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DEPT. OF FINANCIAL
INSTITUTIONS

BEFORE THE DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter the Appraiser's License of:

Case No. 3797

MARCOS M. DIAZ, JR.
Licensed Residential Appraiser
License No. 11813

**CONSENT AGREEMENT FOR and
ORDER FOR PROBATION**

Respondent.

In the interest of a prompt and judicious settlement of the above-captioned matter before the Arizona Department of Financial Institutions ("Department"), and consistent with public interest, statutory requirements and responsibilities of the Department, and pursuant to A.R.S. § 32-3601 *et seq.* and A.R.S. § 41-1092.07(F)(5), Marcos M. Diaz, Jr. (the "Respondent"), holder of License No. 11813, and the Department enter into this Consent Agreement, Findings of Fact, Conclusions of Law, and Order ("Consent Agreement") as the final disposition of this matter.

JURISDICTION

1. The Department 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 Rules 4-46-101 *et seq.*, to regulate and control the licensing and certification of real estate property appraisers in the State of Arizona.

2. Respondent holds a license as a Licensed Residential Appraiser in the State of Arizona, License No. 11813, issued May 23, 2007, pursuant to A.R.S. § 32-3612.

CONSENT AGREEMENT

Respondent understands and agrees that:

3. The Department has jurisdiction over Respondent and the subject matter pursuant to A.R.S. § 32-3601 *et seq.*

4. Respondent has the right to consult with an attorney prior to entering into this Consent Agreement.

1 limits of his license.

2 b. Respondent failed to complete a thorough Highest and Best Use analysis
3 addressing the uniqueness of this combined unit, which appears to be an over
4 improvement for this market.

5 c. Respondent failed to note time adjustment consideration for Comparables 1
6 and 2 that transferred over 1.5 years prior to the effective date of the report..

7 d. Respondent failed to discuss the cost of conversion back to two units, as part
8 of the Highest and Best Use analysis as it pertains to the marketability of this unit.

9 e. Respondent's report contained inconsistent adjustments for the bathrooms.

10 f. Respondent included inappropriate comparables selection in his report.
11 Specifically, he did not choose appropriate sales and failed to adequately support
12 adjustments to the comparables.

13 g. Respondent did not employ recognized appraisal methodology. Respondent
14 selected a multi-family property (Comp. 4) and a commercial use property (Comp. 5)
15 to compare to this condominium unit and that is not a recognized method of
16 appraising.

17 **CONCLUSIONS OF LAW**

18 13. The Department has personal and subject matter jurisdiction in this case under A.R.S.
19 § 32-3601 *et seq.*, and is authorized to seek disciplinary action against any licensed or certified real
20 property appraiser in the State of Arizona for violations of statute, rule or the standards of practice
21 adopted by the Department.

22 14. Pursuant to A.R.S. § 32-3635, a certified or licensed appraiser in the State of Arizona
23 must comply with the standards of practice adopted by the Department. The Standards of Practice
24 adopted by the Department are codified in the Uniform Standards of Professional Appraisal Practice
25 (USPAP) edition application at the time of the appraisal.

26 15. The conduct described above constitutes violations of the following provisions of the

1 USPAP, 2014-2015 edition:

2 **Competency Rule, Scope of Work Rule, Standards Rule 1-1(a)(b)(c), 1-2(h), 1-3(b), 1-**
3 **4(a), 1-6(a)(b), 2-1(a)(b), 2-2(a)(viii)(ix) and A.R.S. § 32-3635 (A)(B).**

4
5 ...

6 **ORDER**

7 16. The Department places Respondent's license as a Licensed Residential Appraiser on
8 probation for a period of six (6) months. The term of this probation shall commence on the day the
9 Superintendent signs this Order into effect (the "effective start date").

10 17. Respondent shall comply with the following orders during the term of his probation:

11 18. Respondent shall comply with all USPAP, Arizona Revised Statutes, and Department
12 rules during this period of probation.

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

15 20. Respondent shall successfully complete the following education within **six (6)**
16 **months** of the effective date of this Consent Agreement; a **fifteen(15) hour Basic Appraisal course**
17 **(with an exam)**. The education under this paragraph **may not** be counted toward the continuing
18 education requirements for the renewal of Respondent's license. Respondent shall provide proof that
19 he completed the required education to the Department within three (3) weeks of completion.
20 Respondent shall be responsible for all costs associated with completing the coursework.

21 21. Respondent shall complete a minimum of **twelve (12) appraisal reports** under the
22 supervision of an Arizona Certified Residential or Certified General Appraiser who shall serve as
23 Respondent's mentor ("Mentor").

24 22. Respondent must obtain a Mentor. Not later than thirty (30) days after the effective
25 date of this Consent Agreement, Respondent shall submit to the Department the name and resume of
26 an Arizona Certified Residential or Arizona Certified General Appraiser who is willing to serve as

1 Respondent's Mentor. If the Department denies Respondent's proposed Mentor, Respondent shall
2 continue to submit names, resumes, and letters of agreement from additional potential Mentors until
3 the Department approves of one. The Department must approve the Mentor in writing. The Mentor
4 is subject to removal by the Department for nonperformance of the terms of this Consent Agreement.

5 23. The Mentor must review all of Respondent's reports during the probationary period.
6 Each report shall either be signed by the Mentor as a supervisory appraiser or the Mentor must
7 complete a written Standard 3 Review of each report ensuring that it complies with USPAP and the
8 Department's statutes and rules. The Mentor's review shall comply with the requirements of
9 Standard 3 of the USPAP. The Mentor's Standard 3 review shall be completed before the report is
10 issued to the client. Respondent shall make all changes that the Mentor requires to all reports to
11 ensure that all reports comply with USPAP prior to issuance. The Mentor shall maintain a copy of
12 their written Standard 3 review to make available to the Department upon request.

13 24. The Mentor shall not have a business relationship with Respondent except for the
14 Mentor/Mentee relationship nor may the Mentor be related to Respondent. Any replacement Mentor
15 is subject to approval by the Department and the remaining terms of this Consent Agreement.

16 25. Respondent shall bear all costs and expenses associated with mentorship.

17 26. The Mentor shall submit a monthly report to the Department for each calendar month
18 during Respondent's probationary period reflecting the quantity and quality of Respondent's work,
19 including, but not limited to, improvement in Respondent's practice and resolution of those
20 problems that prompted this action. The Mentor shall file the report on the first day of each month,
21 beginning with the second month of the probation period and each month thereafter until termination
22 of the probationary period. **The Mentor shall submit a report regardless of whether Respondent**
23 **performs any appraisals in that month. If Respondent performs no appraisals in a given**
24 **month, the Mentor's report must state the same. It is the Respondent's responsibility to**
25 **ensure that the Mentor submits his/her reports monthly.** If the monthly reporting date falls on a
26 Saturday, Sunday or holiday, the report is due on the next business day. The monthly report may be

1 filed by regular mail, email or facsimile.

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

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

17 29. Respondent's probation, including mentorship, shall continue until: (a) Respondent
18 petitions the Department or the Superintendent for termination as provided in paragraph 30 and (b)
19 the Department terminates the probation and mentorship. Upon petition by the Respondent for
20 termination of the probation and mentorship. The Department will select and audit three (3) of
21 Respondent's appraisal reports.

22 30. At the end of three (3) months from the effective date of the Consent Agreement, the
23 Respondent may petition the Department for termination of his mentorship and probation. If the
24 Department determines that Respondent has not complied with **all** the requirements of this Consent
25 Agreement, the Department, at its sole discretion, may continue the probation, including mentorship
26 or institute proceedings for noncompliance with this Consent Agreement, which may result in

1 suspension, revocation, or other disciplinary and/or remedial action.

2 31. Respondent shall not act as a supervising appraiser for other appraisers or trainees,
3 nor shall Respondent act as a mentor, during the term of the probation.

4 32. Respondent shall not teach any course related to real estate appraisals during the term
5 of the probation.

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

8 34. Respondent has read and understands this Consent Agreement as set forth herein, and
9 has had the opportunity to discuss this Consent Agreement with any attorney or has waived the
10 opportunity to discuss this Consent Agreement with an attorney. Respondent voluntarily enters into
11 this Consent Agreement for the purpose of avoiding the expense and uncertainty of an administrative
12 hearing.

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

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

22 37. The parties agree that this Consent Agreement constitutes final resolution of this
23 disciplinary matter.

24 38. If Respondent fails to comply with the terms of this Consent Agreement, the
25 Department shall properly institute proceedings for noncompliance with this Consent Agreement,
26 which may result in suspension, revocation, or other disciplinary and/or remedial actions.

1 Respondent agrees that any violation of this Consent Agreement is a violation of A.R.S. § 32-
2 3631(A)(8), which is willfully disregarding or violating any of the provisions of the statutes or the
3 rules regulating the professional appraisal practice.

4 39. Respondent understands that this Consent Agreement does not constitute a dismissal
5 or resolution of other matters currently pending before the Department, if any, and does not
6 constitute any waiver, express or implied, of the Department's statutory authority or jurisdiction
7 regarding any other pending or future investigation, action or proceeding. Respondent also
8 understands that acceptance of this Consent Agreement does not preclude any other agency
9 subdivision or officer of this state from instituting other civil or criminal proceedings with respect to
10 the conduct that is the subject of this Consent Agreement.

11 40. Respondent understands that the foregoing Consent Agreement shall not become
12 effective unless and until adopted by the Real Estate Appraisal Division Manager and executed on
13 behalf of the Superintendent. Any modification to this original document is ineffective and void
14 unless mutually approved by the parties in writing.

15 41. Respondent understands that this Consent Agreement is a public record that may be
16 publicly disseminated as a formal action.

17 42. Pursuant to the previously noted Board of Appraisal's Substantive Policy Statement
18 #1, the Department considers the violation in the above-referenced matter to constitute a Level III
19 Violation.

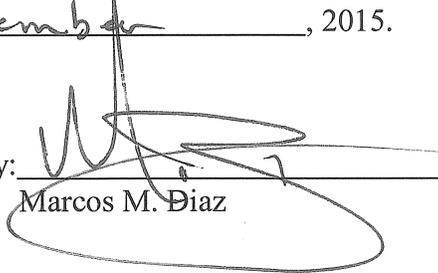
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21
22 RESPECTFULLY SUBMITTED this 4th day of January, 2016.

23 Michael Fowler
24 Assistant Superintendent of Financial Institutions

25 By: Debra Rudd
26 Debra Rudd, Manager
Real Estate Appraisal Division

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DATED this 23 day of December, 2015.

By: 

Marcos M. Diaz

ORIGINAL of the foregoing e-filed this
4th day of January, 2016,
in the office of:

Debra Rudd, Manager
Arizona Department of Financial Institutions
Real Estate Appraisal Division
ATTN: Kelly Luteijn
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
KLuteijn@azdfi.gov

COPY of the foregoing mailed/mailed same date to:

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8451 N. Sayante Way
Tucson, AZ 85743
appraiserdiaz@msn.com
Respondent