

BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

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ARIZONA BOARD OF APPRAISAL

In the Matter of:

TIMOTHY R. FORTUNATO
Certified Residential Appraiser
Certificate No. 21657

Case No. 2516

CONSENT AGREEMENT AND ORDER

In the interest of a prompt and judicious settlement of the above-captioned matter 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), Timothy R. Fortunato (“Respondent”), holder of certificate no. 21657 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 May 15, 2008, the Board met to discuss Case No. 2516. Respondent did not appear. The Board again met on January 15, 2009 to consider an offer of settlement offered by Respondent. Respondent appeared personally and was represented by counsel, Sean St. Clair. At the conclusion of its discussion of the case, 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.

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- 5. It is reasonable to expect the Respondent should have considered other model match sales from the immediate subdivision. Other comparable data would be considered highly comparable data for comparison to the subject property. These additional sales would conceivably indicate a different value for the subject property.
- 6. The Respondent does not, as the appraisal report is written, reconcile sufficient data and properly analyze the data in the Sales Comparison Approach to value. The Respondent fails to present and analyze available comparable sales data in a manner that leads the reader to accept the Respondent's opinion of value for the subject property.
- 7. Other comparable sales data would possibly suggest a differing opinion of value for the subject property.
- 8. The Respondent does not, as the appraisal report is written, reconcile sufficient data and properly analyze available comparable data in the Sales Comparison Approach to value. The appraisal, as written and using the comparable sales included in the appraisal report, however, omitting other seemingly relevant data, is not reasoned to support the market value opinion provided by the Respondent.
- 9. Communicating the appraisal report, as written, is misleading.
- 10. By omitting any discussion in the report regarding other available model match sales from the subject subdivision would clearly lead a

1 knowledgeable reader to believe the Respondent was aiming for a
2 conclusion of value.

3 **CONCLUSIONS OF LAW**

4
5 1. Pursuant to A.R.S. § 32-3635, a certified or licensed appraiser in the State
6 of Arizona must comply with the standards of practice adopted by the Board. The
7 Standards of Practice adopted by the Board are codified in the USPAP edition applicable
8 at the time of the appraisal.

9 2. The conduct described above constitutes violations of the following
10 provisions of the USPAP, 2006 edition: Standards Rule 1-1(b) and (c); Standards Rule 1-
11 2 (c)(iv); Standards Rule 1-4(a); Standards Rule 1-6 (a); Standards Rule 2-1(a) and (b);
12 Standards Rule 2-2(b)(v) and (ix); Statement on Appraisal Standard No. 6; and Standards
13 Ethics Rule – Conduct.
14

15 **ORDER**

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

19 1. **Upon the effective date of this Consent Agreement, Respondent's**
20 **Certificate as a Certified Residential Appraiser shall be placed on probation for a**
21 **period of twelve (12) months.** During probation, Respondent shall comply with
22 USPAP, Arizona Revised Statutes and Appraisal Board rules.

23 2. Respondent shall successfully complete the following education within
24 **six (6) months** of the effective date of this Consent Agreement: **Minimum of five (5)**
25 **hours of mortgage fraud and fifteen (15) hours of qualifying education (with an**
26 **exam) including residential market analysis and highest and best use.** The

1 education required under this paragraph may be counted toward the continuing
2 education requirements for the renewal of Respondent's certificate. The same class
3 may not be repeated to fulfill the education requirements of this Consent Agreement

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

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

9 4. As a condition of probation, Respondent is required to work under the
10 supervision of a Mentor for a period of either **(a) five months or (b) until completion**
11 **of twenty-four (24) appraisal reports, whichever is longer**, under the supervision of
12 an Arizona Certified Residential or Certified General Appraiser who shall serve as
13 Respondent's mentor ("Mentor"). The parties understand that under the terms of this
14 Consent Agreement and Order, Respondent is required to work under the supervision
15 of a Mentor for a period of **five (5) months or until he completes twenty-four (24)**
16 **appraisal reports**, whichever is longer. They further understand that the Mentorship
17 requirement may be terminated after five (5) months or upon the completion of the
18 twenty-four appraisal reports, whichever is longer and prior to the end of the twelve
19 month probation period if so requested in writing by the Respondent and approved by
20 the Board. **Respondent's Mentorship shall continue for five (5) months or until**
21 **such time Respondent completes twenty-four (24) appraisal reports, whichever is**
22 **longer**. Regardless of when Respondent's Mentorship is terminated, Respondent shall
23 remain on probation for a minimum period of twelve (12) months.

24 5. **During the Mentorship period which is either for five (5) months or**
25 **until such time that Respondent completes twenty-four (24) appraisal reports**
26 **under a Mentor, whichever is longer, Respondent shall not issue a verbal or**

1 **written appraisal, appraisal review, or consulting assignment without prior**
2 **review and approval by a Mentor.** Each report shall be signed by the Mentor as a
3 supervisory appraiser. The Mentor shall be either an Arizona Certified Residential or
4 General Appraiser. In the event that the Respondent's client will not accept the
5 signature of the Mentor affixed to an assignment as a supervisory appraiser, the
6 Mentor need not co-sign the report, but must complete a written review of each report
7 ensuring that the report complies with USPAP and the Board's statutes and rules. The
8 Mentor's review shall comply with the requirements of Standard 3 of the USPAP. The
9 Mentor's Standard 3 review shall be completed before the report is issued to the
10 client. Any changes the Mentor requires to ensure the report complies with the
11 USPAP shall be completed by the Respondent and approved by the Mentor before the
12 report is issued. The Mentor's written Standard 3 review shall be maintained by the
13 Mentor and made available to the Board upon request. In order to invoke these
14 provisions, the Respondent must submit proof to the Board with his monthly log
15 showing that his client's policies prevent co-signature by the Mentor.

16 After five (5) months or the completion of twenty-four (24) appraisal reports,
17 whichever is longer, the requirement of pre-approval of appraisals by a Mentor may
18 be terminated upon approval by the Board if Respondent has complied with the
19 conditions set out in this Order.

20 6. The Mentor must be approved by the Board and is subject to removal by
21 the Board for nonperformance of the terms of this Consent Agreement. The Mentor
22 may not have a business relationship with Respondent except for the Mentor/Mentee
23 relationship nor may the Mentor be related to Respondent. Any replacement Mentor
24 is subject to the Board's approval and the remaining terms of this Consent Agreement.
25 The Board's Executive Director may give temporary approval of the Mentor until the
26 next regular meeting of the Board.

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

8 8. Respondent shall bear all costs and expenses associated with the
9 mentorship and incurred in attending the required courses.

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

22 10. The Respondent shall file an appraisal log with the Board on a monthly
23 basis listing every Arizona appraisal that he has completed within the prior calendar
24 month by property address, appraisal type, valuation date, the Mentor's review date (if
25 applicable), the date the appraisal was issued, and the number of hours worked on
26 each assignment. The report log shall be filed monthly beginning the 15th day of the

1 first month following the start of Respondent's probationary period and continuing
2 each month thereafter until the Board terminates the probation. If the log reporting
3 date falls on a Saturday, Sunday, or holiday, the report log is due on the next business
4 day. **Even if Respondent performs no appraisals within a given month, he must**
5 **still file an appraisal log with the Board showing that no appraisals were**
6 **performed.** The monthly log report may be filed by mail or facsimile.

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

13 12. Respondent's probation and mentorship shall continue until: (a)
14 Respondent petitions the Board for termination and (b) the Board terminates the
15 probation and mentorship. Upon petition by the Respondent for termination of the
16 mentorship, after five (5) months or the completion of twenty-four (24) appraisal
17 reports, whichever is longer, the Board will select and audit 3 of Respondent's
18 appraisal reports.

19 13. At the end of **twelve (12) months** from the effective date of this Consent
20 Agreement, the Respondent must petition the Board for termination of his probation.
21 If the Board determines that Respondent has not complied with **all** the requirements of
22 this Consent Agreement, the Board, at its sole discretion, may either: (a) continue the
23 probation or (b) institute proceedings for noncompliance with this Consent
24 Agreement, which may result in suspension, revocation, or other disciplinary and/or
25 remedial action.

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1 14. Respondent shall not act as a supervising appraiser for other appraisers or
2 trainees, nor shall he act as a mentor, during the term of the probation. Respondent shall
3 also not teach any course related to real estate appraisals during the term of the probation.
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5 15. Respondent shall comply with the Uniform Standards of Professional
6 Appraisal Practice in performing all appraisals and all Board statutes and rules.

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

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

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

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

1 20. The parties agree that this Consent Agreement constitutes final
2 resolution of this disciplinary matter.

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

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

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

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

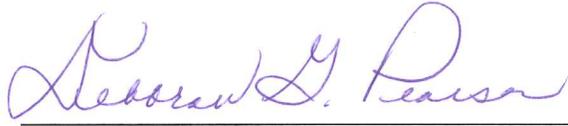
23 25. Respondent understands that this Consent Agreement is a public record
24 that may be publicly disseminated as a formal action of the Board.

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1 26. 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.**

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6 DATED this 20th day of April, 2009.

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9 
Timothy R. Fortunato, Respondent


Deborah G. Pearson, Executive Director
Arizona Board of Appraisal

10
11 **ORIGINAL** of the foregoing filed
12 this 20th day of April, 2009 with:

13 Arizona Board of Appraisal
14 1400 West Washington Street, Suite 360
15 Phoenix, Arizona 85007

16 **COPY** of the foregoing mailed regular mail
17 this 20th day of April, 2009 to:

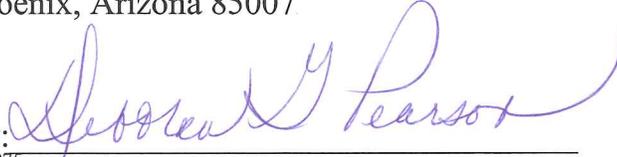
18 Sean St. Clair
19 The Lassiter Law Firm, P.L.C.
20 207 N. Giblest Road, Ste. 001
21 Gilbert, AZ 85234

22 Timothy R. Fortunato
23 2630 West Calle Del Norte
24 Chandler, Arizona 85224

regular and certified mail # 7008 1140 0004 9529 4712

25 **COPY** of the foregoing sent or delivered
26 this 20th day of April, 2009 to:

Jeanne M. Galvin
Assistant Attorney General
Arizona Attorney General's Office
1275 West Washington, CIV/LES
Phoenix, Arizona 85007


By: _____
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