



The CALIFORNIA Appraiser

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OFFICE OF REAL ESTATE APPRAISERS

Spring/Summer 1999

New BT&H Secretary Appointed

Governor Gray Davis appointed former U.S. Department of Commerce official Maria Contreras-Sweet Secretary of the Business, Transportation and Housing (BT&H) Agency. Contreras-Sweet is the first Latina appointed as Secretary of BT&H. The Secretary has authority over the following state agencies: Office of Real Estate Appraisers, California Housing Finance Agency, California Highway Patrol, California Traffic Safety Program, Department of Alcoholic Beverage Control, Department of Corporations, Department of Financial Institutions, Department of Housing and Community Development, Department of Motor Vehicles, Department of Real Estate, Department of Transportation, and Stephen P. Teale Data Center.

“Maria Contreras-Sweet is a woman of many firsts,” announced Governor Davis. “Now she will be the first Latina to head an agency that is critical to the future of California. Understanding what it means to be a businesswoman and entrepreneur, I am confident Maria will develop policy recommendations to make California a more business-friendly state, particularly to those who are willing to invest their hard earned capital in a start-up company.”

Contreras-Sweet is president of Contreras-Sweet Company, an international management consulting firm servicing Fortune 500 and Service 1000 companies. During her corporate experience, she became the first woman vice



president at Westinghouse at age 30. She later became an equity partner of 7-UP/RC Bottling Company. Breaking another glass ceiling, Contreras-Sweet became the first Latina to serve on the Board of Directors of Blue Cross of California, the state’s largest health insurance company. Contreras-Sweet, 43, was appointed to the Federal Glass Ceiling Commission, was the founding president of Hispanas Organized for Political Equality (HOPE), and has served on numerous boards including the United Way of Greater Los Angeles.

“I look forward to working with Governor Davis to build a bridge between business and government,” said Contreras-Sweet, who has served in both capacities. “Having worked in both large- and medium-sized companies and started my own business, I understand the challenges businesses face each day. I also look forward to developing proposals that will address California’s long-term challenges.”

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**1999 OREA Workshop -
 Demystifying OREA**

On January 28, 1999, the Office of Real Estate Appraisers (OREA) held a workshop entitled "1999 OREA Workshop-Demystifying OREA" in Costa Mesa, California. This one-day workshop covered federal and state laws and



Jerry R. Jolly, OREA's Acting Director, welcomes workshop attendees.

regulations governing the real estate appraiser profession, and OREA's licensing and enforcement processes. Four hours of continuing education credit were offered for those portions of the workshop dealing with federal and state laws and regulations.

In the morning, those attending the workshop learned about applicable laws, how to apply for a real estate appraiser license, upgrade a current license and renew a license. We also shared common deficiency problems with applications. In the afternoon, the audience learned about OREA's regulations, types of investigations performed,

typical allegations and their sources, and types of disciplinary sanctions. In addition, we had a Vendor Fair for exhibitors to display products and services to aid in appraisal practice.



Workshop attendees

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 JERRY R. JOLLY
 ACTING DIRECTOR
 ANTHONY F. MAJEWSKI
 DEPUTY DIRECTOR

We were fortunate to be able to have Claudia L. Gaglione, Esq., of Gaglione & Dolan as our guest speaker at the luncheon. Claudia's firm specializes in the defense of professional malpractice claims. She shared with us some avoidable errors in making appraisals and how appraisers can best protect themselves in the event of a lawsuit.

Those attending the Costa Mesa workshop found it to be informative and very worthwhile! We plan to periodically offer these workshops in different areas of the State and will let you know when we schedule another!



Claudia L. Gaglione, Esq., discusses various issues with the audience after our luncheon at the workshop.

Approved Course Providers

For your information and convenience, course providers that have been OREA-approved are listed on our website. Simply "click" on the *Licensing Requirements* box found on our home page and select either B.E. (basic education) or C.E. (continuing education) courses/providers for the listing of your choice!

License Verification On-Line!

You can now verify active real estate appraiser licenses on-line by using OREA's website! This will not only be convenient for customers of real estate appraiser services, but for the industry as well!

Note . . .

There have been questions concerning an article that appeared in the Spring/Summer 1998 edition of *The California Appraiser* entitled "Age Life Depreciation Errors". Because of this, OREA will be revisiting this subject matter in the next edition of the newsletter.

New Field Audit Program

We are pleased to announce the implementation of OREA's Field Audit Program. If you receive a letter from OREA stating that we are coming to your office for an audit, don't panic!

We want everyone to understand that the goal of this program is to provide licensees with valuable feedback regarding their real estate appraisal practice, not to identify problems for the purpose of taking disciplinary action against licensees. In fact, licensees who have recently been involved in our new Field Audit Program have found it to be very informative, educational and a positive overall experience. Comments from those audited have indicated that this program will improve their day-to-day appraisal business.

If you are selected for a field audit, you will be sent a written notice approximately two weeks prior to the scheduled audit date. Upon arrival at your business premises, our Property Appraiser Investigator will explain the purpose of the audit and what you may expect. After answering any questions that you may have, the investigator will select two appraisals that you have completed within the last 12 months and examine them for general conformance with law, regulations and the Uniform Standards of Professional Appraisal Practice. At the conclusion of the examination, the investigator will provide you with any applicable recommendations for improvement in the performance and reporting of your appraisals. You will subsequently receive a written summary of OREA's recommendations.

If you are audited, it is our sincere hope that you will find our Field Audit Program very beneficial to you and to your real estate appraisal business. So, if you get that notice in the mail, relax—everything is going to be fine!



IN THE SPOTLIGHT



In each issue, we are offering a column that provides a personal profile of an OREA staff member. Each issue spotlights a different staff member to better familiarize our readers with the people working for them.

Penny Bulmer is a Senior Licensing Technician in OREA's Licensing and Enforcement Division. Her responsibilities include reviewing license applications to

determine whether applicants meet the requirements for education and experience, and reviewing criminal background issues. Penny also answers questions and provides guidance to the general public and to individuals seeking to apply for a real estate appraiser license.

Penny began working at OREA in September 1991, making her one of our most seasoned veterans. During her tenure, Penny has also been responsible for reviewing basic and continuing education courses for OREA approval, processing Temporary Practice Permits, and participating in the development of desk procedures to be used by OREA staff.

Prior to state service, Penny was employed at the Weinstocks' Division of Carter Hawley Hale stores for 21 years, where she managed up to 30 data entry operators. She performed duties as a data security administrator for 12 Weinstocks stores and support staff, and developed programs and procedures for processing semiannual retail merchandise inventories.

Penny is a native Sacramentan and ,when away from OREA, enjoys golfing and loves pets.

USPAP '99

On March 31,1999, the newest version of USPAP became effective. The 1999 edition of USPAP contains many changes and it is incumbent upon all appraisers to familiarize themselves thoroughly with these revisions. USPAP is available through The Appraisal Foundation, however, we have summarized the changes as follows:

PREAMBLE

The Preamble was modified to add a definition and further clarification.

ETHICS RULE

The Ethics Provision is now referred to as the Ethics Rule. The section on conduct was modified to include a new paragraph dealing with predetermined opinions and conclusions. In addition, the confidentiality section was modified to include state enforcement agencies as exceptions to the confidential nature of the appraiser-client relationship.

DEPARTURE RULE

The Departure Provision is now known as the Departure Rule and contains new terminology. This rule now permits exceptions to sections of the standards that are classified as "Specific Requirements." Invoking this rule, the standard of performance is that opinions or conclusions be credible. It is important to review the revised comment section of this rule. It is also important to note whether or not the standard is a binding requirement or specific requirement for which departure is permitted.

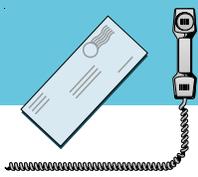
DEFINITIONS

The 1999 USPAP includes several new definitions.

STANDARD 1

Standard 1, Real Property Appraisal Development, contains several changes. Standards Rule 1-2 has been significantly

(Continued on Page 6)



Customer Comment Line

We do appreciate hearing from you! Following are a few of the comments that OREA has recently received.

Bakersfield, California

I spoke with Judy [Cook] today at your office over the telephone and found her to be most knowledgeable and helpful regarding the [Statement of Citizenship] form.

City of Industry, California

John Brenan is outstanding to work with.

Encino, California

As a loan funder for a California lending institution, the federal government's regulations state that I need to disclose to each and every borrower the name, address and telephone number of each and every company who provides services in connection with the transaction and for whose services the borrower has paid a fee. This particularly impacts . . . the appraisals [that] accompany each loan. In most cases the appraiser was chosen by the seller, the buyer, the broker, etc. This person is not known to me or my company as a usual and customary business associate, and thus, most often we have no address or telephone number in our files. What would be most helpful to funders across the state would be [to have each appraisal] contain the name of the appraiser/ appraisal service, the mailing address of the business, including zip code [and] the area code and telephone number of the business. This is in addition to the license number and the other pertinent data on the appraisal.

Inglewood, California

I enjoyed contact with the Office of Real Estate Appraisers.

Irvine, California

A bogus complaint was filed against me, and the attitude and method of investigation by OREA was above and beyond my expectations. Randy Mackay was the investigator and was very professional in his contacts with me. I truly appreciate the manner in which I was treated.

Los Angeles, California

I am very touched by your commitment and in publishing "The California Appraiser."

Los Angeles, California

I am writing to you to compliment you on your courteous, professional and very helpful staff. In the course of being an appraiser, it is necessary for me to interact with a wide variety of state and county agencies. During that time, it has been an extreme rarity to find people employed by any governmental agencies that are as helpful, friendly and willing to go outside the narrow confines of what I perceive their job boundaries to be as [OREA's] staff is.

Manhattan Beach, California

[We] wish to thank [OREA] staff for the excellent seminar . . . We cannot say enough good things about your entire organization. John Brenan has been outstanding in guiding us through the maze of course approvals [and] helping us to interpret the regulations regarding home study courses.

San Clemente, California

Thank you for helping me get my license renewed . . . keep up the good work.

AARO's Fall Conference in California!

This year, the Association of Appraiser Regulatory Officials' (AARO) fall conference will take place in San Diego, California. It will be held at the Marriott Mission Valley, October 2 through October 5, 1999. For more information about the conference, you may contact AARO at (307) 366-2813 or visit their web page at www.aaro.net.

Record Keeping

It has come to our attention that there continue to be a number of misconceptions and questions concerning the issue of record keeping. We would like to address this issue by referring to the *Record Keeping* section of the *Ethics Rule* of the Uniform Standards of Professional Appraisal Practice (USPAP) and answering some of the more common questions asked of us. The *Record Keeping* section states:

“An appraiser must prepare written records of appraisal, review, and consulting assignments including oral testimony and reports-and retain such records for a period of at least five (5) years after the preparation or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last. The written records of an assignment are the workfiles.”

The most common questions that we are confronted with are as follows:

Q: If an appraiser’s employer maintains a complete copy of the appraisal and workfile, is it necessary for the appraiser to maintain a copy?

A: Yes. Even though your employer maintains a complete file copy, a licensed appraiser is *personally* responsible for maintaining a true copy of the appraisal and workfile for the prescribed length of time. Failure to maintain a personal record because the appraiser’s employer maintains one does not alleviate the appraiser’s liability if he/she is unable to access or utilize the records during the required retention periods.

Q: What data should be included in the workfile?

A: OREA suggests that the workfile include a true copy of the appraisal, field notes, sufficient supporting documentation and copies of data source.

Q: Is electronic storage of an appraisal adequate to satisfy the record keeping requirements of USPAP?

A: USPAP does not require multiple storage of the same information, but it requires a workfile for every appraisal assignment. The workfile may include information stored on electronic, magnetic or other media, as well as, a reference to the location of other data used in the appraisal. A common problem with storing files electronically appears to be that

these files may not always be accessible. For example, new software may not be able to read old files, or a hard drive might “crash” and files might be lost.

USPAP ‘99 *(continued)*

modified, in that it is now more specific and deals with intended users and intended use of the appraisal report. There are new sections of this standard that deal more specifically with identifying the scope of work, extraordinary assumptions, and hypothetical conditions in the development of an appraisal. Standards Rule 1-4 now deals more specifically with the three approaches to value. Standards Rule 1-5 has become more restrictive.

STANDARD 2

Standard 2, Real Property Appraisal Reporting, has been modified to distinguish the intended user and intended use throughout. Also, “hypothetical condition” is added as an item to be disclosed in Standard Rule 2-1(c). Standards Rule 2-2 has retained three reporting options, however, the Restricted Appraisal Report is now referred to as the Restricted Use Appraisal Report. The certification in Standard Rule 2-3 was modified.

STANDARD 3

In Standard 3, Real Property Appraisal Review, Development, and Reporting, intended use and intended users are again distinguished. Also, the certification was slightly modified.

In addition to the changes noted above, there were changes to The Statement on Appraisal Standards No. 7, Advisory Opinion 11, Advisory Opinion 12, and Advisory Opinion 15. It is important that all appraisers review these changes. OREA staff members will be available to answer any questions concerning the changes. You may contact OREA at (916) 263-0722. OREA’s office hours are 8 a.m. to 5 p.m., Monday through Friday.

Reminder!

LEGAL PRESENCE VERIFICATION FOR ALL APPRAISERS

You may be aware that OREA now requires proof of legal presence in the United States from all applicants for a real estate appraiser license, including applicants for renewal of an existing license. What you may not know is that OREA can accept your proof of legal presence at any time prior to issuing a license. Therefore, if you plan to apply for any license or to renew your license within the next few years, you may wish to avoid any potential delay in processing your application by submitting documentation now!

For your convenience, the *Statement of Citizenship, Alienage, and Immigration Status for State Public Benefits* form (REA 3030) is located on our web page. If you are unsure of acceptable forms of proof, you may refer to the Spring/Summer edition of *The California Appraiser*, Volume 10, No. 1 or download the information from our website.

Comparable Sales

OREA is aware that confusion exists as to whether or not an appraiser performing a request from a client (or potential client) for comparable sales, commonly referred to as a “comp out” or “range of value,” is in violation of the Uniform Standards of Appraisal Practice (USPAP). This is a common occurrence within the appraisal industry; however, if not handled correctly, the appraiser may be reporting a predetermined value of the subject, which is a violation of the *Management Section* of the *Ethics Rule* of USPAP. Therefore, OREA suggests that the appraiser should:

- Inform the client of the general sales activity that has transpired in the immediate area around the subject property;
- Inform the client that the sales data does not determine a value estimate of the subject property, and the appraiser additionally cannot determine if those sales are truly comparable without conducting a field inspection of the subject and researching the sales data;

- Provide the client a list of sales to assist him or her in the business decision process;
- Decline to indicate a specific, guaranteed, or range of value of the subject property; and
- Communicate to the client the appraiser’s professional obligation to comply with USPAP, since many clients are unfamiliar with the issues of reporting a predetermined value or a direction in value that favors the cause of the client.

OREA suggests that any appraiser asked to perform a “comp out” carefully review the information contained in the *Management Section* of the *Ethics Rule* of USPAP. If you have any questions or need further clarification, you may contact an OREA investigator at (916) 263-0722. OREA’s office hours are 8 a.m. to 5 p.m., Monday through Friday.

APPRAISER-CLIENT RELATIONSHIP

One of the most frequently asked questions of OREA investigators originates from appraisers, homeowners and lenders who want to know how long an appraiser-client relationship lasts, particularly when a new client asks an appraiser to assess a piece of property previously appraised for another client. OREA realizes that this dilemma often surfaces in the “fee appraiser” world and we are often asked to clarify the appraiser-client relationship under the Uniform Standards of Professional Appraisal Practice (USPAP).

For example, in a typical situation an appraiser directly engages with a lender (Lender A) to perform a property appraisal where the appraisal fee is collected, and the assignment is completed and delivered to Lender A. The appraiser subsequently receives an appraisal request for the same property but from another lender (Lender B). In this situation, OREA recommends the following:

- The appraiser should inform Lender B of the appraiser-client relationship with Lender A and of the original appraisal performed on the property.
- The appraiser should inform Lender A of Lender B’s intentions to establish an appraiser-client relationship.
- The appraiser should request and obtain Lender A’s written permission for release of the appraisal to Lender B before accepting the assignment when the appraiser reasonably believes a prior client relationship still exists with Lender A.
- The appraiser should inform Lender B of any nominal administrative costs associated

with the assignment if the appraiser receives the release of the appraiser-client relationship from Lender A. This may include submitting a new cover letter or appraisal transmittal letter indicating full disclosure of the original appraiser-client relationship and changing the original report to reflect that Lender B is the new client. If the original appraiser-client relationship is not fully disclosed, it could be misleading.

- Circumstances may be further complicated if Lender A refuses to release the appraisal to Lender B. The appraiser should ask Lender A if the appraiser-client relationship still exists and if the intended use of the original appraisal is completed. If these issues cannot be determined or remain unclear, it is recommended that the appraiser not accept the assignment from Lender B.
- Since many clients are unfamiliar with the confidential nature of the appraiser-client relationship, it is incumbent upon the appraiser to communicate to the client (or potential client) the professional obligation to comply with USPAP regarding this issue.

OREA suggests that any appraiser asked to perform an appraisal that was previously appraised for another client carefully review the information contained in Advisory Opinion AO-10, the *Appraiser-Client Relationship*, and the *Confidentiality Section of the Ethics Rule* of USPAP. The appraiser should also review Advisory Opinion AO-3, *Update of an Appraisal*, in determining how long the appraiser-client relationship lasts.

If you have any questions or need further clarification, you may contact an OREA investigator at (916) 263-0722. OREA’s office hours are 8 a.m. to 5 p.m., Monday through Friday.

FYI--

All of OREA’s forms and instructions are available for downloading, including the *Change Notification and Miscellaneous Requests form (REA 3011)*, from our website. Our web page address is:

**www.orea.ca.gov
or
www.orea.cahwnet.gov**

Common Appraisal Report Deficiencies

OREA received a request to address the issue of common deficiencies found in appraisal reports, particularly the *Uniform Residential Appraisal Report, Form 1004*. The following are some of the more prevalent deficiencies, which may result in violations of the Uniform Standards of Professional Appraisal Practice (USPAP):

- ✓ The reporting option used (*Self-Contained Appraisal Report, Summary Appraisal Report or Restricted Appraisal Report*) is not prominently stated.
- ✓ Conflicting or inconsistent statements between the report and the addendum, in which the report and/or addendum is boilerplated.
- ✓ No discussion or explanation regarding large adjustments in *the Sales Comparison Analysis*, particularly location, condition, site/view and any “across the board” adjustments.
- ✓ No discussion or explanation for the selection of comparable sales which are predominantly dissimilar in gross living area, location, design/appeal, quality construction and/or condition to the subject property.
- ✓ The final estimate of value is outside the adjusted sales price range of the comparable sales.
- ✓ Comments on the sales comparison section of the report do not indicate which comparables were given the greatest weight or consideration to determine the value estimate.
- ✓ Inadequate descriptions of the features and amenities of the comparable sales to the subject property in the sales grid; “equal,” “similar” and/or “same” are the only indicators in the sales grid.
- ✓ The report excludes comments regarding what items of repair or updating were considered in the condition adjustments of the comparable sales.
- ✓ The report excludes comments regarding special features, recent improvements, repairs needed and its cost to cure of the subject property.
- ✓ The report excludes sales and/or listing history of the subject property and comparable sales.
- ✓ Inconsistencies throughout the report, such as the subject property is proposed, yet “new” or “existing” is

reported, or external or functional obsolescence is indicated in the cost approach yet no obsolescence of the subject property is reported.

OREA is sensitive to the time constraints lenders and clients place on appraisers. However, USPAP prohibits an appraiser from producing a misleading report or rendering services in a careless or negligent manner, regardless of whether or not an error results which significantly affects the final estimate of value. OREA suggests that the appraiser carefully review the information contained in Standards 1 and 2 of USPAP and take the time to proof reports; it will enhance the work product and help avoid problems in the future.

If you have any questions or need further clarification, you may contact an OREA investigator at (916) 263-0722. OREA’s office hours are 8 a.m. to 5 p.m., Monday through Friday.

OREA’s Customer Service Survey

One of the goals of the Office of Real Estate Appraisers (OREA) is to provide you with the best possible customer service. Your input is vital to OREA’s success. Please help us serve you better by taking a few minutes to complete the survey located on page 25. Mail completed survey forms to:

**Office of Real Estate Appraisers
1755 Creekside Oaks Drive, Suite 190
Sacramento, California 95833-3637**

Appraiser Liability: There Ought To Be A Law

Submitted by Steven R. Smith, MAI, SRA

Professional liability may have taken a turn in the road that left the licensed real estate appraiser in the dark. This is the result of two recent events. One is a change in a commonly used real estate form and the other is a court decision. Both changes have to do with liability. Both events are more than two years old, but their impact has yet to be felt.

Few appraisers want to talk about liability. Nevertheless, the question is to whom are we liable? As appraisers, are we only liable to the clients who hired us or to a larger stream of commerce? Based upon these recent changes, it seems that appraisers are now liable to both.

The question exists as to whether this court decision can also be used against those that are advocates and hype value to satisfy the desires of their clients; if so, it will be in either civil litigation or criminal cases. When a subsequent problem arises about property value, depending upon the arena within which the appraisal was performed, the appraiser may be stuck holding the liability bag. Worse yet, liability insurance carriers might not cover the actions of appraisers in the future, unless certain procedures were followed that can be verified upon review.

The First Issue

The California Association of Realtors (CAR) has added an *Appraisal Contingency* to at least two of their Residential Purchase Agreement and Deposit Receipt forms. It says:

APPRAISAL CONTINGENCY: (if checked) This Agreement is contingent upon property appraising at no less than the specified total purchase price. If there is a loan contingency, the appraisal contingency shall remain in effect until the loan contingency is removed, otherwise, the appraisal contingency shall be removed within 10 (or some other number) days after acceptance.

Buyers many times are shown only listings for comparables and may seldom be shown transacted comparable sales. Sales agents do not perform the same level of market value analysis when showing property that appraisers do. Buyers typically do not engage appraisers to establish appropriate prices to pay for properties before they sign purchase agreements. Typically, appraisers work for a lender with whom they have a duty and liability. Appraisers generally concentrate their attention on closed sales and typically may not look at listings or pending sales unless the market is rapidly changing.

Appraisals of homes involved in purchase transactions may now warrant a higher level of due diligence than lenders have allowed for in the past. Because of the “turn-around time” demands of the lender client (or employer), appraisers have often been faced with making what may be an unwritten, but critical, assumption when they appraise homes, which is *the buyer is well informed and operating in his or her own best interest*. This assumption may be wrong. Appraisers typically do not have contact with buyers. Unless appraisers are provided with copies of contracts and their amendments, they have no actual knowledge of the buyers’ concerns. Unless appraisers directly verify comparable sales, they do not know whether the buyers were well informed, what was included in the transactions, their motivations, etc. This results in uninformed appraisal opinions.

This is the case when the appraisal contingency clause has been invoked. A buyer may have serious doubts about the selling price of a piece of property and look to an appraiser to verify that the selling price is equal to the property’s market value. On the other hand, the appraiser is usually trying to get the appraisal done quickly, so as not to receive a demerit for being late. Meeting turn-around time requirements imposed by management or aggressive loan marketing, is a problem that has been here for some time. From a pragmatic point of view, fast delivery has taken priority over providing well-researched, -documented and -analyzed reports.

The Second Issue

The recent court decision that changes the appraiser liability issue in California is one in which testimony was provided for the plaintiff. In a landmark 1996 California opinion entitled *Soderberg v. McKinney* (44 Cal. App. 4th 1760, 52, Cal Rptr. 2d 635), appraiser liability was significantly expanded by a concept called *the Intended Beneficiary Approach*. Using this approach, liability is extended beyond parties to the appraisal contract. It extends to parties that the appraiser may not have met or know about.

Attorney Thomas B. McCullough, Jr. (who represented the plaintiff in the *Soderberg* case) explained the *Intended Beneficiary Approach* as follows:

Under the *Intended Beneficiary Approach*, a real estate appraiser will be found liable to those third parties that they intend to benefit, reach and/or influence by their appraisal report. This is a narrow class of persons who, although not clients, may reasonably come to receive and rely upon the report. The appraiser does not even need to know the parties

by their name or specific identity in order to be held liable to them. In fact, it is enough that the appraiser knows that the recipient of his report intends to transmit it to the third party or class of their parties to be held liable.

In the Soderberg case, this approach was used to hold an appraiser liable to a third-party investor. The loan broker of a second deed of trust had hired the appraiser. However, Mr. McCullough was careful to note that, “the Soderberg ruling could easily be applied in the CAR Appraisal Contingency Clause scenario where the appraiser is hired by the broker or lender; but the appraiser knows that the buyer will be told the results of his appraisal. Just the existence of the Appraisal Contingency Clause should be enough to put the appraiser who has reviewed the purchase contract on notice that the buyer will be relying on his appraisal.” He further stated, “Appraisers must tread carefully in the situation where a buyer has been charged for an appraisal and will be relying upon it in their final purchase decision, even if they never see it.” Appraisers might try to defend against buyer liability by refusing to review purchase contracts, as if that might help relieve them from USPAP provisions and California law.

The Solution

USPAP refers to the use of good procedures but does not define them explicitly. It is the appraisal texts, including *The Appraisal of Real Estate* (9th, 10th and 11th editions), that explicitly spell out the steps to the Market Approach process. In an attempt to absolve ourselves of the responsibility for good procedures, appraisers should consider enacting legislation that limits our liability, similar to that which realtors have in their contracts. It could be a law that favors

better service and delivery times to the clients, and lowers the costs of the appraisal by simply eliminating one step of the process. Specifically, this proposal could constitute a change in the law that eliminates one step of the Market Approach, verification of data.

If, when doing an appraisal for a loan, appraisers were exempted from verifying and validating a sale before they used it in forming an opinion, which could be relied upon by others, their liability could be reduced greatly. Not having to verify the validity of a sale, the terms, motivations, inclusions and exclusions could save time and allow for lower appraisal fees. Transactions could close more quickly and all parties involved would be happy, unless the market took a downturn. In that event, buyers might be unhappy and take action; nevertheless, with the right language, appraisers might be protected from liability to the buyers.

The state of Massachusetts has a law (G.L. c. 184, & 17C) that operates to bar an action arising out of negligence in preparing and appraisal report against a mortgage broker acting as an agent for the mortgage lender, the mortgage lender and the real estate appraiser. This law was recently used to defend a lender and the appraiser from a suit by a buyer (*Macoviak vs. Chase Home Mortgage and others*, 40 Mass, App. Cr. 55, pg 755). Such a law in California should be considered. To get a law like this passed, the appraisal community would probably have to enlist the support of the lending community, since it may not be possible without it.

(The opinions expressed in this article are not in any way to be construed as opinions of the Office of Real Estate Appraisers. The information presented is provided solely by the author.)

The California Appraiser Wants You!

OREA continues to invite its readers to submit articles for consideration for publication in The California Appraiser. Authors need not be appraisers; however, articles should address issues of interest to the appraisal industry.

OREA will review the information submitted and, if appropriate, publish the article in a future edition of The California Appraiser newsletter. All articles are subject to editing for length and content. Articles submitted cannot be returned.

Submit your articles to Tom Morrison, Legislative and External Affairs Coordinator, Office of Real Estate Appraisers, 1755 Creekside Oaks Drive, Suite 190, Sacramento, California 95833-3637.

Disciplinary Action

G **U** **I** **D** **E** **L** **I** **N** **E** **S**
For your information, the following is a breakdown, by level, of violations of the Uniform Standards of Professional Appraisal Practice for which the Office of Real Estate Appraisers disciplines real estate appraisers. The list represents general guidelines for sanction criteria and sanctions, which may be mitigated or aggravated. The criteria are used for determining appropriate discipline. The final determination of the appropriate sanction takes into account all factors involved, as well as the Criteria of Rehabilitation. The guidelines and sanctions are as follows:

LEVEL 1

Sanction Criteria

Minor, insignificant violations, no or minimal damages, violations do not involve ethics or competency, isolated event

Sanction

Warning letter

LEVEL 2

Sanction Criteria

Insignificant damages, technical errors, sloppiness, errors indicate Respondent would benefit from education, Respondent recognized and agreed errors were made, single to few violations

Sanctions

\$250 to \$1,000 fine, 15 hours USPAP, up to 30 hours of specific topics

LEVEL 3

Sanction Criteria

Substantial damages, violations involve competency and/or minor ethics, Respondent would benefit from education

Sanctions

\$1,001 to \$5,000 fine; 15 hours USPAP; up to 45 hours of specific topics

LEVEL 4

Sanction Criteria

Up to high damages, violations involve competency and/or minor ethics, Respondent would benefit from education

Sanctions

\$5,001 to \$10,000 fine, 15 hours USPAP, more than 45 hours of specific topics, suspension optional

LEVEL 5

Sanction Criteria

Significant ethical violations, major damages, gross incompetence, and/or multiple violations

Sanctions

Revocation, fine optional

Did You Know . . .

The total number of licensees in California by License Level:*

| | |
|-------------------------------------------|---------------|
| Trainee License (AT) | 1,108 |
| Residential License (AL) | 1,817 |
| Certified Residential License (AR) | 4,433 |
| Certified General License (AG) | 3,928 |
| Total | 11,286 |

***As of May 14, 1999**

Enforcement Actions

Enforcement actions are based on the totality of circumstances and the merits of each matter on a case by case basis, including the nature and severity of the offenses involved, prior disciplinary actions, if any, and circumstances which support a finding that the offender has been rehabilitated. Violation descriptions may be partial and generalized due to space limitations. For these reasons, cases may appear similar on their face yet warrant different sanctions. For a description of the criteria followed by OREA in enforcement matters, please refer to Title 10, Article 12 (commencing with Section 3721) of the California Code of Regulations. The following actions do not include letters of warning:

Buzarde, Greg L.
AR 012810

Violation of Business and Professions Code, Section 11319. Violation of Title 10, California Code of Regulations, Sections 3702(a)(2), 3705, 3721(a)(2), 3721(a)(6), and 3721(a)(7). Violation of USPAP S.R. 1 and 2, ethics and competency provisions; revocation of appraiser license by state of Nevada for violations of USPAP and failure to provide work files; failure to consider development costs; failure to analyze demand or consider absorption time; failure to consider existing bond debt; failure to state intended use of appraisal; failure to include license number with signature throughout the report; failure to deliver an appraisal report or return the fee. 2/9/99: Issued a public reproof; revocation stayed; license suspended for 45 days effective March 1, 1999; refund appraisal fee of \$500; not practice outside scope of license even on non-federally related transactions; 15 hour USPAP class; 30 hours basic education; submit appraisal log and work samples; review fee of \$275; attend an OREA discretionary conference; \$100 conference fee; \$2,000 fine.

Campbell, Nathaniel
AT 022040

Violation of Title 10, California Code of Regulations Section 3721. Convicted of violation of Penal Code, Section 245(a)(1); assault with a deadly weapon. 10/21/98: License revoked.

Cohn, Mervyn
AL 014028

12/24/98: Resigned license while under investigation.

Cull, William
AG 00174

2/24/99: Resigned license while under investigation.

Culpepper, Christian
AR 022995

Violation of Title 10, California Code of Regulations, Sections 3702 and 3721(a)(2); failure to deliver written appraisal reports or to refund fees. 10/16/98: Issued a public reproof; 15 hour USPAP class; \$2,500 fine.

Culpepper, Christian
AR 022995

Violation of Title 10, California Code of Regulations, Sections 3725 and 3721. Convicted of violation of Penal Code, Sections 243.4(d)(1) and 12031(a); sexual battery and carrying a loaded firearm in a public place. 11/12/98: License revoked.

Kirk, Jerry
AT 023937

Violation of Title 10, California Code of Regulations, Section 3721. Convicted of Violation of California Health and Safety Code, Section 11550(a); use and under influence of controlled substance. 12/14/98: License revoked.

Klofkorn, Alan
AG 003099

Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to properly identify the problem to be addressed; failure to correctly employ recognized method or technique; failure to explain or disclose prior sale of the

(Continued on Page 14)

Enforcement Actions *(continued)*

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| | <p>subject; failure to adequately collect, verify, analyze, describe or reconcile available data; failure to include sufficient information to enable proper understanding of report. 2/4/99: Issued a public reproof; 15 hour USPAP class; 45 hours basic education; \$3,500 fine.</p> |
| Montesano, Anthony J. | <p>Non-licensee. Conviction of misdemeanor violation of Business and Professions Code, Section 11320; conducting an appraisal practice without a license. 2/9/99: Three years summary probation; \$100 restitution fine; 60 hours volunteer work; not conduct appraisals without a valid license; violate no laws; \$400 fine.</p> |
| Norman, Robert L. AG 006862 | <p>Violation of Title 10, California Code of Regulations, Sections 3721, 3702(b) and 3527(a)(3); failure to respond to request for documentation to facilitate an investigation; failure to notify OREA of change in personal contact information. 2/16/99: Resigned under investigation.</p> |
| Olson, Troy AL 008541 | <p>3/18/99: Prior order revoking license on 9/25/98 is rescinded. License re-instated effective 9/25/98.</p> |
| Simmons, Joseph AT 023030 | <p>Violation of Title 10, California Code of Regulations, Sections 3527 and 3721. Conviction of violation of Penal Code Section 273.5(a); willful infliction of corporal injury of a spouse/cohabitant. 10/28/98: License revoked.</p> |
| Tafe, Robert AR 013547 | <p>11/24/98: Resigned license while under investigation; public reproof.</p> |
| Taplin, Allison AG 005553 | <p>Violation of Title 10, California Code of Regulations, Sections 3702 and 3721. Violation of the conduct section of the ethics provision of USPAP; failure to provide appraisal or refund fee. 10/29/98: Issued a public reproof; 15 hour USPAP class; \$2,500 fine.</p> |
| Private Reproof | <p>Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Convicted of violation of Vehicle Code, Sections 23152(b), 23153(b) and 14601.5(a); driving under the influence with a license that has been suspended or revoked. 11/10/98: Issued a private reproof; agreed to not violate any law substantially related to the qualifications, functions or duties of an appraiser through 9/30/2001; agreed to not violate any probation terms ordered by the court through 1/15/2000.</p> |
| Private Reproof | <p>Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to adequately collect, verify, analyze, describe or reconcile available data; failure to adequately support value estimate. 11/18/98: Issued a private reproof; 15 hour USPAP class; \$250 fine.</p> |
| Private Reproof | <p>Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to state reporting option used; failure to adequately reconcile available data; failure to include sufficient information to enable proper understanding of report; failure to properly identify the problem to be addressed. 3/4/99: Issued a private reproof; 15 hour USPAP class; 45 hours basic education; \$1,500 fine.</p> |
| Private Reproof | <p>Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to accurately describe subject property; failure to consider and analyze available data. 11/20/98: Issued a private reproof; 15 hour USPAP class; \$500 fine.</p> |

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| Private Repeval | Trainee licensee. Violation of Title 10, California Code of Regulations, Section 3721. Convicted of violation of Penal Code, Sections 502.7(b)(1) and 502.8; fraudulent use of telephone and avoiding service fees in use of telecom device. 12/31/98: Issued a private reapproval; will not violate terms of probation; 15 hour USPAP class; \$500 fine. |
| Private Repeval | Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; omission of comparable sales available in the subject neighborhood without justification or explanation; failure to adequately collect, verify, analyze, describe or reconcile available data; providing false information to a client. 10/21/98: Issued a private reapproval; 15 hour USPAP class, 30 hours basic education; \$2,500 fine. |
| Private Repeval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of Business and Professions Code, Sections 11320 and 11321 (a) and (b); appraising without a license and indicating that appraiser was licensed. 2/26/99: Issued a private reapproval; 15 hour USPAP class; \$1,000 fine. |
| Private Repeval | Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R.1 and 2; Omission of comparable sales available in the subject neighborhood without justification or explanation; failure to include sufficient information to enable proper understanding of report; failure to have sufficient knowledge of the area to properly appraise the subject property. 12/8/98: Issued a private reapproval; 15 hour USPAP class; 30 hours basic education; submit appraisal log and work samples; review fee of \$275; attend OREA discretionary conference; \$100 conference fee; \$4,000 fine. |
| Private Repeval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to adequately collect, verify, analyze, describe or reconcile available data; failure to analyze prior listing history of subject property; failure to prominently state the reporting option used. 3/4/99: Issued a private reapproval; 15 hour USPAP class; \$750 fine. |
| Private Repeval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to use appropriate appraisal method or technique; failure to include sufficient information to enable proper understanding of report; failure to consider and analyze any current agreement of sale, option, or listing of the property being appraised. 1/25/99: Issued a private reapproval; 15 hour USPAP class, 30 hours basic education; \$500 fine. |
| Private Repeval | Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to accurately describe subject property; failure to adequately support value estimate. 12/2/98: Issued a private reapproval; \$250 fine. |
| Private Repeval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to accurately identify and describe subject property; failure to adequately collect, verify, analyze, describe or reconcile available data. 10/29/98: Issued a private reapproval; 15 hour USPAP class; \$250 fine. |
| Private Repeval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to state appraisal option used; failure to accurately identify and describe subject property; failure to include signed certification statement; failure to consider and analyze pending offer on subject property; failure to use |

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Enforcement Actions *(continued)*

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| | <p>appropriate appraisal method or technique. 2/5/99: Issued a private reproof; 15 hour USPAP class; 45 hours basic education; \$2,500 fine.</p> |
| Private Reproof | <p>Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to prominently state reporting option used; failure to identify and consider the effect on value of personal property; failure to disclose hypothetical condition. 1/8/99: Issued a private reproof; 15 hour USPAP class; 30 hours basic education; \$250 fine.</p> |
| Private Reproof | <p>Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to adequately collect, verify, analyze, describe or reconcile available data; providing of incorrect photographs for comparables; failure to demonstrate sufficient knowledge of the local market. 2/4/99: Issued a private reproof; 15 hour USPAP class; 30 hours basic education; \$1,500 fine.</p> |
| Private Reproof | <p>Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721; failure to provide appraisal or refund fee. 11/3/98: Issued a private reproof; 15 hour USPAP class; \$250 fine.</p> |
| Private Reproof | <p>Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to address functional obsolescence; failure to prominently state appraisal report option used; failure to retain written records of the appraisal; failure to correctly state appraiser's license number; failure to use appropriate appraisal method or technique. 2/11/99: Issued a private reproof; 15 hour USPAP class; 30 hours basic education; \$750 fine.</p> |
| Private Reproof | <p>Expired Licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of Business and Professions Code, Sections 11320 and 22430; appraising without a license and use of a false appraiser license. 4/8/99: Issued a private reproof; \$1,500 fine.</p> |
| Private Reproof | <p>Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to specify the size of the parcels in the site description; failure to properly use the sales comparison approach; failure to sufficiently address exposure time. 1/8/99: Issued a private reproof; 16 hours continuing education; \$750 fine.</p> |
| Private Reproof | <p>Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to properly analyze surplus land; failure to support vacancy rate; failure to consider and analyze available data; failure to adequately analyze rents. 1/15/99: Issued a private reproof; 30 hours basic education; \$1,000 fine.</p> |
| Private Reproof | <p>Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S. R. 1 and 2; failure to state appraisal option used; failure to correctly identify subject property; failure to support the estimated gross rent multipliers and capitalization rates; failure to sign certification statement. 1/8/99: Issued a private reproof; 15 hour USPAP class; 45 hours basic education; \$2,000 fine.</p> |
| Private Reproof | <p>Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of Business and Professions Code, Sections 11320 and 22430; appraising without a license and altering of the state license. 1/14/99: Issued a private reproof; 15 hour USPAP class; \$2,000 fine.</p> |
| Private Reproof | <p>Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to support condition adjustments of comparable sales; failure to adequately analyze, explain or reconcile available data; omission of comparable sales available in the subject neighborhood without justification or explanation;</p> |

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| | failure to accurately identify and describe subject property. 2/11/99: Issued a private reapproval; 15 hour USPAP class; submit appraisal log and work samples; \$275 review fee ; attend an OREA discretionary conference; \$100 conference fee; \$2,500 fine. |
| Private Reapproval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to prominently state reporting option used; failure to adequately collect, verify, analyze, describe or reconcile available data; failure to include sufficient information to enable proper understanding of report. 4/12/99: Issued a private reapproval; 15 hour USPAP class; 30 hours basic education; \$500 fine. |
| Private Reapproval | Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to use appropriate appraisal method or technique; failure to analyze the current agreement of sale and listing of subject property; failure to consider and analyze a prior sale of subject property. 2/19/99: Issued a private reapproval; 30 hours basic education; submit appraisal log and work samples; \$275 review fee; attend an OREA discretionary conference; \$100 conference fee; \$2,000 fine. |
| Private Reapproval | Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to consider and analyze available data; false certification of inspection. 12/7/98: Issued a private reapproval; 15 hour USPAP class; \$1,500 fine. |
| Private Reapproval | Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to properly use appropriate method or technique. 10/28/98: Issued a private reapproval; 15 hour USPAP class. |
| Private Reapproval | Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to adequately collect, verify, analyze, describe or reconcile available data; failure to analyze prior listing history of subject property; failure to prominently state the reporting option used. 3/5/99: Issued a private reapproval; 15 hour USPAP class; \$750 fine. |
| Private Reapproval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failed to report possible structural and water damage of subject property; failure to address the costs to cure or make adjustments to value to reflect condition of subject property. 4/7/99: Issued a private reapproval; 15 hour USPAP class; 20 hours basic education; \$1,500 fine. |
| Private Reapproval | Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Convicted of violation of California Penal Code, Section 242; battery. 12/22/98: Issued a private reapproval; will not violate terms of court ordered probation. |
| Private Reapproval | Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to adequately collect, verify, analyze, describe or reconcile available data; failure to report correct sale price of comparables. 10/22/98: Issued a private reapproval; 15 hour USPAP class; 15 hours continuing education. |
| Private Reapproval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to adjust for superior location and site views of comparable sales; failure to report prior sales history of the subject property; incorrectly reported gross living area of comparable; failure to support the estimated value of |

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Enforcement Actions *(continued)*

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| | <p>the subject property. 1/11/99: Issued a private reapproval; 15 hour USPAP class; 30 hours basic education; submit appraisal log and work samples; \$275 review fee; attend an OREA discretionary conference; \$100 conference fee; \$750 fine.</p> |
| Private Reapproval | <p>Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to accurately identify and describe subject property; failure to correctly employ recognized methods or techniques; failure to address exposure time. 12/29/98: Issued a private reapproval; \$750 fine.</p> |
| Private Reapproval | <p>Trainee applicant. Violation of Title 10, California Code of Regulations, Section 3721; altered work samples submitted with application for real estate appraiser license. 2/10/99: Issued a private reapproval; \$250 fine.</p> |
| Private Reapproval | <p>Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to support adjustments made to the comparable data in the sales comparison approach; failure to collect, verify, analyze and reconcile available data; failure to identify highest and best use; failure to include sufficient information to enable proper understanding of report; failure to properly use or report appropriate appraisal method or technique. 12/24/98: Issued a private reapproval; 15 hour USPAP class; 45 hours basic education; submit appraisal log and work samples; \$275 review fee; attend an OREA discretionary conference; \$100 conference fee; \$2,500 enforcement costs; cease contingent fee operations; 90 day stayed suspension; \$4,000 fine.</p> |
| Private Reapproval | <p>Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to adequately collect, verify, analyze, describe or reconcile available data; failure to include sufficient information to enable proper understanding of the report. 11/3/98: Issued a private reapproval; 15 hour USPAP class; \$500 fine.</p> |
| Private Reapproval | <p>Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Convicted of violation of Penal Code, Section 242; battery. 4/2/99: Issued a private reapproval; violate no law and comply with terms of probation.</p> |
| Private Reapproval | <p>Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to accurately identify and describe subject property; inadequately collected and reported available data; preparation and communication of a misleading report. 4/2/99: Issued a private reapproval; 15 hour USPAP class; 30 hours basic education; \$2,000 fine.</p> |
| Private Reapproval | <p>Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to inspect subject and/or comparables as stated in appraisal report; failure to include sufficient information to enable proper understanding of report; failure to adequately collect, verify, analyze, describe or reconcile available data. 2/17/99: Issued a private reapproval; 15 hour USPAP class; 45 hours basic education; submit appraisal log and work samples; \$275 review fee; attend an OREA discretionary conference; \$100 conference fee; \$1,000 fine.</p> |
| Private Reapproval | <p>Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to properly use or report appropriate method or technique; failure to adequately collect verify, analyze, describe or reconcile available data; failure to include sufficient information to enable proper understanding of report; failure to</p> |

sign certification statement. 1/29/99: Withdraw upgrade application; issued a private reapproval; 15 hour USPAP class; 30 hours basic education; \$800 fine.

Private Reapproval

Applicant for Trainee license. Violation of Title 18, United States Code, Section 2113(b); bank larceny. 11/6/98: Issued a private reapproval; agreed to not violate any law substantially related to qualifications, functions or duties of an appraiser for four years; agreed not to violate the conduct section of the ethics provision of USPAP for four years.

Private Reapproval

Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to accurately describe subject property; failure to properly use sales comparison approach; failure to include sufficient information to enable proper understanding of report. 3/9/99: Issued a private reapproval; 15 hour USPAP class; 30 hours basic education; submit an appraisal log and work samples; \$275 review fee; attend an OREA discretionary conference; \$100 conference fee; \$750 fine.

Private Reapproval

Trainee applicant. Violation of Title 10, California Code of Regulations, Section 3721. Convicted of violation of Title 18, United States Code, Section 201(b)(2)(c); acceptance of a bribe by a public official. 3/9/99: Issued a private reapproval; shall not commit any offenses for two years.

Private Reapproval

Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; omission of comparable sales available in the subject neighborhood without justification or explanation; failed to collect, verify, analyze, and reconcile available data. 12/9/98: Issued a private reapproval; 15 hour USPAP class; \$250 fine.

Private Reapproval

Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to properly use or report appropriate method or technique; failure to adequately collect, verify, analyze, describe or reconcile available data; failure to include sufficient information to enable proper understanding of report; failure to sign certification statement. 1/29/99: Issued a private reapproval; 15 hour USPAP class; 30 hours basic education; submit appraisal log and work samples; \$275 review fee; attend an OREA discretionary conference; \$100 conference fee; \$1,000 fine.

Private Reapproval

Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to accurately identify and describe subject property; failure to base projections of future income and expense on reasonably clear and appropriate evidence; failure to use appropriate appraisal method or technique; failure to include sufficient information to enable proper understanding of report. 2/23/99: Issued a private reapproval; 15 hour USPAP class; 30 hours basic education; \$500 fine.

Private Reapproval

Certified General licensee. Violation of Title 10, California Code of Regulations, Sections 3705 and 3721. Violation of USPAP S.R. 1 and 2; failure to clearly identify departures from USPAP; failure to accurately describe subject property; failure to consider adjustments to get from paper to finished lots; failure to include sufficient information to enable proper understanding of report; failure to use proper certification or affix license number. 10/28/98: Issued a private reapproval; 15 hour USPAP class; 7 hours continuing education; \$500 fine.

Private Reapproval

Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to correctly employ recognized methods and techniques; failure to include sufficient information to enable proper

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Enforcement Actions *(continued)*

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| | <p>understanding of report. 3/18/99: Issued a private reapproval; 15 hour USPAP class; 7 hours continuing education; \$750 fine.</p> |
| Private Reapproval | <p>Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; omission of comparable sales available in the subject neighborhood without justification or explanation; misreporting of distances to comparables; use of a predetermined value. 2/11/99: Issued a private reapproval; 15 hour USPAP class; \$500 fine.</p> |
| Private Reapproval | <p>Trainee licensee. Violation of Title 10, California Code of Regulations, Section 3721. Convicted of violation of California Penal Code, Section 242; battery. 12/29/98: Issued a private reapproval; will not violate terms of probation.</p> |
| Private Reapproval | <p>Trainee applicant. Violation of Title 10, California Code of Regulations, Section 3721. Convicted of violation of California Vehicle Code, Sections 23152(a) and (b), and 23246(a); driving under the influence; driving a vehicle without a certified ignition interlock device 2/5/99: Issued a private reapproval; required to comply with court ordered probation or license will be revoked.</p> |
| Private Reapproval | <p>Trainee applicant. Violation of Title 10, California Code of Regulations, Section 3721(a)(2), altered work sample submitted as part of upgrade application. 3/2/99: Issued a private reapproval; \$250 fine.</p> |
| Private Reapproval | <p>Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to consider and analyze previous sale of subject property; omission of comparable sales available in the subject neighborhood without justification or explanation; inadequately collected and reported available data. 10/29/98: Issued a private reapproval; 15 hour USPAP class; \$1,000 fine.</p> |
| Private Reapproval | <p>Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; omission of comparable sales available in the subject neighborhood without justification or explanation; failure to properly use or report appropriate method or technique. 11/5/98: Issued a private reapproval; 15 hour USPAP class; 15 hours continuing education; \$750 fine.</p> |
| Private Reapproval | <p>Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to correctly employ recognized methods or techniques; failure to adequately verify, analyze, or reconcile available data; failure to include sufficient information to enable proper understanding of report. 12/4/98: Issued a private reapproval; 15 hour USPAP class; 45 hours basic education; \$2,000 fine.</p> |
| Private Reapproval | <p>Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to correctly employ recognized methods or techniques; failure to accurately identify and describe subject property; omission of comparable sales available in the subject neighborhood without justification or explanation; failure to include sufficient information to enable proper understanding of report; failure to disclose performance in the capacity of a mortgage broker on the same subject property. 2/5/99: Issued a private reapproval; 15 hour USPAP class; submit appraisal log and work samples; \$275 review fee; attend an OREA discretionary conference; \$100 conference fee; \$3,250 fine.</p> |
| Private Reapproval | <p>Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of Business and Professions Code, Section 11320; practicing without a license in Texas. 3/11/99: Issued a private reapproval; \$1,000 fine.</p> |

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| Private Repeval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to properly use or report appropriate method or technique; failure to adequately collect, verify, analyze, describe or reconcile available data; failure to include sufficient information to enable proper understanding of report. 1/15/99: Issued a private reapproval; 15 hour USPAP class; restricted to appraising 1-4 unit residential properties; 30 hours basic education; submit sample land appraisals; \$100 review fee. |
| Private Repeval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to adjust for differences in comparables; omission of comparable sales available in the subject neighborhood without justification or explanation; failure to demonstrate sufficient knowledge of the local market. 1/20/99: Issued a private reapproval; 15 hour USPAP class; 30 hours basic education; \$1,000 fine. |
| Private Repeval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to accurately identify and describe subject property; omission of comparable sales available in the subject neighborhood without justification or explanation; failure to correctly employ recognized methods or techniques. 11/23/98: Issued a private reapproval; 15 hour USPAP class; 10 hours continuing education; \$250 fine. |
| Private Repeval | Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to prominently state appraisal option used; failure to adequately collect, verify, analyze, describe or reconcile available data; failure to use appropriate appraisal method or technique. 3/9/99: Issued a private reapproval; 15 hour USPAP class; \$1,000 fine. |
| Private Repeval | Certified Residential licensee. Violation of Title 10, California Code of Regulations Sections 3721 and 3741. Violation of Health and Safety Code, Sections 11350(a) and 11360(a); possession of narcotic controlled substance; possession of marijuana over 1oz. 10/28/98: Issued a private reapproval; two years on probation; two year rehabilitation program. |
| Private Repeval | Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to use appropriate appraisal method or technique; failure to adequately collect, verify, analyze, describe or reconcile available data; failure to include sufficient information to enable proper understanding of report. 10/29/98: Issued a private reapproval; 15 hour USPAP class; \$2,500 fine. |
| Private Repeval | Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to correctly employ recognized methods and techniques; failure to identify and consider appropriate procedures and market information, including physical, functional and external factors; failure to include sufficient information so that the report could be properly understood. 1/8/99: Issued a private reapproval; 15 hour USPAP class; 21 hours basic education; 7 hours continuing education; \$1,000 fine. |
| Private Repeval | Non-licensee. Violation of Business and Professions Code, Sections 11320 and 11321; engaging in a federally related transaction and signing an appraisal without having a license. 11/9/98: Issued a private reapproval; Agreement not to perform federally related transactions or use the title or designation of a state licensed appraiser. |

(Continued on Page 22)

Enforcement Actions *(continued)*

Private Reproval

Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to analyze more similar sales in the subject's neighborhood. 1/8/99: Issued a private reproval; 15 hour USPAP class; \$500 fine.

Private Reproval

Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to correctly employ recognized methods or techniques; failure to consider and analyze available data; failure to accurately identify and describe subject property. 1/21/99: Issued a private reproval; 15 hour USPAP class; 45 hours basic education; \$1,500 fine.

Private Reproval

Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of USPAP S.R. 1 and 2; failure to identify and describe subject property; failure to support highest and best use conclusion; failure to include sufficient information to enable proper understanding of report; failure to report preparation of previous appraisal four months prior; failure to include license number on report. 1/25/99: Issued a private reproval; 15 hour USPAP class; 30 hours basic education; submit appraisal log and work samples; \$275 review fee; attend OREA discretionary conference; \$100 conference fee; \$3,000 fine.

Private Reproval

Certified General licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of Conduct Section of the Ethics Provision of USPAP; failure to provide appraisal or refund fee. 10/29/98: Issued a private reproval; 15 hour USPAP class; \$1,000 fine.

Private Reproval

Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Convicted of misdemeanor violation of Penal Code, Section 487(a); grand theft. 2/18/99: Issued a private reproval; 15 hour USPAP class; complete terms of court ordered probation; \$500 fine.

Private Reproval

Certified Residential licensee. Violation of Title 10, California Code of Regulations, Section 3721. Violation of Business and Professions Code, Section 11321(a); performing appraisals without a valid license. 3/25/99: Issued a private reproval; \$2,000 fine.

Child Support Actions

Heeney, Robert C.
AR 002932

02/16/99: Violation of Welfare and Institutions Code, Section 11350.6. License suspended.

Handy Jr., William A.
AR 004542

03/29/99: Violation of Welfare and Institutions Code, Section 11350.6. License suspended.

Badgley, Charles W.
AR 0025856

03/31/99: Violation of Welfare and Institutions Code, Section 11350.6. License suspended.

Miller, Jeffery A.
AR 006221

03/19/99: Violation of Welfare and Institutions Code, Section 11350.6. License suspended.

Durkee, Murvin R.
AG 002976

03/30/99: License Reinstated. 03/19/99: Violation of Welfare and Institutions Code, Section 11350.6. License Suspended.

Wright, Ernest A.
AR 012494

02/16/99: Violation of Welfare and Institutions Code, Section 11350.6. License suspended.

Rivara, Luigino G.
AR 018221

03/19/99: Violation of Welfare and Institutions Code, Section 11350.6. License suspended.

OREA Targeting ‘Flip’ Transactions

The Office of Real Estate Appraisers (OREA) is working closely with law enforcement agencies throughout the state to aggressively pursue unethical appraisers involved in what are commonly known as “Flip” transactions. In conjunction with various District Attorney Real Estate Fraud units, California Highway Patrol investigators, and other local law enforcement agencies, OREA has been successful in a number of these cases, and is becoming involved in many more new investigations.

Just what is exactly is a “Flip”? A Flip occurs when a party pays the “going price” for a property and then immediately sells or transfers the property to another party at a greatly exaggerated price. The property is appraised at the exaggerated price, a large loan is made based on that appraisal and the seller walks away with the funds. These schemes may also involve real estate agents, mortgage brokers, etc. In addition, there are often “strawmen” (or companies) that take title to the properties temporarily before transferring the title to the final buyer.

Once a wholesale or secondary lender discovers that they have funded a loan in a Flip transaction, they normally attempt to have the originator of the loan buy it back; if this fails, the lender then looks to the appraiser’s errors and omissions insurance policy. The lender may also file a complaint against the appraiser with OREA.

Competent, ethical appraisers will probably never become involved in a Flip transaction. However, appraisers must ensure that they always perform the proper level of due diligence for an assignment. For example, some Flip transactions tend to take place in low-priced neighborhoods that border high-priced neighborhoods. If the appraiser does not perform the required level of due diligence and selects comparables from the higher-priced neighborhoods, then review appraisers, loan underwriters, investigators, etc., will see comparable sales within several blocks of the subject property that appear similar, but are in reality superior properties.

In summary, appraisers may be able to avoid potential involvement in Flip transactions by:

- Ensuring they conform with the Competency Rule of the Uniform Standards of Professional Appraisal Practice (USPAP), by having knowledge of the neighborhoods in which they appraise. If the appraiser does not know a neighborhood well, he or she may not be considered competent to appraise in that neighborhood without taking appropriate steps to become competent.

Many neighborhoods have subtle differences that may not be readily apparent to even the most experienced appraiser. If these differences have a significant impact on value, an appraiser who is unfamiliar with the neighborhood may not recognize them and may make a significant error regarding his or her opinion of value.

- Always searching the Multiple Listing Service (MLS) for a history of the subject property. Although OREA does not require an appraiser to utilize MLS, Standards Rule 1-5 of USPAP requires the appraiser to analyze any prior sales of the subject property that occurred within one year for one-to-four family residential property, and three years for all other property types. In addition, the appraiser must analyze any current Agreement of Sale, option, or listing of the property, if such information is available to the appraiser in the normal course of business.

In a recent Flip case, the subject property was listed for months at \$165,000 and eventually sold for \$150,000. Six days after the \$150,000 transaction closed, an appraiser valued the property at \$360,000 for a new buyer and loan. Public record data sources were obviously not current to the point that a six-day-old transaction for the subject property would appear. Therefore, researching MLS would have provided the necessary history of the property.

- Allowing adequate time to research any problems or “red flags” that appear during the appraisal assignment. Too many appraisers are so concerned with turnaround time that they choose to ignore telltale factors that present themselves. Since appraisers are considered the eyes and ears of the lender, they are expected to research these issues.

When confronted with apparently conflicting sales data, many times there are logical explanations for recent transactions with substantial price increases for a property. A few examples might be foreclosure properties, substandard properties that have gone through extensive upgrading and remodeling, and tax deferred exchanges. Usually, an appraiser can address this in a single paragraph in an addendum to the appraisal report, which could prevent future problems.

We believe that most appraisers are already taking the precautions noted above. However, if you are aware of any appraisers involved in Flip transactions, we strongly encourage you to contact our enforcement staff at (916) 263-0770.

**OFFICE OF REAL ESTATE APPRAISERS
CUSTOMER SERVICE SURVEY**

Since our goal is to provide you with the best possible service, your input is vital to our success. Please help us serve you better by taking a few minutes to answer the questions below. Please return the completed survey to:

Office of Real Estate Appraisers
1755 Creekside Oaks Drive, Suite 190
Sacramento, CA 95833-3637

Thank you for responding.

(Optional)

Name:

Address:

Telephone:

What was the nature of your most recent (within the past 6 months) contact with us? (Please check, as appropriate)

- | | |
|--------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> Licensing assistance | <input type="checkbox"/> General information |
| <input type="checkbox"/> Initial/Upgrade | <input type="checkbox"/> Other: (please explain) _____ |
| <input type="checkbox"/> Renewal | |
| <input type="checkbox"/> Course Approval | <input type="checkbox"/> By phone |
| <input type="checkbox"/> Other: (please explain) | <input type="checkbox"/> In person |
| <input type="checkbox"/> Enforcement assistance | Month/Year: _____ |

| Statements | Check As Appropriate | | | | | |
|------------------------------------------------------------------------------------------------------|----------------------|-------|---------|----------|-------------------|----------------|
| | Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Not Applicable |
| Staff was courteous and helpful | | | | | | |
| Staff provided complete and accurate information | | | | | | |
| A timely response was provided | | | | | | |
| My overall experience was positive | | | | | | |
| In addition, please complete the section below if your contact with us involved licensing assistance | | | | | | |
| The application forms were understandable | | | | | | |
| The application forms were easy to use | | | | | | |
| The Real Estate Appraiser Licensing Handbook was understandable | | | | | | |

Please indicate your type of employment (check only one):

- ___ Independent fee appraiser
- ___ Employee of bank or savings and loan
- ___ Government employee as an appraiser
- ___ Employee of fee shop or consulting firm
- ___ Real estate appraiser employee or accounting firm
- ___ Review appraiser for one of the above
- ___ Other (please explain) _____

Please state license level:

- ___ Certified General (AG)
- ___ Certified Residential (AR)
- ___ Residential License (AL)
- ___ Trainee License (AT)

Other Comments:

OREA

State of California

GRAY DAVIS

Governor

Business, Transportation and Housing Agency

MARIA CONTRERAS-SWEET

Secretary

Office of Real Estate Appraisers

JERRY R. JOLLY

Acting Director

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