

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

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3 **IN THE MATTER OF:**

ARIZONA BOARD OF APPRAISAL

CASE NOS. 2984 and 3241

4 **KYLE D. LINDSEY**
5 Certified Residential Appraiser
6 Certificate No. 20907

**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), Kyle D. Lindsey ("Respondent"), holder of
11 Certificate No. 20907 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 November 27, 2012, the Board held in an Informal Hearing in Case Nos. 2984,
15 3113 and 3241. Respondent appeared personally. At the conclusion of its consideration of
16 these cases, the Board voted to dismiss case number 3113 and to offer the Respondent a
17 Consent Agreement and Order of Discipline in case numbers 2984 and 3241 in lieu of
18 further administrative proceedings.

19 **JURISDICTION**

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

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1 FINDINGS OF FACT

2 On or about October 7, 2011, the Board's investigation revealed the following:

3 2984

4 1. This matter deals with an appraisal conducted and report written by
5 Respondent of a single family residence located at 8301 N. Merion Way, Paradise Valley,
6 AZ 85253 with an effective date of value of May 16, 2006.

7 2. Respondent made a number of errors and omissions in the appraisal report,
8 including but not limited to: failing to state the subject's contract date; incorrectly
9 identifying the subject's neighborhood; failing to note the subject's location near a major
10 arterial road; stating a significantly lower effective age of improvements, without
11 commenting on any updating or modernization; using the sale of a property that was not
12 for the purchase of the home but rather to sell for vacant land or to build something new;
13 using a sale of a property that is not from a competing neighborhood; and failing to
14 provide the correct sales price for comparable number 4.

15 3. Further, Respondent failed to report the subject's current listing dates; nor
16 did Respondent analyze the subject's sales contract.

17 4. Additionally, the Respondent failed to reconcile the quantity and quality of
18 data and provided no analysis for the Sales Comparison approach.

19 5. In the Cost Approach section, and in other sections of the appraisal report
20 referencing the Cost Approach, the Respondent made conflicting statements of the
21 process of determining the estimated site value and the physical depreciation.

22 6. In addition, the workfile did not contain supporting data for the following:
23 the neighborhood data with respect to the price and age ranges of the single family
24 properties or property values increasing; supporting the adjustments made in the Sales
25 Comparison Approach for the comparable sales; supporting the Cost Approach; the
26 neighborhood or market areas or of other sales that might have been used or considered

1 and no data sheets of public records information for the comparables used in the appraisal
2 report.

3 7. Finally, the Board expressed concern that Respondent adjusted \$3,000 for
4 one garage stall but only \$75 per square foot for the difference in GLA.

5 3241

6 On or about January 13, 2012, the Board's investigation revealed the following:

7 8. This matter deals with an appraisal conducted and report written by
8 Respondent of a single family residence located at 13013 W. Columbine Dr., El Mirage
9 AZ, 85335 with an effective date of value of November 7, 2007.

10 9. Respondent made several errors and omissions in the appraisal report,
11 including but not limited to: providing the incorrect zoning classification; stating a
12 significantly lower effective age of the improvements, without commenting on any
13 updating or modernizations; use of outdated Cost data; stated two different ways within
14 the appraisal report of how the Physical Depreciation was figured in the Cost Approach;
15 and there were several misspelled words.

16 10. In addition, Respondent failed to recognize the declining property values
17 for the defined neighborhood. The Board's investigation demonstrated that the value of
18 single family residences declined 8% over a six month period (11/01/06 to 4/30/07); nor
19 did Respondent apply the rate of decline to the three closed sales used in the report (i.e.
20 there were no negative time adjustments).

21 11. The Respondent failed to reconcile the quantity and quality of data and
22 provided no analysis for the Sales Comparison Approach.

23 12. In the Cost Approach section and in other sections of the appraisal report
24 referencing the Cost Approach, the Respondent made conflicting statements of the
25 process utilized in determining the estimated site value.

26

1 13. Finally, the Respondent's workfile does not contain data to support the
2 opinions and conclusions indicated within the appraisal report.

3 **CONCLUSIONS OF LAW**

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

8 **2984**

9 The conduct described above constitutes violations of the following provisions of
10 the USPAP, 2005 edition:

11 **Standards Rule 1-1(a) and (c); Standards Rule 1-5(a); Standards Rule 1-6(a);**
12 **Standards Rule 2-1 (a) and (b); and Standard Ethics Rule—Recordkeeping.**

13 **3241**

14 The conduct described above constitutes violations of the following provisions of
15 the USPAP, 2006 edition:

16 **Standards Rule 1-1(a) and (c); Standards Rule 1-4(b)(i); Standards Rule 1-**
17 **6(a); Standards Rule 2-1 (a) and (b); and Standard Ethics Rule—Recordkeeping.**

18 **ORDER**

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

21 1. **Upon the effective date of this Consent Agreement, Respondent's**
22 **Certificate as a Certified Residential Appraiser shall be placed on probation for six**
23 **(6) months.** During probation, Respondent shall comply with USPAP, Arizona Revised
24 Statutes and Appraisal Board rules. **The effective date of this Consent Agreement and**
25 **Order is the date the Order is signed by the Executive Director on behalf of the**
26 **Board.**

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

4 3. Respondent shall complete the following education within six (6) months of
5 the effective date of this Consent Agreement: **a fifteen (15) hour course in USPAP**
6 **(with an exam); a seven (7) hour course in Complex Properties and a seven (7) hour**
7 **Report Writing course.** The education required under this paragraph may not be
8 counted toward the continuing education requirements for the renewal of
9 Respondent's certificate. The same class may not be repeated to fulfill the education
10 requirements of this Consent Agreement. The Respondent is responsible for the costs of
11 completing the required coursework.

12 4. Proof of completion of the required education must be submitted to the
13 Board within 3 weeks of completion of the required coursework.

14 5. **In addition, within fourteen (14) days of the effective date of this**
15 **Consent Agreement and Order,** the Respondent shall submit to the Board his appraisal
16 log for the last twelve (12) months. **Further,** in that log, Respondent shall identify which
17 appraisals are appraisals of complex properties. Upon receipt of Respondent's log, the
18 Board shall select three (3) of Respondent's appraisals for the purpose of audit. The
19 Board may, in its discretion, seek separate disciplinary action against the Respondent for
20 any violation of the applicable statutes and rules discovered in an audit of the
21 Respondent's appraisal reports provided to the Board under the terms of this Consent
22 Agreement.

23 6. The Respondent shall file an appraisal log with the Board on a monthly
24 basis listing every Arizona appraisal that he has completed within the prior calendar
25 month by property address, appraisal type, valuation date, the date the appraisal was
26 issued, and the number of hours worked on each assignment. The report log shall be filed

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

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

13 8. Respondent's probation shall continue until: (a) Respondent petitions the
14 Board for termination as provided in paragraph 9 and (b) the Board terminates the
15 probation. Upon petition by the Respondent for termination of the probation, the Board
16 will select and audit 3 of Respondent's appraisal reports.

17 9. The Respondent **may** petition the Board at the end of **three (3) months**
18 from the effective date of this Consent Agreement for termination of his probation. If the
19 Board determines that Respondent has not complied with **all** the requirements of this
20 Consent Agreement, the Board, at its sole discretion, may either: (a) continue the
21 probation or (b) institute proceedings for noncompliance with this Consent Agreement,
22 which may result in suspension, revocation, or other disciplinary and/or remedial action.

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

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

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

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

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

23 16. The parties agree that this Consent Agreement constitutes final resolution
24 of this disciplinary matter.

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

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

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

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

22 22. Pursuant to the Board’s Substantive Policy Statement #1, the Board
23 considers the violations in the above-referenced matters to constitute to a **Level III**
24 **Violation.**

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DATED this 8th day of February, 2013.

Kyle D. Lindsey
Kyle D. Lindsey
Respondent

Debra Rudd
Debra Rudd
Executive Director
Arizona Board of Appraisal

ORIGINAL of the foregoing filed
this 8th day of February, 2013 with:

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

COPY of the foregoing mailed regular
and certified mail
this 8th day of February, 2013 to:

Kyle D. Lindsey
22830 N. 32nd Ave.
Phoenix, AZ 85027

COPY of the foregoing sent or delivered
this 8th day of February, 2013 to:

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

By: Sherry Ponte
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