

BEFORE THE MISSOURI
STATE REAL ESTATE APPRAISERS COMMISSION

MISSOURI REAL ESTATE APPRAISERS))	
COMMISSION,)	
)	
Petitioner,)	
)	
v.)	No. 14-0961 RA
)	
JERRY UNDERWOOD,)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

I.

Statement of the Case

On or about August 27, 2015, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Appraisers Commission v. Jerry Underwood*, Case No. 14-0961 RA. The Administrative Hearing Commission certified the records of its proceedings and its Decision in *Missouri Real Estate Appraisers Commission v. Jerry Underwood*, Case No. 14-0961 RA, to the Missouri Real Estate Appraiser Commission (the “MREAC”) on approximately September 30, 2015. In its Decision, the Administrative Hearing Commission found that Respondent Underwood’s certification as a certified residential real estate appraiser is subject to disciplinary action by the MREAC pursuant to § 339.532.2(6), (7), (9), (10), and (14), RSMo¹.

The MREAC has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Decision. The Decision of the Administrative Hearing Commission is hereby adopted and incorporated herein by reference.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Pursuant to notice and § 621.110 and § 339.532.3, RSMo, the MREAC held a hearing on December 9, 2015, at approximately 3:00 p.m. at the Missouri Council of School Administrators Building, 3530 Amazonas Drive, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's certification. The MREAC was represented by Assistant Attorney General Edwin Frownfelter. Respondent was present for the hearing but was not represented by counsel. After being present and considering all of the evidence presented during the hearing, the MREAC issues the following Findings of Facts, Conclusions of Law and Order.

II.

Findings of Fact

1. Respondent holds a certification as a state certified residential real estate appraiser from the MREAC (certification # 2004018160).
2. The MREAC hereby adopts and incorporates herein the findings of fact contained in the Decision of the Administrative Hearing Commission in *Missouri Real Estate Appraisers Commission v. Jerry Underwood*, Case No. 14-0961 RA.
3. In its August 27, 2015, Decision, the Administrative Hearing Commission found the MREAC has grounds to discipline Respondent's certification pursuant to § 339.532.2(6), (7), (9), (10), and (14), RSMo.
4. The MREAC set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion.
5. Underwood appeared at the disciplinary hearing and testified only as to matters already determined in the AHC hearing below including the experience of the MREAC's expert witness and his appraisals.

III.

CONCLUSIONS OF LAW

6. The MREAC has jurisdiction over this proceeding pursuant to § 621.110 and § 339.532.3, RSMo.

7. The MREAC expressly adopts and incorporates by reference the Conclusions of Law and the Decision of the Administrative Hearing Commission in *Missouri Real Estate Appraisers Commission v. Jerry Underwood*, Case No. 14-0961 RA, finding cause to discipline Underwood's certification as a residential real estate appraiser pursuant to § 339.532.2(6), (7), (9), (10), and (14), RSMo.

8. As a result of the foregoing, and as identified in the Decision of the Administrative Hearing Commission, Respondent's state certification as a residential real estate appraiser is subject to disciplinary action by the MREAC, pursuant to § 339.532.2(6), (7), (9), (10), and (14), RSMo.

9. The MREAC has determined that this Order is necessary to ensure the protection of the public.

IV.

Order

10. Having fully considered all the evidence before the MREAC, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the MREAC, that Respondent's state certification as a residential real estate appraiser is hereby **SUSPENDED** for a period of **thirty (30) days commencing ten (10) business days from the effective date of this Order**. The suspension shall immediately be followed by **PROBATION** for a term of **two (2) years**, subject to the following terms and conditions:

- A. Underwood shall be entitled to engage in the practice of real estate appraising as a state certified residential real estate appraiser pursuant to § 339.500 to § 339.549, RSMo, provided Underwood adheres to all of the terms and conditions of this Order.
- B. During the probationary period, Underwood shall not supervise any real estate appraisal, as defined by § 339.503(1), RSMo, of property located in the state of Missouri nor act in any manner as an appraisal supervisor.
- C. During the probationary period, Underwood shall maintain a log of all appraisal assignments completed, including appraisal values. Underwood shall submit a true and accurate copy of his log to the MREAC every six (6) months after the effective date of this Order. Each log, except for the final log, shall be submitted within 15 days after the end of the respective six month period. Underwood shall submit the final log 30 days prior to the end of the probationary period. All logs shall comply with rule 20 CSR 2245-2.050.
- D. During the probationary period, Underwood shall submit samples of his appraisals as requested by the MREAC for review.
- E. During the probationary period, Underwood shall comply with all applicable provisions of Chapter 339, RSMo, as amended, all applicable MREAC regulations and all applicable federal and state laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions. Underwood shall be deemed in violation of this Order and the terms of his probation if he is adjudicated, found guilty of or pleads guilty or nolo contendere to, a criminal offense, whether or not sentence is imposed.
- F. Underwood shall meet in person with the MREAC or its representative at any such time and place as required by the MREAC or its designee upon notification from the MREAC or its designee. Said meetings will be at the MREAC's discretion and may occur periodically during the probationary period.
- G. Underwood shall immediately submit documents showing compliance with the requirements of this Order to the MREAC when requested by the MREAC or its designee.
- H. If Underwood fails to comply with the terms of this order during the probationary period, in any respect, the MREAC may choose to conduct a hearing before it either during the probationary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred. In the event MREAC determines that Underwood has violated any term or condition of this Order, the MREAC may, in its discretion, vacate this Order and may impose additional discipline as deemed appropriate by the MREAC, including revocation of the certification, pursuant to § 324.042, RSMo. The MREAC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

I. Underwood shall keep the MREAC apprised of his current home and work addresses and telephone numbers. Underwood shall inform the MREAC in writing within ten (10) days of any change in this information.

J. During the probationary period, Underwood shall timely renew his certification, timely pay all fees required for licensure and comply with all other requirements necessary to maintain his certification current and active.

K. During the probationary period, Underwood shall accept and comply with unannounced visits from the MREAC's representatives to monitor compliance with the terms and conditions of this Order.

L. This Order does not bind the MREAC or restrict the remedies available to the MREAC for any violation of § 339.500 to § 339.549, as amended, not specifically mentioned in this document.

M. Upon the expiration of the probationary period, Underwood's certification shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the MREAC determines that Underwood has violated any term or condition of this Order, the MREAC may, in its discretion, vacate and set aside the probation imposed herein and may impose any other lawful discipline the MREAC shall deem appropriate, including, revocation of said license. No order shall be entered by the MREAC pursuant to this paragraph without any required notice and opportunity for a hearing before the MREAC in accordance with Chapter 536, RSMo, as amended.

N. If the MREAC determines that Underwood has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the MREAC may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

O. If, at any time during the probationary period, Underwood ceases to reside in the state of Missouri, or ceases to maintain his state residential real estate appraiser certification current or active under the provisions of Chapter 339, RSMo, or fails to keep MREAC advised of his current places of residence and business, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.

P. Unless otherwise specified by the MREAC, all reports, documentation, evaluations, notices, or other materials required to be submitted to the MREAC shall be forwarded to: Missouri Real Estate Appraisers Commission, P.O. Box 1335, Jefferson City, Missouri 65102.

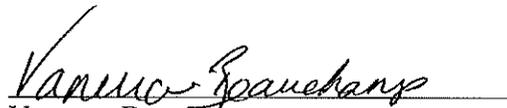
Q. Any failure by Underwood to comply with any condition of discipline set forth herein constitutes a violation of this Order.

11. The terms of this Order are contractual, legally enforceable, and binding and not mere recitals. Except as otherwise contained herein, neither this Order nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

12. The MREAC will maintain this Order as an open record of the MREAC as provided in Chapters 324, 339, and 610, RSMo.

SO ORDERED, THIS 10th day of December, 2015.

**MISSOURI REAL ESTATE
APPRAISERS COMMISSION**



Vanessa Beauchamp,
Executive Director
Missouri Real Estate Appraisers Commission

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

Missouri Real Estate Appraisers Commission)
3605 Missouri Boulevard)
P.O. Box 1335)
Jefferson City, MO 65102-1335)

Petitioner,)

v.)

Jerry Underwood)
620 Francis St.)
St. Joseph, Mo 64501)

Respondent.)

JUN 12 2014
ADMINISTRATIVE HEARING
COMMISSION

Case #: _____ RA

COMPLAINT

Petitioner, Missouri Real Estate Appraisers Commission, by and through the Attorney General of the State of Missouri, and for its cause of action against Respondent, Jerry Underwood, states the following:

1. The Missouri Real Estate Appraisers Commission ("MREAC") is an agency of the State of Missouri, created and established pursuant to Section 339.507, RSMo,¹ for the purpose of executing and enforcing the provisions of Sections 339.500 through 339, RSMo.

¹ All statutory citations are to the Revised Statutes of Missouri, Supp. 2013, unless otherwise noted.

2. Respondent, Jerry Underwood (Underwood), is an adult individual whose registered address is 620 Francis St., St. Joseph, Mo 64501.

3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to Section 621.045, RSMo, and Sections 339.500 through 339.549, RSMo.

4. The Commission is an agency of the state of Missouri created and established pursuant to Section 339.507, RSMo, for the purpose of licensing all persons engaged in the practice of real estate appraisal in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.500 to 339.549, RSMo.

5. Licensee, Jerry Underwood, holds a certification from the Commission as a certified residential real estate appraiser, certification number 2004018160, originally issued on April 11, 2007, which expires June 30, 2014, and which at all times relevant herein is current and active.

Applicable Laws

6. Section 339.532.2, RSMo, Supp. 2013, states in part:

The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser,

state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

* * *

(6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549;

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

* * *

(14) Violation of any professional trust or confidence[.]

7. Section 339.535, RSMo, states:

State certified real estate appraisers and state licensed real estate appraisers shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.

8. The Uniform Standards of Professional Appraisal Practice, 2012-2013 edition (USPAP), promulgated by the Appraisal Standards Board of the Appraisal Foundation, states the following under the Ethics Rule:

Conduct:

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

An appraiser . . . must not perform an assignment in a grossly negligent manner.

9. USPAP states the following under Standard 1:

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.

10. USPAP states the following under 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;

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

(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.

11. USPAP states the following under Standards Rule 1-4:

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:

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

(ii) analyze such comparable sales data as are available to indicate a value conclusion ...

12. USPAP states the following under Standard 2:

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.

13. USPAP states the following under Standards Rule 2-1:

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

Facts

14. On February 14, 2012, Underwood signed two Small Income Property Appraisal Reports on properties located at 204 Black Jack Avenue, Lone Jack, Missouri 64070, owned by Sandra Colson, and 203 Pecan Tree Avenue, Lone Jack, Missouri 64070, owned by Brian and Sandra Colson.

15. Underwood valued both properties at \$200,000 each.

16. At all times relevant to this Complaint, Underwood was required to develop and report the results of Appraisal Report in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2012-2013 Edition. A copy of the Ethics Rule and Standards 1 and 2 is attached to this Complaint as Exhibit A.

17. In preparing the Appraisal Report on 204 Blackjack, Underwood made significant and substantial errors of commission and omission, including but not limited to:

- (a) Underwood failed to report the lot dimensions.
- (b) Underwood incorrectly reported the zoning as “no zoning classification,” when it is listed as “HDR / High Density Residential” on the Lone Jack Zoning Map.
- (c) Underwood failed to make any adjustment for the ages of the comparable sales. As the subject property was built in 2007, while the comparable sale properties were built in 2010 and 2011 and were new at the time of the comparable sales, an adjustment for age was necessary.
- (d) Underwood misplaced the comparable sales on a map of Warrensburg, resulting in an understatement of the distance from the subject property to the comparable properties.

(e) Underwood failed to report or address the fact that the two units in Sales Comparable 1 were sold in two separate sale transactions for 1114A Kimmy Lane and 1114B Kimmy Lane, but listed the combined sales prices as a single transaction.

(f) Underwood failed to provide verifiable comparable rent data, as he only reported rent data as reported to him by the property owner.

(g) Underwood drew his comparable sales from a neighborhood in Warrensburg, Missouri, more than 25 miles away from the subject properties, in a community proximate to a university which was not a comparable rental market, while overlooking comparable sales which, like the subject properties, were located in nearby communities which also served as outlying residential markets for the Kansas City metropolitan area.

18. The Appraisal Report overestimated the value, was not credible, was misleading and/or fraudulent, and was developed and reported in violation of the USPAP Conduct Rule and Standards 1 and 2.

19. Based on Underwood's errors and/or omissions in developing and reporting the results of the Appraisal, he failed to correctly employ those

recognized methods and techniques that are necessary to produce a credible appraisal in violation of USPAP Standard 1 and SR 1-1(a).

20. Based on Underwood's errors and/or omissions in developing and reporting the results of the Appraisal, he performed 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, in violation of USPAP Standard 1 and SR 1-1(c).

21. Based on Underwood's failure to seek comparable sale properties located in areas with market characteristics comparable to the subject property, he failed to analyze such comparable sales data as are available to indicate a value conclusion, in violation of USPAP Standard 1 and SR 1-4(a).

22. Based on Underwood's errors and/or omissions in developing and reporting the results of the Appraisal, he failed to clearly and accurately set forth the appraisal in a manner that will not be misleading, in violation of USPAP Standard 2 and SR 2-1(a).

23. By his conduct of the Appraisal, including exclusive use of sales data ultimately provided by a party involved in the transaction for which the appraisal was completed, exclusion of more proximate and competitive sales from the general Greater Kansas City Metropolitan Area, and use of

comparable sales from one specific development located over 25 miles from the subject in a non-competitive and dissimilar market area, Underwood violated the Conduct section of the USPAP Ethics Rule, by performing an assignment in a grossly negligent manner.

24. Underwood's conduct demonstrates incompetency, misconduct, and gross negligence in the performance of the functions and/or duties of a real estate appraiser, providing cause to discipline his real estate appraiser certification pursuant to Section 339.532.2(5), RSMo.

25. Underwood's conduct violates standards for the development and/or communication of real estate appraisals as provided in or pursuant to Sections 339.500 to 339.549, RSMo, providing cause to discipline his real estate appraiser certification pursuant to Section 339.532.2(6), RSMo.

26. Underwood's conduct demonstrates a failure and/or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, and/or communicating an appraisal, providing cause to discipline his real estate appraiser certification pursuant to Section 339.532.2(8), RSMo.

27. Underwood's conduct demonstrates negligence and/or incompetence in developing an appraisal, in preparing an appraisal report, and/or in

communicating an appraisal, providing cause to discipline his real estate appraiser certification pursuant to Section 339.532.2(9), RSMo.

28. Each of Underwood's USPAP violations constitutes a violation of Section 339.535, RSMo, providing cause to discipline his real estate appraiser certification pursuant to Section 339.532.2(7) and (10), RSMo.

29. Underwood's conduct violates the professional trust and confidence he owed to his clients, the intended users of the appraisal report, and the public, providing cause to discipline his real estate appraiser certification pursuant to Section 339.532.2(14), RSMo.

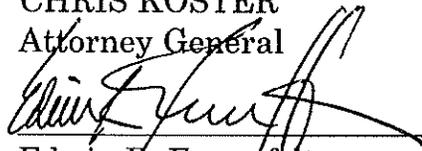
30. Underwood's conduct demonstrates that Underwood rendered appraisal services in violation of the USPAP Ethics Rule, USPAP Standard 1, the USPAP Standards Rules cited in this Count, and Section 339.535, RSMo, providing cause to discipline Underwood's certification as a state-certified real estate appraiser pursuant to Sections 339.532.2(5), (6), (7), (8), (9), (10) and (14), RSMo.

WHEREFORE, Petitioner prays this Administrative Hearing Commission to conduct a hearing in this case pursuant to Sections 621.015 to 621.205, RSMo, and thereafter issue its findings of fact and conclusions of law that the Petitioner may discipline Respondent Jerry Underwood's

certified residential real estate appraiser license under the relevant provisions of Sections 339.500 through 339.549, RSMo, RSMo, and the regulations promulgated thereunder.

Respectfully submitted,

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UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

2012-2013 EDITION

APPRAISAL STANDARDS BOARD



THE APPRAISAL FOUNDATION

*Authorized by Congress as the Source of Appraisal
Standards and Appraiser Qualifications*

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EFFECTIVE:

**January 1, 2012 through
December 31, 2013**

Exhibit A

196 ETHICS RULE

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

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

202 Comment: This Rule specifies the personal obligations and responsibilities of the individual
203 appraiser. An individual appraiser employed by a group or organization that conducts itself in a
204 manner that does not conform to USPAP should take steps that are appropriate under the
205 circumstances to ensure compliance with USPAP.

206 This ETHICS RULE is divided into three sections: Conduct, Management, and Confidentiality
207 which apply to all appraisal practice.

208 Conduct:

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

211 An appraiser:

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

230 Comment: Development standards (1-1, 3-1, 4-1, 6-1, 7-1 and 9-1) address the requirement that
231 "an appraiser must not render appraisal services in a careless or negligent manner." The above
232 requirement deals with an appraiser being grossly negligent in performing an assignment which
233 would be a violation of the Conduct section of the ETHICS RULE.

STANDARD 1

455 STANDARD 1: REAL PROPERTY APPRAISAL, DEVELOPMENT

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

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

463 Standards Rule 1-1

464 In developing a real property appraisal, an appraiser must:

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

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

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

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

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

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

491 Standards Rule 1-2

492 In developing a real property appraisal, an appraiser must:

- 493 (a) identify the client and other intended users;⁵
- 494 (b) identify the intended use of the appraiser's opinions and conclusions;⁶
- 495 Comment: An appraiser must not allow the intended use of an assignment or a client's
496 objectives to cause the assignment results to be biased.⁷
- 497 (c) identify the type and definition of value, and, if the value opinion to be developed is market
498 value, ascertain whether the value is to be the most probable price:
- 499 (i) in terms of cash; or
- 500 (ii) in terms of financial arrangements equivalent to cash; or
- 501 (iii) in other precisely defined terms; and
- 502 (iv) if the opinion of value is to be based on non-market financing or financing with unusual
503 conditions or incentives, the terms of such financing must be clearly identified and the
504 appraiser's opinion of their contributions to or negative influence on value must be
505 developed by analysis of relevant market data;
- 506 Comment: When exposure time is a component of the definition for the value
507 opinion being developed, the appraiser must also develop an opinion of reasonable
508 exposure time linked to that value opinion.⁸
- 509 (d) identify the effective date of the appraiser's opinions and conclusions;⁹
- 510 (e) identify the characteristics of the property that are relevant to the type and definition of value
511 and intended use of the appraisal,¹⁰ including:
- 512 (i) its location and physical, legal, and economic attributes;
- 513 (ii) the real property interest to be valued;
- 514 (iii) any personal property, trade fixtures, or intangible items that are not real property but
515 are included in the appraisal;
- 516 (iv) any known easements, restrictions, encumbrances, leases, reservations, covenants,
517 contracts, declarations, special assessments, ordinances, or other items of a similar
518 nature; and

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*.

STANDARD 1

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

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

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

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

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

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

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

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

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

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

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

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

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

549 Standards Rule 1-3

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

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*.

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

554 Comment: An appraiser must avoid making an unsupported assumption or premise about
 555 market area trends, effective age, and remaining life.

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

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

559 **Standards Rule 1-4**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STANDARD 1

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

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

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

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

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

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

604 Standards Rule 1-5

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

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

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

611 Comment: See the Comments to Standards Rules 2-2(a)(viii), 2-2(b)(viii), and 2-2(c)(viii) for
612 corresponding reporting requirements relating to the availability and relevance of information.

613 Standards Rule 1-6

614 In developing a real property appraisal, an appraiser must:

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

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

¹⁵ See Advisory Opinion 1, *Sales History*.

STANDARD 1

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

STANDARD 2

619 STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING

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

622 Comment: STANDARD 2 addresses the content and level of information required in a report
623 that communicates the results of a real property appraisal.

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

627 Standards Rule 2-1

628 Each written or oral real property appraisal report must:

- 629 (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
- 630 (b) contain sufficient information to enable the intended users of the appraisal to understand the
631 report properly; and
- 632 (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical
633 conditions, and limiting conditions used in the assignment.

634 Standards Rule 2-2

635 Each written real property appraisal report must be prepared under one of the following three options
636 and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal
637 Report, or Restricted Use Appraisal Report.¹⁶

638 Comment: When the intended users include parties other than the client, either a Self-
639 Contained Appraisal Report or a Summary Appraisal Report must be provided. When the
640 intended users do not include parties other than the client, a Restricted Use Appraisal Report
641 may be provided.

642 The essential difference among these three options is in the content and level of information
643 provided. The appropriate reporting option and the level of information necessary in the
644 report are dependent on the intended use and the intended users.

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

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

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

- 653 A party receiving a copy of a Self-Contained Appraisal Report, Summary Appraisal Report, or
 654 Restricted Use Appraisal Report in order to satisfy disclosure requirements does not become
 655 an intended user of the appraisal unless the appraiser identifies such party as an intended user
 656 as part of the assignment.
- 657 (a) The content of a Self-Contained Appraisal Report must be consistent with the intended use of the
 658 appraisal and, at a minimum:
- 659 (i) state the identity of the client and any intended users, by name or type;¹⁷
- 660 Comment: An appraiser must use care when identifying the client to ensure a clear
 661 understanding and to avoid violations of the Confidentiality section of the ETHICS
 662 RULE. In those rare instances when the client wishes to remain anonymous, an
 663 appraiser must still document the identity of the client in the workfile but may omit
 664 the client's identity in the report.
- 665 Intended users of the report might include parties such as lenders, employees of
 666 government agencies, partners of a client, and a client's attorney and accountant.
- 667 (ii) state the intended use of the appraisal;¹⁸
- 668 (iii) describe information sufficient to identify the real estate involved in the appraisal,
 669 including the physical and economic property characteristics relevant to the
 670 assignment;¹⁹
- 671 Comment: The real estate involved in the appraisal can be specified, for example, by
 672 a legal description, address, map reference, copy of a survey or map, property sketch
 673 and/or photographs or the like. The information can include a property sketch and
 674 photographs in addition to written comments about the legal, physical, and economic
 675 attributes of the real estate relevant to the type and definition of value and intended
 676 use of the appraisal.
- 677 (iv) state the real property interest appraised;
- 678 Comment: The statement of the real property rights being appraised must be
 679 substantiated, as needed, by copies or summaries of title descriptions or other
 680 documents that set forth any known encumbrances.
- 681 (v) state the type and definition of value and cite the source of the definition;
- 682 Comment: Stating the definition of value also requires any comments needed to
 683 clearly indicate to the intended users how the definition is being applied.
- 684 When reporting an opinion of market value, state whether the opinion of value is:
- 685 • in terms of cash or of financing terms equivalent to cash, or
 - 686 • based on non-market financing or financing with unusual conditions or
 - 687 incentives.

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*.

STANDARD 2

- 688 When an opinion of market value is not in terms of cash or based on financing terms
689 equivalent to cash, summarize the terms of such financing and explain their
690 contributions to or negative influence on value.
- 691 When an opinion of reasonable exposure time has been developed in compliance
692 with Standards Rule 1-2(c), the opinion must be stated in the report.²⁰
- 693 (vi) state the effective date of the appraisal and the date of the report;²¹
- 694 Comment: The effective date of the appraisal establishes the context for the value
695 opinion, while the date of the report indicates whether the perspective of the
696 appraiser on the market and property as of the effective date of the appraisal was
697 prospective, current, or retrospective.
- 698 (vii) describe the scope of work used to develop the appraisal;²²
- 699 Comment: Because intended users' reliance on an appraisal may be affected by the
700 scope of work, the report must enable them to be properly informed and not misled.
701 Sufficient information includes disclosure of research and analyses performed and
702 might also include disclosure of research and analyses not performed.
- 703 When any portion of the work involves significant real property appraisal assistance,
704 the appraiser must describe the extent of that assistance. The signing appraiser must
705 also state the name(s) of those providing the significant real property appraisal
706 assistance in the certification, in accordance with Standards Rule 2-3.²³
- 707 (viii) describe the information analyzed, the appraisal methods and techniques employed, and
708 the reasoning that supports the analyses, opinions, and conclusions; exclusion of the
709 sales comparison approach, cost approach, or income approach must be explained;
- 710 Comment: A Self-Contained Appraisal Report must include sufficient information to
711 indicate that the appraiser complied with the requirements of STANDARD 1. The
712 amount of detail required will vary with the significance of the information to the
713 appraisal.
- 714 The appraiser must provide sufficient information to enable the client and intended
715 users to understand the rationale for the opinions and conclusions, including
716 reconciliation of the data and approaches, in accordance with Standards Rule 1-6.
- 717 When reporting an opinion of market value, a summary of the results of analyzing
718 the subject sales, options, and listings in accordance with Standards Rule 1-5 is
719 required.²⁴ If such information is unobtainable, a statement on the efforts undertaken
720 by the appraiser to obtain the information is required. If such information is

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*.

- 721 irrelevant, a statement acknowledging the existence of the information and citing its
722 lack of relevance is required.
- 723 (ix) state the use of the real estate existing as of the date of value and the use of the real
724 estate reflected in the appraisal; and, when an opinion of highest and best use was
725 developed by the appraiser, describe the support and rationale for that opinion;
- 726 (x) clearly and conspicuously:
- 727 • state all extraordinary assumptions and hypothetical conditions; and
 - 728 • state that their use might have affected the assignment results; and
- 729 (xi) include a signed certification in accordance with Standards Rule 2-3.
- 730 (b) The content of a Summary Appraisal Report must be consistent with the intended use of the
731 appraisal and, at a minimum:
- 732 Comment: The essential difference between the Self-Contained Appraisal Report and the
733 Summary Appraisal Report is the level of detail of presentation.
- 734 (i) state the identity of the client and any intended users, by name or type;²⁵
- 735 Comment: An appraiser must use care when identifying the client to ensure a clear
736 understanding and to avoid violations of the Confidentiality section of the ETHICS
737 RULE. In those rare instances when the client wishes to remain anonymous, an
738 appraiser must still document the identity of the client in the workfile but may omit
739 the client's identity in the report.
- 740 Intended users of the report might include parties such as lenders, employees of
741 government agencies, partners of a client, and a client's attorney and accountant.
- 742 (ii) state the intended use of the appraisal;²⁶
- 743 (iii) summarize information sufficient to identify the real estate involved in the appraisal,
744 including the physical and economic property characteristics relevant to the
745 assignment;²⁷
- 746 Comment: The real estate involved in the appraisal can be specified, for example, by
747 a legal description, address, map reference, copy of a survey or map, property sketch,
748 and/or photographs or the like. The summarized information can include a property
749 sketch and photographs in addition to written comments about the legal, physical,
750 and economic attributes of the real estate relevant to the type and definition of value
751 and intended use of the appraisal.
- 752 (iv) state the real property interest appraised;

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*, and Advisory Opinion 23, *Identifying the Relevant Characteristics of the Subject Property of a Real Property Appraisal Assignment*.

STANDARD 2

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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.

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

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

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

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

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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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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.²⁸

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- (vi) state the effective date of the appraisal and the date of the report;²⁹

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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.

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- (vii) summarize the scope of work used to develop the appraisal;³⁰

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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.

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When any portion of the work involves significant real property appraisal assistance, the appraiser must summarize the extent of that assistance. The signing appraiser must also state the name(s) of those providing the significant real property appraisal assistance in the certification, in accordance with Standards Rule 2-3.³¹

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- (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;

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*.

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

³⁰ See Advisory Opinion 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*.

- 785 Comment: A Summary Appraisal Report must include sufficient information to
786 indicate that the appraiser complied with the requirements of STANDARD 1. The
787 amount of detail required will vary with the significance of the information to the
788 appraisal.
- 789 The appraiser must provide sufficient information to enable the client and intended
790 users to understand the rationale for the opinions and conclusions, including
791 reconciliation of the data and approaches, in accordance with Standards Rule 1-6.
- 792 When reporting an opinion of market value, a summary of the results of analyzing
793 the subject sales, options, and listings in accordance with Standards Rule 1-5 is
794 required.³² If such information is unobtainable, a statement on the efforts undertaken
795 by the appraiser to obtain the information is required. If such information is
796 irrelevant, a statement acknowledging the existence of the information and citing its
797 lack of relevance is required.
- 798 (ix) state the use of the real estate existing as of the date of value and the use of the real
799 estate reflected in the appraisal; and, when an opinion of highest and best use was
800 developed by the appraiser, summarize the support and rationale for that opinion;
- 801 (x) clearly and conspicuously:
- 802 • state all extraordinary assumptions and hypothetical conditions; and
803 • state that their use might have affected the assignment results; and
- 804 (xi) include a signed certification in accordance with Standards Rule 2-3.
- 805 (c) The content of a Restricted Use Appraisal Report must be consistent with the intended use of the
806 appraisal and, at a minimum:
- 807 (i) state the identity of the client, by name or type;³³ and state a prominent use restriction
808 that limits use of the report to the client and warns that the appraiser's opinions and
809 conclusions set forth in the report may not be understood properly without additional
810 information in the appraiser's workfile;
- 811 Comment: An appraiser must use care when identifying the client to ensure a clear
812 understanding and to avoid violations of the Confidentiality section of the ETHICS
813 RULE. In those rare instances when the client wishes to remain anonymous, an
814 appraiser must still document the identity of the client in the workfile but may omit
815 the client's identity in the report.
- 816 The Restricted Use Appraisal Report is for client use only. Before entering into an
817 agreement, the appraiser should establish with the client the situations where this
818 type of report is to be used and should ensure that the client understands the
819 restricted utility of the Restricted Use Appraisal Report.
- 820 (ii) state the intended use of the appraisal;³⁴

³² See Advisory Opinion 1, *Sales History*

³³ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

³⁴ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

STANDARD 2

- 821 Comment: The intended use of the appraisal must be consistent with the limitation
822 on use of the Restricted Use Appraisal Report option in this Standards Rule (i.e.,
823 client use only).
- 824 (iii) state information sufficient to identify the real estate involved in the appraisal;³⁵
- 825 Comment: The real estate involved in the appraisal can be specified, for example, by
826 a legal description, address, map reference, copy of a survey or map, property sketch,
827 and/or photographs or the like.
- 828 (iv) state the real property interest appraised;
- 829 (v) state the type of value and cite the source of its definition;³⁶
- 830 Comment: When an opinion of reasonable exposure time has been developed in compliance
831 with Standards Rule 1-2(c), the opinion must be stated in the report.
- 832 (vi) state the effective date of the appraisal and the date of the report;³⁷
- 833 Comment: The effective date of the appraisal establishes the context for the value
834 opinion, while the date of the report indicates whether the perspective of the
835 appraiser on the market and property as of the effective date of the appraisal was
836 prospective, current, or retrospective.
- 837 (vii) state the scope of work used to develop the appraisal;³⁸
- 838 Comment: Because the client's reliance on an appraisal may be affected by the scope
839 of work, the report must enable them to be properly informed and not misled.
840 Sufficient information includes disclosure of research and analyses performed and
841 might also include disclosure of research and analyses not performed.
- 842 When any portion of the work involves significant real property appraisal assistance,
843 the appraiser must state the extent of that assistance. The signing appraiser must also
844 state the name(s) of those providing the significant real property appraisal assistance
845 in the certification, in accordance with Standards Rule 2-3.³⁹
- 846 (viii) state the appraisal methods and techniques employed, state the value opinion(s) and
847 conclusion(s) reached, and reference the workfile; exclusion of the sales comparison
848 approach, cost approach, or income approach must be explained;
- 849 Comment: An appraiser must maintain a specific, coherent workfile in support of a
850 Restricted Use Appraisal Report. The contents of the workfile must include sufficient

³⁵ See Advisory Opinion 2, *Inspection of Subject Property*. References to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into USPAP.

³⁶ 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*.

³⁷ See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions*.

³⁸ See Advisory Opinions 28, *Scope of Work Decision, Performance, and Disclosure*, and Advisory Opinion 29, *An Acceptable Scope of Work*.

³⁹ See Advisory Opinion 31, *Assignments Involving More than One Appraiser*.

- 851 information to indicate that the appraiser complied with the requirements of
852 STANDARD 1 and for the appraiser to produce a Summary Appraisal Report.
- 853 When reporting an opinion of market value, a summary of the results of analyzing
854 the subject sales, options, and listings in accordance with Standards Rule 1-5 is
855 required. If such information is unobtainable, a statement on the efforts undertaken
856 by the appraiser to obtain the information is required. If such information is
857 irrelevant, a statement acknowledging the existence of the information and citing its
858 lack of relevance is required.
- 859 (ix) state the use of the real estate existing as of the date of value and the use of the real
860 estate reflected in the appraisal; and, when an opinion of highest and best use was
861 developed by the appraiser, state that opinion;
- 862 (x) clearly and conspicuously:
- 863 • state all extraordinary assumptions and hypothetical conditions; and
 - 864 • state that their use might have affected the assignment results; and
- 865 (xi) include a signed certification in accordance with Standards Rule 2-3.

866 Standards Rule 2-3

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

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

- 870 — the statements of fact contained in this report are true and correct.
- 871 — the reported analyses, opinions, and conclusions are limited only by the reported
872 assumptions and limiting conditions and are my personal, impartial, and unbiased
873 professional analyses, opinions, and conclusions.
- 874 — I have no (or the specified) present or prospective interest in the property that is the
875 subject of this report and no (or the specified) personal interest with respect to the
876 parties involved.
- 877 — I have performed no (or the specified) services, as an appraiser or in any other capacity,
878 regarding the property that is the subject of this report within the three-year period
879 immediately preceding acceptance of this assignment.
- 880 — I have no bias with respect to the property that is the subject of this report or to the
881 parties involved with this assignment.
- 882 — my engagement in this assignment was not contingent upon developing or reporting
883 predetermined results.
- 884 — my compensation for completing this assignment is not contingent upon the
885 development or reporting of a predetermined value or direction in value that favors
886 the cause of the client, the amount of the value opinion, the attainment of a stipulated
887 result, or the occurrence of a subsequent event directly related to the intended use of
888 this appraisal.
- 889 — my analyses, opinions, and conclusions were developed, and this report has been
890 prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- 891 I have (or have not) made a personal inspection of the property that is the subject of
892 this report. (If more than one person signs this certification, the certification must

STANDARD 2

893 clearly specify which individuals did and which individuals did not make a personal
894 inspection of the appraised property.)⁴⁰
895 — no one provided significant real property appraisal assistance to the person signing
896 this certification. (If there are exceptions, the name of each individual providing
897 significant real property appraisal assistance must be stated.)

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

901 In an assignment that includes only assignment results developed by the real property
902 appraiser(s), any appraiser(s) who signs a certification accepts full responsibility for all
903 elements of the certification, for the assignment results, and for the contents of the appraisal
904 report. In an assignment that includes personal property, business or intangible asset
905 assignment results not developed by the real property appraiser(s), any real property
906 appraiser(s) who signs a certification accepts full responsibility for the real property elements
907 of the certification, for the real property assignment results, and for the real property contents
908 of the appraisal report.

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

914 The names of individuals providing significant real property appraisal assistance who do not
915 sign a certification must be stated in the certification. It is not required that the description of
916 their assistance be contained in the certification, but disclosure of their assistance is required
917 in accordance with Standards Rule 2-2(a), (b), or (c)(vii), as applicable.⁴¹

918 Standards Rule 2-4

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

921 Comment: See the RECORD KEEPING RULE for corresponding requirements.

⁴⁰ See Advisory Opinion 2, *Inspection of Subject Property*.

⁴¹ See Advisory Opinion 31, *Assignments Involving More than One Appraiser*.

CAROL BURGESS, HEARINGS SECRETARY
ADMINISTRATIVE HEARING COMMISSION
PO BOX 1557
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INTEROFFICE

IN 

Truman
Building

02 11
004457
MAY 11 1971

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE APPRAISERS)
COMMISSION,)

Petitioner,)

vs.)

JERRY UNDERWOOD,)

Respondent.)

No. 14-0961 RA

DECISION

Jerry Underwood is subject to discipline because his choice of comparable sales properties for an appraisal produced a misleading appraisal report.¹

Procedure

On June 12, 2014, the Missouri Real Estate Appraisers Commission (“MREAC”) filed a complaint seeking to discipline Underwood. On June 14, 2014, we served Underwood with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. With our leave for an extension of time to file, Underwood filed an answer on August 6, 2014. On January 22, 2015, we held a hearing. Assistant Attorney General Edwin Frownfelter represented the MREAC. Underwood represented himself. The matter became ready for our decision on May 14, 2015, the date the last written argument was filed.

¹ The MREAC’s complaint alleges several problems with Underwood’s appraisal reports, but at the hearing and in its brief, the sole remaining alleged cause for discipline was the choice of comparable sale properties.

Findings of Fact

1. Underwood is certified by the MREAC as a residential real estate appraiser. Underwood was originally issued a license as a real estate appraiser on July 8, 2004, and received his certification as a residential real estate appraiser on April 11, 2007. Underwood's certification is current and active and expires June 30, 2016.

2. On February 14, 2012, Underwood signed a small income property appraisal report ("the Appraisal Report" or "the Report") on a property located at 204 Black Jack Avenue, Lone Jack, Missouri 64070, owned by Sandra Colson.² Underwood valued the property at \$200,000.

I. Lone Jack

3. Lone Jack is a small community of about 1,100 people, located in eastern Jackson County, between Kansas City and Warrensburg.

4. Lone Jack is considered part of the Greater Kansas City Metropolitan Area, and Lone Jack properties for sale are listed in the Heartland Multilist, a multilist service ("MLS") operated by the Kansas City Regional Association of Realtors.

5. Lone Jack has a limited number of support facilities. It has police and fire protection and a school system, but employment centers, entertainment options, hospital facilities, and other attractions are located further away, such as in Lee's Summit, which is approximately ten miles west of Lone Jack.

II. The Appraisal Report

A. Underwood's Comparable Properties in Warrensburg

6. At all relevant times, Underwood was required to develop and report the results of the Appraisal Report in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), 2012-2013 Edition.

² Although the complaint also refers to an appraisal report of a property located at 203 Pecan Tree Avenue, Lone Jack, Missouri 64070, owned by Brian and Sandra Colson, the testimony at the hearing and in written argument relate only to the Black Jack Avenue property.

7. In the appraisal of residential income properties, the sales comparison approach is the primary approach used in determining value.

8. No recent comparable sales of residential income properties in Lone Jack were available in 2012, so any appraiser would have had to seek comparable sales in surrounding communities.

9. In his Report, Underwood used three properties as comparable sales, all located in a single neighborhood in Warrensburg, Missouri. The properties were very similar to the subject property in size and floor plan. Underwood identified the distance from the three properties in Warrensburg to the subject property as 22.91 miles.

10. The three Warrensburg properties used by Underwood as comparable sales had gross sale prices ranging from \$179,976 to \$220,125, and adjusted sale prices from \$178,656 to \$218,805.

11. Based on these adjusted sales comparisons, Underwood arrived at an appraised value for the subject property of \$200,000.

12. Underwood also used a cost approach valuation, which led to a value conclusion of \$228,509.

13. Underwood concluded that the comparable sales method was more appropriate, and valued the subject property at \$200,000.

14. Warrensburg is a small city with an approximate population of 20,000.

15. Warrensburg is not considered part of the Kansas City metropolitan area, but as a separate real estate market. Warrensburg is considered a stand-alone community that is self-sustaining, with significant opportunities for employment and a full range of support facilities.

16. Warrensburg properties occasionally appear in the Heartland MLS, but most are listed in the Mid Missouri MLS, covering Johnson County and areas to the east and south.

17. Warrensburg is home to the University of Central Missouri, which in 2011 reported an approximate enrollment of 2,863 full-time students in campus housing and 5,768 non-resident full-time students, as well as faculty and staff, many of whom seek housing in the Warrensburg community. Warrensburg is also located eight miles from Whiteman Air Force base, which provides employment for approximately 8,765 people with 890 on-base housing units, so Warrensburg provides housing opportunities for significant numbers of base personnel.

18. Eternity Village, the neighborhood in which the three comparable sales selected by Underwood were located, is adjacent to the Missouri Veterans Home, which provides additional employment opportunities and demand for rental housing.

B. The MREAC's Expert Witness' Comparable Properties

19. The MREAC's expert witness, Aaron Tobaben, is residentially certified in the states of Missouri and Kansas. He was licensed in Missouri in 2005 and certified in 2006. He primarily confines his practice to the Greater Kansas City Metropolitan Area. Tobaben has not performed an appraisal of any multi-family properties in Warrensburg or Lone Jack.

20. Tobaben performed a "review appraisal" for the subject property. In a review appraisal, the reviewer reads the original appraisal report and work file, and determines whether the reviewer's methodology differs from the methodology used in the original appraisal report. Tobaben identified several duplex properties comparable in size and features to the subject property that were closer to the subject property and in rural communities. Tobaben testified that he found these locations more comparable to Lone Jack than Warrensburg.

21. Tobaben identified Grain Valley, Oak Grove, Pleasant Hill, and Belton as residential communities on the outskirts of the Kansas City metropolitan area that he believed would reasonably compete with Lone Jack for the same pool of potential buyers and renters,

although Belton is a larger community (approximately 20,000 population) and at a greater distance from Lone Jack than the other two communities.

22. Tobaben described Grain Valley and Pleasant Hill as rural communities comparable to Lone Jack . Grain Valley is located 10 miles north of Lone Jack and has a population of approximately 9,000. Pleasant Hill is located approximately seven miles south of Lone Jack and has an approximate population of 7,000.

23. Underwood described Grain Valley as a “city that neighbors three major suburbs with a combined population of 76,690 residents, has four prominent local colleges with an enrollment that is over 65 percent greater.” Tr. at 123. He agreed that Pleasant Hill was comparable to Lone Jack.

24. Tobaben described Belton as less comparable to Lone Jack due to its population of 22,000 and distance of almost 19 miles, but he chose the Belton property because he believed the layout of the property and the location of Belton made the property competitive with Lone Jack in terms of opportunities. Underwood testified that Belton is considered a suburb of Kansas City and is part of the Greater Kansas City Metropolitan Area.

25. Tobaben identified three properties as the best comparable sales:

(a) a property at 1101 Sandy Lane, Grain Valley, Missouri 64029, which was 9.76 miles away and sold for a gross price of \$134,000 with an adjusted value of \$142,900;

(b) a property at 1517 Champion Drive, Pleasant Hill, Missouri 64080, which was 7.11 miles away and sold for a gross price of \$121,000 with an adjusted value of \$140,872; and

(c) a property at 1201 E. 173rd Street, Belton, Missouri 64012, which was 18.97 miles away and sold for a gross price of \$143,600 with an adjusted value of \$142,424.

26. The Pleasant Hill property identified by Tobaben as comparable sale #2 was a short sale, in which the sale price was less than the amount owed on the property. Tobaben made an

upward adjustment of \$18,242 to the value of the Pleasant Hill property to allow for its being a short sale, an amount he calculated as approximately 15% based on a “loose matched-pair” analysis.

27. Underwood had identified the Pleasant Hill sale in his work file, but contended that the sale should not be used because it was a short sale. Underwood had also considered Grain Valley.

28. Based on the adjusted values of the comparable properties he identified, Tobaben derived an appraised value of \$142,000 for the subject property, which is \$58,000 (approximately 29%) less than Underwood’s value conclusion.

29. Tobaben agreed that the Warrensburg properties were comparable in terms of floor plan, age, and other characteristics. But he testified that the Warrensburg comparable sales Underwood used were not the best available comparable sales, due to their distance from the subject market, their location in a different real estate market, and their proximity to employment opportunities and amenities available in a small, self-contained city.

30. Tobaben also criticized the fact that Underwood used the three identical properties in the same neighborhood as the only comparable properties on which he based his value conclusion.

Conclusions of Law

We have jurisdiction to hear this case. Section 621.045.³ The MREAC has the burden of proving by a preponderance of the credible evidence that Underwood has committed an act for which the law allows discipline. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App., W.D. 2012) (dental licensing board demonstrates “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole,

³ Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

that “the fact to be proved [is] more probable than not.” *Id.* at 230. The MREAC meets this burden by substantial evidence of probative value or by inferences reasonably drawn from the evidence. *Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

The MREAC argues there is cause for discipline under § 339.532:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any state-certified real estate appraiser, state-licensed real estate appraiser . . . any person who is a controlling person as defined in this chapter, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

(5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or misrepresentation in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

(6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549;

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549;

(14) Violation of any professional trust or confidence[.]

Section 339.535 states:

State-certified real estate appraisers and state-licensed real estate appraisers . . . shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.

The Uniform Standards of Professional Appraisal Practice, 2012-2013 edition (“USPAP”),⁴ promulgated by the Appraisal Standards Board of the Appraisal Foundation, states the following under the Ethics Rule:

Conduct:

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

An appraiser must not perform an assignment in a grossly negligent manner.

USPAP states the following under Standard 1:

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.

USPAP states the following under 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;
- (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and
- (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually

⁴ Ex. C (comments omitted).

might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

USPAP states the following under Standards Rule 1-4:

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.

USPAP states the following under Standard 2:

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.

USPAP states the following under Standards Rule 2-1:

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[.]

Expert Witnesses

Tobaben is residentially certified in the states of Missouri and Kansas. He was licensed in Missouri in 2005 and certified in 2006. He primarily confines his geographical area to the Greater Kansas City Metropolitan Area. Underwood is also certified by the MREAC as a Residential Real Estate Appraiser. Underwood was originally issued a license as a state-licensed real estate appraiser on July 8, 2004, and received his certification as a certified residential real estate appraiser on April 11, 2007.

Therefore, a threshold issue in this case is: when the opinions of two experienced real estate appraisers differ, who should we believe? Both Tobaben and Underwood are qualified, and § 490.065⁵ allows us to us to consider testimony from “a witness qualified as an expert by

⁵ RSMo 2000.

knowledge, skill, experience, training, or education” when “scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” Underwood is clearly knowledgeable in the area of residential real estate appraisal, and we find his testimony, as well as Tobaben’s, to be helpful in understanding the evidence and determining the facts in issue.

In this respect, this case is similar to *Missouri Real Estate Appraisers Commission v. Funk*, 306 S.W.3d 101 (Mo. App., W.D. 2010). In that case, the court of appeals approved this Commission’s reliance on an appraiser’s testimony about his own appraisals when he expressed opinions different from the MREAC’s expert:

In the present case, testimony regarding Funk’s opinion about the ultimate fact at issue would have probative effect if there was a reasonable basis for it to be accurate and if it was believed. Our continued inquiry, then, is whether Funk established his knowledge of appraisal processes and procedures sufficiently enough for the AHC to rely on his opinion. We find that he did. It is clear from the AHC decision that the AHC examined and relied upon Funk’s significant background in the appraisal profession to determine that he had an adequate foundation as an expert witness to testify on the issue whether the 2007 appraisals conformed to the USPAP and thereby demonstrated knowledge and competence.

Id. at 106-07.

Courts have also recognized that real estate appraisal is a highly subjective field and that differing opinions do not necessarily prove USPAP violations. In *State of Alaska v. Wold*, 278 P.3d 266 (Alaska, 2012), the Alaska Supreme Court reviewed a case brought by the Alaska Board of Certified Real Estate Appraisers (“the Alaska Board”) against Wold, a state-certified appraiser. The Alaska Board based its case on three of Wold’s appraisals reports. The court was critical of the Alaska Board’s expert testimony, particularly that of the following type:

The State thus urges us to infer, from Ferrara’s statement that “[y]ou would expect” the special purpose nature of the marina to be identified in the present context, the conclusion that Wold’s

failure to explicitly identify the marina as “special purpose property” violated the USPAP. **But one expert’s statement of what he considers to be ordinary practice, without additional support, does not provide an adequate analytical basis for identifying the lower bound of acceptable professional conduct as defined by the USPAP.**

Id. at 275 (emphasis added). We agree with this analysis.

Thus, we rely on the testimony of both the appraisers in this case – Underwood and Tobaben – to elucidate the USPAP standards and rules at issue. When there is a conflict between the two, we must simply choose which is more credible on the point at issue. *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).

USPAP Standards

Our assessment of whether Underwood violated USPAP in performing these appraisals is further complicated by the phrasing of USPAP itself, which both parties agree sets the governing standards. Because the USPAP standards are phrased in such general language – “credible” appraisals, “comparable” sales, “not misleading” conclusions – expert testimony is critical to apply them in a meaningful way. On the other hand, expert testimony cannot impose standards that USPAP does not.

We endeavor to read and apply the USPAP standards, if they are not otherwise defined, in accordance with the common sense, dictionary meaning of their words. *State v. Trotter*, 5 S.W.3d 188, 193 (Mo. App., W.D. 1999). As an example, USPAP uses the word “misleading” often, but does not define it. Used as an intransitive verb, as USPAP does, the word “mislead” means “to lead astray : give a wrong impression.”⁶ Accordingly, we define “misleading” as leading to a wrong impression.

⁶ <http://www.merriam-webster.com/dictionary/mislead>.

Finally, it is easy to find fault with a particular aspect of an appraisal, but the Comment to USPAP's SR1-1(c) states: "Perfection is impossible to attain, and competence does not require perfection."⁷ Thus, an isolated mistake or omission in an appraisal may, but does not necessarily, render the appraisal misleading or not credible, and does not necessarily prove a violation of USPAP. When confronted with errors in his own report, Tobaben admitted that the USPAP provides that "perfection is unattainable." Tr. at 86. Tobaben mis-identified the zoning classification – something that he had criticized in Underwood's Report. He also checked two boxes about prior sales of the properties when only one should have been checked, and referred to this as a typographical error.

Analysis of the Report

The MREAC argues that Underwood's Report overestimated the value, was not credible, was misleading and/or fraudulent, and was developed and reported in violation of the USPAP Conduct Rule and Standards 1 and 2.

Tobaben criticizes Underwood's choices of comparables because of the differences between Warrensburg and Lone Jack, including distance, a larger population who would be renting, and more support features. But Underwood also criticizes Tobaben's choices. Underwood testified that he had considered the Pleasant Hill property and decided not to use it because it was a short sale. Tobaben testified:

Q: In your opinion, does the fact that a transaction is a short sale, how does that influence your consideration of that as a suitable comparable?

A: Well, when you look at the market area as a whole, if you're only finding one short sale or two short sales, the odd foreclosure here and there, those probably aren't the best comparables to utilize in the valuation of the property that you're appraising.

⁷ Ex. C at 19.

When there are several short sales, several foreclosures within a given market area, those properties then compete with privately held properties for the same pool of available buyers. Therefore, they become relevant in my opinion.

Tr. at 110-11. Tobaben testified that the Pleasant Hill property was in the latter situation, and he made an adjustment to account for the short sale. The USPAP “question and answer” section states:

There are many appraisal assignments where, in order to achieve credible results, it is necessary to use “distress” (e.g., REO or Short Sales) properties as comparable sales. However, foreclosure sales, defined by *Black’s Law Dictionary* as “the sale of mortgaged property, authorized by a court decree or a power-of-sale clause, to satisfy the debt” are seldom based on market expectations. When there is a glut of distress sales in the marketplace, and those properties are truly comparable to the subject, it would be misleading not to use them as part (or in some cases all) of the basis for a value conclusion.

Ex. 4 at 5. Thus, we find that Tobaben’s choice of the Pleasant Hill property was reasonable, but that does not mean Underwood’s failure to use Pleasant Hill because it was a short sale was incorrect.

Underwood also addressed Tobaben’s choice of Belton, arguing that it is a “city that neighbors three major suburbs with a combined population of 76,690 residents, has four prominent local colleges with an enrollment that is over 65 percent greater.” Tr. at 123.

Underwood testified that Belton is considered a suburb of Kansas City and is part of the Greater Kansas City Metropolitan Area.

Underwood describes the Grain Valley market as “strongly influenced by and situated in the center of an estimated 335,000 residents [eastern Jackson County].” Tr. at 124. He testified that Grain Valley is in Eastern Jackson County and that Eastern Jackson County has a potential labor force of 170,000 people and an employment base of nearly 121,700 job opportunities.

Underwood defended his use of the Warrensburg properties. He testified:

My appraisal contained comparable sales that were physically identical to the subject property with only one exception: GLA⁸ difference of less than 150 feet. The only other difference between the subject and my comparable sales is the location of Lone Jack versus Warrensburg.

Warrensburg is located 50 miles from Kansas City and is relatively isolated from other metropolitan areas and their population and employment influences. Lone Jack, Missouri is located 25 miles from Kansas City and is also relatively isolated from other metropolitan areas and their population and employment influences.

Tr. at 121.

We find both Underwood and Tobaben credible. Underwood's decision to consider Warrensburg properties as comparable sales was not necessarily inappropriate. However, we find that his use of these properties *exclusively* violated several USPAP standards, as set forth below.

A remaining allegation regarding Underwood's choice of comparable sales requires that we infer bad conduct from the fact that the Warrensburg comparable sales allowed Underwood to arrive at a higher figure for the subject properties. We decline to do so. There is no evidence to suggest any improper motive on Underwood's part in selecting those properties.

Violation of Standards/USPAPs – Subdivisions (6), (7) and (10)

Section 339.535

The MREAC argues Underwood failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal in violation of USPAP Standard 1 and SR 1-1(a). We agree. Underwood's use of the three nearly identical properties in the same

⁸ Gross living area.

neighborhood did not produce a credible appraisal. Underwood violated USPAP Standard 1 and SR 1-1(a).

The MREAC argues Underwood performed 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, in violation of USPAP Standard 1 and SR 1-1(c). Since the MREAC abandoned all allegations of error except with regard to the comparable sales, we find no violation of these standards.

The MREAC argues that based on Underwood's failure to seek comparable sale properties located in areas with market characteristics comparable to the subject property, he failed to analyze such comparable sales data as are available to indicate a value conclusion, in violation of USPAP Standard 1 and SR 1-4(a). As stated above, Underwood described how he analyzed the comparable sales data, and rejected several other properties such as those in Grain Valley and Pleasant Hill. We agree with Underwood that the fact that a comparable property was in Warrensburg did not necessarily disqualify it from consideration. But his use of only Warrensburg properties constitutes a failure to analyze the "available" sales data. Underwood violated USPAP Standard 1 and SR 1-4(a).

The MREAC argues that based on Underwood's errors and/or omissions in developing and reporting the results of the Appraisal, he failed to clearly and accurately set forth the appraisal in a manner that will not be misleading, in violation of USPAP Standard 2 and SR 2-1(a). We agree. The value of the subject property using the three Warrensburg properties far exceeded the value of the subject property if he had used even one or two of Tobaben's comparable properties. The Appraisal report was misleading, and Underwood violated USPAP Standard 2 and SR 2-1(a).

The MREAC argues that by excluding more proximate and competitive sales from the general Greater Kansas City Metropolitan Area, and using comparable sales from one specific development located over 25 miles from the subject in a non-competitive and dissimilar market area, Underwood violated the Conduct section of the USPAP Ethics Rule, by performing an assignment in a grossly negligent manner. Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.

Duncan v. Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs, 744 S.W.2d 524, 533 (Mo. App., E.D. 1988). Underwood was not indifferent to a professional duty. He considered the Warrensburg properties as well as other properties in making his choice for comparable sales properties and, at the hearing, defended those choices. The error we have found in choosing all the properties in the same area does not rise to the level of indifference to a professional duty.

Underwood violated USPAPs as follows: Standard 1, SR 1-1(a), SR 1-4(a), Standard 2, and SR2-1(a). He violated § 339.535. We find cause for discipline under § 339.532.2(6), (7), and (10).

Professional Standards – Subdivision (5)

Incompetency is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation. *Tendai v. Missouri State Bd. of Reg'n for the Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005). We follow the analysis of incompetency in a disciplinary case from the Supreme Court. *Albanna v. State Bd. of Reg'n for the Healing Arts*, 293 S.W.3d 423 (Mo. banc 2009). Incompetency is a “state of being” showing that a professional is unable or unwilling to function properly in the profession. *Id.* at 435. Misconduct is the intentional commission of a wrongful act. *Grace v. Missouri Gaming Comm'n*, 51 S.W.3d 891, 900 (Mo. App., W.D. 2001).

The MREAC argues that Underwood's conduct demonstrates incompetency, misconduct, and gross negligence in the performance of the functions and/or duties of a real estate appraiser, providing cause to discipline his real estate appraiser certification. We have one appraisal report before us with one alleged problem. This is insufficient for us to find incompetency. We have already found that Underwood was not grossly negligent. We also find that he did not commit misconduct. There is no evidence that Underwood intentionally used the three Warrensburg properties to inflate the value of the subject property. We believe him when he said he did not do so. We find that his choice to use only the Warrensburg properties was erroneous and led to a misleading valuation of the subject property, but we do not find that he made the choices for an improper purpose.

There is no cause for discipline under § 339.532.2(5).

Failure to Exercise Reasonable Diligence – Subdivision (8)

The MREAC argues that Underwood's conduct demonstrates a failure and/or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, and/or communicating an appraisal. Again, Underwood used reasonable diligence when he searched for and found other properties than the Warrensburg properties, rejected them, and justified his choices at the hearing. There is no cause for discipline under § 339.532.2(8).

Negligence or Incompetence – Subdivision (9)

The MREAC argues that Underwood's conduct demonstrates negligence and/or incompetence in developing an appraisal, in preparing an appraisal report, and/or in communicating an appraisal. Negligence is defined as "the failure to use that degree of skill and learning ordinarily used under the same or similar circumstances by members of [the] . . . profession." *Mirth v. Regional Bldg. Inspection Co.*, 93 S.W.3d 787, 789 (Mo. App., E.D.

2002); *Thiel v. Miller*, 164 S.W.3d 76, 82 (Mo. App., W.D. 2005). We have already found that there is insufficient evidence that Underwood was generally incompetent. But this subdivision allows discipline for a licensee's negligence and incompetence in developing, preparing, or communicating **an appraisal**. Underwood's use of the three Warrensburg properties to the exclusion of any others in preparing the Report was negligent and incompetent.

There is cause for discipline under § 339.532.2(9).

Violation of Professional Trust or Confidence – Subdivision (14)

The phrase “professional trust or confidence” is not defined in Chapter 339, nor has the phrase been defined in the case law. Absent a statutory definition, the plain meaning of words used in a statute, as found in the dictionary, is typically relied on. *E&B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 318 (Mo. banc 2011). The dictionary definition of “professional” is

of, relating to, or characteristic of a profession or calling...[;]...
engaged in one of the learned professions or in an occupation
requiring a high level of training and proficiency...[;
and]...characterized or conforming to the technical or ethical
standards of a profession or occupation....

WEBSTER'S THIRD NEW INT'L DICTIONARY UNABRIDGED 1811 (1986). “Trust” is

assured reliance on some person or thing [;] a confident
dependence on the character, ability, strength, or truth of someone
or something...[.]

Id. at 2456. “Confidence” is a synonym for “trust.” *Id.* at 475 and 2456. Trust “implies an assured attitude toward another which may rest on blended evidence of experience and more subjective grounds such as knowledge, affection, admiration, respect, or reverence[.]” *Id.* at 2456. Confidence “may indicate a feeling of sureness about another that is based on experience and evidence without strong effect of the subjective[.]” *Id.* Therefore, we define professional trust or confidence to mean reliance on the special knowledge and skills that professional licensure evidences. It may exist not only between the professional and her clients, but also

between the professional and her employer and colleagues. *See Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo App. E.D., 1989).

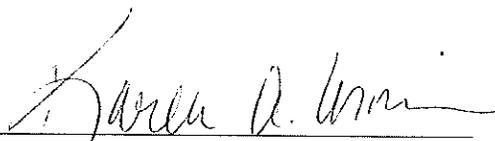
We have found fault only with Underwood's use of the three comparable sales properties to the exclusion of any others. However, there is credible evidence that this choice resulted in an inflated value for the subject property. We find that his use of these properties exclusively constituted a violation of professional trust or confidence.

There is cause for discipline under § 339.532.2(14).

Summary

Underwood is subject to discipline under § 339.532.2(6), (7), (9), (10) and (14). There is no cause for discipline under § 339.532.2(5) or (8).

SO ORDERED on August 27, 2015.



KAREN A. WINN
Commissioner