



WYOMING Real Estate Commission and Certified Real Estate Appraiser Board

Review

SUMMER 2010

From the Desk of Trenton Hogg



This information was previously disseminated, but it seems like a good time to say it again. In July, 2009, the Commissioners unanimously voted to approve a more simplified interpretation to the advertising statute W.S. §33-28-119. This is welcomed news since this logic will allow for simpler (and therefore cheaper) advertising for the licensees and will make enforcement of advertising violations so much easier for the Commission. Looking at the statute from a back-to-basics-consumer-protection only approach; the Commissioners voted to look primarily at the advertising to determine if the public understands they are contacting a real estate company. Having met that simple requirement, any other information (or lack thereof) is up to the Responsible Broker. Responsible Brokers may dictate through their policies and procedures what can and cannot be in the advertising, i.e., company phone number versus agent phone number; company address versus P.O. Box; or company web address versus agent web address (or none of those items). **The Commission just wants it to be crystal clear that a real estate company is involved;** beyond that, put as much or little as the Responsible Broker mandates.



With that in mind...**all advertising must have the name of the real estate company as it appears on the license.** Do not over-abbreviate or acronym. If a licensee's name appears in the advertisement, **the name should appear the way the individual is licensed.** Middle initials do not have to be used but there has always been the policy of nicknames and such being on the license if that is what the licensee "goes by."

Trenton Hogg

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

Congratulations

Governor Freudenthal recently re-appointed Robert Brockman and Loni Hillyard to serve on the Wyoming Certified Real Estate Appraiser Board. Robert Brockman is a General appraiser for Keyhole Land Co. Loni Hillyard is a Residential appraiser for Appraisal Services. Their new terms will expire on July 1, 2013.

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HOT TOPIC: FUNDS HOLDER AGREEMENTS

At its July 2, 2010, meeting, the entire Commission, with guidance from the Attorney General's Office, considered if and when funds holder agreements are required. It is the position of the Commission:

- If a Broker has a trust account with a banking institution, it is not necessary to have a written agreement with a title company, escrow agent, or third party if the Broker is paying earnest money or advanced fees to facilitate closing; and
- If a Broker uses a title company, escrow agent, or third party to hold earnest money or advanced fees, a fund holder's agreement with that entity must be on file with the Commission.

Further clarification: If the Broker uses a trust account to hold earnest money and advance fees and only involves a third party to close, no "Funds Holder Agreement" is required. However, if a Broker uses a third party to hold earnest money or advance fees in trust; a "Funds Holder Agreement" between the Broker and the third party must be on file with the Commission. The requirement for having funds holder agreements is based on why the money is being held and not on the length of time it is held.

All Responsible Brokers using title companies, escrow agents, or other third parties to hold client funds in trust, must have a "Fund Holder Agreement" with each filed with the Commission. When a different Broker becomes the Responsible Broker for a business entity, that Broker must obtain new agreements and file them with the commission.

NOTE: A *sample* "Funds Holder Agreement" acceptable to both the WREC and the Wyoming Land Title Association can be found on the Commission website under "Real Estate Trust Account Guidelines."

1. Do you use a "traditional" trust account (an account at a bank with checks, ledgers, journals, statements, etc) as your primary holder of earnest money or do you use a title company or escrow agency as your primary holder of earnest money?

| | | |
|--------------------------------|-----|-----|
| Traditional Bank Trust Account | 136 | 55% |
| Title Company/Escrow Company | 115 | 47% |

2. Does your company have a "traditional" trust account?

| | | |
|--------------|------------|-------------|
| Yes | 175 | 71% |
| No | 72 | 29% |
| Total | 247 | 100% |

3. If you do not have a traditional trust account, does the third party holding the funds provide to you any statements, accounting, or reconciliation?

| | | |
|---|-----|-----|
| Yes | 53 | 21% |
| No | 46 | 19% |
| N/A because I do have a traditional trust account | 149 | 60% |

4. Given that most real estate companies no longer close and disburse the complete real estate transaction, a title company or escrow agency becomes involved at some point. Of the choices below, which scenario best describes how your office usually handles the earnest money?

| | | |
|--|-----|-----|
| Earnest money checks are written directly to the title/escrow company and it remains there until closing of transaction. | 101 | 41% |
|--|-----|-----|

| | | |
|--|----|----|
| Earnest money checks are written to the real estate company and the check is endorsed to the title/escrow company and it remains there until closing of transaction. | 22 | 9% |
|--|----|----|

| | | |
|--|---|----|
| Earnest money checks are written to the real estate company and put into a traditional trust account. Once the funds have cleared, the money is transferred to the title/escrow company and it remains there until closing of transaction. | 5 | 2% |
|--|---|----|

| | | |
|---|-----|-----|
| Earnest money checks are written to the real estate company and put into a traditional trust account. Just before closing, the money is transferred or delivered to the title/escrow company and it remains there until closing of transaction. | 114 | 46% |
|---|-----|-----|

| | | |
|---|----|----|
| Earnest money checks are written directly to the real estate company and placed in a trust account. The money remains there until closing of transaction. After closing the money is transferred from the real estate company's trust account into the real estate company's operating account. In this method the Buyer's earnest money is credited as being "held" by the real estate company and the commission is reduced by that amount. | 18 | 7% |
|---|----|----|

USPAP Update Schedule Change . . .

Annual Wyoming Appraiser Education Event To Be Held In Casper

Numerous, excellent, approved-for-credit appraiser education courses will be offered in January, 2011. See below for the course schedule.

Some courses will be geared for Certified General, some to Certified Residential, and some will be universal in nature. The WCREAB Education Fund will subsidize classes in odd-numbered years and will subsidize the 7-Hour USPAP Update Course in the even-numbered years. Our hope is to have every appraiser licensed in Wyoming taking advantage of an education event. Doing so, will provide each Appraiser with the ability to meet their continuing education requirements each renewal cycle.

Register early...the subsidized classes will go fast (first-come-first-served).

Wyoming Chapter of the Appraisal Institute
 Bev Luke, Executive Director
 P. O. Box 7742
 Rapid City, SD 57709-7742
 605-716-9011
bkluke@rushmore.com

RE: Preliminary Report Concerning January 2011 Education in Casper

NOTE: Two Days with One 7-Hour Residential Seminar and One 7-Hour Non-Residential Seminar Each Day – Total of Four Seminars Offered in the Two Days

| <u>Annual Wyoming Appraiser Education Event – January 12-14, 2011</u> <u>Best Western Ramkota, Casper</u> | | |
|--|--|---|
| <u>Wednesday 01/12/2011</u> | <u>Thursday 01/13/2011</u> | <u>Friday 01/14/2011</u> |
| <p>WY Chapter AI - Board Of Directors Meeting <i>Wed Evening</i></p> | <p>Residential Offering 1 <i>Most Common USPAP Violations in the URAR and 1025 Form Reports' - 7 Hours of CE Credit</i></p> <p>Non-Residential Offering 1 <u>ASFMRA Offering -</u> <i>Environmental Contamination Seminar (Possibly) – 7 Hours of CE Credit</i></p> <p>Annual Meeting of WY-AI <i>Thursday Noon - During Lunch</i></p> <p>Annual Meeting of WY-ASFMRA <i>Thursday Noon – During Lunch</i></p> <p>Joint Social – Sponsored by WY-AI and WY-ASFMRA <i>Thursday Evening</i></p> | <p>Residential Offering 2 <u>Appraisal Institute Seminar</u> <i>“Whatever Happened To Quality Assurance: Avoiding Risky Appraisals and Risky Loans” – 7 Hours of CE Credit</i></p> <p>Non-Residential Offering 2 <i>Most Common USPAP Violations in Non-Residential Appraisals and Narrative Appraisal Reports’ – 7 Hours of CE Credit</i></p> |

Additionally, the WCREAB is working on a regulation change that would require the 7-Hour USPAP Update Course to be taken by April 1st of the year the material/changes become effective (even-numbered years).



APPRAISER—Q & A

QUESTION: What are the “boundaries/limits” for a Certified Residential Appraiser versus a Certified General Appraiser when a property is not zoned residential or is located on more than 40 acres?

ANSWER: It is possible for a Certified Residential Appraiser to perform an appraisal on a property zoned something other than residential (i.e., a house on a commercially zoned lot) or the dwelling is located on a lot consisting of greater than typical acreage. However, the Certified Residential Appraiser must determine whether the highest and best use is residential at the onset. If the highest and best use is *not* as a residential property, that is the time for the Certified Residential Appraiser to consider not continuing with the assignment and contacting the client to inform them of the likelihood the client should be hiring a Certified General Appraiser.

The appraiser should rely on their knowledge of USPAP and of the various valuation approaches when considering their qualifications for proceeding with the appraisal assignment. The WCREAB believes that the highest and best use of the subject property is the determining factor for who can perform the appraisal, not just a cut and dried zoning or acreage amount.

DISCIPLINE—APPRAISER

Sarah J. Juschka— A revocation hearing was held on June 2, 2010.

RESULT: The Wyoming Certified Real Estate Appraiser Board revoked Ms. Juschka’s Wyoming Residential Real Estate Appraiser Permit No. 552.

Laurie R. Lipp, of Wright Appraisals, Inc. in Greybull, Wyoming, was disciplined with the imposition of an administrative fine in the amount of five hundred dollars (\$500.00). The foregoing discipline was imposed for of the following violations:

- WYO. STAT. ANN. § 33-39-123(a) (iv) and CHAPTER III-CERTIFIED REAL ESTATE APPRAISER BOARD RULES AND REGULATIONS USPAP, Section 1 - for violating a rule or regulation of the board.
- Ethics Rule - Record Keeping - for failure to maintain and produce a proper work file.
- Standards Rule 1-1 – for rendering appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not affect the results of an appraisal, in the aggregate affects the credibility of those results.

DISCIPLINE—REAL ESTATE

Thomas W. Gentry, Associate Broker, formerly with ERA Advantage Real Estate, voluntarily surrendered his broker's license and will not be able to reapply for a broker's license until the year 2013 for the following violations:

- A. Wyo. Stat. Ann. § 33-28-111 (a)(i) - Substantial misrepresentations made to various lenders, guaranty agencies or other interested parties.
- B. Wyo. Stat. Ann. § 33-28-111 (a)(ii) – Violation of a Commission rule (see E. below).
- C. Wyo. Stat. Ann. § 33-28-111 (a)(x) – Failure to advise the buyer and seller of all terms of the proposed sale at the time the offer was presented.
- D. Wyo. Stat. Ann. § 33-28-111 (a)(xxx) – Misrepresentation to various lenders, guaranty agencies or other interested parties through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.
- E. Commission Rules and Regulations, Chapter II, Section 9(b)(vii) – Failure to prepare a contract for the purchase and sale of real estate that included a complete and accurate description of all contractual conditions.

Ryan Bromley, salesman with The Bromley Real Estate Company, Casper, Wyoming, was censured, and placed on probation for a period of two (2) years. He was fined \$500.00 for the following violations:

WYO. STAT. ANN. § 33-28-111 (a)(x) - Failing to advise the buyer and seller of all terms of the proposed sale at the time an offer is presented including estimated discounts and closing costs.

WYO. STAT. ANN. § 33-28-111 (a)(xx) - Failing to obtain written listing agreements identifying the property and containing all terms and conditions under which the property is to be sold including the price, the commission to be paid, the signatures of all parties concerned and a definite expiration date.

Peter W. Black, salesman with Cheek Real Estate Services LLC, Jackson, Wyoming, was placed on probation for one year. He was fined \$4,500 for the following violation:

Wyo. Stat. Ann. § 33-28-111 (a)(i) - Making any substantial misrepresentation, false promises or false or fraudulent representation.

Additionally, Respondent shall attend one 6-hour classroom course in real estate ethics and 16 hours of classroom approved real estate education by December 31, 2010. No continuing education credit will be given for these course hours.

Kevin Bromley, Broker, The Bromley Real Estate Company, Casper, Wyoming, was censured and fined \$1,000.00 for the following violations:

Wyo. Stat. Ann. § 33-28-111 (a)(ix) - Failing to supervise the activities of his associate broker or salesman.

Linda Failoni, former Broker of Castle Rock Realty, Green River, Wyoming, was censured and fined \$500.00 for the following violation:

Wyo. Stat. Ann. § 33-28-111 (a)(ix) - Failing to supervise the activities of her associate broker or salesman.

Scott Hamel, former associate broker of Castle Rock Realty, Green River, Wyoming, was censured, and placed on probation for a period of one (1) year, for the following violations:

Wyo. Stat. Ann. § 33-28-111(a)(ii)(xx) – Failure to obtain written listing agreements identifying the property and containing all terms and conditions under which the property is to be sold including the price, the commission to be paid, the signatures of all parties concerned and a definite expiration date.

Wyoming Real Estate Commission Rules and Regulations, Chapter II, Section 9 (c) – Failure to present offers and negotiate only through the listing broker unless the listing broker gives written consent to contact the principal. All offers shall be presented as expeditiously as possible.

Agent technology less important than agent honesty . . .

(WASHINGTON) - Realtor.com President Errol Samuelson is urging Realtor members to step up their use of mobile devices to respond more quickly to potential clients, pointing out that consumers often don't bother to leave messages when calling about properties seen in person or online.

At NAR's midyear meetings, Samuelson noted a recent test of agents with an online presence and potential buyers who tried to call after visiting the agent's Web site. The study found that 70 percent of consumers who got voicemail hung up without leaving a message.

During the midyear meetings it was noted, however, that only 37 percent of recent buyers believe technology skills are very important in selecting a real estate agent. Alternatively more than 80 percent said characteristics such as honesty, integrity and knowledge of the purchase process were the most important elements in a good agent.

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-- SCAMMERS ADVERTISING REAL ESTATE LISTINGS AS RENTAL PROPERTIES ON CRAIGSLIST--

The Wyoming Real Estate Commission, along with some of our neighboring states, have received calls regarding residential listings appearing fraudulently on Craigslist.com as rentals. Unfortunately, it appears this has become a popular scheme whereby scammers copy listings from the MLS and/or other public websites, and post the information on Craigslist under available housing rentals. The contact information for these bogus listings usually leads to people in foreign countries and the transactions involve wiring money.



The best defense against this scheme is public awareness. Licensees can notify Craigslist to remove the posts, file an internet crime complaint with the FBI at www.ic3.gov and most importantly, help educate the public. Urge clients and consumers alike to be cautious about real estate transactions involving the wiring of funds to a foreign country. This is a red flag for fraud.

Has Your Listing Been Stepped On Lately???

The Commission has had an increase in calls on this topic lately so I thought it might deserve a comment. Apparently some licensees are quick to ask a potential Buyer for their business. Kudos to you. The possible problem stems from asking for the business after the Buyer has informed the agent they are already working with an agent. The Commission considers Buyer's Agency Agreements and Intermediary Agency agreements listings, just like when you get and Exclusive Right To Sell Listing Contract for 123 Main St.

(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:*

(i) *Making any substantial misrepresentation, false promises or false or fraudulent representation;*

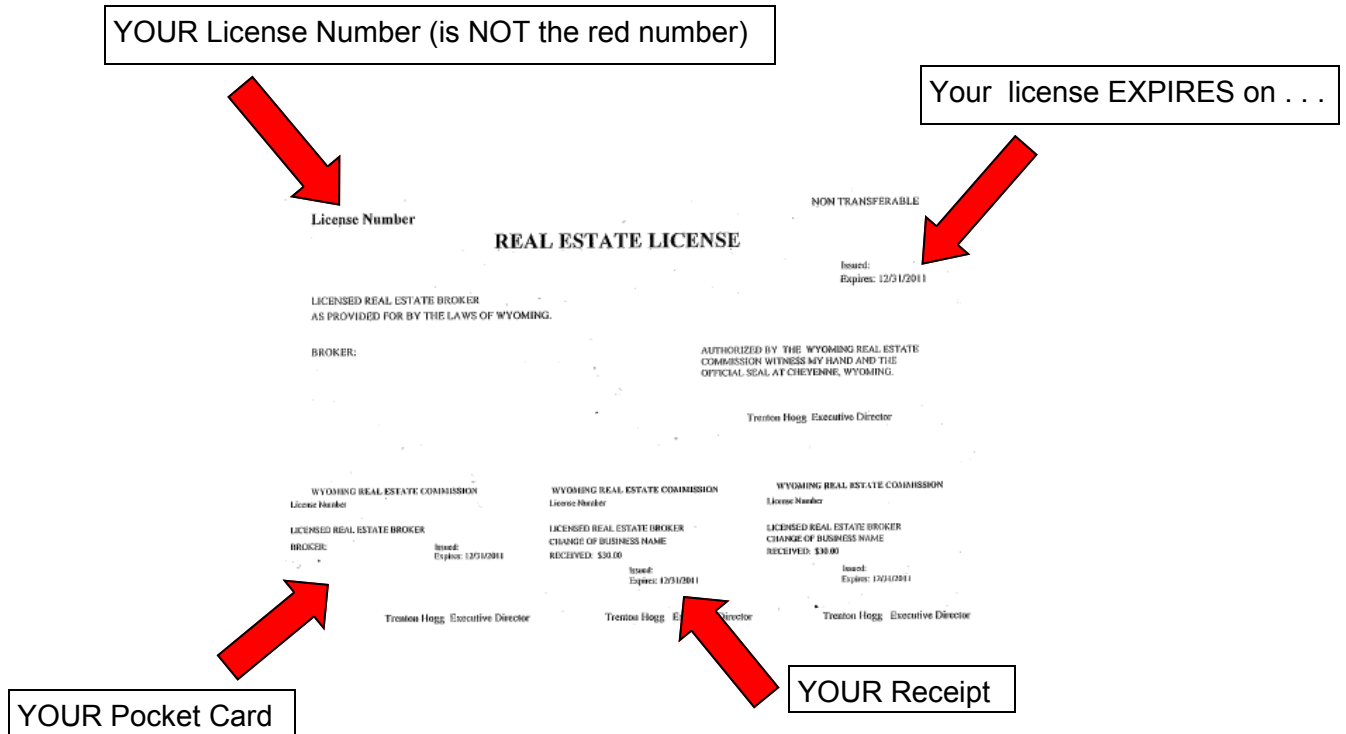
(ii) *Violation of this act or any rule of the commission;*

(iii) *Failing to disclose an interest in the transaction;*

(iv) *Soliciting the breach of a listing or a property management contract;*



Your license is valuable to you! Do you know when it expires?



Renewing This Winter???

ALL active Wyoming real estate license holders must show proof of meeting Wyoming’s continuing education requirements in order to renew **regardless of your residency.**

You will need to have certificates earned during your current license cycle for:

24 hours Required courses: **Marketplace Issues, 8 hours; Practical Applications, 8 hours; Contracting, Trust Accounting and Closing, 8 hours**); and

21 hours Electives: Continuing education credit derived from other courses approved by the Commission.

A list of the approved courses and the hours they are approved for can be found on the Commission’s website under “**Continuing Education**” at <http://realestate.state.wy.us/>

DON’T FORGET TO TRUTHFULLY ANSWER THE FOLLOWING QUESTIONS ON COMMISSION FORMS:

a. Have any of the above professional licenses ever been disciplined, suspended, revoked, or are such charges pending at this time?

b. Are any of the above professional licenses currently involved in any complaint/investigation/hearing proceedings?

Have you ever been convicted or pleaded *nolo contendere* to a felony or are such charges pending at this time? *If yes, give nature of each arrest or complaint, date, name and location of court, and disposition of each incident. If now on parole or probation, so state.*

You must still RENEW your license,
even if you choose to be INACTIVE.



INACTIVE LICENSE: When an individual’s license is placed on “inactive” status, that person may NOT engage in any activity that requires a license. An individual who continues to engage in such business is guilty of a misdemeanor and upon conviction, may be punished by a fine, imprisonment, or both.

**MISSION
STATEMENT**

REMEMBER to notify the Commission when you:

- Change your personal address
- Change your business address *
- Change your name *
- Change your email address
- Change your business telephone number
- Change firms (move from one firm to another)*
- Change your firm name *

*(*Check our website for applicable forms)*

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.

Real Estate Commission—Staff

Hogg, Executive Director

Kari Rayment, Business Office Coordinator

Kamron Ritter, Lead Investigator

Anna Rabou, Executive Secretary

UPCOMING MEETINGS:

Wyoming Real Estate Commission

September 2, 2010 at 9:00 a.m. —

2020 Carey Avenue, AARP Conference Room, Mezzanine

Cheyenne, WY 82002

Wyoming Certified Real Estate Appraiser Board

August 16, 2010 at 9:00 a.m.—

2020 Carey Avenue, AARP Conference Room, Mezzanine

Cheyenne, WY 82002