

1 **BEFORE THE ARIZONA STATE BOARD OF APPRAISAL**

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ARIZONA BOARD OF APPRAISAL

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3 **IN THE MATTER OF:**

CASE No. 2908

4 **KENNETH J. LEMOINE**
5 Certified Residential Appraiser
6 Certificate No. 20869

**CONSENT AGREEMENT
AND ORDER OF DISCIPLINE**

7 In the interest of a prompt and judicious settlement of the above-captioned matter
8 before the Arizona Board of Appraisal ("Board") and consistent with public interest,
9 statutory requirements and responsibilities of the Board, and pursuant to A.R.S. § 32-3601
10 *et seq.* and A.R.S. §41-1092.07(F)(5), Kenneth J. Lemoine, ("Respondent"), holder of
11 Certificate No. 20869 and the Board enter into this Consent Agreement, Findings of Fact,
12 Conclusions of Law and Order ("Consent Agreement") as the final disposition of this
13 matter.

14 On May 18, 2010, the Board held an Informal Hearing on Case No. 2908.
15 Respondent was properly noticed and personally appeared on his own behalf. At the
16 conclusion of the Informal Hearing, the Board voted to offer the Respondent a Consent
17 Agreement and Order of Discipline in lieu of further administrative proceedings.

18 **JURISDICTION**

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

24 2. Respondent holds a Certificate as a Certified Residential Appraiser in the
25 State of Arizona, Certificate No. 20869 issued on November 10, 1997, pursuant to A.R.S.
26 § 32-3612.

1 1. This matter deals with an appraisal conducted and report written by
2 Respondent of unimproved residential land identified as APN Parcels 216-26-177C &
3 216-26-176A with an effective date of value of January 15, 2007.

4 2. The Board's records contain two sets of appraisal reports completed by the
5 Respondent of the above-referenced property. The reports are believed to be identical.

6 3. There was additional market data available that would lead a knowledgeable
7 reader/ intended user/client to have questions regarding the reported market value.

8 4. The appraisal reports do not include an estimate of exposure time for the
9 subject property. When the purpose of an assignment is to develop an opinion of market
10 value, the appraiser must also develop an opinion of reasonable exposure time linked to
11 the value opinion.

12 5. It is not clear from information provided in the appraisal reports and
13 contained in the Respondent's workfile whether there is a clear understanding of the
14 identification and use of a hypothetical condition by the Respondent.

15 6. The Respondent did not adequately determine the scope of work necessary to
16 produce credible appraisal results as a result of failing to consider other comparable data
17 from the market area.

18 7. It is reasonable to expect the Respondent should have considered other data
19 from the subject's market area. As is clear from reviewing data in the Kalinowski report,
20 there were other, more recent comparable sales that may have possibly resulted in the
21 Respondent questioning his market value conclusions.

22 8. The Respondent, does not, as the report is written, reconcile sufficient data
23 and property analyze the data in the Sales Comparison Approach to value to provide a
24 clear understanding to the client and intended use of issues surrounding the opinion of
25 market values. The Respondent fails to present and analyze available comparable data in
26 a manner that leads the reader to accept the Respondent's opinion of value for the subject
properties.

1 9. Other comparable data provided under item (g) would point to the fact that
2 additional analysis and comments are necessary.

3 10. The Respondent has a responsibility to clearly state the fact that a
4 hypothetical condition is being used in the completion of the appraisal reports regarding
5 the lot split.

6 11. The appraisal report does not state which reporting option was utilized in the
7 preparation of the appraisal reports.

8 12. The Respondent does not, as the reports are written, reconcile sufficient data
9 and properly analyze available comparable data in the Sales Comparison Approach to
10 value. The reports, as written and using the comparable sales included in the appraisal
11 report, however, omitting other seemingly relevant data, are not reasoned to have lead the
12 intended user and client to the market value opinions provided by the Respondent.

13 13. The appraisal reports are completed subject to a lot split, however, the
14 appraisal reports do not clearly state the use of the real estate at the date of the appraisal.

15 14. The appraisal reports state that the appraisals were subject to the completion
16 of the split of parcel 216-26-177C, however, USPAP specifically states that the appraisal
17 report must clearly and conspicuously state all hypothetical conditions and whether their
18 use might have affected the assignment results. Appraisal peers recognize
19 language/vocabulary in the completion of an appraisal report. The lack of the use of the
20 term "hypothetical condition" creates a level of doubt in the reader's mind.

21 15. Based upon information provide by the Respondent and in the Respondent's
22 Workfile, the appraisal reports were prepared for M & I Bank. M & I Bank is believed to
23 be a Federally Insured Despository Institution. This fact brings with it the necessity of the
24 Respondent to comply with SMT-10 in the completion of the appraisal reports.

25 16. The Respondent failed to discuss the present use of the subject property.

26 17. The Respondent provided opinions of value for the subject based on a
hypothetical condition (although not called a hypothetical condition in the appraisal

1 reports) of a lot split, however, SMT-10 clearly states that “as is” value of the property
2 must be reported as of the date of the report and how the “as is” value differs from the
3 value under a hypothetical condition. If by failing to provide this opinion, when possible,
4 an appraiser violates the agencies’ appraisal regulation and guidelines and the
5 Supplemental Standards Rule.

6 18. Respondent’s appraisal assignment, in the market environment present at the
7 date of the appraisal arguably would suggest considerable research to find and analyze
8 comparable data. Using three comparable sales from the same gated subdivision creates
9 doubt in the mind of a reader/intender user/client regarding market value of the subject
10 property. Other comparable data analysis would be necessary to provide a credible
11 assignment result. If the Respondent had provided additional analysis on data provided
12 under (g) it would have provided a basis for reporting a value conclusion arguably
13 somewhat different from that reported in the appraisals, or a the very least, it would have
14 provided information on this data regarding why the data would not have been relevant to
15 the appraisal assignment.

16 **CONCLUSIONS OF LAW**

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

21 2. The conduct described above constitutes violations of the following
22 provisions of the USPAP, 2006 edition: Standards Rule 1-1(b); Standards Rule 1-2(c)
23 and (c)(iv); Standards Rule 1-2(g) and (h); Standards Rule 1-4(a); Standards Rule 1-6(a);
24 Standards Rule 2-1(a), (b) and (c); Standards Rule 2-2(b)(v), (b)(viii), (b)(x) and (b)(xi)
25 and (ii); Standards Rule 2-2(b)(vii) and (viii); Standards Rule 2-3; Scope of Work Rule;
26 Scope of Work Rule---Acceptability; Statement on Appraisal Standard No. 6; Statement

1 on Appraisal Standards No. 10; Supplemental Standards Rule; and Ethics Rule—
2 Conduct.

3 **ORDER**

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

6 1. **Upon the effective date of this Consent Agreement, Respondent's**
7 **certificate as a Certified Residential Appraiser shall be placed on probation for a**
8 **minimum period of six (6) months.** During probation, Respondent shall comply with
9 USPAP, Arizona Revised Statutes and Appraisal Board rules.

10 2. Respondent shall successfully complete the following education within **six**
11 **(6) months** of the effective date of this Consent Agreement: **Seven (7) hours of**
12 **Complex Properties; seven (7) hours of Report Writing; and seven (7) hours USPAP**
13 **Update 2010-2011 edition.** The education completed under this paragraph **may not** be
14 counted toward continuing education requirements or for the renewal of Respondent's
15 certificate **except the seven (7) hours obtained from completing the USPAP 2010-**
16 **2011 update course may be counted toward the continuing education requirements**
17 **for renewal of Respondent's certificate.** The same class may not be repeated to fulfill
18 the education requirements of this Consent Agreement. Proof of completion of the
19 required education courses must be submitted to the Board within three (3) weeks of
20 completion of the required course.

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

24 4. During the period of probation, Respondent shall complete a minimum of
25 **twelve (12) appraisal reports.** The Respondent shall file an appraisal log with the Board
26 on a monthly basis listing every Arizona appraisal that he has completed within the prior

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

10 5. 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 Respondent's
14 appraisal reports provided to the Board under the terms of this Consent Agreement.

15 6. Respondent's probation shall continue until: (a) Respondent petitions the
16 Board for termination as provided in paragraph 7 and (b) the Board terminates the
17 probation. Upon petition by the Respondent for termination of the probation, the Board
18 will select and audit 3 of Respondent's appraisal reports.

19 7. At the end of **six (6) months** from the effective date of this Consent
20 Agreement, the Respondent may petition the Board for termination of his probation. If
21 the Board determines that Respondent has not complied with **all** the requirements of this
22 Consent Agreement, the Board, at its sole discretion, may either: (a) continue the
23 probation; or (b) institute proceedings for noncompliance with this Consent Agreement,
24 which may result in suspension, revocation, or other disciplinary and/or remedial action.

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1 8. 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.
4

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

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

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

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

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

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

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

4 16. If Respondent fails to comply with the terms of this Consent Agreement, the
5 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 of
9 the provisions of the Board's statutes or the rules of the Board for the administration and
10 enforcement of its statutes.

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

19 18. 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 void
22 unless mutually approved by the parties in writing.

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

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1 20. 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 12 day of October, 2010.
5 DATED this 22 day of July, 2010.

6 Kenneth J. Lemoine
7 Kenneth J. Lemoine
8 Respondent

6 Daniel Pietropaulo
7 Daniel Pietropaulo
8 Executive Director
9 Arizona Board of Appraisal

10
11 **ORIGINAL** of the foregoing filed
12 this 12 day of October, 2010 with:

13 Arizona Board of Appraisal
14 1400 W. Washington Street, Suite 360
15 Phoenix, AZ 85007

16 **COPY** of the foregoing mailed regular and certified mail 7009 1680 0000 7387 7612
17 this 28 day of October, 2010 to:

18 Mr. Kenneth J. Lemoine
19 4340 E. Indian School Road
20 #21
21 Phoenix, AZ 85018

22 **COPY** of the foregoing sent or delivered
23 this 28 day of October, 2010 to:

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

25 Rebecca M. Loar
26 866117 Rebecca M. Loar