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

10
11 In the Matter of the Accusation Against:

Case No. C101216-03

12 **DONALD J. LIENING**
13 **4473 Mississippi St. #6**
14 **El Cajon, CA 92116**

A C C U S A T I O N

15 **Certified Residential Appraiser License No.**
033255

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about February 14, 2007, the Director of the Office of Real Estate Appraisers
24 (OREA) issued Certified Residential Appraiser License Number 033255 to Donald J. Liening
25 (Respondent). The Certified Residential Appraiser License was in full force and effect at all
26 times relevant to the charges brought herein and will expire on March 2, 2014, unless renewed.

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1 **JURISDICTION**

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

5 4. Business and Professions Code section 118 states, in pertinent part, that the
6 suspension, expiration, or forfeiture by operation of law of a license issued by a board in the
7 department, or its suspension, forfeiture, or cancellation by order of the board or by order of a
8 court of law, or its surrender without the written consent of the board, shall not, during any period
9 in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to
10 institute or continue a disciplinary proceeding against the licensee upon any ground provided by
11 law or to enter an order suspending or revoking the license or otherwise taking disciplinary action
12 against the licensee on any such ground.

13 5. Business and Professions Code section 11313 requires OREA to adopt and enforce
14 regulations determined to be reasonable necessary to carry out the purposes of the Real Estate
15 Appraisers' Law.

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

19 7. Business and Professions Code section 11316 states, in pertinent part, that the director
20 may assess a fine against a licensee for violation of this part or any regulations adopted to carry
21 out its purposes. Failure of a licensee to pay a fine or make a fine payment within 30 days of the
22 date of assessment shall result in disciplinary action by the office. If a licensee fails to pay a fine
23 within 30 days, the director shall charge him interest and a penalty of 10 percent of the fine or
24 payment amount. If a fine is not paid, the full amount of the assessed fine shall be added to any
25 fee for renewal of a license. A license shall not be renewed prior to payment of the renewal fee
26 and fine. The director may order the full amount of any fine to be immediately due and payable if
27 any payment on the fine, or portion thereof, is not received within 30 days of its due date. Any
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1 fine, or interest thereon, not paid within 30 days of a final order shall constitute a valid and
2 enforceable civil judgment.

3 8. Business and Professions Code section 11319 provides that the Uniform Standards of
4 Professional Appraisal Practice (USPAP) constitute the minimum standards of conduct and
5 performance for real estate appraisers.

6 9. Business and Professions Code section 11328 provides that in order to substantiate
7 documentation of appraisal experience, or to facilitate the investigation of illegal or unethical
8 activities, a licensee shall submit copies of appraisals, or any work product which is addressed by
9 USPAP, and all supporting documentation and data, upon request of the director.

10 10. The OREA regulations appear in Title 10, Chapter 6.5, section 3500 et seq., of the
11 California Code of Regulations.

12 11. California Code of Regulations, title 10, section 3500(b)(19) states that USPAP
13 means those Standards Rules (identified as "S.R.") adopted by the Appraisal Standards Board of
14 the Appraisal Foundation.

15 12. California Code of Regulations, title 10, section 3701 provides that licensees shall
16 conform to and observe USPAP and any subsequent amendments thereto as promulgated by the
17 Appraisal Standards Board of the Appraisal Foundation, which standards are incorporated into
18 OREA's regulations by reference as if fully set forth.

19 13. California Code of Regulations, title 10, section 3702(a) states that the Director finds
20 and declares:

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

26 (2) That registered Appraisal Management Companies are vested with a relationship
27 of trust and confidence as to their clients, lending institutions, and both public and private
28 guarantors or insurers of funds in federally-related real estate transactions and that the

1 qualifications of honesty, candor, integrity, and trustworthiness are directly and substantially
2 related to and indispensable to their business operations; and

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

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

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

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

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

18 15. California Code of Regulations, title 10, section 3721 states, in pertinent part:

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

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

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27 (6) Violated any provision of USPAP;

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

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

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13 **UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)**

14 **EFFECTIVE JANUARY 1, 2008 – DECEMBER 31, 2009**

15 **Applicable to First Cause for Discipline¹**

16 16. USPAP Standard 1 states:

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

20 17. USPAP Standards Rule 1-1 states:

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

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23 (b) not commit a substantial error of omission or commission that significantly affects an
24 appraisal.

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27 ¹ USPAP is periodically revised: appraisers are responsible for adherence to the edition of USPAP in effect as of the date of report
28 for an appraisal.

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18. USPAP Standards Rule 1-2 states:

In developing a real property appraisal, an appraiser must:

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(b) identify the intended use 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.

.....

19. USPAP Standards Rule 1-3 states:

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

(a) identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends.

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20. 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.

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21. USPAP Standard Rule 1-6 states:

In developing a real property appraisal, the appraiser must:

(a) reconcile the quality and quantity of data available and analyzed within the approaches used.

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22. 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.

23. 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.

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24. 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;

....

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

....

(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.

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25. 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 divided into four sections: Conduct, Management, Confidentiality, and Record Keeping. The first

1 three sections apply to all appraisal practice, and all four sections apply to appraisal practice
2 performed under Standards 1 through 10.

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

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

9 Conduct:

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

12 An appraiser must not engage in criminal conduct.

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

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

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

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

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

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26 Record Keeping:

27 An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal
28 consulting assignment. 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;
3 summaries of any oral reports or testimony, or a transcript of testimony, including the
4 appraiser's signed and dated certification; and
5 all other data, information, and documentation necessary to support the appraiser's opinions
6 and conclusions and to show compliance with this Rule and all other applicable Standards, or
7 references to the location(s) of such other documentation.

8 An appraiser must retain the workfile for a period of at least five (5) years after preparation
9 or at least two (2) years after final disposition of any judicial proceeding in which the appraiser
10 provided testimony related to the assignment, whichever period expires last.

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

13 26. The USPAP Competency Rule states:

14 Prior to accepting an assignment or entering into an agreement to perform any assignment,
15 an appraiser must properly identify the problem to be addressed and have the knowledge and
16 experience to complete the assignment competently; or alternatively, must:

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

22 27. The USPAP Scope of Work Rule states:

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

- 25 1. identify the problem to be solved;
- 26 2. determine and perform the scope of work necessary to develop credible assignment
27 results; and
- 28 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.

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19 **2010 UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)**

20 **EFFECTIVE JANUARY 1, 2010 TO DECEMBER 31, 2011**

21 **Applicable to Second and Third Causes for Discipline**

22 28. USPAP Standards Rule 1 states:

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

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1 29. USPAP Standards Rule 1-1, states:

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

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

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

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

10 30. USPAP Standards Rule 1-2, states:

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

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13 (e) identify the characteristics of the property that are relevant to the type and
14 definition of value and intended use of the appraisal, [footnote omitted] including:

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

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17 31. USPAP Standards Rule 1-3, states

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

20 (a) identify and analyze the effect on use and value of existing land use regulations,
21 reasonably probable modifications of such land use regulations, economic supply and demand,
22 the physical adaptability of the real estate, and market area trends.

23

24 32. USPAP Standards Rule 1-4, states

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

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

- 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).

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9 33. USPAP Standards Rule 1-5, states:

10 When the value opinion to be developed is market value, an appraiser must, if such
11 information is available to the appraiser in the normal course of business: [footnote omitted]

- 12 (a) analyze all agreements of sale, options, and listings of the subject property current
13 as of the effective date of the appraisal; and
14 (b) analyze all sales of the subject property that occurred within the three (3) years
15 prior to the effective date of the appraisal. [footnote omitted]

16 34. USPAP Standards Rule 1-6, states:

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

- 18 (a) reconcile the quality and quantity of data available and analyzed within the
19 approaches used; and
20 (b) reconcile the applicability and relevance of the approaches, methods and
21 techniques used to arrive at the value conclusion(s).

22 35. USPAP Standards Rule 2, states:

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

- 25 36. USPAP Standards Rule 2-1, states:
- 26 Each written or oral real property appraisal report must:
- 27 (a) clearly and accurately set forth the appraisal in a manner that will not be
28 misleading.

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37. 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. [footnote omitted]

....

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

....

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

....

(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;

....

38. USPAP Ethics Rule, states:

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

An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with the client or intended users. 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.

Conduct:

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

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An appraiser:

- must not perform an assignment with bias;
- must not advocate the cause or interest of any party or issue;
- must not accept an assignment that includes the reporting of predetermined opinions and conclusions;
- must not misrepresent his or her role when providing valuation services that are outside of appraisal practice;
- must not communicate assignment results with the intent to mislead or to defraud;
- must not use or communicate a report that is known by the appraiser to be misleading or fraudulent;
- must not knowingly permit an employee or other person to communicate a misleading or fraudulent report;
- 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;
- must not engage in criminal conduct; and
- must not perform an assignment in a grossly negligent manner.

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

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

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1 Record Keeping:

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

6 The workfile must include:

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

17 An appraiser must retain the workfile for a period of at least five years after preparation or
18 at least two years after final disposition of any judicial proceeding in which the appraiser
19 provided testimony related to the assignment, whichever period expires last.

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

22 An appraiser having custody of a workfile must allow other appraisers with workfile
23 obligations related to an assignment appropriate access and retrieval for the purpose of:

- 24 • submission to state appraiser regulatory agencies;
25 • compliance with due process of law;
26 • submission to a duly authorized professional peer review committee; or
27 • compliance with retrieval arrangements.

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1 **COST RECOVERY**

2 39. Section 11409(a) of the Code provides that any order issued in resolution of a
3 disciplinary proceeding may direct a licensee found to have committed a violation or violations of
4 statutes or regulations relating to real estate appraiser practice to pay a sum not to exceed the
5 reasonable costs of investigation, enforcement, and prosecution of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 (100 West 5th Street, Long Beach, California)

8 40. On or about March 11, 2008, Respondent completed an appraisal report with an
9 effective date of March 10, 2008, for property described as 100 West 5th Street in Long Beach,
10 California. Respondent is subject to disciplinary action under Regulation section 3721,
11 subdivisions (a)(2), (a)(6) and (a)(7), by and through his violations of Regulation sections 3701
12 and 3702 subdivisions (a)(1) and (a)(3), under Business and Professions Code section 11328 for
13 failure to submit information required to be retained in his work file, and the following USPAP
14 violations:

15 a. Failure to adequately or accurately describe and report the subject neighborhood by
16 incorrectly identifying the neighborhood as Alamitos Beach, and as a suburban area, when the
17 subject was located in downtown Long Beach; failure to accurately identify the name, size, unit
18 count, and non-residential uses within the subject building; failure to report that the subject
19 building had been converted into condominium use from a prior non-residential use, and
20 incorrectly described the subject zoning as R-1 (residential). Respondent failed to identify the
21 characteristics of the subject that were relevant to the type and definition of value and intended
22 use of the appraisal, including its location, physical and legal attributes; and failed to identify and
23 analyze the effect on use and value of existing land use regulations. In doing so, Respondent
24 violated S.R. 1-2(e)(i), and 2-2(b)(iii);

25 b. Failure to provide adequate support for his opinion of a stable market, which,
26 according to available market data, was in decline prior to the effective date of value.
27 Respondent failed to accurately identify and analyze the economic attributes affecting the subject
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1 property, and failed to adequately analyze the market trends. In doing so, Respondent violated
2 S.R. 1-2(e)(i), 1-3(a), and 2-2(b)(iii);

3 c. Failure to include relevant, market-based sales in the sales analysis by utilizing a
4 Trustee's Deed transfer (Sale 1), utilizing 2-bedroom condominium units when the subject was
5 effectively a studio (0-bedroom) unit (Sales 2 and 3), and failure to accurately report and analyze
6 Sale 4; failure to provide adequate market support for adjustments applied to the comparable sales
7 and the omission of other relevant adjustments to the sales. Respondent failed to analyze such
8 comparable sales data as was available to indicate a credible value conclusion. In doing so,
9 Respondent violated S.R. 1-4(a), and 2-2(b)(viii);

10 d. Failure to report the prior MLS listings of the subject, which was required under the
11 stated scope of work on the FNMA (Fannie Mae) URAR 1004 form. This information would
12 have demonstrated that the subject unit was not able to sell for an asking price lower than the
13 opinion of value developed by Respondent. Failure to determine and report the scope of work
14 necessary to produce credible assignment results in accordance with the Scope of Work Rule. In
15 doing so, Respondent violated the S.R. 1-2(b), 2-2(b)(vii), and the Scope of Work Rule;

16 e. Failure to reconcile the quality and quantity of data available and analyzed within the
17 Sales Comparison Approach. In doing so, Respondent violated S.R. 1-6(a), S.R. 2-2(b)(viii);

18 f. Based on paragraphs a, b, c, d, and e above, Respondent committed substantial errors
19 of omission or commission that significantly affected the appraisal. In doing so, Respondent
20 violated S.R. 1-1(b);

21 g. Based on paragraphs a, b, c, d, e, and f above, Respondent failed to clearly and
22 accurately set forth the appraisal in a manner that was not misleading. In doing so, Respondent
23 violated S.R. 2-1(a);

24 h. Failure to take all steps necessary to perform an appraisal assignment in a competent
25 manner by performing an appraisal assignment in Long Beach, an area in which Respondent was
26 not familiar in 2008, and by failing to perform adequate research to properly and appropriately
27 appraise the subject property. In doing so, Respondent violated the Competency Rule; and
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1 i. Failure to cooperate with the investigation by failing to provide to the Office of Real
2 Estate Appraisers (OREA) a true and correct copy of the report submitted to his client; and
3 deliberately adding additional pages to the appraisal report in an attempt to mislead investigators.
4 Respondent communicated assignment results in a fraudulent manner. In doing so, Respondent
5 violated the Conduct section of the Ethics Rule, the Record Keeping section of the Ethics Rule,
6 and Business and Professions Code section 11328, et seq.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (1859 Camino Mojave, Chula Vista, California)

9 41. On or about August 24, 2010, Respondent completed an appraisal report with an
10 effective date of August 19, 2010, for property described as 1859 Camino Mojave, Chula Vista,
11 California. Respondent is subject to disciplinary action under Regulation section 3721,
12 subdivisions (a)(2), (a)(6) and (a)(7), by and through his violations of Regulation sections 3701
13 and 3702 subdivisions (a)(1) and (a)(3), and the following USPAP violations:

14 a. Failure to correctly describe and report the subject neighborhood, utilizing boundaries
15 that were located well outside of the subject area. Failure to identify the characteristics of the
16 subject area that were relevant to the type and definition of value and intended use of the
17 appraisal, including its location, physical, and legal attributes. In doing so, Respondent violated
18 S.R. 1-2(e)(i), S.R. 2-2(b)(iii);

19 b. Failure to correctly report the zoning for the subject property. Failure to identify and
20 analyze the effect on use and value of existing land use regulations. In doing so, Respondent
21 violated S.R. 1-3(a), S.R. 2-2(b)(iii);

22 c. Failure to include all relevant sales in the sales analysis by excluding a legitimate sale
23 located two houses away from the subject which had sold approximately six months prior to the
24 effective date of the appraisal, and failure to provide adequate market support for adjustments
25 applied to the comparable sales and failure to consider other appropriate adjustments to the sales.
26 Failure to analyze such comparable sales data as was available to indicate a credible value
27 conclusion. In doing so, Respondent violated S.R. 1-4(a), S.R. 2-2(b)(viii);

28

1 d. Failure to develop a credible opinion of the subject's site value, failure to analyze
2 such comparable cost data as was available to estimate the cost new of the improvements, and
3 failure to provide adequate support for the estimate of functional obsolescence. Failure to
4 develop and report a credible Cost Approach to value. In doing so, Respondent violated S.R. 1-
5 4(b)(i), (ii), and (iii), S.R. 2-2(b)(viii);

6 e. Failure to adequately analyze the prior sale of the subject property, which occurred
7 within three years of the effective date of the appraisal. In doing so, Respondent violated S.R. 1-
8 5(b), S.R. 2-2(b)(viii);

9 f. Failure to reconcile the quality and quantity of data available and analyzed within the
10 approaches used. In doing so, Respondent violated S.R. 1-6(a), S.R. 2-2(b)(viii);

11 g. Failure to reconcile the prior sale price of the subject property, which had occurred
12 one year, eight months prior to the effective date of the appraisal with the estimate of value
13 developed in the report, and failure to properly reconcile the applicability and relevance of the
14 approaches, methods and techniques used to arrive at the value conclusion, and improperly
15 allowing his client to direct the reconciled value of the report. In doing so, Respondent violated
16 S.R. 1-6(b), S.R. 2-2(b)(viii);

17 h. Based on paragraph d above, Respondent failed to be aware of, understand, and
18 correctly employ those recognized methods and techniques that are necessary to produce a
19 credible appraisal, in violation of S.R. 1-1(a);

20 i. Based on paragraphs c, e, and g above, Respondent failed to clearly and accurately set
21 forth the appraisal in a manner that was not misleading. In doing so, Respondent violated S.R. 2-
22 1(a);

23 j. Based on paragraphs a, b, d, and f above, Respondent rendered appraisal services in a
24 careless or negligent manner, by making a series of errors that, although individually might not
25 have significantly affected the results of an appraisal, in the aggregate affected the credibility of
26 those results. In doing so, Respondent violated S.R. 1-1(c);

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1 k. Failure to cooperate in the investigation by failing to provide documents that were
2 required to be maintained by Respondent, including the original version of the report submitted to
3 his client. In doing so, Respondent violated the Record Keeping section of the Ethics Rule; and

4 l. Failure to perform an appraisal assignment with impartiality, objectivity, and
5 independence; by advocating the cause or interest of his client; and by allowing his client to direct
6 Respondent as to which sale must be emphasized, Respondent violated the Conduct section of the
7 Ethics Rule.

8 THIRD CAUSE FOR DISCIPLINE

9 (10141 Los Ranchitos Road, Lakeside, California)

10 42. On or about February 10, 2011, Respondent completed an appraisal report with an
11 effective date of February 10, 2011, for property described as 10141 Los Ranchitos Road,
12 Lakeside, California. Respondent is subject to disciplinary action under Regulation section 3721,
13 subdivisions (a)(2), (a)(6) and (a)(7), by and through his violations of Regulation sections 3701
14 and 3702 subdivisions (a)(1) and (a)(3), and the following USPAP violations:

15 a. Failure to accurately report or analyze the condition of the subject, which was
16 described as a major fixer in the MLS listing, yet described by Respondent to be in average
17 condition. Failure to accurately identify and report the relevant physical attributes of the subject
18 property. In doing so, Respondent violated S.R. 1-2(e)(i), 2-2(b)(iii);

19 b. Failure to utilize the most similar and proximate comparable sales, failure to
20 accurately describe the sales utilized in the report, and failure to report the prior sales of two of
21 the comparable sales, which was relevant to the analysis. Failure to provide a credible opinion of
22 value via the Sales Comparison Approach. In doing so, Respondent violated S.R. 1-4(a), 2-
23 2(b)(viii);

24 c. Failure to develop a credible opinion of the subject's site value by an appropriate
25 appraisal method or technique, and failure to appropriately describe the curable physical
26 depreciation in the valuation of the improvements. Failure to prepare a credible value opinion via
27 the Cost Approach. In doing so, Respondent violated S.R. 1-4(b)(i) and (iii), S.R. 2-2(b)(viii);

28

1 d. Failure to adequately analyze the current MLS listing of the subject property, and
2 failure to reconcile the opinion of value contained in the report to the asking price of the subject.
3 In doing so, Respondent violated S.R. 1-5(a), 2-2(b)(iii);

4 e. Failure to adequately reconcile the quality and quantity of data available and analyzed
5 within the Sales Comparison Approach, in violation of S.R. 1-6(a), 2-2(b)(viii);

6 f. Failure to adequately reconcile the applicability and relevance of the approaches,
7 methods, and techniques used to arrive at the value conclusion, in violation of S.R.1-6(b), 2-
8 2(b)(viii);

9 g. Based on paragraphs a, b, c, d, e, and f above, Respondent failed to be aware of,
10 understand, and correctly employ those recognized methods and techniques that are necessary to
11 produce a credible appraisal. In doing so, Respondent violated S.R. 1-1(a);

12 h. Based on paragraphs a and b above, Respondent committed a substantial error of
13 omission or commission that significantly affected an appraisal. In doing so, Respondent violated
14 S.R. 1-1(b);

15 i. Based on paragraphs a, b, c, and d above, Respondent failed to clearly and accurately
16 set forth an appraisal that was not misleading. In doing so, Respondent violated S.R. 2-1(a); and

17 j. Based on paragraphs a, b, c, d, e, and f above, Respondent failed to perform an
18 appraisal assignment ethically and competently. In doing so, Respondent violated the Conduct
19 section of the Ethics Rule.

20 **DISCIPLINE CONSIDERATIONS**

21 43. On or about October 9, 2009, Respondent received a Stipulated Settlement and
22 Disciplinary Order, Case Nos. C 070430-01 and C 070607-01. The most significant finding
23 involved Respondent falsely certifying that he had inspected the interior of two properties, as well
24 as violations of the Conduct and Management sections of the Ethics Rule.

25 44. The Stipulated Settlement involved published reproof, required Respondent to pay
26 fines and costs, take 30 hours of basic education (BE), and submit four sets of work samples for
27 Monitoring Review (M 091105-07).

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