



September/October
2015

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[South Dakota Real Estate Commission](#)

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From the Director

I hope you all have had an enjoyable summer. With summer nearing its end, the Fall Caravan will be here soon. This seminar presenter is Marie Spodek. Marie will discuss ethical duties concerning property condition disclosure issues as well as the new TILA-RESPA mortgage disclosure requirements and how they will impact a real estate agent's fiduciary duties to clients. This is well worth attending even if you have your education completed for renewal.

I'm looking forward the fall season, hunting, football and of course... renewal time! 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, 2015. 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 Nov. 30th. Brokers —please check with your associates who are renewing to make sure everything is in place 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.

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.

New License Law books will be available soon.

Have a wonderful fall season. Go Vikings! Packers! (Editor's revision 😊)

Registration is OPEN for the Fall Education Caravan

Online registration for the Fall Education Caravan is available on the SDREC website. Log on to www.sdrec.sd.gov. In the middle of the home page is the Licensee log in area. Follow the log in instructions to view licensing information and to register for the caravan.

Mail-in registration forms are also available from the website. A paper registration form has been mailed to each of the real estate companies.

The SDREC is happy to welcome Marie Spodek back to South Dakota for what will be an informative and engaging class. Come to class to find out how the new TILA-RESPA disclosure requirements will impact purchase agreements and the timeline for closings. Part of this class will also focus on the ethical dilemmas facing licensees when dealing with property condition disclosures.

Here are the dates and locations:

Wednesday, October 14 – Rapid City Rushmore Plaza Civic Center – LaCroix C

Thursday, October 15 – Pierre Ramkota

Wednesday, October 21 – Aberdeen Ramkota

Thursday, October 22 – Sioux Falls Ramkota - Annex/Exhibit Hall

Friday, October 23 – Sioux Falls Ramkota – Annex/Exhibit Hall

Check-in/Walk-in Registration starts at 8:15 a.m.; Class begins at 9:00 a.m.

When Licensees Market a Property a Little Too Well

It's all too easy to use electronic means to market a new listing, however sometimes that isn't necessarily a good thing.

When sending out emails to get the word out about a new listing or available buyer clients, please, please, please, do not include the SDREC office and staff in these email messages. While the SDREC staff is happy to receive and respond to email inquiries regarding licensing and other routine SDREC business, the number of emails received by the SDREC from licensees that contain listings or other advertising is overwhelming.

It is generally NOT a good idea to send mass emails to everyone in the email contact list as there may be people on that list that do not want real estate solicitations. The best practice is to maintain a separate list so that only individuals who WANT updates on new listings, open houses, etc. are receiving such information. Be sure to comply with the federal CAN-SPAM act and include an opt-out.

Marketing Services Agreement Exits Highlight RESPA Concerns (Used with permission from ARELLO)

Two large U.S. mortgage lenders, Wells Fargo and Prospect Mortgage, announced recently that they will withdraw from their marketing services agreements (MSAs) with real estate brokers, builders and other settlement service providers, citing uncertainties surrounding recent interpretations and applications of the federal Real Estate Settlement Procedures Act (RESPA) as it applies to MSAs.

Real estate industry MSAs are arrangements under which one settlement service provider agrees to promote the services of another provider for a fee. In their simplest form, such arrangements might involve a mortgage or title company that pays to place advertising on a real estate company website. However, real estate industry MSAs might involve other arrangements such as co-advertising campaigns, cobranded platforms, the use of a name or logo, office space, or other variations.

Very generally, such agreements are not unlawful. And, the real estate brokerage industry is a natural setting for MSAs because consumers often turn to brokers and salespersons for information about and referrals to other settlement service providers. However, RESPA section 8(a) prohibits giving or accepting a fee, kickback, or thing of value pursuant to an agreement or understanding to refer business related to real estate settlement services for a federally-related mortgage loan [12 U.S.C. section 2607(a)]. At its core, the idea is that when a settlement service provider such as a real estate agent is working with a consumer, referrals to other providers should be based on quality and competence, not the fee that will be earned. And, such practices limit consumer shopping and competition, and increase costs.

A 2010 HUD Interpretive Rule states that RESPA section 8(c), which establishes limitations on the scope of the anti-kickback provision, allows real estate agents to receive compensation from home warranty companies for "work actually performed", such as documenting property conditions and appliances to be covered by a warranty. The interpretation has been interpreted by some to imply that MSAs are not prohibited in other contexts as long as the "person in a position to refer settlement service business" does not engage in direct-to consumer solicitations and payments for marketing services reflect a "fair market value for services actually performed".

However, since the Consumer Financial Protection Bureau (CFPB) took over RESPA enforcement from HUD in 2011, some industry stakeholders have become concerned about the legal status of their MSAs. For example, in an October 2014 CFPB consent agreement, Michigan-based Lighthouse Title agreed to pay a \$200,000 civil monetary penalty for illegal "quid pro quo" agreements. The consent order provides few details, but generally states

Marketing Services Agreement (cont.)

that the title company's MSAs with other settlement service providers, including real estate brokers, made it appear that payments would be based on marketing services provided to Lighthouse. However, the CFPB said, "...Lighthouse actually set the fees it would pay under the MSAs, in part, by considering the number of referrals it received or expected to receive from each company." The CFPB also found that, "The companies on average referred significantly more business to Lighthouse when they had MSAs than when they did not [emphasis added]". And, the consent order declares, "Entering a contract is [itself] a 'thing of value' within the meaning of Section 8, even if the fees paid under that contract are fair market value for the goods or services provided"; a conclusion that some stakeholders consider to be a new interpretation of RESPA's anti-kickback provision.

Real estate industry MSAs are not new, of course, nor are questions about their legality under RESPA. But, as underscored by the recent the decisions of Wells Fargo and Prospect Mortgage and the CFPB's heightened enforcement activities, industry stakeholders are confronted with continuing concerns in their efforts to achieve RESPA compliance.

Renewal Notices Arriving Soon

Renewal notices will be sent out in early October! For active licensees, the notices are mailed to the brokerage company with which the license is associated. For inactive licensees, the renewals are mailed to the home address! The group policy E&O insurance is an annual premium, due every year! Deadline is November 30.

New Licenses

Broker Associate

Baumgartel, Tammy L – Sioux Falls
Builich, II, Michael S – Rapid City
Daley, Raymond A – Rapid City
Gill, Robert J – Pierre
Haden, Denise – Hot Springs
Maliske, Brian A – Rapid City
Neises, Bradyn L – Sioux Falls
Pearson, Janel R – Akron, IA
Prins, Jacob C – Eden
Schock, Justin R – Rapid City
Sime, Rebecca S – Clear Lake

Bridgman, Nathan D – Harrisburg
Cook, Sandra L – Sioux Falls
Fitzgerald, Michael D – Sioux Falls
Guiliano, Matthew S – Sioux Falls
Kazmer, Mark L – Spearfish
McKnight, Jeremiah K – Rapid City
Noyes, Christie J – Rapid City
Peterson, Cody W – Avon
Sasso, Ronald – Rapid City
Schoenfelder, Jordan M – Sioux Falls
Speckman, Toni L – Rapid City

Broker

Dickhut, Randy L – Omaha, NE

Schrader, II, Rex D – Columbia City, IN

Property Manager

Boddicker, Ryan J – Sioux Falls
Haight, Michael G – Watertown

Dorhout, Jackson D – Sioux Falls
Lind, Eric R – Rapid City

Salesperson

Litz, Grant R – O'Neill, NE

Residential Rental Agent

Dorale, Ashley L – Sioux Falls
McChesney, Devin – Sioux Falls
Moe, Kurt W – Sioux Falls
Schmidt, Theodore D – Hot Springs

Hamilton, Brent R – Harrisburg
Metzger, Lee D – Sioux Falls
Nelson, Kyera – Sioux Falls
Voss, Jonathan E – Hills, MN

Home Inspector

Peiffer, Jeffrey G – Sioux City, IA

Scott, Anthony J – Sioux Falls

Appraiser Update

New Licensees – July/August 2015

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Tyler J. Walsh, State-Registered – Barnesville, MN
Angie F. Pendergast, State-Registered – Sioux Falls, SD
Brooke A. Newstrom, State-Registered – Rapid City, SD
Annice C. Sosebee, State-Certified Residential – Marieta, GA
Rajesh P. Shah, State-Certified General – Columbus, OH
Andrew M. Norine, State-Certified General – Minneapolis, MN
Robert Woods, State-Certified General – Bismarck, ND
Thomas J. Sternhagen, State-Registered – Groton, SD

Review of Cases – January 1 – September 8, 2015

For the period January 1, 2015 through September 8, 2015, the Department has initiated cases for four complaint investigations, five upgrades, and one new applicant claiming experience.

Complaints – Four pending.

Upgrade – Four pending. One closed.

New With Experience – One closed.

Notices

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

Appraisers – Submit Renewal Application, Fee and Verification of Continuing Education – Appraiser Licenses Expire September 30, 2015

Supervising Appraisers – Submit Renewal Applications and Fee – Supervisory Appraiser Endorsements Expire September 30, 2015

Reporting Assistance From a Trainee

(Re-printed with permission from the North Carolina Appraisal Board from the Appraisereport, Volume 25, April 2015, Number 1)

Board staff has seen repeated instances where trainees have performed the inspection of the subject property, but the supervising appraiser is the only one to sign the appraisal report. In many cases the trainee is simply noted as having provided assistance, and no mention is made in the report that the trainee was the only one to inspect the property. This is a violation of USPAP and Appraisal Board rules.

Standards Rule 2-3 of the Uniform Standards of Professional Appraisal Practice (USPAP) requires an appraiser to note whether anyone has provided “significant professional assistance” in the preparation of an appraisal. Standards Rules 2-2(a) or (b)(vii), as applicable, require that the signing appraiser must also state the extent of that assistance. North Carolina Appraisal Board Rule 57A.0405(a) requires that the appraisal report “shall identify any other person who assists in the appraisal process other than by providing clerical assistance.”

There are some clients who will not accept an appraisal report if a trainee signs it. Sometimes a client will request or demand that only the supervising appraiser’s name appear in the report, and that the contribution of a trainee or other appraiser not be reported. This often happens when only the supervising appraiser is on the client’s approved list. For example, if the trainee or appraiser who works on the preparation of the appraisal does not sign on the left side of a 1004 appraisal report, the supervising appraiser must make a full disclosure in the report as to who provided assistance and provide a detailed explanation of the extent of the assistance. This information can appear in an addendum, as long as the addendum is incorporated into the appraisal report and sent to the client.

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Reporting Assistance (cont.)

Fannie Mae Guidelines define the appraiser as the individual who personally inspected the property being appraised, inspected the exterior of the comparables, performed the analysis, and prepared and signed the appraisal report as the appraiser. Fannie Mae allows a trainee who works under the supervision of a licensed or certified appraiser to perform a significant amount of the appraisal (of the entire appraisal if he or she is qualified to do so)—as long as the appraisal report is signed by a licensed or certified supervisory or review appraiser and is acceptable under state law. Fannie Mae guidelines make it clear that **if a supervisory appraiser signs the appraisal report as the appraiser, the supervisory appraiser must have performed the inspection of the subject property.**

If the Board receives an appraisal report in support of experience credit that is not signed by the trainee or appraiser, or does not contain the appropriate information regarding the assistance provided by the trainee or appraiser, experience credit will be denied. The Board will also pursue disciplinary action against the supervising appraiser for failure to comply with USPAP Rule 2-3 and Board Rule 57A.0405(a).

How to Tell a Good Appraisal from a Bad Appraisal

By: **D. Scott Murphy, SRA**

(Re-printed from the Monthly Newsletter of the Georgia Real Estate Commission, GREC RENEWS, June 2015, Volume 11, Issue 6.)

I receive calls on a daily basis from people wanting me to review a “bad” appraisal. In this instance the caller usually deems the appraisal “bad” because the number is lower than expected. It is remarkable how many truly bad appraisals I see which meet or exceed the sales price. Yet, the buyer, seller, or agents never question these reports.

From a professional standpoint, there are a number of metrics to gauge the quality of the report. One of the most important things an appraiser must do is “bracket”. The term “bracketing” means to use comparable properties that are slightly superior and slightly inferior to the subject property.

For instance, it is critical that the appraiser use sales that are within ten percent of the subject’s gross living area. In order to prepare a strong, defensible appraisal, the appraiser should bracket the subject’s gross living area using comparables with slightly larger GLA and slightly smaller GLA. Room count in terms of bedrooms and bathrooms should be bracketed.

Lot size in terms of overall lot value should also be bracketed. It is important to note here that the appraiser must closely analyze the subject’s lot value as well as each comparable’s lot value. Too often the misconception is made that a larger lot is worth more than a smaller lot. That is not always the case. Topography, amount of usable land, location within the subdivision (such as a corner lot or cul-de-sac), or other features of this kind can impact the overall value. Adjustments are made on separate lines for the general location of the subject property and the property’s view.

When an appraiser uses bracketing properly, they remove the majority of the subjectivity possible in an appraisal report. Bracketing actually “tests” the adjustments and forms a basis for the appraiser to prove his value to the reader. For instance, if he extracts an adjustment of \$10,000 for a full bathroom from the subject market, he must add \$10,000 to a comparable with one less bathroom and subtract \$10,000 from a comparable with one more bathroom. The ultimate goal for an appraiser is to generate an appraisal report with the most similar, recent comparable and arrive at an adjusted range of estimated value that is very small. In other words, once he has made all of his adjustments, the bottom line shows the adjusted estimated market value for the subject property. The range between the lowest and the highest number would ideally be as small as possible.

How to Tell a Good Appraisal from a Bad Appraisal

(cont.)

Keep in mind that it is virtually impossible for this range to be zero due to the imperfect nature of the real estate market. When an appraiser appraises a property for \$200,000 and his adjusted range is \$132,000 - \$367,000, I always say "take that bottom line of the adjustments grid and put the number into a sentence". In the example above, what the appraiser is really saying is "I feel the subject property is worth between \$132,000 and \$367,000". That is not very convincing to me. A range of ten percent is ideal. Any range larger than that is a huge indication of a bad appraisal.

There is no "one" number that a property is worth but an estimate range of over 10% is possibly an indication of dissimilar comparables. The appraiser must go back and analyze the adjustments. By looking at each line and testing the impact on value if that adjustment were increased or decreased, the appraiser is able to narrow the adjusted range and prove the adjustment. The appraiser should contact a party to the transaction and verify each comparable. He should ask probing questions about overall condition, quality, upgrades, and amenities. Generally he can determine why this adjusted value is too high or too low by thorough verification by one of more participants to the transaction.

I had a comparable just down the street from my subject, which was very similar to my subject and sold recently. However, it was adjusting \$25,000 below the adjusted range of all the other comparables. I called the buyer's agent and after just a few questions I was able to determine that it was selling below the other comparables because it had a very sloped lot. This was not visible from the street and was certainly not advertised in the listing. A \$20,000 -25,000 adjustment for topography was reasonable and with that adjustment my adjusted range was very tight.

It is important for agents to be aware of other comparables in the neighborhood of their listing. Research these comparables and be prepared to alert an appraiser of variances such as this. It is then up to the appraiser to verify the information. There are far too many appraisers who because of a time constraint or a fear of talking to agents that will not dig to find the reason for a significant variance.

Another indication of a bad appraisal may be "across the board adjustments". An across the board adjustment is one where every comparable is adjusted in the same direction for a particular item. For example, the subject has a very nice 2-acre lot. Each of the comparables used has less than one acre. This will cause the appraiser to make a positive adjustment to each of the comparables. Another common "across the board adjustment" is for gross living area (GLA). The subject has 2700 sf and the comparables had 3300 sf, 3400 sf and 3500 sf. Each of the comparables would receive a negative adjustment. The problem is that there is no list of adjustments that appraisers use. These adjustments must be extracted from the market. If one appraiser determined that the appropriate GLA adjustment should be \$30/sf then the respective adjustments would be -\$18,000, -\$21,000 and -\$24,000. If another appraiser determined the GLA adjustment should be \$50/sf then the respective adjustments would be -\$30,000, -\$35,000 and -\$40,000. Neither supplies adequate support for his determination of GLA adjustment.

In defense of my fellow appraisers, there are no easy appraisals. But with careful analysis, research, and verification of the comparables, usually a relatively tight range of estimated value can be determined.