



NORTH CAROLINA APPRAISAL BOARD

APPRAISER REPORT

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Number 2

CHANGE IN EXECUTIVE DIRECTOR

Philip Humphries will be retiring after the current session of the General Assembly. Mr. Humphries was employed by the Board in 2001 as a Deputy Director of Investigations and was promoted to Executive Director in 2003. Mr. Humphries had over 33 years of service with NCDOT at the time of employment by the Board.

This decision to retire was announced to the Board at the beginning of the year and the Board formed a committee to search for a new director. Donald T. Rodgers was unanimously selected to be promoted as the new Executive Director.

Mr. Rodgers has been Deputy Director since 2003 having been initially employed by the Board as an investigator in 2000. He is a graduate of NC State University with a bachelor's degree in Textile Management and a master's degree in Business Management. Mr. Rodgers is a certified general appraiser; he currently serves on the Executive Committee of the Association of Appraiser Regulatory Officials (AARO) and is an AQB Certified USPAP Instructor.

NEW BOARD APPOINTMENTS

Governor Beverly E. Perdue has appointed two new members to the Appraisal Board with both terms being from July 1, 2009 to June 30, 2012.

Charles J. Moody, III is a certified general appraiser and was one of the Founders of Realty Services of Eastern Carolina. He received a BS degree from Virginia Tech in Forest Management. Mr. Moody has the designation of MAI from the Appraisal Institute and is a Registered Forester. He has 29 years of experience with a special emphasis on the valuation of timberland, agricultural and conservation use properties. He and his wife, Anne, have two married sons and make their home in New Bern.

Thomas A. Barton is a certified residential appraiser and operates his own appraisal business. He specializes in residential real estate in eastern North Carolina with over 22 years of appraisal experience. Mr. Barton is currently the Treasurer for the North Carolina Association of Realtors and serving his second two year term on the National Association of Realtors Appraisal Committee. He has been "Member of the Year" and Chairman of the Board for the New Bern area Chamber of Commerce. He and his wife, Pam, have a daughter and son and make their home in New Bern.

NEW DEPUTY DIRECTOR

The Appraisal Board has promoted Thomas W. Lewis, III from Chief Investigator to the position of Deputy Director. Mr. Lewis was employed in 2005 as an Investigator. Mr. Lewis is a veteran of the United States Army National Guard with over 19 years of service as a military policeman including combat action in Panama and Iraq. A native of Columbia, South Carolina, Mr. Lewis graduated from Western Carolina University with a bachelor's degree in Political Science. Mr. Lewis is a Certified General Appraiser.

NORTH CAROLINA APPRAISAL BOARD
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APPRAISER REPORT

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NORTH CAROLINA APPRAISAL BOARD

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Beverly E. Perdue, Governor

APPRAISAL BOARD MEMBERS

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J. David Brooks
Vice-Chairman Oxford
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Sidney P. Jessup. Kill Devil Hills
Donald S. Johnson Henderson
Charles J. Moody, III. New Bern
J. Vance Thompson. Elkin
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Jeffrey H. Davison, *Investigator*
Terri S. Haywood, *Investigator*
Jacqueline Kelty, *Administrative Assistant*
Deborah C. Liggins, *Administrative Assistant*
Pam A. Privette, *Administrative Assistant*
Mindy M. Sealy, *Administrative Assistant*

APPRAISER COUNT

(As of July 20, 2009)

Trainees	541
Licensed Residential	240
Certified Residential	2097
Certified General	1081
Total Number	3959

APPRAISER EXAMINATION RESULTS

January 2009 – June 2009

Examination	Total	Passed	Failed
Trainee	71	45	26
Certified Residential	38	18	20
Certified General	4	2	2

Examinations are administered by a national testing service. To apply for the examination, please submit an application which may be downloaded from the Appraisal Board's website at <http://www.ncappraisalboard.org/forms/ApplicationFormLicensure.pdf>

BOARD ELECTS OFFICERS

John D. Lyon, Jr. has been elected Chairman of the Appraisal Board for 2009-2010. Governor Michael F. Easley appointed Mr. Lyon to the Board in February 2008 for a three-year term ending June 2010.

Mr. Lyon graduated from the University of North Carolina with a BA degree in political science. He has been an appraiser for 17 years and is certified general. Mr. Lyon is a North Carolina Superior Court Mediator and also holds a North Carolina Real Estate Brokers license.

J. David Brooks has been elected Vice-Chairman of the Appraisal Board for 2009-2010. Governor Michael F. Easley appointed Mr. Brooks to the Board in 2007 for a three-year term ending June 2010.

Mr. Brooks attended North Carolina State University and has been in the appraisal business for over 22 years. He is a certified general appraiser and the owner of Brooks Appraisals, Inc. His primary business is residential appraisals in Vance, Granville, Warren and Person counties. He is a Trustee of Vance Granville Community College and past Chairman of the Granville County Commissioners. He and his wife, Melinda, make their home in Granville County.

NEW EDITION OF USPAP EFFECTIVE JANUARY 1, 2010.

The 2010-2011 edition of USPAP has been adopted by the Appraisal Standards Board and will be valid for two years, effective January 1, 2010 through December 31, 2011. As with the current edition of USPAP, the new edition will include guidance from the ASB in the form of the USPAP Advisory Opinions and the USPAP Frequently Asked Questions (FAQs). A summary of the actions taken in the new USPAP may be viewed at this link.

http://www.appraisalfoundation.org/s_appraisal/bin.asp?CID=3&DID=1359&DOC=FILE.PDF

The new edition of USPAP is scheduled to be available by October 1, 2009. The 7 hour USPAP update course for this new edition should be available soon after. Appraisers are encouraged to take the course as soon as it is available in order to learn about the changes before they become effective.

NOTE: THE BOARD WILL AGAIN GIVE YOU THE OPPORTUNITY TO ORDER THE 2010-2011 EDITION AT A REDUCED COST BY SENDING A CHECK TO THE BOARD ALONG WITH YOUR ORDER FORM. THE USPAP BOOK WILL THEN BE MAILED DIRECTLY TO YOUR HOME OR OFFICE. ORDER FORMS WILL BE MAILED WHEN WE ARE NOTIFIED THAT THE NEW EDITION IS READY FOR PURCHASE BY THE APPRAISAL FOUNDATION.

WHEN DOES AN APPRAISAL ASSIGNMENT END?

You finish your appraisal report and submit it to your client. The next day you receive an email asking you to add three comps and a current listing. After you send those in, you receive a request for interior photos of the subject. When will it end?

The Board gets calls about this almost daily. The major reason that appraisers get these calls is that they fail to establish their scope of work at the beginning of the assignment. Many appraisers simply look at the fax or email order and start working on the assignment, never asking their clients questions such as how many comps they should use or whether interior photos are required. Another reason is that appraisers generally try to keep their clients happy and will go as far as they can to do so.

The Appraisal Board takes the position that an appraisal assignment ends when the assignment conditions have been met and the report is transmitted to the client. After that point, the client may ask for clarification of items in the report, or for an explanation as to why certain information was not provided. The client may also notify the appraiser of errors in the report and ask the appraiser to correct the mistakes. Any other requests, such as use of additional comps, result in a new appraisal assignment. The appraiser is free to charge whatever he or she chooses for this assignment, or may charge no fee at all.

Appraisers are advised that they should have a letter of engagement in the work file for each assignment that details the scope of work to be performed for each assignment. If the appraisal order does not have sufficient information on it to outline exactly what the client wants, the appraisers should follow up with a fax or email stating exactly what they will do for the assignment. This could include stating the number of comps to be used in the grid, whether a current listing will also be gridded, whether interior photos will be taken or provided in the report, how long they will take to produce the appraisal, etc. Failing to have such a letter may result in a misunderstanding with the client whether the appraiser has completed the assignment as ordered.

NOTE: The Appraisal Board is aware that the Appraisal Standards Board issued a monthly Q&A in December 2007 in which they stated that “Requests to perform additional research or analysis change the scope of work, but do not create a new assignment. The additional work can be performed as part of the original assignment. The appraiser may decide, as a business decision, to treat the request for additional research and analysis as a new assignment, but it is not required.” The concern the Board has is that this Q & A would let an appraisal assignment go on for a long period of time, as there would be no definite end to it. The Board believes that appraisers should treat a request for additional research and analysis as a new assignment.

COMPARABLE SALES – YOU MUST LOOK AT THEM!

Most of the new Fannie Mae forms contain language in the certification that the appraiser has inspected the comparable sales at least from the street. Also, many lenders now require that the appraiser take photographs of the comparable sales, and may not rely on MLS or other sources for photos of the subject and comparable sales.

Be sure to check the “boilerplate” language in the Scope of Work section and in the certification preprinted on the appraisal form you are using to report your appraisal. Also, check the appraisal order form for the assignment to see if you must personally view the comparable sales and include your own photos in the report. If the appraisal form states that you have viewed the comparables and you have not done so, you must explain this in the report. If you use photographs of comparables which you did not take yourself, you must note the source of the photographs on the appraisal report and explain why you did not include your own photos. Failure to do so results in a misleading appraisal report, since it appears to the reader that you took the photographs in the report.

REISSUING OR ASSIGNING AN APPRAISAL REPORT

The Board receives many questions about readdressing or assigning an appraisal report. Advisory Opinions 26 and 27 provide clear guidance on this issue,

Question 1. I recently performed an appraisal on a subject property for an AMC who had me put a lender's name on the client line. Now the AMC has contacted me and told me to change the name of the lender on the report. Is this okay under USPAP?

Answer: No. Once a report has been prepared for a named client, the appraiser cannot readdress or transfer the report to another party. Simply changing the client name on the report cannot change or replace the original appraiser-client relationship that was established with the first client. See Advisory Opinion 26 for more information.

Question 2. I did a report for one lender, and a new lender comes to me with a letter from the original client giving me a release to change the client name on the report to that of the new lender. Is this still okay under USPAP, since I have a written release?

Answer: No, this is not okay. This is "readdressing" a report, and is forbidden. The name change request must be treated as a new assignment.

Question 3. I know that I cannot transfer a report from one client to another, but I get calls all the time asking me to do this. Is there any way I can accept the assignment and comply with USPAP?

Answer: Yes. The appraiser can consider the request a new assignment and establish a new appraiser-client relationship with the second client. What you charge your client for this new assignment, however, is up to you.

Question 4. I recently performed an appraisal on a subject property and a new lender contacted me to request a separate but complete appraisal on the same property. Can I do this new assignment?

Answer: Yes. As long as the appraiser does not use any confidential information given to him or her by the first client, the appraiser can accept an assignment to appraise the same property for a different client. See Advisory Opinion 27 for more information.

Question 5. I heard that the new edition of USPAP will require you to tell your clients if you have appraised the property before. Is this true?

Answer: Yes, this is true. The 2010-2011 edition of USPAP will have a new requirement that you must tell your client about all services you have provided for the past three years for a subject property. If you are contacted to appraise the property again, you must tell the second client about the first appraisal before accepting the assignment. This requirement includes telling your client not only about prior appraisals of the subject, but also any real estate brokerage services, financing, etc. The new edition of USPAP will be out in the fall of 2009, so look for the change in the Conduct Section of the Ethics Rule when you obtain your copy.

Question 6. An AMC hires me to appraise a property and has me put a lender's name as the client. The AMC contacts me later and says that the original client has been bought by another lender, and all appraisals done for the original client have been assigned to the new owner. The AMC wants me to change the name of the client in the report to reflect the takeover. Can I do this?

Answer: No. Since identification of the client is one of the key elements in the appraisal assignment, it is a major factor that drives the appraiser's scope of work decision. These factors must be identified at the time of the assignment, and cannot be modified after an assignment has been completed.

Reminder for Individuals who took Certification Exams Early

As you may recall, the Appraisal Board allowed individuals who had completed the education requirements for Certified Residential or Certified General to take the exam prior to obtaining their experience. If you took one of the certification exams early, you are reminded that you have two years from the date you passed the exam to finish your experience and submit your application for upgrade. The two-year time limit is a federal requirement, not a Board rule, so there can be **no extension** of the deadline. If you do not complete your experience within the two years, you will have to take the new national certification exam. You will not have to take additional classes unless the courses needed for upgrade are over five years old.

EMAIL ADDRESS

We are developing an email list of all registered trainees, licensed and certified appraisers in North Carolina. In the future you will be notified by email of pertinent information such as rule changes, dates and locations of the supervisor course, and most importantly the date a new *Appraisereport* is available on our website. About 20% of appraisers have not provided their email address and will be left out of the loop. Please be sure the Board has your current email address on file. In order to do so, please login under the licensee login section on our website at www.ncappraisalboard.org.

Website Enhancements— Viewing Your Continuing Education Record Online

Enhancements have been made to the Board website so that all current licensees can view their CE record online. Utilizing the licensee login link found at the bottom of the Board's homepage (www.ncappraisalboard.org), current licensees may login by entering their User ID and password. The User ID is the same as an individuals' license number and will start with the letter "A" or "T". The password is the licensees' last four digits of their social security number.

The CE record displayed contains the continuing education earned as reported to the Board by the course sponsors. Please DO NOT send your certificates of course completion directly to the Board, as we can not accept course completion certificates directly from students for CE. Course providers are required to submit rosters directly to the Board to report CE credits. Please note that if you are taking online continuing education courses that you can only receive credit for a maximum of 14 hours per 2-year continuing education cycle. All CE listed in excess of 14 hours online and 28 hours total will NOT carry over into the next renewal cycle.

Appraisers can also update their contact information through the same login.

To view a current list of continuing education courses approved by the Board, please visit our website at http://www.ncappraisalboard.org/education/contin_edu.htm

Disciplinary Actions:

The following is a summary of recent disciplinary actions taken by the Appraisal Board. This is only a summary; for brevity, some of the facts and conclusions may have not been included. Because these are summaries only, and because each case is unique, these summaries should not be relied on as precedent as to how similar cases may be handled.

In many cases appraisers are required to complete additional education as part of a consent order. Please check with the Board office if you have questions regarding an individual's current license status.

Daniel J. Allen A3762 (Tar Heel)

By consent, the Board suspended Mr. Allen's general certification for a period of six months. The suspension is stayed until September 1, 2009. If Mr. Allen completes a 30 hour course in General Market Analysis and Highest and Best Use by that date, the suspension shall be inactive. Mr. Allen appraised a property located in Elizabethtown, North Carolina effective May 7, 2007, finding a value of \$2,250,000. The subject property consists of 7 acres in an industrial park that is improved with a 39,899 square foot manufacturing building. The property is improved with two extensive crane systems with a capacity of 15 tons and 2 tons, respectively. The floor system has reinforced flooring and extensive upgrades in the way of electrical and plumbing to accommodate the special nature of the building. The crane systems are fixtures of the property. Mr. Allen did not discuss in his appraisal report the demand for this type of system in the area. He used the original purchase price as the depreciated cost basis of the crane as part of his analysis because it was less than the full replacement cost. It is apparent that this facility is atypical as it does lend itself to being more of a heavy manufacturing facility as opposed to a light manufacturing facility. In addition, the facility is small, which usually is more common in light manufacturing. Mr. Allen's sales comparison approach relied upon the comparison of the subject with light manufacturing facilities as he could not locate heavy manufacturing facilities of a similar size. He failed to discuss or adjust for the possibility of obsolescence. He did make an

adjustment in his report to reflect the difference of the sales based on the Marshall Valuation Service for light versus heavy manufacturing facilities. He contends that he did consider and reject the potential obsolescence of the subject property but acknowledges that he did not include his analysis in the report.

Sean M. Green T4562 (Boone) James M. Green A4469 (Boone)

By consent, the Board suspended Sean Green's trainee registration and James M. Green's residential certification for a period of six months. The suspensions are stayed until September 1, 2009. If they complete a Sales Comparison course and a course in the Valuation of Vacant Land by that date, the suspensions will be inactive. Sean Green and James M. Green performed an appraisal of a property located in Boone, North Carolina in January 2008, finding a value of \$75,000. The appraisal was completed on the land appraisal report. The subject property is a .47 acre vacant tract of land located in an older small mountain subdivision. It is located on a one lane stretch of gravel road; access to the subject section of the road is over a gravel road. There was no road maintenance agreement and the recorded restrictions appear to have expired. The subject had sold in November 2007 for \$70,000 as two lots. Although the appraisers reported the sale date and price, they did not state that the sale included two lots. Public records erroneously showed that the subject had sold as a single lot and they reported it as such. It was later discovered that the subject had actually sold as two lots. They used three comparable sales in their report. The first sale is located in the subject subdivision. Respondents stated that it sold for \$84,500 in May 2007, when it actually sold for \$75,000 in 2006. This sale contained 3 lots, which was not mentioned or analyzed in the report. They obtained their information for this sale from the Multiple Listing Service, and then verified by telephone with the listing broker who erroneously confirmed the information that was contained in the MLS.

Dennis Gruelle A3562 (Virginia Beach, VA)

By consent, the Board issued a reprimand to Mr. Gruelle and ordered him to take a class in Highest and Best Use and the 15 hour National USPAP course with the examination. If the courses are not completed by December 31, 2009, a three month suspension will begin on that date. Mr. Gruelle appraised a 1,524.5 acre tract of land located in Richmond County, North Carolina in February 2006 with an effective date of June 26, 1997. The property was in litigation and subject to a condemnation action that would take 26.33 acres, as well as areas for a permanent drainage easement, a temporary drainage easement, and a slope easement. The subject was split by a road, and the land was split into two tracts for litigation purposes. Mr. Gruelle indicated just compensation for the first tract at \$1,314,329 and for the second tract at \$434,000. Mr. Gruelle stated that the highest and best use of the tracts in the before condition was a blended use that included residential uses adjacent to the intersecting secondary roads lacing the subject, and a commercial area that would be located adjacent to the existing highway that would take advantage of unfettered highway access. As part of the basis for his opinion, he referenced the existing US-74 road frontage and knowledge of the future I-73 interchange were positive attributes of the property as of the date of take. Prior to the taking, the subject maintained extensive frontage along an existing US highway. As part of the project, the subject's frontage and access became controlled, resulting in ingress/egress being available only off of existing secondary roads. Mr. Gruelle stated that this damaged the remainder as the commercial potential noted in the before condition would be eliminated by the absence of access directly onto the US highway in the after condition. He referenced news articles and other documents that did corroborate his opinion regarding the possibility that the new intersection of I-73 and I-74 would be in the vicinity of the property. He stated that the projected timeframe was 10 years. Mr. Gruelle had previous experience with a situation very similar to that regarding the subject property. Since the likelihood of actual

construction of the new interchange was unknown on the effective date of the report, Mr. Gruelle used an extraordinary assumption in valuing the damages. While he did state that the actual location of the intersection was unknown, but planned in the "vicinity," and he stated that it was projected 10 years down the road, he did not, however, adequately and conspicuously label this extraordinary assumption in his appraisal report. **It is noted that this is the settlement of a disputed claim, and the facts are specific to this case and do not apply to other properties, appraisals or litigation.**

David S. Hill A4121 (Charlotte)

Following a hearing, the Board suspended Mr. Hill's residential license for a period of one year. If he completes the 15 hour National USPAP course with exam, a class in the Sales Comparison Approach and a Board rules course before the end of the first 90 days of the suspension, the remainder of the suspension will be inactive. The Board found that Mr. Hill performed an appraisal of a property located in Arden, North Carolina in November 2006, finding a value of \$159,000. The appraisal was done for a refinance transaction. The subject property is a 1,424 square foot ranch dwelling. It is located in a subdivision known as The Village at Averys Creek. This subdivision has several amenities, such as a community pond and walking trails. Mr. Hill used three comparable sales in his appraisal report. He stated in the appraisal report that the source of his data for his comparable sales was the Multiple Listing Service and exterior inspection. Verification of the data was from tax records. Although Mr. Hill stated in the appraisal report that his second and third sales were from the subject subdivision, none of the sales he used in his appraisal were located in The Village at Averys Creek. All three sales were inferior to the subject property, and no adjustments were made for the differences. There were several sales in the subject subdivision within one year prior to the effective date of the appraisal. These sales ranged in price from \$196,000 to \$240,000. These sales were all listed on the Multiple Listing Service. All had been on the market for less than 70 days when they went under contract, indicating an active market in the subject subdivision. Mr. Hill undervalued the

subject property. As a result, the property owner was unable to obtain refinancing. As part of the complaint, Mr. Hill was asked to provide a copy of his work file for the appraisal assignment. He sent only a copy of the appraisal report. He did not send the work file as he did not have it.

Michael A. Howard A4930 (Cary)

By consent, the Board suspended Mr. Howard's residential certification for a period of five years. The first three years of the suspension are active. If Mr. Howard completes each of the following courses by June 30, 2012, the remaining two years of the suspensions shall be inactive: 15 hours in Residential Market Analysis and Highest and Best Use, 15 hours in Residential Appraiser Site Valuation and Cost Approach, 30 Hours in Residential Sales Comparison and Income Approaches, 7 hours in Appraiser Liability, 7 hours in Business Practices and Ethics, and the 15 hour National USPAP course with exam. Mr. Howard performed appraisals of five properties located in Durham, North Carolina in August 2004. The properties were all located within proximity of one another and were similar in design and appeal, consisting of two units in a typical duplex configuration. The properties were all in excess of 50 years old. On December 16, 2008 a civil judgment was filed against Mr. Howard in which it was found that he provided unverified and unfounded information to his client. Although Mr. Howard failed to perform an interior inspection of any of the properties, the certifications in the appraisal reports for all of them indicated that he had done so. The same three comparable sales were used in each of the five reports, and all the comparables were superior to the subject. Mr. Howard failed to make appropriate adjustments for the differences. He relied on the owner/borrower in the transaction for a description of the condition of the subject properties and did not personally verify the condition. The information provided by the owner/borrower was later found to be inaccurate. Each of the subject properties was not in good condition and needed repairs on the effective date of the appraisal, but Mr. Howard prepared the reports "as is" and did not describe the actual condition of the improvements. He checked the Durham County tax record online prior to completing the appraisals, but did not discover and

report that each property had transferred a couple of days prior to the effective date of each report. The prior sales prices were substantially lower than the appraised values for each property. In at least three of the assignments, Mr. Howard failed to identify the correct owner of record. In these instances the owner of public record and the borrower were the same, but this was not reflected in the report. He overvalued each of the subject properties.

James D. Klostermeyer, Sr. A6173 (Hildebran)

By consent, the Board suspended Mr. Klostermeyer's residential license for a period of twelve months. If Mr. Klostermeyer completes a course in Appraising Vacant Land and a course in Appraiser Liability, the suspension will be inactive. Mr. Klostermeyer and another appraiser performed appraisals on two tracts of vacant land located in Spruce Pine, North Carolina in September 2006, finding a value of \$160,000 for each report. The properties are located in a proposed mixed-use development and are 0.31 acre and 0.38 acre in size. The development was under construction at the time of the appraisal, and was to have several amenities, such as a retail village center, equestrian center, golf course, walking paths and bike trails, private fishing reserve, river rafting, mountain hiking, scenic pocket parks, and a lake. None of the amenities were ever completed. Although the amenities were not in place on the effective date of the report, Mr. Klostermeyer appraised the subject properties as though they were completed. He did not, however, state that the appraisal was performed subject to an extraordinary assumption or hypothetical condition. Mr. Klostermeyer used three comparable sales from the subject development. They would have been reasonable comparables for the subject if the subject project's amenities had been in place or if they had invoked an extraordinary assumption or a hypothetical condition. They were not appropriate for an as-is value.

Justin D. Loebach A5380 (Raleigh)

By consent, the Board issued a reprimand to Mr. Loebach. Mr. Loebach must complete a course in Appraisal Board rules and a course in Sales Comparison by September 1, 2009 or the reprimand

will be withdrawn and an active two month suspension shall begin on that date. Mr. Loeback appraised a property located in Butner, North Carolina effective May 2, 2005 for \$105,000. The subject property is a 965 square foot, one-story house with five rooms including three bedrooms and one bath. All of the comparables used in the report were superior in quality and condition, but inadequate adjustments were made for these factors. Two of the sales used had sales concessions referred to in the listing but these were not reported in the appraisal report. There were limited sales available in the subject's area. If Mr. Loeback had used available sales more similar to the subject, the appraised value would have been lower. Mr. Loeback has previously been disciplined for similar issues during the same time frame and has taken significant continuing education since that time.

Thomas R. T. McIntosh A3721 (Cary)

By consent, the Board suspended Mr. McIntosh's residential certification for a period of two years. The first year of the suspension is active. If Mr. McIntosh completes the 15 hour National USPAP course with exam, a course in Business Practices and Ethics and a course in Mortgage Fraud by the end of the first year, the remainder of the suspension will be inactive. Mr. McIntosh appraised a property located in Durham, North Carolina in September, 2006, finding a value of \$155,000. The subject property is a 40 year old one story duplex with 1474 square feet. Mr. McIntosh recruited the purchaser to buy the subject property, and contacted the seller of the subject property to arrange a sale of the subject property. Mr. McIntosh had previously purchased another property from the seller of the subject property to renovate and re-sell. The HUD statement for the closing of the subject property shows that \$16,175 was paid to Mr. McIntosh, who subsequently paid out that sum of money to various contractors for repairs to the subject. His company was paid \$350 for the appraisal on the subject, and his wife was paid a 9% commission of \$13,410. Despite his obviously close connection to the subject property and the parties, Mr. McIntosh signed a certification on the appraisal that stated that he had no present or prospective interest in the subject property, and that he had no present or prospective personal interest or bias with respect to the participants in the

transaction. This certification was not true. As part of this complaint, Mr. McIntosh was asked to produce a copy of the appraisal reports and work file, but he failed to do so, stating that he did not have his work file.

Daniel H. McMillan A6703 (Raleigh)

By consent, the Board suspended Mr. McMillan's residential certification for a period of six months. The first month of the suspension is active and the remainder is stayed until December 31, 2009. If Mr. McMillan completes a course in the Valuation of Vacant Land and a course in Appraising Complex Properties by that date, the remainder of the suspension shall be inactive. Mr. McMillan performed appraisals of a vacant lot of land located on Lake Gaston, North Carolina, valuing the property for \$210,000, \$290,000, and \$305,000 as of April 29, 2008 with different signature dates. The subject property is a triangular shaped cove lot on a large lake with 40' of lake frontage. The subject is located in an older neighborhood with a wide variety of housing. In the first appraisal, Mr. McMillan compared the subject to lots located on Kerr Lake, which was inappropriate. He thought at the time that the Triangle MLS would contain all of the sales in the Lake Gaston area, which was not the case. He did not include the subject's boat house in the appraisal as he should have. He revised the report using let sales from the local MLS that were provided to the lender by the borrower. These lots were superior to the subject and adjustments were not made for this factor, resulting in an inflated value for the subject. In the third revision, the boat house was included, resulting in an even higher value for the subject.

Paul F. Olson A358 (Raleigh)

Following a hearing, the Board suspended Mr. Olson's residential certification for a period of six months effective June 1, 2009. If he completes a course in Residential Report Writing, a course in Sales Comparison and a course in the Cost Approach by August 1, 2009, only the first two months of the suspension shall be active. If he fails to complete the courses by that date, the remainder of the suspension shall become effective on that date. The Board found that Mr. Olson performed an appraisal of a property located in Carrboro, North

Carolina in March 2008, finding a value of \$220,000. The subject property is a split foyer style duplex that is located in an area of housing near the University of North Carolina at Chapel Hill. Mr. Olson stated incorrect owners for the subject property in the report. On the effective date of the appraisals, one of the two units in the duplex was occupied by a tenant and the other was vacant. Mr. Olson stated in the appraisal report that the subject was owner-occupied, when in fact the owners resided in another town and did not live in the subject property. Local zoning requires 7,500 square feet minimum per unit, and the subject site has 9,749 square feet, which is nonconforming. Mr. Olson stated in the report that the subject's zoning compliance was "legal", which was incorrect. He should have stated that it was "legal nonconforming". He stated that the subject property has a two car-attached garage and a concrete driveway, when there is no garage on the subject property, and the subject driveway is gravel. In his income approach, Mr. Olson used a Gross Rent Multiplier of 140. There was no explanation in the report for this figure, nor was there any support in the work file. The report notes that the cost approach was based on Marshall & Swift Cost Valuation Service, but there is no support in the work file for any of the information in the Cost Approach. The reconciliation in the report stated that emphasis was placed on the sales comparison approach with support from the cost approach. The report also stated that the income approach was not developed, yet the report indicates a value from the income approach. The photographs in the report of the subject property and street scene are incorrect. The photographs of two of the three comparable sales were taken from MLS. The photograph of the third comparable sale is incorrect. All three of the photographs of the comparable rentals were taken from the MLS. Mr. Olson states in his certification that he made a complete visual inspection of the interior and exterior areas of the subject property, when he inspected only one of the two units. He did not mention in the report that he inspected only one of the two units, and he did not utilize or state an extraordinary assumption about the interior condition of the uninspected unit. Instructions from the client indicated that Mr. Olson must inspect all units. They also required that he must take photographs of the comparable sales, and

must not use MLS photos. At the time this appraisal was performed, Mr. Olson allowed an unlicensed office assistant to provide assistance in the preparation of the appraisals, including taking photographs. Mr. Olson viewed only one of the comparable properties.

David K. Peterson A4239 (Roxboro)

By consent, the Board suspended Mr. Peterson's residential certification for a period of twelve months. Two months of the suspension are active and the remainder is stayed until June 1, 2009. If Mr. Peterson completes a course in Appraiser Liability and a course in the Sales Comparison approach before that date, the remainder of the suspension will be inactive. Mr. Peterson performed an appraisal of a property located in Bahama, North Carolina in January 2008, finding an appraised value of \$1,000,000. The subject is a custom built one-and-one half-story brick sided home containing approximately 4666 square feet. It is sited on a 2.25 acre lot. Mr. Peterson failed to include the subject's listing history in the report, although he had the information in his work file. No reference was made in the report to a commercial tree farm on the subject's road near the subject or to a federal prison that is located nearby. He did not measure the subject dwelling, but used a sketch that was provided to him. He failed to disclose this information in the report. Mr. Peterson compared the subject to properties located in areas that were superior in location to the subject, but he did not make appropriate adjustments. One of his sales was on a golf course and another on a pond, but he did not report or adjust for those factors. There were other sales available that were more similar to the subject that would have led to a lower value for the subject.

Herman N. Pickett, Jr. A2937 (Greensboro)

By consent, the Board suspended Mr. Pickett's residential certification for a period of one year. The first three months of the suspension are active and the remainder of the suspension is stayed until December 1, 2009. If Mr. Pickett completes a course in Sales Comparison and a course in Scope of Work by that date, the remainder of the suspension shall be inactive. Mr. Pickett performed two appraisals of a property located in

McLeansville, North Carolina in 2006, finding a value of \$464,000 in each report. The subject property is a 1.5 story brick veneer home with 3021 square feet. It was new construction on the effective date of the appraisal. Two of the comparable sales used in the appraisals are from a golf course community and both lots front the golf course, but Mr. Pickett did not make adjustments for location or view. There were sales from the subject subdivision that could have been used in the appraisals. If he had made appropriate adjustments or had used more appropriate sales, the appraised value would have been lower. The first appraisal had an effective date of September 25, 2006 and a signature date of September 29, 2006. Mr. Pickett appraised the property again in November 2006 with a different borrower. The contract section of both appraisals refers to a contract for \$455,000 dated September 29, 2006 with the seller paying \$8000 in closing costs and owner financing of \$44,500. There was a different contract for the November report that had a different sales price and different terms, but this information was not stated in the November report.

David R. Roberts A1781 (Boone)

By consent, the Board suspended Mr. Roberts' general certification for a period of one year. Three months of the suspension are active and the remainder is stayed until December 1, 2009. If Mr. Roberts completes a course in the Valuation of Vacant Land or Subdivision Valuation, a course in Sales Comparison, a course in Highest and Best Use, the 15 hour National USPAP course with examination and a 14 hour class in Residential Report Writing and Case Studies by the end of the first year, the remainder of the suspension shall be inactive. Mr. Roberts also agrees that he will not issue any restricted use appraisal reports for a period of one year from the effective date of this consent order. Mr. Roberts performed four appraisals of properties located in Watauga County, North Carolina in 2006 for the county manager to determine offering prices to several property owners who owned land in the site selected for a new high school. The first subject property is a 59- acre vacant tract. Mr. Roberts appraised it on April 20, 2006 for \$3,544,000, or \$60,000/acre. The appraisal report notes the highest and best use as retail/office/possible multi-family

residential use. Present zoning would not allow this use, and the property was appraised based on an undisclosed hypothetical condition or extraordinary assumption. A prior sale of the property in August, 2004 was not noted in the report. The second subject property is a 14.826-acre tract of land. Mr. Roberts appraised the property for \$1,260,000, or \$85,000/acre, as of April 20, 2006. The subject was appraised as one parcel when it is actually two adjacent parcels with two different owners who were family members. Considering two tracts as one was to be a hypothetical condition that was not disclosed in the report. There was a graveyard (.315acre) located near the center of one of the tracts, but this fact was not disclosed in the report. The third subject property is a 1.65 acre tract. The subject was appraised for \$330,000 (\$200,000/acre) as of April 20, 2006. The subject is zoned B2, neighborhood business. Mr. Roberts stated that the highest and best use was retail/office/possible multi-family residential use, which would require a special use application. He made an extraordinary assumption regarding allowable uses without noting this in the report. The fourth subject property is a 2.0158 acre tract, zoned residential. It appraised for \$171,000 (\$85,000/acre) on April 20, 2006. This tract is actually three separate tax parcels with three different owners who were family members. These three parcels were appraised as one tract without noting in the report that it was being appraised under the hypothetical condition that all the tracts could be considered as one.

W. Lawrence Robertson A3526 (Wilmington)

By consent, the Board suspended Mr. Robertson's general certification for a period of one year. The first three months of the suspension are active and the remainder is stayed until July 1, 2010. Mr. Robertson must also complete a course in Narrative Report Writing, a course in the General Appraiser Income Approach and a course in the General Appraiser Sales Comparison Approach. He will also, at his cost and expense, have a Certified General Appraiser co-sign all of his appraisal reports for one year, and will submit a copy of his appraisal log on a monthly basis to Appraisal Board staff who will have the option to select individual reports to be sent to the staff member to show

compliance with this Order. If he fails to complete the courses or to send the log, the remaining nine months of the suspension will be active. Mr. Robertson performed an appraisal of a property located in Supply, North Carolina in September 2007. He valued the subject at \$4,625,000 as of September 3, 2007 for the "as is" value and \$10,500,000 as of October 1, 2008 for the "as stabilized" value. The subject property is a proposed multi-tenant medical office building on a 2.51 acre lot with an additional site of 9.85 acres. The proposed building was to be 28,181 square feet in size and would be used primarily for medical purposes. In his highest and best use section of the report, Mr. Robertson did not address the best use as improved, only as unimproved. The work file contained an unexecuted lease agreement between a property group and the medical center for 14,531 square feet of space with a commencement date of May 1, 2008 and a 7- year term. The lease was mentioned but not analyzed in the report. In the Income Approach to value, Mr. Robertson used a capitalization rate of 7.5% that was determined from the use of a national reporting service that he considered to be reliable, but there is no discussion in the report explaining how this rate applied to the subject property. The land value was determined by analyzing 8 land sales that closed in 2004 and 2005, most ranging in size from .34 acre to 1.91 acres, with one 6 acre lot. Each was adjusted for market conditions, based on the Consumer Price Index. These sales were adjusted downward due to somewhat superior locations. Only four sales were adjusted for size, and there were no size adjustments for the 1.47 to 1.91 acre comparables. These adjustment errors were due to a cloning problem that indicated the incorrect acreage for the subject property. The Sales Comparison Approach to value compares the proposed office building to buildings built in the years 1968 to 1997, with one building built in 2003, yet there are no adjustments for condition or age with no explanation given. A market condition or time adjustment was made with reference to the Consumer Price Index. The value indicated in this approach uses the indicated value per building square footage of \$190 times the proposed building size of 28,181 and then adds \$3,693,750 for excess land for a total indicated value of \$9,050,000. Mr. Robertson used urgent care leases for rental data, when he should have used

multi-tenant medical office buildings similar to the subject. There is no data source for the information stated in the report. Rents were not adjusted downward for superior location as the sales were, which was not explained in the report. Rents were adjusted for time based on the consumer price index. The report notes a 6–12 month marketing period for the project to be leased. Mr. Robertson anticipated a building period of 12 months and that it would be leased prior to completion. The client had provided leasing information showing that the building was 50% leased, but this was not discussed in the report. The support for the October 1, 2008 stabilization date and for the vacancy rate is not discussed in the report.

Arlesia D. Royal A6165 (Charlotte)

Following a hearing, the Board suspended Ms. Royal's residential license for ten months effective June 1, 2009. The first month of the suspension is active and the remaining nine months will be stayed provided that by June 30, 2009, Ms. Royal pays the appraiser the sum of \$1000.00 for the appraisals, and providing that she complete a course in Business Practices and Ethics. If she does not pay the appraiser the full balance and complete the course by June 30, 2009, the suspension shall continue until payment is made and the course is complete. If Ms. Royal fails to pay the appraiser and take the course by the end of the ten months, her license will be revoked on April 1, 2010. The Board found that Ms. Royal was a registered trainee until October 2006, when she upgraded to a residential license. While a trainee, she worked under the supervision of a certified residential real estate appraiser. During that time, Ms. Royal would on occasion collect the appraisal fee from the property owner and was to pay the appraiser his "split" for the appraisals. Although the appraiser alleges that Ms. Royal did not always pay him his split, he is willing to forgo any payment for those fees. After she became licensed, Ms. Royal asked the appraiser to perform several real estate appraisals that she could not do. The agreement was that the client would pay Ms. Royal for the appraisals, and she would then pay the appraiser for performing those assignments. At Ms. Royal's request, the appraiser performed three appraisals in 2007. Ms. Royal received payment from the client for these three appraisals,

totaling \$1000.00, but she did not pay the appraiser for those assignments. In response to this complaint, Ms. Royal asked that she have six months to pay. As of the date of the hearing, which took place nine months after her response, she has not paid any of the appraisal fees to the appraiser. Her actions in collecting the fees for the assignments and then refusing to pay the appraiser are improper and dishonest.

David A. Strickland A5233 (Nashville)

By consent, the Board suspended Mr. Strickland's residential certification for a period of six months. The suspension is stayed until September 30, 2009. If Mr. Strickland completes a course in Sales Comparison and the Valuation of Vacant Land by that date, the suspension shall be inactive. Mr. Strickland performed an appraisal of a vacant lot of land located in Powell's Point, North Carolina as of August 5, 2008, finding a value of \$195,000. Although the subject property borders a wetlands/conservation area and has a wetlands easement along the rear, the report noted no adverse easements or encroachments. The subject had sold previously on August 25, 2005 for \$157,000. Although Mr. Strickland had this information in the work file, it was not stated in the report. He believed the subject to be a golf course lot due to the tax map that showed open area adjacent to the subject's back lot line, but it was not in fact on the golf course. Two of the sales used in the sales comparison approach are located directly on the golf course with golf course views. Another sale consisted of two lots transferred at the same time with no revenue stamps. Inadequate adjustments were made to the comparable sales for location and amenities. Mr. Strickland did not have a copy of the original report he submitted to the client; he was only able to provide a copy of the revised report.

Elbert L. Taylor, Sr. A2034 (Swannanoa)

By consent, the Board suspended Mr. Taylor's general certification for a period of one year. The first month of the suspension is active and the remainder is stayed until December 1, 2009. If Mr. Taylor completes a course in Highest and Best Use and a course in Sales Comparison by that date, the remaining suspension shall be inactive. Mr. Taylor performed an appraisal of a property

located in Asheville, North Carolina in November 2007, finding a value of \$567,500. The subject property consists of a 3,700 square foot pre-engineered metal building located on a 2.14 acre track located in the city limits. It is bisected by a creek and there is an area of flood plain on the subject. The subject property has a culvert system allowing for the traverse of the creek. The subject is accessed via recorded 30 foot private right of way that adjoins a city street. It is subject to a sewer easement that parallels a large part of the southwestern boundary of the property, and there is a railway line that forms the northern boundary of the property. The original appraisal report did not contain any discussion of the physical limitations imposed by the presence of the flood plain, creek, sewer easement or the railway line. These features are significant and impact the highest and best use of the subject. Mr. Taylor did prepare a revised report that included discussion of these items. In his Sales Comparison Analysis, he deducted his estimate of the value of the land as vacant from the sales price for each property. His work file contains no data to support these deductions for site. He then figured a price per square foot and used that figure as his unit of comparison in this approach to value. Although his final opinion of value was within a reasonable range, his methodology was not appropriate.

Hope W. Teaster T3600 (Boone)
Pattie J. Tennille A287 (Boone)

By consent, the Board suspended Ms. Tennille's general certification and Ms. Teaster's trainee registration for a period of one year. Three months of the suspension are active and the remainder is stayed until December 1, 2009. If they each complete a course in Appraiser Liability, a course in the Sales Comparison Approach, a course in Business Practices and Ethics, the 14 hour Residential Market Analysis and Highest and Best Use course, and the 15 hour National USPAP course with exam

by that date, the remainder of the suspension shall be inactive. Ms. Tennille and Ms. Teaster performed six appraisals of four properties located in Watauga County, North Carolina in 2006 for the county manager to determine offering prices to several property owners who owned land in the site selected for a new high school. The first report is of a subject property that consists of a 2271 square foot brick dwelling with a 2064 square foot basement. They valued the subject at \$745,000 as of August 8, 2006. The subject is located near the base of a valley and sales were selected from mountaintop areas. Inadequate adjustments were made for view. The second report is of a subject property that consists of a 1992 square foot brick ranch with a 1992 square foot basement. They valued the subject at \$370,000 as of April 20, 2006. The third report is of a subject property is described as a 2503 square foot brick ranch, with a 2503 square foot unfinished basement. This was an exterior inspection only. They used the square footage on the tax card for the report, and valued the subject at \$365,000 as of April 20, 2006. The fourth report is the same subject property as in the third report. They did an interior inspection and measured the property, which resulted in a finding that the property had 2592 square feet, with a 2666 square foot unfinished basement. They then valued the subject at \$360,000 as of August 18, 2006. Ms. Teaster and Ms. Tennille used two of the same sales in the third and fourth reports. Adjustments to these sales were different in the fourth report, with no explanation. The fifth report is of a subject property described as a 1798 square foot brick ranch with an 899 square foot fully finished basement. They valued the subject at \$350,000 as of April 20, 2006. The appraisal was based on an exterior inspection only. The square footages were taken from the tax card. The sixth report is the same subject property as in the fifth report. They did an interior inspection and measured the property, which resulted in a finding that the property had 1994 square feet, with a 1534 square foot basement. They then

valued the subject at \$470,000 as of August 8, 2006. There were two common comparables with the fifth report. Adjustments changed from the fifth report to the sixth with no explanation.

James S. Wagoner A198
(Sneads Ferry)

By consent, the Board accepted the voluntary surrender of Mr. Wagoner's residential certification.

Shadrach M. Winborne A6581
(Wake Forest)

By consent, the Board suspended Mr. Winborne's residential certification for a period of twelve months. The first three months of the suspension are active and the remainder is stayed until December 31, 2009. If Mr. Winborne completes a course in Sales Comparison and a course in Appraising Complex Properties by that date, the remainder of the suspension shall be inactive. Mr. Winborne performed an appraisal of a property located in Raleigh, North Carolina valuing the property at \$1,150,000 as of September 4, 2008. The subject property is a high-end 1.5 story dwelling with 4207 square feet of gross living area, and a 2500 square foot unfinished basement area. The subject subdivision includes 15 residential lots with a fenced-in pasture and community horse stables. Mr. Winborne did not report or adjust for the subdivision amenities. He failed to make appropriate adjustments to his sales for other differences. On one sale, he had the wrong photograph. He used \$35 as his square footage adjustment, which was not supported in the market for properties selling for \$246 to \$331 per square foot. Had he made appropriate adjustments to his sales, his appraised value would have been lower. Mr. Winborne originally submitted the report on September 5, 2008, and revised it on September 9, 2008. He failed to keep a copy of the first report.

2009 Board Meeting Dates

July – No meeting
August 11
September 15
October – No meeting
November 10
December 15

All meetings are conducted at the North Carolina Appraisal Board building located at 5830 Six Forks Road, Raleigh.

USPAP Q&A

The Appraisal Standards Board (ASB) of The Appraisal Foundation develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. The USPAP Q&A is a form of guidance issued by the ASB to respond to questions raised by appraisers, enforcement officials, users of appraisal services and the public to illustrate the applicability of USPAP in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems. The USPAP Q&A may not represent the only possible solution to the issues discussed nor may the advice provided be applied equally to seemingly similar situations. USPAP Q&A does not establish new standards or interpret existing standards. USPAP Q&A is not part of USPAP and is approved by the ASB without public exposure and comment.

The Impact of Different Clients on Assignment Results with Otherwise Identical Assignment Elements and Scope of Work

Question: Assuming otherwise identical assignment elements and scope of work, will an appraiser's value opinion for an assignment be the same regardless of the appraiser's client?

Examples:

Assuming otherwise identical assignment elements and scope of work, will an appraiser's value opinion for an eminent domain assignment be the same regardless of whether the assignment is for the condemnee or the condemnor?

In a litigation assignment with otherwise identical assignment elements and scope of work, will the appraiser's value opinion be the same regardless of whether the appraiser was hired by the defendant or the plaintiff or a third-party?

In an appraisal prepared for a tax assessment appeal with otherwise identical assignment elements and scope of work, will the appraiser's value opinion be the same regardless of whether the appraiser was hired by the government or the taxpayer?

In an appraisal prepared for a gift donation for tax filing purposes with otherwise identical assignment elements and scope of work, will the appraiser's value opinion be the same regardless of whether the appraiser was hired by the IRS or the taxpayer?

Assuming otherwise identical assignment elements and scope of work, will an appraiser's value opinion be the same independent of the client and other intended user(s)?

Response: Before answering these questions, we first need to review portions of the SCOPE OF WORK RULE. In any appraisal, appraisal review or appraisal consulting assignment, the appraiser must identify the problem to be solved, then determine and perform the scope of work necessary to develop credible assignment results in the context of the intended use. Appraisers have broad flexibility and significant responsibility in determining the appropriate scope of work for an assignment. It is the appraiser's responsibility, with input from the client, to identify the assignment elements. Assignment elements are the:

- client and any other intended users;
- intended use of the appraiser's opinions and conclusions;
- type and definition of value;
- effective date of the appraiser's opinions and conclusions;
- subject of the assignment and its relevant characteristics; and
- assignment conditions.

Assignment conditions include assumptions, extraordinary assumptions, hypothetical conditions, laws and regulations, jurisdictional exceptions and other conditions that affect scope of work.

The answer to each of the above questions is yes. Providing the other assignment elements (except the client) and the scope of work are the same, the appraiser's value opinion will be the same.

As an example, suppose an appraiser is requested to provide an opinion of the market value of a property for a specific intended use, such as for a potential sale or acquisition. Unless other assignment elements are different, and the appraiser establishes and follows a different scope of work as a result of differing assignment elements, there will be no difference in the value opinion regardless of whether the intended user is the buyer, seller, or a third party.

In all assignments, the appraiser must comply with the Management section of the ETHICS RULE, which prohibits compensation that is based on "a direction in assignment results that favors the cause of the client." In all assignments, the appraiser must comply with the Conduct section of the ETHICS RULE which states, "An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests." In addition, "An appraiser must not advocate the cause or interest of any party or issue." If an appraiser's results vary solely depending on whether the client is a buyer or seller, the appraiser would be acting as an advocate for the cause of the client.

There are times, however, when assignments involving the same property will have different assignment elements. These could include different effective dates, types and definitions of value (market value, as opposed to insurable value, for example) or assignment conditions. As a result of a change in assignment elements, the value conclusion may be different; **but the value conclusion will not differ simply because the client changed.** The value conclusion differs because one or more of the other assignment elements changed; as a result, the appraiser established and followed a different scope of work.

Does the Certification on the Uniform Residential Appraisal Report (URAR) Form Also Extend to the Market Conditions Addendum?

Question: When I complete the new Market Conditions form (such as the Fannie Mae 1004MC) and include it within my report, does the certification contained in the URAR form apply to the Market Conditions form as well?

Response: Yes. The name of the form in question is the *Market Conditions Addendum to the Appraisal Report*. Any addendum is part of a larger report (in this case, a URAR form). In addition, the Market Conditions form is clearly identified as an addendum, as evidenced by the following language at the top of the form:

The purpose of this addendum is to provide the lender/client with a clear and accurate understanding of the market trends and conditions prevalent in the subject neighborhood. This is a required addendum for all appraisal reports with an effective date on or after April 1, 2009.

The Comment to Standards Rule 2-3 states, "In an assignment that includes only assignment results developed by the real property appraiser(s), any appraiser(s) who signs a certification accepts full responsibility for all elements of the certification, for the assignment results, and for the contents of the appraisal report." Thus, the certification applies to the entire appraisal and report, including any addenda.

QUESTIONS REGARDING 2010-11 REVISIONS TO THE ETHICS RULE

The Appraisal Standards Board recently adopted changes to the Conduct section of the ETHICS RULE that will become effective January 1, 2010 for the 2010-11 edition of USPAP. The specific language that has been adopted, and which has initiated questions and concerns is:

If known prior to accepting an assignment, and/or if discovered at any time during the assignment, an appraiser must disclose to the client, and in the subsequent report certification:

***any current or prospective interest in the subject property or parties involved; and
any services regarding the subject property performed by the appraiser within the three year period immediately preceding acceptance of the assignment, as an appraiser or in any other capacity.***

Comment: Disclosing the fact that the appraiser has previously appraised the property is permitted except in the case when an appraiser has agreed with the client to keep the mere occurrence of a prior assignment confidential. If an appraiser has agreed with a client not to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three year period.

The goal of maintaining public trust makes it important that the client have knowledge regarding an appraiser's prior services associated with the subject property in advance of engaging that appraiser.

The ASB has compiled the following list of questions and answers:

Question: I heard about the changes to the Conduct section of the ETHICS RULE and I am concerned. Is it true that I will not be able to reappraise a property for three years after a prior appraisal?

Response: No. The revised ETHICS RULE that goes into effect on January 1, 2010, will require appraisers to disclose any services regarding the subject property provided as an appraiser or in any other capacity during the three years prior to the new assignment. It does not include any prohibition against reappraising a property.

Question: I occasionally receive requests to appraise a property that I have appraised in the past. With the changes to the ETHICS RULE, I will be required to disclose any assignments that I performed within the three years prior to the date of acceptance of the assignment. Is such a disclosure not a violation of an appraiser's responsibility under the Confidentiality section of the ETHICS RULE?

Response: Generally, no. The Confidentiality section of the ETHICS RULE prohibits, with some exceptions, the disclosure of "confidential information or assignment results prepared for a client." The mere fact that an appraiser appraised a property is not confidential information as defined in USPAP. However, the appraiser must be careful not to disclose confidential information from a previous assignment in the new assignment.

Question: I am concerned that when I tell a prospective client that I have previously provided a service related to a property, it will lead to questions that I cannot answer without violating the Confidentiality section of the ETHICS RULE. I am sure the new client will want to know when I appraised it, and what my value conclusion had been. How can I address these questions and comply with USPAP?

Response: It is likely that many potential clients will ask such questions. However, without authorization from the original client, the appraiser cannot disclose the results of the previous appraisal or any other confidential information. One way to address this problem would be to explain that as an appraiser, you are subject to confidentiality requirements and cannot disclose that information. You could go on to explain that the confidentiality requirements are in place to protect clients, including the one who is engaging you for the new assignment.

Those parties who regularly order appraisals will become accustomed to the new disclosure requirements, and will likely stop asking after a relatively short time.

Question: Some of my best clients require me to keep all information regarding any assignments that I perform for them confidential. The Comment states in part, "If an appraiser has agreed with a client not to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three year period." Will this prevent me from appraising a property for a different client during that three year period?

Response: Perhaps, but USPAP does not require that the disclosure provide any specific details. For example, the disclosure, both prior to accepting the assignment and in the report's certification, could include a statement similar to one of the following:

I have provided a previous service regarding the subject property within the three years prior to this assignment; or
I have previously appraised this property in the three years prior to this assignment.

If an appraiser cannot make such a statement without violating an agreement with a previous client, then the appraiser must not accept the new assignment. Appraisers should review their client agreements to specifically determine what information they have agreed to keep confidential.

Question: Most of my assignments are completed using common residential appraisal report forms. I am concerned that my clients will not allow changes to the certification on the report forms. The Conduct section of the ETHICS RULE requires that I disclose prior services regarding the subject property in the certification. Does this mean that I will not be allowed to appraise a property for these clients if I had performed a service regarding that property in the previous three years?

Response: USPAP compliance is the appraiser's responsibility and adding this information to the certification will be a requirement beginning January 1, 2010. While deletion or modification of client-imposed certifications are generally not allowed, most clients will likely allow additional certifications that do not constitute material alterations to the appraisal report. It is not uncommon for appraisers to add supplemental certifications and this may be necessary in some cases until commonly-used appraisal forms are revised to reflect the changes to USPAP.

Question: The Conduct section of the ETHICS RULE requires that I disclose prior services regarding the subject property provided within the three years prior to acceptance of an assignment. I am appraising a residential property on which I acted as the general contractor when it was built four years ago. Since this service was more than three years ago, am I correct in not disclosing that to a new client?

Response: USPAP establishes a minimum standard of three years, and that is what you are required to disclose. However, the overriding goal of USPAP is to promote and maintain public trust in appraisal practice. Therefore, when an appraiser believes that having provided a previous service that occurred prior to the three years may be relevant to the client, it would be important that the appraiser disclose the information.

Question: If the firm that employs me as an appraiser has provided leasing or property management services in the past three years for the subject property, must this be disclosed?

Response: Not necessarily. The ETHICS RULE requires disclosure of services "provided by the appraiser." However, if an appraiser believes that the provision of a service by the appraiser's firm or other related entity may be relevant, he or she should disclose that information to a potential client.

Question: If I will be conducting an auction of the subject property after the appraisal, does this have to be disclosed?

Response: Yes. This is an example of a "current or prospective interest in the subject property." USPAP currently requires that such an interest be disclosed in the certification, but not necessarily prior to accepting the assignment. Under the 2010 requirements, the appraiser must also disclose this prior to acceptance of an assignment or upon discovery during the assignment.

Question: May the disclosure that must be made at the time of acceptance be oral? May it be made in an email to the client?

Response: USPAP does not specify how the disclosure upon acceptance or discovery must be made. It may be appropriate in some cases to provide an initial oral disclosure. If the client decides to proceed, it may be appropriate that the appraiser's disclosure be restated in writing. One way to accomplish this is by including it in a letter of engagement. In other cases an email would be appropriate.

The Record Keeping section of the ETHICS RULE requires that the appraiser's workfile include "all data, information, and documentation necessary to...show compliance with this Rule..." So, the disclosure prior to acceptance or upon discovery must be documented in the appraiser's workfile.

Collecting Fee on Behalf of an AMC

Question: I am completing an appraisal assignment for which I was engaged by an appraisal management company (AMC) on behalf of a lender. The AMC has asked me to collect a fee from the prospective borrower. I am to retain my portion of the total fee as the fee for my appraisal services, and forward the balance to the AMC. The AMC requires that there is to be no disclosure in the report of the total fee, nor of the manner in which the fee is to be split. Does USPAP permit this type of fee arrangement?

Response: If there was no compensation to procure the assignment, there is no USPAP requirement that the split of the total fee paid for the assignment must be disclosed in the report.

However, in this case, more information must be known in order to make a determination as to whether you are paying a fee to procure the assignment. Consider the following excerpt from the Management section of the ETHICS RULE:

*The payment of **undisclosed** fees, commissions, or things of value in connection with the procurement of an assignment is unethical. (Bold added for emphasis)*

The Comment to the Management section goes on to say:

Disclosure of fees, commissions, or things of value connected to the procurement of an assignment must appear in the certification and in any transmittal letter in which conclusions are stated.

As you can see from this USPAP excerpt, the first step is to determine if you, as the appraiser, paid a fee to procure the assignment. The decision would depend on the specific facts of your appraisal engagement agreement with the client (for which the AMC is acting as agent).

If you did not pay a fee to procure the assignment, then no disclosure is necessary. Simply collecting funds from one party on behalf of another party is not, in and of itself, representative of paying a fee for procurement of the assignment.

Of course, if the specific facts of the appraisal engagement agreement with the client lead you or others to believe a fee was paid for procurement of the assignment, disclosure that a fee was paid is required in the certification and any transmittal letter in which your conclusions are stated.

There may be other laws or regulations that enter into this situation. You should be familiar with the any possible state regulations addressing fee arrangements in your particular jurisdiction.

Assignment Conditions, Scope of Work Acceptability, and Geographic Competency

Question: I am a residential appraiser performing work for several appraisal management companies. Often, I am asked to perform an appraisal assignment outside the areas I am most familiar with. The assignments come with a requirement that a completed report be submitted within 48 hours or less. This time frame does not permit me to adequately research the subject property market. Is it permissible for me to accept an assignment under these conditions?

Response: The COMPETENCY RULE in USPAP requires an appraiser to notify the client that he or she does not have the necessary competency to complete an assignment prior to accepting the assignment. Because your statement in the question states that the “time frame does not permit me to adequately research the subject property market,” you have already made the determination that becoming geographically competent for this assignment is a concern. The client must be notified, appropriate steps must be taken to become competent, and the lack of competency, plus the steps taken to become competent, must be disclosed in the assignment report. If an appraiser is not in a position to spend the necessary time in a market area to attain geographic competency, affiliation with a qualified local appraiser may be an appropriate response to ensure development of credible assignment results. Alternatively, the appraiser must decline the assignment.

This situation is also addressed by the SCOPE OF WORK RULE in USPAP.

For each appraisal, appraisal review, and appraisal consulting assignment, an appraiser must:

- 1. identify the problem to be solved;*
- 2. **determine and perform the scope of work necessary to develop credible assignment results; and***
- 3. disclose the scope of work in the report. (Bold added for emphasis)*

Scope of work is defined as *the type and extent of research and analyses in an assignment*. If you know that the required time frame does not permit you to adequately research the subject property market in order to complete the scope of work necessary to develop credible assignment results, you should decline the assignment.

In some situations, you may initially believe that you can complete the scope of work necessary to develop credible assignment results, but subsequently determine you are unable to do so and still comply with the specific time frame. This circumstance is specifically covered in the Scope of Work Acceptability section of the SCOPE OF WORK RULE.

An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.

Comment: If relevant information is not available because of assignment conditions that limit research opportunities (such as conditions that place limitations on inspection or information gathering), an appraiser must withdraw from the assignment unless the appraiser can:

- modify the assignment conditions to expand the scope of work to include gathering the information; or*
- use an extraordinary assumption about such information, if credible assignment results can still be developed.*

Request to Modify a Completed Appraisal Report

Question: I have completed an appraisal assignment for a client. The report was completed using the 2005 version of the Uniform Residential Appraisal Report (URAR). The client has requested that I remove one of the comparable properties from the report because, in the underwriter’s opinion, it is not sufficiently similar to the subject property. If I do this, will my action comply with USPAP?

Response:

Such an action has the potential to be misleading. Certification item #15 of the 2005 URAR states the following:

“I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.” (Bold added for emphasis)

You initially concluded that the comparable you are being asked to remove was relevant in developing and communicating the assignment results. If this opinion has not changed, and you subsequently remove a comparable listing or sale from the appraisal report and sign the certification for this specific report format, it would likely be misleading because information you consider to be significant is being knowingly withheld.

In addition, Standards Rule 2-2(b)(viii) which addresses the content of a Summary Appraisal Report includes the following requirement.

summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained; (Bold added for emphasis)

If the comparable is removed as requested by the client, information that was analyzed would no longer be summarized in the report as required by this Standards Rule.

Mission Statement

The mission of the North Carolina Appraisal Board is to protect consumers of real estate services provided by its licensees by assuring that these licensees are sufficiently trained and tested to assure competency and independent judgment. In addition, the Board will protect the public interest by enforcing state law and Appraisal Board rules to assure that its licensees act in accordance with professional standards and ethics.