

VIRGINIA REAL ESTATE APPRAISER BOARD

THE VIRGINIA APPRAISER

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Winter 2011

Message from the Chair



Diane Quigley

Greetings to all Commonwealth appraisers and trainees! I hope you enjoyed a safe Holiday Season and that 2011 will be a prosperous year for you.

The Real Estate Appraiser Board's (Board) Regulatory Review Committee met on October 14, 2010, to begin the required periodic review of its regulations. The article on page 3 describes the regulatory review process and the results of the October 14 meeting.

Governor McDonnell recently appointed two new members to the Board. They are Michael G. Miller of Richmond and Laura L. Sanchez del Solar of Henrico County. The Board congratulates and welcomes them to our team. An article on page 4 briefly introduces the new Board members.

The Appraisal Subcommittee (ASC), as part of the Dodd-Frank Wall Street Consumer Protection Act (Dodd-Frank), will increase the annual National Registry Fee for appraisers from \$25 to \$40, effective January 1, 2012. This matter is addressed on page 4.

The Appraisal Standards Board (ASB) is considering changes to the 2012-2013 USPAP. The article on page 5 looks at this.

ASB guidance for appraisers in the "2010 USPAP Q & A" is reprinted on pages 5 and 6.

Board member Glenn James comments on key points of ASC staff's "unofficial" redlined version of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) as amended by Dodd-Frank in an article on pages 7 and 8.

Disciplinary actions from the August and November 2010 Board meetings are listed on page 9.

Please feel free to contact the Board with any questions or suggestions at 804-367-2039 or reappraisers@dpor.virginia.gov

Sincerely,

Diane Quigley, Chair

Real Estate Appraiser Board The Perimeter Center 9960 Mayland Drive, # 400 Richmond, VA 23233 804-367-2039

> Robert F. McDonnell Governor

James S. Cheng Secretary Commerce & Trade

INSIDE THIS ISSUE:

Board Members and Staff	2
Regulatory Review Committee	3
Governor McDonnell Appoints New Board Members	4
National Registry Fee Increase	4
Proposed Changes to 2012-2013 USPAP	5
2010 USPAP Q & A	5-6
Dodd-Frank and Title XI of FIRREA	7-8
Recent Board Disciplinary Actions	9

2011 Board Meetings

All Board meetings are held on the Second Floor of the Perimeter Center at the above address:

> February 23, 2011 May 4, 2011 August 16, 2011 November 8, 2011

Real Estate Appraiser Board Members & Staff

Board Members

Diane Quigley Centreville, VA Chair Term ends April 2, 2013

Betsy Critzer Earlysville, VA Licensee Member Term ends April 2, 2012

John C. Harry, III Chesapeake, VA Licensee Member Term ends April 2, 2013

H. Glenn James Norfolk, VA Licensee Member Term ends April 2, 2012

Sandra Johnson Chesapeake, VA Mortgage Lending Industry Member Term ends April 2, 2014

> Michael G. Miller Richmond, VA Licensee Member Term ends April 2, 2014

> Ryan A. Myers Sterling, VA Citizen Member Term ends April 2, 2012

> Richard A. Pruitt McLean, VA Licensee Member Term ends April 2, 2013

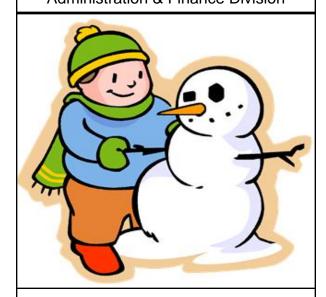
> Laura Sanchez del Solar Henrico, VA Citizen Member Term ends April 2, 2014

DPOR Staff

Gordon Dixon, Director

Mark Courtney, Deputy Director Licensing & Regulation Division

Nick Christner, Deputy Director Compliance & Investigations Division Steven Arthur, Deputy Director Administration & Finance Division



Real Estate Appraiser Board Staff

Christine Martine Executive Director

Kevin Hoeft Board Administrator

Maryanne Woo Licensing Supervisor

Regina Greene & Elaine Winn Licensing Specialists

Emily Trent Administrative Assistant

Board Contact Information

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Complaints Section - 804-367-8504

Real Estate Appraiser Board Regulatory Review Committee

The Virginia Real Estate Appraiser Board (Board) is in the process of the standard periodic review of its regulations as required by the Virginia Administrative Process Act (APA) in the Code of Virginia.

Governor Robert F. McDonnell established policies and procedures for the review of all regulations in Executive Order 14, *Development and Review of Regulations Proposed by State Agencies*, which states in part, "All regulatory activity should be undertaken with the least possible intrusion in the lives of the citizens of the Commonwealth consistent with public health, safety and welfare. Proposed and final regulations shall reflect the Governor's initiative that state government operate more efficiently and effectively." Executive Order 14 can be reviewed at: http://www.governor.virginia.gov/lssues/ExecutiveOrders/pdf/EO_14.pdf

The Board is required to conduct a periodic review of its regulations every four years to ensure that each regulation complies with the principles set out in Executive Order 14. The Board's last periodic review was completed in October 2008, and the review process usually takes between 18-36 months to complete. The standard regulatory review process consists of three stages: Stage 1 - Notice of Intended Regulatory Action (NOIRA); Stage 2 - Proposed Regulation; and Stage 3 - Final Regulation.

The Board established a Regulatory Review Committee (Committee) for this purpose, and Board members Glenn James, Betsy Critzer, Richard Pruitt and Sandra Johnson serve on this Committee. The Committee met on October 14, 2010, to begin to review its regulations. The Committee discussed possibly amending the following regulations: 1) 18 VAC 130-20-20 - Requirement for Registration of Appraisal Business - the role of appraisal businesses should be clarified; 2) 18 VAC 130-20-190 – Standards of Conduct for Certified Appraiser Education Instructors; 3) 18 VAC 130-20-60 -Qualifications for Licensure as an Appraiser Trainee - Unlicensed trainees, and the appraisers who use them, are unaccountable; and 4) 18 VAC 130-20-30.8 - General Qualifications for Licensure (Experience) - the Board will accept appraisal reports completed as far back as 1989 to meet its experience requirement. The North Carolina Appraisal Board will not accept appraisal reports that are more than five years old to meet its experience requirement.

Board staff informed the Committee that both the Appraisal Subcommittee (ASC) and the Office of the Virginia Attorney General (OAG) advised the Board not to incorporate the appraisal-related changes

within the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (HR 4173 – signed into law on July 21, 2010) in the standard regulatory review process. Instead, these changes should be incorporated in the Board's Regulations through another Regulatory Review action after the Board receives official guidance from the ASC and after any required legislation, if necessary, is passed by the General Assembly.

When the Committee completes its evaluation and research of the Board's current regulations, it will draft and submit to the Executive Branch for review the NOIRA, which must include all regulations that the Board intends to amend along with the reasons why these particular regulations should be amended. It is vital that the Board address every regulatory change prior to submitting the NOIRA because issues not raised in the NOIRA cannot be addressed at a subsequent stage of the regulatory review process unless they are first approved by the Governor's Chief of Staff.

After the NOIRA is approved by the Executive Branch, it will be published in the *Virginia Register of Regulations*, which begins a thirty day public comment period. The Board will then consider the public comments, make any necessary changes and approve the Proposed Regulation (Begin Stage 2).

The Proposed Regulation will then be submitted to the Executive Branch for review. After the Proposed Regulation is approved by the Executive Branch, it will be published in the *Virginia Register of Regulations*, which begins a sixty day public comment period. The Board will then consider the public comments, make any necessary changes and approve the Final Regulation (Begin Stage 3).

The Final Regulation will then be submitted to the Executive Branch for review. After the Final Regulation is approved by the Executive Branch, it will be published in the *Virginia Register of Regulations*, which begins a thirty day final adoption and public comment period.

The Final Regulation becomes effective at the conclusion of this thirty day period unless: 1) It is suspended; or 2) Changes with substantial impact have been made between the proposed and final stages and 25 or more people and/or the Governor petition the Board, which requires that an additional public comment period be held. The Regulatory Review Committee has not yet scheduled its next meeting. Please contact the Board office at 804-367-2039 or reappraisers@dpor.virginia.gov if you have any questions or suggestions for the Committee.

Governor McDonnell Appoints Two New Board Members

Governor Robert F. McDonnell recently appointed two new members to the Real Estate Appraiser Board (Board). They are Michael G. Miller and Laura L. Sanchez del Solar. Both will serve four-year terms.

Mr. Miller of Richmond, a certified general real estate appraiser, previously served on the Board from 2000-2004 and is the owner of MGMiller Valuations. He specializes in agricultural, commercial and residential appraisal, market studies and consulting and holds the MAI, SRA, CCIM and MRICS designations. Mr. Miller is also a certified general real estate appraiser in Maryland, North Carolina and West Virginia and is a Qualified Expert Valuation Witness in a number of jurisdictions. He has served in many local and state leadership positions, including the Virginia Tech Board of Visitors

and the Transition Teams for Governors George Allen and James Gilmore.

Ms. Sanchez del Solar of Henrico, a citizen member, is the Foundation Director for the Virginia Hispanic Chamber of Commerce, where she has developed and implemented business and community programs that support the Foundation's mission and objectives. She has more than 25 years of experience in business and non-profit management and operations, and in 2008 Richmond received the she Association's Liberty Bell Award for her work related to naturalization and the citizenship process. Prior to moving to the United States from Peru, Ms. Sanchez del Solar operated her own international trading company where she supplied goods and services to government, corporate and private agencies.

Annual National Registry Fee to be Increased from \$25 to \$40

Under the authority of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was signed into law by President Obama on July 21, 2010, the Appraisal Subcommittee (ASC), at its October 13, 2010, meeting, approved increasing the annual National Registry fee for appraisers from \$25 to \$40, effective January 1, 2012.

The ASC said the fee increase is required to support its additional supervisory responsibilities as required by the Dodd-Frank Reform Act. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, requires the ASC to monitor each state's appraiser program, requires each state to transmit to the ASC a roster listing individuals who are certified or licensed to perform appraisals for federally related transactions, and requires each state to collect a National Registry fee from those individuals. The National Registry database allows lenders and consumers to determine whether an appraiser holds the necessary credentials and is in good standing. Appraisers who are certified or licensed in more than one state must pay this National Registry fee for each state in which they are certified/licensed.

Since the Virginia Real Estate Appraiser Board (Board) issues a two-year license, the current National Registry fee is \$50 for Board licensees. The new National Registry fee will be \$80 for Board licensees, and the ASC expects the Board to collect this amount for appraisers who are issued a new license or who renew an existing license on or after January 1, 2012. The Board will need to amend its regulations to reflect this new requirement. For more information on this fee increase, go the ASC website at: https://www.asc.gov/Pages/ViewWhatsNew.aspx?ID=7

Appraisal Standards Board Solicits Comments for Proposed 2012-2013 USPAP Changes

The Appraisal Standards Board (ASB) is currently considering changes for the 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice (USPAP) and has made available the *Fourth Exposure Draft of Proposed Changes to the 2012-2013 USPAP*. This document can be viewed on the ASB website at: http://netforum.avectra.com/eweb/DynamicPage.aspx? Site=taf&WebCode=ASBDrafts

The ASB's original goals for the 2012-2013 USPAP were to review and revise as needed the following areas: 1) Reporting Requirements; 2) Reporting Options; 3) STANDARDS 7 and 8; and 4) General Revisions to ensure clarity and relevance. The First and Second Exposure Drafts included a major emphasis on reporting. The Third Exposure Draft addressed issues concerning removing the proposed addition

of the COMMUNICATION RULE and removing proposed revisions for reporting formats from the 2012-2013 edition of USPAP. These two issues will be studied for possible inclusion in the 2014-2015 edition of USPAP. The Fourth Exposure Draft continues the refinement of additional changes to USPAP that are intended to improve clarity, relevance and enforceability. These proposed revisions were considered at the January 21, 2011, ASB meeting in Scottsdale, Arizona.

The ASB received public comments on the Fourth Exposure Draft until January 14, 2011. If necessary, a Fifth Exposure Draft may be published in February 2011. Final changes for the 2012-2013 USPAP are expected to be adopted at the April 8, 2011, ASB meeting in San Antonio, Texas. Written comments and questions can be sent by e-mail to: comments@appraisalfoundation.org.

2010 USPAP Q & A

The Appraisal Standards Board (ASB) of The Appraisal Foundation develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. The USPAP Q&A is a form of guidance issued by the ASB to respond to questions raised by appraisers, enforcement officials, users of appraisal services and the public to illustrate the applicability of USPAP in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems. The USPAP Q&A may not represent the only possible solution to the issues discussed nor may the advice provided be applied equally to seemingly similar situations. USPAP Q&A does not establish new standards or interpret existing standards. USPAP Q&A is not part of USPAP and is approved by the ASB without public exposure and comment.

Disclosure of any prior services regarding the subject property, when an appraiser has appraised the property multiple times.

Question

If I have appraised a property multiple times within the previous three years, do I have to disclose the *number* of appraisal services? (e.g., "I have appraised the subject property three times during the previous three years.")

Response

Yes. Each prior service must be disclosed to the client and included in the report certification. This disclosure is similar to when an appraiser has any current or prospective interest in the subject property or the parties involved, which requires that *each interest* be specified. Therefore, *each service* must be disclosed to the client and appear in the certification. (See lines 231-241 in the 2010-11 edition of USPAP)

Disclosure of any prior services regarding the subject property, when an appraiser has performed services other than appraisal practice.

Question

If I have performed a service other than appraisal practice, such as acting as a general contractor within the prior

(Continued on page 6)

2010 USPAP Q & A

(Continued from page 5)

three years, do I have to describe the specific service or merely state a service was performed?

Response

You must disclose to the client the type of prior service you performed regarding the property and this must be included in the report certification. This disclosure is not limited to services provided as part of appraisal practice. Therefore, *each service* must be disclosed to the client and appear in the certification.

Disclosure of any prior services regarding the subject property before accepting an assignment, when the client had previously required an appraiser to sign a confidentiality agreement.

Question

The <u>Comment</u> to the <u>Conduct</u> section of the ETHICS RULE states, in part, "If an appraiser has agreed with a client not to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three-year period." Does this really mean that the appraiser could not be engaged by this same client, on this property, within the three-year period?

Response

Yes. The agreement not to disclose that he or she has appraised the property is between an appraiser and the client. It is possible that a qualified legal opinion might conclude that a confidentiality agreement between an appraiser and a client does not preclude disclosure between the same parties. However, the ASB is not qualified to make such a determination. Without such a legal opinion, the requirement precludes an appraiser from disclosing the prior service and from appraising the property again during this three-year disclosure period.

However, there is nothing that prohibits a client and an appraiser from modifying the prior agreement to allow disclosure. If the confidentiality agreement is amended, the disclosure could be made and an appraisal could be completed for the same client. It must be made clear that if a client releases an appraiser from such a confidentiality agreement, services performed within the previous three-year period *must be disclosed* in the certification of the subsequent report, even if the client is the same for both assignments.

Disclosure of any prior services regarding the subject property before accepting an assignment, when the appraiser only works for one client.

Question

I am a staff appraiser for a company and only complete appraisals for my employer's (the company's) internal use. Am I required to inform the company that I have previously completed an appraisal within the three-year period when the company is already aware of it?

Response

If you consistently correspond with the same person in the company when completing subsequent assignments regarding the same property, the risk of misleading that person is probably minimal. However, your prior services must still be disclosed. When you are working with the same person and they understand your professional responsibilities, it is unlikely this will be a problem.

It is also possible that the specific person you deal with from one instance to the next may change. In this case, the new contact must certainly be informed if you have performed services regarding the subject property within the last three years. While it is not included in your question, there is also the possibility that you may have performed services regarding that property for a different client within the three-year period, or performed another type of service.

Disclosure requirements when an appraiser has NOT performed services regarding a property in the prior three years.

Question

I am aware of the new disclosure requirements in the <u>Conduct</u> section of the ETHICS RULE for the 2010-11 edition of USPAP that requires me to disclose any services I performed regarding the subject property within the prior three years. If I have *not* performed any such services, am I required to make that disclosure as well?

Response

No. USPAP does not specifically require disclosure when no prior services were performed by the appraiser within the last three years.

The Dodd-Frank Act and Title XI of FIRREA By H. Glenn James, Board Member

On October 26, 2010, unofficial language was published by the Appraisal Subcommittee (ASC) for Title XI (the real estate appraisal section) of FIRREA, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). It should be emphasized that although the amendments have been "red-lined" by ASC staff, the document has not been approved by the ASC.

The ASC inserted this caveat when it transmitted this document: "... we [the ASC] will issue guidance on any required actions of you [State Regulatory Agencies] in response to the new provisions, at various times over the next few months and possibly years." The upshot is that no regulations have yet been promulgated, and it will take a considerable amount of time before all applicable regulations will be published. The full text of the ASC release can be seen at https://www.asc.gov/WhatsNew.aspx, and the entire Dodd-Frank text can be found here: https://www.apo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.

This brief article will highlight some of the changes in Dodd-Frank that will most affect real estate appraisers.

The ASC is presently comprised of designees of the heads of the federal financial institutions regulatory agencies, but there will be an addition - a representative of the newly formed Bureau of Consumer Financial Protection and the Federal Housing Finance Agency.

For the first time, the ASC will "monitor the requirements established by States ... for the registration and supervision of the operations and activities of an appraisal management company." Each state ... "shall transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken."

"Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this title) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement." In order words, the ASC apparently does not intend, at this juncture, to get into the education business.

Because of several new regulatory functions being assigned to states, a system of awarding grants to State appraiser certifying and licensing agencies will be implemented "in accordance with policies to be developed by the Appraisal Subcommittee, to support the efforts of such agencies to comply with this title."

States would be able to use grant funds for the complaint process, complaint investigations, and appraiser enforcement activities. Among the new duties would be regulation of appraisal management companies (AMCs), and grant funds may be used for this function as well. There is already a National Registry of appraisers. The new regulations would require states to report if AMCs meet the required qualification criteria. Also, states would report if any AMC operating in their jurisdiction have any formal or informal disciplinary actions taken against them.

The new language defines an AMC: "The term 'appraisal management company' means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in

(Continued on page 8)

The Dodd-Frank Act and Title XI of FIRREA By H. Glenn James, Board Member

(Continued from page 7)

the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

(A) to recruit, select, and retain appraisers; (B) to contract with licensed and certified appraisers to perform appraisal assignments; (C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or (D) to review and verify the work of appraisers." Obviously, some smaller AMCs which would not meet the 15/25 rule will apparently be exempt from the new regulations.

"Appraiser Independence Monitoring.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency's policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence." There was no real detail provided here to determine how the ASC intends to do this, but the Virginia Real Estate Appraiser Board is already audited by the ASC.

"Prohibition.—In conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property. (b) Broker Price Opinion Defined.—For purposes of this section, ... the term 'broker price opinion' means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model ..." Note that any property that is not single-family, owner occupied (including all commercial) is exempt.

"Appraisal Complaint National Hotline.—If, 6 months after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator, or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint." I would imagine that the workers at this proposed phone center will receive some interesting calls!

This article only scratches the surface. More regulations will be issued in the coming months. On another front, The Appraisal Foundation issued comments to the Federal Reserve on Truth in Lending on December 23, 2010. Those comments are available at http://www.appraisalfoundation.org.



Board Disciplinary Actions



If a complaint is filed against an appraiser licensed by the Virginia Real Estate Appraiser Board (Board), the complaint is reviewed by the Compliance and Investigations Division (CID) of DPOR to determine if a violation of the Board's laws or regulations may have occurred. If there is probable cause of a violation, an investigation is initiated. If the investigation reveals that one or more violations may have occurred, the licensee receives notice to appear at an informal fact-finding conference (IFF) to address these alleged violations.

In some cases the licensee may be offered a pre-IFF Consent Order. A Consent Order is an agreement between the licensee and the Board consisting of specific violations and sanctions. Pre-IFF Consent Orders eliminate the time and expense associated with conducting an IFF.

If an IFF is held, a recommendation from the IFF hearing officer consisting of violations and proposed sanctions is submitted to the Board for consideration at its next regularly scheduled meeting. The Board can take the following disciplinary actions against a licensee: assess a monetary penalty; suspend or revoke a license; place an individual on probation, require additional education, or deny renewal. A licensee can continue to practice as an appraiser throughout the disciplinary process until the Board either revokes or suspends his license.

THE FOLLOWING DISCIPLINARY ACTIONS RENDERED BY THE BOARD AT ITS AUGUST and NOVEMBER 2010 MEETINGS CAN BE VIEWED AT: www.dpor.virginia.gov. Click on "License Lookup." Then click on "Search Disciplinary Actions Occurring since April 1, 2002." Then enter the Case Number in the blank "Search" box. Then click on the "Search" button. Then click on the highlighted "File Number." The Order and Report of Findings for that case will appear.

Case No.	<u>Licensee</u>	Violation/Sanction
2010-01174	Dennis W. Gruelle Virginia Beach, VA	18 VAC 130-20-180.K.4 - Unworthiness 18 VAC 130-20-180.K.5 - Unworthiness \$500 Monetary Penalty, \$150 Board Costs, 8-hour Ethics & Standards of Professional Practice Course
2010-03092	Debra S. Ward Franklin, VA	18 VAC 130-20-180.K.1 - Unworthiness \$350 Monetary Penalty, \$150 Board Costs, 15-hour USPAP Course
2010-03090	Diarra K. Hall Bowie, MD	18 VAC 130-20-180.K.4 - Unworthiness (3 counts) 18 VAC 130-20-180.K.5 - Unworthiness (3 counts) \$500 Monetary Penalty, \$150 Board Costs, License Suspension concurrent with Maryland appraiser license suspension
2010-03664	Donald C. Cole Newport News, VA	18 VAC 130-20-180.D - Development of Appraisal (3 counts) 18 VAC 130-20-180.E - Appraisal Report Requirements \$4150 Monetary Penalty, \$150 Board Costs, 30-hour upper level residential appraisal course
2010-03549	Eric S. Musselwhite Newport News, VA	18 VAC 130-20-180.D - Development of Appraisal (2 counts) \$1000 Monetary Penalty, \$150 Board Costs, 30-hour upper level residential appraisal course
2010-02820	Stephen M. Smith Manassas, VA	18 VAC 130-20-180.D - Development of Appraisal (2 counts) \$1750 Monetary Penalty, \$150 Board Costs, 15-hour USPAP Course Quarterly reporting to the Board for one year.