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

In the Matter of the Accusation Against: **CHARLES G. FOX** **37102 Tree Ridge drive** **Murrieta, CA 92563** **Certified Residential Appraiser License No. AR033948** Respondent.	Case No. C071121-01 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 29, 2012, Complainant Elizabeth Seaters, in her official capacity as the Acting Chief of Enforcement of the Office of Real Estate Appraisers, filed Accusation No. C071121-01 against Charles G. Fox (Respondent) before the Director of the Office of Real Estate Appraisers. (Accusation attached as Exhibit A.)

2. On or about May 7, 2004, the Director of the Office of Real Estate Appraisers (Director) issued Certified Residential Appraiser License No. AR033948 to Respondent. The Certified Residential License expired on May 6, 2010, and has not been renewed.

3. On or about March 29, 2012, Respondent was served by Certified Mail copies of the Accusation No. C071121-01, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Title 10, California Code of Regulations, section 3527, is required to be reported and maintained with the Director. Respondent's address of record was and is:

37102 Tree Ridge drive
Murrieta, CA 92563.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. There is no indication that the Accusation and documents sent to Respondent's address of record were not received.

6. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. C071121-01.

8. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Director finds Respondent is in default. The Director will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at Office of Real Estate Appraisers regarding the allegations contained in Accusation No. C071121-01, finds that the charges and allegations in Accusation No. C071121-01, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 11409, it is hereby determined that the reasonable costs for Investigation and Enforcement is $3,399.58 as of March 19, 2012.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Charles G. Fox has subjected his Certified Residential Appraiser License No. AR033948 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of the Office of Real Estate Appraisers is authorized to revoke Respondent's Certified Residential Appraiser License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. On or about August 15, 2007, Respondent completed a real estate appraisal report on a property located at 686 North Coast Highway, Laguna Beach, California. The report contained a series of omissions and miscalculations in violation of the Uniform Standards of Professional Appraisal Practice (USPAP), specifically:

b. Respondent failed to describe the subject market correctly. The appraisal report does not include pertinent information regarding residential land use and commercial land in the area sufficient to support the highest and best use conclusion in the report. Respondent's actions violated S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), 2-2(b)(iii) and the Competency Rule;

c. Respondent failed to describe the subject site properly. The report fails to describe the access to the site. It over states the actual size of the subject site and fails to describe the view. Respondent failed to properly describe the improvements in his appraisal report. The report does not contain sufficient information regarding the physical characteristics of the improvements, and the information that is provided is contradictory. Respondent's actions violated S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), and 2-2(b)(iii);

d. Respondent failed to complete the highest and best use analysis correctly. The highest and best use conclusion in the report is based on erroneous and incomplete information. Legal restrictions (zoning) are reported incorrectly. The report fails to establish that the basis for the highest and best use conclusion is market driven and a probable use of the land. It fails to discuss whether existing improvements are contributory to the value of the subject property. Respondent's actions violated S.R. 1-3(b), 2-2(b)(iii) and 2-2(b)(ix);

e. Respondent failed to complete the Cost Approach in a credible manner. The Cost Approach includes an estimate of value for the site that is unsupported. It fails to estimate the costs of construction for the improvements in a credible manner. It fails to include an estimate of depreciation for the existing improvements. Respondent's actions violated S.R. 1-4(b)(i)(ii)(iii), 2-2(b)(viii) and the Competency Rule;

f. Respondent failed to complete the Sales Comparison Approach to value correctly. The report does not adequately describe the comparable sales used in the appraisal report and fails to analyze them in a credible manner. Respondent's actions violated S.R. 1-1(b), 1-4(a), and 2-2(b)(viii);

g. Respondent failed to render appraisal services in a professional manner. The report contains contradictory information as to what was done in the preparation of the report. Respondent failed to establish the highest and best use of the appraised. property, failed to describe the property adequately, and failed to value it in a credible manner. Respondent's actions violated S.R. 1-1(a), 1-1(b), 2-1(a), 2-2(b)(viii) and Competency Rule); and

h. Respondent failed to cooperate with the investigation. Respondent failed to send in a copy of his appraisal report to the Office of Real Estate Appraisers as required by California Business and Professions Code Section 11328.

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ORDER

IT IS SO ORDERED that Certified Residential Appraiser License No. AR033948, heretofore issued to Respondent Charles G. Fox, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on May 15, 2012.

It is so ORDERED April 25, 2012

Original Signed

FOR THE DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS

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SD2012703137

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

In the Matter of the Accusation Against: **CHARLES G. FOX** **37102 Tree Ridge drive** **Murrieta, CA 92563** **Certified Residential License No. AR033948** Respondent.	Case No. C071121-01 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about May 7, 2004, the Director of the Office of Real Estate Appraisers issued Certified Residential License Number AR033948 to Charles G. Fox (Respondent). The Certified Residential License expired on May 6, 2010, and has not been renewed.

JURISDICTION

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

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

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

5. Business and Professions Code section 11314 states, in pertinent part:

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

6. Business and Professions Code section 11319 states:

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

STATUTORY PROVISIONS

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

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

REGULATORY PROVISIONS

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

9. Regulation 3500 (b) (19), states:

> Uniform Standards of Appraisal Practice; (USPAP)" means those standards as adopted by the Appraisal Standards Board of the Appraisal Foundation.

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10. Regulation 3701 provides that licensees shall conform to and observe USPAP, and any subsequent amendments thereto, as promulgated by the Appraisal Standards Board of The Appraisal Foundation which standards are incorporated into OREA's regulations by reference as if fully set forth therein.

11. Title 10, California Code of Regulations section 3702 states that:

(a) The Director finds and declares as follows:

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

...

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

...

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

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

...

13. Regulation 3721 provides, in pertinent part, that the Director of OREA may issue a citation, order of abatement, assess a fine or private or public reproval, suspend or revoke a license of any person who has violated any provision of USPAP or Real Estate Appraisers' Licensing and Certification Law or done any act involving dishonesty, fraud or deceit with the intent to benefit himself or another, or to injure another.

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USPAP

14. The Competency Rule provides, in pertinent part, that before accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently. Alternatively the appraiser must disclose the lack of knowledge and/or experience to a client before accepting the assignment; take all steps necessary to complete the assignment competently; and describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.

15. USPAP Standards Rule (S.R.) 1-1 states:

> In developing a real property appraisal, an appraiser must:
>
> (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;
>
> (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and
>
> ...

16. S.R. 1-2 states:

> In developing a real property appraisal, an appraiser must:
>
> ...
>
> (e) identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including:
>
> (i) its location and physical, legal, and economic attributes;
>
> ...

17. S.R. 1-3 states:

> When necessary for credible assignment results in developing a market value opinion, an appraiser must:
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> ...
>
> (b) develop an opinion of the highest and best use of the real estate.

18. S.R. 1-4 states:

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

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

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

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

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

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

...

19. S.R. 2-1 states:

Each written or oral real property appraisal report must:

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

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

...

20. S.R. 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;

...

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

...

COST RECOVERY

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

CAUSE FOR DISCIPLINE

(Violation of USPAP- North Coast Highway, Laguna Beach, California)

22. On or about August 15, 2007, Respondent completed a real estate appraisal report on a property located at 686 North Coast Highway, Laguna Beach, California. The report contained a series of omissions and miscalculations in violation of the Uniform Standards of Professional Appraisal Practice (USPAP), listed as follows:

a. Respondent failed to describe the subject market correctly. The appraisal report does not include pertinent information regarding residential land use and commercial land in the area sufficient to support the highest and best use conclusion in the report. Respondent's actions violated S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), 2-2(b)(iii) and the Competency Rule;

b. Respondent failed to describe the subject site properly. The report fails to describe the access to the site. It over states the actual size of the subject site and fails to describe the view. Respondent failed to properly describe the improvements in his appraisal report. The report does not contain sufficient information regarding the physical characteristics of the improvements, and the information that is provided is contradictory. Respondent's actions violated S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), and 2-2(b)(iii);

c. Respondent failed to complete the highest and best use analysis correctly. The highest and best use conclusion in the report is based on erroneous and incomplete information. Legal restrictions (zoning) are reported incorrectly. The report fails to establish that the basis for

the highest and best use conclusion is market driven and a probable use of the land. It fails to discuss whether existing improvements are contributory to the value of the subject property. Respondent's actions violated S.R. 1-3(b), 2-2(b)(iii) and 2-2(b)(ix);

d. Respondent failed to complete the Cost Approach in a credible manner. The Cost Approach includes an estimate of value for the site that is unsupported. It fails to estimate the costs of construction for the improvements in a credible manner. It fails to include an estimate of depreciation for the existing improvements. Respondent's actions violated S.R. 1-4(b)(i)(ii)(iii), 2-2(b)(viii) and the Competency Rule;

e. Respondent failed to complete the Sales Comparison Approach to value correctly. The report does not adequately describe the comparable sales used in the appraisal report and fails to analyze them in a credible manner. Respondent's actions violated S.R. 1-1(b), 1-4(a), and 2-2(b)(viii);

f. Respondent failed to render appraisal services in a professional manner. The report contains contradictory information as to what was done in the preparation of the report. Respondent failed to establish the highest and best use of the appraised. property, failed to describe the property adequately, and failed to value it in a credible manner. Respondent's actions violated S.R. 1-1(a), 1-1(b), 2-1(a), 2-2(b)(viii) and Competency Rule); and

g. Respondent failed to cooperate with the investigation. Respondent failed to send in a copy of his appraisal report to the Office of Real Estate Appraisers as required by California Business and Professions Code Section 11328.

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PRAYER

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

1. Revoking or suspending Real Estate Appraiser License Number AR033948, issued to Charles G. Fox

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

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

DATED: 3/29/12

Original Signed

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

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