



# BOUNDARY LINES

A LOUISIANA REAL ESTATE COMMISSION MONTHLY NEWSLETTER

## Chairman's corner



### Introducing Chairman Burns

I am honored to have been selected by my fellow Commissioners to serve as Chairman of the Louisiana Real Estate Commission for 2014. My pledge is to build upon the solid foundation established by the Commission over the past few years in protecting the public interest in all real estate transactions. One of the first orders of business will be the development of a new strategic plan that will chart our future course in becoming the responsive, tech savvy and efficient regulatory body that will proactively meet the challenges ahead. In addition to taking a hard look at our own internal structure, organization and resources, we will be analyzing external factors including new challenges posed by the internet age.

This past year marked an increasing effort by the Commission to reach out and work with other stakeholder groups in Louisiana that are impacted by LREC action. We intend to build on our relationships with the Louisiana Realtors Association, the thirteen REALTOR® Associations across the state, as well as the state associations of Bankers, Homebuilders and Mortgage Lenders. Close cooperation with the Louisiana Real Estate Appraiser Board and the Appraisal Institute will remain a priority in improving the quality and delivery of residential appraisals.

Listening to the concerns of our stakeholders



*Chairman Burns presents plaques to former Chairman Pat Caffery, Jr. and Commissioners Tim Flavin and Frank Trapani for their service.*

is the key to effective communication. As a real estate licensee, your opinions and thoughts are important to us. We want to know what you feel the LREC is doing right, doing wrong and what issues are important to you. As part of our continuing effort toward transparency and accountability, we have developed a new questionnaire that will be posted on our website to give us instant feedback on how we're doing. Please take a moment and click on the link below to tell us your experience in dealing with the Commission. Thanks and have a great 2014!

### LICENSEE SURVEY LINK

Paul Burns





## ENFORCEMENT: Common Questions

*The LREC receives various questions from people regarding many different topics including questions about the ins and outs of our regulatory process. Hearing Examiner Marsha Stafford has put together a list of questions and answers regarding our process.*

### *After a complaint is filed, what is the process?*

Once filed, a complaint is reviewed, and the person filing the complaint is notified as to which investigator is assigned to investigate the complaint. The investigator sends each licensee involved a copy of the complaint and a request for a written response and copies of all documents by certified mail. Both the respondent and the complainant are interviewed as are any additional witnesses. After the assigned investigator reviews the information gathered, a determination is made as to whether there is sufficient evidence to support disciplinary action against the licensee.

Administrative sanctions are not pursued unless warranted by a preponderance of the evidence. Based upon the investigative findings, one of the following decisions is made:

- Close the file without action
- Referral of the case file by the Chief Investigator to the Hearing Examiner to prepare the case for adjudication.

### *What type of complaints does the Louisiana Real Estate Commission investigate?*

The Louisiana Real Estate Commission investigates violations of the Louisiana Licensing Law and/or Rules and Regulations of the Louisiana Real Estate Commission.

### *What does the Louisiana Real Estate Commission NOT investigate?*

The LREC does not have the authority to investigate:

- Landlord/tenant disputes
- Construction defects
- Ethics violations (Things that are not ethical are not necessarily illegal)
- Homeowners Association (HOA) violations
- Commission disputes between licensees
- Criminal actions (trespassing, assault, theft, etc.)

### *What if the real estate licensee has acted unethically?*

Not all improper actions are illegal, though they may be unethical. If a real estate licensee is also a realtor, a complaint can be filed with the Board of REALTORS®.

- Marsha Stafford

## NOVEMBER - JANUARY citations

*Citations issued from November 1, 2013 through January 28, 2014.*

The Investigation Division issued sixteen (16) advertising citations during the months of November, December and January. The following list details the citations that were issued (some citations were issued for multiple violations):

**1**

**2501.A.** - Failure to identify listing broker in advertisement

**4**

**2501.B.** - Failure to place broker's phone number in advertisement

**1**

**2505.A** - Misleading or inaccurate advertising

**4**

**2509** - Advertising violations by franchises

**2**

**2515.C.3** - No city, state, country in website advertisement

**4**

**2515.C.4** - No jurisdiction shown in website advertisement

**1**

**2501.D** - Failure to advertise as licensed(name or brokerage)

### *Additional citations issued in December:*

A broker was issued a citation and ordered to pay a fine in the amount of \$225 for violating Chapter 27, Subsection **2701.A.** of the Rules and Regulations. The broker failed to open and maintain a sales escrow account while holding funds on behalf of clients in a real estate sales transaction.

### *Additional citations issued in January:*

A salesperson was issued a citation and ordered to pay a fine in the amount of \$150 for violating Chapter 39, Subsection **2901.B.** of the Rules and Regulations. This salesperson failed to properly annotate the time and date an offer was presented.

- Robert Maynor



# Can We Talk?

## REAL ESTATE AGENT/APPRaiser COMMUNICATION

Yes, but stick with the *FACTS!*

Relationship Changes between Professions:  
Real Estate Agent ↔ Lender ↔ Appraiser

Gone are the days when the real estate agent refers their appraiser to the mortgage company to appraise the property for their deal. Federal legislation now prevents the real estate agent, borrower and even the loan officer from choosing the appraiser.

The harshest legislation restricting the interaction between the parties occurred in the Home Valuation Code of Conduct issued by the Federal Housing Finance Agency (FHFA) which went into effect May 1, 2009.

### **The rules include:**

In underwriting a loan, a lender cannot use an appraisal prepared by:

- a. Lender
- b. Affiliate of lender
- c. Entity owned by the lender
- d. Entity that owns lender

Members of loan production staff are forbidden from:

- a. Selecting or influencing the selection of the appraiser or inclusion on an approved appraiser list
- b. Communicating with the appraiser, including managing an appraisal assignment
- c. Working with or being supervised by a person involved in selection, retention or recommendation of or communication with an appraiser.

In October 2009, **12CFR Part 226 TILA** took effect. This document also included restrictions for

coercion of appraisers, but conversely included examples of allowed communication between parties. This was then restated in the Dodd Frank Financial Reform Bill signed into law by President Obama in July 2010. It is this that we need to understand, and this which supports our right to communicate.

### **Allowed Communication between Lender and Appraiser:**

- Ask appraiser to consider additional information about the subject property or about comparable properties
- Provide appraiser additional supporting information about the basis for a valuation
- Correct factual errors in an appraisal

The real estate agent-appraiser relationship requires conversation or an exchange of information, but coercion is prohibited.

### **Truth in Lending; Final Rule [excerpt]**

*October Research Corporation's 2007 National Appraisal Survey found that appraisers reported being pressured to restate, adjust, or change reported property values by mortgage brokers (71%), real estate agents (56%), consumers (35%), lenders (33%), and appraisal management companies (25%)*

So what is coercion in a real estate transaction? Influencing an appraiser to misstate or misrepresent the value of a property. The foundation of this confusion is in the responsibility of each party. The underlying contract objectives differ, with the appraiser required to determine market value and the real estate agent required to determine probable price.



## Property Price vs. Property Value “not necessarily equal”

Price is the amount a purchaser agrees to pay and seller agrees to accept for a property at a point in time; value is the monetary worth of a property to buyer and seller at a point in time.

- Realtors talk price
- Price is a fact
- Appraisers talk value
- Value is an opinion

Federal legislation requires that the appraiser conclude market value when performing appraisals for federally regulated institutions. By definition, market value requires that:

- Buyer and Seller are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their own best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

In many instances price equals value. This is why the appraiser often concludes at the contract price.

This brings up an issue that is often a concern to the parties in a real estate sales transaction: Why do we need to provide the appraiser with the sales contract? It is a pertinent piece of information that must be considered in the valuation process, a communication that is a necessity between the agent and appraiser.

Analysis of the sales contract is actually a required task for the appraiser. It is the appraiser's responsibility, according to their standards of professional practice (USPAP) to “analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal.” If the contract is not provided, the appraiser is required to disclose the efforts taken to obtain the agreement and explain the roadblock.

Analysis of this pertinent piece of information along with the market data obtained, enables the appraiser to relate the agreement to the market. If the agreement meets the definition of market value and the sales support the price as the equivalent of value, then it is reasonable for the appraiser to conclude at the contract price. Hence, agents should provide this piece of information in order for the appraiser to perform their job. How frustrating would it be for the appraiser to conclude a value slightly below the contract price because the contract was not made available, when the contract price is within the range of reasonableness!

Whew – gone are the days of friendships between lenders, real estate agents and appraisers. This language was so harsh; it appeared that all communication was considered coercion. Lenders were afraid to speak with the real estate agents about appraisals, real estate agents were afraid to communicate with appraisers about property specific information, appraisers were afraid to speak with real estate agents and lenders. The result is that pertinent information was often not communicated and many institutions began turning to outside companies to order appraisals to secure their loans. The user of the information lost control over the quality of the product and over the qualifications of the appraiser performing the appraisal.

The real estate agent is key in the communication of information to appraisers, providing insight to subject and comparable information. As long as the information communicated is factual information, the communication is allowed. Real estate agents often have more time to research property specific details on sales in the area, spend more time researching property specific information on the subject, time to discuss key developments that impact the property in the area. Conversely, the appraiser is often under a tight time constraint to complete the appraisal. The result is limited time to research and verify. The appraiser often relies upon help from the agent in the information segment of the appraisal development process.

Communication between the professions and professionals is necessary for each party to adequately perform their contract. The professions rely upon this communication, so let's keep the communication lines open to talk. We just can't coerce!

- Cheryl B. Bella, MAI



# DUAL-LICENSE SANCTIONS

# What You Should Know

*Does LREC have jurisdiction over me if I get caught in another state conducting real estate without a license?*

Your Louisiana license can be sanctioned if you “perform or attempt to perform any of the acts of a licensee on property located in another jurisdiction without first having been properly licensed in that jurisdiction or otherwise having fully complied with that jurisdiction’s laws regarding

real estate brokerage.

You must provide notification by certified mail or hand delivery to LREC with 10 days of any sanction imposed on your license by another jurisdiction.

Chapter 51, Subsection 5105. Jurisdiction over Out-of-State Activities outlines these details.

- Marsha Stafford

Follow us for all the latest updates!



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