SOUTH DAKOTA

Real Estate VIEW — Published by the SDREC

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Spring Caravan 2004!

Don't miss out on a great session with FREE COOKIES AND DRINKS, plus you get 6 hrs of required continuing ed!

Instructor: Marie Spodeck
Course: Caught on Camera and Practicing Safe Agency
Registration Fee: $50.00 (including snacks during morning break)
Class begins at 9:00 a.m.
(Walk in registration begins at 8:15 a.m.)
For access assistance, handicapped persons may call the Commissions office at (605) 773.3600

Ft. Pierre - Holiday Inn - April 26th
Rapid City - Ramkota - April 27th
Spearfish - Holiday Inn - April 28th
Sioux Falls - Ramkota - May 4th and 5th
Brookings - Brookings Inn - May 6th
Aberdeen - Ramada - May 7th

Pre-registration is required to guarantee admission. Failure to register may prohibit your attendance if the class is full. The Commission will retain $10 of any refunded registration fee. Please complete and mail the registration form below along with the registration fee to the S.D. Real Estate Commission at 425 East Capitol, Pierre SD 57501. Registration deadline is 5 days prior to each session.

✂ ----------

S.D. REAL ESTATE COMMISSION
Registration Form
Spring 2004 Educational Caravan

Name_____ License Number and Type_____

_____
(Mailing Address) (City) (State) (Zipcode) (Phone)

Please check which you would like to attend.

- ☐ Ft. Pierre — April 26th
- ☐ Rapid City -- April 27th
- ☐ Spearfish -- April 28th
- ☐ Sioux Falls -- May 4th
- ☐ Sioux Falls May 5th
- ☐ Brookings May 6th
- ☐ Aberdeen May 7th

$50 registration fee payable to SDREC must accompany this form.
PLEASE -- one registrant

From the Director's Desk

Winter is changing into spring and the Real Estate Commission is experiencing change as well. After 17 years of faithfully serving the citizens of South Dakota as a commission member, Jim Berven will be stepping off the Commission. Filling his seat, will be Eileen Fischer, a broker from Pierre. I speak for the staff in saying we will miss Jim and wish him well. We want to congratulate Eileen on her appointment and are looking forward to working with her. Public member Nancy Ekstrum will also be leaving the Commission. Although Nancy was not on the Commission long, she made a very positive impact on the commission members and staff.

The Commission has received correspondence from Cindy Rice Grissom, chief executive officer for Rice Insurance Services Company, regarding coverage for licensed firms. In her letter Ms. Grissom states, "We (RISC) do not sell separate coverage to firm licensees since firm licensees are not required to purchase separate coverage. However, the policy provides coverage to any real estate firm that the insured licensee represents for its vicarious liability for the negligent acts, errors or omissions arising out of professional services by the licensee." If you have questions about this or the processing of refunds to you if your firm has paid a premium to be insured, please contact Rice Insurance Services Company at 1-800-637-7319.

The Legislature has completed another session. Senate Bill 84 was signed by Governor Rounds on February 26, 2004. Effective July 1, 2004 sellers and lessors of residential real property will be required to disclose any prior knowledge of the manufacturing of methamphetamines on the premises. The Real Estate Commission, with assistance from the South Dakota Association of REALTORS®, are in the process of designing a separate disclosure form. Governor Rounds also signed House Bill 1099 on February 26th. This law provides a statute of limitations whereby no action may be brought against a licensed real estate broker, broker associate, or salesperson, or any agent or employee thereof, for malpractice, error, mistake, or omission, whether based upon contract or tort, unless it is commenced within three years of the occurrence of the alleged malpractice, error, mistake, or omission. This bill also includes licensed real estate partnerships, associations, limited liability companies, and corporations. With the passage of this bill, errors and omissions insurance claims could be reduced which may result in premiums remaining at an affordable rate.

The license law book is available on our website at www.state.sd.us/sdrec. You now have a current issue at your fingertips at all times. It never hurts to review our statutes and administrative rules. I seem to find something I never recalled reading before and I've used the book daily for almost 15 years!

Don't forget to register for our Spring Caravan. Antitrust and agency issues are the two topics being presented by Marie Spodek. For those of you who have had the pleasure of being in one Marie's seminars, you already know how interesting her presentations are. Another added bonus to attending is that you will get to meet our new education director Josh Ring. Josh is anxious to be on the road with the Caravan to match faces with the voices he's heard on the phone.

Spring is definitely in the air. It's the time of year to play wisely and with light hearts, treasure moments of beauty and kindness, and remember to *listen* to life all around us. Ralph Waldo Emerson wrote: *"Let the bird sing without deciphering the song."* We need to take the time to do that.

DjN

A Letter from the Chairman

By the time of my writing this, many are no doubt aware that Jim Berven from Watertown ahs left the SD Real Estate Commission after a seventeen year tenure. His absence from the Commission will be sorely felt. I say this, in that we as fellow commissioners and staff, know the energy, and devotion that Jim put forth in his responsibility as a commissioner. He took his commissioner responsibility seriously and devoted much time an effort in preparation for each meeting as well as being a faithful member of the Association of Real Estate License Law Officials. Jim set a high standard for himself and asked nothing less from fellow commissioners in carrying out the duties of protecting the public. When you see Jim, I hope you will thank him for his hard work and devotion to our industry and profession.

As we move on, tow new commissioners will fill the responsibilities of the South Dakota Real Estate Commission. Dee Jones Noordermeer, is relatively new to her position as Executive Director, but certainly not inexperienced and already has the office well-in-hand with a very capable staff. I am confident of the ability of the South Dakota Real Estate Commission in carrying out the responsibility of protecting the public, and also in working with the South Dakota Associations of REALTORS and others in providing an atmosphere for professional improvement of our licenses.

Loren Anderson,
Chairman

New Licensees

The South Dakota Real Estate Commission would like to welcome the following new licensees.

Broker
Janssen, Marlin - Hawarden, IA
Manning, Joy E - Newcastle, WY
Vander Werff, Richard - Sanborn, IA

Broker Associate
Anderson, John P - Sioux Falls
Batka, Kenneth A - Spearfish
Berry, Kathryn J - Rapid City
Bertolotto, Robert E - Sturgis
Brady, Sean D - Vermillion
Byrd, Diane K - Rapid City
Earhart, Lisa L - Sioux Falls
Fritz, Tyler J - Sturgis
Hammink, Nicolien - Brookings
Hegg Zeuger, Kristen - Sioux Falls
Hespe, Nancy J - Sioux Falls
Hetland, Deanna R - Mitchell
Jacobs, Donna R - Sioux Falls
Johnson, Paul E - Madison
Karinen, Audrey - Rapid City
Kelley, Clark M - Sioux Falls
Knealing, Amy L - Sioux Falls
Kneip, Pamela A - Sioux Falls
Larson, Verlyn N - Sioux Falls
Lee, James L - Sioux Falls
Lien, Todd H - Sioux Falls
Martin, Daniel L - Rapid City
Nussbaum, Kelly - Brandon
Paradis, Steven B - Rapid City
Preston, James F, Hermosa
Schmautz, Rhonda J - Belle Fourche
Schroeder, Lester C - Spearfish
Shaffer, Jennifer L - Sioux Falls
Thompson, Brenda L - Wentworth
Vetter, Eric L - Aberdeen
Vold, Jan M - Britton
Wintersteen, Jeena J - Rapid City
Young, Polly J - Spearfish

Reg. Home Inspector
Himle, Norman - Spearfish
Kokenage, Brent - Sioux Falls
Pitt, Kenneth A - Belle Fourche

Res. Rental Agent
Icyaliho, Manzi J - Sioux Falls
Rugamaba, Patrick M - Sioux Falls

Salesperson
Bolton, Roger J - Sioux City, IA
Griffith, Steven H - Sioux City IA
Hatterman, Todd J - Sanborn, IA
Knust, Brian S - Neligh, NE
Kruse-Lenz, Dana J, Sioux City, IA
Urquidi, John - Sioux City, IA

Governor Rounds Appoints Eileen Fischer

On Friday March 19th- Governor- Rounds appointed Eileen Fischer of Pierre South Dakota to the Real Estate Commission. She will be filling the seat vacated by Jim Berven who stepping down from the commission.

Eileen was born in Sioux Falls, South Dakota and spent her childhood there before settling in Ft. Pierre. She has been married to her husband Karl for 40 years. Eileen has four children and six grandchildren.

Eileen is the co-owner of Fischer Rounds and Associates with her husband Karl where she is the responsible broker. She has been active as a real estate agent since 1976. Eileen is also very active in the Central Board of REALTORS ® and has previously been honored as the REALTOR ® of the year by the Central Board.

Eileen is also very passionate in helping her local community. She has been on the board for St. Mary's Hospital for ten years. She has also been active on the Ft. Pierre City Commission for six years. Eileen has also out reached across the entire state with her sixteen years of service on the board for South Dakota Public Broadcasting.

Eileen is very excited about being appointed to the Commission. After working for close to thirty years on the transaction side of real estate she is looking forward to working the regulatory side. She feels that it will be an eye opening experience looking from the inside out.

We would like you to help us welcome Eileen to the Commission as we all look forward to working with her.

Attention Home Inspectors

If you are listed as a registered home inspector and have completed your 100th inspection do not forget to contact the South Dakota Real Estate Commission to have your license upgraded to a licensed home inspector status.

South Dakota Real Estate VIEW

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THE COMMISSION AND STAFF
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Loren Anderson, Vice-Chair ..... Yankton
Brian Jackson, Member ..... Pierre
Charles Larkin III, Member..... Watertown
Nancy Ekstrum, Member..... Philip
Dee Jones Noordermeer,
Executive Director..... Pierre
Josh Ring,
Education Director..... Pierre
Norma Schilling, Secretary..... Pierre
Nancy Peck, Auditor ..... Pierre
Tim Buseman, Auditor .....Sioux Falls

Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because they may be of interest to the readers.

The Commission Would Like to Thank Jim Berven for 17 Years of Service

Downpayment charities see HUD challenge, What will be the impact of zero-down FHA?

Sales associates working with first-time and marginally qualified home buyers need to pay attention to what's happening in the charitable downpayment sector of the lending industry, where the altruism could end up in a face off with the federal bureaucracy in their respective campaigns to help the poor.

In the last few months, the Department of Housing and Urban Development has launched two new initiatives to assist low-income buyers: It has authorized $200 million to be set aside for the charitable gifts to buyers who cannot scrape together a downpayment; and it has asked that FHA be modified to include loans with zero downpayments.

Both programs could directly impact the work of the charitable non-profits that also are attempting to help out the poor - yet they are loath to criticize government interference.

There are now dozens of downpayment gift charities that basically work the same way. Sellers donate 3 to 5 percent of their home's listing price to a charity. The charity extracts a fee, then donates the money back to the buyer. (By law, sellers are prohibited from giving the buyers the downpayment).

The largest private charity groups, the Nehemiah Foundation in California and the AmeriDream in Maryland, have found themselves praising the HUD effort while wondering if it will do more harm than good.

Says AmeriDream CEO Ann Ashburn of the zero-down FHA loan proposal; "We could not be more pleased that President Bush recognizes the enormous need to help low and moderate income wage earners purchase homes.

"Our concern, however, is based on our years of experience in dealing with first time home buyers, many of whom have limited ability to meet qualifications for a home mortgage, a loan the represents the biggest single credit undertaking of their lives.

"We believe that it is much better to enable these home buyers to purchase homes using gift funds for heir down payment rather than saddling them with the additional debt represented by a loan at greater than 100 percent of the home's value.

"Such a loan, while enabling some to purchase a home without ad won payment, has the effect of increasing the financial burden on families and limiting their ability to qualify for additional credit in the future. A mortgage at 103 percent of a home's value has the effect of skewing a consumer's debt to income ration - a critical factor in most lenders' decision to qualify a buyer for a home loan."

The Nehemiah Foundation also found itself applauding the governments' new awareness of the downpayment barrier to home ownership and conceded HUD's initiative could put the private charities out of business. "The Nehemiah Corporation is proud to support the President and Congress in their pursuit of helping more Americans obtain a piece of the American Dream," said CEO Scott Syphax. "This is an encouraging stop forward, but more is still needed."

The concern may be premature. The zero-down FHA change has not yet been approved, and HUD's move into the charitable gift-giving business is limited, at best.

HUD has allocated only $200 million for its effort, enough to assist about 40,000 new buyers.

On an annual basis the private charities help fund 250,000 home purchases with gifts totaling in the billions of dollars.

(This article was republished with permission from ALQ Real Estate Intelligence Report, Volume 15, no. 3, February 2004).

Fair Housing Advertising: What You Can and Can't Say

by Blanche Evans

It's all right to advertise a 'bachelor apartment' but you'd better not suggest that only bachelors apply to rent or buy, or you might be in violation of the Fair Housing Act's advertising guidelines enforced by branches of the Fair Housing Offices in each state.

Confused? You're not alone. Acceptable terms and phrases may seem arbitrary to you, but as a housing advertiser, you'd better know which ones can spark a complaint by consumers because many words aren't no-no's until

they offend someone, and then it's too late.

So if you've ever wondered whether it's acceptable to call the biggest bedroom in the house the "master," or to call a third-floor apartment a "walk-up," or to call a gated community "exclusive," then this article is for you.

Section 804(c)

According to the Guidance Regarding Advertisements under 804(c) of the Fair Housing Act, Section 804(c) of the Act "prohibits the making, printing and publishing of advertisements which state a preference, limitation or discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin."

"The prohibition applies to publishers, such as newspapers and directories," continues Section 804(c) as well as to persons and entities who place real estate advertisements. It also applies to advertisements where the underlying property may be exempt from the provisions of the Act, but where the advertisement itself violates the Act. See 42 U.S.C. 3603 (b).

"Publishers and advertisers are responsible under the Act for making, printing, or publishing an advertisement that violates the Act on its face," intones Section 804(c). "Thus, they should not publish or cause to be published an advertisement that on its face expresses a preference, limitation or discrimination on the basis of *race, color, religion, sex, handicap, familial status, or national origin.*

The advertising guidelines do not go into particular terms or phrases that violate Fair Housing codes, which means it is incumbent upon advertisers (that's you) and publishers (newspapers, real estate books, and yes, your local MLS, etc.) to use common sense.

Guideline examples

Unfortunately, common sense is only attained the hard way sometimes, so the Fair Housing code mentions some specific examples that have already met the complaint test:

 Race, color, national origin. Real estate advertisements should state no discriminatory preference or limitation on account of race, color, or national origin. Use of words describing the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms (i.e, white family home, no Irish) will create liability under this section.

However, advertisements which are facially neutral will not create liability. Thus, complaints over use of phrases such as 'master bedroom,' 'rare find,' or 'desirable neighborhood' should not filed.

 Religion. Advertisements should not contain an explicit preference, limitation or discrimination on account of religion (i.e. no Jews, Christian home). Advertisements which use the legal name of an entity which contains a religious reference (for example, Roselawn Catholic Home), or those which contain a religious symbol, (such as a cross), standing alone, may indicate religious preference. However, if such an advertisement includes a disclaimer (such as the statement "This Home does not discriminate on the basis of race, color, religion, national origin, sex, handicap or familial status") it will not violate the Act. Advertisements containing descriptions of properties (apartment complex with chapel), or services (kosher meals available) do not on their face state a preference for persons likely to make use of those facilities, and are not violations of the Act.

The use of secularized terms or symbols relating to religious holidays such as Santa Claus, Easter Bunny, or St.Valentine's Day images, or phrases such as Merry Christmas, Happy Easter, or the like does not constitute a violation of the Act.

 Sex. Advertisements for single family dwellings or separate units in a multi-family dwelling should contain no explicit preference, limitation or discrimination based on sex. Use of the term master bedroom does not constitute a violation of either the sex discrimination provisions or the race discrimination provisions. Terms such as "mother-in-law suite" and "bachelor apartment" are commonly used as physical descriptions of housing units and do not violate the Act.

 Handicap. Real estate advertisements should not contain explicit exclusions, limitations, or other indications of discrimination based on handicap (i.e., no wheelchairs). Advertisements containing descriptions of properties (great view, fourth-floor walk-up, walk-in closets), services or facilities (jogging trails), or neighborhoods (walk to bus-stop) do not violate the Act. Advertisements describing the conduct required of residents ("non-smoking", "sober") do not violate the Act. Advertisements containing descriptions of accessibility features are lawful (wheelchair ramp).

 Familial status. Advertisements may not state an explicit preference, limitation or discrimination based on familial status. Advertisements may not contain limitations on the number or ages of children, or state a preference for adults, couples or singles. Advertisements describing the properties (two bedroom, cozy, family room), services and facilities (no bicycles allowed) or neighborhoods (quiet streets) are not facially discriminatory and do not violate the Act.

NAR says keep it simple

Still not sure what's safe to say or not? Take a tip from the National Association of Realtors' Office of Legal Affairs, and simply keep the focus on the property and off of people in your ads.

Avoid the following, say the NAR legal eagles:

 Using words or phrases that convey the preference of one group over another. When in doubt, use words that describe features on the property ("near six-mile paved exercise trail through woods") rather than the buyers who might want to use the feature ("great for joggers").

 Describing the dwelling, area, or building residents with words that relate to race, color, religion, age, familial status, or national origin ("Hispanic neighborhood" or "adult building")

 Using catchwords such as "exclusive," "private," or "integrated" that convey preferences for one group over another or send signals about a community's makeup.

 Making references to well-known racial, ethnic, or religious landmarks nearby.

More resources

For more information, continue to check www.HUD.gov the Fair Housing Act for updates to the guidelines. "We are currently reviewing past guidance from this office and from the Office of General

Counsel and will update our guidance as appropriate," says the Fed.

Also, visit your state or local association's website. Search under "Fair Housing advertising."

If your state doesn't offer this service, try Google.com using the same search words. Google produced this resource - an actual word and phrase list compiled by the Miami Valley Fair Housing Center. Visit Realtor.org for additional articles and tips on Fair Housing advertising.

Published: December 29, 2003

(This article was republished with permission from Reality Times www.realitytimes.com).

In Memoriam

The South Dakota Real Estate Commission extends it's sincerest sympathy to the families and friends of the following licenses who recently passed away:

Wayne Jares - Mitchell

Visit us on the Web

www.state.sd.us/sdrec

You can find a plethora of information on our web page from forms and supplemental guides to our frequently asked question section. Just type in the above URL and save it as a favorite to have all of that information at your fingertips 24hrs a day

APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Department of Revenue and Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquires can be directed to Sherry Bren, Program Administrator, 445 East Capitol, Pierre, SD 57501, 605-773-4608

Appraiser Certification Program Mission – Purpose – Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

USPAP Q & A February 2004, Vol. 6, No. 2

Question 1. As a condition of engagement, a financial institution requires that I disclose any prior appraisals I have completed on the subject property. If I disclose that I have previously appraised the subject property, am I violating USPAP?

Question 2. Standards Rule 1-3 begins by allowing departure, but then the word "must" precedes the two requirements. This situation also occurs in other Standards Rules (e.g., SR 7-3). In such cases, may I depart, or does the word "must" make these requirements binding?

Question 3. A potential client has asked me to complete a form indicating what my appraisal fees would be for different assignments. The form asks me to indicate my appraisal fees according to appraised value, e.g., to list the fee for assignments with appraised values between $100,000 and $299,000, $300,000 to $499,000, etc. Is it aviolation of USPAP to quote fees in this manner?

Answers to the above questions can be found at: www.appraisalfoundation.org

Review of Cases As of February 13, 2004

For the period January 1, 2004 through February 13, 2004 there have been three (3) upgrades and two (2) complaints submitted to the Department. Upgrade: Two (2) upgrades are pending and one (1) upgrade has been issued. Complaints: Two (2) complaints are pending. (The complaints were filed by a lender and a consumer.)

For the period January 1, 2003 through December 31, 2003 there have been seven (7) upgrade applications, three new applications claiming experience, and five complaints submitted to the Appraiser Certification Program. Upgrade: Six (6) upgrades have been issued and one (1) upgrade is pending. New applicants claiming experience: Three new certificates have been issued. Complaints: Two (2) complaints are pending and three (3) complaints were disposed of by settlement agreement. (The complaints were filed by an attorney, an appraiser, anonymous, and two consumers.)

New Licensees February and March 2004

Charles G. King, State-Certified General (reciprocity) – Mobile, AL
John A. Kilpatrick, State-Certified General (reciprocity) – Seattle, WA
Michael D. Burns, State-Registered – Rapid City, SD
Jane M. Verba, State-Registered – Sauk Centre, MN
Allan Hall, State-Registered – Brandon, SD
Joe Keune, State-Registered – Rapid City, SD
Daniel R. Regan, State-Registered – Rapid City, SD
Pamela Severance, State-Registered – Huron, SD

Advisory Council New Members

The Secretary of the Department of Revenue and Regulation appointed Jerald Hulm to a four-year term to serve as the western region state-certified general appraiser member of the advisory council effective February 26, 2004. Advisory Council meetings are public and welcomes the opportunity to hear from appraisers, users of appraisal services, or the public in general regarding the administration of the appraiser program.

Using Trainees – The Safe Way

by Robert C. Wiley, President,
Liability Insurance Administrators,
and Claudia L. Gaglione,
Gaglione & Dolan.

(The following article is reprinted courtesy of Robert C. Wiley, Liability Insurance Administrators.)

Lower interest rates have generated so much work that professional appraisers everywhere are struggling to keep up. Many of these appraisers hire trainees as a solution to meeting their client commitments. While this may appear to be a good solution, be aware of the potential risks, and subsequent costs, to your firm.

Exposure In the past it was not unusual for a licensed appraiser to hire and supervise one or two trainees. Today, it's not uncommon to see five to 10 trainees under one licensed appraiser. With the added trainees, we often see a single licensee signing as many as 1,500 appraisals per year. One only has to look at these statistics to understand the increased exposure.

We now have claims that are the result of a supervising appraiser doing nothing more than signing off on a report improperly completed by a trainee. In addition to the risk of legal action, improper supervision of trainees may result in the loss or restriction of your license.

Regulations Most state appraiser boards regulate trainees and have established guidelines for the supervising appraiser. When working with trainees, be sure you know the answers to these questions:

- If the trainee is performing the inspection, should you, as the supervising appraiser, be in attendance?
- Should the trainee's name be mentioned in the report as someone who assisted in the preparation?
- Should the trainee sign the report?
- Should you sign the report indicating your review, even though you did no inspection?

Since the answers vary from state to state, it is up to the supervising appraiser to adhere to their state's regulations. If you cannot confidently answer these questions, check with your state appraiser board before hiring trainees.

If done properly, the addition of trainees to your appraisal practice may allow you to provide a cost-effective increase in volume and maintain the quality you have worked to achieve. Before looking for trainee candidates, you must commit to make available many hours of training and supervision.

What you can do On the average, an appraisal claim is submitted two to three years after the appraisal is completed. By that time, the trainee who helped with the assignment in question may no longer be available. It is critical that you coach your trainees to produce files that are well documented, with legible notes and printouts of all research data. Here's what to add to your trainee's checklist:

- Readable notes from the field inspection, including clarification of anything that could generate a question;
- Printouts of information from public records;
- Printouts of data used for comps presented, with notes on reasons for selection;
- Printouts of data on comps not used, with notes on reasons for rejection; and
- Interior and exterior photos.

Remember: you will be held accountable for your trainee's work. Be sure that you understand everything in the file before affixing your signature. The time it takes to do this is well worth it. To the entire world, you are responsible for any work product that bears your name.

Your standard of excellence Coaching a trainee can provide you with a good review of the procedures necessary for proper file documentation. If you are a coach, be a reliable one. Contribute meaningfully to the development of your trainee's career. The quality of the training you give is a reflection of your professionalism.

Telltale Claims

Actual Claims from LIA Files

The trainee cover up One particular claim involving a trainee will always stick in our minds. A lender sued an appraiser for over-appraising a commercial building. It was claimed that the building was virtually worthless because it had no plumbing or electricity. The loan balance would not have been recovered if the necessary improvements were to have been made. The lender argued that the loan never would have been approved had the true building conditions been reported.

Initially, the appraiser seemed baffled by the allegations. First, what he thought was a bathroom turned out to be a closet. He found the door closed and did not go inside. The matter of the electricity was another story. He swore that the building was occupied with people, sitting at desks, working on computers and adding machines and that lights were on.

After further investigation, we learned that the building in question shared a common wall with the building next door. The same individual owned

both buildings. People who worked at the building in question used the bathroom next door, and extension cords were run from one building to the other through a large hole in the common wall. The property appraised truly had no utilities present.

When faced with this information, the appraiser finally admitted that a trainee was sent out to do the inspection and he had not actually seen the premises. He didn't mention this before because he had signed the report and stated that he had personally inspected the property.

The "valuable" helper Another appraiser was overworked and hired a trainee to help with the workload. On certain assignments, the trainee just did some research. On others, the trainee did the whole report, including the inspections. In all cases, the supervising appraiser signed as if he had done them himself. After one problem appraisal was brought to the attention of the state appraiser board, an investigation determined that numerous reports had been improperly prepared. Unbeknownst to the appraiser, the trainee was fabricating comparable sales data to complete assignments. The appraiser ultimately had his license revoked due to his failure to properly supervise the trainee.

(Liability Insurance Administrators (LIA) administers the Appraisers Liability Insurance Trust E&O insurance program, which has been endorsed by the Appraisal Institute since 1991. Their Claim Alerts, such as the above, appear regularly in *Valuation Insights & Perspectives*. For more information on LIA and their insurance plans, visit their Web site at www.liability.com.)

"Appraising" Scope of Work as it Relates to Appraisers, Auctioneers and Real Estate Brokers

Recently the Department received the following inquiry:

I am a new person in the appraisal field and I have some questions. I understand the difference between Real Estate Brokers, Auctioneers, and Appraisers; however, apparently I do not understand the difference as it relates to scope of work for statements of market valuations and reasons to conduct appraisals.

I have questioned some people in their analysis of asking an Auctioneer or Real Estate Broker for an estimate of market value. Their justification is that it saves them money and it is almost the same value. Apparently they use this as their justification for land valuation purposes. I had thought that Appraisers were the only people permitted to provide estimates of value based upon USPAP, our license and education requirements. Can you help clarify for me this issue? What am I missing in my early education?

Recently a law firm asked me to justify the fees involved for conducting an agricultural land appraisal. I find our rates to be very competitive for agricultural land, based upon the amount of research, continuing education, and writing involved in a summary report, compared to a 1004 residential appraisal. This firm felt that they should pay residential/acreage rates for the agricultural appraisal. I declined the assignment based on the fee they wanted to pay, but they found someone else to do the work. I do not know who they found, but they also asked me why an Auctioneer or Real Estate Broker could not do the same job as an appraiser. They felt that an Auctioneer or Real Estate Broker knows value as well as an appraiser. This is not the case, as they do not follow USPAP and other guidelines, plus they do not have the education in place to conduct such work.

Is it possible for you to publish in the newsletter comments about the differences in scopes of work for these various professions, in such that we can educate the bankers and legal profession Why they should have appraisers do the work and where the line is for such activity?

Response: An appraisal is defined as the act or process of developing an opinion of the value of real estate for another and for compensation. [See ARSD 20:14:01:01(1) and SDCL 36-21B-2] According to SDCL 36-21B-8 there are certain exemptions for appraiser registration, licensing and certification. One of the exemptions applies to a real estate broker under chapter 36-21A when appraising within the scope of the broker's license. A broker may appraise real property if it is not for a federally related transaction. The scope of practice for a broker and a state-registered appraiser is the same. The broker is indeed required to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) when performing a real property appraisal within the scope of the broker's license. An individual who holds a real estate auctioneer's license cannot perform an appraisal. Doing so, would be outside the scope of the auctioneer license and cause for disciplinary action against the auctioneer.