

CONSENT AGREEMENT

Respondent understands and agrees that:

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

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

3. Respondent has a right to a public hearing concerning this case. He further acknowledges that at such formal hearing he could present evidence and cross-examine witnesses. Respondent irrevocably waives his right to such a hearing.

4. Respondent irrevocably waives any right to rehearing or review or to any judicial review or any other appeal of this matter.

5. This Consent Agreement shall be subject to the approval of the Board and shall be effective only when signed by the Executive Director and accepted by the Board. In the event that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any action by any party, except that the parties agree that should the Board reject this Consent Agreement and this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this document or any records relating thereto.

6. The Consent Agreement, once approved by the Board and signed by the Respondent, shall constitute a public record which may be disseminated as a formal action of the Board.

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1 FINDINGS OF FACT

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

3 1. This matter deals with a desktop appraisal conducted and report written by
4 Respondent of a single family residence located at 7208 N. 35th Ave, Phoenix, AZ 85051
5 with an effective date of value of January 20, 2011.

6 2. Respondent failed to adjust for the fact that the subject fronted a very busy
7 street, namely 35th Avenue.

8 3. There was no discussion of the subject's previous sales or listing history.

9 4. Respondent's conclusion of value (\$100,000) is not credible. There were
10 other sales available closer to the subject that would have indicated a lower value.
11 Together, this could lead a reader to conclude that Respondent was biased in his appraisal
12 reporting.

13 CONCLUSIONS OF LAW

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

18 The conduct described above constitutes violations of the following provisions of
19 the USPAP, 2010-2011 edition:

20 **Standards Rule 1-1(a); Standards Rule 1-4(a); Standards Rule 1-5(b);**
21 **Standards Rule 2-1(a); Standards Rule 2-3; Standard Ethics Rule—Conduct.**

22 ORDER

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

25 1. **Upon the effective date of this Consent Agreement, Respondent's**
26 **Certificate as a Certified Residential Appraiser shall be placed on probation for a**

1 **minimum period of twelve (12) months.** During probation, Respondent shall comply
2 with USPAP, Arizona Revised Statutes and Appraisal Board rules.

3 2. Respondent shall successfully complete the following education prior to
4 being released from the requirements of this Consent Agreement: **the seven (7) hour**
5 **2012-2013 USPAP Update course.** The education under this paragraph may be counted
6 toward the continuing education requirements for the renewal of Respondent's certificate.
7 The same class may not be repeated to fulfill the education requirements of this Consent
8 Agreement

9 3. Proof of completion of the required education must be submitted to the
10 Board within 3 weeks of completion of the required course.

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

14 5. During the period of probation, Respondent shall complete a minimum of
15 **twenty-four (24) appraisal reports** under the supervision of an Arizona Certified
16 Residential or Certified General Appraiser who shall serve as Respondent's mentor
17 ("Mentor").

18 6. During the probationary period, the Respondent shall not issue a verbal or
19 written appraisal, appraisal review, or consulting assignment without prior review and
20 approval by a Mentor. Each report shall **either** be signed by the Mentor as a supervisory
21 appraiser **or** the Mentor must complete a written review of each report ensuring that the
22 report complies with USPAP and the Board's statutes and rules. The Mentor's review
23 shall comply with the requirements of Standard 3 of the USPAP. The Mentor's Standard
24 3 review shall be completed before the report is issued to the client. Any changes the
25 Mentor requires to ensure the report complies with the USPAP shall be completed by the
26 Respondent and approved by the Mentor before the report is issued. The Mentor's written

1 Standard 3 review shall be maintained by the Mentor and made available to the Board
2 upon request.

3 7. The Mentor must be approved by the Board and is subject to removal by
4 the Board for nonperformance of the terms of this Consent Agreement. The Mentor may
5 not have a business relationship with Respondent except for the Mentor/Mentee
6 relationship nor may the Mentor be related to Respondent. Any replacement Mentor is
7 subject to the Board's approval and the remaining terms of this Consent Agreement. The
8 Board's Executive Director may give temporary approval of the Mentor until the next
9 regular meeting of the Board.

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

17 9. Respondent shall bear all costs and expenses associated with the
18 mentorship and incurred by attending the course(s).

19 10. The Mentor shall submit monthly reports to the Board for each calendar
20 month during Respondent's probationary period reflecting the quantity and quality of
21 Respondent's work, including, but not limited to, improvement in Respondent's practice
22 and resolution of those problems that prompted this action. The Mentor's report shall be
23 filed monthly beginning the 15th day of the first month following the start of
24 Respondent's probationary period and continuing each month thereafter until termination
25 of the probationary period by the Board. **Even if the Mentor reviews no appraisals**
26 **during a given month, a report stating that no appraisals were reviewed or**

1 **approved must be submitted.** It is the Respondent's responsibility to ensure that the
2 Mentor submits his/her reports monthly. If the monthly reporting date falls on a
3 Saturday, Sunday, or holiday, the report is due on the next business day. The monthly
4 report may be filed by mail or facsimile.

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

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

21 13. Respondent's probation, including mentorship, shall continue until: (a)
22 Respondent petitions the Board for termination as provided in paragraph 14, and (b) the
23 Board terminates the probation and mentorship. Upon petition by the Respondent for
24 termination of the probation and mentorship, the Board will select and *audit* 3 of
25 Respondent's appraisal reports.
26

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

8 15. Respondent shall not act as a supervising appraiser for other appraisers or
9 trainees, nor shall he act as a mentor, during the term of the probation. Respondent shall
10 also not teach any course related to real estate appraisals during the term of the probation.

11 16. Respondent shall comply with the Uniform Standards of Professional
12 Appraisal Practice in performing all appraisals and all Board statutes and rules.

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

18 18. Respondent has read and understands this Consent Agreement as set forth
19 herein, and has had the opportunity to discuss this Consent Agreement with an attorney
20 or has waived the opportunity to discuss this Consent Agreement with an attorney.
21 Respondent voluntarily enters into this Consent Agreement for the purpose of avoiding
22 the expense and uncertainty of an administrative hearing.

23 19. Respondent understands that he has a right to a public administrative
24 hearing concerning each and every allegation set forth in the above-captioned *matter*, at
25 which administrative hearing he could present evidence and cross-examine witnesses. By
26 entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all

1 rights to such an administrative hearing, as well as all rights of rehearing, review,
2 reconsideration, appeal, judicial review or any other administrative and/or judicial action,
3 concerning the matters set forth herein. Respondent affirmatively agrees that this Consent
4 Agreement shall be irrevocable.

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

7 21. The parties agree that this Consent Agreement constitutes final resolution
8 of this disciplinary matter.

9 22. Time is of the essence with regard to this agreement.

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

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

25 25. Respondent understands that the foregoing Consent Agreement shall not
26 become effective unless and until adopted by the Board of Appraisal and executed on

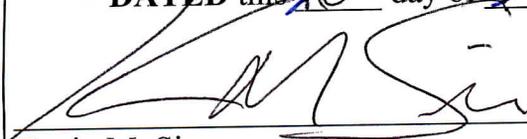
1 behalf of the Board. Any modification to this original document is ineffective and void
2 unless mutually approved by the parties in writing.

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

5 27. Pursuant to the Board's Substantive Policy Statement #1, the Board
6 considers the violations in the above-referenced matter to constitute to a **Level III**

7 **Violation.**

8 DATED this 21 day of December, 2011.
~~10~~ ~~NOVEMBER~~

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10 
11 Kevin M. Simms
12 Respondent

10 
11 Dan Pietropaulo
12 Executive Director
13 Arizona Board of Appraisal

13 **ORIGINAL** of the foregoing filed
14 this 21 day of December, 2011 with:

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

16 **COPY** of the foregoing mailed regular
17 and certified mail 70091680000073871559
18 this 21 day of December, 2011 to:

18 Mr. Kevin M. Simms
19 2531 E. Pierson Street
20 Phoenix, AZ 85016

21 **COPY** of the foregoing sent or delivered
22 this 21 day of December, 2011 to:

22 Jeanne M. Galvin
23 Assistant Attorney General
24 Arizona Attorney General's Office
25 1275 West Washington, CIV/LES
26 Phoenix, Arizona 85007

26 By: 
2367491
Rebecca M. Low