

NORTH CAROLINA APPRAISAL BOARD



APPRAISER REPORT

Volume 21

September 2011

Number 2

RECENT BOARD APPOINTMENTS

John D. Lyon, Jr. was reappointed by Governor Beverly E. Perdue to a two-year term to expire June 30, 2013. Mr. Lyon is a certified general appraiser from Raleigh and has served on the Board since February 2008.

President Pro Tempore of the Senate Phil Berger appointed David B. Goldberg to the Appraisal Board for a three-year term ending June 30, 2014. Mr. Goldberg is currently a student and research assistant at the University of North Carolina at Chapel Hill School of Government's Master of Public Administration program. He moved to North Carolina in January 2011 after graduating with a degree in Emergency Management and Administration from the University of North Texas at Denton. He then worked at the North Carolina General Assembly as a Legislative Assistant and Clerk for the Senate Appropriations Committee on the Department of Transportation. Mr. Goldberg served five years in the Texas Army State Guard as a Civil Affairs Specialist and holds a student pilot license. As a public member on the Board, Mr. Goldberg looks forward to learning about North Carolina's appraisal industry and protecting consumers of real estate services.

Governor Beverly E. Perdue has appointed Clifford A. Maske of Concord to the Board for a two-year term until June 30, 2013. Mr. Maske is a graduate of North Carolina Agricultural and Technical State University and Queens University. He is a certified general appraiser and is currently employed by The Efir Corporation, with primary business in the Charlotte region. Mr. Maske is involved with the Appraisal Institute and is currently pursuing the MAI designation. Mr. Maske is also a member of the Charlotte Regional Realtor Association and holds the CCIM designation. Mr. Maske is very active in church and civic organizations in his local community. He and his wife, Cheryl, make their home in Concord, NC and have 3 children.

House Speaker Thom Tillis has appointed Charles L. McGill to the Appraisal Board for a three-year term ending June 30, 2014. Charles L. McGill attended Indiana University of PA and worked for a large electronics company for 14 years as a member of staff. He started appraising in 1997 and was certified in 2005. For the past six years he has worked at Capital Bank Corporation in Raleigh as VP-Senior Review Officer and more recently also, as the Manager of the Appraisal Department. He has been active at various times in the Boy Scouts (Bucktail Council) and in Little League Baseball. Additionally, he has been active in various musical groups, and is a member of NCPAC. He and his wife make their home in Raleigh.

House Speaker Thom Tillis has appointed Timothy N. Tallent to the Appraisal Board for a three-year term ending June 30, 2014. Timothy N. Tallent is a certified general appraiser and operates his own appraisal business. He specializes in commercial real estate in the Charlotte Metrolina area with over 20 years experience. Mr. Tallent spent 16 years in the North Carolina House of Representatives. Tim and his wife, Dianne, have a daughter and son. He makes his home in Concord. Mr. Tallent is an avid golfer and was a former PGA professional.

Governor Beverly E. Perdue has appointed Timothy C. Theriot to the Appraisal Board for a two-year term until June 30, 2013. He is a Certified Residential Appraiser and is a Regional Vice President with Rels Valuation with responsibility over 10 states. He has a BS-BA degree from University of Southwestern Louisiana and has been appraising for 20 years. He has been with Rels for 13 years.

APPRAISER REPORT

Published as a service to appraisers to promote a better understanding of the Law, Rules and Regulations, and proficiency in ethical appraisal practice. The articles published herein shall not be reprinted or reproduced in any other publication, without specific reference being made to their original publication in the **North Carolina Appraisal Board Appraiser Report**.

NORTH CAROLINA APPRAISAL BOARD

5830 Six Forks Road
Raleigh, North Carolina 27609
Phone: 919/870-4854
Fax: 919/870-4859

Website:

www.ncappraisalboard.org

Email Address:

ncab@ncab.org

Beverly E. Perdue, Governor

APPRAISAL BOARD MEMBERS

John D. Lyon, Jr.	
Chairman	Raleigh
Sidney P. Jessup	
Vice-Chairman	Kill Devil Hills
Thomas A. Barton	New Bern
David B. Goldberg	Chapel Hill
Clifford A. Maske	Concord
Charles L. McGill	Raleigh
Charles J. Moody, III	New Bern
Timothy N. Tallent	Concord
Timothy C. Theriot	Winston-Salem

STAFF

Donald T. Rodgers, *Executive Director*
Roberta A. Ouellette, *Legal Counsel*
Thomas W. Lewis, III, *Deputy Director*
Jeffrey H. Davison, *Investigator*
Terri S. Haywood, *Investigator*
H. Eugene Jordan, *Investigator*
Jacqueline Kelty, *Administrative Assistant*
Deborah C. Liggins, *Administrative Assistant*
Pam A. Privette, *Administrative Assistant*
Mindy M. Sealy, *Administrative Assistant*

APPRAISER COUNT

(As of July 7, 2011)

Trainees	354
Licensed Residential	132
Certified Residential	2030
Certified General	1128
Total Number	3644

APPRAISER EXAMINATION RESULTS

January 2011 – June 2011

Examination	Total	Passed	Failed
Trainee	55	42	13
Certified Residential	16	12	4
Certified General	4	3	1

Examinations are administered by a national testing service. To apply for the examination, please submit an application which may be downloaded from the Appraisal Board's website at <http://www.ncappraisalboard.org/forms/ApplicationFormLicensure.pdf>

BOARD ELECTS OFFICERS

John D. Lyon, Jr. has been re-elected Chairman of the Appraisal Board for 2011-2012. Mr. Lyon was appointed to the Board in 2008 and reappointed by Governor Beverly E. Perdue in 2011.

Sidney P. Jessup has been elected Vice-Chairman of the Appraisal Board for 2011-2012. Ms. Jessup was appointed to the Board by Senator Marc Basnight in 2008. Ms. Jessup is originally from North Eastern North Carolina and is an attorney on the Outer Banks practicing in the area of real estate and family law. She received a BA degree in economics from Mary Washington College and her law degree from Campbell University.

Increase in Annual National Registry Fee

Under authority in the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Appraisal Subcommittee approved a \$15.00 increase to the annual National Registry fee. The fee increase will become effective January 1, 2012. Anyone joining the National Registry on or after January 1, 2012 will be required to pay a \$60.00 annual registration fee. Those that are already on the national registry will not be required to pay the increase until their license is renewed.

NEW EDITION OF USPAP EFFECTIVE JANUARY 1, 2012.

The 2012-2013 edition of USPAP has been adopted by the Appraisal Standards Board and will be valid for two years, effective January 1, 2012 through December 31, 2013. As with the current edition of USPAP, the new edition will include guidance from the ASB in the form of the USPAP Advisory Opinions and the USPAP Frequently Asked Questions (FAQs).

REDUCED COST USPAP BOOK TO BE OFFERED

By now you should have received notice that the Board is offering to send you the 2012-2013 edition at a reduced cost of \$35 by sending a check to the Board along with your order form. The USPAP book will then be mailed directly to your home or office. If you have not received an order form, please contact the Board by sending an email to ncab@ncab.org.

NORTH CAROLINA APPRAISAL BOARD

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Raleigh, NC 27609
(919) 870-4854

APPRAISERS MUST TAKE THE 7 HOUR USPAP UPDATE BY MAY 31, 2012 IN ORDER TO RENEW IN 2012

The new edition of USPAP is scheduled to be available in October 2011. The 7 hour USPAP update course for this new edition should be available soon after. Appraisal Board rules now require that trainees and appraisers must take the 2012 version of the 7 hour USPAP update by May 31, 2012 in order to renew your credential. If you fail to take the course by that date, you will not be allowed to renew until you take the course, and not until after July 1, 2012 (which will result in a late fee).

AMCs in NORTH CAROLINA

As you know, effective January 1, 2011, it became mandatory for Appraisal Management Companies doing business in North Carolina to register with the Appraisal Board. The AMC must state its North Carolina registration number on every order for an appraisal of a property located in North Carolina.

The Board has an online database that you can access to see if an AMC is registered.

<http://www.ncappraisalboard.org/directory/FindAMC.htm> Please make sure that the Board has your email address so that we can send you important information about AMC registration and the appraiser's responsibilities.

Staff has received many inquiries about AMCs. Here are a few things for you to keep in mind before accepting an order from an AMC.

- If a company tells you it is not an AMC or that it is exempt from registration, you should contact the Board to ask whether the company has to register. Don't take the word of the person ordering the appraisal. Send us an email or call us if this happens.
- You should check the AMC's registration number stated on the order with the Appraisal Board's database. We have had several instances where an AMC has used another company's number on their order form. If this happens, please forward the order to us for further action.

Practice Note:

An AMC may tell you that you cannot attach an invoice to the report. Appraisal Board rules state that an AMC may not prohibit you from stating your fee on the appraisal report. Although you may not be able to attach an invoice, you may state the amount of the fee in the report itself.

NOTES FOR APPRAISAL MANAGEMENT COMPANIES

Reminders

The North Carolina Appraisal Board began registering AMCs on January 1, 2011. This process has gone relatively smoothly, and at press time we had 125 companies registered in this state. Here are a few reminders for our AMC registrants:

- You must notify the Appraisal Board if your contact information or officers change.
- You also must notify us if your Compliance Manager changes.
- Your registration number only applies to the name you registered under and your DBA. If you plan to order appraisals in North Carolina, you must make sure to order only from the approved source.

Mission Statement

The mission of the North Carolina Appraisal Board is to protect consumers of real estate services provided by its licensees by assuring that these licensees are sufficiently trained and tested to assure competency and independent judgment. In addition, the Board will protect the public interest by enforcing state law and Appraisal Board rules to assure that its licensees act in accordance with professional standards and ethics.

REPORTING ASSISTANCE FROM A TRAINEE

Board staff has seen repeated instances where trainees have performed the inspection of the subject property, but the supervising appraiser is the only one to sign the appraisal report. In many cases the trainee is simply noted as having provided assistance, and no mention is made in the report that the trainee was the only one to inspect the property. This is a violation of USPAP and Appraisal Board rules.

Standards Rule 2-3 of the Uniform Standards of Professional Appraisal Practice (USPAP) requires an appraiser to note whether anyone has provided "significant professional assistance" in the preparation of an appraisal. Standards Rules 2-2(a), (b), or (c) (vii), as applicable, require that the signing appraiser must also state the extent of that assistance. North Carolina Appraisal Board Rule 57A .0405 (a) requires that the appraisal report "shall identify any other person who assists in the appraisal process other than by providing clerical assistance."

There are some clients who will not accept an appraisal report if a trainee signs it. Sometimes a client will request or demand that only the supervising appraiser's name appear in the report, and that the contribution of a trainee or other appraiser not be reported. This often happens when only the supervising appraiser is on the client's approved list. For example, if the trainee or appraiser who works on the preparation of the appraisal does not sign on the left side of a 1004 appraisal report, the supervising appraiser must make a full disclosure in the report as to who provided assistance and provide a detailed explanation of the extent of the assistance.

Fannie Mae Guidelines define the appraiser as the individual, who personally inspected the property being appraised, inspected the exterior of the comparables, performed the analysis, and prepared and signed the appraisal report as the appraiser. Fannie Mae allows a trainee who works under the supervision of a licensed or certified appraiser to perform a significant amount of the appraisal (or the entire appraisal if he or she is qualified to do so)—as long as the appraisal report is signed by a licensed or certified supervisory or review appraiser and is acceptable under state law. Fannie Mae guidelines make it clear that **if a supervisory appraiser signs the appraisal report as the appraiser, the supervisory appraiser must have performed the inspection of the subject property.**

If the Board receives an appraisal report in support of experience credit that is not signed by the trainee or appraiser, or does not contain the appropriate information regarding the assistance provided by the trainee or appraiser, experience credit will be denied. The Board will also pursue disciplinary action against the supervising appraiser for failure to comply with USPAP Rule 2-3 and Board Rule 57A .0405(a).

Reporting Appraisal Experience for Upgrade

In January the Board switched from the point system, for reporting appraisal experience, to an hour system that matches the Appraiser Qualification Criteria as well as the North Carolina General Statute.

Applicants were instructed to convert experience earned, before December 31, 2010, to hours by multiplying the number of points by 8.3 hours.

Assignments completed on or after January 1, 2011 should show the actual number of hours necessary to complete the assignment. Although the application booklet provides a chart showing anticipated hours for certain types of properties, applicants are to claim the actual hours spent on the assignment whether it is more or less than the chart. The work file should have documentation to adequately support the hours spent on the assignment. Failure to document the hours could result in the denial or reduction of hours for that particular assignment.

Appraisal Designations

Board staff has been receiving inquiries from AMCs, lenders and appraisers asking whether appraisers must have received a designation by an appraisal organization in order to receive federally related appraisal assignments.

In a draft version of the federal Interagency Appraisal and Evaluation Guidelines, one proposal was that a lender could consider a designation as evidence of competency. That language never made it into the final version. The final Guidelines, issued in December 2010, are silent on the issue of designation. They do state that "In determining competency for a given appraisal assignment, an institution must consider an appraiser's education and experience. While an institution must confirm that the appraiser holds a valid credential from the appropriate state appraiser regulatory authority, a state certification or license is a minimum credentialing requirement."

There is a federal law that prohibits discrimination against an appraiser in a federally related appraisal assignment "solely by virtue of membership or lack of membership in any particular appraisal organization". 12 USCS §3351(d) There is also a federal rule that restates this language, and adds that "Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered". 12 CFR 323.6

Although a lender or AMC may consider a designation when reviewing the competency of an appraiser, no designation is required to do appraisals for federally related transactions.

YOU JUST RECEIVED A COMPLAINT IN THE MAIL FROM THE APPRAISAL BOARD – NOW WHAT?

The North Carolina Appraisal Board handles over 200 complaints annually. The threshold for filing a complaint in NC is minimal, which increases the probability that a complaint might be received. Appraisal Board rules state that to be acceptable, a complaint must be in writing, must identify the trainee or appraiser, and must state the facts which form the basis of the complaint. The Appraiser's Act states that anonymous complaints will not be accepted. Members of the public often do not understand the appraisal process, so a complaint may simply state, for example, that "the value is too low". Although the complaint appears to be solely about value, an investigation may reveal flaws in the appraisal analysis or report that rise to a level requiring disciplinary action.

Generally all complaints brought to the Board in which the Board has jurisdiction will be investigated. The NCAB has a complaint process that is easily explained, and a copy of this policy is sent to you if you receive a complaint.

Here are some tips that might assist you in surviving the filing of a complaint and subsequent investigation.

- Keep the Board up to date on your address. You are required to provide the Board with your current address. In addition, you have ten days to notify the Board if you should relocate. Complaints are sent to you at the business address that the Board has on file for you. Keeping the Board updated on your whereabouts ensures timely notice and shortens the time involved for disposition of the matter.
 - Don't ignore the complaint and don't panic. Once a complaint is received and opened, the matter will not simply go away. Ignoring the complaint only increases the chance that significant disciplinary action will result. As mentioned above, many complaints are filed each year and the filing of a complaint does not always mean that violation has occurred. The Board staff approaches each investigation in an unbiased manner and considers all of the evidence before making a recommendation to the Board.
 - Understand that this process can be lengthy. Although the Board desires to wrap up every case as quickly as possible, we have a significant caseload with limited staff. Regardless, each case will be investigated thoroughly and you are always welcome to contact the staff to inquire as to the progress on your individual case.
- Read the complaint and associated material thoroughly. The complaint will typically include the written allegations made by the Complainant as well as copies of additional documents, which often includes a copy of your report. Review the material carefully. Enclosed with the complaint letter is an insert that explains the complaint process and includes specific instructions that you should follow. It is imperative that you read the insert. Please understand that while the staff is eager to assist you on most matters, we are not able to give you advice on how to respond to a complaint that has been filed against you.
 - Do not under any circumstances contact the Complainant. Contact with the Complainant should be avoided as it only opens you up to additional allegations. Further, any attempt to intimidate a Complainant could result in significant disciplinary action taken against you. If the Complainant should attempt to contact you after the complaint has been filed, please inform the Board staff.
 - Provide the requested documents in their entirety and in a timely fashion. Board rules require you to respond in writing to a complaint, and to provide true copies of the appraisal report or reports and complete work files. By statute, you have 30 days to provide this documentation to the Board staff upon receipt of the complaint. A complete work file can be extremely helpful in resolving your case. Again, special attention should be paid to the instructions that accompany your complaint. Failure to provide these documents is a violation that could end in significant disciplinary action.
 - Write your response with the complaint in mind. The best responses are those that "answer" the complaint issue for issue. Derogatory and inflammatory statements about the Complainant are discouraged as they could only aggravate the situation and bring into question your professionalism. The response is a great opportunity to "go on record" and acknowledge changes in your process and/or corrections to highlight steps you have taken or implemented to prevent the issue in the future.
 - Should you get an attorney? The engagement of an attorney is a matter that is completely up to you. The Board staff cannot advise you either way. An attorney can assist you with answering a complaint and provide support when weighing your alternatives.

- Learn from the process. Should you determine that the complaint has merit and resulted from a flaw in your process or analysis, it could be beneficial to acknowledge the flaw or error and take steps to correct it. This does not guarantee that there will be no sanction, but conveys to the Board sincerity and professionalism.
- The investigation will, in most cases, require an interview with the investigator. The investigator is there as a fact finder and not there to criticize or personally critique your appraisal assignment. The investigator is there to determine whether the allegations made in the complaint are substantiated by the evidence. This is done by the collection and evaluation of the evidence associated with your case. The interview will typically be conducted at the Board office in Raleigh, although it can take place closer to your place of business in a public location. You might be asked to provide additional information at the interview.
- Relax: the keyword is interview. The meeting with the investigator is not an interrogation. You will generally find the investigator to be pleasant and very familiar with your case. In most cases the investigator will have already collected the bulk of their information prior to requesting the interview. The interview is informal. You may bring someone with you to the interview if you choose, but understand that the investigator controls the discussion. The interview can be terminated by either party at any time.
- Cooperate with the investigation. Return phone calls and emails, send documents as requested, and be on time for the appointment with the investigator should one be scheduled. Doing so will keep the process on track so that the investigation may proceed in a timely fashion. The complaint will not go away if you try to avoid the process: doing so will make it worse.
- The investigation will primarily focus on the allegations made by the Complainant. The investigator, however, can expand the scope of the investigation to include other areas in the event that possible violations of the USPAP, the NC Appraisers Act, and NC Appraisal Board Rules exist.
- It's not personal. The Board's investigation focuses on the allegations and the evidence and not on you as an individual. Regardless of the merit or tone of the complaint, the Board's investigation is narrow in that it only pertains to the laws and rules that the Board enforces. The Board's investigator is not there to try and

"trip you up" or obtain a confession from you. The evidence generally speaks for itself.

- The investigator cannot tell you what the final disposition of your case will be. Once the investigator completes the investigation, the case file is given to the Board's attorney, who makes a recommendation to the Board at a regularly scheduled Board meeting as whether to dismiss the case or have a hearing. You will be notified of the Board's decision either way, and your options at that point explained to you by the Board's attorney.

It has been the staff's experience that often appraisers react with anger to the filing of a complaint against them. Anger in this instance is rarely productive and can interfere with your ability to reasonably answer the complaint. Board staff knows how time consuming and emotionally draining it can be to respond to complaint, and we can promise you a fair and unbiased investigation.

WHAT IS AN APPRAISAL?

The Appraiser's Act defines an appraisal as "An analysis, opinion or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration". USPAP defines an appraisal as "the act or process of developing an opinion of value; an opinion of value". Value can be expressed as a specific amount (e.g., the property is worth \$100,000), a range of numbers (the property is worth \$90,000 to \$110,000) or a relationship to another value (the property is worth less than the county tax value).

Once an appraiser places a value on a piece of identified real estate, it is an appraisal. Some appraisers believe that if they do not sign the report, it is not an appraisal and they cannot be held accountable for it. This is untrue. Appraisal Board rules require that an appraiser sign an appraisal report, so transmitting an unsigned report is a violation of those rules.

Once you transmit your opinion of value finding to your client, you have performed an appraisal. Some appraisers may call their appraisal a preliminary or draft appraisal. Some might call it a letter of value or evaluation. If an appraiser values a piece of property in any way, it is an appraisal, and both Standard 1 and Standard 2 apply. If the appraiser gives the value orally, the appraiser must comply with the requirements of Standard Rule 2-4. Appraisal Board rules regarding signing appraisal reports will also apply.

Anyone with questions should contact the Board staff for further guidance.

USPAP Q&A

The Appraisal Standards Board (ASB) of The Appraisal Foundation develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. The USPAP Q&A is a form of guidance issued by the ASB to respond to questions raised by appraisers, enforcement officials, users of appraisal services and the public to illustrate the applicability of USPAP in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems. The USPAP Q&A may not represent the only possible solution to the issues discussed nor may the advice provided be applied equally to seemingly similar situations. USPAP Q&A does not establish new standards or interpret existing standards. USPAP Q&A is not part of USPAP and is approved by the ASB without public exposure and comment.

2011-01: OTHER SERVICES

Advisory Opinion 13 (AO-13) Guidance

Question: I have heard that Advisory Opinion 13 (AO-13), *Performing Evaluations of Real Property Collateral to Conform with USPAP*, will not appear in the 2012-13 edition of USPAP. Does that mean that the ASB no longer intends to offer guidance on performing evaluations in conformance with USPAP for regulated institutions?

Response: No. The advice that appears in AO-13 as it was presented in 2010-11 edition of the USPAP document was provided to assist appraisers in understanding and complying with the *Interagency Appraisal and Evaluation Guidelines* that had been issued on October 27, 1994. Those guidelines were superseded by revised *Interagency Appraisal and Evaluation Guidelines* issued on December 2, 2010. As a result, the ASB will be working with the Interagency Work Group to update AO-13 to provide meaningful guidance on this more recent edition of the guidelines. The ASB intends to expose proposed revisions to AO-13 as soon as possible, and expects to issue an updated version of AO-13 prior to the effective date of the next edition of USPAP, on January 1, 2014.

In the interim, appraisers are urged to review the revised guidelines by clicking on the following link to The Appraisal Foundation website:

<https://appraisalfoundation.sharefile.com/d/s9a321e73b1947af9>.

2011-02: APPRAISAL DEVELOPMENT – SCOPE OF WORK ISSUES

Use of Distress Sales in Real Property Market Value Appraisals

Question: A client has asked me to disregard any foreclosure, real estate owned (REO), or short sales when performing market value appraisal assignments. Is this an acceptable assignment condition?

Response: No. USPAP does not specifically address which sales should or should not be considered in an appraisal assignment. However, in real property appraisal assignments, Standards Rule 1-4(a) requires:

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

So, the appraiser must determine what data is relevant.

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

A client-imposed requirement to disregard data that may be relevant and necessary for credible assignment results would be an unacceptable assignment condition.

2011-03: ETHICS RULE - CONDUCT

Does a Request for a “Final Inspection” Require Disclosure of Prior Services?

Question: If I performed an appraisal that was “subject to” completion of repairs, and subsequently received a request to perform a “final inspection” confirming that the work had been completed, am I required to disclose that I previously appraised the property even if it is obvious to the client that I’ve done so?

Response: A “Final Inspection” is **not** an extension of the original assignment unless it is part of the original agreement for services. A subsequent request would be a *new assignment* and as such requires disclosure in accordance with the Conduct section of the ETHICS RULE. This holds true even if it may be obvious to the client that you’ve already previously performed an appraisal on the property.

2011-04: ETHICS RULE - CONDUCT

Does Utilizing a Property as a Comparable Sale Require Disclosure of Prior Services?

Question: If I perform an appraisal and use a property as one of my comparable sales, and later receive a request to appraise the property that was used as a comparable sale, must I disclose I “performed a service” on that property because I used it as a comparable sale?

Response: No. Using a property as a comparable sale in an appraisal does not constitute “performing a service” regarding that property. Therefore, a subsequent request to appraise the sale comparable would not require disclosure under the Conduct section of the ETHICS RULE.

2011-05: ETHICS RULE - CONDUCT

Adding a “Disclaimer” for Disclosure of Prior Services

Question: I am involved in many aspects of the real estate industry. As such, I “perform services” on a great number of properties in many different ways. It would be very difficult for me to recall each and every property I’ve performed services on in a three-year period. Is it permissible to comply with the disclosure requirements by saying something to the effect of, “To the best of my knowledge?”

Response: Such language does not need to be added, since the certification begins with “I certify that, to the best of my knowledge and belief:” The Conduct section of the ETHICS RULE recognizes that an appraiser may not always recall performing services on a property *prior to* being engaged in the assignment, which is why the requirement states, in part:

If known prior to accepting an assignment, and/or if discovered at any time during the assignment, an appraiser must disclose to the client... (Bold added for emphasis)

Appraisers are encouraged to review their record keeping procedures and make any necessary modifications to assist them in promptly recognizing any property for which they provided services within the prior three-year period.

2011-06: APPRAISAL REPORTING – CERTIFICATION AND SIGNATURES

Revising Pre-Printed Certification to Disclose Prior Services

Question: I perform residential real estate appraisals using “standard” pre-printed appraisal forms, such as those developed by Fannie Mae. I’ve heard that Fannie Mae does not allow any changes to their certifications, so how can I comply with the USPAP requirement to disclose, in the certification, any prior services I have or have not performed on the property within the prior three years?

Response: Fannie Mae does **not** prohibit additional certifications to their appraisal forms, as long as those additional certifications do not conflict with or diminish the “standard” certification items appearing on their forms. Therefore, appraisers may create an additional certification to comply with the obligations of the Conduct section of the ETHICS RULE.

2011-07: ETHICS RULE – MANAGEMENT

Appraisal Fee Based on Outcome of Assignment

Question: I am aware of some appraisers who perform property tax assessment appeal assignments where their fee is based on a percentage of the tax savings to the property owner. Doesn’t USPAP prohibit appraisers from accepting assignments where the fee is based on a specific outcome?

Response: Yes. The Management section of the ETHICS RULE states, in part:

An appraiser must not accept an assignment, or have a compensation arrangement for an assignment, that is contingent on any of the following:

- 1. the reporting of a predetermined result (e.g., opinion of value);*
- 2. a direction in assignment results that favors the cause of the client;*
- 3. the amount of a value opinion;*
- 4. the attainment of a stipulated result (e.g., that the loan closes, or taxes are reduced); or*
- 5. the occurrence of a subsequent event directly related to the appraiser’s opinions and specific to the assignment’s purpose. (Bold added for emphasis)*

However, it is important to remember that USPAP applies to individuals only when they are acting as appraisers. An individual who provides some services as an appraiser may also act in a different role when providing other services. If the individual in this question is not preparing an appraisal or otherwise acting as an appraiser, he or she may work as an advocate in the tax appeal case. The only requirement would be that the individual not misrepresent his or her role.

EMAIL ADDRESS

We are developing an email list of all registered trainees, licensed and certified appraisers in North Carolina. In the future you will be notified by email of pertinent information such as rule changes, dates and locations of the supervisor course, and most importantly the date a new *Appraisereport* is available on our website. Please be sure the Board has your current email address on file. In order to do so, please login under the licensee login section on our website at www.ncappraisalboard.org.

Disciplinary Actions:

The following is a summary of recent disciplinary actions taken by the Appraisal Board. This is only a summary; for brevity, some of the facts and conclusions may have not been included. Because these are summaries only, and because each case is unique, these summaries should not be relied on as precedent as to how similar cases may be handled.

In many cases appraisers are required to complete additional education as part of a consent order. Please check with the Board office if you have questions regarding an individual's current license status.

William B. Billings A1972 (Charlotte)

By consent, the Board issued a reprimand to Mr. Billings. Mr. Billings also must complete a course in appraising condominiums and the 15 hour National USPAP course, including passing the examination, by September 1, 2011. If he fails to complete both courses, this reprimand will be vacated and a three month suspension will be imposed on that date. Mr. Billings performed an appraisal of a property located in Charlotte, North Carolina in June 2009, finding a value of \$366,000. The subject property is a one bedroom condominium in a project that offered secured parking, a swimming pool, a fire pit, a media center, a workout facility, and huge balconies. The project was completed in 2009, and the subject had a view of the sports arena and the city skyline. The subject went under contract for \$340,000 on May 9, 2006, and the contract was amended in 2008 to reflect upgrades. Mr. Billings selected sales in the subject project that went under contract in 2006 and 2007 and sold in 2009 at or above the contract price. He did not use any sales that contracted and sold after the project was completed. There were, however, very few competing properties in the areas from which to obtain sales.

Steven B. Coble A5409 (Greensboro)

Leonard W. Taylor A373 (Ocean Isle)

By consent, the Board suspended Mr. Coble's and Mr. Taylor's residential certifications for a period of six months. The suspension is stayed until September 1, 2011. If they each complete a class in sales comparison and a class in residential design and functional utility by that date, the suspensions shall be inactive. Mr. Coble and Mr. Taylor appraised a property located in Burlington, North Carolina in May 2008, finding a value of \$207,500. The subject property is a 2628 square foot dwelling built in 1950. It is located in an urban area of mixed uses, including multi-family and commercial uses. The comparable sales were all located in superior locations in comparison to the subject but no adjustments were made for location. The report showed 4 bedrooms, which is what the home originally had; however, some of the rooms had been changed from their original uses (dining room, parlor, etc.) into bedrooms with closets and doors. The sketch in the report and the field sketch showed that the subject had 7 bedrooms, each with a closet. There was one bath on each level. Mr. Coble and Mr. Taylor should have explained this issue in the report and included a cost to cure to return the subject back to 4 bedrooms.

Jeffrey R. Cooper A2577 (Summerfield)

Following a hearing, the Board suspended Mr. Cooper's residential certification for a period of six months effective July 1, 2011. The first month of the suspension is active and the remaining five months will be stayed provided that by August 1, 2011, Mr. Cooper completes the 15 hour National USPAP class and passes the examination in that class. If he does not complete the class by that date, the suspension will continue until the class is completed. The Board found that Mr. Cooper performed an appraisal of a property located in Greensboro, North Carolina in April 2006. In 2009, a lawsuit was filed against Mr. Cooper and several others alleging that he and the other defendants induced the plaintiffs to purchase the subject by misrepresenting the subject property. The lawsuit specifically alleged that Mr. Cooper committed professional malpractice, made negligent misrepresentations and material omissions in his appraisal report, committed constructive fraud and engaged in unfair trade practices. Mr. Cooper and the plaintiffs went to mediation on September 17, 2009. Both parties were represented by counsel, and they signed a settlement agreement on that day. The agreement stated that Mr. Cooper agreed to pay the plaintiffs \$3000 in three equal payments of \$1000, the first payment being due on October 17, 2009. If he made the payments pursuant to the agreement, the plaintiffs would dismiss the court case. The agreement also stated that Mr. Cooper would sign a Confession of Judgment form in the amount of \$3000 that would not be entered into court unless he failed to pay the \$3000 as due. Another provision of the agreement was that the plaintiffs, who had filed a complaint against Mr. Cooper with the North Carolina Appraisal Board would dismiss their complaint against him. On September 17, 2009, Mr. Cooper also signed a Confession of Judgment in which he confessed judgment to the plaintiffs for \$3,000 for the court case. Although Mr. Cooper testified that he signed a blank sheet of paper and did not know what this document stated, this testimony is not credible. On September 17, 2009, the plaintiffs sent a letter to the Appraisal Board withdrawing their complaint and stating that they no longer wished to participate in any investigation or action of the Appraisal

Board. The Board dismissed the prior case on March 23, 2010. Although the Board does not dismiss a complaint against an appraiser merely because the complainant withdraws the complaint, the investigation was severely hindered by the lack of cooperation by the plaintiffs. Mr. Cooper made none of the payments as agreed to, so the Confession of Judgment was filed in the Guilford County Superior Court on January 5, 2010. He was served with a copy of the judgment on February 18, 2010. He did not pay the amount owed after judgment was entered, so a Writ of Execution was issued on July 12, 2010. When no payment was received, the plaintiffs filed a complaint against Mr. Cooper with the Appraisal Board in April 2010. After the complaint was received, Board staff sent a letter to Mr. Cooper informing him of the complaint and asking for a written response within 30 days. Appraisal Board staff met with Mr. Cooper on May 28, 2010, at which time he stated he would take care of the matter within a month. When no written response was received and he had not paid anything towards the judgment or otherwise taken action to deal with the judgment, he was again contacted by Board staff and told to respond by July 23, 2010. On July 23, 2010, Mr. Cooper sent an email to Board staff indicating that had hired an attorney to look into the matter. Staff met with him again on April 7, 2011 to discuss the matter. He again stated that he wanted time to deal with the matter. On that date, Mr. Cooper was served with the Notice of Hearing in this matter in hand. That Notice advised him that the hearing was scheduled for May 10, 2011. Immediately after receiving the Notice of Hearing, Mr. Cooper contacted the plaintiffs. He did not offer to pay them any money, but instead wanted them to drop the complaint. The Complainants refused to do so. Mr. Cooper then requested that the hearing date be continued. A new hearing date was scheduled for June 14, 2011. In his testimony, Mr. Cooper indicated that he had paid the judgment in full, including interest, on June 13, 2011, the day before the hearing. Although Mr. Cooper indicated that he did not have the financial means to make any payment on the judgment, he was working during this time as a certified residential appraiser. Also during this time, he was in frequent contact with an attorney to advise him on this and other matters. He had ample opportunity to either attempt to amend the settlement agreement he signed or file court action to have it set aside, but he did not do so. Instead, he ignored the agreement and subsequent Confession of Judgment until the day before the hearing. His failure to satisfy the settlement agreement that he signed is contrary to the public trust and constitutes improper and dishonest conduct.

Gregory Dunn A6011 (Wilmington)

By consent, the Board suspended Mr. Dunn's residential license for a period of three months. The suspension is stayed until January 1, 2012. Mr. Dunn completes the 15 hour USPAP class, including passing the examination, and completes a class in sales comparison, the suspension will be inactive. Mr. Dunn performed appraisals of two properties located in Leland, NC. The appraisal on the first property was performed in April 2010, and valued at \$360,000. The appraisal on the second property was performed in June 2010, and valued at \$390,000. Both subject appraisals were done "subject to" completion per plans and specifications. The first subject property is a proposed 2376 square foot dwelling located in a new residential subdivision. The second property is a proposed dwelling with 2803 square feet located in the same subdivision. On both appraisals, Mr. Dunn researched the owner of the properties through public records and other available sources and documents. He noted the owner as the seller shown in the sale contract and as the owner as shown in the county tax records, which was incorrect. He researched and relied on the county tax records to report the sales histories of the comparable sales utilized in the two reports. The county tax records did not indicate all prior sales within the three-year period prior to the appraisal. He did not report all prior sales on some of the comparable sales.

Nelson Eide A5035 (Forest City)

By consent, the Board suspended Mr. Eide's residential certification for a period of six months. The suspension is stayed until December 1, 2011. If Mr. Eide completes a class in valuing vacant land and the 15 hour National USPAP class by that date, the remainder of the suspension shall be inactive. Mr. Eide. There were three cases against Mr. Eide that involved four vacant tracts of land that ranged in size from 1 acre to 1.16 acres. Mr. Eide appraised these four properties in early 2007, findings values that ranged from \$128,000 to \$295,000. The subject development contained 4000 acres of land that was to be developed into an exclusive residential subdivision adjacent to Lake Lure. The parent tract of the development was purchased in 2003 and individual lots began selling in the spring of 2005. Mr. Eide prepared about 23 appraisals from the summer of 2003 to the spring of 2008, when the subdivision failed. He did 48 more appraisals after that time. In all of these appraisals, Mr. Eide's methodology was reasonable and his values supported. None of the reports indicated that he utilized an extraordinary assumption that the appraisals were done subject to completion of the development and its amenities, although it is obvious that he did so. His appraisal reports did not contain sufficient information.

James Gentry A2710 (Murphy)

Katherine London A5869 (Murphy)

By consent, the Board suspended the residential certification of Mr. Gentry and Ms. London for a period of six months. The suspensions are stayed until July 1, 2011. If Mr. Gentry and Ms. London complete a class in sales comparison and a course in appraising REO or foreclosure properties by that date, the suspensions shall be inactive. Mr. Gentry and Ms. London appraised a

property located in Hayesville, North Carolina in September 2007. They originally appraised the subject property for \$125,000, and later reduced the value to \$121,000. The subject was a 1040 square foot ranch built in 1958 and located on 4.14 acres of land in a rural area. The first report indicated that the subject contained 1120 square feet, which was incorrect. They went back to the property after the complaint by the lender was received two years later, and when they discovered the error in square footage, they issued a corrected report with a lower value. On the effective date of the appraisal, the subject was in poor condition. Two of the comparable sales had been renovated, and an inadequate adjustment was made for condition. Inadequate adjustments were made to all three sales for site, size and quality. Mr. Gentry and Ms. London failed to accurately describe the subject in their reports.

Benjamin Herring A3835 (Wilmington)

By consent, the Board suspended Mr. Herring's residential certification for a period of three months. The suspension is stayed until December 1, 2011. If Mr. Herring completes a class in sales comparison and a class in residential design and functional utility by that date, the suspension will be inactive. Mr. Herring performed an appraisal of a property located in Wilmington, North Carolina in June 2010, finding a value of \$1,200,000. The subject is a 2971 square foot two and one half story dwelling with a 1062 square foot finished daylight basement. Mr. Herring included the daylight basement in calculating his square footage, and used comparable sales ranging in size from 3885 to 4701 square foot. By including the lower level in the GLA, he selected comparable sales based on the erroneous GLA. Had he used sales in the correct range, his appraised value would have been lower.

Christopher Howard A6925 (Greensboro)

By consent, the Board suspended Mr. Howard's residential certification for a period of three months. The suspension is stayed until December 1, 2011. If Mr. Howard completes a class in sales comparison and a class in appraising in declining markets, the suspension will be inactive. Mr. Howard performed an appraisal of a property located in Kernersville, North Carolina in December 2010, finding a value of \$130,000. The appraisal was done for the property owner who was considering selling the property. The subject property is a 1464 square foot ranch dwelling on a .48 acre lot in a residential subdivision. Mr. Howard used three sales in his sales comparison analysis that contracted and closed 6 to 9 months before the effective date of the report. Two were from outside the subject neighborhood. A location adjustment should have been made to one of those sales, and an adjustment for a larger lot size should have been made to the other. At the time of the assignment, there were many foreclosures in the subject neighborhood. Six of the eight properties for sale in the neighborhood on the effective date of the report were listed for \$54,900 to \$95,000, and two were listed at \$109,237 and \$112,500. Mr. Howard did not address the foreclosure activity taking place in the neighborhood. He did not realize that the value and marketability of the entire neighborhood was adversely affected by the number of foreclosure/short sale properties on the market at the time of the appraisal.

Laurie L. Jarrett A4922 (Haw River)

By consent, the Board suspended Ms. Jarrett's residential certification for a period of one year. The suspension is stayed until December 1, 2011. If she completes a class in appraiser liability and a class in appraising manufactured housing by that date, the suspension shall be inactive. Ms. Jarrett performed an appraisal of a property located in Walnut Cove, North Carolina in July 2006, finding an appraised value of \$200,000. The subject property is a one-story modular home with 1920 square feet located in a small residential development in a rural area near a state park. Ms. Jarrett did not disclose that the subject is a modular home in the appraisal report. She used three stick-built homes as comparables without making appropriate quality adjustments. There were modular home sales in the area that should have been used as comparables in the report. These sales may have indicated a lower value for the subject property

John K. Keitt A5588 (Highlands)

By consent, the Board suspended Mr. Keitt's residential certification for a period of three months. The suspension is stayed until December 1, 2011. If he completes a class in residential market analysis and highest and best use, a course in valuing vacant land and a class in subdivision analysis by that date, the suspension shall be inactive. Mr. Keitt performed an appraisal of a property located in Glenville, NC in May 2005, finding an appraised value of \$2,026,000. The subject tract consists of 14 acres located off a state-maintained road in a mountain area. It was adjacent to a recorded subdivision that was under construction that was going to offer extensive amenities, including an exclusive hotel and spa. Mr. Keitt analyzed the 14 acre subject by comparing the subject property with five closed individual lot sales from competing developments. After making adjustments to the comparable sales, he applied a per-unit value to the subject property by considering the subject tract to have 12 lots as per a preliminary sales map attached to the report. This process determined a unit value of \$338,000 multiplied by 12 to deliver a total value of \$4,051,000. Mr. Keitt then discounted the total value by 50% to arrive at his appraised value of \$2,026,000. There was no

support for the 50% discount contained in the appraisal report. Although the subject was under contract for \$1,600,000, Mr. Keitt failed to address the substantial difference between the contract price and the appraised value.

Michael Kinsland A6590 (Franklin)

By consent, the Board accepted the voluntary surrender of Mr. Kinsland's residential certification.

Roger D. Labadie A6702 (Brevard)

By consent, the Board accepted the surrender of Mr. Labadie's right to renew his residential certification.

Curtis S. McCall, Jr. A4426 (Mt. Pleasant, SC)

By consent, the Board suspended Mr. McCall's general certification for a period of six months. The suspension is stayed until September 1, 2011. If Mr. McCall completes the 15 hour National USPAP course, including passing the examination, and a course in mortgage fraud by that date, the remainder of the suspension will be inactive. Mr. McCall performed an appraisal of a tract of land located in Mitchell, North Carolina. The subject consisted of 300 acres of land that was to be subdivided into 1,000 residential lots. Mr. McCall valued the entire subject property as of March 10, 2005. He provided an "as is" value of \$36,200,000 and a prospective "infrastructure complete" value of \$46,400,000. Mr. McCall and his wife had taken a trip to Switzerland with the property owner eleven months before the appraisal was done. He also had purchased lots from the owner, although those lots were not part of the subject of the appraisal. The certification on the appraisal report stated that he had no personal bias or interest with respect to the parties involved. This statement was incorrect. Mr. McCall's appraisal in all other respects was appropriately developed with regard to technical requirements.

Dexter Moore A1580 (Grifton)

By consent, the Board issued a reprimand to Mr. Moore. In addition Mr. Moore agrees that he will not appraise any one to four family residential properties for a mortgage transaction until he completes the following courses: (1) The precertification class in Residential Market Analysis and Highest and Best Use and (2) a class in appraising complex properties. Mr. Moore performed an appraisal of a property located in Grifton, North Carolina in March 2006, finding a value of \$438,900. The subject property is a one-story home with 4308 square feet above grade and 1897 square feet below grade. The subject is located on the edge of a small town in a subdivision near a semi-private golf club. It is much larger than the other homes in the subdivision and was renovated to a higher quality than other homes in the area. There were no sales in the subject's market area that were similar to the subject. The comparable sales used in the report were similar in size to the subject, but all were located in superior locations and were superior in amenity appeal. They were not comparable to the subject and should not have been used. The first comparable sale was located in rural Ayden about 2 miles north of the subject, and sold for \$439,900. This property included 20 acres of land. Mr. Moore allowed one acre for the site size, then subtracted \$19,000 for the remaining 19 acres of land from the sales price. He reported the sales price at \$420,000 in the sales comparison grid. Although he explained this process, reported the \$439,900 sales price and made the land allocation in the remarks section of his appraisal report, he instead should have made a site adjustment to this sale in the sales grid for the excess land.

To view a current list of continuing education courses approved by the Board, please visit our website at http://www.ncappraisalboard.org/education/contin_edu.htm

2011 Board Meeting Dates

September 13
October – No meeting
November 1
December 13

All meetings are conducted at the North Carolina Appraisal Board building located at 5830 Six Forks Road, Raleigh.