



# WYOMING Real Estate Commission and Certified Real Estate Appraiser Board

# Review

EARLY SUMMER 2010

## Say It Isn't So . . . Barbara Blaker is retiring July 1st?

What can one say about Barbara Blaker?

She is never too busy to answer a question (no matter how many times the same question has been asked that day). Barb knows real estate inside and out and will always steer you in the right direction. She has a heart of gold and will watch out for your best interest in any situation.

Barb started work at the Department of Agriculture on January 12, 1976, as a receptionist and in August, 1977 accepted a position with the Wyoming Real Estate Commission. She learned the ropes and diligently worked her way up, ultimately earning the position of Deputy Director; a title that suits her well. While directors, commission and board members have come and gone over the years, Barb has been steadfast and consistent. You would be hard pressed to find anyone with a better rounded knowledge of the real estate world than Barb.

It is hard to believe that she is really retiring, though her desire to spend more time with her family and perhaps take up a new hobby is understandable.

While she spreads her wings and begins a new chapter in her life, she will leave some big shoes to fill. She has assured us that she is only a phone call away - thank goodness for that!!!

Barb—we wish you the BEST and thank you for your loyalty, hard work and numerous (too many to count) contributions in moving the agency forward.

Trenton and staff

### Real Estate Commission

Chairman: Ellen Alley, Wheatland

Bev DeSomber, Ten Sleep

Ray Elser, Jackson

Dixie J. See, Sheridan

George "Bo" Short, Jr., Cheyenne

### Certified Real Estate Appraiser Board

Chairman: Loni Hillyard, Afton

Robert Brockman, Wheatland

Steve Cady, Worland

Theo Hirshfeld, Buffalo

Judy Lane, Cheyenne

### NEW SECTION ON WEBSITE . . .



The Commission has added a NEW section to the website entitled "Licensing Procedures." A number of scenarios are outlined and include a list of items the Commission will need in order to process the forms. Please take a moment to become familiar with this NEW section. Also, our website will be taking on a new look in the near future so watch for that as well.

<http://realestate.state.wy.us/>

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## Trust Accounting Class Answers

The two Trust Accounting classes the WREC sponsored and offered using the State video conferencing system have now been completed. 23 of the 24 locations participated without a hitch. The one location experiencing a tech glitch was moved and the students were able to attend the majority of the class in another location.

All in all, several hundred licensees were able to attend a free educational opportunity near their home town with no problems. Each class brought up great questions. The answers and resulting documents from the first class' questions were covered in the second class.

The WREC has provided a DVD containing the second class to every MLS Board office around the state. We also have a copy at the WREC office in Cheyenne. These DVDs are available to be checked out or reproduced. Sample forms that have evolved from this class are available on the Commission website under "Real Estate Trust Account Guidelines."

One question that came up in the second class was answered by the Attorney General's (AG) office after the class and I would like to share that information here.

The WREC requires different types of trust accounts be set up for the different types of money being held (i.e. earnest money is kept in a different trust account than renters' damage deposits). Someone asked if advance fee money (primarily for advertising) should be placed in a trust account separate from the earnest money deposits. The answer from the AG's office is "yes". If your company acquires advance fees, that money should be held, paid out of, and accounted for in a separate trust account used only for advanced fee monies.

### **UPCOMING MEETINGS:**

#### **Wyoming Real Estate Commission**

June 30, 2010 at 9:00 a.m. —

2020 Carey Avenue, Suite 702, Cheyenne, WY 82002

#### **Wyoming Certified Real Estate Appraiser Board**

June 2, 2010 at 9:00 a.m.—

2020 Carey Avenue, Suite 702, Cheyenne, WY 82002



## Home sales up, foreclosures not swamping market

(WASHINGTON) - The National Association of REALTORS® reports existing-home sales rose 6.8 percent in March to an annual sales rate of 5.35 million units compared to 5.01 million in February.

A year ago in March, the sales pace was 4.61 million.

"Sales have been above year-ago levels for nine straight months, and inventory has trended down from year-ago levels for 20 months running," said chief economist Lawrence Yun.

"The home buyer tax credit has been a resounding success as these underlying trends point to a broad stabilization in home prices."

Yun added that foreclosures are being fed into the system at a "steady pace" and did not appear to be overwhelming the market.

Total housing inventory at the end of March rose 1.5 percent to 3.58 million existing homes available for sale, an 8-month supply month supply at the current sales pace.

## Builders see leap in sales, inventory under control

(WASHINGTON) - New numbers from the Commerce Department show new home sales up 26.90 percent in March to an annual sales rate of 411,000.

Commenting on the report, the Home Builders association credited the surge to the federal tax credit for homebuyers.

"The near record-breaking 27 percent increase over February was the result of home buyers taking advantage of the tax credit, as well as a carryover of demand that was held back by unusually bad weather in February," said NAHB Chief Economist David Crowe.

The home builders said that while sales were up, the inventory of unsold homes was down less than 1 percent - an indication that builders are tightly controlling supply to keep the recovery from collapsing.

## Rural properties seeing better sales

(KANSAS CITY) - The United Country Real Estate franchise, which deals predominantly with rural properties, reports a 16 percent increase in sales in the first quarter of this year over sales during the same period in 2009.

Company President Mike Duffy also said there had been a 17 percent increase in traffic to the company's Web site during the same period.

"This tells us that more people are actively looking at real estate and considering making purchases," he said.

The company also reports a 6 percent increase in units sold at auction.

# Defend Your Reputation with Appraisal Workfiles



A proper workfile is something integral to every commercial or residential real estate appraiser since it can be a crucial benefit when defending yourself against legal or administrative allegations. Since most appraiser Error and Omissions claims are made 18 months to three years after the appraisal was completed, a well-prepared and documented workfile will lead you back to that exact moment. A workfile prepared in anticipation of litigation is a powerful tool in limiting your exposure and defending your reputation. The suggestions herein, along with the record-keeping requirement of the Uniform Standards of Professional Appraisal Practice, will result in such a document.

## Keep Each File in Anticipation of Litigation

If a claim or lawsuit is filed, will you be able to reconstruct what you did and how you did it, based on the contents of your workfile? If the file contains nothing but your original assignment sheet and a copy of the appraisal, the answer to this question will likely be “No!”

The file must contain enough information to support and justify the work performed and the final conclusion. The file should also have enough additional information to help refresh your recollection about the assignment, especially if you use trainees or contract appraisers who may no longer be around.

Another thing to consider is the appearance of the file. In most cases, a copy of the workfile must be turned over to the party who is making the claim as part of the “discovery” process. What does your workfile say about you as an appraiser? That you are organized, neat and detail-oriented or that you are sloppy, disorganized and unprofessional?

Many appraisal offices have moved toward a “paperless” system. This is fine as long as the appraiser continues to focus on keeping a complete and well-documented electronic workfile. This means scanning supplemental documentation such as Post-its, phone notes and call slips. An electronic version of anything that would have been in the physical workfile must be scanned, properly labeled and saved in a format that can be reliably viewed at a later date.

Be very careful when you store photos on your computer hard drive. We see numerous instances of hard drive crashes or of photos being lost. The photos are no good to you if they cannot be accessed when a claim is made.

## Assignment Sheets

It is a good idea to always keep a copy of the assignment sheet in your workfile, including those you received via e-mail. The assignment sheet can be very helpful if questions arise about the client, the exact scope of the assignment, any assumptions to be made by the appraiser and the response time; it will also tell if you are dealing with a client that communicates “a must-hit number” or a narrow range of values.

## Research Data

It is crucial that the workfile contains any supporting data that was used to prepare the report. No appraiser can count on being able to go back and reconstruct their research years later when a claim is made unless complete and relevant documentation is kept in the workfile.

If public records were consulted for zoning or square footage, print out what you review and keep it in the file. A printout showing a date recent to the date of the appraisal conveys the fact that you did thorough research. Supporting documentation with a date after the lawsuit was filed implies that you were going back after the fact to try and support your report. The same applies for MLS information. Will you be able to find the MLS information that you reviewed online today three years from now?

It is best to have as much data on comparables in the file as possible. Make sure your comp research was broad and did not just focus on a target or narrow value range. Keep copies of rejected comps that appeared to be comparable but were disregarded with clear notes as to why they were not used. Include notes documenting which real estate agents were called for further information about the comp sales or the subject.

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Before storing the file, look over your handwritten notes. If it was important enough for you to write down, you must be able to read it. Too often appraisers are unable to read their handwriting years later when a claim occurs.

### **Information from Other Sources**

Information used in the report is often given to the appraiser from other sources. It might seem convenient that someone else has already done the work, but information provided by others, no matter how reliable they may seem, must still be verified. Evidence of the steps taken to verify should be clearly set forth in the file.

Rental and income figures provided by others – no matter how nicely bound or presented the information might be – still have to be checked. If the appraiser is unable to verify the information provided, that should be stated clearly both in the report and in the file.

Sometimes an appraiser is given a prior appraisal of the subject property. Resist the urge to “borrow” information – e.g., square footage figures – from the prior appraisal as there is no guarantee that the information is accurate. Measure the subject yourself; many times the prior appraiser was wrong. The appraiser who is now defending the claim rarely has a good excuse for this behavior and makes legal defense of the claim tougher.

Appraisers are frequently provided copies of building plans to review when preparing a report. The plans must be returned upon completion of the assignment. The problem is that plans are often changed or revised during construction. Just as often, the appraiser is inadvertently or intentionally not told of the revisions. Some appraisers do make copies of the plans at their cost. Others simply copy something on the plans that shows the date or some other distinguishing marks. Hopefully the appraiser can show some evidence of which plans they were provided if questioned.

### **Interior Photos**

We strongly recommend that interior photos be taken of every property appraised. Photos can help you document conditions that existed at the time you walked through the property. When a loan goes into default, often the borrower has not maintained the property's appearance. Some borrowers may damage their property or others may vandalize a property that sits vacant. When the lender gains possession of the property, they may find the property is in far from “good condition” as stated in the appraisal, and they are quick to point a finger at the appraiser. It is nice to be able to flash a few photos to show the house was clean and well-maintained when you inspected it, which will help prove that it did not have missing fixtures or holes in the walls like it did after foreclosure.

The same applies to claims alleging failure to note defects. For example, you note some hairline cracks. It could be normal settling, but it may be a bigger issue where the seller is withholding information in an effort to sell the home. A few photos can prove the property's condition at the time you were there.

Water damage is another area where photos kept in the file can help. Is it the remnants of an old roof leak that has been fixed, or is it evidence of a condition that might lead to mold growth? A photo provides clear evidence of what was and wasn't there when you were on the premises.

Lastly, interior photos can help to refresh your recollection about the property. If you get sued three years after completing your appraisal, will you remember the property you appraised? Photos can be an enormous help in jogging your memory.

### **General Notes and Message Slips**

You should write down every thought and keep every paper scrap related to an appraisal, because you never know what might be important. You may have had a significant phone conversation with a client about an extraordinary assumption, yet there are no file notes. Months later, someone might call and ask that a copy of the appraisal be provided to the borrower. If questions arise about whom the appraiser spoke to or when the borrower received a copy of the report, the appraiser might remember. However, that is not usually the case. General notes kept in the file can be used as evidence and are very persuasive to a judge or jury.

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## Tell-Tale Claims

### Sands of Time

An appraiser was hired to appraise a commercial sand pit. Besides determining the land value, he had to value the sand. The appraiser contacted many contractors, haulers and sand pit operators to determine the sand's value. The workfile had a complete listing of all the contacts. The list was very informative, including such information as when calls were made, who the appraiser spoke with, who was unwilling to share information and even who never returned his calls. The sand pit operator eventually defaulted on the loan. The appraiser received a letter from the lender claiming the property had been overvalued, in part, because the value of the sand was overstated.

If the appraiser's sand value was overstated, it had nothing to do with his failure to research available sources of information. The lender's counsel was very impressed with how the workfile was maintained. The volume of neat and orderly documentation confirmed the professionalism of the appraiser. The notes he had about who he called, when he called, and what they said was proof his research was thorough and fully documented. The plaintiff quickly agreed to drop the allegation against the appraiser.

### Not All It's Cracked up to Be

During an assignment on a new purchase loan, an appraiser found that while the home looked ordinary, the two-car garage was completely filled with boxes and cartons that covered the entire floor space and were stacked floor to ceiling. He thought it was odd since the rest of the home was pretty clutter-free, and he was compelled to snap photos of the garage. The appraiser's instincts were right on.

Months later, he was served with a lawsuit filed by the new owners. They claimed that after the sellers vacated the house and cleared the clutter from the garage, they discovered a huge crack in the garage floor. The new owners had a contractor advise that the house would have to be lifted off the foundation for an adequate repair. The entire cost to repair the foundation and resulting structural damage was almost as much as the appraised value.

The appraiser was dismissed early from the case due to his photos, which proved that he could not have seen the cracks in the garage floor. He also noted in the report that he could not do a complete inspection of the garage due to the amount of clutter and debris. The plaintiffs' counsel was happy to dismiss him and used his photos to get a large settlement from the sellers, claiming they had intentionally concealed the foundation crack by filling the garage with boxes and clutter.

### Judge Rules the File Speaks for Itself

An appraiser delivered his appraisal to his lender-client and a week later received a request for a copy of the appraisal from the personal guarantor of the loan. The appraiser got permission from his client and hand-delivered the report to the guarantor's office. The guarantor eventually sued the appraiser and claimed that he had relied on the appraisal when deciding to sign the guarantee. The guarantor testified that he received a copy of the report a full week before the papers were signed. Besides the appraiser's contradicting testimony, his workfile also contained phone message slips and a log that showed when he delivered all of his reports. At trial, the judge ruled in favor of the appraiser on several issues. However, in the judge's written opinion, he specifically noted that the appraiser was found to be more credible than the guarantor/plaintiff due to the manner in which the workfile and his business records were maintained. Case closed!



[This article by LIA Administrators & Insurance Services ([www.liability.com](http://www.liability.com)) originally appeared in Valuation magazine. Copyright 2009. Appraisal Institute. All Rights Reserved.]

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## FOOD FOR THOUGHT . . . Broker Price Opinion (BPO)



For those licensees performing Broker Price Opinions (BPOs), please don't forget this activity has to go through your Responsible Broker. It has always been the position of the WREC and of the instructors (Steve and Bruce) that compensation for performing BPOs can only be made to a Responsible Broker. That compensation can then be paid out to associate brokers and salespersons under the supervision of the Responsible Broker as agreed to by the parties. The WREC does not get into the discussion of compensation splits or percentages. However, any activity a licensee performs because they have a real estate license falls under the purview and supervision of the Responsible Broker, and must be paid to the Responsible Broker (just like a commission check).

WYO. STAT. ANN. § 33-28-111(a) Censure of licensee and suspension or revocation of license; grounds.

(a) The commission shall upon a written sworn complaint or may upon its own motion investigate the actions of any broker, associate broker or salesman, impose an administrative fine not to exceed two thousand five hundred dollars (\$2,500.00) for each separate offense and may censure the licensee, place the licensee on probation and set the terms of probation, suspend or revoke any license issued under this act and impose an administrative fine for any of the following:

(xvii) **Accepting a commission or other valuable consideration by an associate broker or salesman from anyone other than his employing broker.**



### Co-Listing Wyoming Properties???

Please be careful when you are asked to “co-list” a Wyoming property. Make sure the real estate company you are joining forces with is also licensed to sell real estate in Wyoming (if the property is in WY). The WREC is seeing companies not licensed in Wyoming asking Wyoming licensees to “co-list” a property with them. They seem to be under the impression a co-listing agreement somehow authorizes them ***“to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker, associate broker or a real estate salesman within this state without first obtaining a license as a broker, associate broker or salesman, as provided in this act.”*** They are incorrect because ***“no person, corporation, partnership or association, domestic or foreign, shall act or advertise as a real estate broker or salesman in this state by use of letterheads, billboards, radio or television announcements or any other media of advertising, without first obtaining a real estate broker's or salesman's license from the commission.”*** (Authority: WYO. STAT. ANN. § 33-28 101 and WYO. STAT. ANN. § 33-28 -119(c))



## Non-licensed Activity—Survey Results

1. Do you believe it is (or should be) a violation for a Wyoming real estate licensee to advertise Wyoming property for sale if the real estate licensee does not hold an active Wyoming real estate license (the licensee does not have an ownership interest in the property)?

**RESULT: 93% answered YES**

2. Do you believe it is (or should be) a violation for a non-Wyoming real estate licensee to advertise Wyoming property for sale if the real estate licensee does not hold an active Wyoming real estate license (the licensee does not have an ownership interest in the property)?

**RESULT: 90% answered YES**

3. Have you observed an advertisement for a Wyoming property that you believe originated from a real estate licensee who did not possess an active Wyoming real estate license?

**RESULT: 82% answered NO**

4. For the purposes of this question only; assume it is not a violation for any real estate licensee to advertise property for sale in any state in which they do not hold an active license, so long as they never enter the state in which the property is located. As a Wyoming licensee, would you be willing to voluntarily limit yourself to only advertising property in states in which you hold an active real estate license; in exchange for the same voluntary limitation from all other licensees in all other states?

**RESULT: 78% answered YES**

5. Would you be willing to participate in future, short, simple surveys such as this, from the Wyoming Real Estate Commission?

**RESULT: 97% answered YES**

## MISSION STATEMENT

### Real Estate Commission—Staff

Trenton Hogg, Executive Director

Barbara Blaker, Deputy Director

Kamron Ritter, Lead Investigator

Anna Rabou, Executive Secretary

Kari Rayment, Paralegal

**The Wyoming Real Estate Commission and the Certified Real Estate Appraiser Board are to assist and protect consumers of real estate services and foster economic growth in Wyoming. Through our programs of education, licensing and industry regulation, the Real Estate Commission and the Certified Real Estate Appraiser Board ensure the availability of capable and honest real estate service providers.**