

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE APPRAISERS BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
QUINLAN D. THOMAS,	:	LS0306182APP
RESPONDENT.	:	

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Division of Enforcement Case Nos. 96 APP 013 and 01 APP 027 (94 APP 038)

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Quinlan D. Thomas  
2623 Cty AA  
Chetek, WI 54728

Division of Business Licensure & Regulation  
Real Estate Appraisers Board  
P.O. Box 8935  
Madison, WI 53708 8935

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708 8935

The parties in these matters agree to the terms and conditions of the attached Stipulation as the final decision of these matters, subject to the approval of the Real Estate Appraisers Board (Board). The Board has reviewed the stipulation agreement annexed to this Final Decision and Order, and considers it acceptable. Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Quinlan D. Thomas (Thomas) of 2623 Cty AA, Chetek, WI 54728, is and was at all time material to the complaints, licensed as a Licensed Real Estate Appraiser (#118 4) and has been so licensed under the provisions of ch. 458, Wis. Stats., since June 9, 1992.

2. Complaint #94 APP 038 was consolidated into the subject complaint 96 APP 013. All three (3) subject complaints involve the same or similar- substantive allegations and violations.

94 APP 038

3. This subject complaint was filed with the Department by the Federal Deposit Insurance Corporation (FDIC), Division of Supervision, Exhibit "A" attached hereto, which indicated in pertinent part that:

"Pursuant to requirements of Section 1119(c) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, I hereby advise you that an examination of Security Bank, P.O. Box 278, New Auburn, Wisconsin as of March 31, 1994 disclosed actions of Mr. Quinlan D. Thomas, a licensed appraiser by the State of Wisconsin's Department of Regulation and Licensing, that may be contrary to the purposes of the title. The appraiser appears not to have complied with the qualification restrictions and standard rules 1 and 2 of USPAP, and thus Part 323 of the FDIC's Rules and Regulations pertaining to Real estate appraisals.

The appraiser appears to have breached the qualification restrictions of USPAP and federal financial institution appraisal regulations by accepting an assignment for which he is not qualified. By regulation, the appraisal in question required the services of state certified appraiser as it is a nonresidential transaction over \$250,000, and the appraiser is only licensed. In addition, the appraisal does not meet the minimum requirements established in Standards 1 and 2 of USPAP. The appraisal is on a real estate development whereby a parcel of land is being improved and subdivided into lots for sale. The appraisal includes only a market comparison approach to value, using as comparison only properties sold within the development and disclosing no terms of any comparable sales. No reasonable marketing period for the property or any market conditions which might affect projected income or the absorption period are analyzed or reported. No discounts or deductions were made for any proposed or necessary construction. The project was appraised on an 'as-developed' basis. No value was assigned on an 'as though vacant and available for development' basis even though the majority of the property being appraised consisted of yet to be improved raw land, which according to the appraisal was not yet surveyed. At a minimum, the appraisal does not contain sufficient supporting documentation so that the appraiser's logic, reasoning, judgment, and analysis can be fully scrutinized as required by USPAP and the regulation. In addition, no required certification was made in the appraisal stating the appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or approval of the loan. These deficiencies appear to have resulted in a significantly overstated value for this project."

4. Respondent responded to the allegations and admitted in pertinent part, Exhibit "A1" attached hereto, that:

"I was hired by Thousand Lakes Realty to prepare an appraisal of the property for their uses. I was at the time and I am presently licensed to do residential appraisals up to one million dollars, and commercial appraisals up to two hundred and fifty thousand dollars. I reviewed the data as was necessary to come up with my figures and after three or four days, I discovered that the appraisal was, in fact, in excess of a million dollars. Nevertheless, I proceeded with the final figures for Thousand Lakes Realty. It was only after I came up with the bottom line figure that I learned that the New Auburn Bank would be involved, specifically with a commercial loan, which would mean that I was far in excess of (as opposed to being slightly over) those license restrictions when the appraisal was considered to be residential property. Had I known from the beginning that the property was to be considered for a commercial loan, I would have realized that I would have been far in excess of my license restrictions and would not have accepted the work.

I also wish to address the FDIC objections that the property was appraised on a developed basis only. Thousand Lakes Realty requested the appraisal be on a fully developed basis and that is the information I had when I developed my background notes for the appraisal. At no time was I made aware of the need for a discounted appraisal.

In addition, I did not use a marketing period for the property because I did not know what the timetable for development was, if any, therefore I felt a marketing period was unknown and irrelevant to the appraisal."

5. Respondent subsequently added in pertinent part:

"The sole notes that I had regarding the appraisal were in rough draft form and they were destroyed once the final draft was completed . . .

. . . I was first contacted by the realtor involved . . . they asked me if I could do an appraisal for them on the subject property which they needed as soon as possible . . . which I ended up doing. After I added all the numbers I discovered that the total amount was, in fact, in excess of the amount allowed by my license . . . As I had my time invested . . . I submitted my appraisal to them. Approximately a month later, I was contacted by the realtor at which time they explained to me that the New Auburn Bank would be involved, and they asked that the heading be changed to reflect that fact, which it was . . .

. . . Being merely a residential and single family appraiser, I have never developed a discount appraisal. All of my previous appraisals have been for present values. However, I would submit to you that a discounted appraisal not only discounts the present value but also the present costs of developing the parcels in question. But here again, solely as a single family real estate appraiser, I am not aware of the true distinction between a discounted appraisal and a full developed appraisal."

6. The then case advisor assigned to the subject complaint reviewed Respondent's subject appraisal and other appraisal reports for compliance with USPAP, and Wisconsin law, and concluded in pertinent part:

"I have now reviewed the appraisal submitted by Quinlan Thomas of Two Bear Lake. The complaint is that the appraiser did not meet the Competency Provision of USPAP and also violated Standards 1 and 2 of USPAP in appraising a proposed residential subdivision, not applying property appraisal techniques recognized in the industry or required under current FIRREA regulations.

It is very apparent to me that the alleged complaint is totally accurate. Mr. Thomas, first of all, does not disclose required steps necessary to prove his competency as outlined in USPAP. It is apparent further that he lacks the experience to do such. The appraiser should be asked to provide why he is competent to appraise such property in written form by the Department. If in fact he has never appraised such property in the past, he should have received guidance or advised his client."

"The appraisals lack many proper techniques which include,

- 1) No documentation was ever provided that there is actually 700+ acres in appraised tract.
- 2) No highest and best use analysis other than a boiler plate definition of highest and best use from a plagiarized text found in the addendum (which is not even labeled). Only on Page 4.1 is a phrase which indicates, 'the highest and best use for the subject would be it's present use.' This, first of all, is an inaccurate statement since the present use is an undeveloped tract and there is total lack of support for this conclusion. Standard 2-1 (i).
- 3) Page 4 says that Rusk County is not zoned, yet indicates the subject property is zoned Residential.

- 4) Many violations of Standard 2 2 including lack of purpose of the appraisal, scope, incorrect definition of market value (fair market value), no explanation of valuation approaches used or lack of utilization of certain valuation approaches.
- 5) Appraiser provided misleading report by estimating gross potential sale prices of sites without appropriate discounting for time to sell, sales costs and other soft and hard costs involved in marketing the subject property. The subject property is a proposed residential subdivision with an apparent 200+ lots (although I was never able to exactly determine this anywhere in the appraisal). Violation of both Standard 1 1 (a) and (b) and FIRREA.
- 6) Appraiser has not maintained either the appraisal or field notes in his file for at least five years. Appraiser apparently destroyed both the appraisal and records for what reasons? Other appraisals requested from him were also not available. Management Provision of USPAP."

#### "Conclusion

"The appraiser has made a very serious violation of USPAP and whether he did or not, could have caused a great deal of damage to the public if the lender would have made the loan based upon a loan to value ratio of a very inflated value as a result of use of improper valuation techniques.

The appraiser has also violated several other standards and provisions of USPAP which are of great concern. Further, the appraiser performed an appraisal which is beyond his competency and above the allowable transaction value for being only a licensed appraiser, which cannot exceed \$250,000 based upon his estimate of market value, whether it is accurate or not.

Finally, I have reviewed the other appraisals submitted by Mr. Thomas and also find significant omissions and errors. For instance, on 20 1/4 Avenue in Rice Lake, comparables are listed as in average condition compared to the subject's new condition but no adjustment made. Comparables have statements such as (2) lots and 131 feet of frontage yet no support. The adjustment of #16 per square foot for size is not consistent with cost new of \$45 per square foot. No discussion of sales lack of use of the income approach was found. How could any improvements as the subject be new but in average condition?

Lot 37 Two Bear Lake has two comparables with the same amount of lake frontage yet a -\$10,000 adjustment was made."

#### 96 APP 013

7. The Department also received this second complaint against Respondent from FDIC, Exhibit "B" attached hereto, which alleged in pertinent part:

"Pursuant to requirements of Section 1119(c) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, I hereby advise you that an examination of Banner Bank, 312 Maple Street, Birnamwood, Wisconsin on March 1, 1996 disclosed an action of an appraiser, Quinlan Thomas #118, that may be contrary to the purposes of the title. The state certified appraiser appears not to have complied with Uniform Standards of Professional Appraisal Practice (USPAP) numbers 1 and 2.

The appraisals are on eleven vacant lots in various subdivisions with each done individually. These lots are owned by the developer with the appraisal ordered by the developer for the bank. The appraisals only utilize direct sales comparison of lots within the same subdivision or other subdivisions owned by the same developer. The appraisals do not disclose this limited pool of comparable transactions. When contacting the appropriate Register of Deeds officer to verify the sale information, in many instances, the date of recordation is substantially different than the sale date on the appraisal or the sale disclosed was actually the sale 'to' American Investment Company but the price disclosed is consistent with the sale 'from' American Investment Company. These properties are located in rural counties and would not have a significant 'lag' in its recording time. In addition, no adjustments have been made to reflect marketing periods, or for the impact of financing arranged or provided by the developer. These factors result in values being assigned that may be misleading.

The FDIC has notified Dennis Blakely, President, Banner Banks, 312 Maple Street, Birnamwood, Wisconsin (715)449 2556 of the apparent violation of USPAP and that your agency may contact the bank for further information."

8. Respondent's attorney responded on his behalf, and indicated in pertinent part:

". . . I will respond to the allegations contained in Mr. Daryl P. Stum's letter in the order in which he lists them.

1. Mr. Stum says that the comparable sales were limited to lots within the subdivision and of the subdivision which were owned by the same developer and this fact was not disclosed. Mr. Thomas' failure to disclose this fact was an oversight on his part. He has since corrected his office and appraisal procedures so that this type of situation will not occur in the future.
2. Mr. Stum states that some recording dates were substantially different from the sale date on the appraisal. In this case, Mr. Thomas used the closing date. In checking with American Investment Company, it is his understanding that some of the documents are not immediately recorded, which would account for the difference.
3. Mr. Stum states that the sales disclosed were actually to American Investment Company but the price is consistent with the sale from American Investment Company. Mr. Thomas argues that these comparables are still appropriate and, as a matter of fact, any use of a sale to American Investment Company instead of from American Investment Company would militate against the increase in the value rather than a decrease, thus, presenting a more conservative figure.
4. Mr. Stum says no adjustments were made to reflect different market periods. Mr. Thomas feels no adjustment is necessary due to the lack of sales activity and the fact that the market had not changed over the period of the comparables used.
5. Finally, Mr. Stum states that the impact of financing by the developer was not discussed. The developer does not finance any of the sales made, thus it is not necessary to enter into that discussion.

I also enclose documents from Mr. Thomas relative to his appraisal of the property."

9. The Department received Exhibit "C" attached hereto, a third complaint filed against Respondent by FDIC, with referenced exhibits, which alleged:

"Pursuant to the requirements of Section 119(c) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, I hereby advise you that an examination of Banner Banks, 416 Main Street, Birnamwood, Wisconsin, on August 13, 2001, disclosed an action of an appraiser, Quinlan D. Thomas #118, that may be contrary to the purposes of the title. The state licensed appraiser appears not to have complied with standards 1 and 2 of the Uniform Standards of Professional Appraisal Practice (USPAP).

The appraisals reflect the following deficiencies and related noncompliance with USPAP:

**Use of comparable sales transactions that are not arm's length (USPAP Standards Rules 1-1(b) and 1-4(a)).**

*"In all instances, the appraiser relies on or exclusively uses prior land sales involving the borrower (Secluded Land Company, LLC) for comparables, and in many instances, these sales transactions are significantly out of area. The appraiser fails to disclose why market conditions result in the necessity to use non-arm's length sales transactions.*

*"Refer to Exhibits 1 through 7 a.*

**Provides undiscounted value conclusions and fails to reflect appropriate deductions and discounts for a tract development appraisal (USPAP Standards Rules 1-4(e) and 1-4(h)).**

*In all instances of tract development/multiple lot valuations, the appraiser fails to report and consider holding and developmental costs, and incorporate appropriate discount factors.*

*Refer to exhibits 1, 2, 2 a, 4, 4 a, 6, 6 a, 7, and 7 a. Note that exhibits 3 and 5 represent land acquisition by Secluded Land Company, LLC, and precede tract development financing.*

Reports the sum of retail values for units in a tract development as representing the market value of the whole property (USPAP Standards Rules 1-1(a) and 1-4(e)).

*"In all but one instance of tract development/multiple lot valuations, the appraiser directly avoids this by virtue of preparing separate appraisals for each lot. Indirectly, however, the effect to the institution is the reporting of the sum of values of the tract development as representing the market value of the whole property.*

*Refer to exhibits 2, 2 a, 4, 4 a, 6, 6 a, 7, and 7 a.*

Fails to disclose and analyze prior sales activity (USPAP Standards Rules 1-1(b) and 1-5(b)).

*In all instances, the appraisals fail to disclose and analyze prior sales activity.*

*Refer to exhibits 1 through 7 a.*

Reconciliation of final appraised market value is not clear (USPAP Standards Rules 2-1(a) and 2-1(b)).

*In two instances, it is not clear how the appraiser reconciled or obtained a final value conclusion.*

*Refer to exhibits 1 and 5.*

Information pertaining to attached exhibits: Exhibits 2, 4, 6, and 7 represent appraisals for multiple lot/tract developments. The total number of lots and appraisals performed for these developments are as follows:

Exhibit 2 – 19 lots and separate appraisals

Exhibit 4 – 5 lots and separate appraisals

Exhibit 6 – 7 lots and separate appraisals

Exhibit 7 – 6 lots and separate appraisals

One additional appraisal was obtained for each development, which are listed as exhibits 2 a, 4 a, 6 a, and 7 a respectively. As each appraisal demonstrated identical weaknesses, additional copies were not obtained.”

10. The Department hired a Certified General Appraiser expert, with MAI and SRA designations from the Appraisal Institute, and previous chair and member of the Appraiser Qualification Board of the Appraisal Foundation, to review the subject complaints respectively, along with all related documentation for reviews for compliance or non compliance with USPAP, and Wisconsin appraisal related laws.

#### CONCLUSIONS OF LAW

1. The Real Estate Appraisers Board has jurisdiction to act in these matters pursuant to sec. 458.26, Wis. Stats.

2. The Wisconsin Real Estate Appraisers Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

3. Respondent neither admits nor denies the allegations, but in resolution of the captioned matters, agrees to and stipulate to the following:

#### 94 APP 038

4. Per the expert’s review, he concluded per Exhibit “D,” attached hereto, his “Field Review” dated July 23, 2002, that Respondent had variously violated those enumerated violations cited therein.

#### 96 APP 013

5. Per the expert’s review, he concluded per Exhibit “E,” attached hereto, his “Field Review” dated July 30, 2002, that Respondent had variously violated those enumerated violations cited therein.

6. Per the expert's review, he concluded per Exhibit "F," attached hereto, his "Field Review" dated February 18, 2003, that Respondent had variously violated those enumerated violations cited therein.

7. As a result of the above enumerated violations, Respondent is deemed to have variously violated, and/or engaged in a pattern of violations of:

1. S. 458.16(1) (2), Stats. Use of certificate number and title.

2. S. 458.18, Stats. Maintenance of records.

3. S. 458.19, Stats. Requirements for appraisal reports.

a. Respondent has variously violated, and/or engaged in a pattern of violations of secs. 458.26(3)(b) (c), (e), (i), Stats.:

(b) Engaged in unprofessional or unethical conduct in violation of rules promulgated under sec. 458.24.

(c) Engaged in conduct while practicing as an appraiser which evidences a lack of knowledge or ability to apply professional principles or skills.

(e) Advertised in a manner that is false, deceptive or misleading.

(i) Violated this chapter or any rule promulgated under this chapter.

b. Respondent has variously violated, and/or engaged in a pattern of violations of secs. RL 86.01(1) (2), (4) (6), Wis. Adm. Code:

(1) Certified and licensed appraisers shall comply with the standards of practice established by ch. 458, Stats., and chs. RL 82 to 86 and the standards set forth in Appendix 1 (USPAP).

(2) All appraisals performed in conjunction with federal related transactions and non federal related transactions shall conform to the uniform standards of professional appraisal practice.

(4) A licensed appraiser who is not certified under s.458.06, stats., shall not use the title "Wisconsin licensed appraiser" on any appraisal report

or agreement, except in conjunction with an appraisal performed within the scope of appraisal practice of a licensed appraiser as specified in s. RL 81.04.

- (5) Certified and licensed appraisers shall not knowingly omit, understate, misrepresent or conceal material facts in their appraisals.
  - (6) A certified or licensed appraiser shall not offer to perform nor perform, services which he or she is not competent to perform through education or experience.
- c. Respondent has variously violated, and/or engaged in a pattern of violations of sec. "Conduct" of the Ethic provisions of USPAP:

#### Conduct

An appraiser must perform ethically and competently in accordance with the standards and not engage in conduct that is unlawful, unethical, or improper. An appraiser who could reasonably be perceived to act as a disinterested third party in rendering an unbiased appraisal, review, or consulting service must perform assignments with impartiality, objectivity, and independence and without accommodation of personal interest.

All enumerated violations are not inclusive. See generally, Exhibits "D F," expert's "Field Reviews" attached hereto.

#### ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. Respondent Quinlan Thomas is reprimanded; shall pay a forfeiture in the amount of \$1,000.00; shall pay experts fees of \$4,536.25; and his license as a licensed appraiser is limited to precluding his performing commercial real estate and residential tract development project appraisals for a minimal period of one (1) calendar year (e.g., rural vacant lots/undeveloped tracts/vacant lots in subdivisions/parcels of land being improved and subdivided into lots for sale, all regarding the type of subject appraisals which are the subjects of the subject complaints (See generally "Statement On appraisal Standard No. 10 (SMT 10)).

Additionally, Respondent is prohibited from performing commercial appraisals (The types which are the subjects of the subjects complaints) for American Investment Company, Secluded Land Company, LLC, or Thousand Lake Realty, and or for any of their affiliates or subsidiaries, until/unless he is granted such permission from the Board.

2. Additionally, Respondent shall take and successfully complete a minimum of seven (7) hours of USPAP education approved by the department relating to performing commercial real estate and residential tract development projects appraisals (see paragraph #1 supra), which shall not count or be credited toward his required continuing education.

3. On or before the expiration of the one (1) calendar year, and prior to the lifting of limitations on Respondent's license as a licensed appraiser, he must petition the Board and demonstrate to the Board's satisfaction that he is capable of practicing as a Licensed Appraiser in a manner that safeguard the interest of

the public; and demonstrate competency to perform the subject appraisals which are the subject of the complaints, which competency can be demonstrated in part by working under the supervision of a Certified General Appraiser while performing such appraisals.

4. If Respondent performs such appraisals under the supervision of a Certified General Appraiser, then a roster of such appraisals performed by Respondent under the supervision of a Certified General Appraiser, shall be provided to the Department Monitor – hereinafter – for a selection of a random sample of three or more appraisal reports for compliance reviews of USPAP; along with a letter from the supervising appraiser, that in his/her opinion, Respondent is competent to independently perform such appraisals.

5. If, after the Board or its designee reviews appraisals performed by Respondent under the supervision of a Certified General Appraiser, are not per USPAP, then Respondent’s limitations on his license as a licensed appraiser may be ordered to remain limited, or the Board may impose other limitations.

6. If the Board or its designee concludes that Respondent’s subject appraisals complies with USPAP, and lifts the subject limitations and/or allows him to independently commence doing the subject types of appraisals, if Respondent commences doing the subject type of appraisals independently, he shall submit the first three appraisal products to the Department Monitor at the time of completing the appraisal reports, for USPAP’s compliance reviews.

7. If, after Respondent commences doing the subject type of appraisals independently, the Board determines his appraisals are not per USPAP, then Respondent’s license as a licensed appraiser may be permanently limited regarding the subject type of appraisal; or the Board may take other appropriate disciplinary action.

8. Any failures to comply with the terms of the Stipulation and the Board’s Order are grounds for further discipline.

9. No later than 10 days after the effective date of the Board’s Order, Respondent shall submit his licensed appraiser’s licenses previously issued to him to the Department Monitor, at which time he will be issued a limited license consistent with the terms of the Order. (The effective date of the Board’s Order is the date of signing the Final Decision and Order by the Board’s chair or his designee.)

Monitor  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708 8935

10. The payments of the \$4,536.25 expert’s fees, and \$1,000.00 forfeiture shall be payable by cashier’s check or money order made payable to the Department of Regulation and Licensing, and submitted to the Department’s Monitor, supra, and shall be paid within six (6) months of the effective date of the Board’s Order adopting the stipulation agreement (place case #96 APP 013 on check or money order and words “forfeiture” and/or “costs”).

11. If Respondent shall fail to pay the expert’s fees or forfeiture, or to take and successfully complete the seven (7) hours of USPAP as ordered, or fails to obtain a written extension from the Board to pay or complete same, then he shall be considered to be in violation of the Board’s Order and may be subjected to further discipline.

- a. The Department of Regulation and Licensing, pursuant to sec. 458.26(5), Wis. Stats., reserves the right to appeal the Board's Final Decision and Order.

REAL ESTATE APPRAISERS BOARD

By: La Marr Franklin

6/18/03

On Behalf of the Board

Date