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BEFORE THE
BUREAU OF REAL ESTATE APPRAISERS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to Revoke Probation Against: **DONALD G. RISNER** **12801 Monterey Beach Drive** **Bakersfield, CA 93311** **Residential Appraiser License No. 004107** Respondent.	Case No. C20160621-05 **SECOND AMENDED ACCUSATION AND SECOND AMENDED PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Elizabeth Seaters, acting on behalf of the Bureau of Real Estate Appraisers (Complainant), Department of Consumer Affairs brings this Accusation and Petition to Revoke Probation solely in her official capacity as Chief of Enforcement for Complainant.

2. On or about April 3, 1992, the Bureau of Real Estate Appraisers (formerly Office of Real Estate Appraisers) issued residential appraiser license number 004107 to Donald G. Risner ("Respondent"). Respondent's real estate appraiser license was in full force and effect at all times relevant to the charges brought herein. Respondent's real estate appraiser license will expire on August 19, 2018, unless renewed.

3. In a disciplinary action entitled *In the Matter of the Administrative Findings Against: Donald G. Risner*, Case Number C20131224-01, the Bureau issued a decision effective December 17, 2014, in which Respondent's Real Estate Appraiser License was revoked. However, the revocation was stayed, and Respondent was monitored on probation for two (2) years from the effective date on terms and conditions. A copy of that decision is attached as Exhibit "A" and is incorporated for reference.

JURISDICTION

4. This Second Amended Accusation and Second Amended Petition is brought before the Bureau of Real Estate Appraisers for the Department of Consumer Affairs, under the authority of the following laws.

5. Business and Professions Code Section 11310.1 states: "Protection of the public shall be the highest priority of the Office of Real Estate Appraisers in exercising its licensing, regulatory, and disciplinary functions."

6. Business and Professions Code Section 11313 states, in relevant part:

> "The bureau is under the supervision and control of the Director of Consumer Affairs. The duty of enforcing and administering this part is vested in the chief, and he or she is responsible to the Director of Consumer Affairs therefor."

7. Business and Professions Code Section 11315.3 states:

> "The suspension, expiration, or forfeiture by operation of law of a license or certificate of registration issued by the office, or its suspension, forfeiture, or cancellation by order of the office or by order of a court of law, or its surrender without the written consent of the office, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the office of its authority to institute or continue a disciplinary proceeding against the licensee or registrant upon any ground provided by law or to enter an order suspending or revoking the license or certificate of registration, or otherwise taking disciplinary action against the licensee or registrant on any such ground."

8. Probationary term 12 in the disciplinary action entitled *In the Matter of the Administrative Findings Against: Donald G. Risner*, Case Number C20131224-01 states:

> "12. **Violation of Probation.** If Respondent violates probation in any respect, the Bureau Chief, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during

probation, the Bureau Chief shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final."

STATUTORY AND REGULATORY PROVISIONS

9. Business and Professions Code Section 11319 provides, in pertinent part, the Uniform Standards of Professional Appraisal Practice (USPAP) constitute the minimum standard of conduct and performance for real estate appraisers.

10. California Code of Regulations, title 10, section 3721 states:

> "(a) The Chief may issue a citation, order of abatement, assess a fine or private or public reproval, suspend or revoke any license or Certificate of Registration, and/or may deny the issuance or renewal of a license or Certificate of Registration of any person or entity acting in a capacity requiring a license or Certificate of Registration who has:
>
> ...
>
> (6) Violated any provision of USPAP;
>
> ..."

11. Business and Professions Code section 11316 states in relevant part:

> "(a) The director may assess a fine against a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation for violation of this part or any regulations adopted to carry out its purposes."

12. Business and Professions Code section 11409 states in relevant part:

> "(a) Except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, registrant, applicant for a certificate of registration, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation found to have committed a violation or violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case."

USPAP REQUIREMENTS

13. See Exhibit "B" for a copy of the applicable sections of USPAP, which are hereby incorporated by reference.

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FACTUAL BACKGROUND

14. On or about March 1, 2015, Respondent completed an appraisal of the property located at 416 Decatur Street, Bakersfield, California. The report contains certain errors and omissions in violation of the Uniform Standards of Professional Appraisal Practice (USPAP), listed as follows:

a) Respondent falsely stated the neighborhood one-unit housing lower price range and predominant price (S.R. 1-2(e)(i) and 2-2(a)(iii));

b) Respondent falsely stated the subject had forced air heating and central air conditioning, whereas it had a wall heater and evaporative cooler (S.R. 1-2(e)(i) and 2-2(a)(iii));

c) Respondent used MLS photographs for all of the comparable sales used while cropping off the MLS trademarks from three of the six comparable sales used, which was contrary to the assignment conditions (S.R. 1-2(h), 2-2(a)(vii) and Scope of Work Rule;

d) Respondent falsely stated the subject's zoning as R-1, Single Family Residential, whereas it was R-2, Medium-density Residential District (S.R. 1-3(a) and 2-2(a)(iii));

e) Respondent created a misleading report by failing to collect, verify, and analyze all information necessary for credible assignment results via the Sales Comparison Approach (S.R. 1-4(a) and 2-2(a)(viii));

i. Comparable Sale Two: Respondent falsely stated Comparable Sale Two was conventionally financed, whereas it was a cash sale.

ii. Comparable Sale Three: Respondent falsely stated this sale sold for $90,000 with conventional financing, whereas it sold for $85,000 with private party financing. Respondent falsely stated it had a two-car garage, whereas it had a one-car garage.

iii. Comparable Sale Four: Respondent falsely stated this closed sale was a pending sale. Respondent also misrepresented the pending sale date, which was more than a year previously than it was at the time of his appraisal report. Additionally, Respondent failed to appropriately discuss and analyze the significant age disparity of 75 years between this property and the subject.

iv. Comparable Sale Six: Respondent falsely stated it had a two-car garage, whereas it had a one-car garage.

f) Based upon the findings noted in above items a, b, c, d and e, Respondent failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal (S.R. 1-1(a));

g) Based upon the findings noted in above items a, b, c, d and e, Respondent committed substantial errors of omission or commission that significantly affected the appraisal (S.R. 1-1(b));

h) Based on the findings noted in above items a, b, c, d and e, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading (S.R. 2-1(a));

i) Based on the findings noted in above items a, b, c, d and e, Respondent failed to provide sufficient information to enable the intended users of the report to understand it properly (S.R. 2-1(b)); and

j) Based on the findings noted in above items a, b, c, d, and e, in addition to appraisal that was not credible, Respondent violated the Conduct section of the Ethics Rule.

15. On or about April 16, 2015, Respondent completed an appraisal of the property located at 30819 Road 144, Visalia, California. The report contains certain errors and omissions in violation of the Uniform Standards of Professional Appraisal Practice (USPAP), listed as follows:

a) Respondent falsely stated the subject neighborhood make-up and land use percentages, such as the significant agriculture and abutting orchards (S.R. 1-2(e)(i) and 2-2(a)(iii));

b) Respondent failed to appropriately discuss and analyze the subject's additional three units, several of which were conversions from garages and/or shops. Additionally, Respondent failed to discuss and analyze the status of permits and legality of the living units (S.R. 1-2(e)(i) and 2-2(a)(iii));

c) Respondent failed to appropriately discuss and analyze the horse stables and pet cemetery businesses that were located on the subject property (S.R. 1-2(e)(i) and 2-2(a)(iii));

d) Respondent failed to appropriately discuss and analyze that the St. John's River runs through the subject property. Additionally, Respondent falsely stated the subject was not in a FEMA Special Flood Hazard Area, whereas it was located in a special flood hazard area (S.R. 1-2(e)(i) and 2-2(a)(iii));

e) Respondent falsely stated he had inspected the interior of all the units, whereas he did not inspect two of the units. Additionally, Respondent failed to disclose he had utilized interior photographs of the units he did not inspect that were provided by a real estate salesperson (S.R. 1-2(h), 2-2(a)(vii) and the Scope of Work Rule);

f) Respondent used MLS photographs while cropping off the MLS trademarks from five of the six comparable sales used and all of the comparable rental properties used, which was contrary to the assignment conditions (S.R. 1-2(h), 2-2(a)(vii) and Scope of Work Rule;

g) Respondent falsely stated the subject's AE-20 zoning as "Limited Multi Family (Fourplex)", whereas it was Exclusive Agricultural Zone, with a 20 acre minimum (S.R. 1-3(a) and 2-2(a)(iii));

h) Respondent failed to appropriately discuss and analyze the subject's highest and best use based on the actual zoning. Additionally, Respondent falsely stated the subject current use was legal and conforms to local zoning regulations and building codes (S.R. 1-3(b), 2-2(a)(iii) and 2-2(a)(x));

i) Respondent created a misleading report by failing to collect, verify, and analyze all information necessary for credible assignment results via the Sales Comparison Approach. Specifically, Respondent's failed to appropriately discuss and analyze the legality of the subject's living units, in addition to the horse stables and pet cemetery businesses in comparison to the comparable sales used. Respondent failed to discuss and analyze the subject's location on a river in comparison to the comparable sales used. Respondent also failed to provide market support for the site size adjustments applied to each of the comparable sales used. Additionally, Respondent failed to appropriately discuss and analyze the age disparity of the subject and comparable sales used (S.R. 1-4(a) and 2-2(a)(viii));

i. Comparable Sale One: Respondent failed to discuss and analyze this property sided to a school district building and was also located across the street from a low income elderly housing project.

ii. Comparable Sale Two: Respondent falsely stated this sale was conventional financed, whereas it sold with FHA financing.

j) Respondent falsely stated all the subject units were rented, whereas one of the units was not. Additionally, Respondent fabricated a current monthly rent for the vacant unit (S.R. 1-4(c)(i)(iii) and 2-2(a)(viii));

k) Respondent falsely stated the subject's studio unit had a bedroom, whereas it did not (S.R. 1-4(i)(iii) and 2-2(a)(viii));

l) Respondent inflated Comparable Rental One's monthly rent while overstating the gross building area (S.R. 1-4(i)(iii) and 2-2(a)(viii));

m) Respondent significantly overstated Comparable Rental Three's gross building area while misrepresenting projected rents as the currently monthly rents for the vacant units (S.R. 1-4(i)(iii) and 2-2(a)(viii));

n) Respondent provided an Opinion of Market rent that was not supported by the comparable rental properties used (S.R. 1-4(i)(iii)(iv) and 2-2(a)(viii));

o) Respondent's Income Approach was flawed and not credible due to his usage of an unsupported Opinion of Market Rent (S.R. 1-6(a) and 2-2(a)(viii));

p) Based upon the findings noted in above items a, b, c, d, e, f, g, h, i, j, k, l, m, n and o, Respondent failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal (S.R. 1-1(a));

q) Based upon the findings noted in above items a, b, c, d, e, f, g, h, i, j, k, l, m, n and o, Respondent committed substantial errors of omission or commission that significantly affected the appraisal (S.R. 1-1(b));

r) Based on the findings noted in above items a, b, c, d, e, f, g, h, i, j, k, l, m, n and o, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading (S.R. 2-1(a));

s) Based on the findings noted in above items a, b, c, d, e, f, g, h, i, j, k, l, m, n and o, Respondent failed to provide sufficient information to enable the intended users of the report to understand it properly (S.R. 2-1(b)); and

t) Based on the findings noted in above items a, b, c, d, e, f, g, h, i, j, k, l, m, n and o, in addition to appraisal that was not credible, Respondent violated the Conduct section of the Ethics Rule.

16. Respondent failed to fully comply with the terms and conditions of his probation by violating USPAP, consistently submitting late appraisal logs, work samples, payment of fines and completion of his required education, in violation as follows:

a) Probation Condition 1: Obey All Laws. Based on paragraphs 13 and 14 above, Respondent failed to conform to the minimum guidelines set forth in the Uniform Standards of Professional Appraisal Practice (USPAP); and

b) Probation Condition 3: Comply with Probation. Respondent failed to fully comply with probation.

c) Probation Condition 4: Monitoring. Respondent failed to fully comply with monitoring by being delinquent in his submission of appraisal logs, work samples, payment of fines and completion of a 15-hour basic education course of the Uniform Standards of Professional Appraisal Practice.

d) Probation Condition 5: Appraisal Log/Work Samples. Respondent was late multiple times in his submission of his appraisal logs and work samples.

e) Probation Condition 7: Payment of Fine. Respondent was late multiple times in fine payments.

f) Probation Condition 8: Uniform Standards of Professional Appraisal Practice Course. Respondent was late in his completion of the 15-hour basic education course.

ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(Violating USPAP)

17. Respondent's license is subject to discipline pursuant to California Code of Regulations, title 10, section 3721(a)(6) for his violations of USPAP. The violations are described in paragraphs 14 and 15 above, inclusive, and hereby incorporated by reference.

PETITION TO REVOKE PROBATION

FIRST CAUSE FOR DISCIPLINE

(Violating Probationary Terms)

18. This Petition to Revoke is brought based upon Respondent's violation of probationary terms 1, 3, 4, 5, 7, and 8 of the decision *In the Matter of the Administrative Findings Against: Donald G. Risner*, Case Number C20131224-01. Those terms are as follows:

> "1. **Obey All Laws.** Respondent shall comply with all federal, state and local laws, and conform to the minimum guidelines set forth under the Uniform Standards of Professional Appraisal Practice (USPAP), and all other laws and regulations pertaining to real estate appraisers.
>
> 3. **Comply With Probation.** Respondent shall fully comply with the terms and conditions of the probation imposed by the Bureau Chief and shall cooperate fully with representatives of the Bureau in its monitoring and investigation of Respondent's compliance with the terms and conditions of probation.
>
> 4. **Monitoring.** Respondent shall be subject to, and shall permit and cooperate with, monitoring and investigation of Respondent's professional practice. Such monitoring and investigation shall be conducted by representatives of the Bureau.
>
> 5. **Appraisal Log/Work Samples.** Commencing on the effective date of the Decision and Order and continuing through the period of probation, Respondent shall maintain a log of all appraisals and appraisal reviews Respondent performs on a Log of Appraisal Experience form provided by the Bureau. Respondent shall submit a complete and accurate copy of the log of all appraisals, and appraisal reviews, completed each six months. Each six month log shall be submitted to the Bureau within 30 days following the end of each six month period. Respondent understands that the Bureau may (has the option to) select work samples for review from each submitted six month log. Failure to submit the log or any selected work samples in compliance with these terms shall extend probation

for a period equivalent to the period of noncompliance. Respondent shall complete a minimum of twelve appraisals per each year of probation, commencing on the effective date of the Decision and Order. If respondent fails to complete twelve appraisals per year, probation shall be tolled pursuant to condition entitled Tolling of Probation for Out-of State Residence/Practice below.

7. **Payment of Fine.** Respondent shall pay a fine pursuant to Business and Professions Code section 11316(a) and California Code of Regulations, Title 10, section 3721(a), in the sum of Four Thousand Dollars ($4,000). Payment of this fine shall be made in quarterly installments with payments of not less than Five Hundred Dollars ($500.00), with the first payment due within 30 days of the effective date of the final Decision and Order as signed by the Bureau Chief. Payment shall be made to the Real Estate Appraisers Regulation Fund c/o Bureau of Real Estate Appraisers, 1102 Q Street, Suite 4100, Sacramento, California 95811, by check or money order and shall indicate on its face the notation: "BREA Case No. C20131224-01." Respondent shall also submit a copy of the invoice with payment, which will be provided by the Bureau. If full payment is not received by the Bureau by the date due as noted in the invoice, a 10 percent penalty shall be added to the unpaid balance and interest will accrue on the unpaid balance at the pooled money investment rate in effect at that time, until full amount is paid. Respondent shall not be eligible to renew his or her license until such time as full payment of the outstanding fine has been made. Failure to make payment on the fine shall constitute a violation of the probationary order.

8. **Uniform Standards of Professional Appraisal Practice Course/Examination.** Respondent shall take and pass an Bureau approved 15-hour basic education course on the Uniform Standards of Professional Appraisal Practice within 6 months of the date the Decision and Order of the Bureau Chief is final. The course must be "The Appraisal Foundations National USPAP Course" (or its equivalent as determined solely by the Appraisers Qualifications Board ("AQB") Course Approval Program), and must be taught by an AQB Certified USPAP Instructor who is also a Certified Residential or Certified General appraiser in good standing with the Bureau. The course may be taken on line or in a classroom setting and must include an administered closed book final examination. Respondent must submit proof of successful completion of the course and final exam within 6 months following the date the Decision and Order of the Bureau Chief is final. Respondent understands that it is his or her responsibility to ensure that the course meets all the requirements listed above and to apply for, schedule, and make all arrangements to take the course."

19. Respondent has violated his probationary conditions, as set forth in paragraph 18, inclusive, and hereby incorporated by reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Bureau of Real Estate Appraisers issue a decision:

1. Revoking the probation that was granted by the Bureau of Real Estate Appraisers in *In the Matter of the Administrative Findings Against: Donald G. Risner*, Case Number C20131224-01 and imposing the disciplinary order that was stayed thereby revoking the Real Estate Appraisers License number 004107 issued to Donald G. Risner.

2. Revoking or suspending Real Estate Appraisers License number 004107 issued to Donald G. Risner.

3. Ordering Donald G. Risner to pay Bureau reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 11409.

4. Ordering Donald G. Risner to pay the Bureau of Real Estate Appraisers a fine in the amount of Ten Thousand Dollars ($10,000.00) pursuant to Business and Professions Code section 11316.

5. Taking such other and further action as deemed necessary and proper.

DATED: 7/13/17

Original Signed

ELIZABETH SEATERS
Chief of Enforcement
Bureau of Real Estate Appraisers
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision & Order for *In the Matter of the Administrative Findings Against: Donald G. Risner*, Case Number C20131224-01

BEFORE THE

BUREAU CHIEF OF THE BUREAU OF REAL ESTATE APPRAISERS

BUREAU OF REAL ESTATE APPRAISERS

STATE OF CALIFORNIA

In the Matter of the of the Real Estate Appraiser License of: Donald G. Risner, 12801 Monterey Beach Drive Bakersfield, CA 93311 Real Estate Appraiser License No. 004107 Respondent.	Case No. C20131224-01

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Chief of the Bureau of Real Estate Appraisers, Department of Consumer Affairs as the Decision and Order in the above entitled matter.

This Decision shall become effective on 12-17-14.

It is so ORDERED 11-17-14.

Original Signed

JAMES MARTIN, BUREAU CHIEF,
BUREAU OF REAL ESTATE APPRAISERS
DEPARTMENT OF CONSUMER AFFAIRS

Bureau of Real Estate Appraisers
1102 Q Street, Suite 4100
Sacramento, CA 95811

Telephone: (916) 552-9742
Facsimile: (916) 440-7406

BEFORE THE
CHIEF OF THE BUREAU OF REAL ESTATE APPRAISERS
STATE OF CALIFORNIA

In the Matter of the Administrative Findings Against: **Donald G. Risner** **12801 Monterey Beach Drive** **Bakersfield, CA 93311** **Real Estate Appraiser License No. 004107** Respondent.	Case No. C20131224-01 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and mission of the Bureau of Real Estate Appraisers ("Bureau"), the parties hereby agree to the following Stipulated Settlement and Disciplinary Order ("Stipulated Settlement") which will be submitted to the Chief of the Bureau of Real Estate Appraisers ("Bureau Chief") for approval and adoption as the final disposition of this proceeding:

PARTIES

1. Elizabeth Seaters, acting on behalf of the Bureau of Real Estate Appraisers ("Complainant"), brings this action solely in her official capacity as Chief of Enforcement for Complainant.

2. Donald G. Risner ("Respondent") is representing himself and has chosen not to exercise his right to be represented by counsel.

3. On or about April, 3, 1992, Complainant issued Real Estate Appraiser License No. 004107 to Respondent. Respondent's License was in full force and effect at all times relevant to the attached Administrative Findings and, in absence of any superseding action, will expire on August 19, 2016.

JURISDICTION

4. The Bureau initiated an investigation resulting in the Administrative Findings associated with Case No. C20131224-01.

5. When deemed by the Chief of the Bureau of Real Estate Appraisers ("Bureau Chief") to be in the public interest, Complainant has the authority under Business and Professions Code section 11315.5 to enter into a settlement related to administrative allegations of violations of the regulations governing the conduct of licensed appraisers.

6. A copy of the administrative allegations associated with the Complainant's Case No. C20131224-01 against Respondent are attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read and understands the charges and allegations in the Administrative Findings associated with Case No. C20131224-01. Respondent has also carefully read and understands the effects of this Stipulated Settlement.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the Administrative Findings developed in the Bureau of Real Estate Appraisers Case No. C20131224-01; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in the Administrative Findings attached as Exhibit A, and agrees that cause exists for discipline against his Real Estate Appraiser License No. 004107.

11. Respondent agrees that his Real Estate Appraiser License No. 004107 is subject to discipline and he agrees to be bound by the Bureau Chief's imposition of discipline as set forth in the following Disciplinary Order.

CONTINGENCY

12. This Stipulated Settlement shall be subject to approval by the Bureau Chief. Respondent understands and agrees that counsel for Complainant and Complainant's staff may communicate directly with the Bureau Chief regarding this Stipulated Settlement, without notice to or participation by Respondent or his counsel. By signing this Stipulated Settlement, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind this Stipulated Settlement prior to the time the Bureau Chief considers and acts upon it. If the Bureau Chief fails to adopt this Stipulated Settlement as Complainant's Decision and Order, the Stipulated Settlement shall be of no force or effect, and, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Bureau Chief shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that PDF or facsimile copies of this Stipulated Settlement, including PDF or facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Bureau Chief may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Respondent's Real Estate Appraisers License No. 004107 is revoked and issued a published reproval. However, the revocation shall be stayed, and Respondent shall be monitored on probation for two (2) years from the effective date of the Decision and Order on the terms and conditions described below. The published reproval will not be stayed.

1. **Obey All Laws.** Respondent shall comply with all federal, state and local laws, and conform to the minimum guidelines set forth under the Uniform Standards of Professional Appraisal Practice (USPAP), and all other laws and regulations pertaining to real estate appraisers.

2. **Active License Status.** Respondent shall at all times maintain an active license status with the Bureau, including during any periods of suspension. If the license is expired at the time the Decision and Order of the Bureau Chief becomes effective, the license must be renewed within 30 days of the effective date of the Decision and Order.

3. **Comply With Probation.** Respondent shall fully comply with the terms and conditions of the probation imposed by the Bureau Chief and shall cooperate fully with representatives of the Bureau in its monitoring and investigation of Respondent's compliance with the terms and conditions of probation.

4. **Monitoring.** Respondent shall be subject to, and shall permit and cooperate with, monitoring and investigation of Respondent's professional practice. Such monitoring and investigation shall be conducted by representatives of the Bureau.

5. **Appraisal Log/Work Samples.** Commencing on the effective date of the Decision and Order and continuing through the period of probation, Respondent shall maintain a log of all appraisals and appraisal reviews Respondent performs on a Log of Appraisal Experience form provided by the Bureau. Respondent shall submit a complete and accurate copy of the log of all appraisals, and appraisal reviews, completed each six months. Each six month log shall be submitted to the Bureau within 30 days following the end of each six month period. Respondent understands that the Bureau may (has the option to) select work samples for review from each

submitted six month log. Failure to submit the log or any selected work samples in compliance with these terms shall extend probation for a peiod equivalent to the period of noncompliance. Respondent shall complete a minimum of twelve appraisals per each year of probation, commencing on the effective date of the Decision and Order. If respondent fails to complete twelve appraisals per year, probation shall be tolled pursuant to condition entitled Tolling of Probation for Out-of State Residence/Practice below.

6. **Monitoring Costs**. Respondent shall pay costs associated with monitoring each and every year of probation. Respondent shall comply with the Bureau's probation compliance monitoring program. Failure to pay costs or comply with probation monitoring shall be considered a violation of probation. Said costs shall be in a sum sufficient to cover the costs incurred by the Bureau in reviewing appraisals, and other monitoring, in an amount not to exceed $250.00 per six (6) months.

7. **Payment of Fine.** Respondent shall pay a fine pursuant to Business and Professions Code section 11316(a) and California Code of Regulations, Title 10, section 3721(a), in the sum of Four Thousand Dollars ($4,000). Payment of this fine shall be made in quarterly installments with payments of not less than Five Hundred Dollars ($500.00), with the first payment due within 30 days of the effective date of the final Decision and Order as signed by the Bureau Chief. Payment shall be made to the Real Estate Appraisers Regulation Fund c/o Bureau of Real Estate Appraisers, 1102 Q Street, Suite 4100, Sacramento, California 95811, by check or money order and shall indicate on its face the notation: "BREA Case No. C20131224-01." Respondent shall also submit a copy of the invoice with payment, which will be provided by the Bureau. If full payment is not received by the Bureau by the date due as noted in the invoice, a 10 percent penalty shall be added to the unpaid balance and interest will accrue on the unpaid balance at the pooled money investment rate in effect at that time, until full amount is paid. Respondent shall not be eligible to renew his or her license until such time as full payment of the outstanding fine has been made. Failure to make payment on the fine shall constitute a violation of the probationary order.

8. **Uniform Standards of Professional Appraisal Practice Course/Examination.** Respondent shall take and pass an Bureau approved 15-hour basic education course on the Uniform Standards of Professional Appraisal Practice within 6 months of the date the Decision and Order of the Bureau Chief is final. The course must be "The Appraisal Foundations National USPAP Course" (or its equivalent as determined solely by the Appraisers Qualifications Board ("AQB") Course Approval Program), and must be taught by an AQB Certified USPAP Instructor who is also a Certified Residential or Certified General appraiser in good standing with the Bureau. The course may be taken on line or in a classroom setting and must include an administered closed book final examination. Respondent must submit proof of successful completion of the course and final exam within 6 months following the date the Decision and Order of the Bureau Chief is final. Respondent understands that it is his or her responsibility to ensure that the course meets all the requirements listed above and to apply for, schedule, and make all arrangements to take the course.

9. **Minimum Education Requirements.** Educational courses imposed as a term or condition of probation may not be credited towards Respondent's continuing education requirements required for renewal of Respondent's real estate appraiser license.

10. **Automatic Suspension.** Failure to comply with the education requirements as contained in this Stipulated Settlement and Disciplinary Order shall result in an automatic suspension of Respondent's real estate appraiser license.

11. **Tolling of Probation For Out-of-State Residence/Practice.** In the event Respondent should leave California to reside or practice outside this state, Respondent must notify Complainant, in writing, of the dates of departure and return. Periods of non-California residency or practice outside the state shall extend the running of the probationary period, or of any suspension, for an equivalent period. No obligation imposed herein, including requirements to file written reports, reimburse Complainant costs, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of Complainant.

12. **Violation of Probation.** If Respondent violates probation in any respect, the Bureau Chief, after giving Respondent notice and an opportunity to be heard, may revoke probation and

carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Bureau Chief shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. **License Surrender.** During Respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his or her license to the Bureau. The Bureau reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation. Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Bureau. Respondent may petition the Bureau for reinstatement pursuant to the provisions set forth in Government Code Section 11522. If, following a surrender of his or her license, Respondent ever applies for licensure or any certification of registration to the Bureau and/or petitions for reinstatement in the State of California, the Bureau Chief shall treat it as a new application for licensure or certification. Respondent must comply with all the laws, regulations and procedures for licensure or certification in effect at the time the application or petition is filed, and all of the charges and allegations contained in the attached Administrative Findings will be deemed true when the Bureau Chief determines whether to grant or deny the application, certification or petition. Further, Respondent shall pay the enforcement costs, fine and complete the education, as specified in this Stipulated Settlement prior to filing any application for reinstatement or issuance of a new license or certificate of registration.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement. I understand the stipulation and the effect it will have on my Real Estate Appraiser License. I enter into this Stipulated Settlement voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Bureau Chief.

DATED: 11/08/2014

Original Signed

Donald G. Risner
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement is hereby respectfully submitted for the Bureau Chief's consideration.

Dated: 11/17/2014

Original Signed

Elizabeth Seaters
Chief of Enforcement

Exhibit A

Administrative Findings - Case No. C20131224-01

On or about September 7, 2013, Respondent completed a real estate appraisal report for the property located at 4305 Rio Viejo Drive, Bakersfield, California. The report contained errors or omissions, in violation of the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP), listed as follows:

a) Respondent failed to appropriately discuss and analyze neighborhood boundaries and median price ranges (S.R. 1-2(e)(i) and 2-2(b)(iii));

b) Respondent inconsistently stated the home was 10 years old and under construction at the time of his inspection (S.R. 1-2(e)(i) and 2-2(b)(iii));

c) Respondent created a misleading report by failing to collect, verify, and analyze all information necessary for credible assignment results via the Sales Comparison Approach. Specifically, Respondent failed to appropriately discuss and analyze the varying conditions of the properties such as Comparable Sale Two, which had new carpet, vinyl flooring and paint, and Comparable Sale Six which was a foreclosure property that was sold in "as is" condition. Additionally, Respondent failed to use more relevant comparable sales while utilizing less relevant comparable sales, resulting in a value conclusion that was not credible (S.R. 1-4(a) and 2-2(b)(viii));

   i. Comparable Sale One: Respondent falsely stated this property was conventionally financed whereas it was a cash sale. Respondent also failed to discuss and analyze this property backed to an arterial. Additionally, Respondent provided a false photograph of this property.

   ii. Comparable Sale Two: Respondent falsely stated this property was conventionally financed whereas it was FHA financed. Respondent also provided a false photograph of this property.

   iii. Comparable Sale Three: Respondent falsely stated this property was conventionally financed whereas it was a cash sale. Respondent also failed to discuss and analyze a more recent sale of this property.

   iv. Comparable Sale Four: Respondent falsely stated this property was conventionally financed whereas it was a cash sale.

   v. Comparable Sale Six: Respondent provided a false photograph of this property.

d) Based upon the findings noted in above items a, b and c, Respondent failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal (S.R. 1-1(a));

e) Based upon the findings noted in above items a, b, c, Respondent committed substantial errors of omission or commission that significantly affected the appraisal (S.R. 1-1(b));

f) Based on the findings noted in above items a, b and c, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading (S.R. 2-1(a));

g) Based on the findings noted in above items a, b and c, Respondent failed to provide sufficient information to enable the intended users of the report to understand it properly (S.R. 2-1(b));

h) Based on the findings noted in above items a, b and c, in addition to an appraisal that was not credible, Respondent violated the Conduct section of the Ethics Rule: and

i) Respondent failed to maintain and provide to BREA a complete work file, including all versions of his appraisal report, resulting in a violation of the Record Keeping section of the Ethics Rule.

On or about April 28, 2014, Respondent provided to BREA a real estate appraisal report for the property located at 4305 Rio Viejo Drive, Bakersfield, California. The report contained errors or omissions, in violation of the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP), listed as follows:

a) Respondent misrepresented an altered version of his report as a true copy of his appraisal report that was submitted to the client. Additionally, Respondent provided a false date of appraisal report (S.R. 1-1(a), (b), 2-1(a),(b), 2-2(b)(vi) and the Conduct section of the Ethics Rule).

Exhibit "B"

ETHICS RULE

An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics.

An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with the client or intended users. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.

> Comment: This Rule specifies the personal obligations and responsibilities of the individual appraiser. An individual appraiser employed by a group or organization that conducts itself in a manner that does not conform to USPAP should take steps that are appropriate under the circumstances to ensure compliance with USPAP.
>
> This ETHICS RULE is divided into three sections: Conduct, Management, and Confidentiality which apply to all appraisal practice.

Conduct:

An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

An appraiser:

- **must not perform an assignment with bias;**
- **must not advocate the cause or interest of any party or issue;**
- **must not accept an assignment that includes the reporting of predetermined opinions and conclusions;**
- **must not misrepresent his or her role when providing valuation services that are outside of appraisal practice;**
- **must not communicate assignment results with the intent to mislead or to defraud;**
- **must not use or communicate a report that is known by the appraiser to be misleading or fraudulent;**
- **must not knowingly permit an employee or other person to communicate a misleading or fraudulent report;**
- **must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value;**
- **must not engage in criminal conduct;**
- **must not willfully or knowingly violate the requirements of the RECORD KEEPING RULE; and**
- **must not perform an assignment in a grossly negligent manner.**

> Comment: Development standards (1-1, 3-1, 6-1, 7-1 and 9-1) address the requirement that "an appraiser must not render appraisal services in a careless or negligent manner." The above requirement deals with an appraiser being grossly negligent in performing an assignment which would be a violation of the Conduct section of the ETHICS RULE.

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 each 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.

In assignments in which there is no appraisal or appraisal review report, only the initial disclosure to the client is required.

Management:

An appraiser must disclose that he or she paid a fee or commission, or gave a thing of value in connection with the procurement of an assignment.

Comment: The disclosure must appear in the certification and in any transmittal letter in which conclusions are stated; however, disclosure of the amount paid is not required. In groups or organizations engaged in appraisal practice, intra-company payments to employees for business development do not require disclosure.

An appraiser must not accept an assignment, or have a compensation arrangement for an assignment, that is contingent on any of the following:

1. **the reporting of a predetermined result (e.g., opinion of value);**
2. **a direction in assignment results that favors the cause of the client;**
3. **the amount of a value opinion;**
4. **the attainment of a stipulated result (e.g., that the loan closes, or taxes are reduced); or**
5. **the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.**

An appraiser must not advertise for or solicit assignments in a manner that is false, misleading, or exaggerated.

An appraiser must affix, or authorize the use of, his or her signature to certify recognition and acceptance of his or her USPAP responsibilities in an appraisal or appraisal review assignment (see Standards Rules 2-3, 3-6, 6-9, 8-3, and 10-3). An appraiser may authorize the use of his or her signature only on an assignment-by-assignment basis.

An appraiser must not affix the signature of another appraiser without his or her consent.

Comment: An appraiser must exercise due care to prevent unauthorized use of his or her signature. An appraiser exercising such care is not responsible for unauthorized use of his or her signature.

Confidentiality:

An appraiser must protect the confidential nature of the appraiser-client relationship.

An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results.

An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.[2]

An appraiser must not disclose: (1) confidential information; or (2) assignment results to anyone other than:

- **the client;**
- **persons specifically authorized by the client;**
- **state appraiser regulatory agencies;**
- **third parties as may be authorized by due process of law; or**
- **a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation.**

A member of a duly authorized professional peer review committee must not disclose confidential information presented to the committee.

Comment: When all confidential elements of confidential information and assignment results are removed through redaction or the process of aggregation, client authorization is not required for the disclosure of the remaining information, as modified.

[2] Pursuant to the passage of the Gramm-Leach-Bliley Act in 1999, numerous agencies have adopted privacy regulations. Such regulations are focused on the protection of information provided by consumers to those involved in financial activities "found to be closely related to banking or usual in connection with the transaction of banking." These activities have been deemed to include "appraising real or personal property." (Quotations are from the Federal Trade Commission, Privacy of Consumer Financial Information; Final Rule, 16 CFR Part 313.)

SCOPE OF WORK RULE[3]

For each appraisal and appraisal review 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.**

An appraiser must properly identify the problem to be solved in order to determine the appropriate scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to produce credible assignment results.

<u>Comment</u>: Scope of work includes, but is not limited to:

- the extent to which the property is identified;
- the extent to which tangible property is inspected;
- the type and extent of data researched; and
- the type and extent of analyses applied to arrive at opinions or conclusions.

Appraisers have broad flexibility and significant responsibility in determining the appropriate scope of work for an appraisal or appraisal review assignment.

Credible assignment results require support by relevant evidence and logic. The credibility of assignment results is always measured in the context of the intended use.

<u>Problem Identification</u>

An appraiser must gather and analyze information about those assignment elements that are necessary to properly identify the appraisal or appraisal review problem to be solved.

<u>Comment</u>: The assignment elements necessary for problem identification are addressed in the applicable Standards Rules (i.e., SR 1-2, SR 3-2, SR 6-2, SR 7-2 and SR 9-2). In an appraisal assignment, for example, identification of the problem to be solved requires the appraiser to identify the following assignment elements:

- 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.

This information provides the appraiser with the basis for determining the type and extent of research and analyses to include in the development of an appraisal. Similar information is necessary for problem identification in appraisal review assignments.

Communication with the client is required to establish most of the information necessary for problem identification. However, the identification of relevant characteristics is a judgment made by the appraiser that requires competency in that type of assignment.

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[3] See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure* and Advisory Opinion 29, *An Acceptable Scope of Work.*

Assignment conditions include assumptions, extraordinary assumptions, hypothetical conditions, laws and regulations, jurisdictional exceptions, and other conditions that affect the scope of work. Laws include constitutions, legislative and court-made law, administrative rules, and ordinances. Regulations include rules or orders, having legal force, issued by an administrative agency.

<u>Scope of Work Acceptability</u>[4]

The scope of work must include the research and analyses that are necessary to develop credible assignment results.

<u>Comment</u>: The scope of work is acceptable when it meets or exceeds:

- the expectations of parties who are regularly intended users for similar assignments; and
- what an appraiser's peers' actions would be in performing the same or a similar assignment.

Determining the scope of work is an ongoing process in an assignment. Information or conditions discovered during the course of an assignment might cause the appraiser to reconsider the scope of work.

An appraiser must be prepared to support the decision to exclude any investigation, information, method, or technique that would appear relevant to the client, another intended user, or the appraiser's peers.

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.

<u>Comment</u>: 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.

An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

<u>Disclosure Obligations</u>

The report must contain sufficient information to allow intended users to understand the scope of work performed.

<u>Comment</u>: Proper disclosure is required because clients and other intended users rely on the assignment results. Sufficient information includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed.

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[4] See Advisory Opinion 29, *An Acceptable Scope of Work*.

STANDARD 1: REAL PROPERTY APPRAISAL, DEVELOPMENT

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.

Comment: STANDARD 1 is directed toward the substantive aspects of developing a credible appraisal of real property. The requirements set forth in STANDARD 1 follow the appraisal development process in the order of topics addressed and can be used by appraisers and the users of appraisal services as a convenient checklist.

Standards Rule 1-1

In developing a real property appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

Comment: This Standards Rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Important changes in the cost and manner of constructing and marketing commercial, industrial, and residential real estate as well as changes in the legal framework in which real property rights and interests are created, conveyed, and mortgaged have resulted in corresponding changes in appraisal theory and practice. Social change has also had an effect on appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason, it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.

(b) not commit a substantial error of omission or commission that significantly affects an appraisal; and

Comment: An appraiser must use sufficient care to avoid errors that would significantly affect his or her opinions and conclusions. Diligence is required to identify and analyze the factors, conditions, data, and other information that would have a significant effect on the credibility of the assignment results.

(c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

Comment: Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care.

Standards Rule 1-2

In developing a real property appraisal, an appraiser must:

(a) identify the client and other intended users;[5]

(b) identify the intended use of the appraiser's opinions and conclusions;[6]

Comment: An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.[7]

(c) identify the type and definition of value, and, if the value opinion to be developed is market value, ascertain whether the value is to be the most probable price:

(i) in terms of cash; or

(ii) in terms of financial arrangements equivalent to cash; or

(iii) in other precisely defined terms; and

(iv) if the opinion of value is to be based on non-market financing or financing with unusual conditions or incentives, the terms of such financing must be clearly identified and the appraiser's opinion of their contributions to or negative influence on value must be developed by analysis of relevant market data;

Comment: When exposure time is a component of the definition for the value opinion being developed, the appraiser must also develop an opinion of reasonable exposure time linked to that value opinion.[8]

(d) identify the effective date of the appraiser's opinions and conclusions;[9]

(e) identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal,[10] **including:**

(i) its location and physical, legal, and economic attributes;

(ii) the real property interest to be valued;

(iii) any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal;

(iv) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature; and

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[5] See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users.*

[6] See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users.*

[7] See Advisory Opinion 19, *Unacceptable Assignment Conditions in Real Property Appraisal Assignments.*

[8] See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Opinions of Value.* See also Advisory Opinion 7, *Marketing Time Opinions,* and Advisory Opinion 22, *Scope of Work in Market Value Appraisal Assignments, Real Property.*

[9] See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions,* and Statement on Appraisal Standards No. 4, *Prospective Value Opinions.*

[10] See Advisory Opinion 2, *Inspection of Subject Property,* and Advisory Opinion 23, *Identifying the Relevant Characteristics of the Subject Property of a Real Property Appraisal Assignment.*

(v) **whether the subject property is a fractional interest, physical segment, or partial holding;**

Comment on (i)-(v): The information used by an appraiser to identify the property characteristics must be from sources the appraiser reasonably believes are reliable.

An appraiser may use any combination of a property inspection and documents, such as a physical legal description, address, map reference, copy of a survey or map, property sketch, or photographs, to identify the relevant characteristics of the subject property.

When appraising proposed improvements, an appraiser must examine and have available for future examination, plans, specifications, or other documentation sufficient to identify the extent and character of the proposed improvements.[11]

Identification of the real property interest appraised can be based on a review of copies or summaries of title descriptions or other documents that set forth any known encumbrances.

An appraiser is not required to value the whole when the subject of the appraisal is a fractional interest, a physical segment, or a partial holding.

(f) **identify any extraordinary assumptions necessary in the assignment;**

Comment: An extraordinary assumption may be used in an assignment only if:

- it is required to properly develop credible opinions and conclusions;
- the appraiser has a reasonable basis for the extraordinary assumption;
- use of the extraordinary assumption results in a credible analysis; and
- the appraiser complies with the disclosure requirements set forth in USPAP for extraordinary assumptions.

(g) **identify any hypothetical conditions necessary in the assignment; and**

Comment: A hypothetical condition may be used in an assignment only if:

- use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison;
- use of the hypothetical condition results in a credible analysis; and
- the appraiser complies with the disclosure requirements set forth in USPAP for hypothetical conditions.

(h) **determine the scope of work necessary to produce credible assignment results in accordance with the SCOPE OF WORK RULE.**[12]

Standards Rule 1-3

When necessary for credible assignment results in developing a market value opinion, an appraiser must:

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[11] See Advisory Opinion 17, *Appraisals of Real Property with Proposed Improvements.*

[12] See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure,* and Advisory Opinion 29, *An Acceptable Scope of Work.*

(a) **identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends; and**

<u>Comment</u>: An appraiser must avoid making an unsupported assumption or premise about market area trends, effective age, and remaining life.

(b) **develop an opinion of the highest and best use of the real estate.**

<u>Comment</u>: An appraiser must analyze the relevant legal, physical, and economic factors to the extent necessary to support the appraiser's highest and best use conclusion(s).

<u>Standards Rule 1-4</u>

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

(a) **When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.**

(b) **When a cost approach is necessary for credible assignment results, an appraiser must:**

(i) **develop an opinion of site value by an appropriate appraisal method or technique;**

(ii) **analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and**

(iii) **analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).**

(c) **When an income approach is necessary for credible assignment results, an appraiser must:**

(i) **analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property;**

(ii) **analyze such comparable operating expense data as are available to estimate the operating expenses of the property;**

(iii) **analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount; and**

(iv) **base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence.**[13]

<u>Comment</u>: In developing income and expense statements and cash flow projections, an appraiser must weigh historical information and trends, current supply and demand factors affecting such trends, and anticipated events such as competition from developments under construction.

(d) **When developing an opinion of the value of a leased fee estate or a leasehold estate, an appraiser must analyze the effect on value, if any, of the terms and conditions of the lease(s).**

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[13] See Statement on Appraisal Standards No. 2, *Discounted Cash Flow Analysis.*

(e) **When analyzing the assemblage of the various estates or component parts of a property, an appraiser must analyze the effect on value, if any, of the assemblage. An appraiser must refrain from valuing the whole solely by adding together the individual values of the various estates or component parts.**

<u>Comment</u>: Although the value of the whole may be equal to the sum of the separate estates or parts, it also may be greater than or less than the sum of such estates or parts. Therefore, the value of the whole must be tested by reference to appropriate data and supported by an appropriate analysis of such data.

A similar procedure must be followed when the value of the whole has been established and the appraiser seeks to value a part. The value of any such part must be tested by reference to appropriate data and supported by an appropriate analysis of such data.

(f) **When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.**

(g) **When personal property, trade fixtures, or intangible items are included in the appraisal, the appraiser must analyze the effect on value of such non-real property items.**

<u>Comment</u>: When the scope of work includes an appraisal of personal property, trade fixtures or intangible items, competency in personal property appraisal (see STANDARD 7) or business appraisal (see STANDARD 9) is required.

<u>Standards Rule 1-5</u>

When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:[14]

(a) **analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal; and**

(b) **analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal.[15]**

<u>Comment</u>: See the <u>Comments</u> to Standards Rules 2-2(a)(viii) and 2-2(b)(viii) for corresponding reporting requirements relating to the availability and relevance of information.

<u>Standards Rule 1-6</u>

In developing a real property appraisal, an appraiser must:

(a) **reconcile the quality and quantity of data available and analyzed within the approaches used; and**

(b) **reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion(s).**

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[14] See Advisory Opinion 24, *Normal Course of Business.*

[15] See Advisory Opinion 1, *Sales History.*

STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING

In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

<u>Comment</u>: STANDARD 2 addresses the content and level of information required in a report that communicates the results of a real property appraisal.

STANDARD 2 does not dictate the form, format, or style of real property appraisal reports. The form, format, and style of a report are functions of the needs of intended users and appraisers. The substantive content of a report determines its compliance.

<u>Standards Rule 2-1</u>

Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

(b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and

(c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

<u>Standards Rule 2-2</u>

Each written real property appraisal report must be prepared under one of the following options and prominently state which option is used: Appraisal Report or Restricted Appraisal Report.[16]

<u>Comment</u>: When the intended users include parties other than the client, an Appraisal Report must be provided. When the intended users do not include parties other than the client, a Restricted Appraisal Report may be provided.

The essential difference between these two options is in the content and level of information provided. The appropriate reporting option and the level of information necessary in the report are dependent on the intended use and the intended users.

An appraiser must use care when characterizing the type of report and level of information communicated upon completion of an assignment. An appraiser may use any other label in addition to, but not in place of, the label set forth in this Standard for the type of report provided.

The report content and level of information requirements set forth in this Standard are minimums for each type of report. An appraiser must supplement a report form, when necessary, to ensure that any intended user of the appraisal is not misled and that the report complies with the applicable content requirements set forth in this Standards Rule.

A party receiving a copy of an Appraisal Report or Restricted Appraisal Report in order to satisfy disclosure requirements does not become an intended user of the appraisal unless the appraiser identifies such party as an intended user as part of the assignment.

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[16] See Advisory Opinion 11, *Content of the Appraisal Report Options of Standards Rules 2-2, 8-2,* and 10-2 and Advisory Opinion 12, *Use of the Appraisal Report Options of Standards Rules 2-2, 8-2, and 10-2.*

(a) **The content of an Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:**

(i) **state the identity of the client and any intended users, by name or type;**[17]

Comment: An appraiser must use care when identifying the client to ensure a clear understanding and to avoid violations of the Confidentiality section of the ETHICS RULE. In those rare instances when the client wishes to remain anonymous, an appraiser must still document the identity of the client in the workfile but may omit the client's identity in the report.

Intended users of the report might include parties such as lenders, employees of government agencies, partners of a client, and a client's attorney and accountant.

(ii) **state the intended use of the appraisal;**[18]

(iii) **summarize information sufficient to identify the real estate involved in the appraisal, including the physical, legal, and economic property characteristics relevant to the assignment;**[19]

Comment: The real estate involved in the appraisal can be specified, for example, by a legal description, address, map reference, copy of a survey or map, property sketch, and/or photographs or the like. The summarized information can include a property sketch and photographs in addition to written comments about the legal, physical, and economic attributes of the real estate relevant to the type and definition of value and intended use of the appraisal.

(iv) **state the real property interest appraised;**

Comment: The statement of the real property rights being appraised must be substantiated, as needed, by copies or summaries of title descriptions or other documents that set forth any known encumbrances.

(v) **state the type and definition of value and cite the source of the definition;**

Comment: Stating the definition of value also requires any comments needed to clearly indicate to the intended users how the definition is being applied.

When reporting an opinion of market value, state whether the opinion of value is:

- in terms of cash or of financing terms equivalent to cash, or
- based on non-market financing or financing with unusual conditions or incentives.

When an opinion of market value is not in terms of cash or based on financing terms equivalent to cash, summarize the terms of such financing and explain their contributions to or negative influence on value.

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[17] See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users.*

[18] See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users.*

[19] See Advisory Opinion 2, *Inspection of Subject Property*, and Advisory Opinion 23, *Identifying the Relevant Characteristics of the Subject Property of a Real Property Appraisal Assignment.*

When an opinion of reasonable exposure time has been developed in compliance with Standards Rule 1-2(c), the opinion must be stated in the report.[20]

(vi) state the effective date of the appraisal and the date of the report;[21]

Comment: The effective date of the appraisal establishes the context for the value opinion, while the date of the report indicates whether the perspective of the appraiser on the market and property as of the effective date of the appraisal was prospective, current, or retrospective.

(vii) summarize the scope of work used to develop the appraisal;[22]

Comment: Because intended users' reliance on an appraisal may be affected by the scope of work, the report must enable them to be properly informed and not misled. Sufficient information includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed.

When any portion of the work involves significant real property appraisal assistance, the appraiser must summarize the extent of that assistance. The name(s) of those providing the significant real property appraisal assistance must be stated in the certification, in accordance with Standards Rule 2-3.[23]

(viii) 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;

Comment: An Appraisal Report must include sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1. The amount of detail required will vary with the significance of the information to the appraisal.

The appraiser must provide sufficient information to enable the client and intended users to understand the rationale for the opinions and conclusions, including reconciliation of the data and approaches, in accordance with Standards Rule 1-6.

When reporting an opinion of market value, a summary of the results of analyzing the subject sales, agreements of sale, options, and listings in accordance with Standards Rule 1-5 is required.[24] If such information is unobtainable, a statement on the efforts undertaken by the appraiser to obtain the information is required. If such information is irrelevant, a statement acknowledging the existence of the information and citing its lack of relevance is required.

(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal;

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[20] See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Opinions of Value.* See also Advisory Opinion 7, *Marketing Time Opinions*, and Advisory Opinion 22, *Scope of Work in Market Value Appraisal Assignments, Real Property.*

[21] See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions.*

[22] See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure*, and Advisory Opinion 29, *An Acceptable Scope of Work.*

[23] See Advisory Opinion 31, *Assignments Involving More than One Appraiser.*

[24] See Advisory Opinion 1, *Sales History.*

(x) **when an opinion of highest and best use was developed by the appraiser, summarize the support and rationale for that opinion;**

(xi) **clearly and conspicuously:**

- **state all extraordinary assumptions and hypothetical conditions; and**
- **state that their use might have affected the assignment results; and**

(xii) **include a signed certification in accordance with Standards Rule 2-3.**

(b) **The content of a Restricted Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:**

(i) **state the identity of the client, by name or type;[25] and state a prominent use restriction that limits use of the report to the client and warns that the rationale for how the appraiser arrived at the opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser's workfile;**

Comment: An appraiser must use care when identifying the client to ensure a clear understanding and to avoid violations of the Confidentiality section of the ETHICS RULE. In those rare instances when the client wishes to remain anonymous, an appraiser must still document the identity of the client in the workfile but may omit the client's identity in the report.

The Restricted Appraisal Report is for client use only. Before entering into an agreement, the appraiser should establish with the client the situations where this type of report is to be used and should ensure that the client understands the restricted utility of the Restricted Appraisal Report.

(ii) **state the intended use of the appraisal;[26]**

Comment: The intended use of the appraisal must be consistent with the limitation on use of the Restricted Appraisal Report option in this Standards Rule (i.e., client use only).

(iii) **state information sufficient to identify the real estate involved in the appraisal;[27]**

Comment: The real estate involved in the appraisal can be specified, for example, by a legal description, address, map reference, copy of a survey or map, property sketch, and/or photographs or the like.

(iv) **state the real property interest appraised;**

(v) **state the type of value and cite the source of its definition;[28]**

[25] See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

[26] See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

[27] See Advisory Opinion 2, *Inspection of Subject Property*.

[28] See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Opinions of Value*. See also Advisory Opinion 7, *Marketing Time Opinions*, and Advisory Opinion 22, *Scope of Work in Market Value Appraisal Assignments, Real Property*.

Comment: When an opinion of reasonable exposure time has been developed in compliance with Standards Rule 1-2(c), the opinion must be stated in the report.

(vi) **state the effective date of the appraisal and the date of the report;**[29]

Comment: The effective date of the appraisal establishes the context for the value opinion, while the date of the report indicates whether the perspective of the appraiser on the market and property as of the effective date of the appraisal was prospective, current, or retrospective.

(vii) **state the scope of work used to develop the appraisal;**[30]

Comment: Because the client's reliance on an appraisal may be affected by the scope of work, the report must enable them to be properly informed and not misled. Sufficient information includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed.

When any portion of the work involves significant real property appraisal assistance, the appraiser must state the extent of that assistance. The name(s) of those providing the significant real property appraisal assistance must be stated in the certification, in accordance with Standards Rule 2-3.[31]

(viii) **state the appraisal methods and techniques employed, state the value opinion(s) and conclusion(s) reached, and reference the workfile; exclusion of the sales comparison approach, cost approach, or income approach must be explained;**

Comment: An appraiser must maintain a specific, coherent workfile in support of a Restricted Appraisal Report. The contents of the workfile must include sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1 and for the appraiser to produce an Appraisal Report.

When reporting an opinion of market value, a summary of the results of analyzing the subject sales, agreements of sale, options, and listings in accordance with Standards Rule 1-5 is required. If such information is unobtainable, a statement on the efforts undertaken by the appraiser to obtain the information is required. If such information is irrelevant, a statement acknowledging the existence of the information and citing its lack of relevance is required.

(ix) **state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal;**

(x) **when an opinion of highest and best use was developed by the appraiser, state that opinion;**

(xi) **clearly and conspicuously:**

- **state all extraordinary assumptions and hypothetical conditions; and**

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[29] See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions*.

[30] See Advisory Opinions 28, *Scope of Work Decision, Performance, and Disclosure*, and Advisory Opinion 29, *An Acceptable Scope of Work*.

[31] See Advisory Opinion 31, *Assignments Involving More than One Appraiser*.

- **state that their use might have affected the assignment results; and**

(xii) include a signed certification in accordance with Standards Rule 2-3

Standards Rule 2-3

Each written real property appraisal report must contain a signed certification that is similar in content to the following form:

I certify that, to the best of my knowledge and belief:

— **the statements of fact contained in this report are true and correct.**

— **the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.**

— **I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.**

— **I have performed no (or the specified) services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.**

— **I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.**

— **my engagement in this assignment was not contingent upon developing or reporting predetermined results.**

— **my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.**

— **my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice.***

— **I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)[32]**

— **no one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.)**

Comment: A signed certification is an integral part of the appraisal report. An appraiser who signs any part of the appraisal report, including a letter of transmittal, must also sign this certification.

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. In an assignment that includes personal property, business or intangible asset assignment results not developed by the real property appraiser(s), any real property appraiser(s) who signs a certification accepts full responsibility for the real property elements

[32] See Advisory Opinion 2, *Inspection of Subject Property.*

of the certification, for the real property assignment results, and for the real property contents of the appraisal report.

When a signing appraiser(s) has relied on work done by appraisers and others who do not sign the certification, the signing appraiser is responsible for the decision to rely on their work. The signing appraiser(s) is required to have a reasonable basis for believing that those individuals performing the work are competent. The signing appraiser(s) also must have no reason to doubt that the work of those individuals is credible.

The names of individuals providing significant real property appraisal assistance who do not sign a certification must be stated in the certification. It is not required that the description of their assistance be contained in the certification, but disclosure of their assistance is required in accordance with Standards Rule 2-2(a)(vii) or 2-2(b)(vii) as applicable.[33]

Standards Rule 2-4

To the extent that it is both possible and appropriate, an oral real property appraisal report must address the substantive matters set forth in Standards Rule 2-2(a).

Comment: See the RECORD KEEPING RULE for corresponding requirements.

[33] See Advisory Opinion 31, *Assignments Involving More than One Appraiser.*