

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
DANIEL B. TRUAX,	:	
RESPONDENT.	:	LS0510197APP

Division of Enforcement Case No. 02 APP 055

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Daniel B. Truax
RR 4, Box 291
Black River Falls, WI 54615

Wisconsin Real Estate Appraiser's Board
P.O. Box 8935
Madison, WI 53708

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Real Estate Appraisers Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Daniel B. Truax, (DOB 06/22/76), is duly licensed as a real estate appraiser in the state of Wisconsin having license # 4-1334, which was first granted on 11/06/00.
2. Truax's most recent address on file with the Wisconsin Department of Regulation and Licensing is RR 4 Box 291, Black River Falls, WI 54615.
3. On or about September 4, 2002, the U.S. Department of Housing and Urban Development (HUD) notified Truax that he would be removed from the FHA Appraiser Roster for a period of one year and that he would be required to successfully complete an education course on completing appraisals for FHA insuring in order to be reinstated. The removal from the FHA Appraisal Roster and the requirement for remedial education were due to deficiencies discovered during a field review of the appraisals Truax completed on fourteen properties located in Kenosha and Racine, Wisconsin.
4. HUD described the deficiencies in Truax's appraisals as follows:

Failure to identify and analyze sales concessions of the subject property per HUD Handbook 4150.2, paragraph 5-1(a), and Appendix D, Section 1.

Six appraisals failed to identify sales concessions for the subject property in the "Subject" section of the

appraisal report and to analyze their effect on value. HUD guidelines require the appraiser to “provide the agreed-on sales price, (accepted offer) date of sale, and all financial terms implicit in the offer and the pending sales contract. If the appraiser is unable to obtain this information, he should document all efforts to do so. If sales concessions are indicated, the appraiser should comment on any consequent effect on value.”

Failure to properly verify comparable sales data required by HUD Handbook 4150.2, paragraph 4-6 (A-8).

“In all 14 reports reviewed, the appraisals failed to properly verify the sales data according to HUD requirements. The only verification noted on all reports was the ‘MLS and/or Assessor.’ HUD guidelines state: ‘The appraiser must verify sales information with the buyer, the seller or one of their representatives (broker, lender, lawyer, etc.) If the sale cannot be verified with someone who has first-hand knowledge of the transaction, use public records. The appraiser must clearly state how the sale was verified and to what extent. Do not use or rely heavily on any sale that was not verified with an involved party or one of the representatives because *concessions have become more common in the market.*’ Verification only through the local MLS and/or Assessor does not comply with HUD guidelines. FHA computer records indicate that several of the comparables used in these reports may have sold with seller concessions.”

Failure to adequately support the use of Market Condition (Time) adjustments.

“HUD requires the appraiser to explain the rationale for all adjustments and keep the supporting documentation in his file. The appraiser is also required to account for all differences between the subject property and each comparable sale that could have an effect on market value. In five . . . reports, the appraiser used time adjustments on one or more comparables with sales data in excess of six months. In each report, the final estimate of value for the subject property would either not be supported or be weakly supported without use of these adjustments.

However, in the other nine reports reviewed, one or more comparables also had sales dates exceeding six months and no time adjustments were used. This inconsistent use of a market condition adjustment does not comply with HUD guidelines or USPAP regulations. If a time of adjustment is justified, it should be applied equally in all instances. The appraiser’s use of time adjustments on only selected reports is inappropriate and indicated an attempt by the appraiser to reach a predetermined value.”

5. On October 27, 2004, Truax received a letter from the U.S. Department of Housing and Urban Development informing him that his successful completion of the continuing education course entitled “HUD Valuation Conditions Report” satisfied his education requirement and he was reinstated to the FHA Roster.

6. The fourteen appraisals that were the subject of the HUD field review were reviewed by the Department of Regulation and Licensing staff and by a Real Estate Appraiser Board Case Advisor, and it was determined that Truax did not comply with the Uniform Standards of Professional Appraisal Practice (USPAP) in his appraisals in the following respects:

- a. USPAP Standards Rule 1-1, Developing an Appraisal, by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results;
- b. USPAP Standards Rule 1-2a, Client and Intended Users(s), by not identifying the intended user(s) in the appraisals;
- c. USPAP Standards Rule 1-2d, Effective Date, by not providing an explanation for nine of the reports for why there is a different date in the grid versus the effective date at the bottom of page 2 of the reports;
- d. USPAP Standards Rule 1-4a, Sales Comparison Approach, by applying time adjustments, room count adjustments, bath adjustments, GLA adjustments and garage stall adjustments inconsistently for properties that are all from the same general market area (Racine and Kenosha) and cover the same general time frame (late 2001 and early 2002);
- e. USPAP Standards Rule 1-4b, Cost Approach, by failing to provide an explanation for omission of the

Cost Approach to value; simply stating that the Cost Approach is deemed “non-applicable”, without further explanation, is insufficient;

- f. USPAP Standards Rule 1-4c, Income Approach, for the properties that are rented, by failing to provide rent comparables, failing to provide the rents for the subject properties or the sales comparables selections, and failing to provide a discussion of operating expenses;
- g. USPAP Standards Rule 1-4d, Interested Value, by misstating the property interest being valued for the properties at 6402 26th Avenue, Kenosha, and 3623 Wright Avenue, Racine, as “fee simple” when they are actually “leased fee” which should be identified in the report; and
- h. USPAP Standards Rule 1-5, Subject Listing and Sale Information, by:
 - appraising the property at 6605 50th Avenue, Kenosha, WI, for \$3,000.00 over the reported sales price with no explanation;
 - indicating on page 1 of the report for the property at 8254 23rd Avenue, Kenosha, WI, that this is a sale at \$132,600, but indicating at the bottom of the grid that there are no listings nor sales in the past 12 months, and indicating at the top of page 2 of the multipurpose addendum that there is no sale;
 - for the property at 5034 28th Avenue, Kenosha, WI, the appraisal indicates that the seller is paying \$2,950 in closing costs but does not provide any discussion of this impact on the value of the property;
 - for eight of the appraisals, Truax indicated in the multipurpose addendums that he has reviewed the contract and/or escrow instructions, but informed the Department of Regulation and Licensing in response to its investigation that he obtained information on the sales transactions verbally from the lenders;
 - for failing to provide any discussion of any gifts that were involved for the down payments for any of these sales; and
 - for failing to analyze the listing(s) and agreement(s) of sale.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Appraisers Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 458.26, and is authorized to enter in the attached Stipulation pursuant to Wis. Stat. § 227.44 (5).
2. Respondent Daniel B. Truax, by his conduct as set forth above in the Findings of Fact ¶¶ 4 and 6, violated USPAP Standards Rules 1-1, 1-2(a) and (d), 1-4(a) – 1-4(d), and 1-5, which thereby constitutes a violation of Wis. Admin. Code § RL 86.01(2) by performing appraisals that do not conform to the USPAP standards and Wis. Stat. § 458.26 (3)(c) by engaging in conduct while practicing as an appraiser which evidences a lack of knowledge or ability to apply professional principles or skills.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Respondent **Daniel B. Truax**, license #4-1334 be, and hereby is, **REPRIMANDED**.
2. Respondent **Daniel B. Truax**, within 120 days of the date of this Order, **successfully complete 15 hours of Department approved education regarding USPAP Standards** and submit proof of the same in the form of verification from the institution providing the education to the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.
3. Respondent **Daniel B. Truax** shall, within 60 days of the date of this Order, **pay costs of this proceeding in the amount of ONE-THOUSAND THREE HUNDRED DOLLARS (\$1,300.00)**. Payment shall be made payable to

the Department of Regulation and Licensing and sent to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 261-7904, Fax (608) 266-2264

4. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Truax's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Truax fails to timely submit any payment or fails to complete the education as ordered, Respondent Daniel B. Truax's license, # 4-1334, SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

5. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE APPRAISERS BOARD

By: Mark P. Kowbel
A Member of the Board

10/19/05
Date