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7
8 **BEFORE THE**
DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 120113-04

11 **JAMES L. HAUSEL**
2811 Castro Valley Blvd., No. 209
12 Castro Valley, California 94546

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

13 **Real Estate Appraiser License No.**
AR009954

14 Respondent.
15

16 Complainant alleges:

17 PARTIES

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

21 2. On or about July 6, 1992, the Director of the Office of Real Estate Appraisers issued
22 Real Estate Appraiser License Number AR009954 to James L. Hausel (Respondent). The Real
23 Estate Appraiser License was in full force and effect at all times relevant to the charges brought
24 herein and will expire on October 28, 2012, unless renewed.

25 JURISDICTION

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

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

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

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

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

14 6. Business and Professions Code section 11314 states, in pertinent part: "The office is
15 required to include in its regulations requirements for licensure and discipline of real estate
16 appraisers that ensure protection of the public interest."

17 7. Business and Professions Code section 11319 states:

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

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

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

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

1 (a) The Director finds and declares as follows:

2 "(1) That the profession of real estate appraisal is vested with a fiduciary relationship of
3 trust and confidence as to clients, lending institutions, and both public and private guarantors or
4 insurers of funds in federally-related real estate transactions and that the qualifications of honesty,
5 candor, integrity, and trustworthiness are directly and substantially related to and indispensable to
6 the practice of the appraisal profession;

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

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

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

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

21 . . .

22 "(2) Done any act involving dishonesty, fraud or deceit with the intent to benefit himself or
23 another, or to injure another;

24 . . .

25 "(6) Violated any provision of USPAP;

26 "(7) Violated any provision of the Real Estate Appraisers' Licensing and Certification Law,
27 Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code, or

28

1 regulations promulgated pursuant thereto; or any provision of the Business and Professions Code
2 applicable to applicants for or holders of licenses authorizing appraisals;

3 ...

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

10 ..."

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

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

19 12. Business and Professions Code section 11328 states, in pertinent part:

20 "To substantiate documentation of appraisal experience, or to facilitate the investigation of
21 illegal or unethical activities by a licensee, applicant, or other person acting in a capacity that
22 requires a license, that licensee, applicant, or person shall, upon the request of the director, submit
23 copies of appraisals, or any work product which is addressed by the Uniform Standards of
24 Professional Appraisal Practice, and all supporting documentation and data to the OREA."

25 2010 UNIFORM STANDARDS OF APPRAISAL PRACTICE (USPAP)

26 13. USPAP Standards Rule 1 states:

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

1 analyses necessary to produce a credible appraisal.

2 14. USPAP Standards Rule 1-1, states:

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

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

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

8 and

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

12 15. USPAP Standards Rule 1-2, states:

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

14 (a) identify the client and other intended users; [footnote omitted]

15 (b) identify the intended use of the appraiser's opinions and conclusions; [footnote
16 omitted]

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

19 (i) in terms of cash; or

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

21 (iii) in other precisely defined terms; and

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

26 (d) identify the effective date of the appraiser's opinions and conclusions; [footnote
27 omitted]

28

- 1 (e) identify the characteristics of the property that are relevant to the type and
2 definition of value and intended use of the appraisal, [footnote omitted] including:
- 3 (i) its location and physical, legal, and economic attributes;
 - 4 (ii) the real property interest to be valued;
 - 5 (iii) any personal property, trade fixtures, or intangible items that are not real
6 property but are included in the appraisal;
 - 7 (iv) any known easements, restrictions, encumbrances, leases, reservations,
8 covenants, contracts, declarations, special assessments, ordinances, or other items of a
9 similar nature; and
 - 10 (v) whether the subject property is a fractional interest, physical segment, or
11 partial holding;
 - 12 (f) identify any extraordinary assumptions necessary in the assignment;
 - 13 (g) identify any hypothetical conditions necessary in the assignment; and
 - 14 (h) determine the scope of work necessary to produce credible assignment results in
15 accordance with the SCOPE OF WORK RULE. [footnote omitted]

16 16. USPAP Standards Rule 1-3, states

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

- 19 (a) identify and analyze the effect on use and value of existing land use regulations,
20 reasonably probable modifications of such land use regulations, economic supply and demand,
21 the physical adaptability of the real estate, and market area trends; and
- 22 (b) develop an opinion of the highest and best use of the real estate.

23 17. USPAP Standards Rule 1-4, states

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

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

28

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

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

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

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

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

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

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

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

16 (iv) base projections of future rent and/or income potential and expenses on reasonably
17 clear and appropriate evidence. [footnote omitted]

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

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

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

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

3 18. USPAP Standards Rule 2, states:

4 In reporting the results of a real property appraisal, an appraiser must communicate each
5 analysis, opinion, and conclusion in a manner that is not misleading. [footnote omitted]

6 19. USPAP Standards Rule 2-1, states:

7 Each written or oral real property appraisal report must:

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

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

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

14 20. USPAP Standards Rule 2-2, states:

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

18 (a) The content of a Self-Contained Appraisal Report must be consistent with the
19 intended use of the appraisal and, at a minimum:

20 (i) state the identity of the client and any intended users, by name or type; [footnote
21 omitted]

22 (ii) state the intended use of the appraisal; [footnote omitted]

23 (iii) describe information sufficient to identify the real estate involved in the appraisal,
24 including the physical and economic property characteristics relevant to the
25 assignment; [footnote omitted]

26 (iv) state the real property interest appraised;

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

28

- 1 (vi) state the effective date of the appraisal and the date of the report; [footnote
2 omitted]
- 3 (vii) describe the scope of work used to develop the appraisal; [footnote omitted]
- 4 (viii) describe the information analyzed, the appraisal methods and techniques
5 employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of
6 the sales comparison approach, cost approach, or income approach must be explained;
- 7 (ix) state the use of the real estate existing as of the date of value and the use of the real
8 estate reflected in the appraisal; and, when an opinion of highest and best use was developed by
9 the appraiser, describe the support and rationale for that opinion;
- 10 (x) clearly and conspicuously:
11 state all extraordinary assumptions and hypothetical conditions; and
12 state that their use might have affected the assignment results; and
- 13 (xi) include a signed certification in accordance with Standards Rule 2-3.
- 14 (b) The content of a Summary Appraisal Report must be consistent with the intended
15 use of the appraisal and, at a minimum:
- 16 (i) state the identity of the client and any intended users, by name or type; [footnote
17 omitted]
- 18 (ii) state the intended use of the appraisal; [footnote omitted]
- 19 (iii) summarize information sufficient to identify the real estate involved in the
20 appraisal, including the physical and economic property characteristics relevant to the
21 assignment; [footnote omitted]
- 22 (iv) state the real property interest appraised;
- 23 (v) state the type and definition of value and cite the source of the definition;
- 24 (vi) state the effective date of the appraisal and the date of the report; [footnote
25 omitted]
- 26 (vii) summarize the scope of work used to develop the appraisal; [footnote omitted]
- 27
- 28

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

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

7 (x) clearly and conspicuously:

8 state all extraordinary assumptions and hypothetical conditions; and

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

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

11 (c) The content of a Restricted Use Appraisal Report must be consistent with the
12 intended use of the appraisal and, at a minimum:

13 (i) state the identity of the client, by name or type; [footnote omitted] and state a
14 prominent use restriction that limits use of the report to the client and warns that the appraiser's
15 opinions and conclusions set forth in the report may not be understood properly without
16 additional information in the appraiser's workfile;

17 (ii) state the intended use of the appraisal; [footnote omitted]

18 (iii) state information sufficient to identify the real estate involved in the appraisal;
19 [footnote omitted]

20 (iv) state the real property interest appraised;

21 (v) state the type of value, and cite the source of its definition; [footnote omitted]

22 (vi) state the effective date of the appraisal and the date of the report; [footnote
23 omitted]

24 (vii) state the scope of work used to develop the appraisal; [footnote omitted]

25 (viii) state the appraisal methods and techniques employed, state the value opinion(s)
26 and conclusion(s) reached, and reference the workfile; exclusion of the sales comparison
27 approach, cost approach, or income approach must be explained;

28

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

4 (x) clearly and conspicuously:

5 state all extraordinary assumptions and hypothetical conditions; and

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

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

8 21. USPAP Ethics Rule, states:

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

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

15 Conduct:

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

18 An appraiser:

- 19 • must not perform an assignment with bias;
- 20 • must not advocate the cause or interest of any party or issue;
- 21 • must not accept an assignment that includes the reporting of predetermined
22 opinions and conclusions;
- 23 • must not misrepresent his or her role when providing valuation services that are
24 outside of appraisal practice;
- 25 • must not communicate assignment results with the intent to mislead or to defraud;
- 26 • must not use or communicate a report that is known by the appraiser to be
27 misleading or fraudulent;

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- 1 • must not knowingly permit an employee or other person to communicate a
- 2 misleading or fraudulent report;
- 3 • must not use or rely on unsupported conclusions relating to characteristics such
- 4 as race, color, religion, national origin, gender, marital status, familial status, age,
- 5 receipt of public assistance income, handicap, or an unsupported conclusion that
- 6 homogeneity of such characteristics is necessary to maximize value;
- 7 • must not engage in criminal conduct; and
- 8 • must not perform an assignment in a grossly negligent manner.

9 If known prior to accepting an assignment, and/or if discovered at any time during the
10 assignment, an appraiser must disclose to the client, and in the subsequent report certification:

- 11 • any current or prospective interest in the subject property or parties involved; and
- 12 • any services regarding the subject property performed by the appraiser within the
- 13 three year period immediately preceding acceptance of the assignment, as an
- 14 appraiser or in any other capacity.

15 Management:

16 An appraiser must disclose that he or she paid a fee or commission, or gave a thing of
17 value in connection with the procurement of an assignment.

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

- 20 1. the reporting of a predetermined result (e.g., opinion of value);
- 21 2. a direction in assignment results that favors the cause of the client;
- 22 3. the amount of a value opinion;
- 23 4. the attainment of a stipulated result (e.g., that the loan closes, or taxes are reduced);

24 or

- 25 5. the occurrence of a subsequent event directly related to the appraiser's opinions
- 26 and specific to the assignment's purpose.

27 An appraiser must not advertise for or solicit assignments in a manner that is false,
28 misleading, or exaggerated.

1 An appraiser must affix, or authorize the use of, his or her signature to certify recognition
2 and acceptance of his or her USPAP responsibilities in an appraisal, appraisal review, or
3 appraisal consulting assignment (see Standards Rules 2-3, 3-6, 5-3, 6-9, 8-3, and 10-3). An
4 appraiser may authorize the use of his or her signature only on an assignment-by-assignment
5 basis.

6 An appraiser must not affix the signature of another appraiser without his or her consent.

7 Confidentiality:

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

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

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

13 An appraiser must not disclose: (1) confidential information; or (2) assignment results
14 to anyone other than:

- 15 • the client;
- 16 • persons specifically authorized by the client;
- 17 • state appraiser regulatory agencies;
- 18 • third parties as may be authorized by due process of law; or
- 19 • a duly authorized professional peer review committee except when such
20 disclosure to a committee would violate applicable law or regulation.

21 A member of a duly authorized professional peer review committee must not disclose
22 confidential information presented to the committee.

23 Record Keeping:

24 An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal
25 consulting assignment. A workfile must be in existence prior to the issuance of a written or
26 oral report. A written summary of an oral report must be added to the workfile within a
27 reasonable time after the issuance of the oral report.

28 The workfile must include:

- 1 • the name of the client and the identity, by name or type, of any other intended users;
- 2 • true copies of any written reports, documented on any type of media (A true copy is
- 3 a replica of the report transmitted to the client. A photocopy or an electronic copy of
- 4 the entire signed report transmitted to the client satisfies the requirement of a true
- 5 copy.);
- 6 • summaries of any oral reports or testimony, or a transcript of testimony,
- 7 including the appraiser’s signed and dated certification; and
- 8 • all other data, information, and documentation necessary to support the
- 9 appraiser’s opinions and conclusions and to show compliance with USPAP, or
- 10 references to the location(s) of such other documentation.

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

12 at least two years after final disposition of any judicial proceeding in which the appraiser

13 provided testimony related to the assignment, whichever period expires last.

14 An appraiser must have custody of his or her workfile, or make appropriate workfile

15 retention, access, and retrieval arrangements with the party having custody of the workfile.

16 An appraiser having custody of a workfile must allow other appraisers with workfile

17 obligations related to an assignment appropriate access and retrieval for the purpose of:

- 18 • submission to state appraiser regulatory agencies;
- 19 • compliance with due process of law;
- 20 • submission to a duly authorized professional peer review committee; or
- 21 • compliance with retrieval arrangements.

22 22. The USPAP Competency Rule, states:

23 An appraiser must: (1) be competent to perform the assignment; (2) acquire the necessary

24 competency to perform the assignment; or (3) decline or withdraw from the assignment.

25 Being Competent

26 The appraiser must determine, prior to accepting an assignment, that he or she can

27 perform the assignment competently. Competency requires:

- 28 1. the ability to properly identify the problem to be addressed; and

2. the knowledge and experience to complete the assignment competently; and
3. recognition of, and compliance with, laws and regulations that apply to the appraiser or to the assignment.

Acquiring Competency

If an appraiser determines he or she is not competent prior to accepting an assignment, the appraiser must:

1. disclose the lack of knowledge and/or experience to the client before accepting the assignment;
2. take all steps necessary or appropriate to complete the assignment competently; and
3. describe, in the report, the lack of knowledge and/or experience and the steps taken to complete the assignment competently.

When facts or conditions are discovered during the course of an assignment that cause an appraiser to determine, at that time, that he or she lacks the required knowledge and experience to complete the assignment competently, the appraiser must:

1. notify the client, and
2. take all steps necessary or appropriate to complete the assignment competently, and
3. describe, in the report, the lack of knowledge and/or experience and the steps taken to complete the assignment competently.

Lack of Competency

If the assignment cannot be completed competently the appraiser must decline or withdraw from the assignment.

23. USPAP Scope of Work Rule, states:

For each appraisal, appraisal review, and appraisal consulting assignment, an appraiser must:

1. identify the problem to be solved;
2. determine and perform the scope of work necessary to develop credible assignment results; and
3. disclose the scope of work in the report.

1 An appraiser must properly identify the problem to be solved in order to determine the
2 appropriate scope of work. The appraiser must be prepared to demonstrate that the scope of work
3 is sufficient to produce credible assignment results.

4 Problem Identification

5 An appraiser must gather and analyze information about those assignment elements that are
6 necessary to properly identify the appraisal, appraisal review or appraisal consulting problem to
7 be solved.

8 Scope of Work Acceptability

9 The scope of work must include the research and analyses that are necessary to develop
10 credible assignment results.

11 An appraiser must not allow assignment conditions to limit the scope of work to such a
12 degree that the assignment results are not credible in the context of the intended use.

13 An appraiser must not allow the intended use of an assignment or a client's objectives to
14 cause the assignment results to be biased.

15 Disclosure Obligations

16 The report must contain sufficient information to allow intended users to understand the
17 scope of work performed.

18 FIRST CAUSE FOR DISCIPLINE

19 (2504 Myrtle Street, Oakland, California)

20 24. On or about September 20, 2010, Respondent completed an appraisal report with the
21 same effective date, on a residential property located at 2504 Myrtle Street, Oakland, California.
22 Respondent is subject to disciplinary action under California Code of Regulations, title 10,
23 section 3721, subdivisions (a)(6) and (a)(7), by and through his violations of California Code of
24 Regulations, title 10 sections 3701, 3702 subdivisions (a)(1) and (a)(3), and based on the
25 following USPAP violations:

26 a. Respondent failed to accurately report the subject's neighborhood description and
27 land use. Respondent reported that the subject's neighborhood consisted of 100% single family
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1 properties, when the neighborhood consisted of commercial, multifamily and one-unit housing, in
2 violation of Standard Rules (“S.R.”) 1-1(b), 1-2(e)(i) and 2-2(b)(iii).

3 b. Respondent failed to report the correct zoning classification, zoning description and
4 zoning compliance for the subject property. Respondent reported the subject’s zoning
5 classification as “R-1” with a description as “single family residential.” The subject’s zoning
6 classification was actually R-50 with a zoning description of Medium Density Residential with a
7 4000 square foot lot minimum. Respondent reported that subject’s zoning compliance was legal
8 when it was legal non-conforming because the lot was less than 4000 square feet in violation of
9 S.R. 1-2(e)(i) and 2-2(b)(iii).

10 c. Respondent failed to support his opined highest and best use when he reported a
11 highest and best use for the subject property as a single family residence and misrepresented the
12 real property improvements of the subject property. Respondent reported the subject as a single
13 family residence. However, he reported within an addendum that the subject’s basement was
14 improved with a full kitchen and bathroom and included photographic evidence that the subject
15 functioned as two units as of the effective date of value. Respondent failed to analyze and report
16 the legal permissibility of the subject’s two units. He also failed to report that the subject’s
17 zoning classification would have allowed for two units (with proper permits). Therefore, he
18 failed to support his opined single family residence highest and best use, in violation of S.R. 1-
19 3(b), 1-2(e)(i), 2-2(b)(ix) and the Conduct Section of the Ethics Rule.

20 d. Respondent committed substantial errors of omission that significantly affected the
21 credibility of the assignment results. Respondent failed to apply the appropriate diligence
22 required to complete the appraisal assignment competently when he failed to properly report the
23 subject’s neighborhood characteristics, failed to properly verify and report the subject’s zoning,
24 and failed to consistently report the subject’s two unit use, in violation of USPAP S.R. 1-1(a), 1-
25 1(b), 2-2(b)(viii) and the Competency Rule.

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1 THIRD CAUSE FOR DISCIPLINE

2 (22505 Woodroe Avenue, Hayward, California)

3 26. On or about May 24, 2011, Respondent completed an “as is” appraisal report with an
4 effective date of May 26, 2011 on a residential property located at 22505 Woodroe Avenue,
5 Hayward, California. Respondent is subject to disciplinary action under California Code of
6 Regulations, title 10, section 3721, subdivisions (a)(6) and (a)(7), by and through his violations of
7 California Code of Regulations, title 10 sections 3701, 3702 subdivisions (a)(1) and (a)(3), and
8 based on the following USPAP violations:

9 a. Respondent failed to support his opined highest and best use when he reported a
10 highest and best use for the subject property as a single family residence and misrepresented the
11 real property improvements of the subject property. Respondent reported the subject as a single
12 family residence and failed to report that the subject was a twelve bed residential care facility as
13 of the effective date of value. Respondent also failed to report and analyze the subject’s special
14 use permit that allowed the subject to operate as a licensed twenty four hour residential care
15 facility, when he opined a highest and best use as single family residential, in violation of S.R. 1-
16 3(b), 1-2(e)(i), and S.R. 2-2(b)(ix).

17 b. Respondent failed to clearly and conspicuously state all hypothetical conditions, and
18 failed to state that their use might have affected the assignment results, when he failed to report
19 that the subject was licensed as a twelve bed residential care facility and appraised it as if it were
20 a single family residential property, in violation of S.R. 1-2(g) and 2-2(b)(x).

21 c. Respondent failed to analyze appropriate comparable sales data when he utilized
22 comparable sales that were not substitute properties for the subject. The subject was a twelve bed
23 residential care facility as of the effective date of the appraisal and all reported comparable sales
24 were single family residential properties. Respondent failed to report any analysis for differences
25 between the subject’s residential care facility use and the comparable sales single family use.
26 Respondent therefore also failed to support his final opinion of value because his final value
27 opinion was based on an unsupported Sales Comparison Approach that relied on inappropriate
28 comparable sales, in violation of S.R. 1-4(a) and 2-2(b)(viii).

1 d. Respondent signed a false certification when he certified that he complied with the
2 Appraiser's Certifications, in violation of S.R. 2-1(a) and S.R. 2-1(b), when he failed to:

- 3 • Perform the appraisal in accordance with the requirements of USPAP
4 (certification number three);
- 5 • Use comparable market data that would result in the development of a reliable
6 sales comparison approach for the appraisal assignment, because he only used
7 residential properties that were used as single family homes when appraising a
8 twelve bed residential care facility (certification number four);
- 9 • Use Comparable sales that were functionally similar to the subject property when
10 he only utilized comparables that functioned as single family residences when
11 appraising a property that functioned as a twelve bed residential care facility
12 (certification number seven);
- 13 • Access the necessary and appropriate public and private data sources when he
14 failed to obtain the information about the subject property that was available from
15 the Alameda County Planning Department (certification number twelve); and
- 16 • Fallaciously represented the subject property as a single family residence
17 (certification number fifteen).

18 e. Respondent failed to develop the appropriate assignment specific scope of work, in
19 violation of S.R. 1-2(h), 2-2(b)(vii) and the Scope of Work Rule, when he failed to:

- 20 • Properly identify the problem to be solved, when he failed to appraise the subject
21 as a twelve bed residential care facility for this "as-is" appraisal assignment;
- 22 • Perform the necessary research and analysis, when he failed to research and
23 analyze appropriate comparable properties; and
- 24 • Properly disclose sufficient information necessary to allow the intended user to
25 understand the scope of work performed.

26 f. Respondent failed to provide the Office of Real Estate Appraisers with workfile
27 information documenting the support for his opinions and conclusions or references to the
28 locations of such documentation, in violation of the Record Keeping Section of the Ethics Rule.

1 g. Respondent communicated a misleading or fraudulent appraisal report by
2 misrepresenting the subject property as a single family residence when it was a twelve bed
3 residential care facility, in violation of S.R. 1-1(a), 1-1(b), 2-1(a) and the Conduct Section of the
4 Ethics Rule.

5 FOURTH CAUSE FOR DISCIPLINE

6 (22505 Woodroe Avenue, Hayward, California)

7 27. On or about May 24, 2011, Respondent completed an “as completed” appraisal report
8 with an effective date of May 26, 2011 on a residential property located at 22505 Woodroe
9 Avenue, Hayward, California. Respondent is subject to disciplinary action under California Code
10 of Regulations, title 10, section 3721, subdivisions (a)(6) and (a)(7), by and through his violations
11 of California Code of Regulations, title 10 sections 3701, 3702 subdivisions (a)(1) and (a)(3), and
12 based on the following USPAP violations:

13 a. Respondent failed to support his opined highest and best use when he reported a
14 highest and best use for the subject property as a single family residence and misrepresented the
15 proposed as-completed real property improvements of the subject property. Respondent reported
16 the subject as a single family residence and failed to report that the subject’s proposed
17 improvements were for the expansion of a licensed residential care facility from a twelve bed
18 facility to a fifteen bed facility. Respondent also failed to report and analyze the subject’s special
19 use permit as a licensed twenty four hour residential care facility with a proposed continued use
20 as an expanded residential care facility, when he opined a highest and best use as single family
21 residential, in violation of S.R. 1-3(b), 1-2(e)(i) and 2-2(b)(ix).

22 b. Respondent failed to clearly and conspicuously state all hypothetical conditions, and
23 failed to state that their use might have affected the assignment results, when he failed to report
24 that the subject’s proposed improvements were for a fifteen bed residential care facility and
25 appraised the proposed improvements as if the subject was going to be a single family residential
26 property, in violation of S.R. 1-2(g) and 2-2(b)(x).

27 c. Respondent failed to analyze the appropriate comparable sales data when he utilized
28 comparable sales that were not appropriate substitute properties for the subject’s proposed

1 completed improvements. The subject was proposed to be a fifteen bed residential care facility
2 for this “as-completed” appraisal. All reported comparable sales were single family residential
3 properties. Respondent failed to report any analysis for differences between the subject’s
4 residential care facility use and the comparable sales single family use. Respondent therefore also
5 failed to support his final opinion of value because his final value opinion was based on an
6 unsupported Sales Comparison Approach that relied on inappropriate comparable sales, in
7 violation of S.R. 1-4(a) and 2-2(b)(viii).

8 d. Respondent signed a false certification when he certified that he complied with the
9 Appraiser’s Certifications, in violation of S.R. 2-1(a) and 2-1(b), when he failed to:

- 10 • Perform the appraisal in accordance with the requirements of USPAP
11 (certification number three);
- 12 • Use comparable market data that would result in the development of a reliable
13 sales comparison approach for the appraisal assignment, because he only used
14 single family homes when appraising a proposed fifteen bed residential care
15 facility (certification number four);
- 16 • Use comparable sales that were functionally similar to the subject property when
17 he only utilized comparables that functioned as single family residences when
18 appraising a property that was proposed to function as a fifteen bed residential
19 care facility (certification number seven);
- 20 • Access the necessary and appropriate public and private data sources when he
21 failed to obtain the information about the subject property that was available from
22 the Alameda County Planning Department (certification number twelve); and
- 23 • Fallaciously represented the subject as a single family residence (certification
24 number fifteen).

25 e. Respondent failed to develop the appropriate assignment specific scope of work, in
26 violation of S.R. 1-2(h), 2-2(b)(vii), and the Scope of Work Rule, when he failed to:

- 1 • Properly identify the problem to be solved, when he failed to appraise the subject
- 2 as a fifteen bed residential care facility as per the plans and specifications for this
- 3 “as-completed” appraisal assignment;
- 4 • Perform the necessary research and analysis, when he failed to research and
- 5 analyze the subject’s legal use for a proposed expanded residential care facility
- 6 and failed to research and analyze appropriate comparable properties; and
- 7 • Properly disclose sufficient information necessary to allow the intended user to
- 8 understand the scope of work performed.

9 f. Respondent failed to provide the Office of Real Estate Appraisers with all workfile
10 information documenting the support for his opinion and conclusions or references to the
11 locations of such documentation, in violation of the Record Keeping Section of the Ethics Rule.

12 g. Respondent communicated a misleading or fraudulent appraisal report by
13 misrepresenting the subject property as if it was going to be completed as a single family
14 residence when it was going to be utilized as a fifteen bed residential care facility, in violation of
15 S.R. 1-1(a), 1-1(b), 2-1(a), and the Conduct Section of the Ethics Rule.

16 PETITION TO REVOKE PROBATION

17 28. In a disciplinary action entitled "In the Matter of Accusation against James L.
18 Hausel," Case No. C060504-05, the Director of the Office of Real Estate Appraisers issued a
19 decision, effective October 7, 2010, in which Respondent’s Real Estate Appraiser License was
20 revoked. However, the revocation was stayed and Respondent’s Real Estate Appraiser License
21 was placed on probation for a period of two (2) years with certain terms and conditions. A copy
22 of that decision is attached as Exhibit A and is incorporated by reference.

23 FIRST CAUSE TO REVOKE PROBATION

24 (Appraisal Logs/Work Samples)

25 29. At all times after the effective date of Respondent’s probation, Condition 2 stated:

26 Appraisal Log/Work Samples. Commencing on the effective date of the Decision
27 and Order and continuing through the period of probation, respondent shall
28 maintain a log of all appraisals respondent performs on the Log of Appraisal
Experience (REA 3004) form. Respondent will submit a complete and accurate
copy of the log of all appraisals completed each six months. Each six-month log

1 shall be submitted to the Office of Real Estate Appraisers (OREA) within 30 days
2 following the end of each six-month period. Respondent understands that OREA
will select work samples for review from each submitted six-month appraisal log.

3 30. Respondent's probation is subject to revocation because he failed to comply with
4 Probation Condition 2, referenced above, in that he failed to timely submit to the Office of Real
5 Estate Appraisers a complete and accurate copy of the log of all appraisals completed each six
6 months within the required 30 days following the end of each six-month period.

7 SECOND CAUSE TO REVOKE PROBATION

8 (Uniform Standards of Professional Appraisal Practice Course/Examination)

9 31. At all times after the effective date of Respondent's probation, Condition 12 stated:

10 Uniform Standards of Professional Appraisal Practice Course/Examination.
11 Respondent shall take and pass an OREA approved 15-hour basic education course
12 on the Uniform Standards of Professional Appraisal Practice (USPAP) within 12
13 months of the date the decision and order of the Director of OREA is final. This
14 course must be the Appraisal Foundation's National USPAP Course (or its
15 equivalent as determined solely by the Appraiser Qualifications Board (AQB)
16 Course Approval Program), and must be taught by an AQB Certified USPAP
17 Instructor who is also a Certified Residential or Certified General appraiser in
18 good standing with OREA. The course must be in a classroom setting and
19 administer a closed book final examination. Respondent must submit proof of
20 successful completion of the course and final examination within 12 months
21 following the date the Decision and Order of the Director of OREA is final.
22 Respondent understands that it is his responsibility to ensure that the course meets
23 all of the requirements listed above and to apply for, schedule, and make all
24 arrangements to take it.

25 32. Respondent's probation is subject to revocation because he failed to comply with
26 Probation Condition 12, referenced above, in that he failed to take and pass an OREA approved
27 15-hour basic education course of the Uniform Standards of Appraisal Practice within 12 months
28 of the date of the Decision and Order of the Director of the OREA.

29 THIRD CAUSE TO REVOKE PROBATION

30 (Basic Education Course)

31 33. At all times after the effective date of Respondent's probation, Condition 13 stated:

32 Basic Education Course. Respondent shall take and successfully complete, within
33 30 days from the effective date of the Decision and Order of the director of OREA,
34 30 hours of OREA approved basic education courses covering the following
35 topics: Residential Sales Comparison and Income Approaches. The courses must
36 be given in a classroom setting and must administer and closed book final
37 examination. The courses must be approved in advance by the Director of OREA
38 or the Director's designee. Respondent has the burden of applying for, scheduling,

1 and otherwise making arrangements to take the course. Respondent must timely
2 report successful completion of the course within 30 days from the date of
3 completion, by submitting to OREA a course completion certificate or transcript
4 verifying respondent's successful completion of the course and passage of the final
5 examination.

6 34. Respondent's probation is subject to revocation because he failed to comply with
7 Probation Condition 13, referenced above, in that he failed to take and successfully complete 30
8 hours of OREA approved basic education courses covering Residential Sales Comparison and
9 Income Approaches within 30 days of the date of the Decision and Order of the Director of the
10 OREA.

11 PRAYER

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

- 15 1. Revoking or suspending Real Estate Appraiser License Number AR009954, issued to
16 James L. Hausel;
- 17 2. Ordering James L. Hausel to pay the Director of the Office of Real Estate Appraisers
18 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code section 11409;
- 20 3. Ordering James L. Hausel to pay the Director of the Office of Real Estate Appraisers
21 a fine pursuant to Business and Professions Code section 11316; and
- 22 4. Taking such other and further action as deemed necessary and proper.

23 DATED: 10/1/12

Original Signed

24 ELIZABETH SEATERS
25 Chief of Enforcement
26 Office of Real Estate Appraisers
27 State of California
28 *Complainant*

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