

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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**OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD**

**IN RE DISCIPLINARY PROCEEDINGS
AGAINST**

**DANIEL G. KUHNERT and
MATTHEW W. KUHNERT**

RESPONDENTS.

:
:
: **FINAL DECISION AND ORDER**
: **AS TO DANIEL G. KUHNERT**
:
: **LS06101815APP**
:
:

Division of Enforcement Case No. 04 APP 042

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

Daniel G. Kuhnert
P.O. Box 55065
North Pole, AK 99705

Matthew W. Kuhnert
W2404 State Road 60
Columbus, WI 53925

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 the matter(s), subject to the approval of the Real Estate Appraisers 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 Daniel G. Kuhnert, whose last known address of record with the Department of Regulation and Licensing ("Department") is P.O. Box 55065, North Pole, AK 99705, and whose date of birth is November 16, 1972, possesses a certificate of licensure and a certificate of certification to practice as a certified residential appraiser (#9-1448). The license was first granted on November 21, 2005, and expires on December 14, 2007. Prior to being granted certification and licensure as a certified residential appraiser Daniel G. Kuhnert possessed a certificate of certification to practice as a licensed appraiser (#4-1606). The previous license was first granted on August 1, 2003, and expired on December 31, 2005.

2. Respondent Matthew W. Kuhnert, whose last known address of record with the Department of Regulation and Licensing ("Department") is W2404 State Road 60, Columbus, Wisconsin 53925, and whose date of birth is June 7, 1977, possesses a certificate of licensure and a certificate of certification to practice as a licensed appraiser (#4-1603). The license was first granted on November 6, 2000, and expires on December 14, 2007.

3. On November 22, 2003, Daniel G. Kuhnert completed an appraisal report of real property located at 1166 Crossing Ridge Trail, Sun Prairie, Wisconsin, including a certification statement. Matthew W. Kuhnert also signed the appraisal report and certification statement as "supervising appraiser."

4. The appraisal report failed to comply with several rules of the 2004 Uniform Standards of Professional Appraisal Practice ("USPAP") including, but not limited to, the following:

a. USPAP Standards Rule 1-1, which requires an appraiser to “correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal; ... not commit a substantial error of omission or commission...; and ... not render appraisal services in a careless or negligent manner” by: (i) equating the condition of comparable #1, which was one year old or less, with the subject property, which was nineteen (19) years old, by listing both as being in “average” condition, and making no adjustments based upon condition; (ii) making inadequate adjustment for age difference between the subject property and comparable #1; (iii) selecting comparables #1, #2, and #3, which are all located in neighborhoods with higher values than the subject property; (iv) failing to acknowledge and adjust for the following features of comparables #2, #4 and #6 as found on the MLS listings, and instead listing all homes as being in “average” condition, and not different from the subject property: (a) walkout basement, new furnace, (b) “new \$56,000 kitchen gourmet maple/stainless kitchen w/Sub-zero refrig & upscale built-ins, Corian...” and (c) remodeled kitchen and flooring; (v) utilized comparables #1, #4, #5, and #6, which were different in style from the subject property; and (vi) utilized comparables #4, #5, and #6, all of which were significantly larger than the subject property.

b. USPAP Standards Rule 1-2(a), which requires an appraiser to, “identify the client and other intended users,” by failing to identify the intended user(s) of the report;

c. USPAP Standards Rule 1-2(b), which requires an appraiser to, “identify the intended use of the appraiser’s opinions and conclusions,” by failing to identify the intended use of the report;”

d. USPAP Standards Rule 1-2(c), which requires an appraiser to, “develop an opinion of reasonable exposure time linked to the value opinion” when, “the purpose of the assignment is to develop an opinion of market value...” by failing to develop an opinion of reasonable exposure time linked to the value opinion.

e. USPAP Standards Rule 1-2(f), which requires an appraiser to, “identify the scope of work necessary to complete the assignment;” by failing to identify the scope of work necessary to complete the assignment.

5. Per USPAP Standards Rule 2-3, “Any appraiser(s) who signs a certification accepts full responsibility for all elements of the certification, for the assignment results, and for the contents of the appraisal report.”

6. Per Wis. Admin. Code § RL 86.01(1), “Certified and licensed appraisers shall comply with... the standards set forth in Appendix I. A violation of any provision of this chapter may result in disciplinary action under s. 458.26, Stats.

7. Per Wis. Admin. Code § RL 86.01(2), “All appraisals performed in conjunction with federally related transactions and non-federally related transactions shall conform to the uniform standards of professional appraisal practice set forth in Appendix I.”

8. Per Wis. Stat. § 458.26(3)(b), an appraiser is subject to discipline if he or she has, “Engaged in unprofessional or unethical conduct in violation of rules promulgated under s. 458.24.”

9. Per Wis. Stat. § 458.26, (3)(i), an appraiser is subject to discipline if he or she has, “Violated this chapter or any rule promulgated under this chapter.”

10. As a mitigating factor, the Department acknowledges that the estimated value of the subject property, per the appraisal order form received from the client, was \$250,000, whereas the appraised value was \$226,000, which raises an inference that Respondents were not targeting a specific value.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Appraisers Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 458.26.

2. The Wisconsin Real Estate Appraisers Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

3. By failing to comply with USPAP Standards, as set forth above in paragraph four (4) of the findings of fact, **Daniel G. Kuhnert** have committed five (5) or more violations of Wis. Admin. Code § RL 86.01 (1) and (2), thereby subjecting themselves to discipline per Wis. Stat. § 458.26(3)(b).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The licensure and certification of **Daniel G. Kuhnert** (#9-1448) shall be, and hereby is, **Reprimanded** and **Suspended** for a period of forty-five (45) days, to begin ten (10) days after the date of signing of this Order.

IT IS FURTHER ORDERED that:

2. **Daniel G. Kuhnert** shall successfully complete the following educational courses, including the exam portion of the courses, by November 1, 2007: (a) Residential Report Writing and Case Studies, offered by the Appraisal Institute; and (b) Residential Sales Comparison and Income Approaches, offered by the Appraisal Institute. The education required by this Order may not be counted towards Respondents continuing education obligations. Proof of completion shall be provided to the Department Monitor.

3. Respondent **Daniel G. Kuhnert** shall pay partial costs of this investigation in the amount of six hundred and seventy-five (\$675.00) dollars within six (6) months of the date of signing of this Order.

4. All payments and proof of completion of education required by this order to be submitted to the Department Monitor shall be mailed, faxed or delivered 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

5. Case number 04 APP 042 is hereby closed.

6. 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 Respondent's license and certification. The Real Estate Appraisers 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 that Respondent fails to timely submit any payment of costs as set forth above, or fails to comply with the terms of this Order, the license and certification of Respondent (#9-1448) SHALL BE SUSPENDED, without further notice or hearing, if Respondent has not complied with the terms of this Order.

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

REAL ESTATE APPRAISERS BOARD

By: Mark P. Kowbel
A Member of the Board

10-18-2006
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN RE DISCIPLINARY PROCEEDINGS	:	
AGAINST	:	
	:	STIPULATION
DANIEL G. KUHNERT and	:	AS TO DANIEL G. KUHNERT
MATTHEW W. KUHNERT	:	
	:	LS _____
	:	
RESPONDENTS.	:	

Division of Enforcement Case No. 04 APP 042

- It is hereby stipulated and agreed, by and between Daniel G. Kuhnert, Respondent; and Mark A. Herman, attorney for Complainant, State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement, as follows:
1. This Stipulation resolves a pending investigation of Respondent’s licensures by the Division of Enforcement (04 APP 042). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
 2. Respondent understands that by signing this Stipulation he voluntarily and knowingly waive his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.
 3. Respondent has been provided with the opportunity to obtain legal counsel prior to signing this Stipulation.
 4. Respondent agrees to the adoption of the attached Final Decision and Order by the Real Estate Appraisers Board (“Board”). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board’s order, if adopted in the form attached.
 5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.
 6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Real Estate Appraisers Board ever assigned as an advisor in this investigation may appear before the Board, without the presence of Respondent or his attorney(s), for purposes of speaking in support of this agreement and answering questions that any person may have in connection with the Board’s deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
 7. Respondent is informed that should the Board adopt this Stipulation, the Board’s final decision and order is a public record and will be published in accordance with standard Department procedure.
 8. The Division of Enforcement joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

DANIEL G. KUHNERT

Respondent

3472 Nulato Drive

P.O. Box 55065

North Pole, AK 99705

Date

MARK A. HERMAN

Attorney, Division of Enforcement

1400 East Washington Avenue

Madison, WI 53708-8935

Date