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9 **BEFORE THE**
10 **DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS**
11 **STATE OF CALIFORNIA**

12 **In the Matter of the Accusation Against:**

Case No. C 101213-04

13 **Dean L. Herbst**
14 **1517 Keating Court**
15 **Ceres, CA 95307**

A C C U S A T I O N

16 **3939 Central Avenue #23-A**
17 **Ceres, CA 95307**

18 **Certified Residential Appraiser License No.**
19 **AR014962**

20 **Respondent.**

21 Complainant alleges:

22 **PARTIES**

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

26 2. On or about November 16, 1993 the Director of the Office of Real Estate Appraisers
27 ("Director") issued Certified Residential Appraiser license Number AR014962 to Dean L. Herbst
28 ("Respondent"). Respondent's real estate appraiser license was in full force and effect at all
times relevant to the charges brought herein. Respondent's real estate appraiser license expired
on April 12, 2011.

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1 **JURISDICTION**

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

5 4. Code section 11313 requires OREA to adopt and enforce rules and regulations as are
6 determined reasonably necessary to carry out the purposes of the Real Estate Appraisers’
7 Licensing and Certification law.

8 5. Code section 11314 states, in pertinent part:

9 The office is required to include in its regulations requirements for licensure and
10 discipline of real estate appraisers that ensure protection of the public interest.

11 **FINES**

12 6. Code section 11316, subdivision (a) states:

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

18 **MINIMUM STANDARDS FOR CONDUCT AND PERFORMANCE**

19 7. Code section 11319 states:

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

25 8. Code section 11328 states:

26 To substantiate documentation of appraisal experience, or to facilitate the investigation of
27 illegal or unethical activities by a licensee, applicant, or other person acting in the capacity that
28 requires a license, that licensee, applicant or person shall, upon the request of the director, submit

1 copies of appraisals, or any work product which is addressed by the Uniform Standards of
2 Professional Appraisal Practice, and all supporting documentation and data to the office. This
3 material shall be confidential in accordance with the confidentiality provisions of the Uniform
4 Standards of Professional Appraisal Practice.

5 **COST RECOVERY**

6 9. Code section 11409, subdivision (a) states:

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

14 **REGULATORY PROVISIONS**

15 10. The OREA regulations appear in Title 10, Chapter 6.5, section 3500 et seq., as
16 amended from time to time, of the California Code of Regulations (Regulation.)

17 11. Regulation section 3527, subdivision (a) states, in pertinent part:

18 (a) All applicants for and holders of a license...shall submit written notice to OREA
19 of any change to the following within 10 days on the Change Notification and Miscellaneous
20 Requests Form REA 3011 (Rev. 5/8/00), which is herein incorporated by reference:

- 21 (1) Name;
- 22 (2) Residence telephone number
- 23 (3) Business telephone number
- 24 (4) Residence Address
- 25 (5) Business name or address; or
- 26 (6) Mailing address.

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1 12. Regulation section 3701 states:

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

6 13. Regulation section 3702 (a) states, in pertinent part:

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

8 (1) That the profession of real estate appraisal is vested with a fiduciary
9 relationship of trust and confidence as to clients, lending institutions, and both public
10 and private guarantors or insurers of funds in federally-related real estate transactions
11 and that the qualifications of honesty, candor, integrity and trustworthiness are
12 directly and substantially related to and indispensable to the practice of the appraisal
13 profession ...

14 (3) Every holder of a license to practice real estate appraisal ...shall be
15 required to demonstrate by his or her conduct that he or she possesses the
16 qualifications of honesty, candor, integrity and trustworthiness.

17 14. Regulation section 3705 (a) states:

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

24 15. Regulation 3721 states, in pertinent part:

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

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(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.

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)
(EFFECTIVE JULY 1, 2006)¹

16. 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.

17. USPAP Standard 2 states:

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

18. The Ethics Rule of USPAP states, in pertinent part:

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

PROPERTY APPRAISED

19. On September 1, 2007, Respondent completed a real estate appraisal report for property located at 4213 Windgate Drive, Denair, California, with a concluded opinion of value at \$301,000.00. The property consisted of a 8,125 square foot lot improved with an approximately 1,246 square foot, 6 room, 3 bedroom, 2 bathroom, 1-story, home built in 1975.

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¹ USPAP is periodically revised: appraisers are responsible for adherence to the edition of USPAP in effect as of the date of report for an appraisal. The 2006-2007 edition of USPAP (effective July 1, 2006 through December 31, 2007), was applicable to the appraisal in this case, which had a report date of September 1, 2007.

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

DATED: 5/1/12

Original Signed

Elizabeth Seaters
Chief of Enforcement
Office of Real Estate Appraisers
State of California
Complainant