

4. There are no dimensions and no real description of the property in the report, other than as shown in the plat map attached to the report.

5. It appears that the Respondent used data that was available online through US Assessor.

6. There is no data or other verification in Respondent's appraisal or her work file .

7. The Respondent is from Chickasha and the lake house property is located near Lake Eufaula, which is a unique area.

B) 801 West Rulane Drive, Midwest City, Oklahoma

8. In March of 2016, Terry Lynn Berry ("Respondent") accepted an appraisal assignment for an appraisal (the "appraisal") for a property located at 801 West Rulane Drive, Midwest City, Oklahoma (the "subject 2"). Respondent listed that the report was for Patti Kilgo ("client"). The report was transmitted to the client, with an effective date of April 2015. The appraisal's use was for a divorce proceeding.

9. Respondent committed a series of errors in the report which led to an erroneous report.

10. The effective date of Respondent's appraisal is "April 2015," that the better practice is to include a specific date including day of the month.

11. Respondent does not define her neighborhood except for "2 miles in each direction" which is vague at best, the best practice is to include names of subdivisions or the street names that bound the neighborhood.

12. Respondent does not make adjustments for 1 1/2 v. 2 bathrooms; comparable #1 is a short sale; comparable #2 was sold, remodeled and then sold again in March of 2015 for \$58,000. There is no discussion of this.

13. Comparable #2 was also a rental property at the time of sale, yet Respondent states that the subject is a "single family dwelling so income approach is not feasible. In reality, the subject was a rental as was comparable #2; however, Respondent states that the subject property was not in condition to be rented as it was not habitable.

14. The subject is near Rose State College which is a high rental area and there is plenty of rental information available.

15. Regarding her comparables, she goes out as far as 3 miles away, yet there were 15 sales found within a half mile, that sold between \$40,000 and \$65,000.

AGREED VIOLATIONS OF LAW

1. That Respondent has violated 59 O.S. § 858-723(C)(6) through 59 O.S. §858- 726, in that Respondent violated:

A) The Ethics Rule and the Conduct Section of the Uniform Standards of Professional Appraisal Practice Ethics Rule;

B) The Competency Rule of the Uniform Standards of Professional Appraisal Practice;

C) The Scope of Work Rule of the Uniform Standards of Professional Appraisal Practice;

D) Standard 1, Standards Rules 1-1, 1-2, 1-3, 1-4, and 1-6; Standard 2, Standards Rules 2-1, and 2-2 of the Uniform Standards of Professional Appraisal Practice. These include the sub sections of the referenced rules.

2. That Respondent has violated 59 O.S. § 858-723(C)(7): "Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal."

3. That Respondent has violated 59 O.S. § 858-723(C)(8): "Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal."

CONSENT AGREEMENT

The Respondent, by affixing her signature hereto, acknowledges:

1. That Respondent has been advised to seek the advice of counsel prior to signing this document,

2. That Respondent possesses the following rights among others:

- a. the right to a formal fact finding hearing before a disciplinary panel of the Board;
- b. the right to a reasonable notice of said hearing;
- c. the right to be represented by counsel;
- d. the right to compel the testimony of witnesses;

- e. the right to cross-examine witnesses against him; and
- f. the right to obtain judicial review of the final decision of the Board.

3. The Respondent stipulates to the facts as set forth above and specifically waives her right to contest these findings in any subsequent proceedings before the Board and to appeal this matter to the District Court.

4. The Respondent consents to the entry of this Order affecting her professional practice of real estate appraising in the State of Oklahoma.

5. The Respondent agrees and consents that this Consent Order shall not be used by her for purposes of defending any other action initiated by the Board regardless of the date of the appraisal.

6. All other original allegations in this matter are dismissed.

7. All parties to this Consent Agreement have been represented by counsel.

8. Each party shall bear its own costs and attorneys' fees in connection with the above-captioned Action and this Consent Agreement.

9. This Agreement may be executed in one or more counterparts, but all of such counterparts, taken together, shall constitute only one Agreement. When delivered to the other party, facsimile and visual digital reproductions of original signatures shall be effective the same as if they were the originals.

10. The undersigned Respondent agrees that presentation of this Settlement Agreement to the OREAB without the undersigned Respondent being present shall not constitute an improper *ex parte* communication between the OREAB and its counsel.

11. The Parties represent and warrant to one another that each party has authority to enter into this binding Consent Agreement. The OREAB represents and warrants that the

undersigned has full authority to execute this Consent Agreement on behalf of the OREAB and bind the OREAB to the terms set forth herein.

12. It is hereby agreed between the parties that this Consent Agreement shall be presented to the Board with recommendation for approval of the Board at the next scheduled meeting of the Board. The Respondent understands that the Board is free to accept or reject this Consent Agreement and, if rejected by the Board, a formal hearing on the complaint may be held. If the Board does not accept the Consent Agreement, it shall be regarded as null and void. Admissions by Respondent in the Consent Agreement will not be regarded as evidence against her at the subsequent disciplinary hearing. Respondent will be free to defend herself and no inferences will be made from her willingness to have entered this agreement. It is agreed that neither the presentation of the Consent Agreement nor the Board's consideration of the Consent Agreement will be deemed to have unfairly or illegally prejudiced the Board or its individual members and therefore will not be grounds for precluding the Board or any individual Board member from further participation in proceedings related to the matters set forth in the Consent Agreement in the event that the Settlement Agreement is not accepted by the Board. If the Consent Agreement is accepted by the Board, the Board will take no further action in prosecuting the above-captioned action.

ORDER

WHEREFORE, on the basis of the foregoing Agreed Findings of Fact and Agreed Conclusions of Law, it is ordered that Respondent TERRY BERRY:

1. Shall complete the following courses, which can be taken in person or on-line, said education shall be completed within ninety (90) days after the approval of this Order: a)

Course #600: National USPAP – 15 hours – no continuing education will be received;

b) Residential Sales Comparison and Income Approach – 30 hours – which can be taken online if available and Respondent will receive continuing education credit for this class; and

c) Advanced Residential Applications & Case Studies – 15 hours - which can be taken online if available and Respondent will receive continuing education credit for this class.

2. Respondent shall provide the OREAB office proof of completion of the courses within ninety (90) days of this Order's effective date (which will begin upon receipt of the Order's approval from the Oklahoma Attorney General's Office).

DISCLOSURE

Pursuant to the Oklahoma Open Records Act, 51 O.S. §§24-A.1 – 24A.21, the signed original of this Consent Order shall remain in the custody of the Board as a public record and shall be made available for public inspection and copying upon request.

FUTURE VIOLATIONS

In the event the Respondent fails to comply with any of the terms and conditions of this Consent Order, Respondent will be ordered to show cause for his failure to comply which could result in additional penalties.

RESPONDENT:


TERRY BERRY

07-27-17
DATE

Odell Campbell

ODELL CAMPBELL, COUNSEL FOR TERRY
BERRY

August 2, 2017

DATE

CERTIFICATE OF BOARD PROSECUTING ATTORNEY

I believe this Consent Order to be in the best interests of the Oklahoma Real Estate Appraiser Board, the State of Oklahoma and the Respondent with regard to the violations alleged in the formal Complaint.



STEPHEN MCCALED, OBA #15649
Board Prosecutor
3625 NW 56th Street, Suite 100
Oklahoma City, Oklahoma 73112



DATE

IT IS SO ORDERED on this 2nd day of August, 2017.



ERIC SCHOEN, Board Secretary
Oklahoma Real Estate Appraiser Board

**OKLAHOMA REAL ESTATE
APPRAISER BOARD**

By:



BRYAN NEAL, OBA #6590
Assistant Attorney General
Attorney for the Board
313 NE 21st Street
Oklahoma City, Oklahoma

73105

CERTIFICATE OF MAILING

I, Christine McEntire, hereby certify that on the 25th day of August, 2017 a true and correct copy of the above and foregoing Consent Order was placed in the U.S. Mail, with postage pre-paid, by certified mail, return receipt requested to:

Odell D. Campbell

The Campbell Law Firm

4920 N. Meridian Avenue, Suite C

Oklahoma City, OK 73112

Counsel for the Respondent, Terry L. Berry

7016 3010 0000 2706 6902

and that copies were forwarded by first class mail, interagency mail or hand delivery to the following:

Bryan Neal, Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL

313 N.E. 21st Street

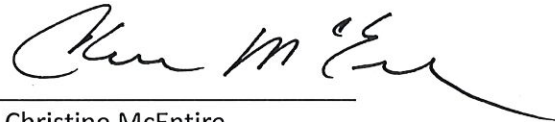
Oklahoma City, OK 73105

Stephen L. McCaleb

DERRYBERRY & NAIFEH

4800 N. Lincoln Boulevard

Oklahoma City, OK 73105



Christine McEntire



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

RECEIVED
OKLAHOMA INSURANCE DEPT.

AUG 24 2017

Real Estate Appraiser Board

ATTORNEY GENERAL OPINION
2017-651A

Christine McEntire, Director
Oklahoma Real Estate Appraiser Board
3625 N.W. 56th St., Ste. 100
Oklahoma City, OK 73112

August 24, 2017

Dear Director McEntire:

This office has received your request for a written Attorney General Opinion regarding agency action that the Oklahoma Real Estate Appraiser Board intends to take pursuant to a consent agreement with licensee 11089CGA in Board Complaint 16-029. The proposed action is to require the licensee to complete three education courses to include a 15-hour National Uniform Standards of Professional Appraisal Practice ("USPAP") course; a 30-hour Residential Sales Comparisons and Income Approach course; and a 15 hour Advanced Residential Application & Case Studies course. The education courses are required to be completed within 90 days of the effective date of the consent order in this case.

In this case, the licensee produced two appraisal reports on two different pieces of property prepared as part of a divorce proceeding. One of the reports was an appraisal report on a Midwest City residence. The second was an appraisal report on a lake house near Lake Eufaula. One of the property owners filed a complaint regarding these appraisal reports. The complaint, in pertinent part, alleged that the appraisal report on the Midwest City residence had multiple issues which created a misleading appraisal and an unreliable value. As to the appraisal report for the Lake Eufaula property, the complaint, in pertinent part, alleged that the licensee relied on online data through the U.S. Assessor, did not utilize MLS, did not perform any due diligence, and was not geographically competent to perform this appraisal. The licensee has signed a Consent Order in this case.

The Oklahoma Certified Real Estate Appraisers Act, 59 O.S.2011 & Supp.2016, §§ 858-700 – 858-732, authorizes the Oklahoma Real Estate Appraiser Board to discipline licensees based on the "[f]ailure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal" and/or "[n]egligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal." 59 O.S.Supp.2016, § 858-723(C)(7),(8). The Act also requires adherence to the "current edition of" the Uniform Standards of Professional Appraisal Practice, which is the 2016-2017 edition. 59 O.S.2011, § 858-726.

The USPAP contains professional requirements pertaining to ethics, competency, and scope of work. See ETHICS RULE, USPAP-8 (requiring compliance with USPAP standards); COMPETENCY RULE, USPAP-12 (requiring appraisers to be competent to perform assignment or acquire necessary competency); and SCOPE OF WORK RULE, USPAP-14 (requiring appraiser to perform scope of work necessary to develop credible results and disclose such information in the appraisal report). USPAP also contains standards such as Standard 1, which requires the appraiser to “complete research and analyses necessary to produce a credible appraisal.” USPAP-17. Components of Standard 1 clarify that this means the appraiser must employ proper valuation techniques, identify the effective date of the appraiser’s opinions and conclusions, identify relevant characteristics of the property, avoid making unsupported assumptions when developing a market value opinion, analyze relevant factors, and reconcile data and approaches used to arrive at a value conclusion. USPAP-17, 18, 19, 20, 21. Further, Standard 2 requires that appraisal reports communicate all analyses, opinions, and conclusions clearly and accurately and to summarize the information sufficient to identify the real estate involved in the appraisal. USPAP-22, 23, 24, 25, 26, 27. The action seeks to enforce requirements of professionalism embodied in the Act and in the USPAP. The Board may reasonably believe that the disciplinary action is necessary to prevent future violations.

It is, therefore, the official opinion of the Attorney General that the Oklahoma Real Estate Appraiser Board has adequate support for the conclusion that this action advances the State of Oklahoma’s policy to uphold standards of competency and professionalism among real estate appraisers.



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA



RYAN CHAFFIN
DEPUTY CHIEF – ASSISTANT ATTORNEY GENERAL