Renewals

From the SDREC Director, Melissa Miller

The holidays will be here before we know it and so will the renewal deadline for those with licenses expiring on December 31st, 2012. 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. Brokers who allow associates to continue working without a current license or insurance, jeopardize their licenses, as well. In order to ensure that you are in compliance, get your license and insurance renewals in on time.

Rice Insurance was awarded the contract to provide group errors & omissions insurance. The 2013 errors and omissions insurance premium increased by $5 to $187.

Please remember you can renew online. Last year was the first year licenses were able to renew their license and E&O online and it went really well for the first year. This year you can now renew your firm license online as well. If you are having any problems please give us a call as we would be happy to help.

Looking ahead to 2013, the Commission will be keeping a close eye on legislation being proposed in the next legislative session. There will be several bills brought in by the Commission and with the support of the South Dakota Association of REALTORS®, so be sure to watch for legislative updates.

Have a wonderful holiday season and a very happy & prosperous 2013!

Reminder for Renewals

Errors & Omissions insurance

For those licensees on the group E&O policy, remember that this is an annual premium. Renewal forms were mailed out in October. Even if your license is not due to renew this year, the E&O insurance premium is due on November 30. If the premium is not paid and the coverage expires, your license will be placed on inactive status on January 1.

License renewal forms

License renewal forms were mailed in October to those individuals and/or firms needing to renew in 2012. The renewal forms and appropriate fees are due in the SDREC office no later than November 30 - this is NOT a postmark deadline. License renewals received on or after December 1st must include the appropriate late fee.

Inactive licensees

Inactive licenses are due to renew every two years, just the same as active licenses. If an inactive license is not renewed, the license expires and the individual becomes UNLICENSED. Inactive licensees do not need to maintain E&O insurance coverage or complete continuing education requirements in order to maintain the license on inactive status. Inactive licensees may use the online renewal system or submit the renewal notice and fee by mail.

For active licensees using the online renewal system

1) In order to renew an active license online, the licensee’s continuing or postlicensing education must be completed AND RECORDED with the SDREC office. If the education is not recorded, the license may be renewed online, but only on an inactive status.
2) If renewing online, DO NOT also mail in the paper renewal form.
3) The “E&O Renewal Only” tab is for licensees who only need to renew their Errors & Omissions insurance. If your license is due to renew, please select the “Renew this License” tab to pay for both the license renewal fee and E&O insurance premium.
4) Licensees using Google Chrome or Safari as a web browser may not be able to utilize the online renewal system. We are hoping to get this issue corrected, but for now, we recommend using Internet Explorer.

For licensees mailing in a paper renewal form

1) Please fill out the renewal form completely and legibly.
2) Answer all questions (front and back) and sign the renewal form.
3) Be sure to include a check for the correct amount. The renewal fee and E&O insurance premium may be combined into one check.
4) If you have not yet completed the education necessary to renew the license on active status, please answer this question on the renewal form with a “no” answer.
5) If you have an additional license hanging at a satellite office address or with a different firm, don’t forget the $30 additional license fee for each additional license/-location.

Non-resident licensees

A non resident who holds a SD real estate license must include a certification of licensure from his or her home state indicating the license is active and in good standing. As long as the licensee meets the education requirements of their home state’s licensing jurisdiction, proof of education is not required for the SD license renewal.

Pay attention to details and deadlines

To ensure the new license is in hand by January 1, we strongly suggest that licensees complete their education by November 30. Licensees who put off completing the education requirements until late December run the risk of not having an active license on January 1. Calling the SDREC office to demand immediate action on the renewal or argue the technicalities that the requirements were met by the end of December will not speed up the process. The deadline is November 30 so that the SDREC staff has sufficient time (the month of December) to handle all of the paperwork involved in renewing thousands of licenses. The renewal process is not complete when the licensee pays the renewal fee/E&O premium and finishes the education - it is complete when the new license has been generated and received by the licensee. Every individual that holds a real estate license is responsible for knowing what is required to maintain that license. Compliance with the insurance and renewal requirements is a personal responsibility, not one of an office manager, assistant, secretary or spouse.
Responsible brokers
It is YOUR responsibility to know if the licensees you supervise have current E&O coverage and are meeting all of the license renewal requirements in order to maintain an active license. Allowing an individual to continue to practice when the license has lapsed or has been placed on inactive status for failure to renew or insurance requirements is grounds for disciplinary action by the commission. Be prepared to remove agent profiles and listings advertised on the brokerage firm's website on January 1 for individuals no longer actively licensed and to take over their listings.

Small Business Administration Eases Loan Standards for Real Estate Businesses (Used with permission from ARELLO)
The U.S. Small Business Administration (SBA) has issued final regulations that will make it easier for real estate, rental and leasing businesses to access SBA loans, federal procurement opportunities and other support programs. The SBA was created in 1953 as an independent federal agency to support small businesses, preserve competitive enterprise and help strengthen the U.S. economy. The SBA accomplishes that mission by, among other things, establishing eligibility for various government programs and preferences reserved for small business concerns, and providing access to an array of small businesses financing. The agency sets the guidelines for, and guarantees, loans that are made by authorized lenders, community development organizations and micro-lending institutions. The SBA determines eligibility through size standards that vary depending on the nature of the business, but primarily measure average annual receipts and number of employees.

Effective October 24th, the new rules increased the size standards for businesses in 21 specific industries in the SBA's "Real Estate and Rental and Leasing" sector. For example, revenue standards for offices of real estate agents, residential and non-residential property managers, appraisers and certain other real estate related businesses were increased from $2 million to $7 million. Business engaged in leasing residential, non-residential and certain other types of real property can qualify for SBA programs if they have up to $25.5 million in annual revenues, up from the previous threshold of $7 million. The SBA says that more than 13,000 additional real estate-related firms will qualify as "small" under the new standards and thus become eligible for SBA loans and federal procurement programs.

The new rules were prompted by the U.S. Small Business Jobs Act of 2010, which directed the SBA to conduct a detailed review of all industry size standards and make adjustments to reflect market conditions. Prior to the issuance of the new rules, the size standards for most real estate-related small businesses had not been reviewed since the 1980s.


SDREC Calendar
Thursday, November 22 - Thanksgiving Holiday - SDREC Office Closed
Friday, November 23 - Thanksgiving Holiday - SDREC Office Closed
Friday, November 30 - License Renewal Deadline, E&O Insurance Deadline
Wednesday, December 5 - Commission Meeting, Pierre
Thursday, December 6 - Commission Meeting, Pierre
Monday, December 24 - Christmas Holiday - SDREC Office Closed
Tuesday, December 25 - Christmas Holiday - SDREC Office Closed

U.S. Mortgage Forgiveness Debt Relief Set to Expire December 31st (Used with permission from ARELLO)
Real estate market watchers are keeping their eyes on the approaching December 31st expiration of the U.S. Mortgage Forgiveness Debt Relief Act of 2007. The federal law provides tax breaks for struggling homeowners who receive mortgage debt cancellation or forgiveness from lenders through various foreclosure alternatives. Of particular interest is the potential impact that expiration of the law may have on short sale transactions, which are a significant element of current U.S. residential real estate market dynamics.

Prior to enactment of the law, if mortgage lenders forgave a portion of borrowers’ mortgage debt, the U.S. Tax Code treated any forgiven amounts as taxable income. However, the 2007 legislation allows taxpayers to exclude certain types of discharged debt on their principal residence. Generally, mortgage debt reduced through principal modifications, foreclosures, short sales or deeds-in-lieu of foreclosure qualify for the tax break. The law applies to mortgages used to buy, build or substantially improve a taxpayer’s principal residence and must have been secured by that residence. Debt used to refinance qualifying debt is also eligible for the exclusion from taxable income, up to the amount of the mortgage principal immediately prior to refinancing.

Short sales are, of course, transactions in which a lender agrees to the sale of a home for less than the existing mortgage debt. Despite their potential complexities and the fact that they can take a long time to complete, struggling homeowners and lenders have increasingly turned to short sales as a means of avoiding looming foreclosures. A short sale can be a significant loss mitigation tool for lenders and can benefit homeowners who seek to avoid the negative effects of a foreclosure, especially where all or part of the "deficiency" remaining after the short sale is cancelled or forgiven by the lender. Consequently, the tax relief provided by the Mortgage Forgiveness Debt Relief Act is a significant incentive for sellers who are considering short sales or other foreclosure alternatives.

U.S. short sales transaction volumes have grown over the last several years and are expected to do so again in 2013, as lenders increasingly turn to often cost-efficient short sales as a means of reducing foreclosure inventories and the risks associated with retaining the properties. But the accuracy of that prediction could depend on whether the Mortgage Debt Forgiveness Act will be extended beyond 2012. Market watchers worry that, without the tax breaks, short sales and other foreclosure alternatives will fall off, resulting in damage to the recovery of housing markets.

There is also a mounting concern that the failure of Congress to extend the tax provisions will severely hinder the effectiveness of the $25 billion national mortgage settlement, also called the "robosigning" settlement, between state/federal regulators and five of the largest U.S. mortgage lenders that was reached earlier this year: Under the agreement, the lenders are obligated to address past foreclosure and mortgage servicing irregularities, including principal reduction, direct payment and other remedial programs. The lenders receive credit against their settlement obligations for loan modifications and other workouts that that include debt forgiveness.

Legislation is pending in the U.S Congress to extend the law and reportedly has widespread bipartisan support. However, in the midst of the U.S. election it is unclear whether the "lame duck" Congress will pass a relief measure before the end of
New Licensees

Broker
Cotton, Steven R - Wagner
Cunningham, Ronald - Rose, OK
Delfs III, William C - Sioux City, IA
Gioia, Kevin - San Diego, CA
Polk, John M - North Platte, NE
Rosa De Sharon, Chere - Sioux Falls

Broker Associate
Anderson, Mary K - Canton
Beekman, Samantha J - Volga
Christensen, Ehren J - N. Sioux City
Griggs, Jeffrey P - Sioux Falls
Harms, Douglas E - Larchwood, IA
Kollars, Jeffrey T - Brookings
Morgan, Aaron R - Rapid City
Praet, Casey S - Watertown
Reimer, John M - Sioux Falls
Schuetzle, Graham - Pierre
Trebil, Kelly D - Mitchell

Property Manager
Bultsma, Jana M - Hot Springs
Peterson, Nadeen E - Wakonda

Res. Rental Agent
Cotter, Kevin W - Harrisburg
Jenred, Stacey L - Canton
Lowe, Bradley L - Sioux Falls
Lunstra, Heather M - Sioux Falls
Marsh, Lori A - Tea
Stewart, Jacqueline R - Brandon
Webb, Mona K - Sioux Falls
Williams, Jessica - Sioux Falls

Salesperson
Dodson, Dallas D - Valentine, NE
Husman, Chad W - Storm Lake, IA
Murhead, Daniel N - Overton, NE
Stottenberg, Dean W - Jasper, MN
Wilson, Katelyn M - Sioux City, IA

Registered Home Inspector
Dehner, Robert J - Vermillion

Timeshare Agent
Rihrich, Brad - Rapid City

APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Department of Labor and 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.

New Licensees – August/September/October 2012

Anita E. Rimer, State-Certified Residential – Mobridge, SD
Phil Svartoej, State-Registered – Freeman, SD
Robert E. Dietrich, State-Certified General – Irvine, CA
Dennis L. Reymann, State-Certified General – Storm Lake, IA
Marcia L. Lalim, State-Registered – Watertown, SD
Jonathan J. Kvols, State-Certified General – Sioux City, IA
Scott G. Pothoff, State-Certified General – Carroll, IA
Scott A. Mertens, State-Registered – Spearfish, SD

Vacancy – Advisory Council

The Department of Labor and Regulation, Appraiser Certification Program is seeking nominations for two positions on the Advisory Council. The positions to be filled are for a State-Certified General Appraiser from the eastern part of South Dakota and an institutional staff appraiser (e.g., staff appraiser for a financial institution, Farm Credit Services of America, federal agency, etc.).

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 attending meetings or for any travel expenses incurred to serve on the council. Four meetings are held each year in Pierre. The term 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 Department of Labor and Regulation, Appraiser Certification Program, 445 East Capitol Avenue, 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 these positions 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 30, 2012. If you have any questions, please feel free to contact Sherry Bren at 605.773.4608.

Disciplinary Action Information

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Revenue and Regulation, Appraiser Certification Program, 445 East Capitol Avenue, 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))
Review of Cases – January 1, 2012 through November 5, 2012

For the period January 1, 2012 through November 5, 2012, the Department has received ten upgrade applications and initiated thirteen complaint investigations.

Upgrades – Seven upgrades pending, one agreed disposition executed, and two upgrades issued.

Complaints – Ten cases pending, one case dismissed, and consent agreements executed in two cases.

Disclosure of Significant Professional Assistance in the Certification

In accordance with the Uniform Standards of Professional Appraisal Practice a signed certification is required for all appraisal, appraisal review and appraisal consulting reports. An appraiser who signs any part of a report, including a letter of transmittal, must also sign the certification.

A signed certification provides important disclosures about the aspects of the assignment. It provides evidence that the appraiser is aware of the ethical obligations of acting as an appraiser. In single-discipline appraisals, the certification also attests that the analyses, opinions, and conclusions expressed are those of the signatory. The certification is also where significant appraisal assistance from others not signing the certification must be acknowledged. Any appraiser who provides significant appraisal, appraisal review, or appraisal consulting assistance to the assignment must sign the certification or be identified in the certification. (Uniform Standards of Professional Appraisal Practice, 2012-2013 Edition, Advisory Opinion 31, Page A105.)

Each appraisal report must contain a signed certification that is similar to the content found in Standards Rule 2-3. Pursuant to Standards Rule 2-3 the names of individuals providing significant real property appraisal assistance who do not sign the certification must be stated in the certification.

In the event an appraiser uses preprinted appraisal forms that the client or client group prohibits altering the form used in assignments performed for them, including the certification, the appraiser must include a signed certification disclosing the name of the individual(s) providing significant real property appraisal assistance. The disclosure may be added as an additional certification on a separate page. The additional certification must be signed and contain language that is similar in content to Standards Rule 2-3.

If you have any questions, please feel free to contact the Appraiser Certification Program.

Steps that May Help Avoid a Complaint – (Article courtesy of the North Carolina Board Newsletter, Appraiserreport, March 2012, Vol. 22, Number 1)

If you have been appraising for years, chances are good that someone will someday file a complaint against you. Here are a few tips to help you avoid a complaint.

1. Consider whether you should accept the assignment.

   If you have been appraising for years, chances are good that someone will someday file a complaint against you. Here are a few tips to help you avoid a complaint.

   If this is a routine residential mortgage transaction, things may go fairly smoothly. If the assignment is for appraising a property in a divorce, estate, tax appeal, or anything that might end up in litigation, you should meet with your client to assess whether there could be trouble ahead. You should also consider whether you are comfortable with the assignment conditions before accepting this type of assignment. The client might expect a certain outcome from your appraisal to support their position, and if the client seems emotional about the outcome, you may want to consider whether you want to take the assignment.

   Another time to be careful about accepting an assignment is if the client needs the report in a hurry, especially over a weekend. The client may tell you that another appraiser backed out and that they will pay you a rush fee. If you accept an assignment on this basis, make sure that you have adequate time and opportunity to verify the information you plan to use in your analysis.

   Think about the assignment – are you competent to take it? If not, decline it, or figure out how you will attain competency. If the subject property is outside your usual market area, consider whether you are geographically competent to accept it. Ask yourself why a local appraiser has not taken the assignment. There may be something going on in this market area that local appraisers are fully aware of but that you won’t know about. Be sure to consult with local appraisers or real estate agents to talk about the subject so that you don’t miss anything.

   If you have an uneasy feeling about the client or the assignment, it is better to walk away than to risk having a dissatisfied client.

2. Make sure you and your client understand the terms of the assignment.

   Clients want quick turnaround times. Give yourself enough time to do the assignment. Have a clear agreement (preferably in writing) with your client as to when the appraisal will be sent. If you cannot meet this deadline, let your client know as soon as possible. When you agree on a later date, confirm it in writing.

   You should also make sure that you understand your client’s guidelines and that your client understands your scope of work. For example, do you only need to use 3 comps? Or does your client expect 6 comps and 3 listings that are gridded? Are you permitted to use photos? How many? May a trainee assist you on the assignment? What reporting format will you use? If you don’t have these types of issues clarified before you begin the assignment, you may find yourself being asked for additional information or told to revise the report. If you refuse to do this work, a complaint may be filed.

3. Double check your measurements.

   The Board often gets complaints from property owners and buyers stating that the sketch in the report and the square footage of the dwelling are incorrect. In some circumstances staff finds that the field measurement was correct, but numbers were transposed or inaccurately recorded. When doing your sketch, you could, for example, end up with a sketch for a dwelling that looks square, while the property is clearly rectangular. Since this is one area of the report that gets a great deal of scrutiny, make sure your measurements are as accurate as possible.

4. Verify the information about your comparable sales.

   Appraisers obtain comparable sales information from listing services, tax records, real estate agents and others in performing appraisals. For the most part, that information is correct and reliable. Sometimes, however, the information is incorrect and relying upon it will result in a misleading appraisal. USPAP requires you to obtain, verify and analyze such information. For example, if you obtain comparable sales information from MLS, you then verify the information by calling 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, especially from a home owner. Your data source and verification source need to be noted in your report. Many times property owners are quite familiar with a home that has sold in their area, and, for example, are quick to point out the property does not have a pool or is in rundown condition.

5. Make sure the information in your report is consistent.
Staff often sees simple mistakes in entering information in a report. Often this happens as a “cloning error” when you use an earlier report as a template. For example, you might state on the first page of the URAR that the property has a two car garage, but in the sales comparison grid, you state that the subject has a one car garage and make adjustments accordingly. In a narrative report, you might have basic information about one county in a report where the subject is in another county. These types of mistakes make your report look careless and less than credible, even if your value is supported by the market. Careful proofreading should catch most of these errors.

Your adjustments should be explained in the report. If the comparable sale is in an inferior neighborhood and a location adjustment is warranted, it should not be made in the site adjustment area. Readers of the report will assume that no adjustment was made for location, and will complain that the appraiser did not recognize the location difference. If you decide to combine adjustments, explain in an addendum what you did. Also, make sure to make your adjustments in the right direction (positive or negative).

Before sending your report in, take another look at your photos for your subject and comparable sales. Sometimes there are clear and obvious differences between the subject and the comparable sales. If a reader of the report would expect an adjustment and one is not there, this could generate a complaint.

7. Accurately report sales history.
USPAP requires you to provide a complete sales history on the subject for 3 years. This means every transfer for the subject, not just those in MLS. Foreclosures must be reported. Some tax offices only report that last sale of a property, not all sales. If only the land sold, that sale must be reported and explained. Fannie Mae requires that appraisers report the 12 month sales history of comparable sales. Remember, the 12 months goes back from the date of the sale of the comparable sale, not the date of appraisal. Make sure that you perform an adequate search for the sales history.

8. Verify information or make your appraisal based on an extraordinary assumption.
Is the electricity off in the home? Say so in the report, and make your appraisal based on the extraordinary assumption that the utilities work. Using an extraordinary assumption informs your client that you don’t know if the utilities work, but you will prepare the appraisal as though they do. This issue could also arise when an addition has been made to a property and you are not sure if proper permits have been obtained, or if the addition was performed in compliance with local building codes. If you don’t know and can’t find out, and the information could have some influence on your appraisal, consider an extraordinary assumption to alert your client to the issue.

9. Note any significant real property appraisal experience by others.
Property owners, real estate agents and others remember who came out to inspect a property or who called them for information. If your trainee does the inspection, but only sign the report, the reader will have serious questions about the credibility of the appraisal. Property owners will pour over the details of their property looking for items that were missed in the inspection and that could change the value. Signing a certification that you inspected the property when you did not is a violation of USPAP and the Appraiser’s Act, and is taken very seriously by the Board.

This won’t necessarily help you avoid a complaint, but will help you deal with it should one come along. USPAP’s Record Keeping Rule requires you to maintain a copy of the work file for every appraisal assignment for at least five years after preparation or two years after court testimony, whichever period expires last. Thus it is important to keep copies of all information and verification in the file. You should have enough data, information and documentation in your file to support your opinions and conclusions, and to produce a summary report from it. USPAP does allow you to have a reference in the file as to where the information may be obtained, so some appraisers don’t keep a copy of MLS sheets, tax cards and other data. The problem arises when an MLS system purges its system, or a new tax valuation occurs. The old information is no longer available, the appraiser cannot retrieve that information, and the work file is incomplete. A work file may be kept in an electronic format, and scanning in a tax card or MLS sheet does not take very long.

Interior photographs, even if not required by your client, could be very useful if a complaint is filed. If a property goes into foreclosure at some point after your appraisal, the lender often orders a retrospective review. In many cases the property has deteriorated since the effective date of your appraisal, which may influence the reviewer’s opinion of value. Your photographs of the condition of the subject property at the time of your inspection could save you from disciplinary action.

Often appraisers are asked to make revisions or corrections to their reports. You must keep a copy of every version of the report that you send to a client, not just the last one. Staff often receives complaints that contain an original version of a report: being able to follow your work file through the revisions made after the original appraisal was sent will make the investigative process easier on you.

Conclusion
Above all else, be professional when dealing with property owners, clients, appraisal management companies and others. Dress appropriately, don’t use profanity, and be polite. Your attitude and demeanor could make the difference if someone is on the fence about filing a complaint.