



September/October
2014

In this issue from the [South
Dakota Real Estate](#)

[Commission:](#)

- From the Director
- Fall Caravan Information
- Lynn Madison – Fall Caravan Presenter
- Inactive License Status Requests
- Disciplinary Actions
- BPOs, CMAs & Appraisals
- New Licensees

In this issue from the [South
Dakota Appraiser Certification](#)

- [Program:](#)
- New Licensees/Upgrades
 - Review of Cases
 - 2014 Renewal
 - Tips for Preventing Complaints and Disciplinary Action

[South Dakota Real
Estate Commission](#)

Melissa Miller
Executive Director
221 W. Capitol Ave.,
Suite 101
Pierre, SD 57501
Phone: 605.773.3600
Fax: 605.773.4356

[South Dakota Appraiser
Certification Program](#)

Sherry Bren
Executive Director
308 S. Pierre St.
Pierre SD 57501
Phone: 605.773.4608
Fax: 605.773.5405

From the Director

I hope you can get out and enjoy the nice days before winter hits us. With summer ending, the Fall Caravan is upon us. The presenter is Lynn Madison and the topic is Real Estate Done Right - You Make the Call! Please plan on attending this worthwhile educational session.

If you do not know the number of education hours you currently have, you can find this information in the 'Licensee' section on the Commission's website.

Licensees who need to renew this year will soon be receiving their renewal notices. The renewal and fee must be received by the Commission no later than November 30, 2014. Renewals received after that date will have to pay a late fee. In addition, all active licensees who carry errors and omissions insurance from Rice Insurance Services Company will be receiving notices to renew. I strongly advise those licensees to have their continuing education completed by November 30th. Brokers — please check with your associates who are renewing to make sure everything is in place for their renewals to meet the November 30th deadline. To utilize the online renewal system, active licensees must have their education completed and recorded with the SDREC office.

When changing broker affiliation or moving an entire office to a new location, please remember to file the proper notification with the SDREC office within 10 days of the change. It is the law! If you are unsure what paperwork to send in, please call our office, sooner than later, so that staff can help you stay in compliance.

Enjoy the fall season!

Register NOW for the Fall Caravan

| | |
|-------------------|---|
| Presenter: | Lynn Madison, Lynn Madison Seminars |
| Topic: | Real Estate Done Right – You Make the Call! |
| CE Approval | 6 hours Required |
| Postlicensing: | 3 hours Postlicensing 1/Agency and 3 hours Postlicensing 1/Fiduciary Duties NO Postlicensing Period 2 |

Dates/Locations – Registration begins at 8:15 a.m.; Class time 9 a.m. to 4 p.m.
 Mon., October 27 – Sioux Falls Ramkota Tues., October 28 – S.F. Ramkota
 Wed., October 29 – Aberdeen Ramkota Thurs., October 30 – Pierre Ramkota
 Friday, October 31 – Rapid City Rushmore Plaza Civic Center

This course will help licensees handle Limited Agency and Appointed Agency transactions, analyze the proper handling of conflicts of interest and apply the proper steps in presentation and negotiation of contracts.

Registration Fee: \$60 online or **POSTMARKED NO LATER than Friday, October 17;**
 \$70 After Oct. 17 and on-site (The Commission will retain \$10 of any refunded registration.)

Registration information has been mailed to all real estate offices. **Online registration** is available on the SDREC website until October 17.

Fall Caravan Presenter – Lynn Madison



Lynn is the owner of Lynn Madison Seminars, a full-service training and development company devoted to the advancement of professionalism in real estate.

Lynn has been a speaker at the NAR convention for over a decade and has spoken to REALTORS® in over 30 states. Lynn has been active in developing and delivering Illinois' continuing education programs since 1992.

As an Instructor for REBAC's ABR program, Lynn not only conducts the program nationwide, she is involved in its development and instructor certification program. Lynn wrote the REBAC BPOR course and co-authored the SFR Certification program as well. In 2004 she was inducted into the REBAC Hall of Fame.

At the National level, Lynn has served on the Cultural Diversity/EOH, Risk Management, Professional Standards, and Professional Development Committees. At the state level, Lynn's involvement has included:

- Chair of the Illinois Professional Standards Committee
- Illinois License Law Rewrite Task Force
- License Law Scope and Structure Working Group
- Equal Opportunity Working Group
- Education Committee
- Strategic Planning Committee
- Realtor of the Year Committee

Lynn was the NAR Educator of the Year for 1996 and was named REALTOR of the Year by the Illinois Association of REALTORS in 2011. She conducts over 250 continuing education seminars annually.

Inactive License Status Requests

At any time, a licensee on active status can request to have his/her license placed on inactive status by sending the license certificate, along with a request for it to be placed on inactive status to the SDREC office.

However, the licensee and the licensee's Responsible Broker need to keep in mind that the license is placed on inactive status IMMEDIATELY upon receipt by the SDREC office.

Specifically, if a licensee wants to go inactive on a certain date, he/she must wait until that date to send the license in to the SDREC office. For example, a licensee who wants to go inactive on October 1 needs to wait until October 1 to send the license in to the SDREC office. If it is received by the SDREC office prior to this date, the license is inactive immediately.

Remember, in order to be active, a person must have a license certificate in his/her possession. Once the license is returned to the SDREC office, the licensee is no longer active, regardless of the date the licensee intended to go inactive.

Disciplinary Actions

The following actions by the Commission have become effective since the last report in the newsletter. A **Consent Agreement** is an admission of violation and voluntary acceptance of the terms determined by the Commission in lieu of a formal hearing. **Findings of Fact, Conclusions of Law, and Order** are the result of a formal hearing. A **suspension held “in abeyance”** is one where the Commission has set aside the suspension provided the licensee comply with all of the other terms of the agreement. All education ordered by the Commission does not count toward the licensee’s continuing education requirements.

Richard Shelton, Huron, Broker, Consent Agreement. Violation of 36-21A-71(1)&(9), and 36-21A-130 for failure to have a listing agreement and written permission from the property owners to list their properties for sale. Completion of three hours of education in License Law and three hours education in Contracts.

Denice Hooth, Milbank, Broker Associate, Consent Agreement. Violation of 36-21A-71(1) and 36-21A-61 for failure to renew her license in a timely manner and for engaging in real estate activity while license was expired. Administrative fine of \$100 and completion of six hours of education in License Law.

Jayson Maguire, Watertown, Broker, Consent Agreement. Violation of 36-21A-71(1) and 36-21A-79 for allowing an individual with an expired license to engage in the practice of real estate. Administrative fine of \$100 and completion of six hours of education in License Law.

James W. Peterson, Hill City, Broker, Consent Agreement. Violation of 36-21A-71(1),(30),(31), 36-21A-132 and 36-21A-138 for failing to advise his clients to update the property condition disclosure statement and for failing to notify the buyer of an adverse material fact. Administrative fine of \$500 and completion of six hours of education in License Law and six hours of education in Agency.

John Fischer, Long Lake, Broker, Consent Agreement. Violation of 36-21A-71(1)&(9), 36-21A-130, 36-21A-132 and 36-21A-147 for entering into a listing agreement and agency agreement addendum without obtaining signatures of all of the owners of the property, failing to present the real estate relationship disclosure when one was required and failing to amend a contract to extend a closing date. Administrative fine of \$2500 and completion of the 15-hour Responsible Broker course, six hours of education in Agency and six hours of education in Contracts.

Paula Pearson, Madison, Broker Associate, Consent Agreement. Violation of 36-21A-71(1) and 36-21A-147 for failing to present and have client sign a real estate relationship disclosure at first substantive contact. Administrative fine of \$500 and completion of three hours of education in License Law and three hours of education in Agency.

Jeffrey Lechner, Madison, Broker, Consent Agreement. Violation of 36-21A-71(1) and 36-21A-79 for failing to supervise real estate activities of affiliated licensees. Administrative fine of \$500 and completion of three hours of education in License Law and three hours of education in Agency.

Vicki Johns, Madison, Broker Associate, Consent Agreement. Violation of 36-21A-71(1) and 36-21A-130 for marketing a property after the listing agreement had expired. Administrative fine of \$500 and completion of six hours of education in Contracts.

BPOs, CMAs and Appraisals – Don't “Value” an “Opinion”

License law defines a Broker Price Opinion and/or Comparative Market Analysis as an estimate, prepared by a broker/broker associate that details the probable selling price of a parcel of real property and provides a varying level of detail about the property's condition, market and neighborhood and information on comparable properties. BPOs and CMAs do not include an automated valuation model.

An Appraisal is the process of developing an opinion of value of real estate. Appraisals must be conducted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

Real estate licensees need to be extremely careful when performing BPOs or CMAs to ensure that their actions don't approach that of an appraisal, otherwise those actions must conform to USPAP requirements. Using terminology like “probable selling price” instead of “value” can go a long way to keep real estate licensees within the proper scope of practice and avoid possible disciplinary action by the Commission.

Check the SDREC Website for Upcoming Courses

It's the time of year when education providers are scheduling courses to meet the demands of licensees needing hours to renew their licenses. Approved education courses are posted on the SDREC website. Be sure to check this list often as it changes frequently when new classes are added!

New Licensees

Broker

Brath, Ronald R – Campbell Sport, WI Hostetler, Ryan L – Loveland, CO
Pearman, Seth C – Sioux Falls Schlemeyer, Jr., George – Austin, TX

Broker Associate

| | |
|---------------------------------|------------------------------------|
| Bertsch, Delmar D – Watertown | Biers, Luke J.M – Rapid City |
| Cunningham, Deena – Sioux Falls | Dale, William – Sioux Falls |
| Eberts, Kyle – Sioux Falls | Fisher, Janet R – Sioux Falls |
| Healy, Jennifer B – Eden | Hemiller, Jr, Robert J – Watertown |
| Herbert, Sonya M – Sioux Falls | Jones, Curtis S – Larchwood |
| Kurvink, Lori M – Sioux Falls | LaFrance, Josiah P – Rapid City |
| Lensing, Amy L – Dell Rapids | McDonald, Timothy F – Hartford |
| Nelson, Milton E – Mitchell | Palmer, Tara – Rapid City |
| Peterson, Chad F – Vermillion | Rounds, Thomas T – Pierre |
| Stahl, Eldon C – Mitchell | Van Zee, Carrie J – Sioux Falls |

Property Manager

Passick, Kirsten K - Vermillion

Registered Home Inspector

| | |
|------------------------------|--------------------------------------|
| Davis, Gary W – Lennox | Medill, Christopher T – Aberdeen |
| Miller, Andrew – Sioux Falls | Wineland, Matthew J – Sioux City, IA |

Residential Rental Agent

Ruge, Dawn M – Sioux Falls

In this issue from the [South Dakota Real Estate](#)

Commission:

- From the Director
- Fall Caravan Information
- Lynn Madison – Fall Caravan Presenter
- Inactive License Status Requests
- Disciplinary Actions
- BPOs, CMAs & Appraisals
- New Licensees

In this issue from the [South Dakota Appraiser Certification](#)

Program:

- New Licensees/Upgrades
- Review of Cases
- 2014 Renewal
- Tips for Preventing Complaints and Disciplinary Action

South Dakota Real Estate Commission

Melissa Miller
Executive Director
221 W. Capitol Ave.,
Suite 101
Pierre, SD 57501
Phone: 605.773.3600
Fax: 605.773.4356

South Dakota Appraiser Certification Program

Sherry Bren
Executive Director
308 S. Pierre St.
Pierre SD 57501
Phone: 605.773.4608
Fax: 605.773.5405

Appraiser Update

New Licensees – August 2014

James J. Farrell, State-Certified Residential – Lombard, IL
James B. Hodge, State-Certified General – Houston, TX
Aaron D. Krogman, State-Registered – Sioux Falls, SD

Upgrades Issued – August 2014

Zan Swanson, State-Certified Residential, Sioux Falls, SD

Review of Cases – January 1 through August 11, 2014

For the period January 1, 2014 through August 11, 2014, the Department has initiated six complaint investigations, eight upgrade cases and two new applicants claiming experience cases.

Complaints – three closed, three pending.

Upgrades – two closed, six pending.

New With Experience – two closed.

Appraisers – 2014 Renewal

NOTICE! The 2014 appraiser renewal applications were mailed the first week in July. The applications were due in the Appraiser Certification Program office by August 17, 2014 for renewal of certificates for state-certified general, state-certified residential, state-licensed and state-registered appraisers.

If you have not submitted your 2014 renewal, please do so as soon as possible to avoid a late renewal penalty fee and lapse in authority to appraise.

Supervising Appraisers – 2014 Renewal

NOTICE! The 2014 supervisory appraiser endorsement renewal applications were mailed the first week in July. The applications were due in the Appraiser Certification Program office by August 17, 2014 for renewal of the supervisory appraiser endorsement.

Tips for Preventing Complaints and Disciplinary Action

[Permission to reprint the following article from By Nikole Avers, Executive Director
Tennessee Real Estate Appraiser Commission

I have seen and heard a lot of complaints in the last several years. Some are very legitimate, some not so much. As a professional you may not be able to completely avoid complaints, but many professional complaints can be avoided. Anyone can file a complaint and the Commission considers complaints submitted in writing to the Commission office to determine if they are within the authority of the law. An appraiser can minimize the stress and uncertainty of receiving a complaint by being mindful of their requirements.

In Tennessee, by law real estate appraisers are required to comply with Uniform Standards of Professional Appraisal Practice (USPAP) and that requires analysis of relevant property characteristics and specific reporting requirements such as external influences, property characteristics, sale and listing history, etc.

The motivations of buyers, sellers, real estate agents, appraisal management company (AMC) personnel, and lenders whenever a real estate transaction is pending and even many years after a sale has closed are often very high and sometimes can become emotional. The appraiser is required to remain independent, impartial, and objective.

Many appraisers will have a complaint filed against them at some point in their career. Once a complaint is received, any appraisal that is part of the complaint will be reviewed for USPAP compliance.

TIPS:

- If you are unfamiliar with a particular market area, or type of property, or if the property exceeds your license limits as outlined in the law; consult a qualified professional or transfer the client to another qualified appraisal professional. Know your limits.
- If you notice a mistake, address it immediately with the client. If you are honest and address the matter timely, many times errors can be resolved quickly. If you make a change to the report, make sure it is clear what changes have been made to the report. If the day you transmit this change is different than the initial day you communicated the report (i.e. not a same day fix), make sure you change the report date or date signed (not the effective date).
- Document all reports communicated to your client to the workfile, even the one with the mistake. If you sent it out into the world, document it. Don't assume the receiver of the report had the good conscience to delete your prior version. You don't know what may later come up. You can save an electronic version of the report; it doesn't have to be paper (i.e. 123 MainStreet1, 123 MainStreet2).
- Be a good communicator with your client. If the client cannot reach you, or calls are not returned timely, it may ultimately lead to a complaint. Be sure you are communicating with the client about any delays that may crop up. Timeliness isn't generally grounds for discipline, but good communication with your client and within your appraisal report can save a lot of communication time later in a complaint process.

•Report more on the property characteristics. This is important to the clients and the home owners. You might be surprised at the number of complaints initiated over omissions of characteristics of the property. Lenders need to know things like deferred maintenance, external influences, functional obsolesces, and overall quality and condition of the improvements to make an informed lending decision. The client is supposed to get a copy of your report, but once the report is communicated to the lender they can send it to the home owner. The appraiser is bound by confidentiality; the lender has to give the borrower a copy of the appraisal. You might also avoid receiving a complaint from the home owner if you report property characteristics better. A lot of complaints are filed by home owners because the appraiser either misreported property characteristics or omitted them entirely, such as upgrades to the kitchen or bathrooms, energy efficiency items, and basement finish.

•Support your opinions in your appraisal and in your workfile. The site value, for example, is an opinion of value. If you include an opinion of site value in your appraisal report, but you fail to support the conclusion or fail to include support in your workfile for how you developed the opinion of value, then you have included an unsupported opinion of value in your appraisal. Be certain you use recognized methods and techniques for developing your opinions of value. It makes me sad to think how many times I have heard “I used the assessor’s value” as the site value. That is not an acceptable method for developing a conclusion of value in your appraisal unless you are the assessor.

- Methods for Estimating Site Value
- Sales Comparison
- Allocation
- Extraction
- Land Residual
- Ground Rent Capitalization
- Subdivision Development

Summarize rationale for selecting comparable sales and reasoning and support for adjustments to the comparable sales. It seems so basic, but that is what the client hired you for to explain the market. So start summarizing it for them. If you don’t know why you selected a comparable or made an adjustment, you’re heading in the wrong direction.

If a Complaint is Filed Against You In South Dakota

ARSD 20:14:11:01. Complaints and investigations. The secretary shall upon written and signed complaint, or may, upon the secretary’s own motion, initiate an investigation of any certificate holder or applicant for certification.

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.

Procedures

1. When a complaint is received by the Department the appraiser is notified that a complaint has been filed. The notification includes the alleged violations and/or errors. The appraiser is asked to respond to the complaint in writing, submit the subject appraisal(s) and all pertinent information to the Department. The appraiser is requested to sign a Submission of Documents form to ensure that all of the pertinent information regarding the subject appraisal(s) has been submitted. Documentation necessary to support an appraiser's analysis, opinions, and conclusions (the "Workfile" as defined in the uniform standards) is required to be submitted by the appraiser.
2. The Department notifies the USPAP Compliance Review Examiner (examiner) of the complaint assignment. The notification includes the complainant's name and address and address of property involved allowing the examiner the opportunity for refusal if there is a conflict of interest.
3. The Department reviews all of the submitted documents and information from the complainant and the appraiser.
4. The Department copies all of the submitted documents and information blanking out the appraiser's name, address, license number and any other identifying factors making them anonymous, and mail them to the examiner. The examiner is requested to review the appraisal(s) for minimum compliance with relevant laws, uniform standards and rules governing appraisers. The examiner must document and support the specific violations cited.
5. The examiner submits the review report and supporting comments to the Department. If the violations cited do not warrant disciplinary action by the Department, the complaint case may be closed. [For information and corrective purposes the appraiser will be made aware of the violations cited. The appraiser will be advised if there are no violations cited and the case will be closed.]
6. If the Department determines that the violations warrant disciplinary action the Department notifies the appraiser. [ARSD 20:14:11:02. Disciplinary actions. The secretary may deny, suspend, censure, reprimand, or revoke a certificate in accordance with SDCL 1-26.]
 - *The appraiser has the right to a hearing pursuant to SDCL ch. 1-26 regarding the allegation of non-compliance with the relevant laws, uniform standards and rules governing appraisers. Such rights include the following:
 - (1) A contested case hearing as defined in SDCL 1-26-1(2). The hearing is an adversary proceeding at which the appraiser has the right to be present and to be represented by legal counsel, to introduce evidence and to present testimony on the appraiser's behalf, to call witnesses to testify, to cross-examine all witnesses present, and to submit argument.
 - (2) Appealing the decision by the Department of Labor and Regulation, Appraiser Certification Program based on the hearing to the circuit court and the State Supreme Court as provided by law.