

BUREAU OF REAL ESTATE APPRAISERS

California Code of Regulations
Title 10, Chapter 6.5

§ 3733. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Bureau shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines and Model Disciplinary Orders" [Rev. 2015] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Bureau and/or administrative law judges in its/his or her discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority Sections 11313 and 11314, Business and Professions Code; and Section 11425.50, Government Code. Reference: Sections 11310.1, 11315, 11315.1, 11315.5, and 11320, Business and Professions Code; and Section 11425.50(e), Government Code.

A MANUAL OF DISCIPLINARY GUIDELINES AND MODEL DISCIPLINARY ORDERS

Revision 2015

I. INTRODUCTION

To establish consistency in license discipline for similar offenses on a statewide basis, the Bureau of Real Estate Appraisers ("BREA") has adopted these uniform disciplinary guidelines. This document, which is designed for use by Administrative Law Judges, attorneys, BREA licensees, applicants, others involved in BREA's disciplinary process, and ultimately the Chief of BREA, shall be revised from time to time and will be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and disciplinary guidelines for specific offenses.

For purposes of this document, terms and conditions of probation are divided into two general categories: (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation; and (2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

This document is a guideline and the presence of mitigating or aggravating circumstances may necessitate deviations from these guidelines. If there are deviations, BREA requests the Administrative Law Judge hearing the matter state the reasons for deviation in the proposed decision.

II. GENERAL CONSIDERATIONS

Proposed decisions should include the following:

- a. Specific code sections and/or regulations violated with their definitions;
- b. Clear description of the violation;
- c. Respondent's explanation of the violation if he/she is present at the hearing;
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate;
- e. When suspension or probation is ordered, BREA requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

III. FACTORS IN AGGRAVATION

Factors in aggravation include but are not limited to:

- Respondent's violation was intentional;
- Respondent induced a trainee to commit or assist in the commission of a violation;
- Respondent has a history of prior discipline, particularly where the prior discipline involved the same or similar type of conduct;
- Respondent's action could have or did result in financial damage to his/her clients or other consumers. The amount of loss may be an additional aggravating factor;
- Respondent violated conditions of a BREA stipulation or final order;
- Respondent failed to acknowledge responsibility for the violation;
- Respondent failed to cooperate with BREA;
- Respondent's acts or omissions are numerous;
- Respondent took advantage of his/her client for personal gain (e.g. respondent was able to take advantage due to the ignorance, age or lack of sophistication of the client);
- Submission of false statements or evidence, or other deceptive practice (e.g., adding to work file after complaint filed); and
- Intimidation of or threats to witnesses or others involved with the investigation.

IV. FACTORS IN MITIGATION

Factors in mitigation include but are not limited to:

- Respondent's violation was unintentional;
- Respondent was induced by others to participate, was a passive participant, or played a minor role in the violation (e.g. trainee);
- Respondent's violation was committed because of an unusual circumstance which is unlikely to recur;
- Respondent made technical errors that did not result in financial damages;
- Respondent made reasonable and diligent efforts to comply with applicable laws and regulations;
- Respondent demonstrated remorse and a willingness to take corrective action;
- Respondent was cooperative during the investigation;
- The passage of considerable time since the violation occurred with no evidence of recurrence or evidence of any other violations;
- The assignment was difficult/complex;
- License level at the time of the violation; and
- Respondent was under the supervision of another licensee at the time of any violation (e.g., trainee).

V. GROUNDS FOR DISCIPLINARY ACTION AND DISCIPLINARY GUIDELINES

The following are violations and recommended discipline for accusations and statements of issue. The numbers following conditions of probation refer to the Standard Conditions of Probation or Optional Probation Conditions listed below. These conditions vary dependent upon the nature of the offense and presence of mitigation or aggravation.

Business and Professions Code

B&P 11318	<u>Failure to Notify BREa of Felony Charge, Conviction, Discipline</u> Maximum: Revocation, full cost recovery, payment of fine Minimum: Optional term 12
B&P 11319	<u>USPAP – Minimum Standard</u> Maximum: Revocation, full cost recovery, payment of fine Minimum: Revocation stayed, one year probation, standard conditions of probation 1-8 and optional probation conditions 10 through 12
B&P 11320/11320.5	<u>Practice Without a License/Certificate</u> Maximum: Revocation, full cost recovery, payment of fine Minimum: Revocation stayed, one to three years probation; standard terms of probation 1-8 and optional terms 9 and 12
B&P 11321	<u>Unauthorized Use of Title</u> Maximum: Revocation, full cost recovery, payment of fine Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 9 and 12
B&P 11323	<u>Conflict of Interest – Compensation Dependent on Value Conclusion</u> Maximum: Revocation, full cost recovery, payment of fine Minimum: Revocation stayed, three years probation, standard terms of probation 1-8 and optional terms 10 through 14
B&P 11328	<u>Failure to Provide Copies of Appraisals</u> Maximum: Revocation, full cost recovery, payment of fine Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 9 and 12

B&P 11328.1

Failure to Respond to Request for Information

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 9 and 12

**B&P 11345.05
(Appraisal Management
Companies "AMC")**

Failure to Notify BREB of Changes of Contact Information

Maximum: Suspension, full cost recovery, payment of fine

Minimum: Optional term 12

B&P 11345.4 (AMC)

Improper Influence of Appraisals

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 10 through 12

B&P 11345.45

Structuring of Appraisal Assignments to Evade Provisions

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 12

B&P 11345.6 (AMC)

Alteration of Completed Appraisal Reports

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 9 and 12

B&P 11345.7

Prohibited Interest in Appraised Property

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 12

**California Code of
Regulations, Title 10**

**Section 3527(a)
(Appraisers)**

Failure to Maintain and Submit Personal Information or Contact
Change

Maximum: Suspension stayed, one year probation, standard terms of probation 1-8 and optional term 12

Minimum: Optional term 12

Section 3527(b)

Failure to Maintain and Submit Personal Information or Contact

(AMCs)

Change

Maximum: Suspension stayed, one year probation, standard terms of probation 1-8 and optional term 12
Minimum: Optional term 12

Section 3529

Failure to Cooperate with Audits

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 12

Section 3568

Trainee Licenses and Supervisor Appraiser Responsibilities

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 10 through 13

Section 3577 (AMC)

Minimum Standards of Practice for AMCs

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 12

Section 3701

Standards of Professional Appraisal Practice (Conform to USPAP)

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 10 through 14

Section 3702

Special Qualifications – Honesty, Candor, Integrity, Trustworthiness

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 9 through 14

Section 3705

Signature and License Number on Reports

Maximum: Suspension, full cost recovery, payment of fine
Minimum: Optional term 12

Section 3721(a)(1)

Conviction of Felony or Substantially Related Crime

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of

probation 1-8 and optional term 12

Section 3721(a)(2)

Dishonesty, Fraud, Deceit

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 9 through 14

Section 3721(a)(3)

Conviction for Solicitation of Criminal Act – Bodily Harm

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 12

Section 3721(a)(4)

Any Act which would be Grounds for Discipline

Maximum: License denied, full cost recovery, payment of fine

Minimum: License granted, immediately revoked, revocation stayed, one year probation, standard terms of probation 1-8

Section 3721(a)(5)

False Statement in Application

Maximum: License denied, full cost recovery, payment of fine.

Revocation, full cost recovery, payment of fine

Minimum: License granted, immediately revoked, one year probation, standard terms of probation 1-8. Revocation stayed, one year probation, standard terms of probation 1-8, optional term 12

Section 3721(a)(6)

USPAP Violation

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Suspension stayed, one year probation, standard terms of probation 1-8 and optional terms 10 through 14

Section 3721(a)(7)

Violation of Real Estate Appraisers' Licensing Law

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Optional term 12.

Section 3721(a)(8)

Prohibited from Participating in a Insured Depository Institution

Maximum: License denied, full cost recovery, payment of fine; or Revocation, full cost recovery, payment of fine

Minimum: License granted, immediately revoked, revocation stayed, one year probation, standard terms of probation 1-8; or Revocation stayed, one year probation, standard terms of probation

Section 3721(a)(9)

Dishonored Financial Instrument

Maximum: License denied, full cost recovery, payment of fine; or Revocation, full cost recovery, payment of fine

Minimum: License granted, immediately revoked, revocation stayed, one year probation with standard terms 1-8; or Revocation stayed, one year probation, standard terms of probation 1-8

Violation of Probation

Maximum: Vacate stay order and impose discipline that was stayed

Minimum: Extension of probation

TERMS OF PROBATION

Probation conditions are divided into two categories:

1. Standard Conditions of Probation that should appear in all probation cases, and
2. Optional Conditions of Probation that depend on the nature and circumstances of a particular case. BREa prefers that the optional conditions be placed before the standard conditions in sequence in the proposed disciplinary order. Other conditions appropriate to the case which are not contrary to public policy may also be imposed.

MODEL DISCIPLINARY LANGUAGE

Revocation Order

IT IS HEREBY ORDERED that Real Estate Appraiser (License No. ____ or Certificate No.____) issued to Respondent is revoked.

Suspension Order

IT IS HEREBY ORDERED that Real Estate Appraiser (License No. ____ or Certificate No.____) issued to Respondent is suspended for ____ days immediately after the effective date of the Decision and Order. During the period of suspension, Respondent shall not engage in any activities for which licensure as a real estate appraiser is required.

Stay Order

However, the [revocation or suspension] is stayed and Respondent is placed on probation for ____ years on the following terms and conditions.

Probation Order

Respondent is placed on probation for a period of ____ years.

Public Reproval

Respondent's license is publically reproved.

STANDARD TERMS OF PROBATION (to be included in all cases of probation)

1. Obey All Laws. Respondent shall comply with all federal, state and local laws, the Real Estate Appraisers' Licensing and Certification Law and regulations promulgated thereto, 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. Additionally, if Respondent is subject to criminal court orders, Respondent shall comply with all criminal court orders, including probation and parole.

Please note: Standard terms 2-4 should be used for cases directly related to professional competency or ethics (i.e. USPAP violations not convictions).

2. Appraisal Log/Work Samples

[Use for Real Estate Appraisers]

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 BREa. Respondent shall submit a complete and accurate copy of the log of all appraisals and appraisal reviews completed each six (6) months. Each six (6) month log shall be submitted to BREa within thirty (30) days following the end of each six (6) month period. Respondent understands BREa may select work samples for review from each submitted six (6) month log. Failure to submit the log, or any selected work samples, in compliance with these terms shall extend the probation for a period equivalent to the period of noncompliance.

Respondent shall complete a minimum of six (6) appraisals every six (6) months. If Respondent fails to complete six (6) appraisals every six (6) months, probation shall be tolled. Periods during which probation is tolled shall not apply to reduction of the probationary period, suspension or any other disciplinary order or term.

[Use for Appraisal Management Companies ("AMCs")]

Commencing on the effective date of the Decision and Order and continuing through the period of probation, Respondent shall maintain a log of all appraisal assignments. The log shall contain: (1) the date of the receipt of the request; (2) the name of the person from whom the request was received; (3) the name of the client for whom the request was made, if different from the name of the person from whom the request was received; (4) the name of the appraiser or appraisers assigned to perform the contracted service; and (5) the date of delivery of the appraisal product to the client. Respondent shall submit a complete and accurate copy of the log of all appraisal

assignments made each six (6) months. Each six (6) month log shall be submitted to BREa within 30 days following the end of each six (6) month period. Failure to submit the log in compliance with these terms shall extend the probation for a period equivalent to the period of noncompliance.

3. 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 BREa.
4. Monitoring Costs. Respondent shall pay \$450 every six months while on probation to compensate BREa for enforcing the order by examining the work samples or AMC logs. Failure to pay monitoring costs shall be a violation of probation.
5. Comply with Probation. Respondent shall fully comply with the terms and conditions of the probation imposed by the Chief of BREa and shall cooperate fully with representatives of BREa in its investigation of Respondent's compliance with the terms and conditions of probation.
6. Cost Reimbursement. Respondent shall reimburse BREa its investigation and prosecution costs in the sum of \$ _____. The payment shall be made within 30 days of the effective date the Decision and Order, unless BREa agrees in writing to payment plan. 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. _____." Respondent shall also submit a copy of the invoice with payment, which will be provided by BREa. If full payment is not received by BREa by the date due as noted in the invoice, a 10 percent late 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 the full amount is paid. Respondent shall not be eligible to renew his or her license until such time as full payment of the outstanding costs have been made. Failure to timely reimburse BREa's costs of its investigation and prosecution shall constitute a violation of the probationary order or further disciplinary action.
7. Violation of Probation. If Respondent violates probation in any respect, the Chief of BREa, 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 Chief shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
8. Surrender of License: 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 BREa. BREa 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 BREa. An appraiser whose license has been surrendered may re-apply for licensure no sooner than one year from the effective date of the disciplinary decision.

Respondent may petition to BREa 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 to BREa and/or petitions for reinstatement in the State of California, the Chief shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in the Accusation or Statement of Issues will be deemed true when the Chief determines whether to grant or deny the application or petition. Further, Respondent shall pay the enforcement costs, fines and complete all education, as specified in this Decision and Disciplinary Order prior to filing any application for reinstatement or issuance of a new license.

OPTIONAL TERMS OF PROBATION

9. Actual Suspension. Respondent's license is suspended for a period of ____ days immediately following the effective date of the Decision and Order. During the period of suspension the Respondent shall not engage in any activities for which licensure as a real estate appraiser is required.
10. Uniform Standards of Professional Appraisal Practice Course/Examination. Respondent shall take and pass a BREa approved 15-hour basic education course on the Uniform Standards of Professional Appraisal Practice within six (6) months of the effective date the Decision and Order. The course may be taken on-line or in a classroom setting. However, the course must be The Appraisal Foundation's National USPAP Course (or its equivalent as determined solely by the Appraiser Qualifications Board (AQB) Course Approval Program) and at least one of the course instructors must be an AQB Certified USPAP Instructor who is also a state certified appraiser in good standing. The course must administer a closed-book final examination. Respondent must submit proof of successful completion of the course and final examination within six (6) months following the effective date of the Decision and Order. Respondent understands that it is his/her responsibility to ensure that the course meets all of the requirements listed above and to make all necessary and preparatory arrangements to take the course. Educational courses imposed by the Chief of BREa may not be credited toward Respondent's continuing education requirements required for renewal of Respondent's real estate appraiser license. Failure to comply with the education requirements as contained in this Disciplinary Order shall result in an automatic suspension of Respondent's real estate appraiser

license. In order to reinstate Respondent's license if it is automatically suspended for failure to comply with the education requirement, Respondent must provide BREA with the following: (i) satisfactory verification of the completion of the education course or courses imposed; (ii) completion and filing of a reinstatement application; and (iii) payment of all applicable fees, fines, or penalties.

11. Basic Education Courses/Examination. Respondent shall take and successfully complete, within 12 months from the effective date of the Decision and Order, BREA approved basic education course(s) covering the following modules: ***Specify topics and hours listed in Appendix A (i.e., Sales and Comparison Approach, Valuation Process, Real Estate Markets and Analysis etc.).*** The course(s) must administer a closed-book final examination. Respondent must submit proof of successful completion of the course(s) and final examination within 12 months following the effective date of the Decision and Order. Respondent understands that it is his/her responsibility to ensure that the course meets all of the requirements listed above and to make all necessary and preparatory arrangements to take the course. Educational courses imposed by the Chief of BREA may not be credited toward Respondent's continuing education requirements required for renewal of Respondent's real estate appraiser license. Failure to comply with the education requirements as contained in this Disciplinary Order shall result in an automatic suspension of Respondent's real estate appraiser license. In order to reinstate Respondent's license if it is automatically suspended for failure to comply with the education requirement, Respondent must provide BREA with the following: (i) satisfactory verification of the completion of the education course or courses imposed; (ii) completion and filing of a reinstatement application; (iii) payment of all applicable fees, fines, or penalties.
12. Payment of Fine. Respondent shall pay a fine in the sum of \$ _____. The payment shall be made within 30 days of the effective date of the Decision and Order, unless BREA agrees in writing to payment plan. 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. ____." Respondent shall also submit a copy of the invoice with payment, which will be provided by BREA. If full payment is not received by BREA by the date due as noted in the invoice, a 10 percent late 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 the 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 or further disciplinary action.
13. Restricted License - Supervision. For the entire probationary term, Respondent shall not supervise any individual in the practice of real estate appraisal.
14. Restricted License – Limited Scope of Practice (Please choose all applicable restrictions).

- a. For the entire probationary period Respondent shall be restricted from appraising vacant land.
- b. For the entire probationary period Respondent shall be restricted from performing complex appraisal assignments.
- c. For the entire probationary period Respondent shall be restricted from performing non-residential appraisal assignments.

In outright revocation orders, the following language shall be included:

15. Relinquish Certificate. Respondent shall relinquish and shall forward or deliver to BREa the license or certificate to practice within 10 days of the effective date of this decision and order.