

RECEIVED

2008 JAN 18 AM 9:16

ARIZONA BOARD OF APPRAISAL

BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

In the Matter of :

Case No. 2431

**GERALD A. DIEHL**  
Licensed Residential Appraiser  
License No. 10546

**CONSENT AGREEMENT AND ORDER  
OF DISCIPLINE**

On December 13, 2007, the Arizona Board of Appraisal ("Board") discussed Case Nos. 2431 regarding Gerald A. Diehl ("Respondent"). After reviewing the information presented, the Board voted to offer Respondent the opportunity to enter into this Consent Agreement and Order of Discipline ("Consent Agreement").

**JURISDICTION**

1. The Arizona State Board of Appraisal ("Board") is the state agency authorized pursuant to A.R.S. § 32-3601 *et seq.*, and the rules promulgated thereunder, found in the Arizona Administrative Code ("A.A.C." or "rules") at R4-46-101 *et seq.*, to regulate and control the licensing and certification of real property appraisers in the State of Arizona.

2. Respondent is a Licensed Residential Appraiser in the State of Arizona, holder of License No. 10546, issued on April 19, 1999, pursuant to A.R.S. § 32-3612.

**FINDINGS OF FACT**

1. This case involves the appraisal of property located at 15047 West Sells Drive in Goodyear, Arizona, with an effective date of March 30, 2007.

2. On or about June 27, 2007, the Board received a complaint alleging that the Respondent's market value opinion on the subject property was inflated by \$165,000.

1           3.       The Board's investigation revealed the following deficiencies with the  
2 report prepared by Respondent:

3                   a.       Other comparable sales data provided under Item (g) would possibly  
4 suggest a differing opinion of value for the subject property. Also the Respondent  
5 provided unsupported Replacement Cost figures from the quoted source (Marshall  
6 & Swift Residential Cost Handbook). Providing unsupported Replacement Cost  
7 data would not permit the report to be understood properly by the intended  
8 user/client;  
9

10                   b.       It is reasonable to expect the Respondent to consider model match  
11 sales from the immediate subdivision;  
12

13                   c.       Respondent recites the previous sale of the subject property that  
14 occurred one and one half months prior to the date of the appraisal, however, he  
15 did not analyze the sale. An intended user/client would clearly wonder about the  
16 circumstances surrounding a sale that closed February 7, 2007, for \$351,651, and  
17 being appraised March 30, 2007, for \$565,000;  
18

19                   d.       The Respondent does not, as the report is written, reconcile  
20 sufficient data and properly analyze the data in the Sales Comparison Approach to  
21 value. The Respondent fails to present and analyze available comparable sales  
22 data in a manner that leads the reader to accept the Respondent's opinion of value  
23 for the subject property. Further, the appraisal, as written and using the  
24 comparable sales included in the appraisal report, however, omitting other  
25  
26

1 seemingly relevant data, is not reasoned to support the market value opinion  
2 provided by the Respondent;

3 e. Communicating the appraisal report as written, is misleading.

4 Additionally, omitting any discussion in the report regarding model match sales  
5 from the subject subdivision would lead a knowledgeable reader to believe the  
6 Respondent was aiming for a conclusion of value.  
7

### 8 CONCLUSIONS OF LAW

9 1. Pursuant to A.R.S. § 32-3635, a certified or licensed appraiser in the State  
10 or Arizona must comply with the standards of practice adopted by the Board. The  
11 Standards of Practice adopted by the Board are codified in the USPAP edition applicable  
12 at the time of the appraisal.  
13

14 2. The conduct described above constitutes violations of the following  
15 provisions of the USPAP, 2006 edition: Standards Rule 1-1(a); Standards Rule 1-4(a);  
16 Standards Rule 1-5(b); Standards Rule 1-6(a); Standards Rule 2-1(a); Standards Rule 2-  
17 1(b); Standards Rule 2-2(b)(ix); and the Ethics Rule - Conduct.  
18

### 19 ORDER

20 Based upon the foregoing Findings of Fact and Conclusions of Law, the parties  
21 agree to the following:

22 1. Beginning on the effective date of this Consent Agreement,  
23 Respondent's License No. 10546 shall be placed on probation for a minimum period  
24 of six (6) months. During probation, Respondent shall comply with USPAP, Arizona  
25 Revised Statutes and Appraisal Board rules. During the term of probation,  
26

1 Respondent shall: (a) demonstrate resolution of the problems that resulted in this  
2 disciplinary action; and (b) otherwise comply with the terms of this Consent  
3 Agreement.

4       2.       During the period of probation, Respondent shall complete a minimum  
5 of **twenty-four (24) appraisal reports** under the supervision of an Arizona Certified  
6 Residential or Certified General Appraiser who shall serve as Respondent’s mentor  
7 (“Mentor”);

8       3.       Respondent shall successfully complete the following education within  
9 **six (6) months** of the effective date of this Consent Agreement: a. A minimum of  
10 four (4) hours of course work in Market Trends; and b. A minimum of six (6) hours  
11 of education in mortgage fraud. Proof of completion of the required education must  
12 be submitted to the Board within 3 weeks of completion of the required course(s).

13       4.       The education required under paragraph 3 may not be counted toward  
14 the continuing education requirements for the renewal of Respondent’s certificate.  
15 The same class may not be repeated to fulfill the education requirements of this  
16 Consent Agreement.

17       5.       **During the probationary period, the Respondent shall not issue a**  
18 **verbal or written appraisal, appraisal review, or consulting assignment without**  
19 **prior review and approval by a Mentor.** Each report shall be signed by the Mentor  
20 as a supervisory appraiser.

21       6.       The Mentor must be approved by the Board and is subject to removal by  
22 the Board for nonperformance of the terms of this Consent Agreement. The Mentor  
23 may not have a business relationship with Respondent or be related to respondent.  
24 Any replacement Mentor is subject to the Board’s approval and the remaining terms  
25  
26

1 of this Consent Agreement. The Board's Executive Director may give temporary  
2 approval of the Mentor until the next regular meeting of the Board.

3 7. Not more than **30 days** after the effective date of this Consent  
4 Agreement, Respondent shall submit to the Board the name and resume of an Arizona  
5 Certified Residential or Arizona Certified General Appraiser who is willing to serve as  
6 Respondent's Mentor together with a letter from the potential Mentor agreeing to  
7 serve as Respondent's Mentor. If requested by Board staff, Respondent shall continue  
8 to submit names, resumes, and letters agreeing to serve as Mentor until a mentor is  
9 approved by the Board. Any Mentor must be approved in writing by the Board.

10 8. Respondent shall bear all costs and expenses associated with the  
11 mentorship and incurred in attended the courses.

12 9. The Mentor shall submit monthly reports to the Board for each calendar  
13 month during Respondent's probationary period reflecting the quantity and quality of  
14 Respondent's work, including, but not limited to, improvement in Respondent's  
15 practice and resolution of those problems that prompted this action. The Mentor's  
16 report shall be filed monthly beginning the 15<sup>th</sup> day of the first month following the  
17 start of Respondent's probationary period and continuing each month thereafter until  
18 termination of the probationary period by the Board. **Even if the Mentor reviews no**  
19 **appraisals during a given month, a report stating that no appraisals were**  
20 **reviewed or approved must be submitted. It is the Respondent's responsibility to**  
21 **ensure that the Mentor submits his/her reports monthly.** If the monthly reporting date  
22 falls on a Saturday, Sunday, or holiday, the report is due on the next business day.  
23 The monthly report may be filed by mail or facsimile.

24 10. The Respondent shall file an appraisal log with the Board on a monthly  
25 basis listing every Arizona appraisal that he has completed within the prior calendar  
26

1 month by property address, appraisal type, valuation date, the Mentor's review date,  
2 the date the appraisal was issued, and the number of hours worked on each  
3 assignment. The report log shall be filed monthly beginning the 15<sup>th</sup> day of the first  
4 month following the start of Respondent's probationary period and continuing each  
5 month thereafter until the Board terminates the probation. If the log reporting date  
6 falls on a Saturday, Sunday, or holiday, the report log is due on the next business day.

7 **Even if Respondent performs no appraisals within a given month, he must still**  
8 **file an appraisal log with the Board showing that no appraisals were performed.**

9 The monthly log report may be field by mail or facsimile.

10 11. The Board reserves the right to audit any of Respondent's reports and  
11 conduct peer review, as deemed necessary, during the probationary period. The Board  
12 may, in its discretion, seek separate disciplinary action against the Respondent for any  
13 violation of the applicable statutes and rules discovered in an audit of the  
14 Respondent's appraisal reports provided to the Board under the terms of this Consent  
15 Agreement.

16 12. Respondent's probation, including mentorship, shall continue until: (a)  
17 Respondent petitions the Board for termination as provided in paragraphs 13, and (b)  
18 the Board terminates the probation and mentorship. Upon petition by the Respondent  
19 for termination of the probation and mentorship, the Board will select and audit 4 of  
20 Respondent's appraisal reports.

21 13. At the end of **six (6) months** from the effective date of this Consent  
22 Agreement, the Respondent must petition the Board for termination of his mentorship  
23 and probation. If the Board determines that Respondent has not complied with **all** the  
24 requirements of this Consent Agreement, the Board, at its sole discretion, may either:  
25 (a) continue the probation, including mentorship; or (b) institute proceedings for  
26

1 noncompliance with this Consent Agreement, which may result in suspension,  
2 revocation, or other disciplinary and/or remedial action.

3 14. Respondent shall not act as a supervising appraiser for other appraisers or  
4 trainees, nor shall he act as a mentor, during the term of the probation. Respondent shall  
5 also not teach any course related to real estate appraisals during the term of the probation.

6 15. Respondent shall comply with the Uniform Standards of Professional  
7 Appraisal Practice in performing all appraisals and all Board statutes and rules.

8 16. If, between the effective date of this Consent Agreement and the  
9 termination of Respondent's probation by the Board, Respondent fails to renew his  
10 license while under this Consent Agreement and subsequently applies for a license or  
11 certificate, the remaining terms of this Consent Agreement, including probation and  
12 mentorship, shall be imposed if the application for license or certificate is granted.

13 17. Respondent has read and understands this Consent Agreement as set  
14 forth herein, and has had the opportunity to discuss this Consent Agreement with an  
15 attorney or has waived the opportunity to discuss this Consent Agreement with an  
16 attorney. Respondent voluntarily enters into this Consent Agreement for the purpose  
17 of avoiding the expense and uncertainty of an administrative hearing.

18 18. Respondent understands that he has a right to a public administrative  
19 hearing concerning each and every allegation set forth in the above-captioned matter,  
20 at which administrative hearing he could present evidence and cross-examine  
21 witnesses. By entering into this Consent Agreement, Respondent freely and  
22 voluntarily relinquishes all rights to such an administrative hearing, as well as all  
23 rights of rehearing, review, reconsideration, appeal, judicial review or any other  
24 administrative and/or judicial action, concerning the matters set forth herein.

25 Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.  
26

1           19.    Respondent understands that this Consent Agreement, or any part  
2 thereof, may be considered in any future disciplinary action against him.

3           20.    The parties agree that this Consent Agreement constitutes final  
4 resolution of this disciplinary matter.

5           21.    Time is of the essence with regard to this agreement.

6           22.    If Respondent fails to comply with the terms of this Consent Agreement,  
7 the Board shall properly institute proceedings for noncompliance with this Consent  
8 Agreement, which may result in suspension, revocation, or other disciplinary and/or  
9 remedial actions. Respondent agrees that any violation of this Consent Agreement is a  
10 violation of A.R.S. § 32-3631(A)(8), which is willfully disregarding or violating any  
11 of the provisions of the Board's statutes or the rules of the Board for the  
12 administration and enforcement of its statutes.

13          23.    Respondent understands that this Consent Agreement does not constitute  
14 a dismissal or resolution of other matters currently pending before the Board, if any,  
15 and does not constitute any waiver, express or implied, of the Board's statutory  
16 authority or jurisdiction regard any other pending or future investigation, action or  
17 proceeding. Respondent also understands that acceptance of this Consent Agreement  
18 does not preclude any other agency, subdivision or officer of this state from instituting  
19 other civil or criminal proceedings with respect to the conduct that is the subject of  
20 this Consent Agreement.

21          24.    Respondent understands that the foregoing Consent Agreement shall not  
22 become effective unless and until adopted by the Board of Appraisal and executed on  
23 behalf of the Board. Any modification to this original document is ineffective and  
24 void unless mutually approved by the parties in writing.

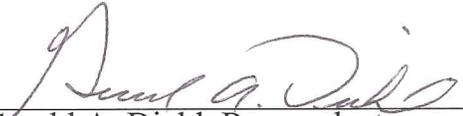
25  
26

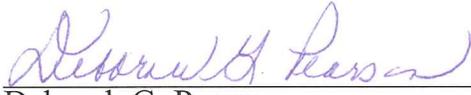
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

25. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board.

26. Pursuant to the Board's Substantive Policy Statement #1, the Board considers this violation to amount to a **Level III Violation**.

DATED this 18<sup>th</sup> day of JANUARY, 2008.

  
Gerald A. Diehl, Respondent

  
Deborah G. Pearson  
Arizona Board of Appraisal

**ORIGINAL** of the foregoing filed this 18<sup>th</sup> day of JANUARY, 2008, with:

Arizona Board of Appraisal  
1400 West Washington Street, Suite 360  
Phoenix, Arizona 85007

**COPY** of the foregoing mailed regular and U.S. Certified Mail # 7006 0100 0002 8652 4407 this 18<sup>th</sup> day of JANUARY, 2008, to:

Brian Flaherty  
Shughart Thomson & Kilroy  
Security Title Plaza, Suite 1200  
3636 North Central Avenue  
Phoenix, Arizona 85012  
Attorney for Respondent

Gerald A. Diehl  
6837 E. Monterra Way  
Scottsdale, AZ 85266  
Respondent

By: 