

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 ANTOINETTE B. CINCOTTA  
Deputy Attorney General  
4 State Bar No. 120482  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2095  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. C 090806-05

12 **KEVIN S. GREENE**  
13 **6780 Mission Gorge Road, #27**  
14 **San Diego, CA 92120**

**A C C U S A T I O N**

15 **Certified Residential License No. AR034138**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Elizabeth Seaters, acting on behalf of the Office of Real Estate Appraisers  
20 (Complainant) brings this Accusation solely in her official capacity as the Chief of Enforcement  
21 for Complainant.

22 2. On or about February 13, 2008, the Director of the Office of Real Estate Appraisers  
23 issued Certified Residential License Number AR034138 to Kevin S. Greene (Respondent). The  
24 Certified Residential License was in full force and effect at all times relevant to the charges  
25 brought herein and will expire on May 25, 2012, unless renewed.

26 ///

27 ///

28 ///

## JURISDICTIONAL AND STATUTORY PROVISIONS

3. This Accusation is brought before the Director of the Office of Real Estate Appraisers (Director), under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Code section 11313 states:

"The office is under the supervision and control of the secretary. The duty of enforcing and administering this part is vested in the director and he or she is responsible to the secretary therefor. The director shall adopt and enforce rules and regulations as are determined reasonably necessary to carry out the purposes of this part. Those rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code."

5. Code section 11314 states, in pertinent part: "The office is required to include in its regulations requirements for licensure and discipline of real estate appraisers that ensure protection of the public interest."

6. Code section 11316 states, in pertinent part:

"(a) The director may assess a fine against a licensee, . . . for violation of this part or any regulations adopted to carry out its purposes.

"(b)(1) Failure of a licensee, . . . to pay a fine or make a fine payment within 30 days of the date of assessment shall result in disciplinary action by the office. If a licensee, . . . fails to pay a fine within 30 days, the director shall charge him or her interest and a penalty of 10 percent of the fine or payment amount. Interest shall be charged at the pooled money investment rate.

"(2) If a fine is not paid, the full amount of the assessed fine shall be added to any fee for renewal of a license. A license shall not be renewed prior to payment of the renewal fee and fine.

"(3) The director may order the full amount of any fine to be immediately due and payable if any payment on the fine, or portion thereof, is not received within 30 days of its due date.

"(4) Any fine, or interest thereon, not paid within 30 days of a final order shall constitute a valid and enforceable civil judgment.

///

“(5) A certified copy of the final order shall be conclusive proof of the validity of the order of payment and the terms of payment.

“(c) Any administrative fine or penalty imposed pursuant to this section shall be in addition to any other criminal or civil penalty provided for by law.

“(d) Administrative fines collected pursuant to this section shall be deposited in the Real Estate Appraisers Regulation Fund.”

7. Code section 11319 states:

"Notwithstanding any other provision of this code, the Uniform Standards of Professional Appraisal Practice constitute the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards. If a licensee also is certified by the Board of Equalization, he or she shall follow the standards established by the Board of Equalization when fulfilling his or her responsibilities for assessment purposes."

8. Business and Professions Code section 11325, subdivision (a) states:

"The director shall adopt regulations which determine the parameters of appraisal work which may be performed by licensed appraisers."

## REGULATORY PROVISIONS

9. California Code of Regulations, title 10, section 3701 states:

"Every holder of a license under this part shall conform to and observe the Uniform Standards of Professional Appraisal Practice (USPAP) and any subsequent amendments thereto as promulgated by the Appraisal Standards Board of The Appraisal Foundation which standards are herein incorporated into these regulations by reference as if fully set forth herein."

10. California Code of Regulations, title 10, section 3702 states in relevant part:

“(a) The Director finds and declares as follows:

“(1) That the profession of real estate appraisal is vested with a fiduciary relationship of trust and confidence as to clients, lending institutions, and both public and private guarantors or insurers of funds in federally-related real estate transactions and that the qualifications of honesty, candor, integrity, and trustworthiness are directly and substantially related to and indispensable to the practice of the appraisal profession;



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

3       “(b) not commit a substantial error of omission or commission that significantly affects an  
4 appraisal; . . . .”

5       13.       USPAP Standards Rule 1-2 states:

6       “In developing a real property appraisal, an appraiser must:

7       “ . . . .

8       “(e) identify the characteristics of the property that are relevant to the purpose and intended  
9 use of the appraisal, including:

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

11       “ . . . .

12       “(h) determine the scope of work necessary to produce credible assignment results in  
13 accordance with the SCOPE OF WORK RULE.”

14       14.       USPAP Standard Rule 1-4 states:

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

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

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

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

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

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

25       “ . . . .”

26       15.       USPAP Standards Rule 2-1 states:

27       “Each written or oral real property appraisal report must:

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

1       “(b) contain sufficient information to enable the intended users of the appraisal to  
2 understand the report properly; . . . .”

3       16.       USPAP Standards Rule 2-2 states:

4       “Each written real property appraisal report must be prepared under one of the following  
5 three options and prominently state which option is used: Self-Contained Appraisal Report,  
6 Summary Appraisal Report, or Restricted Use Appraisal Report.

7       “ . . . .”

8       “(b) The content of a Summary Appraisal Report must be consistent with the intended use  
9 of the appraisal, and, at a minimum;

10       “ . . . .”

11       “(iii) summarize information sufficient to identify the real estate involved in the appraisal,  
12 including the physical and economic property characteristics relevant to the assignment;

13       “ . . . .”

14       “(vii) summarize the scope of work used to develop the appraisal;

15       “(viii) summarize the information analyzed, the appraisal methods and techniques  
16 employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of  
17 the sales comparison approach, cost approach, or income approach must be explained;

18       “ . . . .”

19       17.       The USPAP Ethics Rule states:

20       “To promote and preserve the public trust inherent in professional appraisal practice, an  
21 appraiser must observe the highest standards of professional ethics. This ETHICS RULE is  
22 divided into four sections: Conduct, Management, Confidentiality, and Record Keeping. The first  
23 three sections apply to all appraisal practice, and all four sections apply to appraisal practice  
24 performed under Standards 1 through 10.

25       Compliance with USPAP is required when either the service or the appraiser is obligated by  
26 law or regulation, or by agreement with the client or intended users, to comply. In addition to  
27 these requirements, an individual should comply any time that individual represents that he or she  
28 is performing the service as an appraiser.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

" . . . .

Conduct:

An appraiser must perform assignments ethically and competently, in accordance with USPAP.

" . . . .

"An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

" . . . .

18. The USPAP Competency Rule states:

"Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; or alternatively, must:

" . . . .

"2. take all steps necessary or appropriate to complete the assignment competently; and

" . . . ."

19. The USPAP Scope of Work Rule, states:

"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.

"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.

///

///

1       "Problem Identification

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

5       "Scope of Work Acceptability

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

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

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

12       "Disclosure Obligations

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

15                               **COST RECOVERY**

16       20. Code section 11409, subdivision (a) states:

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

24                               **CAUSE FOR DISCIPLINE**

25       (Violations Of USPAP- Minimum Standards Of Conduct And Performance)

26       21. On or about December 31, 2008, Respondent completed a real estate appraisal report  
27 for a property located at 8867 Los Cochinos Road, Lakeside, California ("the subject property").  
28 Respondent is subject to disciplinary action under California Code of Regulation, title 10, section



1 3721, subdivisions (a)(6) and (a)(7), by and through his violations of California Code of  
2 Regulations, title 10, sections 3701 and 3702, subdivisions (a)(1) and (a)(3), and in the following  
3 USPAP violations:

4 a. Respondent failed to identify and analyze relevant site and improvement  
5 characteristics of the subject property, including omissions pertaining to the subject's location  
6 along a heavily traveled thoroughfare, atypical open (storage) yard uses, inclusion of various non-  
7 permitted improvements, and overstating the quality of construction of the subject improvements  
8 in violation of USPAP S.R. 1-2(c)(i) and 2-2(b)(iii);

9 b. Respondent failed to select appropriate sales and properly analyze various physical  
10 and economic attributes resulting in a misleading report and an unsupported valuation in violation  
11 of USPAP S.R. 1-4(a), and 2-2(b)(viii);

12 c. Respondent failed to adequately analyze sufficient sales and cost data available to  
13 support the opinion of site value, estimated costs new and accrued depreciation, resulting in a  
14 misleading report and an unsupported valuation in violation of USPAP S.R. 1-4(b)(i), (ii), (iii),  
15 and 2-2(b)(viii);

16 d. Based on the errors in paragraph 21(a) through (c), above, Respondent failed to  
17 correctly employ those recognized methods and techniques that are necessary to produce a  
18 credible appraisal and violated the USPAP S.R. 1-1(a);

19 e. Based on the errors in paragraph 21(a) through (c), above, Respondent committed  
20 substantial errors of omission that significantly affected the appraisal in violation of USPAP S.R.  
21 1-1(b);

22 f. Based on the errors in paragraph 21(a) through (c), above, Respondent failed to  
23 identify and perform the scope of work necessary to complete the assignment that would be  
24 consistent with appraiser peers' actions in violation of USPAP S.R. 1-2(h), and 2-2(b)(vii), and  
25 the Problem Identification and Scope of Work Acceptability sections of the Scope of Work Rule;

26 g. Based on the errors in paragraph 21(a) through (c), above, Respondent failed to  
27 clearly and accurately set forth the appraisal in a manner that would not be misleading, and failed  
28

1 to report sufficient information to enable the intended users of the appraisal to understand the  
2 appraisal properly in violation of USPAP S.R. 2-1(a) and (b); and

3 h. Based on the errors in paragraph 21(a) through (c), above, Respondent advocated the  
4 cause of helping to secure a mortgage loan by failing to disclose and properly analyze relevant  
5 property and market characteristics, that resulted in communicating the assignment results in a  
6 misleading or fraudulent manner in violation of the Conduct section of the Ethics Rule.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
9 and that following the hearing, the Director of the Office of Real Estate Appraisers issue a  
10 decision:

11 1. Revoking or suspending Certified Residential License Number AR034138 issued to  
12 Kevin S. Greene;

13 2. Ordering Kevin S. Greene to pay the Director of the Office of Real Estate Appraisers  
14 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
15 Professions Code section 11409;

16 3. Ordering Kevin S. Greene to pay the Director of the Office of Real Estate Appraisers  
17 a fine pursuant to Business and Professions Code section 11316; and

18 4. Taking such other and further action as deemed necessary and proper.

19 DATED: 5/15/12

**Original Signed**

ELIZABETH SEATERS  
Chief of Enforcement  
Office of Real Estate Appraisers  
State of California  
Complainant

23 SD2012802144  
24 70554472.doc  
25  
26  
27  
28