SOUTH DAKOTA
Real Estate VIEW

STATE OF SOUTH DAKOTA · GREAT SEAL · 1889 · UNDER GOD THE PEOPLE RULE · REAL ESTATE COMMISSION

Published by the SDREC

VOLUME 55 | October/November 2010 | NUMBER 5

Inside This Issue

License Renewal Reminders

Renewal Deadline

Renewals must be received by the SDREC office **no later than November 30**. **THIS IS NOT A POSTMARK DEADLINE.** Renewals received after Nov. 30 will be assessed a late fee.

Sign and Complete the Renewal Form

Every year, the commission office returns numerous renewals because they were submitted without a signature or they were incomplete. Questions that need either a yes or no answer may not be answered "NA".

Correct Fees

The commission office does not accept credit card payments. The license renewal fee and E&O premium may be combined into one check, but make sure it is the correct amount! Checks received by the SDREC are deposited within 1-2 days of receipt.

Satellite/Branch Offices

If a license is displayed at more than one physical location and/or with an additional entity, there is a $30 additional license fee that must be submitted with the renewal form.

Education

Don't wait until education hours are completed to send in the renewal form. If the education is not completed, simply answer "No" to the education question posed on the renewal form and send the renewal form in. This allows the SDREC office to process the new license more quickly once the education is completed. Course providers have 10 days from the completion date to submit the rosters to the commission office. During license renewal time, the number of rosters submitted to the SDREC office **increases dramatically** – it may be up to 3 weeks before the education gets posted to a licensee's report.

Inactive Licensees

Inactive licenses still must be renewed, otherwise they will expire completely. Continuing education and E&O insurance are not necessary for renewal on an inactive status.

E&O Endorsements for Other States

SD residents purchasing E&O endorsements for other states in which they hold licenses need to submit their E&O renewal to the SDREC office as soon as possible. It takes time for the SDREC office to notify the insurance company of the endorsements and in turn, for the insurance company to notify the appropriate state(s) of the coverage. Waiting until the last minute to submit the E&O premium will result in a delay in this process.

Nonresidents

Nonresidents with active SD licenses must submit a certification of licensure from their resident state. A certification of licensure is NOT a photocopy of the license – contact the regulatory agency in your resident state to request a license certification.

Mailing Address

For active licensees, renewals were mailed to the business address on file with the commission office. For inactive licensees, renewals were mailed to the home address on file. The renewal forms are also posted on the commission website at www.state.sd.us/sdrec. **It is each licensee's responsibility to ensure all of the renewal requirements are met!**

From the Director's Desk

The Commission conducted a public rules hearing at its last meeting. As a result of this hearing, the rules will be presented to the Interim Rules Committee of the State Legislature for its approval. This meeting is scheduled for November and if the rules are approved by the Committee, they will go into effect around the first part of December. The effect of these rules changes will be to permit a licensee to receive advance compensation if the compensation is placed in the broker's trust account until completion of the service performed, authorize the commission to issue consent orders, define auction terms, establish listing requirements, advertising guidelines, and procedures when selling real estate at auction, require auctioneers to retain certain records, prohibit auctioneers from performing certain acts, distinguish licensees who are permitted to conduct auctions, and allow an inactive nonresident licensee to renew without filing a certification of licensure from the licensee's resident state.

At a recent meeting of real estate regulators, discussions were held on the rise of problems in property management, especially vacation rentals, and concerns of brokers who shirk their supervisory duties. Like the other jurisdictions, both of these topics are hot issues in South Dakota and the Commission and staff are trying to deal with them as best they can.

Lately, several licensees have fallen victim to the Commission's citation program because of reporting changes of address after the 10 day requirement. Because the change of association form requires three signatures, it is imperative that the form gets completed and filed with the Commission in a timely manner. When the form is filed late, the transferring licensee and the new broker are each served with a citation packet.

With the 2009/2010 licensing period coming to a close, I encourage those of you renewing and on active status to make sure you get your renewals in by the deadline to ensure you have a license to display. Last year, several stipulations were agreed to which incurred additional costs to the licensees who continued to practice without an active license. This also incurred costs to the responsible brokers of these licensees. You can avoid Commission action if you comply with renewal requirements. Please read carefully the renewal article on the newsletter cover and take heed to it.

It has also come to my attention that many licensees are having the agency agreement addendum signed prior to the signing of the listing agreement or buyer agency agreement. The first line of the agency agreement addendum states, "This addendum is attached to and made a part of the ___ listing/management agreement ___ buyer/tenant agency agreement dated… " Basic contract law requires a contract to be in place before attaching any addenda to it.

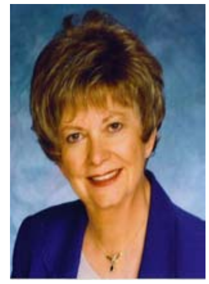
Autumn always brings a new beauty to our wonderful state. I hope you have a chance to enjoy this splendor. Winter will be here before we know it!

DjN

SDREC Executive Director Dee Jones Noordermeer takes the oath of office as a new member of the ARELLO Board of Directors at the Annual Meeting in Anchorage, AK

Calendar of Events

November 11
Veterans Day, SDREC Office Closed
November 25-26
Thanksgiving, SDREC Office Closed
November 30
E&O License Renewal Deadline
December 1-2
Commission Meeting – Pierre



From the Commission Chair, Paula Lewis

Fall is here and with it was our Fall Caravan featuring Marie Spodek. I hope you found answers to those everyday questions that come up in the workday of a licensee.

Dee Jones-Noordermeer and I enjoyed an earlier Fall in Anchorage, Alaska, where we attended the annual meeting of ARELLO (The Association of Real Estate License Law Officials). It truly is an international group with attendees from the United States, Canada, South Africa and the United Arab Emirates at his meeting.

The General assembly was opened by the current President, Gary Isom, from Arkansas riding in on a dog sled! Martin Buser, a four time winner of the Iditarod dog sled race, spoke about the race, his dogs and the incredible effort it takes just to compete and provide the over 15000 calories a day that each dog requires.

During the installation of the new officers Dee was installed to the Board of Directors assuring SD a voice on that body.

I have been the Chair of the Real Estate Practices Advisory Group this year. We have been exploring new and sometimes unwelcome trends throughout the jurisdictions. This year we have focused on short sales and the unlicensed practice of real estate. We discussed penalties for this practice which range from felony prosecution, forfeiting the entire fee received, and misdemeanors usually not prosecuted by the State's Attorneys.

One area of particular concern was addressed in our motion adopted by the board of directors was for ARELLO to issue a position statement encouraging jurisdictions to ensure that licensees understand that ANYONE who receives a referral fee must be licensed unless otherwise permitted by law. Often licensees do not ask referral companies or internet contacts if they or their firm is licensed. SDREC is urging action to tighten SD's law concerning unlicensed activity.

After our regular meeting this month, we held a productive public rules hearing for auctioneers. It was well-attended and thanks to the Auctioneers' Association attorney, Mike Shaw of Pierre, who acted as the main spokesperson for the group, there was a free exchange of ideas and explanations of phrases commonly in use. Everyone in attendance had an opportunity to ask questions and state their position. It was educational, particularly for those of us who are not auctioneers. The resulting changes in rule will clarify how auctions will be advertised and conducted.

I want to remind all of you that you are welcome at our meetings and may comment or suggest items to be considered for our agenda. We will meet again in Ft. Pierre December 1st and 2nd at the Holiday Inn Express.

SDREC Instructor Development Workshop

Real estate instructors and those interested in being instructors are invited to attend SDREC's Instructor Development Workshop (IDW) scheduled for Nov. 3-4 in Pierre.

This year's workshop facilitator is Deborah Long, DREI, CRS, Ed. D.

Deb's presentation will focus on "The Struggle for Character". Participants will learn how to recognize the ethical maturity of their students; develop effective teaching techniques for enhancing ethical development; foster ethical development in the classroom and beyond. She will use some case studies and offer tips on incorporating scenarios into the classroom to help students with ethical decision-making.

The workshop will begin at 1 p.m. on Wednesday, Nov. 3 and conclude early afternoon on Thursday, Nov. 4. There is no cost to attend, other than traveling expenses. Persons considering instructing prelicensing courses must complete an IDW within one year of approval as a prelicensing instructor.

For more information, contact Karen Callahan, Education Director at (605) 773-3600 or email karen.callahan@state.sd.us.

Citations Issued

The Commission established the Citation Program to diminish the number of license law violations, decrease time required to bring licensees into compliance and to recover costs involved when action is required. The following individuals and/or firms have been issued citations. Each licensee/company has agreed to a Stipulation of Assurance and Voluntary Compliance and has satisfied the requirements of the stipulation.

Audit violation/Failure to reconcile trust account/Trust account not balanced:

Richard O'Bryan, Winner, Broker. $100 penalty.

Failure to report change of business location within 10 days:

Clint Fischer, Brookings, Auctioneer. $50 penalty.

New Licensees

The South Dakota Real Estate Commission would like to welcome the following new licensees.

Broker
Barr, Robert W – Rice Lake, WI
De Hueck, Patricia – Pierre
Marreel, Joel W – Hooper, NE
Nichols, Shawn M – Sioux Falls
Obrecht, Jeffrey T – Iowa Falls, IA
Rabin, Cheryl L – Glenview, IL
Walters, Ronald L – Clear Lake, MN
Webster, James S – Orem, UT

Broker Associate
Anderson, Christine A – Conde
Berger, Barbara A – N. Sioux City
Bobby, Melanie R – Aberdeen
Brown, Amanda L – Sioux Falls
Clark, Jeremiah T – Rapid City
DeBeer, Todd L – Sioux Falls
Drew, Natalie A – Rapid City
Dupont, Nicholas J – Rapid City
Evans, Rosalie A – Monroe
Feldman, Annetta J – Sioux Falls
Grosskopf, Ann M – Black Hawk
Henderson, Tawnya L – Aberdeen
Johnson, Trevor C – Rapid City
Lauer, Cody A – Rapid City
Lawrence, Michael A – Watertown
McDonald, John E – Sioux Falls
McDowell, John K – Rapid City
Niemeyer, Thomas G – Tea
Pomrenke, Kraig A – Sioux Falls
Spilde, Heidi A – Arlington
Steffensen, Sarah – Arlington
Swee, Troy K – Beresford
Wagner, Cari A – Sioux Falls
Williams, Lisa A – Yankton

Property Manager
Thalacker, Janet M – Rapid City
Wheeler, Trina K - Piedmont

Home Inspector
Bowden, Bruce – Black Hawk
Casper, James O – Belle Fourche
Whitebird, Robert A - Pierre

South Dakota Real Estate VIEW

Official Publication of the
South Dakota Real Estate Commission
221 West Capitol Ave., Suite 101
Pierre, South Dakota 57501

Telephone: 605-773-3600
Facsimile: 605-773-4356
Website: www.state.sd.us/sdrec
E-mail: drr.realestate@state.sd.us

Editor-in-Chief: Dee Jones Noordermeer
Editor: Karen Callahan

Residential Rental Agent
Fowlds, Tena L – Tea
Maher, Daun – Sioux Falls
Marshall, Cindy – Dupree
Reeves, Patti – Sioux Falls

Salesperson
Donabauer, Jeremy J – Annandale, MN
Reynolds, Benjamin J – Hooper, NE
Robb, James D – Clearwater, MN
Swanson, Kenneth A – Big Lake, MN

In Memoriam

The SD Real Estate Commission extends its sincerest sympathy to the families and friends of the following licensee who recently passed away:

Mel Ribordy, Broker Associate,
Rapid City, SD

U.S. Federal Reserve Releases Proposed "Reg Z" Changes: Round Two

(used with permission from ARELLO)

The Board of Governors of the (U.S.) Federal Reserve System has issued its proposal for more changes to "Regulation Z" which, among many other things, mandates mortgage loan practices and disclosures that are intended to protect consumers under the U.S. Truth in Lending Act (TILA).

The latest set of proposals represents the second phase of the Board's comprehensive overhaul of "Reg Z" mortgage loan rules. The first phase commenced with the August 2009 publication of proposals that would significantly enhance the disclosures that consumers receive in connection with closed-end home mortgage loans and home equity lines of credit (HELOCs). After considering the comments received on the current, second round of proposed rules, "the Fed" plans to issue final rules that combine both. According to the Federal Reserve's "highlights" of its very lengthy rulemaking notice, the following new changes would apply to various forms of home-secured credit.

<u>Reverse mortgages</u>

"The Fed" says that reverse mortgages are complex products available to older consumers, some of whom may be more vulnerable to abusive practices. To help consumers understand these products, the proposed Reg Z changes include:

- A new, two-page disclosure highlighting the basic features and risks of reverse mortgages;
- Prohibitions against certain unfair practices in the sale of financial products with reverse mortgages;
- Transaction-specific disclosures that reflect the actual terms of the reverse mortgage within three days after receiving the consumer's application;
- A final disclosure within three days of closing that facilitates comparison with the earlier disclosures;
- New standards to ensure accurate and balanced reverse mortgage product advertising;
- Prohibitions against forcing reverse mortgage purchasers to purchase other financial or insurance products such as annuities or long-term care insurance;
- Required consumer counseling; and
- Prohibitions against steering consumers to specific reverse mortgage counselors, or compensating counselors or counseling agencies.

<u>Consumer's right to rescind:</u>

The Federal Reserve notes that under existing federal law, consumers generally have three business days after closing to rescind certain types of home-secured loans. The right to rescind may be extended for up to three years if the creditor fails to provide the consumer with certain disclosures or the required notice of the right to rescind. According to the Federal Reserve, the latest rule proposals would:

- Simplify and improve right to rescind notices provided to consumers at closing;
- Revise the list of disclosures that can trigger an extended right to rescind, focusing on those that are most important to consumers; and
- Clarify creditors' obligations when the extended right to rescind is asserted, in order to reduce uncertainty and litigation costs.

<u>Other home-secured credit provisions: All loan types</u>

Other proposed Reg Z changes aimed at all types of home-secured loans would:

- Ensure that consumers have time to review their loan cost disclosures and change their minds before they become obligated for fees, by requiring lenders to refund the fees if the consumer decides to withdraw the application within three days after they receive the disclosures;
- Ensure that consumers receive new disclosures when the parties agree to modify the key terms of an existing mortgage loan;
- Require servicers to provide information to consumers about the owner of a loan, generally within 10 business days of receiving such a request;
- Revise the definition of "higher-priced mortgage loans," which are subject to special protections for subprime loans;
- Conform advertising rules for home-equity lines of credit to existing rules that apply to closed-end mortgage loans; and
- Revise the disclosure rules related to credit insurance and debt cancellation and suspension products to ensure that consumers are fully informed of the associated costs and risks.

The public comment period for the proposed changes closes on Dec. 23, 2010 and may be made by following the instructions contained in the Federal Reserve's rulemaking notice. In addition to these Reg Z proposals, the Federal Reserve has issued a host of other rules affecting unfair, abusive, or deceptive loan originator compensation practices; the sale or transfer of mortgage loans; and variable mortgage rate disclosures and escrow requirements for certain types of loans. Some of the rule changes are mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. More information is available through the Federal Reserve's website.

Annual FBI Report Details Increasing Mortgage Fraud, Emerging Schemes and Top Fraud States

(used with permission from ARELLO)

The latest annual mortgage fraud report issued by the U. S. Federal Bureau of Investigation (FBI) concludes, somewhat predictably, that mortgage fraud activity in the U.S continued to grow during fiscal year 2009. The report indicates that the top states for mortgage fraud during 2009 were CA, FL, IL, MI, AZ, GA, NY, OH, TX, DC, MD, CO, NJ, NV, MN, OR, PA, RI, UT and VA, in that order. While the report reveals the continuation of well-known mortgage fraud schemes, it also provides a look at new scams that are emerging.

Emerging Schemes

Many of the prevalent mortgage fraud schemes that are well-known to law enforcement and regulatory agencies continued to plague consumers and the real estate industry in FY2009. These familiar schemes involve loan origination, foreclosure rescue, builder bailouts, equity skimming, short sale, home equity line of credit (HELOC), illegal property flipping, reverse mortgage fraud and many others. According to the FBI, new techniques and trends in mortgage fraud were reported in FY2009 by various law enforcement, regulatory and industry entities.

Mortgage Debt Elimination Schemes by "Domestic Extremists/Sovereign Citizens"

"Sovereign citizen/domestic extremists" throughout the U.S. are perpetrating debt elimination schemes. "Sovereign citizens" reject all forms of government authority and believe they are immune from federal, state and local laws. Victims pay advance fees to perpetrators espousing themselves as "sovereign citizens" or "tax deniers" who promise training in methods to reduce or eliminate debts. Schemes primarily targeting mortgages and commercial loans, unsecured debts and other types of loans have victimized consumers in several U.S. jurisdictions. The schemes involve "coaching" people on how to file fraudulent liens, proofs of claim, entitlement orders and other documents to prevent foreclosure and forfeiture of property.

Commercial Real Estate Loan Fraud

The FBI report indicates that the $6.4 trillion commercial real estate market is experiencing a high incidence of loan origination fraud similar to that seen during the last few years in the residential market. Perpetrators such as loan officers, real estate developers, appraisers and apartment management companies are increasingly submitting fraudulent documents that misrepresent assets and property values to qualify for loans.

Flopping, Short Sales and Broker Price Opinions

As cited in previous annual mortgage fraud reports, short sale property flipping schemes continue to emerge using the distressed properties of homeowners who are unemployed or facing foreclosure. The perpetrators collude with appraisers or real estate agents to undervalue the property using an appraisal or a broker price opinion to further manipulate the price down (the "flop") to increase their profit margin when they later sell the property (the "flip"). They negotiate a short sale with the bank or lender, purchase the property at the reduced price and flip it to a pre-selected buyer at a much higher price. The FBI's report also expresses concern over HUD/FHA's waiver of the 90-day property flipping rule, which was designed to prevent illegal property flips of FHA-insured properties. The waiver, in effect through January 31, 2011, was initiated in order to boost the stagnant real estate market and remove properties from "the books" of banks.

Property Theft Targeting Bank-Owned Properties

The FBI also reports that perpetrators are targeting bank-owned properties by filing a false warranty deed, using a false rental/lease agreement and collecting advance fees from an unauthorized tenant. The perpetrator arranges to rent out the REO property to an unsuspecting renter. The perpetrator advises the renter that, if confronted by a realtor [sic] or law enforcement officer, the renter is to produce a lease agreement provided by the perpetrator. On inspection of public records, the false warranty deed seems to support the equally false lease. During the course of this scheme, the perpetrator places "no trespassing" signs on the properties and often changes the locks.

Foreclosure Rescue Schemes—Prime Fixed-Rate Loan Delinquencies

Although mortgage loan delinquencies and related fraud activity are generally associated with higher-risk subprime loan borrowers, the FBI says that an increasing number of prime-rate mortgage loan delinquencies are being driven by unemployment. Because of the known correlation between mortgage loan delinquencies, defaults, foreclosures and mortgage fraud, it is anticipated that the increasing number of prime-rate loan delinquencies will fuel a greater pool of potential mortgage fraud victims and perpetrators. Prime-rate homeowners will also add to the growing number of foreclosure "rescue" victims. According to the Mortgage Bankers Association, prime fixed-rate loans are now the biggest contributing factor to foreclosure rates and account for approximately 30 percent of all new foreclosures, a 10% increase from 2008.

Foreclosure Rescue Schemes/Loan Modification Fraud

Despite the efforts of local, state and federal agencies to warn consumers about foreclosure rescue and related loan modification fraud, the FBI says that predatory practices in this area are still flourishing. In the face of growing numbers of homeowners needing loss mitigation assistance, mortgage servicers are overwhelmed with loan modification requests and are not providing borrowers with timely and consistent information regarding modifications or other alternatives. Consequently, loan modification scams that typically involve advance fees are increasing.

The Outlook

According to the FBI, a decrease in loan originations, increased unemployment, increased housing inventory, lower housing prices and increases in defaults and foreclosures in FY 2009 created a favorable environment for mortgage fraud perpetrators. The current housing market, while showing modest signs of improving, continues to be an attractive environment for mortgage fraud perpetrators. Even with recent regulatory interventions, mortgage fraud levels are not expected to decrease until 2013, at the very earliest. The FY 2009 FBI Mortgage Fraud Report is publicly available and includes more information about existing and emerging schemes, geographical data and relevant statistics.

APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Dept. of Revenue & Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquires can be directed to Sherry Bren, Program Administrator, 445 E. Capitol, Pierre, SD 57501, 605-773-4608

Appraiser Certification Program Mission–Purpose–Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

Appraiser Certification Program Advisory Council

Council members provide recommendations to the Secretary of the Department of Revenue and Regulation in the areas of program administration in order to sustain a program that is consistent with Title XI. The Council meets quarterly in public forum. See the Website for meeting information. www.state.sd.us/appraisers

Vacancy – Advisory Council - Deadline for Nominations Extended

The Dept. of Revenue and Regulation is seeking nominations for a **State-Licensed Appraiser** to serve as a member of the Appraiser Advisory Council.

The Advisory Council is responsible for advising the Department Secretary in matters of program administration, procedure, and policy in order to sustain a program that is consistent with Title XI, Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 administered by the Appraisal Subcommittee and the uniform standards and qualifications criteria as set by the Appraisal Standards Board and the Appraiser Qualifications Board of the Appraisal Foundation. The council members do not receive compensation for any expenses incurred to serve on the council. Four meetings are held each year in Pierre. The term limit is four years.

If you are interested in nominating yourself or another appraiser for appointment to the Advisory Council, please submit your nomination in writing to the Dept. of Revenue and Regulation, Appraiser Certification Program, 445 E. Capitol Ave., Pierre, SD 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 the position should possess substantial knowledge regarding appraising, a reasonable understanding of Title XI, 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 November 15. If you have any questions, please feel free to contact Sherry Bren at 605.773.4608.

New Licensees – August/Sept. 2010

Timothy J. O'Hara, State-Registered – Yankton, SD

Kevin P. Johnson, State-Certified Residential – Lexington, KY

Janelle E. Mersch, State-Certified Residential – Omaha, NE

Deborah L. Carstensen, State-Certified General – Omaha, NE

Jeffrey S. Wilhelm, State-Certified General – Omaha, NE

Brett E. Russell, State-Certified General – Flowermound, TX

Robert V. Bias, State-Certified Residential – Florence, KY

Information Regarding Disciplinary Actions

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Appraiser Certification Program, 445 E. Capitol Ave., Pierre, SD 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 may include denial, suspension, censure, reprimand, or revocation of a certificate by the department. (ARSD 20:14:11:03))

The following disciplinary action has been taken by the Appraiser Certification Program:

Monte R. Gregg, Jefferson, SD – Complaint Case # 10-336. The Department of Revenue and Regulation entered an Amended Final Decision, effective July 6, 2010, affirming the revocation of the State-Certified Residential Appraiser Certificate for Monte R. Gregg.

Anonymous Complaints

ARSD 20:14:11:01.01. Anonymous complaints. Initiation of an investigation may be commenced upon receipt of an anonymous complaint if it meets the following criteria:

(1) The allegations of violations of any provision of this article are considered credible and based upon factual information which is independently verifiable; and

(2) The complaint is accompanied by a copy of the appraisal report or other documents which contain clearly identifiable errors or violations of the provisions of this article.

Review of Cases – 1/1/10 – 10/12/2010

For the period 1/1/10 – 10/12/10, the Department has received 18 upgrade applications and initiated 20 complaint investigations.

Upgrades – 10 pending, 1 agreed disposition, and 7 issued.

Complaints – 13 pending, 3 final disposition, and 4 dismissed.

Upgrade – Sept. 2010

David Lawrence, State-Certified General

Steven Clooten, State-Licensed

Rick March, State-Certified General

Loretta Asbenson, State-Certified Residential

Issues in Comparable Sales

What is a true comparable sale?

In looking at a sale to see if it may be used in an appraisal, the appraiser must make sure that the sale reflected an arm's length transaction. There are generally five elements of an arm's length transaction.

1. The buyer and seller are typically motivated.
2. Both parties are well informed or well advised, and each is acting in what they consider their best interest.
3. A reasonable time was allowed for exposure in the open market.
4. Payment was made in terms of cash in United State Dollars or in terms of a financial arrangement comparable thereto.
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions.

If any of these tests are not met, the sale may only be used with appropriate discussion and adjustment. A client may have additional requirements, such as that the sale must be less than 6 months old or within a certain distance from the subject. It is the appraiser's responsibility to be familiar with and comply with those guidelines.

Source of data

Your source of data for your comparable sales must have sufficient information so that you can understand the conditions of sale, existence of financing concessions, physical characteristics of the subject property, and whether it was an arms-length transaction. Competency requires that you have the ability to locate home sales information available from many sources, not just a Multiple Listing Service. A local MLS is a good source of data, but should not be considered the only source an appraiser may utilize in selecting comparable sales. In some areas, tax records or private databases provide more comprehensive data. A FSBO (for sale by owner) property could be a reasonable comparable sale if it had been properly marketed. Some builders do not utilize the MLS for their subdivisions, preferring to do some or all of the sales themselves. This is especially true in some "green" subdivisions. If a property has not been marketed on MLS or another regional database, the appraiser must make sure that the property was exposed to the open market for a reasonable time before it can be used. Also remember that Fannie Mae requires you to state the specific source of your data; they do not allow the use of a broad category such as "public records".

Verification

Remember, Standards Rule 1-4 of USPAP requires that you collect, verify and analyze the data used in the report. For example, if you <u>collect</u> comparable sales information from MLS, you then <u>verify</u> the information by checking with the listing or sales agent, the tax office, or another source. If there is any discrepancy between these two sources, you must continue to research the sale until you are confident that the information you will use in your analysis is correct. This is especially important if you receive verbal information or a HUD-1 that conflicts with public records.

An appraiser cannot state that the verification source is "inspection".

Information in MLS may not be accurate and may report a sale that was not arm's length. There are some instances where real estate agents may report a land/home package sale on MLS. Sometimes you will see a remark that the sale is for information purposes only and is not to be used as a comp. Even if the sale is reported on the MLS, that does not make it a legitimate, arm's length transaction.

Using foreclosure sales

In the current economy, foreclosures have skyrocketed and REO sales have become common in many areas. Lenders may be more willing to accept a short sale to avoid foreclosure. The problem with using these sales is that in many instances the buyers and sellers are not typically motivated. The seller may want to unload the property as soon as possible, not caring about the final price received. The buyer may take advantage of this and make an offer much lower than what they are willing to pay. The properties themselves are often sold "as is", without any repair or inspection contingency. Given these problems, FHA and other lenders "strongly discourage" the use of foreclosure sales or short sales as comparables.

In areas where there are only a few distress sales, it is easy to ignore them as comparable. In some areas, however, there are so many foreclosure sales that they have become the market for that area and buyers will not pay full price for a home absent special financing or

SD Real Estate Commission
221 W Capitol Ave, Suite 101
Pierre, SD 57501

4350 copies of this publication were printed by the SD Real Estate Commission at a cost of .20 per copy.

concessions. As a result, there could be a longer marketing time and resultant decline in value in the area. These factors should be noted in the marketing conditions section of the appraisal report or on the 1004 MC. In this circumstance, using a foreclosure sale might be warranted, if adequate research is done and the use of the sale is explained in the report.

Recordkeeping

You should also be careful to correctly identify both your data source and verification source, and to keep in your workfile a copy of the information relied upon for the appraisal. For example, if you use MLS as your data source and tax records as your verification source, you should have a copy of the MLS sheet and tax record in your file. MLS and tax records may be changed or deleted before the end of the 5 year retention period for the workfile, and it is important that you can show what information you relied on in your appraisal. Sometimes you may receive information orally, such as from the listing broker over the telephone. You should make a note for the file of your conversation, including the name and telephone number of the source of information and the date, as well as a summary of the information received. You do not have to keep a paper workfile. You may keep your entire workfile in electronic form.

Summary

The choice of comparable sales is crucial to the valuation process. Make sure you have done the necessary research to choose the best sales available, and then verify the data until you are confident that the data is accurate. Make appropriate adjustments as warranted. Keep good records, including documentation of the source of your comparable sales, in case your appraisal is questioned in the future.

[Courtesy of the North Carolina Appraisal Board -- APPRAISERREPORT Vol. 20, August 2010, Number 2]

Courses No Longer Approved in SD

The Appraiser Certification Program was notified by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council that, effective Sept. 22, 2010, the International Distance Education Certification Center (IDECC) revoked distance education certification for the following courses provided by Dynasty School:

- 2010-2011 7-Hour Equivalent National USPAP Update Course
- Residential Appraiser Site Valuation and Cost Approach
- Residential Market Analysis and Highest & Best Use
- Residential Report Writing
- Residential Sales Comparison and Income Approaches

The courses are no longer approved by the Department for failure to maintain IDECC approval for distance education.