

**NEW JERSEY APPRAISER LAW, USPAP & YOU**

**Presented  
December 14, 2011**

**By  
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**The Way We Were - Pre-FIRREA**

- How was real estate appraisal work controlled before the passage of FIRREA?
  - Professional Standards
    - AIREA
    - SREA
    - NAIFA
    - ASA
  - Malpractice law
    - Negligence
    - Privity

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**And Now**

- What currently constitutes the law of real estate appraisal?
  - Statutes (State & Federal)
  - Regulations (Fed CFRs, NJ Administrative Code)
  - Case law (Mostly State)
    - Courts (NJ Superior Ct, Appellate Division, NJSC)
    - Office of Administrative Law (Within Agencies)
    - State Appraiser Regulatory Agency Decisions
    - Consent Orders
  - Malpractice law
    - Separate body of law but may rely upon above

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## And Now

- Federal Law
  - Created as a result of “S&L Crisis” & revised as a result of the “Global Financial Crisis”
  - Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) mandates criteria for real estate appraisals used in “federally related transactions”
  - Mortgage Reform and Anti-Predatory Lending Act of 2010 revises FIRREA, TILA, RESPA, ECOA and tasks GAO with studies on industry
- Federal agencies use the appraisal standards created under FIRREA, even if the intended use of the appraisal is not for a federally insured institution, i.e., HUD

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## And Now (cont' d)

- Under FIRREA Congress begat
  - Appraisal Sub-Committee (ASC)
    - Government agency
    - Under the Federal Financial Institutions Examination Council (FFIEC)
    - Works with & helps fund the Appraisal Foundation
    - Oversees real estate appraiser regulatory agencies in each state/territory
  - Then Under MRAPLA, Congress
    - Expanded role of ASC
    - Increased power of ASC over state agencies

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## And Now (cont' d)

- Under FIRREA Congress established
  - Appraisal Foundation
    - Private independent coordinator of real estate appraisal regulatory issues between the federal government, state regulatory boards and the trade organizations representing practitioners.
  - Appraisal Standards Board (ASB)
    - “develop, interpret and amend USPAP”
  - Appraiser Qualifications Board (AQB)
    - develop voluntary appraiser qualification standards
      - state boards may adopt with their own modifications.
  - Both the ASB and AQB receive administrative support from the Appraisal Foundation.

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## And Now (cont' d)

- Other Federal Law & Regs
  - “De Minimis Rules”
    - i.e., 12 CFR 225.63 – Federal Reserve Board
  - “Dodd-Frank”
    - Created Bureau of Consumer Financial Protection
    - MRAPLA Subsection F, Appraisal Activities
      - Replaces HVCC with TILA revision
  - Interim Final Rule - Appraiser Independence
    - By Federal Reserve Board – Fully Effective April 1, 2011
    - CFPB is reported to have input on Final Final Rule

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## And Now (cont' d)

- Federal Guidelines
  - Interagency Guidelines
  - HUD Handbooks
  - Yellow Book
- USPAP
  - Originally created from appraisal organization standards and codes of ethics
  - Referenced in CFRs
  - Referenced in Federal guidelines
  - Referenced in state statutes
  - Referenced in state regulations

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## And Now (cont' d)

- Current Enforcement by state regulatory entities
  - Under FIRREA
    - Real Estate Appraisers
  - Under MRAPLA
    - Real Estate Appraisers
    - AMCs that are not owned 25%+ by Business Entities under FFIEC agencies
    - AVMs (after regulations are created by FFIEC agencies)
- After GAO Reports to Congress
  - ????

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## The New Jersey State Board of Real Estate Appraisers

State Real Estate Appraisers Board, Division of Consumer Affairs  
New Jersey Office of the Attorney General  
124 Halsey Street, 3rd Floor  
Newark, NJ 07102  
(973) 504-6200; (800) 242-5846  
<http://www.njconsumeraffairs.gov/real>

Charles Kirk, Director  
Steven N. Flanzman, Esq., NJ Senior Deputy Attorney General  
Joanne Leone, Esq., NJ Deputy Attorney General

Board Members  
Stephen P. Giocondo (State Member – D.E.P.)  
Barry J. Krauser (RG)  
Joseph Palumbo (RC)  
John A. McCann (RG)  
Cheryle A. Randolph-Sharpe (Licensed)  
Denise M. Siegel (RG)  
Frank A. Willis (Public)  
2 Seats Vacant

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## NJ Real Estate Appraiser Law

- New Jersey Real Estate Appraiser Act - *N.J.S.A. 45:14F-2, et. seq.*
  - Composition & functions of the Board
- Rules to Implement (Administrative Code) the Real Estate Appraisers Act *N.J.A.C. 13:40A-1, et. seq.*
  - Board Regulations
  - Incorporation of USPAP within these Regulations
- See, <http://www.njconsumeraffairs.gov/real/>

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## NJ Appraiser Discipline Process

- Initiation of investigation
  - Complaint
- Communication with appraiser
  - Request to produce work file
  - Duty to Cooperate *N.J.A.C.13;45c-1.1 et seq.*
- Board review of complaint & appraiser response
  - Appearance before Board

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### Discipline Process (cont'd)

- Legal standards
  - Uniform Enforcement Act at *N.J.S. 45:1-21*
  - Compliance with USPAP
  - Potential Penalties under *N.J.S. 45:1-22, N.J.S. 45:1-25*
- What happens if a case does not settle?
  - Issuance of Complaint or Provisional Order
  - Hearing before Board or Office of Administrative Law Judge

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### NJ Appraiser Laws

- Laws & Regulations of the New Jersey State Real Estate Appraiser Board
  - New Jersey Real Estate Appraiser Act - *N.J.S.A. 45:14F-1, et. seq.*
  - Rules to Implement (Administrative Code) the Real Estate Appraisers Act *N.J.A.C. 13:40A-1, et. Seq.*
  - Division of Consumer Affairs Uniform Enforcement Act *N.J.S. A. 45:1-15, et. Seq.*

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### NJ Appraiser Laws (cont'd)

- Rules (Administrative Code) Regarding Uniform Regulations On The Licensee Duty To Cooperate And To Comply With (Division Of Consumer Affairs Board Orders *N.J.A.C. 13:45c-1.1, et. Seq.*
- New Jersey Administrative Procedures Act - *N.J.S. A. 52:14B-1 et seq.*

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## NJ Appraiser Law & Disciplinary Process

- Process
  - Obtained, reviewed, abstracted, analyzed Board Disciplinary Actions 4Q 2006 to October 2011
  - In November 2006, I had performed same type of analysis on preceding 12 months
  - Compared analyses

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## NJ Appraiser Law & Disciplinary Process

- How USPAP Becomes Law  
13:40A-6.1 General requirements

(a) The appraiser shall ensure that all appraisals shall, at a minimum conform to the Uniform Standards of Professional Appraisal Practice (USPAP) in effect on the date on which the appraisal was prepared, which standards are incorporated herein by reference.

(b) An appraiser's failure to comply with the provisions of USPAP may be construed to be professional misconduct in violation of N.J.S.A. 45:1-21(e).

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## Appraiser Law & Disciplinary Process (cont'd)

N.J.S. 45:1-21 Refusal to license or renew, grounds

A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license:

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N.J.S. 45:1-21 (cont'd)

- a. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
- b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
- c. Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence;
- **e. Has engaged in professional or occupational misconduct as may be determined by the board;**

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N.J.S. 45:1-21 (cont'd)

- f. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;
- g. Has had his authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section;
- **h. Has violated or failed to comply with the provisions of any act or regulation administered by the board;**
- i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions

- Key Issues:
  - Historical
    - Fraud cases
      - » Flipping/scams
      - » Schools giving certificates without attendance
    - Supervising Appraiser does not inspect property but certifies that they did
    - Trainees going along
    - Removal from FHA Roster
    - Failure to cooperate
    - Failure to respond
      - » CE audit
      - » Notice

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- Recent
  - Ethical violations
  - Misleading
  - Misrepresentation of data (SF of comps, condition of comps)
  - Directed appraisals
  - Valuation issues
  - CE audits find incomplete records or unfulfilled hours

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- Most frequent USPAP sections cited by Board:
  - SR 1-1(a)(b)(c)
  - SR 1-5 (a)(b)
  - SR 2-1(a)
  - Ethics – Conduct
  - Ethics – Record Keeping

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- USPAP Standards Rules often involved in disciplinary actions by the Board from 2006 – 2011.
  - SR 1-1: In developing a real property appraisal, an appraiser must:
    - (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- USPAP Standards Rules in discipline (cont' d)
  - SR 1-1 (b) not commit a substantial error of omission or commission that significantly affects an appraisal;
  - SR 1-1 (c) 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 affects the credibility of those results.
  - SR 1-5: (a) analyze a contract for sale of the subject property; (b) analyze all sales of the subject that occurred within the three (3) years prior to the effective date of the appraisal

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- Examples of SR 1-1 violations:
  - Series of minor errors
  - Adjustments not valid
  - Selection, use comparability of comparable sales
  - GLA
  - Failure to report prior sales & listings
  - Did not employ techniques to support credible appraisal
  - Personally not inspected property

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- USPAP Standards Rules in discipline
- SR 2-1(a) appraiser clearly set forth an appraisal in a manner that is not misleading.
  - Misleading
    - USPAP – Does not define -> Dictionary
    - Merram-Webster On-line Dictionary
      - to lead in a wrong direction or into a mistaken action or belief often by deliberate deceit; to lead astray, give a wrong impression
    - Black's Law Dictionary
      - calculated to be misunderstood [Cases: Fraud]

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- Examples of SR 2-1 violations:
  - Typically, but not always combined with SR 1-1
  - Different data / same comp - 2 different reports
  - Stated subject not listed when it was
  - Stated subject not sold previously when it was
  - Said inspected when not
  - Failed to identify Trainee contributions
  - Submitted improperly altered appraisal reports

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- Ethics Rule - "To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics.
- An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with the client or intended users. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser." (2006 thru 2010-11)

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- Ethics Rule, Conduct - "An appraiser must perform assignments ethically and competently, in accordance with USPAP and any supplemental standards agreed to by the appraiser in accepting the assignment. An appraiser must not engage in criminal conduct. An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests." (2006)

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

### Ethics Rule, Conduct (2008-9)

- An appraiser must perform assignments ethically and competently, in accordance with USPAP.
- An appraiser must not engage in criminal conduct.
- An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.
- An appraiser must not advocate the cause or interest of any party or issue.
- An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.
- An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.
- An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- Conduct (2010-11): An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.
- An appraiser:
  - must not perform an assignment with bias;
  - must not advocate the cause or interest of any party or issue;
  - must not accept an assignment that includes the reporting of predetermined opinions and conclusions;
  - must not misrepresent his or her role when providing valuation services that are outside of appraisal practice;
  - must not communicate assignment results with the intent to mislead or to defraud;

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

### Conduct (2010-11, Cont'd)

- must not use or communicate a report that is known by the appraiser to be misleading or fraudulent;
- must not knowingly permit an employee or other person to communicate a misleading or fraudulent report;
- must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value;
- must not engage in criminal conduct; and
- must not perform an assignment in a grossly negligent manner.

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- Examples of Conduct violations:
  - Personally inspected interior and failed to name Trainee who provided professional assistance
  - Failed to indicate prior sales of comps
  - Accommodating interests of client – misleading report (because of intent)
  - Certified inspection of interior when not done
  - Used comps that were not closed sales

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- Record Keeping: An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment. A workfile must be in existence prior to the issuance of a written or oral report. A written summary of an oral report must be added to the workfile within a reasonable time after the issuance of the oral report (2010-11)
- The workfile must include:
  - the name of the client and the identity, by name or type, of any other intended users;
  - true copies of any written reports, documented on any type of media (A true copy is a replica of the report transmitted to the client. A photocopy or an electronic copy of the entire signed report transmitted to the client satisfies the requirement of a true copy.);
  - summaries of any oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification; and
  - all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such other documentation.

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- Record Keeping (cont'd):
- An appraiser must retain the workfile for a period of at least five years after preparation or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.
- An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.
- An appraiser having custody of a workfile must allow other appraisers with workfile obligations related to an assignment appropriate access and retrieval for the purpose of:
  - submission to state appraiser regulatory agencies;
  - compliance with due process of law;
  - submission to a duly authorized professional peer review committee; or
  - compliance with retrieval arrangements

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### New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont'd)

- Examples of Recordkeeping violations:
  - Failed to maintain workfiles
  - Workfiles lacked documentation of renovations discussed in report
  - Had not maintained copies of reports
  - Workfile consistently lacked documentation of rental comps used in reports

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### New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- Most frequent regulatory (N.J.A.C.) violations
  - *N.J.A.C.* 13:40A-6.1 – USPAP conformance
  - *N.J.A.C.* 13:40A-5.3 – CE requirements
  - *N.J.A.C.* 13:45C-1.2 – Duty to cooperate
  - *N.J.A.C.* 13:45C-1.3 – Acts of failure to cooperate
  - *N.J.A.C.* 13:45C-1.4 – Non-Compliance

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### New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)

- *N.J.A.C.* 13:40A-6.1 – General requirements
- (a) The appraiser shall ensure that all appraisals shall, at a minimum conform to the Uniform Standards of Professional Appraisal Practice (USPAP) in effect on the date on which the appraisal was prepared, which standards are incorporated herein by reference.
- (b) An appraiser's failure to comply with the provisions of USPAP may be construed to be professional misconduct in violation of *N.J.S.A. 45:1-21(e)*.

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**New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)**

- Examples of violations of *N.J.A.C.* 13:40A-6.1 – USPAP conformance:
  - Failure to conform to USPAP
  - Report is misleading
  - Failure to make proper location adjustments
  - Inspection stated but not performed
  - Limited inspection of subject & comps sales history

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**New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont'd)**

- Examples of violations of *N.J.A.C.* 13:40A-5.3 – CE requirements:
  - Did not complete required full 28 hours
  - Did not comply with requirement to take USPAP 7-hour update seminar

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**New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont' d)**

- For violations of
  - *N.J.A.C.* 13:45C-1.2 – Duty to cooperate
  - *N.J.A.C.* 13:45C-1.3 – Acts of failure to cooperate
  - *N.J.A.C.* 13:45C-1.4 – Non-Compliance
- Examples include:
  - Random audit but no response
  - Trainee turned in reports without their name, then did not respond upon request

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## New Jersey Real Estate Appraiser Board Disciplinary Decisions (cont'd)

- Statutes most frequently cited by the Board during 2006 - 2010.
  - *N.J.S. 45:1-21(b)* - Misrepresentation
  - *N.J.S. 45:1-21(e)* – Professional Misconduct
  - *N.J.S. 45:1-21(h)* – Failed to comply

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## New Jersey Real Estate Appraiser Board Disciplinary Penalties (cont'd)

- Examples of statutory violations:
  - *N.J.S. 45:1-21(b)* – Misrepresentation
    - Typically CE certification is false
  - *N.J.S. 45:1-21(e)* – Professional Misconduct
    - Failure to comply with USPAP
    - Misleading
    - Indicated inspected interior when did not
    - Selecting superior properties as comparables
    - Failure to cooperate

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## New Jersey Real Estate Appraiser Board Disciplinary Penalties (cont'd)

- *N.J.S. 45:1-21 (b) & (e)*
  - Failure to indicate comp was transaction between related parties
- *N.J.S. 45:1-21(h)*
  - Usually added to other violations
  - FAILURE TO CONFORM TO BOARD REGULATION = USPAP VIOLATION

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### New Jersey Real Estate Appraiser Board Disciplinary Penalties

- Fines
  - N.J.S. 45:1-25 – Penalties (1<sup>st</sup> Offense - up to \$10k)
    - Most under \$5,000
    - Typical fine for CE-related violation \$500 to \$1,000
    - Failure to respond start at \$1,500
    - Factual errors start at \$1,500
    - Ethics section / Certain Standards violations start at \$2,500 and go up to \$10,000
  - Highest (2 cases) was \$50,000

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### New Jersey Real Estate Appraiser Board Disciplinary Penalties (cont'd)

- Costs
  - Typically \$500 to \$1,000
- Suspensions
  - Three months to response (failure to comply)
  - Typically 1-2 years
  - Often stayed (probation)

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### New Jersey Real Estate Appraiser Board Disciplinary Penalties (cont'd)

- Example of violations & resulting penalties:
  - Charge
    - Report did not indicate comp transaction between related parties or whether it was arms length
  - Violations
    - USPAP SR 1-1, N.J.A.C. 13:40A-6.1, N.J.S. 45:1-21(b),(e)
  - Penalty
    - 2 year suspension
    - Restitution \$325 & 350
    - \$6,000 fine

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## What to Do?

- Review your office procedures for compliance with workfile requirements
- Take CE & keep records of it
- Obtain Board law & regs from their website
- If you receive a communication from Board
  - Consult knowledgeable legal counsel **early** in the process
  - Respond timely
  - Respond honestly (with aid of counsel)

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## NEW JERSEY APPRAISER LAW, USPAP & YOU

Presented  
December 14, 2011

By

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