



Volume 2

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Number 1

KREAB Board Appointment Announced

Governor Steve Beshear announced the reappointment to a three year term for both Dorsey G. Hall, II of Lexington as a lender member and Kathy J. Mayfield of Winchester as the consumer member to the Kentucky Real Estate Appraisers Board.

Upon being notified of the appointment, both Ms. Mayfield and Mr. Hall responded that it is an honor and privilege to serve the citizens, the appraisers and the lenders throughout the Commonwealth of Kentucky. Also, each expressed gratitude for being given the opportunity to continue working with the Board members and staff of the Kentucky Real Estate Appraisers Board.

The board members and staff of the Kentucky Real Estate Appraisers Board look forward to continuing working with Mr. Hall and Ms. Mayfield in completing the goals and objectives of making the Kentucky Real Estate Appraisers Board one of the most effective appraiser enforcement agencies in the United States.

Appraisal Foundation Board of Trustee Appointments

The staff and Board congratulate the following Kentucky Credentialed Real Property Appraisers upon their appointment to the Boards of the Appraisal Foundation.

Rick Baumgardner, Elizabethtown, KY – Chair of the Appraiser Qualification Board

Jeff Lagrew, Versailles, KY – Member of the Appraiser Qualifications Board

Dennis Badger, Lexington, KY – Member of the Appraisal Standards Board

**Kentucky Real Estate Appraisers
Board Office and Contact Numbers**

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BOARD MEMBERS

Harold G. Brantley, Appraiser Member
ChairpersonBowling Green

Sam E. Blackburn , Lender Member
Vice-Chairperson.Frankfort

G. Herbert Pritchett
Appraiser Member.Madisonville

Dorsey G. Hall, II
Lender Member.Lexington

Kathy J. Mayfield
Consumer Member.Winchester

STAFF

Larry Disney, *Executive Director*
Angie Thomas, *Administrative Assistant*
Ravon Radmard, *Executive secretary*
Dennis Badger, *Contract Investigator*
James Grawe, *Contract Attorney*

APPRAISER COUNT

(As of February 18, 2011)

Associates.188
Licensed Residential . . . 22
Certified Residential. . .814
Certified General.527
Total Number.1,551

APPRAISER

EXAMINATION RESULTS

May 1, 2010 – March 14, 2011

Examination

Certified Residential 2 Tests - 2 Passed
Certified General 13 Tests -6 Passed

Examinations are administered by a national testing service. To apply for the examination, please contact Angie Thomas at the Board Office. Also, please download a candidate handbook for KY Appraisers @ www.goamp.com

BOARD NEWS

On March 11, 2011 House Bill 288 received final passage by the Kentucky Legislature.

On behalf of the Board and staff of the KREAB, we thank Rep. Susan Westrom (D) Lexington, Fayette County District 79 for sponsoring the bill, and for working so diligently in assisting its passage. Doing so was extremely difficult during a short legislative session.

Countless individuals and groups assisted in moving the bill. However, the following individuals and groups have to be identified for the above and beyond the call of expectation in assisting to make the bill passage a reality:

- Anetha Dunn Sanford and the Kentucky Association of Realtors
- Marvin Dever, Dennis Badger, Roy Sizemore, Roy Cornett and the many members of the Kentucky Association of Real Estate Appraisers
- Deborah Stamper and the Kentucky Bankers Association
- Buddy Kittle and the Kentucky Mortgage Bankers Association
- David Reichert and the Kentucky Department of Financial Institutions
- John Cooper and Russ Woodward of Capital Link Consultants
- Kentucky Association of Home Builders

The ACT relating to real estate appraisal management companies will create a new section of KRS Chapter 324A to define terms related to real estate appraisal management companies; require registration of real estate appraisal management companies with the board and provide qualifications and limitations on registration; require board to establish a reasonable filing fee in administrative regulation; specify the inclusion of the annual national registry fee required under federal law and maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council; require surety bond not to exceed \$500,000; require registrants and persons owning 10% or more of the registrant to submit to a national criminal history check through the Federal Bureau of Investigation; provide requirements for registered companies and their employees, directors, officers, and agents; require executive director of the board to maintain a register of all applicants; grant board the authority to penalize registrants for specified offenses; exempt specified parties from provisions of the Act; specify that the Act shall be known as the Kentucky Appraisal Management Company Registration Act.

The following article contains G. Herbert Pritchett, MAI, CCIM thoughts and opinions on an issue that many certified residential appraisers must address almost daily.

What Properties Types Can Certified Residential Appraisers Appraise?

The answer is quite simple – legally a certified or licensed residential appraiser in Kentucky can **only** appraise 1 to 4 unit residential properties. (See Kentucky Administrative Regulations (201 KAR 30:030).

The highest and best use – not the current use – of the property is the determining factor. Each certified residential appraiser must do the requisite highest and best use analysis when necessary for credible assignment results. If the highest and best use of the property is something other than 1 to 4 unit residential, or the assignment calls for a hypothetical condition assuming a use other than 1 to 4 unit residential, the certified residential appraiser **must** either resign from the assignment down or affiliate with a certified general appraiser. Where there is a gray area and the determination of highest and best use is especially critical, it is incumbent upon the certified residential appraiser, in the appraisal report, to either clearly summarize or fully report the highest and best use analysis that leads to the conclusion that the highest and best use of the appraised property is 1 to 4 unit residential (USPAP Standard Rules 1-3, and 2-2 (b) (ix)). To repeat, the determining factor is **not** the current use of the property – the determining factor is the appraised property's highest and best use.

Some certified residential appraisers believe they can appraise non-residential properties if the transaction or property value is less than \$250,000. This too is false! The transaction value relates to when appraisals are required for FIRREA compliance by banks – not whether or not certified residential appraisers can appraise a property. A Kentucky certified residential appraiser cannot appraise a commercial or industrial property – even if the value or transaction value of that property is less than \$250,000; it is contrary to a number of KREAB regulations.

Other certified residential appraisers believe that if the property is being utilized as a support site for a single family residence, it can be appraised by certified residential appraiser. This too is false. It is highest and best use that drives the determination. Hence, a property that had a highest and best use as a pasture farm, but was being utilized as support for a single family residential property on the date of inspection, could not be appraised by a certified residential appraiser, because its highest and best use is not 1 to 4 unit residential.

Some appraisers believe that if the client says it is okay for them to appraise a property that is something other than 1 to 4 family residential, they can proceed with the assignment. That too is false! It is the appraiser's responsibility and duty to comply with the Kentucky Statutes and

regulations governing appraisers and their activities. Clients and their requests cannot negate this responsibility and duty.

Essentially, land size, current use, property value, transaction value, whether or not the appraiser utilizes the income approach, and the wishes of the client are not the primary determinants of whether or not a certified residential appraiser can appraise a piece of property. The primary determinant is the highest and best use of the property. If the highest and best use of the property being appraised is something other than 1 to 4 unit residential, it cannot be appraised by a Kentucky certified residential or licensed appraiser.

So as the precinct sergeant in the television show *Hill Street Blues* used to say, “Be careful out there.” Don’t hurt yourself.

Fannie Mae and Freddie Mac Announce “UMDP”

Fannie Mae and Freddie Mac have jointly established the Uniform Mortgage Data Program (UMDP), under the direction of the Federal Housing Finance Agency for the purpose of providing common requirements for appraisal and loan delivery data. UMDP.

Fannie Mae and Freddie Mac announced “The new program is being introduced to improve the quality and consistency of appraisal data on loans delivered to the GSE’s, Freddie Mac and Fannie Mae, at the direction of the Federal Housing Finance Agency, have developed the Uniform Appraisal Dataset (UAD), which defines all fields required for an appraisal submission for specific appraisal forms and standardizes definitions and responses for a key subset of fields. This new standardization provided by the UAD will enable a more robust and accurate automated appraisal review.”

All real property appraisers credentialed and licensed in Kentucky should understand that while the Fannie Mae and Freddie Mac forms will not be amended or revised, the data submitted will be substantially new and the format for submission will require amended software and computerized appraisal software programs for submitting the following types of information:

- Data formats
- Input requirements
- Descriptions
- Ratings
- Instructions

Credentialed real property appraisers are strongly urged to attend a training seminar that will offer guidance and instructions for completing the format. Also, the following two websites can be used to access information and training for completing the process:

<https://www.efanniemae.com/sf/lqi/umdp/>

http://www.freddie.mac.com/sell/secmktg/uniform_mortgage.html

If anyone has questions or requires additional information concerning this program, please contact Larry Disney at the KREAB office.

Online Renewal of Kentucky Appraiser Credential to be Available in 2012

The KREAB is pleased to announce that the existing Board web site is currently undergoing revision, including with the fiscal year 2012-2013 the renewal of all Kentucky real property appraiser credentials will be available on-line.

The Board staff has been working with kentucky.gov to develop and make available the same type of on-line renewal that many Kentucky licensing agencies, including the Real Estate Commission, now successfully use.

Another added feature of the web site will be the ability of credentialed Kentucky real property appraisers to log onto the site and review the status of their licensing history, including continuing education hours completed and the last date of completion for the 7-hour USPAP Update Course. It is believe this addition will greatly reduce calls to the Board staff and assist the appraisers with remaining abreast of their fiscal-year education and credential renewal status.

Please Verify Before you Sign any Agreement

The staff and board members of the Kentucky Real Estate Appraisers Board have received questions asking for advice prior to signing appraisal services agreements that include indemnification and hold harmless agreements.

Neither the statutes nor the administrative regulations grant authority for the board members and staff to offer advice in matters that are outside the legal authority granted to the Board for purposes of effective appraiser enforcement.

The Board legal counsel, James Grawe, Assistant Attorney General, has advised that the Board members and staff caution Kentucky credentialed real property appraisers to contact their personal attorney and their Errors and Omissions legal counsel prior to signing any contact that appears to bind the appraiser with any clause or language that might have legal consequences for an appraiser's actions in appraisal practice or valuation services performed by the appraiser when acting as an appraiser.

Each of the 2011 KREAB Day with the Board seminars included a 3.5 hour presentation by the Liability Insurance Administrators (LIA) by Mr. Robert A. Wiley, Mr. Peter Christensen, and Mr. J. Gordon Forester, JR titled "Loss Prevention Program for Real Estate Appraisers.

During the discussions questions were asked about indemnification and hold harmless agreements. Following the last Board seminar, Peter Christensen, LIA's General Counsel, drafted the following information that was posted on the LIA website.

With the express written consent of Mr. Robert A. Wiley, the following information is reprinted in this newsletter.

Review of LandSafe Independent Contractor Agreement

21 April, 2011

Resource Category: [Risk Reviews](#) | By: [Peter Christensen, Executive Director](#)

Many of LIA's insured appraisers and READI members have asked that we review the new independent contractor agreement from LandSafe Appraisal Services, Inc. ("LandSafe") to provide them information about liability risks and E&O insurance coverage. The documents we have reviewed for our appraisers consist of a 16-page "Appraisal Services Agreement," a one-page "Schedule A – Service Level Agreement," and a four-page "Schedule B – Information Security." These are referred to below as the "Agreement."

Although we have been informed that LandSafe will now require appraisers to carry E&O insurance with a total aggregate limit – not "per claim" limit – of \$1 million, we have not seen the written requirement specifying that coverage or other insurance coverage terms. We will update this review if we receive such documents for our consideration.

Summary

Like many current AMC contractor agreements, the LandSafe Agreement exposes appraisers to potential liabilities they would not normally have and requires appraisers to agree to indemnify LandSafe for a broad range of claims and risks. Appraisers need to understand that their contractual promises in this Agreement, as in many other AMC agreements, expose them to potential liabilities which are beyond E&O or other insurance coverage. In addition, because much of the Agreement appears borrowed from general LandSafe or Bank of America corporate contracts, there are numerous provisions which, as a practical matter, appraisers simply cannot fulfill, such as the many requirements pertaining to information security.

Preface to Detailed Comments about the LandSafe Agreement

Many of our insured appraisers and READI members simply want us to answer the question "should I sign the Agreement?" We cannot answer that question because the answer depends on the appraiser's personal weighing of other factors beyond the liability risks and insurance issues we describe. A "good AMC" paying fair fees and promoting

good appraisal work may very well have a “bad agreement.” The answer to the question may also depend on how badly the appraiser needs a particular AMC’s work.

With respect to an appraiser’s weighing of the risks versus the benefits of doing business with this AMC, it may be helpful for our appraisers to know that, to this date, we have experienced very few claims against our 20,000+ insured appraisers by either LandSafe or its primary client Bank of America. In fact, Bank of America itself has made far fewer claims against appraisers than much smaller lenders. In addition, as of this date, very few AMCs in general have actually sued appraisers or demanded damages under their contractor agreements. The problem is that we cannot predict whether this pattern will change in the future.

It would be easier if we could say “don’t worry, sign it,” but we have to be honest and accurate in our assessment of what we are asked to review. We do realize that most AMCs will not accept changes to their agreements and that an appraiser who refuses to sign an agreement “as is” will probably not receive work from that AMC. The harm caused by this fact is not just to the appraiser – it’s our observation that the overall quality of the AMC’s appraiser panel suffers because, on average, better qualified, more knowledgeable and more financially secure appraisers are the ones who typically refuse to sign agreements that have unreasonable requirements. Thus, the AMC’s clients and potentially the borrowers of those clients suffer also.

Our review of the Agreement is limited to issues which we believe have a direct and reasonable relationship to an appraiser’s real-world liability risk and E&O insurance. Appraisers should read the Agreement, and any AMC agreement, for themselves. We can offer our view of the risk and insurance issues, but we can’t decide for appraisers if other provisions like the following are acceptable to them – these are just a few examples:

- Section 9.1. The appraiser must notify LandSafe about any “material adverse change in Appraiser’s business or financial condition.”
- Section 23.1. LandSafe will own the appraiser’s reports and other work product.
- Section 23.2. The appraiser must notify LandSafe of any threat or filing of any action or proceeding against the Appraiser “in which an adverse decision would reasonably be expected to have a material adverse effect on the appraiser.”
- Section 24.9. The appraiser acknowledges that both the appraiser and LandSafe “were given an equal opportunity to negotiate the terms and conditions in this Agreement.”

Comments about Specific Sections of the Agreement

Section 1.7, Definition of Confidential Information. This section contains a definition of “confidential information.” The definition refers to many types of information that a panel appraiser would never conceivably receive or have access to, such as LandSafe’s “product development strategy and activity, marketing strategy, corporate assessments and strategic plans, business plans . . . “ This is not consequential to the appraiser but it typifies how LandSafe has applied an agreement to appraisers that is drawn from other

areas of LandSafe's business. What may be of concern is that LandSafe has defined the following as "confidential information:"

- "pricing" – e.g., the pricing of LandSafe appraisals and the amount paid by LandSafe to the appraiser. Thus, under the restrictions concerning use of confidential information later in the Agreement (section 13.1), an appraiser may not disclose pricing except as necessary to complete appraisal work.
- "all information relating to LandSafe's and its Affiliates' consultants, employees, customers, vendors and suppliers." This is too vague to apply.
- "any legal agreements or documents (including this Agreement)" – the Agreement itself is deemed "confidential information" according to LandSafe, if the appraiser signs the Agreement.

Section 2.3, Disclosure of Appraisal Information. Under this section, the appraiser gives permission to the lender/client on any report to disclose and distribute appraisal reports to various parties such as the borrower, another lender, and GSEs. This has become normal, but appraisers may object to the disclosure of their reports to unspecified "data collection or reporting services" which section 2.3 also permits. Regardless, appraisers need to understand that under this and most other AMC agreements, they are already agreeing to give up any "ownership" of their work product and, thus, generally do not have control over how AMCs or clients choose to disclose or use information in their reports. Any contrary terms or conditions in an appraisal report will not change this.

Section 8.0, Representations and Warranties of Appraiser.

Section 8.1 provides in part:

8.1 In rendering its obligations under this Agreement, without limiting other applicable performance warranties, Appraiser represents and warrants to LandSafe as follows: . . .
(c) Appraiser has not had any disciplinary action(s) against it in the state(s) where it is licensed/certified within the last five (5) years

It is becoming more common for appraisers to have "disciplinary action(s)" against them. In this provision, the appraiser promises he or she has not had any such action within the last 5 years – this will prevent many appraisers from working for LandSafe.

Section 8.2 provides in part:

Appraiser represents and warrants that the Services shall comply with the current Uniform Standards of Professional Appraisal Practices, all applicable state and federal laws (including, without limitation, FIRREA Title XI, the Equal Credit Opportunity Act and the Fair Housing Act) and all appraisal guidelines published by Fannie Mae, Freddie Mac, the FDIC, the OTS, the OCC and the NCUA.

Under the above language, the appraiser gives a warranty that the appraisal services will comply with all of the listed standards, laws and guidelines. The first problem here is

that, other than USPAP, it's really not within an individual appraiser's capacity to say one way or another whether appraisal services comply with *all* of the various requirements in the listed laws and guidelines because many of the requirements are outside of the individual appraiser's area of legal responsibility or actual knowledge. The appraiser is representing compliance with some requirements that are solely within the AMC's or lender's area of responsibility and knowledge, such as matters relating to how the appraiser was selected by LandSafe or whether LandSafe complied with its legal obligations pertaining to the appraiser's services.

The real risk is not from making those overbroad representations, however, because in the real world appraisers are not likely to be sued by LandSafe about those matters. The real risk is that by contractually promising and giving a warranty that the appraiser's own services comply with the various laws and guidelines, appraisers are creating contractual liability to LandSafe for any violations and LandSafe could then enforce those violations as breaches of this Agreement – that means, among other things, that LandSafe could bring an arbitration action for damages against the appraiser in Plano, Texas in front of an arbitrator meeting LandSafe's criteria (see section 21).

Section 8.2 further provides:

Appraiser represents and warrants that the Work Product and Services furnished under this Agreement do not and shall not infringe, misappropriate or otherwise violate any Intellectual Property Rights or any other rights of any third party.

Here, the appraiser promises that his or her appraisals do not violate things like patents, copyrights or data licenses. Such claims are not frequent relating to appraisals but appraisers should understand that an appraiser's E&O policy does not cover so-called intellectual property infringement and thus does not cover the representation made to LandSafe. The most likely potential breach of this section would be where an appraiser uses real estate data, maps or photos in violation of the license terms from the provider of that information. For example, if an appraiser uses someone else's password to access the information and does not pay for it. The other potential risk is that an appraiser may unwittingly use some software or other technology that violates another party's patent or other rights (as an example, CoreLogic is suing various large appraisal vendors for using AVM technology that it claims violates a CoreLogic patent). Appraisers are representing that their services do not violate such patents or rights.

Section 12.0, Insurance. On the matter of insurance, the Agreement provides:

12.1 Appraiser shall at its own expense secure and continuously maintain throughout the Term, the insurance coverages required by LandSafe under the LandSafe Policies and Procedures and/or LandSafe Guidelines and Requirements, as applicable. Appraiser shall, within seven (7) calendar days following LandSafe's request, furnish to LandSafe certificates and required endorsements evidencing such insurance.

We have not yet seen any “LandSafe Policies and Procedures” or “LandSafe Guidelines and Requirements” regarding appraiser insurance requirements. We will update this review if such requirements emerge and it is possible that they may relate to insurance beyond E&O. We have only been informed that LandSafe will now require appraisers to carry E&O insurance with a total aggregate limit of \$1 million. LandSafe clarified to us that this is the aggregate limit it will require, not a “per claim” limit.

LandSafe and appraisers should realize that setting the insurance limit at \$1 million may cause some of its appraisers to shop for *new dangerous forms of E&O insurance being sold to appraisers which will leave appraisers with no coverage for their prior work for LandSafe* and introduce many new exclusions, such as for “any economic loss” or FDIC claims. See [“A Serious Warning for Appraisers and AMCs/Lenders about E&O Insurance”](#) on Appraiser Law Blog.

Section 13.0, Confidentiality and Information Protection, and “Schedule B – Information Security”

The confidentiality and information security provisions in section 13 and in “Schedule B – Information Security” are clearly borrowed from other LandSafe or Bank of America corporate documents. These provisions largely have no realistic relationship to individual residential appraisers. For example, in section 13.11, the Agreement requires that the appraiser must have “*network diagrams depicting Appraiser perimeter controls and security policies and processes relevant to the protection of Confidential Information. Examples of these policies include, but are not limited to, access control, physical security, patch management, password standards, encryption standards, and change control.*” And, in the related “Schedule B – Information Security,” the appraiser must agree that the appraiser has an “Information Security Program” which addresses matters like “*system architecture including, without limitation, the logical topology of routers, switches, Internet firewalls, management or monitoring firewalls, servers (web, application and database), intrusion detection systems, network and platform redundancy.*”

Appraisers signing this Agreement almost certainly will not be able to satisfy these extensive requirements regarding confidentiality and security of information. Accordingly, almost all appraisers signing the Agreement will actually be in breach of these provisions.

14.0, Indemnity. Indemnification provisions should always be a concern. Our comments about this indemnification provision are nearly identical to comments about other AMCs’ provisions because most of these provisions have the same effect and expose appraisers to the same risks. **Section 14.1** provides:

14.1 Appraiser shall indemnify, defend, and hold harmless LandSafe and its Representatives, successors and permitted assigns from and against any and all claims or legal actions of whatever kind or nature that are made or threatened by any third party and all related losses, expenses, damages, costs and liabilities, including reasonable

attorneys' fees and expenses incurred in investigation, defense or settlement (“Damages”), which arise out of, are alleged to arise out of, or relate to the following: (a) any negligent act or omission or willful misconduct by Appraiser or its Representatives engaged by Appraiser in the performance of Appraiser’s obligations under this Agreement; or (b) any breach in a representation, covenant or obligation of Appraiser contained in this Agreement.

Under this provision, the appraiser agrees to indemnify (basically, a fancy word for reimburse or pay) LandSafe for any losses, damages, attorney’s fees, etc., associated with claims of any kind against LandSafe by third parties, when the claims relate to either (a) a negligent act or omission of the appraiser in performing services under the Agreement or (b) any breach by the appraiser of a representation or obligation in the Agreement. This is a broad indemnification and raises important risks and insurance coverage issues, as is the case with many other AMC’s similar provisions.

First, please understand that an indemnity provision does not change an appraiser’s E&O coverage or “void” the policy. An appraiser’s E&O policy (if it is with LIA) will still provide the same degree of protection and coverage as if the AMC agreement did not exist and still provide the same level of defense set forth in the policy for claims against the appraiser alleging professional negligence. This means, for example, that an appraiser would still be defended under the policy against claims by a lender, borrower or even LandSafe alleging professional negligence by the appraiser in an appraisal delivered to LandSafe (assuming that the appraiser maintains current insurance and that all other regular terms and conditions of the policy are met and no regular exclusions in the policy apply, etc.).

The potential problem is that under the indemnity section of the Agreement, an appraiser is purportedly agreeing to pay all of LandSafe’s losses, damages, attorneys' fees, etc. which might arise from any breach by the appraiser of his or her various representations and warranties (remember the warranties about legal compliance and not infringing “intellectual property”) -- even if the loss or damage results in some way from someone else’s – even LandSafe’s – errors or wrongdoing. Further, the appraiser is agreeing to indemnify LandSafe for types of damages and costs that are beyond the coverage of an appraiser’s E&O policy, such as damages for bodily injury or LandSafe’s own attorneys’ fees. Thus, the appraiser is agreeing to pay potential damages and costs that are broader than can be covered by the appraiser’s insurance. An appraiser’s E&O policy can only cover professional errors and damages caused by the insured appraiser (not a third party such as the AMC) and does not cover liabilities forced on the appraiser by contract that the appraiser would not otherwise have. Accordingly, there is the potential – but I will say the risk is very low – that LandSafe could bring a professional liability claim against an appraiser for which the appraiser would not have E&O coverage. Again, the risk is low, but I must still point it out.

Section 14.2 of the Agreement contains an additional indemnification provision relating to “intellectual property rights” – e.g., copyrights, patents and licenses. It states, in part:

14.2 Appraiser shall defend or settle at its expense any threat, claim, suit or proceeding arising from or alleging infringement, misappropriation or other violation of any Intellectual Property Rights or any other rights of any third party by Work Product or Services furnished under this Agreement. Appraiser shall indemnify and hold LandSafe, its Affiliates and each of their Representatives and customers harmless from and against and pay any Damages, including royalties and license fees attributable to such threat, claim, suit or proceeding.

This section obligates the appraiser to indemnify LandSafe for “intellectual property infringement” relating to appraisals or services under the Agreement – regardless of whose fault it may be. In the appraisal world, this would mostly pertain to using copyrighted or protected information or data in a report without proper permission (for example, if an appraiser used copyrighted maps in a report or violated the terms of a license for real estate sales data). Such claims are very infrequent relating to appraisals but please understand that an appraiser’s E&O policy does not cover intellectual property infringement and thus does not cover your promise to indemnify LandSafe for such matters. Also, the appraiser could conceivably be demanded to indemnify LandSafe for matters outside the appraiser’s control or own conduct.

Section 17.0, Audit. This section sets forth how long appraisers must keep their records and grants LandSafe the right to inspect them:

17.1 Appraiser shall maintain at no additional cost to LandSafe, in a reasonably accessible location, all Records pertaining to its Services provided to LandSafe under this Agreement for a period of ten (10) years Such Appraiser Records referenced above may be inspected, audited and copied by LandSafe, its Representatives or by federal or state agencies having jurisdiction over LandSafe, during normal business hours and at such reasonable times as LandSafe and Appraiser may determine.

The idea that appraisers should keep their work files and appraisals for 10 years is actually good based on our claims experiences and we’ve been suggesting for the last several years that appraisers keep their records for 7-8 years or more. The reason is because appraisal-related liability claims increasingly concern appraisals that are fairly old (dating to 2004-2008). It is almost always in the appraiser’s own self-interest to have his or her work file when a claim arises. However, the issue that appraisers should perhaps have here is being requiring to give LandSafe access to all of their work files – appraisers would not normally have this obligation.

Section 21.0, Mediation/Arbitration. Appraisers should be aware that almost all disputes -- including claims by the appraisers against LandSafe – are subject to mandatory mediation and arbitration. Accordingly, if LandSafe brings a claim against an appraiser for violation of the Agreement or to require indemnification, that dispute will be determined in arbitration in Plano, Texas before an attorney or retired judge who meets LandSafe’s requirement of practicing “*in the areas of banking and/or information technology law.*”

This does not directly impact an appraiser's E&O coverage. You have the same coverage (under LIA's policy) in such arbitrations. However, it is important for appraisers to realize that disputes will generally be subject to these arbitration requirements and that they are giving up their regular legal rights with respect to court and jury litigation.

Section 24.6, LandSafe Can Change the Agreement with 30 Days Notice. Appraisers should be aware that by signing this Agreement, they are agreeing that LandSafe can change the Agreement in the future for any reason by giving appraisers 30 days written notice – and, according to LandSafe's language, such changes will be effective without any further action by the appraiser.

Section 24.11, Future Assistance to LandSafe. Appraisers also should be aware that under section 24.11, they are obligated to provide things like deposition testimony, court assistance or further cooperation in connection with their appraisal work under the Agreement without further charge (except for reimbursement of "out-of-pocket" expenses like parking or gas).

I have tried to answer the common questions that appraisers have for us with regard to this Agreement. If you have remaining questions and are insured by LIA, please email me at peter@liability.com.

This information has been reprinted with the permission of Robert A. Wiley, Vice President with LIA.

The information is intended for only those appraisers insured through LIA Administrators & Insurance Services (LIA) and members of READI (readimember.org). It is not intended for consideration by any other person or entity. Do not copy, share or distribute this memorandum or post it on the internet.

Kentucky credentialed appraisers are advised to contact their personal legal counsel and the legal counsel for their own Errors and Omissions carrier, if the carrier is not LIA.

Questions and Answers from the Appraisal Foundation

The Appraisal Standards Board (ASB) of The Appraisal Foundation develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. The USPAP Q&A is a form of guidance issued by the ASB to respond to questions raised by appraisers, enforcement officials, users of appraisal services and the public to illustrate the applicability of USPAP in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems. The USPAP Q&A may not represent the only possible solution to the issues discussed nor may the advice provided be applied equally to seemingly similar situations. USPAP Q&A does not establish new standards or interpret

existing standards. USPAP Q&A is not part of USPAP and is approved by the ASB without public exposure and comment.

Qualifying Education

Question: I was pursuing a General Certification credential and completed a 30-hour qualifying education course on “General Appraiser Market Analysis and Highest and Best Use” approved by my state. I decided to pursue a Residential Certification instead, which requires 15 Hours of “Residential Market Analysis and Highest and Best Use.” Can I use the General Appraiser course to count as my qualifying education in this category?

Response: The *Real Property Appraiser Qualification Criteria* sets forth module names of the Required Core Curriculum areas which must be covered in a candidate’s qualifying education for each appraiser classification sought. Furthermore, Guide Note 1 of the criteria provides guidance on subtopic areas that should be covered under each of the modules of the Required Core Curriculum, in order to prepare the candidate to pass the National Uniform Licensing and Certification examination for the specific credential. However, coverage of all of the subtopics under each module is not required in order for a course to be approved by your state appraiser regulatory agency as qualifying education given the commonality between the subtopics covered in the respective General and Residential Highest and Best Use courses, under the Criteria, a state could approve the General course toward the Required Core Curriculum for the Residential classification. However, be sure to check with the specific state appraiser regulatory agency in the jurisdiction in which you are seeking a credential to verify their specific requirements and course approvals, which could be more specific.

Continuing Education

Question: I am certified in multiple states. If I attend and successfully complete a continuing education course in one state, can I use it to count toward my recertification in another state?

Response: In the event the course, provider and delivery mechanism (classroom or distance education) are approved in both states, then each state may grant you CE credit for taking the one course. Each state has a unique method of approving courses. Thus, be sure to check with the specific state appraiser regulatory agency in the jurisdictions in which you are seeking to recertify your credentials to verify their requirements.

Qualifying Experience

Question 1: Is there an assumption that a typical residential appraisal takes “X” hours to develop and report? If someone submits a log to the state and says they have acquired 3,000 hours of experience by doing ten “URAR” form reports, would they be believed? Or, is there a range that makes sense, like between 4 and 12 hours for a “typical” assignment?

Response: The *Real Property Appraiser Qualification Criteria* does not specify the amount of experience hours which may be claimed per assignment. The state appraiser

regulatory agency in the jurisdiction where you are seeking a credential is responsible for examining your experience log and must be satisfied there is a reasonable relationship between the amount of time you claim to have spent on an assignment and your description of work performed. Some states have established typical hours for specific types of appraisal assignment types, which they use as a benchmark to identify potentially excessive experience claims. Be sure to check with your supervisory appraiser and your state appraiser regulatory agency to make sure you comply with the hourly requirements when claiming experience.

Question 2: I am employed by a county appraisal district where we value properties for ad valorem tax purposes. My job requirements include valuing real property using the sales comparison approach, performing on-site inspections of properties, using mass appraisal tools to assign real property values, analyzing sales on an annual basis, etc. Our state requires that my appraisal experience for state licensure or certification must comply with the Appraiser Qualifications Board criteria for acceptable experience. Does my position as a Residential Appraiser at the appraisal district meet the AQB criteria for acceptable experience?

Response: Just by serving in a municipal appraisal position, you are not automatically granted credit. Per the *Real Property Appraiser Qualification Criteria* the quantitative experience requirements must be satisfied by time spent on the appraisal process: analyzing factors that affect value; defining the problem; gathering and analyzing data; applying the appropriate analysis and methodology; and arriving at an opinion and correctly reporting the opinion in compliance with USPAP. Based upon the minimum criteria set forth by the AQB, a state could, after review of your work log and work samples, grant you experience credit for work completed in ad valorem, mass appraisal assignments. However, check with the specific state appraiser regulatory agency in the jurisdiction in which you are seeking a credential to verify their requirements, which may be more restrictive.

Question 3: I am presently a Certified Residential appraiser and I am pursuing a change to Certified General. I realize a Trainee who applies to become Certified General is required to accumulate 3,000 hours of experience (with at least 1,500 being non-residential). However, does this mean that a Certified Residential appraiser would only have to accumulate 1,500 hours of commercial experience to satisfy the experience requirement?

Response: The *Real Property Appraiser Qualification Criteria* requires 3,000 hours of experience accumulated during no fewer than 30 months, of which 1,500 hours must be non-residential. Under the *Criteria*, experience gained in pursuit of a credential is not exclusive to that specific credential. Thus, based upon the minimum criteria set forth by the AQB, a state appraiser regulatory agency could, after review, count the experience earned toward your Certified Residential credential along with additional experience earned toward the 3,000-hour requirement for the Certified General credential. However, be sure to check with the specific state appraiser regulatory agency in the jurisdiction in

which you are seeking a credential to verify their requirements, which may be more restrictive.

Question 4: I have been a Licensed Real Estate agent for several years and also an appraiser Trainee for over one year. I have a supervisor for whom I do appraisals and I also get paid by a bank to do Broker Price Opinions (BPOs) that require very similar information as an appraisal (including providing six comps). I act as a completely unbiased person doing these BPO's and have no interest in the properties. Can these BPOs be counted on my appraisal experience log?

Response: If the BPOs do not comply with USPAP, regardless of the level of detail or the scope of work performed, they are ineligible for experience credit. (Refer to the 2010-11 USPAP document for further information on not misrepresenting your role when acting as an appraiser versus a broker/sales person/mortgage broker.) If, however, the development and reporting of the BPO complies with USPAP, and your supervisory appraiser provides direct supervision over your preparation thereof, reviews and signs your work product, it is possible a state appraiser regulatory agency might count these as appraisal experience. However, be sure to check with the specific state appraiser regulatory agency in the jurisdiction in which you are seeking a credential to verify their requirements, which may be more restrictive.

Question 5: I am a licensed forester and an Appraiser Trainee. My supervisory appraiser is a forester and a Certified General Appraiser. As a part of my company's forestry practice, I often perform timber inventory and valuation reports (timber cruises) to estimate the value of timber. Can I utilize my timber cruise experience to satisfy the 3,000 hours of required real property appraisal experience toward earning a Certified General credential?

Response: Solely developing a timber inventory and valuation report does not qualify for real property valuation experience. However, if you develop a timber inventory and valuation report and appropriately utilize this information in an appraisal of real property, it may qualify for real property valuation experience provided the appraisal complies with USPAP. Furthermore, as with other types of appraisal assignments, an individual providing significant real property appraisal assistance in the appraisal may receive credit for these assignments, provided the individual is duly acknowledged in the certification of the report as having provided significant real property appraisal assistance, and the description of their assistance is included in the appraisal report. Be sure to check with the specific state appraiser regulatory agency in the jurisdiction in which you are seeking a credential to verify their requirements, which may be more restrictive.

2011 Board Meeting Dates

May 26

August 26

October 28

June 17

September 23

November 18

July 22

December 23