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BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

IN THE MATTER OF:

NATHAN G. MORRIS,
Certified Residential Appraiser
No. 22034,

Respondent.

Complaint Nos. 08F-2487-BOA
09F-2763-BOA

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER OF SUSPENSION**

On July 16, 2009, the Arizona Board of Appraisal met to consider the Administrative Law Judge Decision of Diane Mihalsky in the above-captioned matter. Nathan G. Morris appeared. The State was represented by Jeanne Galvin, Assistant Attorney General. The Board received independent legal advice from Christopher Munns, Assistant Attorney General from the Solicitor General's Office.

The Board, having reviewed the administrative record and the Administrative Law Judge's Findings of Fact, Conclusions of Law and Order in this matter, and having considered the written and oral arguments of the parties and fully deliberating the same, takes the following actions on the recommended decision:

1. The Board hereby accepts the Findings of Fact of the Administrative Law Judge.
2. The Board hereby accepts the Conclusions of Law of the Administrative Law Judge.
3. The Board hereby modifies the Order of the Administrative Law Judge based on the Board's determination that the Findings of Fact and Conclusions of Law do not rise to the level of findings of fact and conclusions of law of prior complaints where orders of revocation were issued.¹

4. The Findings of Fact, Conclusions of Law and Order shall read as follows:

¹ The Board modifies the recommended order of the Administrative Law Judge to be consistent with prior Board orders.

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FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. On October 31, 2008, the Arizona State Board of Appraisal ("the Board") issued Certified Residential Real Estate Appraiser License No. 22034 to Respondent Nathan G. Morris. Mr. Morris' license is set to expire on October 31, 2010.

2. The Board first licensed Mr. Morris as a licensed residential real estate appraiser in 2005.

Case No. 2487

3. On August 27, 2008, the Board received a complaint from Steven and Darcy Sellers regarding a summary appraisal report that Mr. Morris had prepared of a property that Mr. and Mrs. Sellers owned at 9888 W. Golddust Drive, Queen Creek, Arizona ("the Golddust Drive property"), which report had an effective date of July 30, 2007. Mr. and Mrs. Sellers complained that Mr. Morris had not actually physically inspected the property, but instead had relied upon an inspection performed by Anthony Kawczynski, and that Mr. Morris made numerous factual inaccuracies in his description of their residence.

4. The Board designated Mr. and Mrs. Sellers' complaint No. 2487 and forwarded a copy of the complaint to Mr. Morris. On October 9, 2008, the Board received Mr. Morris' written response to the complaint, in relevant part as follows:

Anthony Kwaczynski [sic] asked me to ride along with him on this day, due to his trainer Thomas Canale, was not available for a couple of days. He has had over two years of training and experience with Thomas and me.

I was actually in the car still in front of the home. I did not enter the home because I received an important phone call from a client of ours and was distracted. Since Anthony has more than enough hours and is getting ready to take his schooling, I told him to start without me. I watched him take pictures and notes and start measuring the home. Before I knew it, he was done and I was still talking to our client. I read over all his notes and checked his report before he sent it out.

Mr. Morris admitted some of the inaccuracies in his appraisal report of the Golddust Drive property and challenged others.

5. The Board appointed contract investigator Linda S. Beatty, a certified general appraiser, to investigate the complaint. Ms. Beatty reviewed Mr. and Mrs. Sellers' complaint, Mr. Morris' response, the appraisal report, and Mr. Morris' workfile and verified the accuracy of

1 the subject data and sales information referenced in the report with the Multiple Listing Service
2 ("MLS") and public records. Ms. Beatty also researched additional improved sales information
3 within the subject's market area for the 12 months preceding Mr. Morris' appraisal report.

4 6. Based on her review and investigation, on December 4, 2008, Ms. Beatty issued a
5 report of her investigation, which opined that Mr. Morris had violated certain Standard Rules
6 ("SRs") of the July 1, 2006 edition of the Uniform Standards of Professional Appraisal Practice
7 ("USPAP").

8 7. Based on Ms. Beatty's report, the Board referred Complaint No. 2487 to the Office of
9 Administrative Hearings ("OAH"), an independent state agency, for the scheduling of a fair
10 hearing. OAH assigned the case no. 08F-2487-BOA.

11 8. On January 30, 2009, the Board issued a Complaint and Notice of Public Hearing in
12 Case No. 08F-2487-BOA. The Complaint and Notice of Public Hearing charged Mr. Morris with
13 violations of USPAP, 2006 edition, SR 1-1(c), SR 1-2(h), SR 2-2(b)(vii), Scope of Work Rule
14 (Acceptability), and A.R.S. § 32-3635.

15 9. On February 13, 2009, the Board received Mr. Morris' written answer to the
16 Complaint and Notice of Public Hearing in Case No. 08F-2487-BOA. Mr. Morris again stated
17 that Mr. Kawczynski had inspected and measured the interior of the residence while Mr. Morris
18 was on an important telephone call in his vehicle, parked in from of the residence. Mr. Morris
19 also added the following:

20 I watched him take pictures and notes and start measuring the
21 home. Before I knew it, he was done and I was still talking to our
22 client. I read over all his notes and looked over the pictures taken
23 before we left. I know I was supposed to inspect the entire home
24 myself, but, I was not trying to purposely lie or mislead anyone.
25 Also, the reason I didn't list his name originally in the report was
26 due to the fact that I was not training him. I had just forgotten to
list him as a significant contributor. I know that there is no excuse
for my lack of education [or] training and what had happened. It
was just a misunderstanding, on my part, of U.S.P.A.P.

The other deficiencies were incorrect and were overlooked. I
admit that I rushed through and didn't check over the report
thoroughly enough and signed the report.

I know I certified that I performed a complete visual inspection of
the interior and exterior areas of the property, but, it was not
meant to mislead anyone. It was just a one time deal to see if
Anthony K. wanted to still be in the business, even though he had
completed all of his training hours at that time.

Case No. 09F-2763-BOA

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2 10. The Board's application review committee recommended that the Board open
3 Complaint No. 2763 after Mr. Morris submitted two appraisal reports in support of his application
4 for licensure as a certified residential appraisal that were virtually identical to reports submitted
5 by Bobby O. Hibbitts in support of Mr. Hibbitts' application for licensure as a certified residential
6 appraiser. Mr. Morris did not acknowledge Mr. Hibbitts' assistance in the reports he submitted
7 to the Board.

8 11. On December 10, 2008, the Board informed Mr. Morris that it had opened
9 Complaint No. 2763 and requested his response.

10 12. On January 12, 2009, the Board received Mr. Morris' response to Complaint No.
11 2763, in relevant part as follows:

12 [T]he reason for not identifying Bobby O. Hibbitts in my licensure
13 application was because of the original lender. At the time of the
14 original appraisal, the lender requested the removal of the trainees
15 [sic] name from the report. This was overlooked when I had
16 submitted the report for my certification licensing. It was then
17 brought to my attention that it was missing when Bobby O. Hibbitts
18 had applied. It was in no way meant to try and deceive the board
19 or the review committee, just a mistake that was overlooked.

20 I have been appraising since February 2003, licensed since
21 August 2005, Certified since October 2008, and the last USPAP
22 classes that I took were on 02/29/2007 (7-hour) and 11/12-
23 14/2007 (15 hour).

24 13. The Board referred Case No. 2763 to OAH, which designated it Case No. 09F-
25 2763-BOA, and moved to continue the hearing in Case No. 08F-2487-BOA to allow the two
26 cases to be consolidated for hearing. Mr. Morris did not oppose the Board's motion and the
Administrative Law Judge set a continued hearing.

 14. On April 1, 2009, the Board issued a First Amended Complaint and Notice of
Public Hearing in Consolidated Case Nos. 08F-2487-BOA and 09F-2763-BOA. In addition to
the charged violations in Case No. 08F-2487-BOA, the Board charged Mr. Morris with violating
2006 USPAP SR 2-2(b)(vii), Standards Ethics Rule—Conduct, and A.R.S. § 32-3631(A)(1) and
(5) in Case No. 09F-2763-BOA.

 15. A hearing was held in the consolidated cases on June 2, 2009. The Board
presented the testimony of Executive Director Deborah G. Pearson and contract investigator
Ms. Beatty and submitted fifteen exhibits. Mr. Morris testified on his own behalf, presented the
testimony of Thomas Canale, and submitted one exhibit.

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ADDITIONAL HEARING EVIDENCE

Ms. Pearson

16. Ms. Pearson testified that the Board oversees approximately 2,800 licensed or certified residential and general appraisers, consisting of the following three classifications: (1) Approximately 700 state licensed real estate appraisers, who can perform an appraisal or an appraisal review of noncomplex one-to-four unit residential real properties having a value of less than \$1 million or complex one-to-four unit residential properties having a value of less than \$250,000; (2) Approximately 1,200 state certified residential real estate appraisers, who can perform an appraisal or appraisal review of one-to-four unit residential properties, without regard to complexity or value; and (3) Approximately 900 state certified general real estate appraisers, who can perform appraisals and appraisal reviews of all types of real property.

17. Ms. Pearson testified trainee appraisers are not regulated. However, supervising appraisers are required by A.A.C. R4-46-201(F)(4) to "provide to the Board in writing the name and address of each trainee within 10 days of engagement" A.A.C. R4-46-101 defines "supervising appraiser" as a state licensed or certified appraiser with a minimum of four years of experience "who engages in direct supervision of a trainee" The effective date of these regulations was January 1, 2007.

18. Ms. Pearson testified that Mr. Morris had not provided Mr. Kawczynski's name to the Board as his trainee. Even if Mr. Morris had provided a trainee's name, because Mr. Morris did not have four years of experience in September 2007, when Mr. Morris responded to the complaint about his appraisal report of the Golddust property, he did not qualify as a supervising appraiser and the Board would have so informed him.

19. Ms. Pearson testified that Mr. Canale was a supervising appraiser, but not for Mr. Kawczynski. Mr. Canale had submitted Mr. Hibbitts name to the Board as his trainee. Mr. Kawczynski had never been listed with the Board as anyone's trainee and had never been issued a license.

20. Ms. Pearson testified that the Board had provided numerous notifications to the regulated community of licensed appraisers about the adoption of the regulations that set forth the qualifications of a supervising appraiser, required a supervising appraiser to notify the Board of engagement of trainees, and required supervising appraisers to directly supervise trainees.

21. Ms. Pearson testified that the Board also published Frequently Asked Questions ("FAQs") about the requirements to be a supervising appraiser of a trainee appraiser on the Board's website.

1 22. Ms. Pearson testified that license applicants submit logs of appraisals that they
2 have prepared or that they have helped prepare. The Board uses the log to select appraisal
3 reports for inspection and determination of whether the reports are USPAP compliant. The
4 Board noticed that the logs submitted by Mr. Morris and Mr. Hibbitts contained appraisal reports
5 of the same properties. Both Mr. Morris and Mr. Canale had signed Mr. Hibbitts' logs as
supervising appraisers.

6 23. The two properties for which both Mr. Morris and Mr. Hibbitts had submitted reports
7 to the Board were on 441 N. Williams in Mesa, Arizona ("Williams' property") and 8311 West
8 Sandy Lane in Arizona City, Arizona ("Sandy Lane property"). The address, effective dates in
9 May and June of 2007, conclusions of value, and most of the contents of the reports were
identical.

10 24. The report for the Williams property that Mr. Hibbitts submitted to the Board noted
11 that "Bobby O. Hibbitts has significantly contributed to this file. This includes subject and
12 comparable sales research and physical inspections of all sales comparison approach and
general data input."

13 25. The report for the Williams property that Mr. Morris submitted to the Board included
14 no such notation or acknowledgement of Mr. Hibbitts' assistance in preparing the report.

15 26. The report for the Sandy Lane property that Mr. Hibbitts submitted to the Board
16 noted that "Bobby O. Hibbitts has significantly contributed to this file. This includes subject and
comparable sales research and physical inspections of all, sales comparison approach and
general data input."

17 27. The report for the Sandy Lane property that Mr. Morris submitted to the Board
18 included no such notation or acknowledgement of Mr. Hibbitts' assistance in preparing the
report.

19 28. Mr. Morris' signature appears on all four reports.

20 29. On July 21, 2005, the Board adopted Substantive Policy Statement #1, which
21 under A.A.C. R4-46-301 set forth five levels of violations based on escalating levels seriousness
and severity of penalty, ranging from nondisciplinary letters of concern to license revocation.

22 30. Ms. Pearson testified that the Board classified Mr. Morris' violations in his appraisal
23 reports of the Golddust Drive, Williams, and Sandy Lane properties as Level V violations, which
24 were "significant violations found. Willful disregard of USPAP, A.R.S. or A.A.C. found." The
25 appropriate resolutions for Level V violations were a consent agreement, order of probation with
education, mentorship and/or practice restrictions, suspension, or revocation.

1 40. Mr. Morris' "Exterior Description" of the Golddust Drive property also indicated that
2 it had a block wall. Ms. Beatty testified that the homeowners had told her it had a split-rail
3 fence. A split-rail fence appeared in a photograph of the subject's pool.

4 41. On the "Site" section for the Golddust Drive property report, Mr. Morris had
5 checked "no" as to whether the property as located in a "FEMA Special Flood Hazard Area."
6 Ms. Beatty testified that, according to the FEMA's website, which information had been available
7 at the time that Mr. Morris had prepared the report, the property was located in a FEMA flood
8 hazard area. Flood insurance would be required. Mr. Morris should have checked "yes."

9 42. Mr. Morris reported that the range of comparable listing prices for the Golddust
10 Drive property was \$569,900 to \$110,000. Ms. Beatty testified that Mr. Morris meant \$1.1
11 million but did not correct the typographical error in his report

12 43. In comparable sales approach for the Golddust Drive property, Mr. Morris
13 described both the subject and Comparable Sale #1 as multi-storied and Comparables #2 and
14 #3 as "ranch." But in the summary, Mr. Morris stated that, "[w]hile comparable 1 is slightly dated
15 it is the only available comparable that is one story." Ms. Beatty pointed out that this was
16 another example of contradictory and incorrect information.

17 44. Ms. Beatty testified that these errors or series of errors in Mr. Beatty's report for the
18 Golddust Drive property indicated carelessness or negligence, which affected the credibility of
19 the report, in violation of USPAP SR 1-1(c).

20 45. In addition, the comparable sales used in Mr. Morris' report for the Golddust Drive
21 property were all located outside the subdivision in which the subject was located. Ms. Beatty
22 reported that "[a] summary of sales activity within the subject development provided by MLS
23 indicates the average sales price in the area is \$407,441 and that the highest sale to date is
24 \$550,000." Mr. Morris' estimate of value for the subject was \$620,000.

25 46. Ms. Beatty testified that she had not been asked to perform a review appraisal of
26 Mr. Morris' report or to render an opinion of value. However, comparable sales from outside a
subdivision are not generally used unless the subject is atypical in some respect. Mr. Morris did
not include any explanation in his appraisal report of the Golddust Drive property of his selection
of comparable sales outside the subject's subdivision.

 47. In the "Additional Comments" section to the comparable sales approach, Mr. Morris
stated that "[t]he livable size for the subject and the comparables may be different tha[n] the size
indicated by the builder and/or the county assessor," but that "[t]he size I have used for the
purposes of this report are from my actual drawing of the subject property." Ms. Beatty testified

1 that, because Mr. Morris had admitted that Mr. Kawczynski, not Mr. Morris, had measured the
2 building, this statement was false.

3 48. Ms. Beatty testified that USPAP SR 2-2(b)(vii) requires an appraiser to
4 "summarize the scope of work used to develop the appraisal." Mr. Morris' false statement about
5 the scope of work that he actually performed was misleading.

6 49. Ms. Beatty testified that, in the report, Mr. Morris signed the report and certified that
7 he had "[p]erformed a complete visual inspection of the interior and exterior areas of the subject
8 property." Mr. Morris admitted that this certification was not true.

9 50. Ms. Beatty testified that USPAP SR 2-3 required the certification and that Mr.
10 Morris' false certification violated that USPAP requirement. If Mr. Morris had remained in his
11 truck while Mr. Kawczynski took measurements and inspected the interior of the residence, Mr.
12 Kawczynski had provided significant assistance, which was required to be included in the report.

13 51. Ms. Beatty testified that, typically, an appraiser notes significant assistance
14 provided by others in the "Additional Comments" section of the appraisal report.

15 52. Ms. Beatty testified that the "Scope of Work" section of the Uniform Residential
16 Appraisal Report form that Mr. Morris had used for the Golddust Drive property required that
17 "[t]he appraiser must, at a minimum . . . perform a complete visual inspection of the interior and
18 exterior areas of the subject property" Mr. Morris had not done this.

19 53. Ms. Beatty testified that Mr. Morris did not perform the scope of work described in
20 his appraisal report. USPAP SR 1-1(h) requires an appraiser, in developing a real property
21 appraisal, to "determine the scope of work necessary to produce credible assignment results in
22 accordance with the SCOPE OF WORK RULE." USPAP SR 2-2(b)(vii) requires that "[t]he
23 content of a Summary Appraisal Report must be consistent with the intended use of the
24 appraisal and, at a minimum, . . . [must] summarize the scope of work used to develop the
25 appraisal"

26 **Case No. 09F-2763-BOA**

27 54. With respect to the Board's complaint in Case No. 2763, Ms. Beatty testified that
28 USPAP requires a person who provides significant professional assistance to be identified in the
29 report. It appeared that Mr. Hibbitts had provided significant assistance, but Mr. Morris had
30 failed to identify Mr. Hibbitts on the reports for the Williams and the Sandy Lane properties.

31 55. Ms. Beatty estimated that she had performed 5,000 appraisals in her 22 years as a
32 professional appraiser. No lender had ever asked her to remove the name of a person who had
33 provided significant professional assistance from her appraisal report. If a lender had ever

1 made such a request, Ms. Beatty testified that she would have refused and informed the lender
2 that USPAP required such information in the report. A client cannot require an appraiser to
violate USPAP.

3 **Mr. Canale**

4 **Case No. 08F-2487-BOA**

5 56. Mr. Canale testified that, for two years, he had acted as supervising appraiser for
6 Mr. Kawczynski. When the real estate market crashed, Mr. Kawczynski decided to go to
7 nursing school but was still considering a career as a real estate appraiser. Mr. Kawczynski had
8 more than 1500 hours logged performing home inspections and doing research. On the day in
9 question, Mr. Kawczynski had a day off from nursing school and requested a ride-along to keep
his skills fresh. Mr. Canale testified that he was not going to be in town and asked Mr. Morris
whether he would take Mr. Kawczynski to his inspection of the Golddust Drive property.

10 57. Mr. Canale testified that he did not notify the Board of his engagement of Mr.
11 Kawczynski as a trainee because such notification was not required at the time.

12 58. Mr. Canale testified that Mr. Kawczynski was knowledgeable about appraisal
practices and could provide credible information.

13 59. Mr. Canale testified that, at the time Mr. Morris appraised the Golddust Drive
14 property, he was working for Mr. Canale's company, 2 Day Appraisal, Inc. ("2 Day"). Mr. Canale
15 testified that, three or four weeks after Mr. Morris' and Mr. Kawczynski's inspection of the
16 property, the homeowners called Mr. Canale because they were upset that Mr. Morris' value
17 was too low. They demanded that the report be revised. When Mr. Canale refused, the
homeowners filed suit against him in small claims court. Mr. Canale testified that the
homeowners' lawsuit had been "thrown out."

18 60. Mr. Canale testified that he has known Mr. Morris since high school. Mr. Canale
19 had trained Mr. Morris to become a licensed appraiser. Mr. Canale described Mr. Morris as "an
20 upstanding citizen in the Payson area." Mr. Canale has never known Mr. Morris to do anything
21 negligent or fraudulent. There was no benefit to Mr. Morris or to 2 Day in the three reports at
issue, other than the appraisal fee.

22 61. Mr. Canale testified that he has never performed a residential appraisal inspection
23 based on photographs taken of the interior of the subject by another. He testified that he has
24 used photographs of the interior of comparable sales taken from the MLS or other sources
because he usually does not have access to the interior of comparable sales.

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As proficiency is demonstrated by an assistant, it is appropriate for the principal appraiser to place greater reliance on the work of that assistant. In the context of a real property appraisal assignment, an assistant who has meaningful appraisal education and extensive work experience may well be competent to inspect the real estate and prepare the appraisal report alone, subject to an appropriate final reconciliation by the principal appraiser who will be signing or cosigning the certification in the report. In this situation, the assistant's contribution is both significant and professional. The appropriate final reconciliation should include a discussion of which aspects of the appraisal process were performed by the assistant and the principal appraiser.

If the principal appraiser signs the certification alone, the contribution of the assistant must be acknowledged ([SR] 2-3, 6-9, 8-3, or 10-3), and the specific tasks performed by the assistant should be clearly stated as part of the scope of work disclosure required in [SR] 2-2(a)(vii), (b)(vii) In no circumstances is it appropriate for the principal appraiser to merely sign the certification in an appraisal report prepared by an assistant.

66. Mr. Morris also submitted an excerpt from a 2006 Advisory Opinion from the Appraisal Foundation on the purpose and minimum level of an inspection of subject property. Regarding the purpose of an inspection, the opinion notes that, "[w]hile there are other ways to gather such information [about the characteristics of a property that are relevant to its value], in many cases personal observations of the appraiser are the primary source of information regarding the subject property." The Advisory opinion notes that, "[t]he appraiser's inspection commonly is limited to those things readily observable without the use of special testing equipment." The Advisory Opinion states further:

There are many circumstances that influence the extent of the appraiser's property inspection. In some assignments, the client may request that the appraiser perform an exterior-only inspection from the street or perform no inspection of the subject property (i.e. a "desktop appraisal"). There are situations where inspection of the subject property is not possible; for example, if the improvements have been destroyed, removed, or not yet built. In other cases the appraiser is denied access to the property.

The appraiser must ensure that the degree of inspection is adequate to develop a credible appraisal. An appraiser cannot develop a credible appraisal if adequate information about the relevant characteristics of the subject property is not available. When adequate information about relevant characteristics is not available through a personal inspection or from sources the

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appraiser believes are reliable, an appraiser must withdraw from the assignment

Disclosure Requirements

Appraisal reports for real and personal property must contain a signed certification indicating *whether the appraiser has or has not personally inspected the subject property*. All appraisal reports must also contain sufficient information to enable the intended users to understand the extent of the inspection that was performed.

Because of the infinite variability of inspections, it is important that the appraisal report clearly communicates the degree of the inspection in order for the report to be meaningful.

[Emphases added.]

67. Mr. Morris also submitted three letters of commendation: (1) A letter dated May 29, 2009 from Tara K. Keeney, President of Lenders for Life Home Mortgage in Payson, who praised "Mr. Morris' attention to detail and the accuracy of his work," as well as his honesty, professionalism, and professional ethics; (2) An undated letter from Ryan Rippy at Home Equity Mortgage, who praised Mr. Morris' "conduct [of] excellent business matters year after year; and (3) An undated letter from Mr. Kawczynski, which stated that, on July 30, 2007, he had worked for Mr. Canale for more than two years as an apprentice and that the appraisal was "rather uncomplicated as the home was quite standard for the area" and "well within [his] competency level."

68. Mr. Morris testified that, when he inspected the Golddust Drive property, he understood USPAP to allow Mr. Kawczynski to inspect the interior and to measure the residence on the interior and rear exterior. Mr. Morris testified that Mr. Kawczynski had taken photographs and, in the driveway, before they left the home, Mr. Morris had examined the photographs and measurements.

69. Mr. Morris testified that USPAP does not require that appraisers be physically present to inspect a property. Mr. Canale testified that appraisers sometimes do driveby appraisals. The only mistake that Mr. Morris admitted to having made was not disclosing an extraordinary assumption.

70. Mr. Morris testified that he did not think at the time that USPAP required the disclosure of Mr. Kawczynski's name or professional assistance.

1 71. Mr. Morris admitted that the appraisal report of the Golddust Drive property
2 contained many errors. He explained that, at the time, he had many appraisals going out. He
3 admitted being at fault for not "double- and triple-checking the report." Mr. Morris testified that
4 he now triple-checks every report that goes out.

5 72. Mr. Morris pointed to a photograph of the rear of the Golddust Drive property,
6 which showed two horizontal scuppers coming out either end of a one-story flat roof over a
7 patio. Mr. Morris called these scuppers downspouts.

8 73. Mr. Morris testified that he misinterpreted the requirements of a "visual inspection."
9 He thought that it would be alright to view photographs taken by another. In the future, he will
10 disclose help provided by others. The ride-along with Mr. Kawczynski was a "one-time thing."
11 He should have gone into the Golddust Drive property, but he did not mean to harm anyone or
12 to be misleading.

13 **Case No. 09F-2763-BOA**

14 74. Mr. Morris testified that, when he turned in the reports for his certification, he pulled
15 the reports off his computer. The lender had asked him to remove Mr. Hibbitts' name. He had
16 performed most of the work and simply had not reinserted Mr. Hibbitts' name. Mr. Morris
17 testified that he was still "wet behind the ears" when he submitted the reports.

18 75. On cross-examination, Mr. Morris admitted that there were two lenders involved in
19 the two properties. The lender Lenox Financial Mortgage had asked him to remove Mr. Hibbitts'
20 name from the appraisal report for the Williams property. The lender Integrity Lending had
21 asked him to remove Mr. Hibbitts' name from the appraisal report for the Sandy Lane property.

22 **CONCLUSIONS OF LAW**

23 1. This matter lies within the Board's jurisdiction.²

24 2. The Board bears the burden of proof and must establish cause to penalize Mr. Morris'
25 certified residential appraiser certificate by a preponderance of the evidence.³

26 3. "A preponderance of the evidence is such proof as convinces the trier of fact that the
contention is more probably true than not."⁴ A preponderance of the evidence is "[t]he greater
weight of the evidence, not necessarily established by the greater number of witnesses
testifying to a fact but by evidence that has the most convincing force; superior evidentiary

²See A.R.S. § 32-3601 *et seq.*

³ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁴ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still
2 sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”⁵

3 4. The Arizona legislature created the Board to prescribe and enforce standards of
4 professional appraisal practice.⁶ The Arizona legislature charged the Board with investigating
5 complaints against licensed appraisers and, if violations of applicable statute, regulation, or
6 standard are established, disciplining appraisers’ licenses.⁷

6 5. Certified and licensed appraisers’ appraisals in Arizona must comply with USPAP.⁸

7 6. The most basic requirement for an appraisal is that it must be competently,
8 independently, and impartially performed and set forth an unbiased opinion of value supported
9 by analyses that comply with USPAP’s requirements.⁹

9 7. Mr. Morris did not dispute the numerous errors in his appraisal report of the Golddust
10 Drive property, with the exception of the purported downspouts.

11 8. Mr. Morris’ own exhibits established that, if an appraiser is able to personally visually
12 inspect a property, USPAP requires him to do so. If he certifies that he has visually inspected
13 the interior of a property, USPAP requires him to have done so.

14 9. Mr. Morris’ own exhibits established that he should have acknowledged and detailed
15 Mr. Kawczynski’s and Mr. Hibbitts’ significant professional assistance on, respectively, the
16 appraisal reports for the Golddust Drive, Williams, and Sandy Lane properties.

17 10. Ms. Pearson’s testimony established that Mr. Morris was not qualified to act as
18 supervisor for Mr. Kawczynski or Mr. Hibbitts because he lacked the requisite experience and
19 had not notified the Board of his engagement of these trainees.

20 11. The Board therefore has established in Case No. 08F-2487-BOA that Mr. Morris
21 violated the following provisions of USPAP, 2006 edition: SR 1-1(c); SR 1-2(h); SR 2-2(b)(vii);
22 Scope of Work Rule (Acceptability)¹⁰; and A.R.S. § 32-3635.¹¹

23 12. Mr. Morris’ testimony that he removed Mr. Hibbitts’ name from the appraisal reports
24 for the Williams and the Sandy Lane properties at the request of Lenox Financial Mortgage and
25

26 ⁵ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

⁶ A.R.S. § 32-3605(B)(1).

⁷ A.R.S. § 32-3631(A)(2) and (6); see also A.A.C. R4-46-301 (concerning complaints and investigations) and R4-46-302 (concerning formal hearing procedures, investigations, and penalties).

⁸ A.A.C. R4-46-401.

⁹ A.R.S. § 32-3601(1) and (2).

¹⁰ This Scope of Work Rule requires that “[t]he scope of work must include the research and analyses that are necessary to develop credible assignment results.”

¹¹ This statute requires a state licensed or state certified appraiser to comply with the standards of professional appraisal practice adopted by the Board.

1 Integrity Lending is not credible. Rather, it appears he removed Mr. Hibbitts' name because he
2 did not generally acknowledge significant professional assistance from trainees that he was not
qualified to supervise.

3 13. The Board therefore has also established in Case No. 09F-2763-BOA that Mr.
4 Morris violated the following provisions of USPAP, 2006 edition: SR 2-2(b)(vii); Standards
5 Ethics Rule—Conduct¹²; and A.R.S. § 32-2631(A)(1) and (5).¹³

6 14. With respect to the penalty, Mr. Morris had been working as a licensed residential
7 appraiser for at least two years when the violations at issue occurred. Although he admitted
8 some fault at the hearing, he also espoused interpretations of USPAP that were not supported
9 by his own exhibits and that defied common sense and understanding. In light of the sheer
10 volume of errors, especially in Case No. 08F-2487-BOA, Mr. Morris has not established any
factors in mitigation or that he can be professionally rehabilitated.

11 ORDER OF SUSPENSION

12 In issuing this order of discipline, the Board considers its obligations to fairly and
13 consistently administer discipline, its burden to protect the public welfare and safety, as well as
14 all aggravating and mitigating factors presented in the case. Based on the foregoing Findings of
Fact and Conclusions of Law, **IT IS HEREBY ORDERED:**

15 1. Respondent Nathan G. Morris's Certified Residential Appraiser Certificate No.
16 22034 shall be placed on suspension for a period of six (6) months beginning on the effective
17 date of this Order. During the period of suspension, the Respondent shall not issue a verbal or
18 written appraisal, appraisal review or consulting assignment involving real property in the State
of Arizona.

19 2. Respondent shall successfully complete the following education within six (6) months
20 of the effective date of this Order: not less than fifteen (15) hours of basic appraisal to include
21 successful completion of an examination. The education required under this paragraph may not
22 be counted toward continuing education requirements or for the renewal of Respondent's
certificate. Proof of completion of the required education must be submitted to the Board within

23 _____
24 ¹² This Ethics Rule requires that "[a]n appraiser must perform assignments ethically and
competently, in accordance with USPAP"

25 ¹³ These statutory subsections allow the Board to revoke, suspend, or otherwise discipline an
26 appraiser's license or certificate if the holder of the license or certificate committed any fraud or
misrepresentation in the procurement of the license or committed any act "involving dishonesty, fraud,
misrepresentation with the intent to substantially benefit the license or certificate holder"

1 ten (10) days of completion of the required education. Respondent shall bear all costs and
2 expenses incurred in obtaining the education.

3 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

4 Respondent is hereby notified that he has the right to petition for a rehearing or review.
5 Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or review must be filed
6 with the Board's Executive Director within thirty (30) days after service of this Order and
7 pursuant to A.A.C. R4-46-303, it must set forth legally sufficient reasons for granting a rehearing
8 or review. Service of this order is effective five days after mailing. If a motion for rehearing or
9 review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to
10 Respondent.

11 Respondent is further notified that the filing of a motion for rehearing or review is
12 required to preserve any rights of appeal to the Superior Court.

13 DATED this 21st day of July, 2009.

14 ARIZONA STATE BOARD OF APPRAISAL

15 By: *Deborah G. Pearson*
16 Deborah G. Pearson, Executive Director

17 Copy of the foregoing mailed via U.S. regular and
18 U.S. Certified Mail #7008 1140 0004 9529 4842
19 this 21st day of July, 2009, to:

20 NATHAN G. MORRIS
21 509 E. MCKAMEY ST.
22 PAYSON, AZ 85541

23 Copies of the foregoing sent by interagency
24 this 21st day of July, 2009, to:

25 JEANNE GALVIN
26 ASSISTANT ATTORNEY GENERAL
1275 W. WASHINGTON
PHOENIX, AZ 85007

CHRISTOPHER MUNNS
ASSISTANT ATTORNEYS GENERAL
SOLICITOR GENERAL'S OFFICE
1275 W. WASHINGTON
PHOENIX, AZ 85007

27 *Deborah G. Pearson*
28 Deborah G. Pearson