

APPRAISER LICENSING AND CERTIFICATION BOARD

Heber M. Wells Building

Room 210

9:00 a.m.

May 25, 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
Paul W. Throndsen, Vice Chair
Debra Sjoblom, Board Member
Jeanette Payne, Board Member
Daniel Brammer, Board Member

GUESTS:

Ron Smith	Neil Jensen
Vern Meyer	Austin Christensen
Jim Ivy	Mike Carter
Mike Christensen	Denny Lytle
Chris Donaldson	Bill Lifferth
Kathie Johnson	

The May 25, 2011 meeting of the Appraiser Licensing and Certification Board began at 9:00 a.m. with Chair Morley conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes - The minutes from the April 27, 2011 minutes needed to add a decision made during the Executive Session from last months meeting. The name of Glen Stevens was approved to be on the list of Experience and Education Mass Appraiser Reviewers. Vote: Chair Morley, yes; Vice Chair Throndsen, yes; Board Member Brammer, yes; Board Member Sjoblom, yes. Motion carries.

DIVISION REPORT

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey said that the first meeting of the customary and reasonable fees committee will be tomorrow, May 26th, at 10:30 a.m.

It appears that there are a growing number of survey companies that are popping up on the internet to take survey information of appraisers. Just as an example, two are workingre.com, and feesurvey.com. Fee Survey.com is produced by a company that is compiling a database of fee information from the content submitted by appraisers. Working RE.com is a 16-page customary and reasonable fee's survey result for Colorado. It is broken down by the types of loans (Fannie/Freddie, HUD, etc.), and covers a number of geographic areas. Director Sabey found it interesting that there are now independent companies or services that are collecting this data. Presumably it is to help appraisers who decide they want to rebut the Presumption One for the customary and reasonable fees determinations.

Director Sabey said there seems to be a discrepancy between several appraiser groups with regard to types of fees that can be considered in determining whether Presumption One under the Customary and Reasonable Fees, a provision has been satisfied. A number of appraiser organizations have commented, and a petition has been sent to the Federal Reserve Board, talking about the need to exclude the fees charged by AMCs in the determination of customary and reasonable fees.

TARMA wrote a letter dated May 19, 2011 to the Federal Reserve that expresses their views as to what they feel is misinformation being disseminated which is causing confusion. They have asked the Federal Reserve Board for clarification and for action to take steps necessary to correct some misinterpretation of the interim final rule. There may even be some differences of opinions as to whether, at this point in time, state agencies can regulate under the customary and reasonable fees language, because it comes down from federal law.

The Appraiser Subcommittee has come out with something on the "What's New" page of their website. There is a section called "Where to Direct Questions and Comments regarding Customary and Reasonable Fees." It directs anyone who has a concern about a compliance with customary and reasonable fees under the Truth in Lending Act to seek the agency that enforces TILA for the creditor. This would be the FTC for non-federally regulated creditors, and there are some links on the website as to where you can find the federal regulator for federally regulated loans.

INVESTIGATIONS REPORT – Dee Johnson

Mr. Johnson wanted to compliment the investigators, three of which are here today. Out of all the professions that we have jurisdiction over, in appraisal we are basically current with all of our screenings. This means that we are able to stay on top of the complaints as they come in. With the other professions that is not the case.

Mr. Johnson reported in April the Division received 10 complaints; screened 2 complaints; opened 7 cases; closed 19 cases; leaving the total number of appraiser cases at 72. Of all the open cases that we have to report to the Appraisal Subcommittee, we were able to eliminate approximately one-half of them. Close to the remaining half will be involved in another hearing.

Stipulation for Review

Jason M. Olson

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

EDUCATION AND LICENSING REPORT – Mark Fagergren

In looking at the statistics sheet, Mr. Fagergren said of all the three professions, appraisers are the only profession that remains constant. In real estate last month, there was a total loss of nearly 200 licensees, and in mortgage, since first of 2010 to May of this year, 56% of mortgage licensees are no longer licensed. Nationally, there are approximately 125,000 mortgage loan originators. The top five banks have more than that number, and they don't have to register. If you add the top 30 banks, you can see the trend is essentially for the vast majority of licensees in mortgage to be from depository organizations.

Last month Mr. Fagergren brought up an e-mail that we received from an individual who was a reviewer commenting on his experience with mass appraiser assignments that he was given. The comment, as you may recall, was that the work that he was reviewing was cookie-cutter-type of work. He didn't feel like there was very much of a sense for the capabilities of this certified residential applicant, and that the submissions were all residential properties. He felt that it might good to see a better variety in what was selected. After our discussion last month, the Board asked the Division to come back with some kind of language on this topic. Mr. Fagergren met with Ms. Jonsson and gave her some language to prepare a draft rule for your review.

In R162-2g-304d, Experience hours, Mr. Fagergren made a suggestion to add information under (5)(d)(ii). First, mass appraisers have to submit at least eight residential appraisals. All samples have to conform to Standards 1 and 2, and for a certified residential they have to do the following types of assignments: vacant property; two- to four-unit dwelling; non-complex single-family unit; and complex single-family unit. He got some feedback that "complex" is confusing terminology, so alternative wording could be the following instead of complex: basic and advanced; complicated or uncomplicated; traditional or non-traditional; or easy or hard. The point he was trying to get across was that it isn't necessarily the size of the home that determines the complexity of the assignment. If there is a subdivision where there are a lot of comps and they are similar homes, it would be an easier assignment than if you are doing a geodesic home.

This suggestion didn't change anything for licensed appraisers, because Mr. Fagergren got the sense last month that the Board felt like they weren't concerned as much with

what the applicants were submitting. He didn't make any changes for the certified general applicants, because theirs come from Appendix 2.

On the Division's Caravan last month, because of the downturn for mortgage licensees, and the fact they can no longer get CE credit, we essentially had no more than a handful of mortgage licensees attend. We had the same number overall that we did the prior year, which means that the real estate and appraisal numbers grew.

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

Lucas Hendrickson, CG Candidate
Kyle P. Jensen, LA Candidate
Benjamin Hulet, CR Candidate
Jeffrey Worthington, CR Candidate

Discipline List for Board's Consideration

Michael G. Feurborn, Main Control Person
Curtis Hansen, Main Control Person
Christine Pearson, CR Reciprocity
James Tippetts, Renewal of CR License

COMMISSION AND INDUSTRY ISSUES

Rule Updates – Jennie Jonsson

Ms. Jonsson informed the Board that the reorganization of the rules, R162-2g, is with Administration. It is a very lengthy document and several people have to review the changes and sign off on it. The process hasn't been completed yet, so the rule is not yet filed for public comment. Ms. Jonsson will inform the Board when this happens.

The draft we discussed in Mr. Fagergren's report, R162-2g-304d(5), assumes that our reorganized draft will go into effect, so the amendment is made to that version. We have become aware of a glitch in our Administrative Proceedings rule which has to do with the amount of notice that we give to an applicant or respondent who is called into a hearing. The rules say that we must give them ten days notice, and yet they also provide that this person has 30 days in which to file an answer. We would suggest that we make the notice 30 days, and that way the answer could be due on the day of the hearing and we feel comfortable that this will clear up the problem. R162-2g-504(d)(i) shows the change to the hearing notice requirement. A motion was made to make the modifications to this rule as shown. Vote: Chair Morley, yes; Vice Chair Thronsen, yes; Board Member Brammer, yes; Board Member Sjoblom, yes. Motion carries.

Mass Appraisers – Complexity of Samples Submitted – Ron Smith/Jim Ivie

Mr. Smith was reading the Dodd-Frank Reform Act and noticed where they had defined "complex" and "non-complex" in FIRREA. "A complex one- to four-unit single family

appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical.”

Mr. Smith continued to say that his comments today will be to certified residential. There have been several changes over the years to the requirements for mass appraisers. The pendulum seems to be swinging from one side to the other. During all this time, a fee appraiser was required to turn in an experience log. Then four work files were selected by the Division for review to see if they complied with Standards 1 and 2. For a mass appraiser, when this first started, all they needed was a letter or affidavit from the supervisor saying that the applicant knows what he’s doing. The first rule was that we want to see an experience log from the mass appraisers. Next was, in addition to the log, we now would like to see for a certified residential eight sample appraisals chosen by the appraiser to show compliance with Standards 1 and 2. Next, the Appraisal Subcommittee decided that perhaps we should also look at the experience log and have the Division select ten sample work files to see if they complied with Standard 6. And now it appears that they are going one step further, according to the draft, that of requiring that the eight sample appraisals include a vacant property, a two-to four-unit, a complex, and a non-complex. Mr. Fagergren said it is just from those four types, so perhaps we need clarity to put how many of each is required.

Mr. Smith went on to say that the pendulum has shifted again. Now the fee appraiser still turns in a log and has four appraisals chosen by the Division and reviewed. Those appraisals, all 100 that come in on the log, could be non-complex single family homes. It’s a rare day when a fee appraiser has on the log a vacant property. It appears the shift is now becoming a detriment to mass appraisers trying to become certified residential.

Mr. Smith believes that the requirements should be similar, and would propose that if this rule goes through, to consider another one to bring the mass appraisers similar to the fee appraisers. Mr. Smith submitted his revised version of R162-104-1 for review. He is asking that the mass appraisers be treated equally to the fee appraisers.

Mr. Ivie has been an appraiser for over 30 years, and most recently the Davis County Assessor. He has done reviews for people wanting general certifications, many of which are from the State Tax Commission. Many of those are mass appraisers, and they have done appraisals on sand and gravel pits, and gas and oil. They are very good at that, and the assignments are very complex and go into a discounted cash flow model. His concern is if those people are granted the status of a certified general appraiser and then they leave the state, could they appraise an office building? He gets some reviews that are all four for sand and gravel pits. Mr. Ivie is wondering if they should be given a different classification to be able to continue to do that kind of work, but not be called a general appraiser.

Chair Morley said the Board doesn’t have the ability to offer an alternative certification, at least anything that would be recognized at a federal level. The Board does have the

ability to develop rules for getting that general certification in compliance with the Appraisal Subcommittee.

Mr. Smith discussed the 2010-2011 USPAP Competency Rule that states if you are not competent to appraise something, either get competent or don't appraise it. That would solve the problem. In looking through the rules, Mr. Smith found 54 appraisal assignments listed in our current rules. It appears out of these 54, there are nine categories. If you want the certified general candidate to qualify in areas other than their specialty, he doesn't recommend it. He recommends sticking to the competency rule in USPAP.

Mr. Fagergren said that he and Mr. Johnson attended a meeting where the chairman of the Appraisal Subcommittee spoke. The chairman said for any certified general candidate, the Division is required to select the properties they are appraising. We asked him how we could do that for mass appraisers? It was his opinion that any certified general has to demonstrate competency in residential and anything else. He wanted us to choose, and we finally had our representative, Jenny Tidwell, say her boss is trying to do something that there is no way we could require. This was some insight in terms of having generals have residential competency.

Ms. Jonsson said that the objective is not to ensure that anybody who holds a state-certified general appraiser certification is competent in every type of property. She doesn't think that that is realistic, and thinks that the concern is that we be satisfied the person understands what the competency rule requires and understands what it might mean to become competent in a property type that he is not used to. It could perhaps be accomplished by saying that you must demonstrate competency to appraise two of the property types or something like that, so they are going to have to step outside of their realm of expertise and go through the process of becoming competent for a property type that they are not doing.

Mr. Fagergren said that he and Director Sabey don't want to make it so difficult that we have to send out an application to several reviewers. We are hoping that what we are sending out to our panel of reviewers is something that they are accustomed to. Sending out the application to several reviewers would just complicate an already complicated process.

Board Member Brammer suggested that the Board review the draft language and the comments that were given today, and review it next month.

Board Member Payne suggested adding the phrase "As an appraiser I accept responsibility to protect the public trust" to the bottom of the applications and renewals. She believes that licensees are not paying attention to what is in USPAP, and would like to see them affirm this every two years. Mr. Fagergren said that to add or change something on the applications or on-line renewals is not a simple task. He agrees with Board Member Payne, but currently it would be difficult to add anything to the existing forms.

A recess was taken from 10:23 a.m. to 10:40 a.m.

Application Fees Being Charged by AMCs – Craig Morley

Chair Morley set the framework for this discussion. Within USPAP there are some requirements for fee disclosures if an appraiser must pay a fee to get an assignment. The fee paid by the appraiser has to be disclosed. Apparently there are some Appraisal Management Companies or other clients are requiring the appraiser to pay fees in order to either stay on lists or to accept assignments. With that in mind, is this an issue we need to be addressing and write some administrative rules, or are things not that serious?

Mr. Austin Christensen said that at AMC Links they do not charge appraisers a fee to be on their panel. The point to be considered is that some AMCs may need to do that to keep up with the requirements set forth in the law that basically say if they are required to get USPAP reviews on every appraiser that is performing services, that will cost the AMC something to get the review. If you have 1,000 appraisers on your panel and it is \$200 each, that cost would be \$200,000. Where is the AMC going to get the money to cover that charge? If they are not able to do it up front it is possible that the appraiser may pay for it anyway in some type of reduction in the split that they are receiving now.

Ms. Jonsson said that these reviews are not required in Utah, but Mr. Christensen said that many other states or lender/clients are requiring them.

Mr. Jensen with Rels said they don't charge any fees to remain on their lists. He said the question is, does the state require that the AMC go beyond the rules that have been discussed that lead to a type of review or service that we have to provide in order to remain licensed. He asked if we are addressing a problem that doesn't exist, or is there a concern, and what is it so we can focus on what it is.

Mr. Mike Christensen said the confusion that he has from an appraiser standpoint, is how does it become the appraiser's responsibility to see to it that the AMCs are somehow financially to the point that they can deal with the costs that are being thrown at them by the same regulations that are being thrown to us. There should be some kind of pass-through because they are required to review the appraisal. It has nothing to do with the appraisal itself in terms of the appraiser, unless you have an issue, and that would resolve itself. If it is a requirement based on what the states are putting in place, relative to those reviews, then that is an AMC cost. Why is all of the funding for AMC filtering back to the appraiser? As a middleman, aren't they doing at least as much for the lenders as they are supposedly for the appraisers?

Board Member Payne said that an appraisal fee is separate from a management fee. All that they are talking about is a management fee. As an appraiser, we should not have to be burdened with the extra expense of the costs of the management. The costs of the management should go through the mortgage company. The costs of the appraisal should go through the appraiser.

Mr. Mike Christensen said of the 100,000 appraiser licensees in the United States, approximately 25% of them are fee appraisers. Of those 25%, approximately 85% are self-employed. As we have looked at the marketplace in general, with those numbers of valuers who are appraisers, almost 11,000,000 appraisals were done in 2010. Whether these are broker price opinions, done through AMCs, or done by individual appraisal shops, they were completed. The reason why is because the marketplace demanded them.

Chair Morley said if a person is on 50 different AMCs, and get charged the pass-through 50 different times at \$40.00, there are very few AMCs that are going to guarantee a minimum level of work. In 2015 the AMCs are mandated to charge a fee for being with them. He would suggest to representatives from some of the appraisal organizations here that he doesn't believe the Board should try and regulate something that isn't a problem. At the same time we need to be proactive that if we see a problem coming down the road it would be well to address it before the problem occurs. He would suggest if the organizations would go to their membership and see if any of these things are happening, get specifics to be reviewed.

Appraiser Pressures – Jeanette Payne

Board Member Payne said the AMC companies can withhold a fee if the appraiser breaks the contract. Their contract may include: contacting the homeowner within six hours of acceptance of the appraisal no matter what time of the day or night it is; and have the appraisal done within 24 hours of walk through. AMC companies have to pay the appraiser.

AMCs have an HVCC addendum in their contract. They ask for other items not requested by the mortgage companies, such as aerial photos, but are not going to compensate you. When making the assignment, the AMC may just give the appraiser the zip code and the type of property, but when the appraiser gets to the property, it is a more complex appraisal. When the appraiser contacts the AMC to let them know that it is a complex appraisal and will need more time to complete, the AMC will cancel the contract and shop around for another appraiser to do the job.

Ms. Jonsson said that this is a violation. The AMC has to give more information than this. When something like this happens, the appraiser needs to file a complaint with the Division, because we can't investigate something we are not aware of.

Ms. Hardman said it doesn't help to add more regulation when we can't enforce the regulations that are already in place. We can only enforce it when complaints are being received.

Broker Price Opinions – Jeanette Payne

Board Member Payne asked if our statute deals only with appraisers or does it extend to valuations. Ms. Jonsson said that if someone is exempted out of the appraisal statute, the Board cannot exercise regulatory authority over that person. Real Estate

professionals are exempted out of the appraiser statutes, so the Board cannot regulate their activity. If they are operating within the exemption, then they are exempt from the appraiser statutes completely.

CLOSED TO PUBLIC

Motion to hold an Executive Session. Vote: Chair Morley, yes; Vice Chair Thronsdon, 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 11:55 a.m. to 1:07 p.m.

OPEN TO PUBLIC

RESULTS OF DELIBERATIONS

Review of Lists

Deliberation on Stipulation

The Stipulation for Jason M. Olson was approved.

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

Lucas Hendrickson, CG Candidate - Approved

Kyle P. Jensen, LA Candidate - Approved

Benjamin Hulet, CR Candidate - Approved

*Jeffrey Worthington, CR Candidate - Approved

*Chair Morley recused himself

Discipline List for Board's Consideration

Michael G. Feurborn, Main Control Person - Approved

Curtis Hansen, Main Control Person – An Order will be issued

Christine Pearson, CR Reciprocity – An Order will be issued

James Tippetts, Renewal of CR License – An Order will be issued

A motion was made to adjourn the meeting. Vote: Chair Morley, yes; Vice Chair Thronsdon, yes; Board Member Sjoblom, yes; Board Member Brammer, yes; Board Member Payne, yes. The meeting adjourned at 1:09 p.m.