



November/December
2016

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**[South Dakota Real
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From the Director

Season Greetings! Thanksgiving and Christmas will be here soon and so will the end of the year. Remember, if you don't renew your 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 with RISC, 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 2016 will be posted in the next newsletter.

I know I have already mention this but I'm going to do it again.

Please keep in mind that next time you renew your license the only option you will have is to renew it online.

Here are a few important changes for the 2016 renewal cycle.

- **Licensees will now print their personal and firm licenses.** Licensees who renew their personal or firm license in 2016 will receive an email notice for either license, after their renewal has been approved, letting them view and print the license. Be sure to update your email on the Commissions website to receive this email. You are not required to display your personal or firm license.
- **Licensees will now renew their group E & O insurance directly with RISC.** You should receive directions on how you can renew online at RISC's website or by mail. **The SDREC office will no longer be processing renewal checks for RISC. All checks made out to RISC received in our office will be returned.**

Real Estate Commission Calendar

Thursday, November 24th – The Real Estate Commission office will be closed in honor of Thanksgiving Day

Friday, November 25th – The Real Estate Commission office will be closed

Wednesday, November 30th – Deadline for 2016 license renewal applications

Friday, December 23rd – The Real Estate Commission office will be closed at 12:00 pm CDT

Monday, December 26rd – The Real Estate Commission office will be closed in honor of Christmas Day

Monday, January 2nd – The Real Estate Commission office will be closed in honor of New Year's Day

What's Around the Corner?

We had some new changes at the Real Estate Commission office. Here are a few more changes we are preparing for in the coming year:

- The South Dakota Real Estate Commission website will be getting an update. As covered in the 2016 Fall Education Caravan the layout of the webpage will now feature drop down boxes and easy to navigate pages. We will also have a new website URL at <http://dlr.sd.gov/realestate> We tentatively anticipate these updates to be effective as of December 1st, 2016.
- As of 2017 The View newsletter will be sent out four times a year in a spring, summer, fall, and winter edition. It will still be sent by e-mail.
- As of 2017 applications for renewal will no longer be offered in paper format. Licensees will need to log into the Licensee Online Services portal located on the main page of the SDREC website starting October 1st, 2017 to submit their renewal application. You will receive a reminder in September by mail.

Beyond Protected Classes: HUD Addresses “Limited English Proficiency” Fair Housing Concerns (Used with permission from ARELLO)

The U.S. Department of Housing and Urban Development, Office of General Counsel, has issued a guidance document warning of potential Fair Housing Act (FHA) liabilities that may arise from unlawful discrimination against persons with “Limited English Proficiency” (LEP).

In an earlier guidance paper examining criminal history-based housing discrimination [May 2016 Boundaries], HUD’s Office of General Counsel acknowledged that the existence of a criminal record is not one of the seven protected characteristics under the FHA [i.e., race, color, religion, sex, disability, familial status and national origin] but concluded that certain housing-related practices based on a person’s criminal past may have a unlawful disparate impact on minorities. Similarly, HUD acknowledges in its new LEP guidance that persons with limited ability to read, write, speak, or understand English are not a protected class under the FHA, but may be protected by its prohibitions against discrimination based on national origin or race.

HUD’s observes that the link between national origin and LEP is “fairly intuitive”, but is also supported by statistics. Over twenty-five million persons in the United States, approximately nine percent of the population, are LEP. Approximately 16,350,000 speak Spanish, 1,660,000 speak Chinese, 850,000 speak Vietnamese, 620,000 speak Korean, 530,000 speak Tagalog, 410,000 speak Russian, and other LEP persons speak dozens of other languages. Citing statistics comparing LEP rates among various segments of the U.S. population, HUD concludes that English language-based housing discrimination generally relates to race or national origin, both of which are FHA-protected classes.

The new HUD guidance examines language-based housing discrimination in the context of both intentional discrimination and practices that have an unlawful discriminatory effect. Intentional discriminatory practices may include, for example, applying a language-related requirement to people of certain races or nationalities; posting advertisements such as “all tenants must speak English”, or turning away housing applicants, such as potential tenants, who are not fluent in English. HUD also explains that lack of English proficiency is often used as a “proxy” for prohibited race or national origin discrimination, thus courts have held that justifications for language-based discrimination warrant close scrutiny. For example, LEP persons may speak English well enough to conduct essential housing-related matters or have a household member who can provide assistance, “...so a blanket refusal to deal with LEP persons...is likely not motivated by genuine communication concerns.” And, says HUD, if a housing provider or resident can access free or low-cost language assistance services, any cost-based justifications for refusing to deal with LEP persons would also be “immediately suspect”.

FHA liability also can arise from policies or practices that have an unjustified discriminatory effect, or “disparate impact”, on protected classes; even absent any intent to discriminate. HUD notes that, unlike language requirements that have been upheld in some business/employment cases, English proficiency is likely unnecessary in the context of a real estate purchase and sale transaction, for example, because there is no ongoing relationship between the buyer and seller. HUD adds, “Nor is it likely necessary in the landlord-tenant context where communications are not particularly complex or frequent or where, for example, a landlord employs a management company with multilingual staff or otherwise can access language assistance.” Similarly, says HUD, refusing to allow an LEP borrower to have mortgage documents translated, restricting a

Limited English Proficiency (cont.)

mortgage borrower's use of an interpreter, and requiring that an English speaker cosign a mortgage, are all examples of practices that are unlikely to survive FHA scrutiny.

HUD's guidance paper also suggests examples of reasonable alternatives to discriminatory LEP practices; such as allowing a reasonable amount of time to take a transaction document to be translated, obtaining written or oral translation services, drawing upon the language skills of a housing provider's staff members, or agreeing to communicate with an English-speaking family member or other person instead of refusing to deal with a person who does not speak English.

[Much of the information in the new HUD guidance document is supported by citations to court decision, census data and other resources that have been omitted here, but are available through the "new LEP guidance" link provided above.-Ed.]

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.

Kim Petit, Sioux Falls, Broker Associate. Consent Agreement. Violation of SDCL: 36-21A-71(1), (2), & (30) for failure to provide protect and promote the interests of the client, SDCL 36-21A-130 for failing to provide a clear and complete explanation of representation of the interests of the client, and SDCL 36-21A-136 for failure to perform duties and obligations owed to the client. Administrative fine of \$1,000.00 and successful completion of the following education; six hours of Contracts, six hours of Laws, and six hours of Agency.

Clint Ackerman, Sioux Falls, Broker. Consent Agreement. Violation of SDCL 36-21A-71(1) and SDCL 36-21A-52 for failure to register a change of business location in writing within ten days. Administrative fine of \$100.00.

New Licenses

Broker

Parker, Kelsey Rapid City

Broker Associate

Ackerman, Tammy	Rapid City	Hill, Shane	Centerville
Ali, Neima	Aberdeen	Holloway, Sean	Rapid City
Allen, Jr., Samuel	Sioux Falls	McLaughlin, Alyssa	Hermosa
Andreson, Kevin	Rapid City	Pullman, Heidi	Rapid City
Brown, Cody	Rapid City	Routh, Britney	Spearfish
Burns, Milissa	Sioux Falls	Sandau, James	Vergas
Clark, III, Lee	Sioux Falls	Skorzewski, Kathleen	Hill City
Crossan, Christopher	Sioux Falls	Steinley, Gerald	Rapid City
DeJong, Tyler	Sioux Falls	Taylor, Tiffany	Sioux Falls
Eichacker, Nick	Salem	Tschetter, Linda	Sioux Falls
Flyger, Thomas	Sioux Falls	Urwiler, Loren	Sioux Falls
Funmaker, Ada	Aberdeen	Weir, Ronnie	Rapid City
Gjerde, Roy	Vienna	Williams, Kera	Spearfish
Grobecker, Teresa	San Francisco		

New Licenses (cont.)

Lic. Home Inspector

Paschen, Roberts Clark

Property Manager

Goettsch, Troy Hot Springs

Hancock, Jessica Hot Springs

Hirschman, Emily Rapid City

Lipp, Ashley Sioux Falls

Maliske, Brian Rapid City

Myers, Julie Hartford

O'Brien, Drew Tea

Walter, Jasmine Rapid City

Res. Rental Agent

Bartol, Rena Spearfish

Beaird, Tonya Rapid City

Hyronemus, Cieara Sioux Falls

Ideker, Tammy Rapid City

Salesperson

Buhl, John Genoa

Derrick, Jesse North Sioux City

Struve, David Sioux City

Upton, Jamie Sioux City

Appraiser Update

New Licensees – September/October 2016

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Benjamin D. Laird, State-Certified General – Phoenix, AZ
April C. Sewall, State-Certified General – West Des Moines, IA
Deanne J. Valenzuela, State-Certified Residential – Watford City, ND
Julie A. Penney, State-Registered – Rapid City, SD
Joshua Van Rooyen, State-Registered – Sioux Falls, SD
Kassidy C. Noem, State-Registered – Castlewood, SD
Charles P. Ferraro, State-Registered – Buffalo Gap, SD
Meghan J. Byrum, State-Registered – Lead, SD
Gregory J. Rasset, State-Certified Residential – Ortonville, MN
Vera R. Tipton, State-Registered – Pierre, SD

Review of Cases – January 1 – October 30, 2016

For the period January 1, 2016 through October 30, 2016, the Department has opened fourteen cases – six investigations and eight upgrades.

Investigations – Six pending.

Upgrades – Four pending, one agreed disposition, and three closed.

Information Regarding Disciplinary Actions

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Labor and Regulation, Appraiser Certification Program, 308 South Pierre Street, Pierre, South Dakota 57501 or e-mail: Sherry.Bren@state.sd.us. Include in the request for information the name of the appraiser and the appraiser's city and state of residence. (Disciplinary action includes but may not be limited to denial, suspension, censure, reprimand, or revocation of a certification by the department. (ARSD 20:14:11:03)

USPAP Q&A 2016-17 USPAP Issue Date: September 13, 2016

2016-11: APPRAISAL DEVELOPMENT – SCOPE OF WORK ISSUES
Inspection Using a Drone

Question: I specialize in eminent domain and right-of-way appraisal assignments. My subject properties are typically very large, wooded, and sometimes have rugged topography. I have begun to use a camera mounted on a drone to view more of the subject property than is practical on foot. Drones even help me view the comparable sales. The certification required by Standards Rule 2-3 requires me to disclose whether or not I personally inspected the subject property. Do aerial viewings using a drone constitute a "personal inspection"?

Response: Yes, provided the use of a drone was in conjunction with your visitation of the property. Unmanned aerial vehicles, or drones are a tool, not unlike binoculars. Tools such as these facilitate a much more thorough inspection than possible by the naked eye. Use of a drone or similar tool *without* a visitation to the subject property (i.e., remotely) would not constitute a personal inspection.

USPAP does not require that you inspect the property being appraised. The SCOPE OF WORK RULE requires that you disclose the extent to which you inspected the property. Therefore, just as you would disclose whether or not you entered the property, or that you relied upon surveys and topographical maps, you would disclose that a drone allowed you to view additional areas of the subject property. Conversely, if somebody provided you with footage filmed by a drone or a manned aircraft, it would be misleading to represent that as a personal inspection.

Appraisal Development (cont.)

Because this is a rapidly evolving technology, regulations by government agencies, such as the Federal Aviation Administration, are also rapidly evolving. Make sure you are familiar with all relevant federal, state, and local laws, requirements and restrictions. This may be of particular importance if you use aerial technology to view comparable properties or those with access restrictions.

2016-12: APPRAISAL REPORTING – USE AND FORMAT ISSUES Restricted Appraisal Report for Multiple Parties

Question: I received an inquiry about performing an appraisal assignment. The caller stated the assignment would have two intended users: 1) himself (as the client); and 2) his business partner. Both parties are very familiar with the property and frequent users of appraisal services. Therefore, I was asked to produce a Restricted Appraisal Report. However, USPAP prohibits issuing a Restricted Appraisal Report when there are any intended users other than the client. Is there a way I can produce a Restricted Appraisal Report for multiple parties under USPAP?

Response: Yes. Although USPAP does not permit a Restricted Appraisal Report when there are additional intended users beyond the client, USPAP does allow multiple parties to engage an appraiser in an assignment.

In this case, if both parties engage the appraiser as co-clients, there would be no intended users besides the client(s), and a Restricted Appraisal Report would be permitted under USPAP.

[Visit The Appraisal Foundation website (www.appraisalfoundation.org) for additional USPAP Q&As]

New Rules Effective September 20, 2016 Appraiser Certification Program

Midway to Upgrade Review (Chapter 20:14:05)

20:14:05:05.05. Experience -- Review of appraisals by secretary midway to upgrade. When a state-registered appraiser has achieved at least fifty percent of the experience hours required to upgrade to the state-licensed, state-certified residential, or state-certified general appraiser classification, the licensee may request from the secretary an appraisal review of an appraisal completed by the licensee. The licensee may have a maximum of two appraisals reviewed pursuant to this section.

The appraisal review shall be for compliance with: the uniform standards, as adopted pursuant to § 20:14:06:01; the additional assignment conditions, as required pursuant to § 20:14:06:01.01; and the competency requirement pursuant to § 20:14:09:02. The department shall provide a copy of the appraisal review report to the licensee and the licensee's supervisory appraiser.

If the appraisal review reveals that the licensee's appraisal is not in compliance, the secretary may prescribe remedial education to the licensee. The secretary may not take disciplinary action against the licensee or the licensee's supervisory appraiser for non-compliant appraisal work found pursuant to this section.

If the appraisal review reveals that the licensee's appraisal is in compliance, the licensee shall be granted credit for the compliant appraisal report when the licensee applies to upgrade to a higher classification.

New Rules (cont.)

Fees (Chapter 20:14:10)

20:14:10:05.01. Upgrade fee -- midway upgrade. A licensee shall pay the following applicable midway upgrade fee for each appraisal submitted pursuant to § 20:14:05:05.05:

- (1) \$200 -- Residential (Single Family Unit);
- (2) \$250 -- Residential -- Small Income Producing (2-4 units);
- (3) \$350 -- Non-Residential (Agricultural); or
- (4) \$400 -- Non-Residential (Commercial/Industrial/Multi-Family [more than 4 units]).

Complaints, Investigations, and Discipline (Chapter 20:14:11)

20:14:11:01. Complaints and investigations. Upon receipt of an allegation of non-compliance against any certificate holder or applicant for certification, as defined by § 20:14:11:01.01, or upon the secretary's own motion, the secretary shall initiate an investigation of the allegation. If the investigation provides evidence of non-compliance, the secretary may enter a formal complaint stating the charge against any certificate holder or applicant for certification.

20:14:11:01.01. Allegation of non-compliance. An allegation of non-compliance must be in writing and meet the following criteria:

- (1) The allegation of error or violation of any provision of this article is considered credible and based upon factual information which is independently verifiable; and
- (2) The allegation is accompanied by a copy of the appraisal report or other credible documentation which contains a clearly identifiable error or violation of the provisions of this article, and provides sufficient evidence that it is probable the allegation has merit.

When the Uniform Residential Appraisal Report (URAR) Is Not the Right Form By Jim Jacobs- Investigator with the Texas Appraiser Board

[Reprinted from THE APPRAISER, Arkansas Appraiser Licensing and Certification Board Newsletter, Spring 2016, Volume 24, Issue 1]

URAR is the most commonly used appraisal report form in residential appraising. Most appraisers are familiar with it and feel comfortable in its use. However, it is not always the right form in a residential appraisal assignment.

2016-2017 USPAP states in Standard 2 the appraisal report must not be misleading and contain sufficient information to be properly understood. Additionally, as a regulatory attorney once observed: "If you say it in your appraisal report, the reader has the right to rely on your statements." So, care should be taken in communicating your appraisal results including the use of the appropriate report form.

The URAR was designed only for mortgage finance assignments in general, and with the specific needs/requirements of Fannie Mae/Freddie Mac (FNMA/FHLMC) in mind. Also, as promulgated by FNMA/FHLMC, the URAR does not fully comply with current USPAP requirements. As a result, in many assignments communicating the appraisal assignments results using the URAR may be problematic.

Assignments where the URAR may not be the optimum form include:

- Litigation;
- Partial interests;

Not the Right Form (cont.)

Replacement cost for insurance purposes;

Listing price services;

Foreclosure/REO assignments;

Property tax protests; and

Probate and estate planning.

To comply with USPAP in the above and other appraisal assignments, it may be necessary for the appraiser to adapt or modify the URAR form to comply with USPAP and/or meet client needs. The specialization built into the form may make this a thankless task.

As mentioned, the URAR was designed for FNMA/FHLMC purposes only and therefore reflects their particular needs and requirements. Examples of this include: emphasis being placed on the neighborhood without addressing the market area; a highest and best use section which assumes the current use, as improved, will be the highest and best use; and an improvement description section that does not lend itself to detailed descriptions of accrued depreciation or any related analysis. Additionally, the certifications (there are 25 incorporated in the form, USPAP requires only 10) reflect specific FNMA/FHLMC requirements that restrict/limit the appraiser's flexibility. Furthermore, there is language in the form specifically forbidding or restricting changes or modifications of the intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications.

When a non-finance residential assignment calls for the use of a form summarizing the appraiser's findings, what are the options?

While in the past there were not many options, that is no longer the case. Alternatives available include:

Narrative Format: Creating a narrative report has always been an alternative, but it negates many of the advantages of a form. However, some appraisers have created template report formats for use in lieu of the URAR, but these are typically not created to any particular standard or format and may meet client resistance.

General Purpose Forms: Software vendors offer suites of general purpose residential forms. All the major providers of software offer versions of non-FNMA/FHLMC specific forms. While retaining the general layout and "feel" of the URAR, the specifics related to mortgage lending and secondary mortgage market requirements have been removed or changed. An added advantage of these purpose forms includes their being updated more frequently than the URAR.

AI Reports: The Appraisal Institute created a family of residential appraisal forms/addendums to handle a wide range of non-mortgage lending appraisal assignments. Unlike other forms, the AI Reports are a hybrid form/narrative report, using a modular format. This allows the appraiser to have more control and flexibility, and the ability to pick and choose only those elements germane to the assignment.

June, 1993 URAR: The "old" version of the URAR has been a choice for many appraisers, especially in the past when there were few alternatives. Problems with using this form include it having many of the same mortgage finance specific limitations of the current form, and also being 23 years "out of date." Much in the way of modification/changes would be required to properly use this form today.

So, there you have it. The current URAR may not be the proper form for every residential assignment. However, today there are number of alternatives which preserve the advantages of a form report without requiring extensive changes or modifications.

Remember, whichever form you choose, the appraiser has the ultimate responsibility for compliance with USPAP. Happy appraising!