AN OVERVIEW OF THE COMPLAINT PROCESS

Since January 1, 2002, the Board has received 54 new complaints. During that timeframe the Investigative Committee of the Board held 11 meetings. Action resulting from those meetings include: 31 dismissed complaints; 3 cautionary letters, 29 complaints settled by Consent Agreement and Orders, 1 hearing was held and 9 Petitions for revocation were filed. There are currently 48 complaints pending.

THE COMPLAINT PROCESS

The Board receives complaints from many sources, including: individuals, financial institutions, federal entities, reviewers, anonymous sources, or the Board may initiate a complaint.

When the Board receives a complaint, we will determine if there is probable cause before proceeding with investigation of the complaint. The Board then initiates a complaint file and the investigation proceeds in the following manner (these steps may vary depending on the information provided in the original complaint):

- The appraiser is notified of the complaint and provided any supporting documentation the Board received concerning the complaint. The appraiser is instructed to respond to the complaint. The appraiser must provide the Board with a copy of the report, work-files and other supporting documentation the appraiser considers appropriate in responding to the complaint.
- Once received, the above information, including the original complaint, is then forwarded to a third party review appraiser.
- After the review is complete all of the information concerning the complaint is distributed to the Investigative Committee of the Board. The Investigative Committee will then determine appropriate action to be taken for settlement of the matter.
- Settlement may occur by dismissal, a cautionary or warning letter, a Consent Agreement and Order or by a hearing. The most common form of settlement is by a Consent Agreement and Order. This is an order that is entered into by the appraiser and the Board to settle the matter by agreeing to certain terms and conditions.
- Terms and conditions that are often used in a Consent Agreement and Order may include one or more of the following: requiring additional education, recovery of the expenses associated with the cost of the review, fines, probation, limitations to the scope of work performed by the appraiser, submitting logs of work performed, suspension or revocation.
- An appraiser may not agree to accept the terms and conditions of the Consent Agreement and Order. In those cases, the appraiser may address the Investigative Committee in writing and request modifications to the agreement and their justification for those modifications; or the matter may go directly to hearing. If the matter cannot be settled by mutual agreement, the appraiser may request a hearing in the matter which is then set before the Hearing Panel.
- If the appraiser does not request a hearing and does not enter into a Consent Agreement and Order, the Board will file a Petition for Revocation and the matter will go to hearing.

(continued on page 2)
GOOD STANDING
Once an appraiser is disciplined by the Board, the appraiser is not considered to be in “good standing” until they have completed the terms and conditions of the Consent Agreement and Order or the terms of a Final Order issued by the Board.

SUPERVISING
Unless otherwise stipulated in the Consent Agreement, a Supervisor must be in good standing with the Board in order to supervise provisional/trainee appraisers.

PUBLICATION
Not all final orders are published. Complaints that are not published are still considered to be an open record. All disciplinary action is reported to the Appraisal Subcommittee and will be added to the National Registry.

OPEN RECORDS
A complaint that is in the investigative process is considered to be confidential and any information pertaining to the complaint is not considered to be an open record.

After a complaint has been adjudicated, information concerning the complaint becomes an open record.

CONTINUING EDUCATION REQUIREMENTS/CYCLES TO CHANGE

This is essentially a reprint of the article that appeared in the Spring 2002 Newsletter; HOWEVER, there have been some changes made and the information should be reviewed to see if the changes would affect your 2003 renewal continuing education requirements.

Based on recommended changes set forth by the Appraiser Qualifications Board, the Kansas Real Estate Appraisal Board is currently adopting regulations that will change both the continuing education requirements and the education cycle. Effective July 1, 2003, all appraisers will be required to complete a 7-hour Uniform Standards of Professional Appraisal Practice (USPAP) Update course once every 2 years. This change will be implemented by the KREAB in the following manner:

INDIVIDUALS LICENSED PRIOR TO JULY 1, 2000
For the renewal period of July 1, 2002 through June 30, 2003, these appraisers will be required to meet the 14-hour continuing education requirement. There will be no specific USPAP requirement for that renewal. There will be no carryover into the next renewal period. The first 2-year education cycle will begin with the July 1, 2003 through June 30, 2004 renewal period and the 7-hour National USPAP Update course would be required by June 30, 2005.

INDIVIDUALS LICENSED ON OR AFTER JULY 1, 2002
These licensees will enter the 2-year education cycle in place at the time of their original licensure. These individuals will be exempt from education requirements at their June 30, 2003 renewal. There will be no carryover into the next renewal period. The first 2-year education cycle will begin with the July 1, 2003 through June 30, 2004 renewal period and the 7-hour National USPAP Update course would be required by June 30, 2005.

ERRORS IN APPRAISAL REPORTS - AN APPRAISER’S DUTY

Source: North Carolina Appraisal Board

Many of the complaints received by the Appraisal Board are the result of typographical and clerical errors in appraisal reports. A majority of errors occur simply because reports are not being proofread before they are signed. Often an appraiser will write over an old report, forgetting to make changes as necessary. The result may be a misleading report that confuses the intended users and other readers of the report.

USPAP addresses this issue in Standards Rule 1-1(c). That rule
states that “An appraiser must not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results.”

The Appraisal Standards Board also addresses this issue in its publication, Frequently Asked Questions. The ASB states, “It is the opinion of the ASB that the appraiser is responsible for the contents, analyses and conclusions of the appraisal and appraisal report. When an error is discovered, the appraiser should contact the client in writing and inform the client of the error and correct information, and any other resulting changes in the analyses and reported conclusions.”

Appraisers should carefully proofread their reports before sending them to clients. If a mistake is discovered in a report after it has been transmitted, the appraiser should let the client know about the error. If the mistake affects the conclusions in the report or the value of the subject, a new report should be sent to the client as soon as the error is known.

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**USPAP Q & A**

In 2001, STATEMENT 10 (SMT-10) was adopted by the ASB for inclusion in USPAP. SMT-10 was a joint effort between the Appraisal Standards Board and an Interagency Work Group comprised of representatives from the Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and the Office of Thrift Supervision. Since its introduction, several questions have arisen. SMT-10 addresses banking regulatory requirements, therefore the ASB posed several questions to the Interagency Work Group for the regulatory answer to these questions (1 through 3) and answers are reprinted below.

**Q No.1.** STATEMENT 10 only applies to Federally Related Transactions. Can the Interagency Work Group provide guidance on how an appraiser can determine if a transaction is, or is not a Federally Related Transaction? More directly, what is a Federally Related Transaction and do certain entities (FHA, VA, Fannie Mae & Freddie Mac) have exceptions in this regard?

**THE RESPONSE FROM THE INTERAGENCY WORK GROUP:**

A real estate-related transaction and a federally related transaction are legal terms prescribed by law1 and defined in the agencies’ appraisal regulations. In general, our appraisal regulations apply to real estate-related financial transactions entered into by the agencies or by federally regulated financial institutions2. However, not all real estate related transactions are considered federally related transactions. A real estate-related financial transaction is a federally related transaction unless the transaction is specifically exempted from the agencies’ appraisal regulations.

Our appraisal regulations list specific categories of transactions that do not require the services of an appraiser and, therefore, are not considered to be federally related transactions. Under the agencies’ appraisal regulations, federally regulated institutions have the responsibility to determine if a transaction meets the legal definition of a federally related transaction or is otherwise exempted. If a real estate-related transaction exceeds $250,000, the appraiser may presume that it is a federally related transaction, unless specifically notified by the institution that it is not a federally related transaction.

In response to the second part of your question as to whether certain entities are exempted from the regulations, the entities listed in your letter (FHA, VA, Fannie Mae or Freddie Mac) are not under our supervision and, therefore, are not subject to the agencies’ appraisal regulations. Federally regulated financial institutions do engage in real estate-related transactions with these entities, such as the sale of loans. Under the agencies’ regulations, transactions that

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1 The law refers to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

2 This includes commercial banks, savings and loan associations, credit unions, bank holding companies, and the nonbank subsidiaries of bank holding companies.

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**NEWSLETTER FORMAT TO CHANGE**

Beginning with the Board’s 2003 Newsletters, printed copies will not automatically be sent to each appraiser. Each quarter (Spring, Summer, Fall, Winter) a new newsletter will be posted on the Board’s website at www.ink.org/public/kreab.

If you would prefer to receive the Newsletter in printed form, you may request that a copy be mailed to you by submitting your name and license/certificate number, via U.S. Mail to the KREAB at 1100 S.W. Wanamaker Rd., Ste. 104, Topeka, KS 66604; e-mail at kreab1243@mindspring.com; or facsimile at (785) 271-3370.
qualify for sale to a United States government agency or United States government sponsored agency (e.g., FHA, VA, Fannie Mae, Freddie Mac, Farmer Mac, and Sallie Mae) are exempted and as such are not federally related transactions. Our regulations also contain an exemption for transactions that involve a residential real estate transaction in which a regulated institution’s appraisal conforms to the appraisal standards of Fannie Mae or Freddie Mac.

Q No. 2. Appraisers are receiving conflicting advice regarding the requirements to provide an “as is” value. Can the Interagency Work Group provide guidance on exactly when an “as is” value is required and when it is not?

**THE RESPONSE FROM THE INTERAGENCY WORK GROUP:**

The requirement for an “as is” value is an implied element in the minimum appraisal standards listed in the agencies’ appraisal regulations. Under these standards, an institution must analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units.

The agencies’ appraisal regulations require an appraisal report to include an “as is” current market value when an institution finances:

- The proposed construction or renovation of an existing property.
- A property that has not met its leasing goals (non-stabilized).
- A property with non-market lease terms (concessions that impact cash flow).
- A subdivision or tract development with unsold units.

If a transaction does not include any of these types of financing situations, then an “as is” value is not required. For example, in financing the purchase of an existing home, there typically would be no need to apply deductions or discounts to arrive at the market value of the property since the institution’s financing of the purchase does not depend on events such as further development of the property or the sale of units in a tract development.

Q No. 3. Lines 3921-3933 of SMT-10 appear to indicate that banking regulations require written consent before an appraiser may invoke departure and prepare a limited appraisal. However, within that same section the text seems to indicate that while written consent is a good business practice, it is not a requirement. For an appraisal in an FRT, is an appraiser required to obtain written permission before invoking departure?

**THE RESPONSE FROM THE INTERAGENCY WORK GROUP:**

The agencies’ appraisal regulations incorporate USPAP by reference, but do not specifically address the Departure Rule or a limited appraisal. An institution’s use of a limited appraisal is addressed in the agencies’ “Interagency Appraisal and Evaluation Guidelines”, dated October 27, 1994 (guidelines). As discussed in these guidelines, the agencies believe that institutions should be cautious in their use of a limited appraisal because it will be less thorough than a complete appraisal. An institution and appraiser must concur that invoking the Departure Rule is appropriate for the transaction. While the guidelines do not require that there be a written agreement between an institution and an appraiser on the applicability of the Departure Rule to a particular appraisal assignment, the agencies believe that it is a prudent business practice for an institution to document such an agreement in writing, before the appraiser commences the appraisal assignment.

Q May an appraiser express his or her own opinion of value in an appraisal consulting assignment, or must the appraiser use an opinion of value developed and reported by another appraiser?

A In an appraisal consulting assignment, an appraiser may develop and report his or her own opinion of value as part of the appraisal consulting assignment. The Comment to STANDARD 4 states, in part:

In some assignments, the opinion of value may originate from a source other than the consulting appraiser. In other assignments, the consulting appraiser. In other assignments, the consulting appraiser may have to develop the opinion of value as a step in the analyses leading to the assignment results.

An opinion of value or an opinion as to the quality of another appraiser’s work cannot be the purpose of an appraisal consulting assignment. Developing an assignment for those purposes is an appraisal or an appraisal review assignment, respectively. Misrepresenting the purpose of an assignment performed under this STANDARD is a violation of the ETHICS RULE.

Additionally, if the appraiser develops an opinion of value as part of an appraisal consulting assignment, the appraisal com-
ponent must be reported in con-
formance with the applicable
sections of STANDARD 2. The
Comment to Standards Rule 5-
2(h) states, in part:

If an opinion of value was
developed by the consulting
appraiser, the appraisal con-
sulting report must include the
information required to comply
with Standards Rule 2-2(a) or
(b)(ii) through (xi). Standards
Rule 2-2(c)(ii) through (xi) is
also permitted if the client is
the only intended user of the
assignment results.

Q The Conduct section of the
ETHICS RULE states, in
part:

An appraiser must not use or
rely on unsupported conclu-
sions relating to characteristics
such as race, color, religion,
national origin, gender, marital
status, familial status, age, re-
cipient of public assistance
income, handicap, or an unsup-
ported conclusion that homo-
genrety of such characteristics
is necessary to maximize
value.

Does this imply that relying on
supported conclusions relating
to characteristics such as race,
color, religion... is acceptable?

A No. One cannot infer by
logical extension that using
supported conclusions "relating
to characteristics such as race,
color, religion, national origin,
gender, marital status, age..." is
appropriate or acceptable.
Additionally, USPAP clearly rec-
ognizes that there may be laws
and/or regulations that apply to
this issue. In such cases, Advi-
sory Opinion 16 (AO-16) makes
it very clear than an appraiser
must be aware of, and must
abide by applicable laws. Spe-
cifically, AO-16 states, in part:

In some cases, even sup-
ported conclusions in assign-
ments relating to characteris-
tics such as race, color, relig-
ion, national origin, gender,
marital status, familial status,
age, receipt of public assis-
tance income, handicap, or
group homogeneity cannot be
used because they are pre-
cluded by applicable law...

An appraiser must ensure
that his or her appraisal, ap-
praisal review, or appraisal
consulting opinions and conclu-
sions are impartial and ob-
jective and do not illegally dis-
criminate or contribute to illegal
discrimination through subjec-
tive or stereotypical assump-
tions.

Q Section C-4 of STATE-
MENT 10 (STMT-10) ap-
ppears to indicate that banking
regulations require written con-
sent before an appraiser may
invoke departure and prepare a
Limited Appraisal. Is this a US-
PAP requirement?

A No. According to an Inter-
agency Work Group, com-
prised of the Federal Reserve
Board, Federal Deposit Insur-
ance Corporation, Office of Thrift
Supervision, and Office of the
Comptroller of the Currency:
The agencies’ appraisal
regulations incorporate USPAP
by reference, but do not spe-
cifically address the Departure
Rule or a limited appraisal. An
institution’s use of a limited
appraisal is addressed in the
agencies’ “Interagency Ap-
praisal and Evaluation Guide-
lines”, dated October 27, 1994
(guidelines). As discussed in
these guidelines, the agencies
believe that institutions should
be cautious in their use of a
limited appraisal because it will
be less thorough than a com-
plete appraisal. An institution
and appraiser must concur that
invoking the Departure Rule is
appropriate for the transaction.
While the guidelines do not
require that there be written
agreement between an insti-
tution and an appraiser on
the applicability of the De-
parture Rule to a particular
appraisal assignment, the
agencies believe that it is a
prudent business practice
for an institution to docu-
t such an agreement in
writing, before the appraiser
commences the appraisal
assignment. (Bold added for
emphasis)

Q Is it ethical for an ap-
praiser, acting as a re-
viewer, to change the reported
value opinion in the original
appraiser’s work without the
knowledge or consent of the
original appraiser?

A No. The reviewer must
prepare a separate report.
Simply changing the original
appraisal report, in any way, with-
out the consent of the original
appraiser would be a violation of
the Conduct section of the ETH-
ICS RULE that states, in part:

An appraiser must not com-
municate assignment results in
a misleading or fraudulent
manner. An appraiser must
not use or communicate a mis-
leading or fraudulent report or
knowingly permit an employee
or other person to communi-
cate a misleading or fraudulent
report.

Q A client has asked me to
complete an appraisal of a
property, but she does not want
me to prepare a written report.
Instead, she has asked that I
communicate the results of my
appraisal orally. Is this allowed
under USPAP? If so, what re-
quirements would I have to fol-
low?

A Yes, USPAP allows an ap-
praiser to provide an oral
report. Standards Rules 2-4, 3-
3, 5-4, 8-4, and 10-4 address the reporting requirements for oral reports. These are all specific requirements and thus, departure is permitted. However, every appraisal, appraisal review, or appraisal consulting report must be clearly and accurately set forth in a manner that is not misleading and contain sufficient information to enable intended users to understand the report properly. Thus, the burden is on the appraiser to not limit the reporting to such a degree that it would be misleading.

The Record Keeping section of the ETHICS RULE also includes requirements related to oral appraisal reports, including the requirement for including in the appraiser's workfile:

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

In addition, this same section states that:

- A workfile must be in existence prior to and contemporaneous with the issuance of a written or oral report. A written summary of an oral report must be added to the workfile within a reasonable time after the issuance of the oral report.

A client recently requested that I perform a feasibility study on a potential retail development. No value conclusions are included in the scope of work assignment agreed upon with the client, but they have requested that I provide many of the components of what could lead to a value conclusion, such as potential income streams, capitalization rates, cost estimates, etc. I have completed numerous appraisal assignments for this client and I am certain that I was chosen, in large part, because I am an appraiser. Does this assignment fall within appraisal practice? And, must I comply with USPAP in completing the assignment?

Yes, this assignment would fall under appraisal practice. USPAP defines appraisal practice as:

- valuation services, including but not limited to appraisal, appraisal review, or appraisal consulting, performed by an individual as an appraiser.

Comment: Appraisal practice is provided only by appraisers, while valuation services are provided by a variety of professionals and others. The terms appraisal, appraisal review, and appraisal consulting are intentionally generic and are not mutually exclusive. For example, an opinion of value may be required as part of an appraisal review and is required as a component of the analysis in an appraisal consulting assignment. The use of other nomenclature for an appraisal, appraisal review, or appraisal consulting assignment (e.g., analysis, counseling, evaluation, study, submission, or valuation) does not exempt an appraiser from adherence to the Uniform Standards of Professional Appraisal Practice.

The feasibility analysis, described in this question clearly falls with the scope of appraisal practice; however, since it is not an appraisal, appraisal review, or appraisal consulting assignment as defined in USPAP, it does not fall within STANDARDS 1-10. Therefore, the applicable sections of USPAP would be the DEFINITIONS, the PREAMBLE, the ETHICS, COMPETENCY, JURISDICTIONAL EXCEPTION and SUPPLEMENTAL STANDARDS RULES, as applicable to the assignment.
**Action:** Consent Agreement and Order was entered into with the following terms and conditions: That Hughes take and pass the examination of a minimum 24-hour report writing course on or prior to June 30, 2003. That Hughes pay $320 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement.

**Violations:** K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and (58-4118(a)(8)).

**Action:** Consent Agreement and Order was entered into with the following terms and conditions: That Shivers cease and desist from performing all appraisals outside the residential certified scope of practice without the supervision of a general certified appraiser in good standing with the Kansas Real Estate Appraisal Board. That Shivers pay $405 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement. That Shivers pay a fine of $250 within 30 days from the date of the Agreement.

**Ronaldo Lee Shivers - R-676**

**Complaint 276 - Abilene**

**Violations:** K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and (58-4118(a)(8)).

**Action:** Consent Agreement and Order was entered into with the following terms and conditions: That Wilson complete a total of 30 hours of Board approved continuing education courses prior to June 30, 2003. That Wilson successfully complete a total of 30 hours of Board approved continuing education courses prior to June 30, 2003. That Wilson pay $160 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement.

**Violations:** K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and (58-4118(a)(8)).

**Action:** Consent Agreement and Order was entered into with the following terms and conditions: That Thomas take and pass the examination of a 15-hour USPAP course on or prior to June 30, 2003. That Thomas pay $160 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement.

**Violations:** K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and (58-4118(a)(8)).

**Action:** Consent Agreement and Order was entered into with the following terms and conditions: That Thomas’ general certification be suspended, said suspension to be stayed upon completion of the following terms: (a) That Thomas take and pass the examination of a 15-hour USPAP course on or prior to June 30, 2003. (b) That Thomas pay $320 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement. (c) That Thomas pay a fine of $500 within 30 days from the date of the Agreement. That Thomas maintain a monthly log of all appraisals through June 30, 2003, beginning with the date the suspension is stayed. The log will be submitted to the Board office on or immediately following the 1st working day of each month. The Board will review the logs and choose two (2) appraisals for additional review. Upon request by the Board office, Thomas will submit the requested appraisals and workfiles within ten (10) days. That Thomas pay the cost of the two (2) additional appraisal reviews within 30 days from the date of notice by the Board.

**Cindy Lou Simons - G-843**

**Complaint 293 - Newton**

**Violations:** K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and (58-4118(a)(8)).

**Action:** Consent Agreement and Order was entered into with the following terms and conditions: That Simons take and pass the examination of a 15-hour USPAP course on or prior to June 30, 2003. That Simons pay $200 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement.

**Violations:** K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and (58-4118(a)(8)).

**Action:** Consent Agreement and Order was entered into with the following terms and conditions: That Simons take and pass the examination of a 15-hour USPAP course on or prior to June 30, 2003. That Simons pay $200 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement.

**A man is never astonished that he doesn’t know what another does, but he is surprised at the gross ignorance of the other in not knowing what he does.**

Haliburton
LICENSED/CERTIFIED APPRAISERS AS OF DECEMBER 1, 2002

GENERAL CERTIFIED .......................... 114
RESIDENTIAL CERTIFIED ....................... 266
STATE LICENSED .................................... 335
PROVISIONAL (TRAINEE) .......................... 427

TOTAL .................................................. 1,142

WEB SITES
THE APPRAISAL SUBCOMMITTEE:  www.asc.gov
THE APPRAISAL FOUNDATION:  www.appraisalfoundation.org

OTHER LINKS
See the Board’s website for “Other Links” which provides e-mail and website addresses for appraisal regulatory agencies in other states.

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