

COPY

BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

IN THE MATTER OF:

CASE No. 2851

THOMAS M. O'NEILL  
Licensed Residential Appraiser  
License No. 11991

CONSENT AGREEMENT AND  
ORDER FOR DISCIPLINE

In the interest of a prompt and judicious settlement of the above-captioned matters before the Arizona Board of Appraisal ("Board") and consistent with public interest, statutory requirements and responsibilities of the Board, and pursuant to A.R.S. § 32-3601 *et seq.* and A.R.S. § 41-1092.07(F)(5), Thomas M. O'Neill ("Respondent"), holder of License No. 11991 and the Board enter into this Consent Agreement, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as the final disposition of this matter.

On April 22, 2010, the Board held an Informal Hearing in Case No. 2851. Respondent was properly noticed and he appeared personally and on his own behalf. At the conclusion of the Informal Hearing, the Board voted to offer the Respondent a Consent Agreement and Order of Discipline in lieu of further administrative proceedings.

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 holds a license as a Licensed Residential Appraiser in the State of Arizona, License No. 11991 issued on August 11, 2008, pursuant to A.R.S. § 32-3612.

CONSENT AGREEMENT

Respondent understands and agrees that:



1           2.       The Respondent did not adequately address changing market conditions in  
2 the appraisal of the subject property. Although sales were somewhat limited in the  
3 immediate Book and Map, active listings, together with other data, including  
4 expired/cancels listings, and information from Phoenix Metropolitan Housing Study  
5 would provide strong evidence regarding the probable value applicable to the subject  
6 property.

7           3.       The Board's investigation revealed that there was clear support provided by  
8 the market that single family values were declining in the entire metropolitan Phoenix  
9 market. Although Respondent made comments on the first page of the form and in the  
10 narrative addenda relating to a declining market, the appraisal report does not sufficiently  
11 reflect this market-wide phenomena.

12           4.       The Respondent miscalculated the Market Conditions adjustment made for  
13 declining market conditions. In addition, Respondent included conflicting information on  
14 the name of the ownership and on the subject property unit number. The subject's City of  
15 Mesa zoning was also incorrectly noted by the Respondent as was the flood zone map  
16 reference. Further, Respondent incorrectly states that the subject condominium project is  
17 a one story project and that the subject property, as well as all of the comparable sales,  
18 have garages. The Respondent also incorrectly stated that the subject property has 288  
19 phases. Finally, the Respondent did not provide his correct Arizona State license number;  
20 rather he provided an Arizona State Certification number belonging to someone else.

21           5.       Additionally, the Respondent did not adequately determine the scope of  
22 work necessary to produce credible appraisal results due to his failure to consider listing  
23 data from the immediate subject condominium project. It is reasonable to expect the  
24 Respondent to have considered other data from the subject's Book and Map, including  
25 sales, active listings and expired/canceled listings. There were at least two listing of  
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1 similar size units that were available at the time of the appraisal that would have almost  
2 certainly resulted in the Respondent questioning his market value conclusion.

3         6.       The Respondent does not, as the report is written, reconcile sufficient data  
4 and properly analyze the data in the Sales Comparison Approach to value to provide a  
5 clear understanding to the client and intended user of issues surrounding value in the  
6 subject condominium project. The Respondent fails to present and analyze available  
7 comparable data in a manner that leads the reader to accept the Respondent's opinion of  
8 value for the subject property.

9         7.       Other comparable data provided under Item (g) would point to the fact that  
10 additional analysis is necessary. An intended user/client would obviously be interested in  
11 properties within the subject project that were listed at prices substantially beneath the  
12 market value opinion provided by the Respondent.

13         8.       Communicating the appraisal report, as written, is misleading as a result of  
14 the Respondent's failure to discuss and analyze other comparable data from the subject  
15 project's Book and Map that would lead a reader to question the Respondent's reported  
16 market value. In the current environment, it is important to discuss in detail factors  
17 impacting value in a given neighborhood. Omitting any reporting and discussion in the  
18 report regarding other available comparable sales (and listings, expired listings and  
19 canceled listings) from the subject project and neighborhood would clearly lead a  
20 knowledgeable reader to believe the Respondent was aiming at a conclusion of value.

21         9.       Finally, the appraisal reports forwarded to the Board by the Complainant  
22 and by the Respondent vary in typed content. This is a violation of the Recordkeeping  
23 portion of the Ethics Rule. The Board's investigation revealed that while it would appear  
24 that the Respondent's file copy was a subsequent report forwarded to the lender as a  
25 result of the a request for additional data, a copy of the report, or at a minimum, the pages  
26 that were substituted were not maintained by the Respondent in his workfile.

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CONCLUSIONS OF LAW

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

The conduct described above constitutes violations of the following provisions of the USPAP, 2008-2009 edition:

Standards Rule 1-1(b) and (c); Standards Rule 1-2(h); Standards Rule 1-4(a); Standards Rule 1-6(a); Standards Rule 2-1(a) and (b); Standards Rule 2-2(b)(viii); Ethics Rule---Recordkeeping; and Ethics Rule—Conduct.

ORDER

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

1. Upon the effective date of this Consent Agreement, Respondent's License as a Licensed Residential Appraiser shall be placed on probation for a minimum period of six (6) months. The effective date of this Consent Agreement and Order is that date the Consent Agreement is signed by the Board Chair or by the Board's Executive Director on behalf of the Board. During probation, Respondent shall comply with USPAP, Arizona Revised Statutes and the Appraisal Board rules.

2. Respondent shall successfully complete the following education within six (6) months of the effective date of this Consent Agreement: Seven (7) hours Scope of Work; fifteen (15) hours of Basic Appraisal to include Market Trends (with an exam); seven (7) hours USPAP Update relating to the 2010-2011 edition. The education under this paragraph may not be counted toward the continuing education requirements for the renewal of Respondent's certificate except that the seven (7) hours

1 obtained by completing the USPAP Update course for the 2010-2011 edition may be  
2 counted toward the continuing education requirements for the renewal of  
3 Respondent's certificate. The same class may not be repeated to fulfill the education  
4 requirements of this Consent Agreement

5 3. Proof of completion of the required education must be submitted to the  
6 Board within 3 weeks of completion of the required courses.

7 4. During the term of probation, Respondent shall: (a) demonstrate resolution  
8 of the problems that resulted in this disciplinary action; and (b) otherwise comply with  
9 the terms of this Consent Agreement.

10 5. During the period of probation, Respondent shall complete a minimum of  
11 **twelve (12) appraisal reports** under the supervision of an Arizona Certified Residential  
12 or Certified General Appraiser who shall serve as Respondent's mentor ("Mentor").

13 6. During the probationary period, the Respondent shall not issue a verbal or  
14 written appraisal, appraisal review, or consulting assignment without prior review and  
15 approval by a Mentor. Each report shall **either** be signed by the Mentor as a supervisory  
16 appraiser **or** the Mentor must complete a written review of each report ensuring that the  
17 report complies with USPAP and the Board's statutes and rules. The Mentor's review  
18 shall comply with the requirements of Standard 3 of the USPAP. The Mentor's Standard  
19 3 review shall be completed before the report is issued to the client. Any changes the  
20 Mentor requires to ensure the report complies with the USPAP shall be completed by the  
21 Respondent and approved by the Mentor before the report is issued. The Mentor's written  
22 Standard 3 review shall be maintained by the Mentor and made available to the Board  
23 upon request.

24 7. The Mentor must be approved by the Board and is subject to removal by  
25 the Board for nonperformance of the terms of this Consent Agreement. The Mentor may  
26 not have a business relationship with Respondent except for the Mentor/Mentee

1 relationship nor may the Mentor be related to Respondent. Any replacement Mentor is  
2 subject to the Board's approval and the remaining terms of this Consent Agreement. The  
3 Board's Executive Director may give temporary approval of the Mentor until the next  
4 regular meeting of the Board.

5 8. No more than 30 days after the effective date of this Consent  
6 Agreement, Respondent shall submit to the Board the name and resume of an Arizona  
7 Certified Residential or Arizona Certified General Appraiser who is willing to serve as  
8 Respondent's Mentor together with a letter from the potential Mentor agreeing to serve as  
9 Respondent's Mentor. If requested by Board staff, Respondent shall continue to submit  
10 names, resumes, and letters agreeing to serve as Mentor until a Mentor is approved by the  
11 Board. Any Mentor must be approved in writing by the Board.

12 9. Respondent shall bear all costs and expenses associated with the  
13 mentorship and incurred by completing the courses.

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

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1           11. The Respondent shall file an appraisal log with the Board on a monthly  
2 basis listing every Arizona appraisal that he has completed within the prior calendar  
3 month by property address, appraisal type, valuation date, the Mentor's review date, the  
4 date the appraisal was issued, and the number of hours worked on each assignment. The  
5 report log shall be filed monthly beginning the 15<sup>th</sup> day of the first month following the  
6 start of Respondent's probationary period and continuing each month thereafter until the  
7 Board terminates the probation. If the log reporting date falls on a Saturday, Sunday, or  
8 holiday, the report log is due on the next business day. **Even if Respondent performs**  
9 **no appraisals within a given month, he must still file an appraisal log with the Board**  
10 **showing that no appraisals were performed.** The monthly log report may be filed by  
11 mail or facsimile.

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

17           13. Respondent's probation, including mentorship, shall continue until: (a)  
18 Respondent petitions the Board for termination as provided in paragraph 14, and (b) the  
19 Board terminates the probation and mentorship. Upon petition by the Respondent for  
20 termination of the probation and mentorship, the Board will select and audit 3 of  
21 Respondent's appraisal reports.

22           14. At the end of probationary period, the Respondent may petition the Board  
23 for termination of his mentorship and probation. If the Board determines that Respondent  
24 has not complied with **all** the requirements of this Consent Agreement, the Board, at its  
25 sole discretion, may either: (a) continue the probation, including mentorship; or (b)  
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1 institute proceedings for noncompliance with this Consent Agreement, which may result  
2 in suspension, revocation, or other disciplinary and/or remedial action.

3 15. 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 probation. Respondent shall also  
5 not teach any course related to real estate appraisals during the term of probation.

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

8 17. 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 any remaining  
12 period of probation and mentorship, shall be imposed if the application for license or  
13 certificate is granted.

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

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

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

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

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

6           23.    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 of  
11 the provisions of the Board's statutes or the rules of the Board for the administration and  
12 enforcement of its statutes.

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

21           25.    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 void  
24 unless mutually approved by the parties in writing.

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

1 27. Pursuant to the Board's Substantive Policy Statement #1, the Board  
2 considers the violations in the above-referenced matter to constitute to a Level III

3 Violation.

4 DATED this 24 day of June, 2010.  
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7   
8 Thomas M. O'Neill  
9 Respondent

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8 Daniel Pietropaulo  
9 Executive Director  
10 Arizona Board of Appraisal

11 ORIGINAL of the foregoing filed  
12 this 24 day of June, 2010 with:

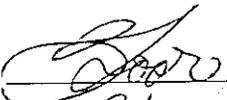
11 Arizona Board of Appraisal  
12 1400 W. Washington Street, Suite 360  
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed regular  
15 and certified mail 7009 1680 0000 7387 4048  
16 this 24 day of June, 2010 to:

16 Mr. Thomas M. O'Neill  
17 3860 W. Mariposa Grande  
18 Glendale, AZ 85310

19 COPY of the foregoing sent or delivered  
20 this 24 day of June, 2010 to:

21 Jeanne M. Galvin  
22 Assistant Attorney General  
23 Arizona Attorney General's Office  
24 1275 W. Washington - CIV/LES  
25 Phoenix, AZ 85007

24   
25 #835440 Rebecca M. Loar

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