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BEFORE THE
DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **KEVIN J. DRISCOLL** **4458 17th St.** **San Francisco, CA 94114** **Real Estate Appraiser License No. AR005543** Respondent.	Case No. C080714-04 and C090901-11 **ACCUSATION**

Complainant alleges:

PARTIES

1. Elizabeth Seaters, acting on behalf of the Office of Real Estate Appraisers (Complainant), brings this Accusation solely in her official capacity as Chief of Enforcement for Complainant.

2. On or about May 8, 1992, the Director of the Office of Real Estate Appraisers issued Real Estate Appraiser License Number AR005543 to Kevin J. Driscoll (Respondent). The Real Estate Appraiser License expired on March 17, 2011, and has not been renewed.

JURISDICTION

3. This Accusation is brought before the Director of the Office of Real Estate Appraisers (Director), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Business and Professions Code section 11313 states, in pertinent part:

"The office [Office of Real Estate Appraisers] is under the supervision and control of the secretary [secretary of the Business, Transportation and Housing Agency]. The duty of enforcing and administering this part is vested in the director [director of the Office of Real Estate Appraisers] and he or she is responsible to the secretary therefor. The director shall adopt and enforce rules and regulations as are determined reasonably necessary to carry out the purposes of this part."

5. Business and Professions Code section 11316, subdivision (a) states:

"(a) The director may assess a fine against a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation for violation of this part or any regulations adopted to carry out its purposes."

6. Business and Professions Code section 11319 states:

"Notwithstanding any other provision of this code, the Uniform Standards of Professional Appraisal Practice constitute the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards. If a licensee also is certified by the Board of Equalization, he or she shall follow the standards established by the Board of Equalization when fulfilling his or her responsibilities for assessment purposes."

7. California Code of Regulations, title 10, section 3701 states:

"Every holder of a license under this part shall conform to and observe the Uniform Standards of Professional Appraisal Practice (USPAP) and any subsequent amendments thereto as promulgated by the Appraisal Standards Board of The Appraisal Foundation which standards are herein incorporated into these regulations by reference as if fully set forth herein."

8. California Code of Regulations, title 10, section 3702(a) states:

(a) The Director finds and declares as follows:

"(1) That the profession of real estate appraisal is vested with a fiduciary relationship of trust and confidence as to clients, lending institutions, and both public and private guarantors or

insurers of funds in federally-related real estate transactions and that the qualifications of honesty, candor, integrity, and trustworthiness are directly and substantially related to and indispensable to the practice of the appraisal profession;

"(2) That registered Appraisal Management Companies are vested with a relationship of trust and confidence as to their clients, lending institutions, and both public and private guarantors or insurers of funds in federally-related real estate transactions and that the qualifications of honesty, candor, integrity, and trustworthiness are directly and substantially related to and indispensable to their business operations; and

"(3) Every holder of a license to practice real estate appraisal, Registrant, Controlling Person of an Appraisal Management Company, or person or entity acting in a capacity requiring a license or Certificate of Registration shall be required to demonstrate by his or her conduct that he or she possesses the qualifications of honesty, candor, integrity, and trustworthiness."

9. Title 10, California Code of Regulations, section 3705, states:

"(a) Every appraisal report subject to the Uniform Standards of Professional Appraisal Practice upon final completion shall bear the signature and license number of the appraiser and of the supervising appraiser, if appropriate. The affixing of such signature and number constitute the acceptance by the appraiser and supervising appraiser of full and personal responsibility for the accuracy, content, and integrity of the appraisal under Standards Rules 1 and 2 of USPAP.

"(b) Every review appraisal report upon final completion shall bear the signature and license number of the reviewer. The affixing of such signature and number shall constitute acceptance by the reviewer of responsibility for the review under Standard Rule 3 of USPAP.

"(c) The license number of the appraiser, and of the review appraiser if the report is a review, shall appear with each signature throughout the appraisal or review document."

10. California Code of Regulations, title 10, section 3721 states:

"(a) The Director may issue a citation, order of abatement, assess a fine or private or public reproval, suspend or revoke any license or Certificate of Registration, and/or may deny the issuance or renewal of a license or Certificate of Registration of any person or entity acting in a capacity requiring a license or Certificate of Registration who has:

. . .

"(6) Violated any provision of USPAP;

"(7) Violated any provision of the Real Estate Appraisers' Licensing and Certification Law, Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code, or regulations promulgated pursuant thereto; or any provision of the Business and Professions Code applicable to applicants for or holders of licenses authorizing appraisals;

. . .

"(b) Before issuing any private or public reproval or denying, suspending, or revoking any license or Certificate of Registration issued or issuable under the provisions of the Real Estate Appraisers Licensing and Certification Law or these regulations, the Office shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code (the Administrative Procedure Act) and the Office shall have all the powers granted therein.

. . ."

11. Business and Professions Code section 11409, subdivision (a) states:

"Except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, registrant, applicant for a certificate of registration, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation found to have committed a violation or violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case."

2008 UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)[1]

12. The USPAP ETHICS RULE states:

To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics. This ETHICS RULE is

[1] Effective January 1, 2008 to December 31, 2009.

divided into four sections: Conduct, Management, Confidentiality, and Record Keeping. The first three sections apply to all appraisal practice, and all four sections apply to appraisal practice performed under Standards 1 through 10.

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

An appraiser must not misrepresent his or her role when providing valuation services that are outside of appraisal practice.

Conduct:

An appraiser must perform assignments ethically and competently, in accordance with USPAP.

An appraiser must not engage in criminal conduct.

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

An appraiser must not advocate the cause or interest of any party or issue.

An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.

Management:

The payment of undisclosed fees, commissions, or things of value in connection with the procurement of an assignment is unethical.

It is unethical for an appraiser to accept an assignment, or to 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; or
5. the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.

Advertising for or soliciting assignments in a manner that is false, misleading, or exaggerated is unethical.

Confidentiality:

An appraiser must protect the confidential nature of the appraiser-client relationship.

An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results.

An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; and a duly authorized professional peer review committee except when the disclosure to a committee would violate applicable law or regulation. It is unethical for a member of a duly authorized professional peer review committee to disclose confidential information presented to the committee.

Record Keeping:

An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment. The workfile must include:

the name of the client and the identity, by name or type, of any other intended users;

true copies of any written reports, documented on any type of media;

summaries of any oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification; and

all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation.

An appraiser must retain the workfile for a period of at least five (5) years after preparation or at

least two (2) years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.

An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.

13. USPAP Standard 1 states:

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

14. USPAP Standards Rule 1-2 states:

In developing a real property appraisal, an appraiser must:

(a) identify the client and other intended users;

(b) identify the intended use of the appraiser's opinions and conclusions;

(c) identify the type and definition of value, and, if the value opinion to be developed is market value, ascertain whether the value is to be the most probable price:

(i) in terms of cash; or

(ii) in terms of financial arrangements equivalent to cash; or

(iii) in other precisely defined terms; and

(iv) if the opinion of value is to be based on non-market financing or financing with unusual conditions or incentives, the terms of such financing must be clearly identified and the appraiser's opinion of their contributions to or negative influence on value must be developed by analysis of relevant market data;

(d) identify the effective date of the appraiser's opinions and conclusions;

(e) identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including:

(i) its location and physical, legal, and economic attributes;

(ii) the real property interest to be valued;

(iii) any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal;

(iv) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of similar nature; and

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

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

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

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

15. USPAP Standard Rule 1-4 states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. USPAP Standards Rule 2-1 states:

Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading.

(b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and

(c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

17. USPAP Standards Rule 2-2 states:

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

. . .

(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal, and, at a minimum;

(i) state the identity of the client and any intended users, by name or type;

(ii) state the intended use of the appraisal;

(iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;

(iv) state the real property interest appraised;

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

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

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

(viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;

(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, summarize the support and rationale for that opinion;

(x) clearly and conspicuously:

state all extraordinary assumptions and hypothetical conditions; and

state that their use might have affected the assignment results; and

(xi) include a signed certification in accordance with Standards Rule 2-3.

. . .

18. USPAP Standards Rule 2-3 states:

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

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

— the statements of fact contained in this report are true and correct.

— the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.

— I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.

— I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

— my engagement in this assignment was not contingent upon developing or reporting predetermined results.

— my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

— my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

— I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)

— no one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.)

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FIRST CAUSE FOR DISCIPLINE

(88 South Broadway #2106, Millbrae, California)

19. On or about June 23, 2009, Respondent completed a real estate appraisal report for the property located at 88 South Broadway #2106, Millbrae, California. Respondent is subject to disciplinary action under Regulation section 3721, subdivisions (a)(6) and (a)(7), by and through his violations of Regulation sections 3701, 3702 subdivisions (a)(1) and (a)(3), and 3705, and based on the following Uniform Standards of Professional Appraisal Practice ("USPAP") violations:

20. Respondent failed to describe the subject property correctly; Respondent failed to state the size of the project site on which the subject property is located, and failed to report the project's density, in violation of Standards Rule ("S.R.") 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b) and 2-2(b)(iii);

21. Respondent failed to report the correct size of the subject property that he valued; Respondent understated the living area of the subject unit, in violation of S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), and 2-2(b)(iii).

22. Respondent failed to report the zoning for the subject property and state the zoning restrictions regarding the allowable density of development, in violation of S.R. 1-1(b), 1-2(e)(i), and 2-2(b)(iii).

23. Respondent signed a false certification which failed to state that assistance was provided in the preparation of the report; Respondent falsely stated that he inspected the subject property, violating S.R. 2-3 and the Conduct Section of the Ethics Rule.

24. Respondent failed to include his license number next to every signature of his appraisal report, in violation of Title 10, California Code of Regulations, section 3705.

SECOND CAUSE FOR DISCIPLINE

(Weimar, California)

25. On or about March 20, 2008, Respondent completed a real estate appraisal report for the property located next to the North Fork of the American River in Weimar, California. Respondent is subject to disciplinary action under Regulation section 3721, subdivisions (a)(6)

and (a)(7), by and through his violations of Regulation sections 3701, 3702 subdivisions (a)(1) and (a)(3), and based on the following Uniform Standards of Professional Appraisal Practice ("USPAP") violations:

26. Respondent failed to accurately describe the neighborhood; the map in the report falsely indicates that the subject property is located near a freeway, in violation of S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(a), 2-2(b)(iii) and the Conduct Section of the Ethics Rule.

27. Respondent failed to state the correct price structures for the subject neighborhood; the prices stated in the report are substantially above that of the subject neighborhood, in violation of S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(a) and 2-2(b)(iii).

28. Respondent failed to describe the subject property correctly; Respondent indicated that the site is primarily level, which is false; Respondent falsely described the location of the subject property as being near a freeway when it is at the bottom of a canyon distant from the freeway; Respondent failed to report that the subject has no recorded access and failed to state how the subject property can be accessed, in violation of S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b) and 2-2(b)(iii).

29. Respondent reported the wrong zoning for the subject property resulting in a grossly misleading appraisal report; the report fails to report the zoning restriction for the subject property, in violation of S.R. 1-1(b), 1-2(e)(i), and 2-2(b)(iii).

30. Respondent failed to analyze the highest and best use of the subject property; Respondent's appraisal report fails to state that legal restrictions severely limit the use and marketability of the subject property; the report fails to state that the location of the property and its topography limit its development potential; instead, the report misleads the reader into believing that it has more potential that it does by misrepresenting its location on a map and comparing it to properties with more development potential, in violation of S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), and 2-2(b)(iii).

31. Respondent failed to use appropriate sales in his report resulting in a grossly misleading report, in violation of S.R. 1-1(a), 1-1(b), 1-4(a), 2-1(a) and the Competency Rule.

32. Respondent signed a false certification, which stated that he inspected the subject property, in violation of S.R. 2-3 and the Conduct Section of the Ethics Rule.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of the Office of Real Estate Appraisers issue a decision:

1. Revoking or suspending Real Estate Appraiser License Number AR005543, issued to Kevin J. Driscoll;

2. Ordering Kevin J. Driscoll to pay the Director of the Office of Real Estate Appraisers the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 11409;

3. Ordering Kevin J. Driscoll to pay the Director of the Office of Real Estate Appraisers a fine pursuant to Business and Professions Code section 11316; and

4. Taking such other and further action as deemed necessary and proper.

Original Signed

DATED: 5/2/12

ELIZABETH SEATERS
Chief of Enforcement
Office of Real Estate Appraisers
State of California
Complainant

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