

**BEFORE THE WEST VIRGINIA REAL ESTATE
APPRAISER LICENSING AND CERTIFICATION BOARD**

IN THE MATTER OF:

**RANDALL SINCLAIR,
Certified Residential Appraiser No. CR0167**

CONSENT DECREE

Now comes Respondent, Randall Sinclair, and the West Virginia Real Estate Appraiser Licensing and Certification Board (hereinafter "Board"), by Sharron L. Knotts, *its Executive Director, for the purpose of resolving Board Complaint Number 08-008*, against Sinclair. As reflected in this Consent Decree, the parties have reached an agreement in which Sinclair hereby agrees and stipulates to the Findings of Fact and Conclusions of Law set forth in the instant Consent Decree concerning the proper disposition of this matter, and the Board, having approved such agreement, does hereby find and Order as follows:

FINDINGS OF FACT

1. The Board is a state entity created by W. Va. Code § 30-38-1 *et seq.*, and is empowered to regulate, among other things, the conduct of licensed residential appraisers.
2. Sinclair is a state certified residential real estate appraiser licensed by the Board, holding license number CR0167.
3. In or around February 2007, Sinclair was requested to perform a field review of residential property located at 182 Fieldview Drive, Mt. Lookout, West Virginia, 26678 (hereinafter the "Property"), relating to an appraisal that had been performed on the Property in February 2002, by another appraiser.

4. Sinclair had previously performed an appraisal of the Property in October 2006.

5. In addition to performing a field review of the 2002 appraisal of the Property, Sinclair also performed an appraisal of the Property (hereinafter the "Appraisal").

6. In the Appraisal, Sinclair originally included six comparable properties, three of which were the comparables used by the other appraiser in 2002.

7. Sinclair's client subsequently requested that Sinclair remove the other appraiser's comparable properties, and Sinclair complied with his client's request.

8. In the Appraisal, Sinclair incorrectly attributed within the gross living area of the Property the area of the "rec room," which was not located in the main house, and should not have been attributed the same value per square footage as the gross living area.

9. In the Appraisal, Sinclair incorrectly cited the room count of the Property.

10. Sinclair extrapolated, utilized, and/or commingled certain information from the 2002 appraisal, with Sinclair's 2006 appraisal, on the Appraisal, as opposed to obtaining and independently verifying such information in Sinclair's February 2007, Appraisal.

11. In the Appraisal, Sinclair determined the value of the Property to be \$90,000.00, as of February 2004.

12. Sinclair performed a retroactive appraisal of the Property.

13. As a result of such errors, the appraised value of the Property may not be credible or supportable.

14. In the field review of the 2002 appraisal of the Property, Sinclair did not identify effective date of the appraisal, the conclusion of the appraisal, or the appraiser that performed the appraisal.

CONCLUSIONS OF LAW

1. Pursuant to Article 38 of Chapter 30 of the West Virginia Code, the Board is the State entity vested with the power to regulate real estate appraisers in the State of West Virginia.

2. Pursuant to W. Va. Code §§ 30-38-12(a)(7) and 30-38-13(b), the Board may revoke, suspend, refuse to renew, or otherwise discipline the license of an appraiser, or deny an application, for any violation of any section of this article, or rule of the Board.

3. West Virginia Code § 30-38-17 provides, in pertinent part, that “[e]ach real estate appraiser licensed or certified under this act shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation.”

4. Pursuant to USPAP, Ethics Rule, Conduct, in pertinent part, “an appraiser must perform assignments with impartiality, objectivity, and independence”

5. In removing certain comparable properties at the request of the client, Sinclair failed to perform the appraisal of the Property with independence, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Ethics Rule (Conduct).

6. “In developing a real property appraisal, an appraiser must . . . not render appraisal services in a careless or negligent manner, such as by making a series of errors

that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results.” USPAP, Standards Rule 1-1(c).

7. Sinclair rendered appraisals services, where such appraisal contained certain errors that may have, in the aggregate, affected the credibility of the appraisal result, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Standards Rule 1-1(c).

8. Pursuant to USPAP, Standards Rule 2-1(a), “each written or oral real property appraisal report must: clearly and accurately set forth the appraisal in a manner that will not be misleading.”

9. Given that Sinclair extrapolated certain data from various appraisal reports, including the reviewed appraiser, and failed to explain the data extrapolated, or the reasons for such extrapolation, Sinclair failed to clearly and accurately set forth the appraisal in a manner that was not misleading, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Standards Rule 2-1(a).

10. Pursuant to USPAP, Standards Rule 3-1(b)(iv), “[i]n developing an appraisal review, the reviewer must identify the date of the work under review and the effective date of the opinion or conclusion in the work under review.”

11. Sinclair failed to identify the date of the work under review and the effective date of the opinion or conclusion in the work under review, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Standards Rule 3-1(b)(iv).

12. Pursuant to USPAP, Standards Rule 3-1(b)(v), “[i]n developing an appraisal review, the reviewer must identify the appraiser(s) who completed the work under review, unless the identity was withheld.”

13. Sinclair failed to identify the appraiser who completed the work under review, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Standards Rule 3-1(b)(v).

CONSENT

Sinclair, both in his individual capacity and as a certified residential real estate appraiser, by the execution hereof, agrees to the following:

1. Sinclair has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Sinclair to make this settlement other than as set forth herein. Sinclair acknowledges that he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Sinclair consents to the entry of the following Order affecting his conduct as a certified residential real estate appraiser.

ORDER

On the basis of the foregoing, the Board hereby ORDERS as follows:

1. The real estate appraiser license of Sinclair, Certified Residential Appraiser License No. CR0167, is hereby REPRIMANDED.

2. The real estate appraiser license of Sinclair, License No. CR0167, is hereby RESTRICTED for a period of ninety days. During such period of restriction, Sinclair shall not engage in the practice of reviewing real estate appraisals in the State of West Virginia, either directly or indirectly. Sinclair may otherwise engage in the practice of real estate

appraising as permitted by the scope of Sinclair's licensure. Such restriction of Sinclair's license shall begin on the effective date of the instant Consent Decree.

3. Sinclair, within ninety (90) days of the date of entry of this order, shall successfully pass, complete, and provide to the Board all proper documentation reflecting the same, a minimum seven hour course, with examination, approved by the Board, relating to the Uniform Standards of Professional Appraisal Practice. Such course relating to the Uniform Standards of Professional Appraisal Practice shall be in addition to any continuing educational course required to obtain and/or maintain licensure, or renewal of licensure thereof.

4. Sinclair shall pay to the Board the amount of one thousand and five hundred dollars (\$1,500.00). Such payment by Sinclair shall represent the costs incurred by the Board associated with the investigation and prosecution of Complaint Number 08-008, and the subsequent reimbursement to the Board thereof. Such payment shall be paid to the Board in full within thirty (30) days of the date of entry of the instant Consent Decree.

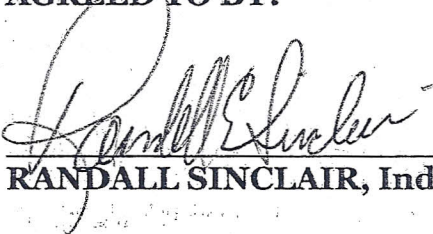
5. Any deviation from the requirements of the instant Consent Decree, without the prior written consent of the Board, shall constitute a violation of this Order, and result in the immediate suspension of Sinclair's license. The Board shall immediately notify Sinclair via certified mail of the specific nature of the charges, and the suspension of Sinclair's license. Sinclair may request reinstatement of his license through renewal of this agreement, or execution of a new agreement, which may contain different or additional terms. The Board is not bound to comply with Sinclair's request.

In the event Sinclair contests any such allegations of violation of the Consent Decree, if any, which results in the suspension of Sinclair's license, Sinclair may request a hearing

to seek reinstatement of his license. Any such hearing shall be scheduled and conducted in accordance with the provisions of West Virginia Code § 30-1-8 and § 30-38-1 et seq.

Further, in the discretion of the Board and in the event Sinclair violates the provisions of the instant Consent Decree, the Board may schedule a hearing on its own initiative for the purpose of allowing the Board the opportunity to consider further discipline against Sinclair's license.

AGREED TO BY:



RANDALL SINCLAIR, Individually

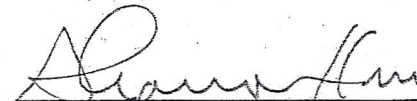
12/30/08

DATE

ENTERED into the records of the Board this:

6th day of January, 2009
2008.

**WEST VIRGINIA REAL ESTATE APPRAISER
LICENSING AND CERTIFICATION BOARD**

By: 

**SHARRON L. KNOTTS
EXECUTIVE DIRECTOR**

1/6/09

DATE