

**APPRAISER LICENSING AND CERTIFICATION BOARD**

Heber M. Wells Building

Room 210

9:00 a.m.

June 22, 2011

**MINUTES**

**STAFF MEMEBERS PRESENT:**

Deanna Sabey, Division Director  
Dee Johnson, Enforcement Director  
Mark Fagergren, Education/Licensing Director  
Xanna Hardman, Assistant Attorney General  
Jennie Jonsson, Hearing Officer  
Renda Christensen, Board Secretary  
Carla Westbroek, Appraisal Education/Licensing Specialist  
Jim Bolton, Investigator  
Ken Wamsley, Investigator  
Craig Livingston, Investigator

**BOARD MEMBERS PRESENT:**

Craig Morley, Chair  
Debra Sjoblom, Board Member  
Jeanette Payne, Board Member  
Daniel Brammer, Board Member

**GUESTS:**

Carol C. Howell	Lee Gardner
Joes Frost	Vern Meyer
Neil Jensen	Mike Carter
Austin Christensen	Ann Barcellona

The June 22, 2011 meeting of the Appraiser Licensing and Certification Board began at 9:00 a.m. with Chair Morley conducting.

Board Member Throndsen was excused from the meeting today.

**PLANNING AND ADMINISTRATIVE MATTERS**

It was decided to postpone the elections until next month when Vice Chair Throndsen can be in attendance.

Approval of Minutes – A motion was made to approve the minutes from the May 25, 2011 meeting. Vote: Chair Morley, yes; Board Member Brammer, yes; Board Member Sjoblom, yes. Motion carries.

## **DIVISION REPORT**

### **DIRECTOR'S REPORT – Deanna Sabey**

Director Sabey said she found an article out of the Valuation Magazine, second quarter, that she found to be interesting. The article is entitled “The Dog that Wouldn’t Bite,” and is on the customary and reasonable fee provisions of the interim rule and of the Dodd-Frank Act. It states that “...the rule’s language was unclear regarding the ability of AMCs to create fee schedules, and appraisers have voiced concerns that major AMCs have issued new fee schedules that lowered fees.” Last month Director Sabey brought up the subject that there had been a petition circulated to submit to the Federal Reserve by a number of appraisers to clarify this issue. There has also been a letter that was sent to the Federal Reserve asking for clarification of whether appraiser fees should be considered for one or both presumptions in determining whether the customary and reasonable fee provision has been breached or not. This issue has not been determined yet by the Federal Reserve’s perspective. The rules language could be interpreted one way or the other.

The AQB has its fourth exposure draft out that was issued on June 17, 2011. This is a result of numerous drafts and discussions, some of which took place in Salt Lake City. Comments are requested by September 30, 2011. This exposure draft has a number of issues in it that revise certain licensing and qualification requirements. As an example, there are proposed revisions to college degree requirements; background checks; proposed revisions to trainee appraiser qualifications; and supervisory appraisal requirements. Those are not all of the changes being proposed, but it is an example of some of them. Anyone who is interested in commenting can send comments after reviewing the material found on the Appraisal Foundation’s website. Send your comments to [aqbcomments@appraisalfoundation.org](mailto:aqbcomments@appraisalfoundation.org).

Director Sabey has been reviewing the Division’s statutes to see what might need to be changed in next year’s legislative session. The Division is trying to make fewer regulations that over-regulate our licensees, and believe that these few examples need some discussion.

One issue is if we still want to require an appraiser to notify the Division within 10 days of filing a personal or business bankruptcy. In 61-2g-306(b) it states that a person who is licensed, certified, or registered must notify the Division within 10 business days of filing a personal bankruptcy or business bankruptcy. After a brief discussion, the Board is favor of this change.

The next issue is the Division’s definition of AMCs. Our definition of AMC is quite a bit different in its approach to the definition of AMC under the Dodd-Frank Act. We can take the language right out of the Dodd-Frank Act, which defines an AMC as an entity that maintains more than 15 certified or licensed appraisers on a panel in a state, or 25 certified or licensed appraisers nationally within a given year. The Division couldn’t increase the number, but we could certainly lower the number. We

can always be more restrictive than federal law, but we can't be more lenient than the federal law. Our trigger is the number of appraisals brokered in the state, and the Dodd-Frank Act doesn't address this issue. The federal definition only involves those properties collateralizing mortgage loans or mortgages incorporated into a securitization process. The topic was opened for discussion with the Commission and the public. It was decided that the Board was comfortable with the definition of AMC's in the Division's statute. Director Sabey said a letter would be sent to Ms. Jenny Tidwell, Policy Manager, at the Appraisal Subcommittee to notify her of our statute, and have her review the wording to make sure we are covered under the federal statute.

The last issue Director Sabey would like to discuss is to add an exemption in our statute that matches the federal statute for bank subsidiaries. Because federal banks are regulated through federal law, there is no state regulatory authority over those bodies and their subsidiaries. Chair Morley said we would need to define the exemption in our statute to distinguish "owned" versus "wholly owned."

Director Sabey said there has been quite a bit of action taken in the last month with the committee established to review customary and reasonable fees. The Division has received a legal memorandum from counsel for RELS Valuations outlining some jurisdictional concerns that exist as to whether a state board can make regulations or rules, and enforce the customary and reasonable fees provision of the Dodd-Frank Act. The Dodd-Frank Act modifies the Truth in Lending Act in which a specific provision says it is the federal regulators and state Attorneys General who have power to enforce the law. Director Sabey said that the committee has more research to do on these jurisdictional issues. These are some complex legal issues that we are working with, because we are talking about interpreting language under both the Truth in Lending Act, Dodd-Frank Act, interim rules, and, of course, state laws. All of these intersecting laws may sound like a simple thing to determine, but it is not, because of all the different pieces and levels of regulation and authority to regulate. What the committee believes is that we can field complaints and investigate for merit. The Division has only received two complaints so far on this issue. The Division cannot make rules that further interpret the Dodd-Frank Act or the interim rules. We know that we can refer the matter to our state Attorney General's office. What the committee has not yet determined is whether we can bring an enforcement action before the Board.

Board Member Sjoblom asked if it was possible that those who might want to file a complaint with the Division are afraid to because they might be black-balled by others in the industry. Director Sabey said this definitely is a problem, but that people can file anonymously with the Division.

A brief recess was taken from 10:00 a.m. to 10:08 a.m.

## **OPEN TO PUBLIC**

### **INFORMAL HEARINGS:**

No representatives from Transcontinental Valuations, Inc. appeared for the scheduled hearing at 10:00 a.m. The hearing for Mr. Roberts was moved up to the 10:00 slot on the agenda.

10:10            Scott Roberts – Experience Review

11:03            Transcontinental Valuations, Inc. – Cease & Desist  
Division witness: Craig Livingston  
No representative has appeared for the hearing, and the hearing continued as scheduled.

#### INVESTIGATIONS REPORT – Dee Johnson

Mr. Johnson said that all three appraisal investigators are present today, and he would like to commend them for the job they have been doing in keeping the numbers down. They have worked very hard to get us in position for the next audit by the ASC.

Mr. Johnson reported in May the Division received 14 complaints; screened 2 complaints; opened 12 cases; closed 18 cases; leaving the total number of appraisal at 66.

#### Stipulation for Review

J D Rogers

The respondent was given the opportunity to appear today and has chosen not to.

#### EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the statistics for May show a drop in the number of appraiser trainees by seven. Over the last 11 months there has been a drop of 25 licensed appraisers, and a gain of three certified residential appraisers, and a gain of eight certified general appraisers. Overall the numbers are remaining steady.

Two months ago Mr. Fagergren reported he had an e-mail exchange between an experience review panel member who was commenting regarding a mass appraiser review assignment he had received. At that time, the Board asked Ms. Jonsson to come up with some draft language for an amendment to the rule regarding experience hours. Ms. Jonsson has passed out a copy of the proposed language for the Board to review. A motion was made to submit these changes as written. Vote: Chair Morley, yes; Board Member Brammer, yes; Board Member Sjoblom, yes; Board Member Payne, yes. Motion passes.

There has been an interesting e-mail exchange and phone conversation between a trainee who had started a conversation with Mr. Fagergren. This trainee asked if he could do appraiser reviews and count those towards his credit. Mr. Fagergren said that licensed and certified residential appraisers could clearly do review work, as

defined in the Division's rules, and he couldn't see anything in the rules stating that a trainee can do reviews. Mr. Fagergren called Chair Morley and asked his opinion on this matter. Chair Morley said that he learned as much from doing reviews as from doing appraisals, and as such, he believes it can be a valuable source of appraisal experience. There are different levels of reviews: is it merely a review for USPAP compliance; is it a review where the concurrence of the value is also required; or is a new value to be developed by the appraiser. Chair Morley asked the Board if they had any concerns over this matter, and they agreed with his thoughts on trainees doing reviews for credit. Mr. Fagergren said there is a limit of 50% of a trainee's experience hours that can be earned by performing reviews, and his trainer would have to sign the review.

Mr. Fagergren submitted the following lists to the Board for their review:

Certified and Licensed Appraiser Applicants Approved by both Education and Experience Review Committee

Steven D. Fletcher, LA Candidate  
Timothy Peel, CR Candidate  
Suzanne Millard, CR Candidate  
Denise Wood, CR Candidate

Discipline List for Board's Consideration

James L. Beech  
Heather Fox  
Gene C. Jorgensen  
James L. Tippetts

COMMISSION AND INDUSTRY ISSUES

Rule Updates – Jennie Jonsson

Ms. Jonsson said the Department of Commerce has changed some of their rules regarding Agency Review. Those changes will affect the appraisal industry. Agency Review has been withheld from appraisers for many years, so if an appraiser comes before this board and is not happy with the outcome, that person must go to District Court and start over with a de novo proceeding. The person did not have recourse to the Executive Director for Agency Review. The Department looked at the rule and realized that, except for within the appraisal industry, the only time Agency Review is withheld is when a statute prohibits it. The Department contacted Ms. Jenny Tidwell with the Appraisal Subcommittee, and asked her if Agency Review should be withheld under federal law, and she said that in every other state where the Board is part of a Department, Agency Review is provided. The Department has re-written the rule to allow Agency Review of Board orders.

Our appraisal rule reorganization, R162-2(g), will be published on July 1, 2011. It has made its way through Administration of the Department of Commerce, has been accepted by the Division of Administrative Rules, and will be published. The public comment period will run until August 1, 2011. In our July meeting Ms.

Jonsson will let the Board know if any public comments have been received. If none have been received, then we can entertain a motion and vote to make the rule effective.

There has been an amendment to our existing appraiser rule, R162-104-14, out for public comment. It has gone through the entire public comment period, and there have been no comments submitted. This is the rule that established a December 31<sup>st</sup> deadline for a person that has completed a segmented application by the end of last year, but was not able to pass the test, to complete additional education, pass the test and submit a complete application for review. If the person is not able to comply with that deadline, thereafter the person would have to submit new experience. A motion was made to make the rule effective today. Vote: Chair Morley, yes; Board Member Sjoblom, yes; Board Member Brammer, yes; Board Member Payne, yes. Motion carried.

There has been a comment from the public regarding our AMC rules. Ms. Jonsson passed out copies of the comment to the Board for discussion. A motion was made to make the rule effective today. Vote: Chair Morley, yes; Board Member Sjoblom, yes; Board Member Brammer, yes; Board Member Payne, yes. Motion carried.

#### **CLOSED TO PUBLIC**

Motion to hold an Executive Session. Vote: Chair Morley, yes; Board Member Sjoblom, yes; Board Member Brammer, yes; Board Member Payne, yes. Chair Morley read into the Minutes, "I hereby affirm that the sole reason for closing part of the meeting was to discuss the character, professional competence, or physical and mental health of an individual." An Executive Session was held from 12:00 p.m. to 1:00 p.m.

#### **OPEN TO PUBLIC**

##### **RESULTS OF DELIBERATIONS**

Review of Lists

Deliberation on Stipulation

Deliberation on hearings

The Stipulation for J D Rogers was rejected. The Board, with concurrence of the Director, has rejected the stipulation and has recommended a letter of reprimand with no fine.

##### **Certified and Licensed Appraiser Applicants Approved by both Education and Experience Review Committee**

Steven D. Fletcher, LA Candidate, Approved

Timothy Peel, CR Candidate, Approved

Suzanne Millard, CR Candidate, Approved

Denise Wood, CR Candidate, Approved

Discipline List for Board's Consideration

James L. Beech - Approved

Heather Fox – Send a Notice of Agency Action and schedule her for a hearing before the Board

Gene C. Jorgensen – The Board has instructed Ms. Jonsson will issue an Order.

James L. Tippetts – Continue on as currently licensed without conditions.

A motion was made to adjourn the meeting. Vote: Chair Morley, yes; Board Member Sjoblom, yes; Board Member Brammer, yes; Board Member Payne, yes. The meeting adjourned at 1:02 p.m.