



**2005
Winter Newsletter**

January 2005

No. 1

**INVESTIGATION OF COMPLAINTS:
THE HEARING PROCESS**

BY CAMILLE NOHE, ASST. ATTORNEY GENERAL

In the fall 2004 newsletter, the process by which the Board's Investigative Committee resolves many complaints through a Consent Agreement and Order was discussed. As indicated in that article, if the matter cannot be settled by a Consent Agreement and Order, it is referred for prosecution and a hearing is set. In this event the United States Constitution guarantees a licensed or certified appraiser a hearing by a fair and impartial hearing panel. It is for this reason that Board members who serve on the Investigative Committee do not serve on the Board's Hearing Panel for issues they heard before the Investigative Committee.

Like a jury in a civil or criminal case, the (usually) three Board members who decide a case are provided with very limited information about the case prior to the hearing. Hearing Panel members are given a copy of the charging document which is called a Petition. This document, filed by an Assistant Attorney General who acts as the "prosecutor," contains the factual allegations and the laws and USPAP violations that are charged. A copy of the Petition is also mailed to the appraiser, often with a Notice of Hearing. If the appraiser files an answer or response to the matters charged in the Petition, a copy is provided to the Hearing Panel members.

In many cases the appraiser retains a lawyer in order to defend against the allegations. Whether or not a lawyer represents the appraiser, he or she has a right to obtain copies of any documents or other evidence that the

prosecutor intends to present at the hearing. In some cases, the appraiser's lawyer takes the deposition of the prosecutor's expert witness in order to obtain a preview of that witness's testimony and the basis for the expert's opinions. The appraiser may also decide to hire an expert witness as a part of the defense.

The hearing is conducted much like a trial although the rules of evidence and procedure are somewhat relaxed. The hearing can last anywhere from ½ day to 2 days, depending on how many counts are charged, the complexity of the legal and factual issues, and how many witnesses testify. The Hearing Panel listens to all the testimony and reviews all the evidence that is admitted. At the conclusion of the hearing, the Hearing Panel deliberates and decides whether clear and convincing evidence has been presented to establish the charges. The Hearing Panel's decision, called a Final Order, is mailed to the appraiser and the prosecutor. If the appraiser is dissatisfied with the decision, the appraiser may appeal to district court for judicial review.



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KANSAS APPRAISER APPOINTED TO THE ASB

Jim Cannon, Hutchinson, has been appointed to the Appraisal Standards Board, to serve a two year term.

Mr. Cannon began training as an appraiser in 1965 immediately after earning his BS degree in Agricultural Economics from Oklahoma State University. He currently is the owner of Cannon Valuation Services, Inc. in Hutchinson. He has national appraisal experience in agricultural, natural resource, transitional and commercial/industrial properties. His experience includes both asset appraisal and business valuation. He concentrates in specialty agricultural and commercial appraisals, with the majority of his work being farms/ranches, confinement livestock operations, food storage/processing facilities and agribusiness. His practice also includes appraisal reviews.

Mr. Cannon holds the MAI designation from the Appraisal Institute and was the 2002 president of the Greater Kansas Chapter of the Appraisal Institute. He also holds the ARA designation from the American Society of Farm Managers and Rural Appraisers and the ASA Business Valuation designation from the American Society of Appraisers. He is an instructor of appraisal courses for these organizations as well as being an AQB Certified USPAP Instructor.

Our congratulations to Mr. Cannon on his appointment.



PROVISIONAL (TRAINEE) EXPERIENCE LOGS

The Board has noted an increase in the number of Provisional licensees attempting to submit unsigned logs for experience credit.

K.A.R. 117-5-2(g) requires "An appraisal log shall...at a minimum, include the following for each appraisal report...(6) the state license or

certification number and the signature of the supervising appraiser..."

This regulation is directed, not to the supervisor, but to the Provisional licensee. It is the trainee's responsibility to maintain a log of all experience and to secure the signature of the supervisor for each entry made. It is highly recommended that the log be kept current and that upon completion of an appraisal, the trainee make an entry on the log and secure the supervisor's signature **at that time**.



2005 RENEWAL

The 2005 renewal applications will be mailed out to all appraisers the last week of March. Be sure to read the information carefully and fill out the application completely before returning the form to the Board. The majority of renewals submitted in 2004 that could not be processed were due to incomplete applications.

The application will require that you log all 28 hours (if applicable) completed since July 1, 2003. This will include the 14 hours completed for your 2004 renewal, as well as the 14 hours completed for 2005. **Keep in mind** that 7 of those hours must be in the National USPAP Update course and that the 15-hour tested USPAP course **CANNOT** be used as a substitute.

The biggest change you will note on your renewal is the reduction in the renewal fees. Renewal fees have been reduced \$40. Appraisers who are Certified General or Residential and State Licensed will see a reduction from \$265 per year to \$225. Provisional appraisers will see a drop from \$240 to \$200.

Again, as in the past, we will send a personal demographics review form. Please be sure that all contact information is correct and make any changes necessary by either typing or clearly printing the information. We are noticing an increased number of e-mail addresses that are no longer valid when notice of a newsletter is sent.

One additional question that will appear on your renewal applies only to Provisional appraisers, in that we are asking for a listing of all supervisors and their license numbers. Our database has recently been enhanced to cross-reference trainees and their supervisors and this information will help us keep the data as current as possible.

RENEWAL DOS AND DON'TS

- **DO** read the renewal form carefully, answer all questions and sign prior to submitting the renewal form and fee, particularly those who will be submitting multiple applications to be covered by a single check or money order.
- **DON'T** submit your completed renewal application prior to completion of your continuing education. If you have not received a certificate of completion at the time you are submitting your renewal, verify with the provider that the course has been completed and that the certificate is en route.
- **DON'T** send in copies of your education certificates with the renewal. Approval of education is based solely on the entries on the education log.
- **DON'T** include courses taken prior to July 1, 2003, on your renewal education log.



BOARD HOLDS ELECTION OF OFFICERS

The Kansas Real Estate Appraisal Board held its election of officers at their December 3, 2004 meeting, to be effective January 1, 2005.

Current Chairman - Ronald D. Aul, Lawrence
Current ViceChair - G.N. Capps, Wichita

Chairman Elect-James E. Pfeffer, Overland Park
ViceChair Elect-Gregg Lesh, Haysville



EXPOSURE DRAFT OF PROPOSED CHANGES TO RULES AND REGULATIONS

The KREAB is in the process of introducing four (4) new regulations for adoption. These regulations will deal exclusively with experience supervision for each of the four appraiser license/certification types available. Some of the requirements proposed by K.A.R. 117-2-2a, 117-3-2a, 117-4-2a and 117-5-2a are:

- Supervising appraiser must be certified and in good standing;
- supervisor must have been licensed/certified for a minimum of two years;
- no more than three applicants may be supervised at one time; and
- supervisor must inspect a minimum of the first 25 properties and continue to inspect until satisfied applicant is competent.

The proposed effective date of these regulations would be July 1, 2007, allowing time for licensed appraisers to complete the education and test requirements for certification.



USPAP Q & A

Q. The Management section of the ETHICS RULE requires an appraiser to disclose, *...fees, commissions, or things of value...* paid in connection with the procurement of an assignment. If a referral fee was paid in conjunction with an assignment, must the amount of the fee be disclosed, or is it sufficient to simply disclose that a fee was paid?

A. Disclosing the fact that a payment was made in the appraisal certification and any transmittal letter where the conclusions are stated is sufficient to meet the requirement. However, this is a minimum requirement and does not prohibit full disclosure of the amount of the fee.

Q. I am a licensed trainee with approximately six months of experience. My supervisory appraiser recently deemed me competent to perform inspections on my own; however, many of our clients require the supervisory appraiser to physically inspect the property as well. If I do the inspection by myself but take numerous representative photos of the interior of the subject property, may my supervisory appraiser check the box indicating that he "Did Inspect" the interior of the property?

A. No. A physical inspection of the interior of the property is not the same as a physical inspection of photographs of the interior of the property. It would be misleading for an appraiser to indicate that a physical inspection was performed when in fact the appraiser viewed photographs of the property. An appraiser who only inspects photographs of a property, but signs a certification indicating that he or she physically inspected the subject property, is in violation of USPAP's prohibition against the communication of a misleading or fraudulent report (Conduct section of the ETHICS RULE).

Q. I have been looking for new clients and found that many request sample appraisals for review, but I'm concerned that I would be in violation of appraiser-client confidentiality by providing them. To alleviate this problem, I'm considering including the following disclaimer in the "fine print" of my reports: "The appraiser reserves the right to utilize this report in its entirety as sample work for the purpose of soliciting prospective clients unless written refusal is received from the client." Does USPAP allow me to do this?

A. No. The client, not the appraiser, determines who may receive the appraisal report. The Confidentiality section of the ETHICS RULE states, in part:

An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client...

Including a statement indicating that the report may be used as a sample does not constitute client authorization to distribute copies of the report. One solution is to obtain client authorization to use each report as a work sample. An alternative solution may be to

redact all confidential information from the report before providing it as a sample. As stated in the Comment following the above referenced text:

Comment: When all confidential elements of confidential information are removed through redaction or the process of aggregation, client authorization is not required for the disclosure of the remaining information, as modified.

Q. My client, a federally insured financial institution, has asked me to provide a "value in use" appraisal instead of a market value appraisal. May I do this?

A. USPAP does not dictate the use of any specific type or definition of value. The type and definition of value must be appropriate for the intended use and intended users. For federally related transactions, federally insured financial institutions require an opinion of market value, as defined by regulations. Therefore, if you provide a value in use, you may also have to provide a market value, depending on the intended use.

Q. I have been asked to perform an appraisal that complies with USPAP and with valuation standards from an international appraisal organization. If my appraisal complies with USPAP, will it automatically comply with other valuation standards as well?

A. No. Although there are similarities between all major appraisal standards, it is impossible to say that compliance with USPAP ensures compliance with any other standards. It would be necessary to review the actual content of the valuation standards in question to determine whether different actions would be necessary to comply with those standards.

Q. I have been asked to perform an appraisal involving proposed improvements. The client has indicated that plans and specs have not been finalized. Does USPAP require me to review the plans and specifications prior to completing this assignment?

A. No. Standards Rule 1-4(h) states, in part: *When appraising proposed*

improvements, an appraiser must examine and have available for future examination:

(i) plans, specifications, or other **documentation sufficient to identify the scope and character of the proposed improvements;** (*Bold added for emphasis*)

Hence, the appraisal can be based on other documentation. If that documentation provides sufficient information to properly identify the relevant characteristics of the subject property. Additional guidance on appraising proposed improvements may be found in Advisory Opinion 17 (AO-17) *Appraisals of Real Property with Proposed Improvements*.

Q. If two appraisers sign an appraisal report, what are the obligations related to record keeping? Specifically, must both appraisers keep a copy of the workfile?

A. No, it is not necessary for both appraisers to have a copy of the workfile. The Record Keeping section of the ETHICS RULE states, in part:

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

Neither appraiser is required to have custody of the workfile. However, an appraiser who does not have custody must make appropriate arrangements for retention, access, and retrieval.

For further information regarding *USPAP Q&A*, please contact: John S. Brennan, Director of Research & Technical Issues, The Appraisal Foundation, 1029 Vermont Avenue NW, Suite 900, Washington, DC 20005; (202) 624-3044 phone, (202) 347-7727, fax

This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. The ASB USPAP Q&A is issued to inform appraisers, regulators, and users of appraisal services of the ASB responses to questions raised by regulators and individuals; to illustrate the applicability of the Uniform Standards of Professional Appraisal Practice (USPAP) in specific situations; and to offer advice from the ASB for the resolution of appraisal issues and problems.



DISCIPLINARY ACTIONS

VICKI EMILY SHEPHERD (G-207) Complaint #364

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

Action: A Consent Agreement and Order was entered into on October 14, 2004, with the following terms and conditions: That Shepherd take and pass the examination of the 15-hour USPAP course on or prior to June 30, 2005; that Shepherd take and pass the examination of a minimum 24-hour Market Sales Approach course on or prior to June 30, 2005; and that Shepherd pay \$400 to cover the cost of the review associated with this complaint within 30 days from the date of this Agreement.

GARY GRAY NEWCOME L-510 Complaint #383

Violations: K.S.A. 58-5121; 58-4118(a)(6); 58-4118(a)(7); and 58-4118(a)(8).

Action: A Consent Agreement and Order was entered into on October 16, 2004, with the following terms and conditions: That Newcome maintain a log of all appraisals he performs or in which he participates for a period of three (3) months, effective the date of the Agreement; that the log be submitted to the Board office on or immediately following the first working day of each month; that the Board will select two (2) appraisals from the log for additional review; that Newcome pay \$200 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement; and that Newcome pay the costs of the additional reviews within 30 days from notice by the Board.

STEVEN A. WRISCHNIK (L-1389) Complaint #374

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

Action: A Consent Agreement and Order was entered into on October 16, 2004 with the following terms and conditions: That Wrischnik take and pass the examination of the 15-hour

USPAP course on or prior to June 30, 2005; that Wrischnik take and pass the examination of a minimum 24-hour Market Sales Approach course on or prior to June 30, 2005; and that Wrischnik pay \$240 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement.

RONAL GINGERICH
R-595 Complaint #373

Violations: K.S.A. 58-4141, 4118(a)(6), 58-4118(a)(7), and 58-4118(a)(8).

Action: A Consent Agreement and Order was entered into on October 26, 2004, with the following terms and conditions: That Gingerich be supervised by a Kansas certified appraiser, in good standing with the Board, for a period of 12 months from the date of the Agreement; that Gingerich will submit a log of appraisals he performs or in which he participates during the 12 month period, the log to be submitted to the Board office on or prior to the 1st working day of each month; that the Board may select any number of the logged appraisals for review; that Gingerich pay \$240 to cover the cost of the review associated with this complaint; and that Gingerich will pay the cost of a maximum of three (3) additional reviews within 30 days from the date of notice by the Board.

RICHARD C. JAYNES
R-700 Complaint #380

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

Action: A Consent Agreement and Order was entered into on November 8, 2004, with the following terms and conditions: That Jaynes take and pass the examination of the 15-hour USPAP course on or prior to June 30, 2005; and that Jaynes take and pass the examination of a minimum 24-hour market sales approach course on or prior to June 30, 2005.

DENNIS C. KEITHLEY
R-1261 Complaint #370

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

Action: A Consent Agreement and Order was entered into December 3, 2004, with the following terms and conditions: That Keithley

take and pass the examination of the 15-hour USPAP course on or prior to June 30, 2005; that Keithley take and pass the examination of a minimum 24-hour small residential income producing property course on or prior to June 30, 2005; that Keithley cease and desist from the appraisal of small residential income producing properties for a period of six (6) months, effective the date of this Agreement; that upon completion of the above education, Keithley will maintain a log of all appraisals which he performs or in which he participates for a period of six (6) months, the log to be submitted to the Board office on the first working day of each month; that the Board may select two (2) appraisals from the logs for additional review, that Keithley pay \$240 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement; and that Keithley pay the cost of the additional reviews within 30 days from the date of notice by the Board.

JOHN L. PLOGER
G-500 Complaint #389

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

Action: A Consent Agreement and Order was entered into on December 17, 2004, with the following terms and conditions: That Ploger cease and desist from all supervision for a period of 12 months, effective the date of the Agreement; that Ploger maintain a log of all appraisals he performs or in which he participates for a period of 6 months, said log to be submitted to the Board on or immediately following the first working day of each month; that the Board will select two (2) appraisals from the log for review; that Ploger pay a fine of \$500 within 30 days from the date of the Agreement; that Ploger pay \$250 to cover the cost of the review associated with this complaint; and that Ploger pay the cost of the additional reviews within 30 days from notification by the Board.

MARTY STEVEN WEST
P-1525 Complaint #362

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

Action: A Consent Agreement and Order was entered into on December 17, 2004, with the

following terms and conditions: That West take and pass the examination of the 15-hour USPAP course on or prior to June 30, 2005; that West take and pass the examination of a minimum 24-hour market sales comparison course on or prior to June 30, 2005; and that West pay \$120 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement.

**DEAN E. CLARKSON
R-1057 Complaint #361**

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

Action: A Consent Agreement and Order was entered into on December 20, 2004, with the following terms and conditions: That Clarkson cease and desist from all supervision for a period of 12 months, effective the date of the Agreement; that Clarkson take and pass the examination of the 15-hour USPAP on or prior to June 30, 2005; that Clarkson take and pass the examination of a minimum 24-hour Market Sales Comparison course on or prior to June 30, 2005; that upon completion of the education, Clarkson will maintain a log of all appraisals he performs or in which he participates for a period of 6 months, said log to be submitted to the Board office on or immediately following the first day of each month; that a maximum of 2 appraisals will be selected by the Board for review; that Clarkson pay \$120 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement; and that Clarkson pay the cost of the additional reviews within 30 days of notice by the Board.



DON'T FORGET

Each appraiser is responsible for reporting any change of residence, mailing or business address to the Board immediately upon moving. Be sure to identify the address being changed and always include the appraiser's name and license/cert. number.

**LICENSED/CERTIFIED APPRAISERS AS OF
JANUARY 11, 2005**

GENERAL CERTIFIED	419
RESIDENTIAL CERTIFIED	343
STATE LICENSED	346
PROVISIONAL (TRAINEE)	<u>156</u>
TOTAL	1,264

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