

BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-07-0059-REA REGARDING:

THE PROPOSED DISCIPLINARY	)	Case No. 800-2007
TREATMENT OF THE LICENSE OF	)	
DONALD HEPPNER,	)	
Certified Residential Appraiser No. 283.	)	
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**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;  
AND RECOMMENDED ORDER**

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**I. INTRODUCTION**

The Montana Department of Labor and Industry Business Standards Division (BSD) filed a complaint against the appraiser's license of Donald Heppner alleging violations of Montana Code Annotated § 37-54-403(1) (which requires a licensee to comply with the USPAP requirements)<sup>1</sup> and Montana Code Annotated § 37-1-316(18) (which prohibits a licensee from engaging in unprofessional conduct). Hearing Examiner David A. Scrimm held a contested case hearing in this matter on February 4, 2008. Mike McCabe, agency legal counsel, appeared on behalf of the Department of Labor and Industry. Patrick F. Flaherty, attorney at law, represented Heppner.

Heppner, a Montana certified general appraiser, Billie VeerKamp, a Montana certified general appraiser and Board investigator, and Joseph Seipel testified under oath in this matter. The parties were allowed to submit post-hearing briefs and the final brief was submitted on April 4, 2008 when this matter was deemed submitted for decision. BSD's Exhibits 1 through 6 were admitted by stipulation of the parties. Heppner's Exhibits A, B, and C are admitted. Based on the evidence adduced at the hearing as well as the arguments of counsel, the following findings of fact, conclusions of law, and recommended decision are made.

**II. FINDINGS OF FACT**

1. At all times relevant to these proceedings, Heppner was a certified residential appraiser, holding License No. 283, issued by the Montana Board of Real Estate Appraisers.

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<sup>1</sup> "USPAP" stands for the Uniform Standards of Professional Appraisal Practice, the rules which regulate conduct of appraisers while conducting appraisals. These rules are promulgated by the Appraisal Standards Board of the Appraisal Foundation and govern the professional conduct of Montana appraisers by virtue of Mont. Code Ann. § 37-54-403. For purposes of the instant case, all references are to the 2004 Edition of USPAP which governs the appraisal at issue in this case.

2. The Board of Real Estate Appraisers has jurisdiction over the person of Heppner and the subject matter herein pursuant to Mont. Code Ann. § 37-54-105.

3. On or about August 25, 2004, Heppner prepared a written appraisal report of a 0.50 acre tract of land with a single-family residence located in Columbia Falls, Flathead County, Kalispell, Montana. The effective date of the appraisal report was August 18, 2004.

4. The 2004 Edition of the Uniform Standards of Professional Appraisal Practice and Advisory Opinions (USPAP) was the appraisal standard in effect at all times relevant to this matter.

5. Heppner prepared the above-recited appraisal report for Sherri Darsow, the owner of the subject property.

6. Heppner's transmittal letter for the August 18, 2004 appraisal report prepared by Heppner had as its stated purpose "To estimate the market value of the property."

7. The client and intended user for the August 18, 2004 appraisal prepared by Heppner was the real property owner, Sherri Darsow.

8. Heppner admitted that there were errors on the appraisal and that he would give himself a grade of C- for the appraisal assignment.

9. Heppner's appraisal was not a consulting assignment which would not be subject to USPAP Standards 1 and 2. Neither the appraisal nor Heppner's response to the proposed screening panel action expressed that the appraisal was a consulting assignment. Exhibits 5, 6, and A.

10. USPAP Standards Rule 1-1(b) provides that an appraiser must "not commit a substantial error of omission or commission that significantly affects an appraisal."

11. USPAP Standards Rule 1-1(c) provides that in developing a real property appraisal, an appraiser must "not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results."

12. USPAP Standards Rule 1-2(a) requires an appraiser to "identify the client and other intended users."

13. USPAP Standards Rule 1-2(b) requires an appraiser to "identify the intended use of the appraiser's opinions and conclusions."

14. USPAP Standards Rule 1-2(e)(iv) requires an appraiser to identify any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature.

15. USPAP Standards Rule 1-3(b) requires an appraiser, when necessary for credible assignment results in developing a market value opinion, to “develop an opinion of the highest and best use of the real estate.”

16. USPAP Standards Rule 1-5(b) requires an appraiser to “analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal.”

17. USPAP Standards Rule 2-1(a) requires that an appraisal report must “clearly and accurately set forth the appraisal in a manner that will not be misleading.”

18. USPAP Standards Rule 2-2(b)(i) requires that a Summary Appraisal Report must “state the identity of the client and any intended users, by name or type.”

19. USPAP Standards Rule 2-2(b)(ii) requires that a Summary Appraisal Report must “state the intended use of the appraisal.”

20. USPAP Standards Rule 2-2(b)(x) requires that a Summary Appraisal Report must “state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when the purpose of the assignment is market value, summarize the support and rationale for the appraiser’s opinion of the highest and best use of the real estate.”

21. Heppner’s August 25, 2004 appraisal report violated Standard Rule 2-2, 2004 Edition of USPAP, by not clearly defining which reporting option was being used. Heppner initially identified the appraisal report as a “limited summary appraisal report” and then later in the report identified it as a “complete summary report.”

22. Heppner’s August 25, 2004 appraisal report did not violate USPAP Standard Rules 1-1(b), but contained a significant number of lesser errors that did affect the credibility of the appraisal.

23. Heppner’s August 25, 2004 appraisal report violated USPAP Standard Rules 1-1(c) and 2-1(a), by preparing an appraisal report in a careless or negligent manner by making the following errors which affected the credibility of the report:

- (a) The appraisal report did not identify its intended use;
- (b) The appraisal report identifies unnamed users of the report and states that they may rely on the report for unidentified purposes;
- (c) The appraisal report does not develop and report a reasonable exposure time linked to the value opinion;
- (d) The appraisal report does not identify the scope of work necessary to complete the assignment;
- (e) The appraisal report identifies “increasing property values, shortage of supply”, “market conditions in Northwest Montana are at a frantic and escalating pace with increasing values from 6% to 25% a year, depending on property”, and “marketing

time of 3 to 6 months.” These statements are later contradicted by Heppner’s statement that “marketing time for this probable price would be up to 1 year from the appraisal date”;

(f) The appraisal report does not accurately describe the physical attributes of the subject site;

(g) The appraisal report does not disclose any easements but refers the reader to the title report which was not included as an attachment;

(h) The appraisal report does not contain a summary of highest and best use. The subject property is a single-family residence in a neighborhood zoned for “CR-5 Residential Duplex”;

(j) The appraisal report does not summarize any information to support the estimated land-as-thought-vacant value in the cost approach; and

(k) The appraisal report identifies the subject property’s sales history for one year instead of a three year period.

24. The violations of the 2004 Edition of USPAP identified above are contrary to Mont. Code Ann. § 37-54-403(1); constitute unprofessional conduct pursuant to Mont. Code Ann. § 37-1-316(18); and subject licensee to the sanctions available in Mont. Code Ann. § 37-1-312.

25. Heppner violated USPAP Standards Rules 1-2(a) and (b) and USPAP Standards Rules 2-2(b)(i) and (ii) by issuing the appraisal wherein the client is identified as Sherri Darsow in one part of the appraisal but was addressed to “Dear Lender.” The appraisal report also identifies the client as the intended user and that the appraisal “cannot be used for any other purpose by the homeowner or any other lenders.” Heppner’s appraisal then goes on to state that the “client can have other users of this appraisal that can rely on the contents for their purpose.”

26. Heppner violated USPAP Standards Rule 1-2(e)(iv) by issuing an appraisal that stated that any adverse easements “will be noted in the title policy” and then failed to include the title policy as an addendum to the appraisal report.

27. Heppner’s appraisal report violated USPAP Standards Rules 1-3(b) and 2-2(b)(x) because Heppner failed to consider the highest and best use of the subject property which was zoned CR-5 residential duplex. Heppner simply checked the boxes that the present use was the highest and best use without summarizing his support or rationale for the conclusion.

28. Heppner violated USPAP Standards Rule 1-5(b) by failing to analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal. Heppner’s appraisal report merely indicates no sales within the last year.

29. The USPAP deficiencies contained in Heppner’s appraisal report rendered that appraisal not credible.

30. Heppner's violations are not the result of a conscious decision to mislead the client or other potential users of his appraisal, but rather the result of carelessness in carrying out the appraisal assignment. Heppner has lost some appraisal work as a result of the subsequent disciplinary action against his license.

31. The BSD has sought to have Heppner's license placed on a one-year probation as a result of his conduct in this matter. As part of that probation, the Department also seeks a \$500.00 fine; 30 hours of remedial education; 15 hours of current USPAP coursework; that the required coursework not be used as credit toward's Heppner's continuing education requirement; and that Heppner document his completion of the required coursework within six months of the final order issued in this matter. The protection of the public in this matter requires that Heppner be subject to supervision by the Board for a period of one year.

### III. CONCLUSIONS OF LAW<sup>2</sup>

1. The Board of Real Estate Appraisers has jurisdiction over this matter. Mont. Code Ann. § 37-54-105.

2. The Department bears the burden of proof to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The Department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

3. Montana licensed appraisers must "comply with generally accepted standards of professional appraisal practice" as evidenced by USPAP. Mont. Code Ann. § 39-54-403(1). In addition, Admin. R. Mont. 24.207.402 provides that the Board adopts by reference USPAP standards.

4. By failing to comport with USPAP requirements, Heppner committed unprofessional conduct. Mont. Code Ann. § 37-1-316(18) and Mont. Code Ann. § 37-54-403(1).

5. Mont. Code Ann. § 37-1-312(1) provides that upon a determination that the licensee has committed a violation, the Board may issue an order providing for, among other things, payment of a fine not to exceed \$1,000.00 per occurrence, remedial education, and suspension of the licensee's license for a fixed or indefinite term.

6. To determine which sanctions are appropriate, a regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can a board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

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<sup>2</sup> Statements of fact in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

7. On balance, the facts in this case demonstrate that sanctions are required both to protect the public and to rehabilitate the licensee. While the Department has not shown a pattern, history, or severity of violation that justifies suspension, Heppner's carelessness in carrying out the subject appraisal demonstrates the need to impose remedial training in order to ensure the protection of the public.

8. Under the circumstances of this case, a one-year probation of Heppner's license, imposition of a \$250.00 fine, requiring regular submission of Heppner's appraisal log to the Board for a period of six months following the entry of the Board's final order in this matter, and ordering Heppner to attend 15 hours of USPAP training in addition to continuing education requirements is appropriate.

#### **IV. RECOMMENDED ORDER**

Based on the foregoing, the hearing examiner recommends that the Montana Board of Real Estate Appraisers place Heppner's license on probation for one year and order Heppner: (1) to pay a fine of \$250.00 to the Board of Real Estate Appraisers by cashier's check or money order no later than 30 days after the entry of the final order in this matter; (2) to submit his appraisal log for review by the Board at a frequency directed by the Board for a period of six months following the final order in this matter; (3) to attend and successfully complete a current USPAP course of instruction (15 hours) from an accredited provider as determined by the Board; and (4) to provide documentary proof of successful completion of such additional USPAP training within six (6) months of the entry of the final order in this matter.

DATED this 14th day of August, 2008.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ DAVID A. SCRIMM  
DAVID A. SCRIMM  
Hearing Examiner

#### **NOTICE**

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.