



November/December
2015

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From the Director

The holidays will be here before you know it and so will the November 30 renewal deadline for those with licenses expiring on December 31, 2015. Remember, if you don't have a current license or you do not have errors and omissions insurance by January 1st, you cannot engage in any real estate activity requiring licensure. This holds true for those of you lacking the required continuing education as well. If you renewed your license but failed to complete your continuing education, your license will be placed on inactive status until the education is completed. If you do not know the number of hours you currently have, you can find this information in the 'Licensee Only' section on the Commission's website. Please remember you can renew online.

Another reminder, if your errors and omissions insurance expire on December 31st and you haven't renewed your errors and omissions insurance, or provided the Commission a certificate of coverage, you will not be on active status effective January 1st.

If a licensee continues to practice real estate without an active license, they will receive a complaint/consent agreement and no less than a \$100 penalty.

Licensees who failed to renew their licenses at the end of 2015 will be posted in the next newsletter. If you see an individual listed who you know is still engaging in the practice of real estate, please contact the Commission office.

I wish you all a wonderful holiday season and prosperous new year!

Calendar of Events - SDREC Office Holiday Closures and 2016 Tentative Spring Caravan Dates

The SDREC office will be closed on the following days for the holidays:

Thursday, November 26 – Thanksgiving
Friday, November 27 – Thanksgiving
Thursday, December 24 – Office closing at noon for Christmas holiday
Friday, December 25 – Christmas
Friday, January 1, 2016 – New Year

2016 Spring Education Caravan Tentative Dates:

Monday, April 18 – Rapid City
Tuesday, April 19 – Pierre
Wednesday, April 20 – Aberdeen
Thursday, April 21 – Sioux Falls
Friday, April 22 – Sioux Falls

Course presenter and topic is to be determined.

Last Minute Renewal Reminders

As of November 20, the SDREC still had over almost 2000 licenses remaining to be renewed. With the November 30 deadline looming, it is officially “the last minute”. Here are some reminders regarding license and E&O renewal:

Online License Renewal

- In order to use the online system, active licensees must have their education completed and posted! **For licensees that are still completing education courses, it is recommended that you renew by mail. The SDREC office cannot guarantee that the education hours will be posted by November 30 in time to use the online system.**
- For licensees who need to renew both the license and E&O, use the tab to do both at once! If the “E&O only” tab is used, the licensee will not immediately be able to go back and pay the license renewal fee separately.

Renewal by Mail

- The renewal can be mailed in anytime, even if the education is not completed.
- If the brokerage company has satellite offices, don't forget to include the fees for the additional licenses.
- Be sure to fill out the renewal form completely, including the back page.
- If combining the E&O and license renewal fees into one check, please make sure the check is for the correct amount.

Education

- Please do NOT send in, fax or email license completion certificates unless the class was completed out of state, or if the course occurred more than 20 days ago and is still not on the education report.
- Course providers are responsible for reporting the course completion information. They have 10 days from the time the course is completed to do so.

Inactive Licenses

- Licensees on inactive status still need to renew the license if due this year to renew. Failure to renew will result in the license expiring altogether.

Repeated calls, faxes, email, voicemails to the SDREC office does NOT speed up the processing of renewals.

Deadline to renew is November 30. Late fees will take effect December 1.

Disciplinary Actions

The following actions by the Commission have become effective since the last report in the newsletter. A **Consent Agreement and Order** is an admission of violation and voluntary acceptance of the terms determined by the Commission in lieu of a formal hearing.

Brandt Williams, Sioux Falls, Broker. Consent Agreement. Violation of 36-21A-71(1), and 36-21A-52 for failure to register a new place of business or change of business location within ten days. Administrative fine of \$100.

Thomas Adamson, Lawrence, KS, Broker. Consent Agreement. Violation of 36-21A-71(1), and 36-21A-52 for failure to register a new place of business or change of business location within ten days. Administrative fine of \$100.

Steven Abraham, Rapid City, Home Inspector. Consent Agreement. Violation of 36-21C-3, and ARSD 20:74:06:02 for performing home inspections during the time period in which his license was expired. Administrative fine of \$100.

Real Estate News from Around the Country

(Re-printed with permission from ARELLO)

From Kentucky - Brokerage Wasn't Freddie Mac's Agent When it "Trashed-Out" the Wrong Garage

A federal district court recently ruled that a Kentucky real estate brokerage company preparing a foreclosed Freddie Mac condominium unit for resale was not acting in an agency capacity when its broker directed the "trash-out" of the wrong condominium garage space. In doing so, the court ruled that the use of the term "agent" in the contract between Freddie Mac and the brokerage was not sufficient to create an agency relationship, thus Freddie Mac was not vicariously liable for the mistake.

From Montana - Montana Court: Sellers' Agent Had No Duty to Discover Mold Problem for Buyers

The Supreme Court of Montana recently rejected a buyer's argument that the state's real estate licensing laws, together with the REALTOR® Code of Ethics, impose a common law duty on sellers' agents to inspect a property in order to discover and disclose adverse material facts to buyers.

In the case of *Watterud v. Gilbraith*, the sellers disclosed in writing to the buyers that the basement of the subject property had flooded in 2005, but had been "redone" and no further problems had arisen. The sellers also disclosed that the home had not been tested or treated for mold and disclaimed, for themselves and their real estate agent, any representations or warranties about mold. The sellers did not disclose that, instead of hiring professionals, they performed the remediation work themselves. The buyers had the responsibility to obtain a qualified mold inspection, but chose not to do so.

After the transaction closed the buyers became ill, discovered mold in the property, and filed a lawsuit that included a negligence claim against the sellers' agent. A trial court rendered summary judgment in the agent's favor, finding that she had no duty to discover and disclose to the buyers any information regarding the mold problem.

From Hawaii - Hawai'i Approves Early Rental Termination Process for Victims of Domestic Violence

Legislation that took effect in the State of Hawaii on November 1, 2015 provides a means by which victims of domestic violence can terminate rental agreements early, and without monetary penalties. In a bill signing ceremony, Hawaii Governor David Ige said the legislation is particularly important because, "The highest number of deaths among victims of domestic violence occur when the victims take steps to leave the batterer."

Hawaii House Bill 858 amends the state's landlord tenant laws to provide that a tenant residing in a dwelling unit under a rental agreement of a term of one year or less may terminate the agreement early and without additional penalties, fees or liability for future contractual rent payments if the tenant or an immediate family member of the tenant residing in the dwelling has been a victim of domestic violence within 90 days preceding notice of early termination.

From Texas - Bank Not Liable for Brokerage's Counterfeit Check Loss

A Texas appellate court recently held that a bank was not responsible for a \$30,000 loss from a real estate brokerage escrow account that resulted from a successful counterfeit check scheme. In doing so the court relied, in part, on the failure of the brokerage to identify numerous "red flags" indicating that the proposed transaction was a scam.

“Coming Soon” Signs? – Not Without a Written Agreement

Before a brokerage company can place a “Coming Soon” sign in the yard of a home that is not yet on the market, a written agreement must be in place with the owner authorizing them to do so.

The placing of the sign rises to the level of “substantive contact”, which constitutes representation. As required by law, any agreement for representation must be in writing.

New Licenses

Broker Associate

Anderson, John P – Ponte Vedra Beach, FL	Avelar, Yany E – Sioux Falls
Bohlinger, Hanna – Spearfish	Bradsky, Tracy – Rapid City
Dowling, Nicholas P – Rapid City	Elgersma, Eric – Brandon
Farmer, Megan M – Sioux Falls	Ford, Jr., Joe B – Sturgis
Gortmaker, Kendra L – Miller	Gullickson, Martin – Sioux Falls
Gullickson, Rick S – Aurora	Hall, Heidi J - Hartford
Harris, Allison S – Brandon	Hix-Disanto, Lynne – Rapid City
Holsworth, Shalyn K – Rapid City	Johnson, Marnie J – Aberdeen
Lamb, Rachel Y – Sioux Falls	Lenard, Vickie M – Rapid City
McNamara, Daniel W – Hill City	Meyer, Elizabeth A – Sioux Falls
Mikla, James A – Box Elder	Mullin, Michael E – Sioux Falls
Pedersen, April J – Sioux Falls	Rome, Joshua R – Sioux Falls
Semmler, Mia M – Rapid City	Small, Gayle G – Watertown
Smith, Marci C – Sioux Falls	Solheim, Kevin R – Watertown
Sparling, Jason – Northville	Sterling, Nickolas A – Rapid City
Walton, Pamela – Sioux Falls	Webster, Alexandra – Rapid City
Werdel, Angela M – Clark	Winter, Zachary – Sioux Falls
Woehl, Brody L – Yankton	Yan, Shicai – Sioux Falls

Broker

Buesing, Diane – Marshall, MN	Diehm, Roger – Kendallville, IN
Ekse, Mark A – Sioux Falls	Haverly, Jon K – Sioux Falls
Horrall, Bradley – Vincennes, IN	Johnson, Drew C – Aberdeen
Jordan, Kevin – Columbia City, IN	Smith, Matthew J – Highlands Ranch, CO
Van Houten, Marvin D – Forsyth, MT	Wetering, Tyler C – Rapid City

Property Manager

Farmer, Jon M – Sioux Falls	Galbraith, Richard R – Aberdeen
Heber, Gordon E – Sioux Falls	Luder, Brittany M – Box Elder
McGraw, Julia A – Box Elder	Mollman, Jody A – Deadwood
Weter, Olivia M – Rapid City	

Salesperson

Arnwine, Sharon L – Knoxville, TN	Brown, Jackie G – Laveen, AZ
Brown, Paula A – Sioux City, IA	Fast, Karina J – Sioux City, IA
Pope, Kameron – Sioux City, IA	Thue, Darwin D – Willmar, MN

Residential Rental Agent

Boke, James W – Spearfish	Byington, Allison M – Sioux Falls
Cobb, Jacqueline L – Sioux City, IA	Conner, Judson J – Sioux Falls
Mueller, Sean – Sioux Falls	Oligmueller, Lisa G – Sioux Falls
Peterson, Hope M – Sioux Falls	Sik, Nicole - Brookings

Home Inspector

Harshfield, Koleby – Larchwood, IA	Luke, Edward L – Marion
Reynolds, James P - Aberdeen	

Appraiser Update

New Licensees – September/October 2015

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Joseph Miller, State-Certified General – Chicago, IL
Ethan Pieske, State-Registered – Brookings, SD
Chase Kristensen, State-Registered – Plankinton, SD
Marla L. Britton, State-Certified General – Madison, WI
Mark A. Williams, State-Certified General – Marlette, MI
Bradley W. Holloway, State-Certified General – Belton, MO
Jason L. Cox, State-Certified General – Louisville, KY
Alan P. Leirness, State-Certified General – Fargo, ND
Steven Washechek, State-Registered – Rapid City, SD

Review of Cases – January 1 – November 12, 2015

For the period January 1, 2015 through November 12, 2015, the Department has initiated cases for five complaint investigations, eight upgrades, and three new applicants claiming experience.

Complaints – Four pending, one closed.

Upgrade – Six pending, two closed.

New With Experience – One pending, two closed.

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Notices

New” Appraisal Experience Log Form In Service and Required Effective June 1, 2015

Certified, licensed and registered appraisers are required to complete the 2016-2017 7-Hour National USPAP Update course by June 30, 2016.

New Advisory Council Member Appointment

The Appraiser Certification Program is pleased to announce that Adam Lalim of Watertown has been appointed by Marcia Hultman, the Department of Labor and Regulation Secretary, to the Advisory Council effective January 1, 2016. Mr. Lalim serves in the State-Certified Residential Appraiser member position.

Vacancy – Appraiser Certification Program Advisory Council

The Department of Labor and Regulation, Appraiser Certification Program is seeking nominations for the position of State-Licensed Appraiser.

If you are interested in nominating yourself or another appraiser for appointment to the Advisory Council, please submit your nomination in writing to the Department of Labor and Regulation, Appraiser Certification Program, 308 South Pierre Street, Pierre, South Dakota 57501.

The nomination should include the appraiser’s name, address, appraiser title and the reason that you believe you or the person you have nominated should be appointed to the Advisory Council. Any person nominated for this position should possess substantial knowledge regarding appraising, a reasonable understanding of Title XI of FIRREA and its impact on the appraiser profession, and be highly respected by other appraiser professionals.

Please submit nominations to the Department no later than December 15, 2015. If you have any questions, please feel free to contact Sherry Bren at 605.773.4608.

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USPAP Q&A - July 16, 2015

2015-10: APPRAISAL DEVELOPMENT - SCOPE OF WORK ISSUES

Impact on Values of Surrounding Properties

Question: My state requires that when property owners seek an exception to a zoning requirement they demonstrate that the exception will not diminish the value of surrounding properties. I am occasionally engaged to render an opinion in these matters. Is the service that I am providing an appraisal?

Response: Yes. USPAP defines appraisal, in part, as “the act or process of developing an opinion of value.” The Comment to this definition goes on to explain that the opinion of value does not necessarily have to be a number; it can be a relationship (i.e., equal to, more than, not less than) to a numerical benchmark (e.g., market value, assessed value, collateral value). In this example, the question could be restated as: Will the market value of the surrounding properties be less than the current market value if the exception is granted? There, the resulting response is an appraisal.

2015-11: APPRAISAL DEVELOPMENT – ETHICS RULE – CONFIDENTIALITY

Providing a Copy of a Workfile

Question: I recently received a notice from an Appraisal Management Company (AMC) requesting that I provide a copy of my complete workfile upon their request. What steps should I take to comply with this request without violating USPAP?

Response: Providing the AMC with a copy of the workfile is not prohibited by USPAP. However, the appraiser must comply with the Confidentiality section of the ETHICS RULE. The workfile might contain assignment results from another assignment, or confidential information obtained from another client. If so, the appraiser must have authorization from that other client to disclose assignment results or any confidential information related to that assignment.

In addition, the appraiser must be aware of any other laws or regulations applicable to those past assignments, including privacy requirements such as those contained in the Gramm-Leach-Bliley Bank Modernization Act.

USPAP Q&A - October 29, 2015

2015-12: APPRAISAL DEVELOPMENT – SCOPE OF WORK ISSUES

Appraising Two Lots as One

Question: I have a lender client that wants a market value appraisal completed. The property consists of two separate legal lots. The highest and best use for each of these lots is as a separate one-unit residential site. However, the client wants them appraised as though they were one legal lot. The intended use is for mortgage lending purposes.

May this assignment be completed treating these two lots as if they were one legal lot with the highest and best use as one legal lot?

Response: If the appraiser knows that the highest and best use of the properties is as two separate one-unit residential sites, then complying with the lender’s request will require use of a hypothetical condition. If the client is a federally regulated financial institution, it will also need an “as-is” appraisal.

If the appraisal were based on a hypothetical condition (i.e., market value of the subject as if it were a single lot), the appraiser would have to develop an opinion of highest and best use. If this leads to the conclusion that the highest and best use would be subdivision into two or more lots, the appraiser must perform the appraisal recognizing that potential use and may need to perform a subdivision analysis to reach a credible opinion of the highest and best use of the hypothetical parcel.

Assumptions, Extraordinary Assumptions and Hypothetical Conditions (Re-printed with permission from the North Carolina Appraisal Board from the Appraiserreport, Volume 25, April 2015, Number 1)

Appraisers are often asked to appraise properties where they may not be able to verify every fact in an appraisal report. In order to complete the assignment, appraisers may make certain assumptions about the property. USPAP defines an assumption as “that which is taken to be true.” A typical assumption might be that all mechanical, electrical and plumbing systems are in working order. Since the property is occupied, the appraiser is pretty sure that this is the case, but has not actually tested each and every electrical outlet. To make an assumption in this circumstance is reasonable, as the appraiser has no reason to doubt those conditions.

In some circumstances, the appraiser may be uncertain about some characteristic of the subject property that is necessary for the analysis. In that case, the appraiser may utilize an extraordinary assumption to complete the appraisal assignment. USPAP defines an extraordinary assumption as “an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser’s opinions or conclusions.” The comment to this definition states “Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis.” The concept of the extraordinary assumption, and its definition, were added to USPAP in the 1999 edition, which was effective March 31, 1999.

An extraordinary assumption would be appropriate in a situation where, for example, the subject is residential but currently vacant. If the utilities have been turned off, the appraiser cannot check to see if the plumbing or electrical systems work. If these systems do not work, it would have a significant effect on the appraiser’s opinions and conclusions. The appraiser can make an extraordinary assumption that these systems are functional and proceed with the assignment.

If an appraiser does a drive-by appraisal and is uncertain about some condition of the subject property (such as whether the electrical system works, for example), the appraiser should use an extraordinary assumption that the dwelling is in a certain condition, and appraise the property subject to that assumption. As another example, when doing a drive-by appraisal, the appraiser does not generally measure the property or otherwise have direct knowledge of the size of the finished and unfinished areas of the home. The square footage is usually based on information obtained from another source, such as the owner, listing agent or tax office. If the appraiser does not have direct knowledge of the square footage, he should use an extraordinary assumption regarding the square footage. The appraiser must be careful to comply with Standards Rule 2-2 when using such an extraordinary assumption.

A hypothetical condition is used in situations where the appraiser knows some condition is false, but the assignment calls for the appraiser to appraise a subject based on the existing condition. USPAP defines a hypothetical condition as “that which is contrary to what exists, but is supposed for the purpose of analysis.” The comment in USPAP states “Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market condition or trends, or the integrity of data used in analysis.”

Assumptions, Extraordinary Assumptions and Hypothetical Conditions (cont.)

For example, appraisers are often asked to appraise a piece of land on which a home will be built. Since the appraiser knows that the home is not yet built, he cannot appraise it subject to an extraordinary assumption. He can, however, appraise it subject to a hypothetical condition. As another example, a client may ask the appraiser to appraise the subject as though it were zoned commercial, when in fact it is currently zoned residential. The difference in zoning will probably result in a different highest and best use. The appraiser knows the property is not zoned commercial, so he can use only a hypothetical condition. A hypothetical condition is a false condition. The appraiser must be careful to explain what facts are false and what conditions were used in the hypothetical. For a new single family residence, that can mean including a copy of the plans and specifications used by the appraiser in the assignment.

An example of a property disclosure of an extraordinary assumption utilized in a drive-by appraisal might state something like the following:

“Since an interior inspection of the subject property was not performed, this appraisal assignment is based on the extraordinary assumption that the subject property is in average condition. If it turns out that the subject property is not in average condition, this appraiser’s opinions and conclusions may be different.”