

**APPRAISER LICENSING AND CERTIFICATION BOARD
HEBER M. WELLS BUILDING
ROOM 2B
March 25, 2009
9:00 A.M.
TELEPHONIC MEETING**

MINUTES

STAFF MEMBERS PRESENT

Mark B. Steinagel, Division Director
Dee Johnson, Enforcement Director
Mark Fagergren, Education/Licensing Director
Traci Gundersen, Assistant Attorney General
Renda Christensen, Board Secretary
Craig Livingston, Investigator
Ken Wamsley, Investigator
Jim Bolton, Investigator
Carla Westbroek, Appraisal Education/Licensing Specialist

BOARD MEMBERS PRESENT

Craig Morley, Vice Chair
Debra Sjoblom, Board Member
Paul Throndsen, Board Member

GUESTS

Darrin Liddell

The March 25, 2009 meeting of the Appraiser Licensing and Certification Board began at 9:02 a.m. with Vice Chair Morley conducting. Chair Smith was out of town and unavailable for this meeting.

The Minutes for the February 25, 2009 meeting were approved as written.
The Minutes for the March 4, 2009 meeting were approved as written.

DIVISION REPORTS

DIRECTOR'S REPORT – Mark B. Steinagel

Director Steinagel discussed House Bill 86 and the actions the Board may or may not do. There are two rules the Board is required to accomplish and they are: adopting rules for the renewal of a trainee registration; and, determine the continuing education requirements for trainees. These rules must be drafted within six months of the effective bill which would put the deadline as November 12, 2009.

The Board may grant authority to the Division to conduct automatic revocation hearings for trainees who lose conditional registration for failure to disclose a criminal history. On the Real Estate and Mortgage side the Commissions have designated the Division to conduct these hearings. After some discussion, the Board decided to be consistent with the other industries and have the Division hold the post-revocation hearings. A motion was made to

have the Division conduct these hearings on behalf of the Board. The motion was passed unanimously.

Two other issues where the Board may act are providing by rule for an exemption from any provision of USPAP for an activity engaged on behalf of a governmental entity, and modifying a sanction against a licensee pending completion of court-ordered restitution (i.e. suspend some of a fine). The Board requested the Division bring back rules for experience reviewers at the next meeting.

House Bill 86 also lists action points for the Division. Beginning May 12, 2009, the Division shall start completing background checks for trainees who initially register; charge trainees the cost of the background checks; and permit individuals who fail to renew within six months to reinstate within twelve months if penalties are met. The Division may unilaterally decide to temporarily extend the license of an individual who has pursued renewal of the license and is awaiting a hearing.

House Bill 152 has some actions points require the Board. The Board shall determine if applicants for AMC registration are of good moral character, and shall determine AMC employee qualifications in some instances. The Board may make rules consistent with the law to implement AMC regulation, define "total compensation" that an AMC pays to an appraiser and is disclosed to the client, and, may establish rules for AMC conduct.

House Bill 152 action points require the Division to prescribe the registration form to be used by AMC applicants; determine a fee; register AMC's in accordance with the Act; conduct background checks; and, receive upon registration or renewal an explanation for (1) AMC plan to ensure use of licensed appraisers in good standing, (2) AMC review process, and (3) AMC record keeping.

Vice Chair Morley said that the Board will come back next month with ideas and suggestions for rules. It was suggested that the Appraisal Institute and the Utah Appraiser Association also submit suggestions.

Director Steinagel said that Allan Payne has requested time on the agenda for next month's meeting. He would like time to discuss a rule to clarify the state's position on sales concessions. It was decided to put his time on the May agenda, which is a phone hearing.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson said in the month of February the Division received 12 complaints; screened 1 complaint; opened 3 cases; closed 4 cases, leaving a total of 105 cases.

There are two Stipulations to present to the Board today. The respondents for the Stipulations were offered the opportunity to be here today and both have declined.

Review of Stipulations

Christian E. Bitton
Bonita Loudermilk

Mr. Johnson said that R162-106-7, Sales and Listing History, states the appraiser shall analyze and report the listing history of the subject property for three years. The Division had

intended to include the words “sales and listing” history. This happened when there was a change in the Assistant Attorney General for the Division changed, and so the rule was never completed. Mr. Bolton brought this to Mr. Johnson’s attention to discuss before the Board. The Division would like to add the word “sales and listing” to the rule for more definition.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren mentioned that Ms. Westbroek had two phone calls from concerned AMC groups who expressed concern and wanted to be able to register right then. She requested their names and they resisted in providing an answer. Board Member Throndsen suggested a pre-registration form so those asking can send in the information.

Certified and Licensed Appraiser Applicants Approved by both Education and Experience Review Committees:

- Kevin Boren, CR Candidate
- Rachelle Hubsmith, CR Candidate
- Justin W. Evans, LA Candidate
- Allen Mead, LA Candidate

BROKER PRICE OPINION – Traci Gundersen

Ms. Gundersen said the issue has come up as to who and under what conditions a broker price opinion (“BPO”) can be preformed. The appraisal statutes define who an appraiser is, and what an appraisal or appraisal report is with certain exceptions, etc. One of the first definitions as to who can do an appraisal is under 61.2b.3, which says with certain exceptions it is unlawful for anyone to prepare for valuable consideration an appraisal, an appraisal report, a certified appraisal report, or perform a consultation service relating to real estate or real property in this state without first being licensed or certified in accordance with this chapter.

This sub-paragraph is really broad and it basically tells everyone it is illegal for them to do an appraisal unless you are licensed as an appraiser except for certain exceptions. This sub-paragraph just deals with why and how it is illegal for someone to do an appraisal unless you are licensed as an appraiser.

There is an exception that would apply to BPO’s. Sub-paragraph 2 says this section does not apply to (a) a real estate broker or sales agent as defined in the real estate statute licensed by the state who in the ordinary course of the real estate broker or sales agent’s business gives an opinion 1) regarding the value of real estate, 2) to a potential seller or third-party recommending a listing price of real estate, or 3) to a potential buyer or third-party recommending a purchase price of real estate.

There is no way a BPO should ever be referred to as an appraisal. If they call it an appraisal they would have to be licensed as an appraiser.

Vice Chair Morley suggested a rule change that the Division might want to take a look at. Is a broker or agent who is developing an opinion of value by definition has creating an appraisal? In the appraisal language there is a difference between price and value, and so when an appraiser is developing a market value, he is performing an appraisal function. He is wondering if we need to clean up the language. Ms. Gundersen said she agrees on cleaning

up the language because when she was given the Nevada statute, which is fairly similar to Utah's, they don't have the part talking about the value of real estate. Nevada specifically states that if anyone put anywhere in their BPO the word "value" they begin to infringe on the appraiser definition.

Director Steinagel referring to Ms. Gundersen's explanation stated that current statutory language allows agents and brokers to render an opinion of value if performed in the normal course of their business. The Board can't create a rule that would conflict with a statute. Vice Chair suggested that for the next legislative session that we could have a statutory change to clarify the wording.

Director Steinagel suggested getting a working group together probably with Board Member Sjoblom, a member from the Real Estate Commission, another member of the Appraisal Board, an appraisal association, a local Board of Realtors representative, or the UAR, because an agreement needs to be made on whatever you propose. Vice Chair Morley agreed and said that the industry isn't clear on this topic and everyone has their own opinion on a BPO. The way the statute is listed there is no restriction on an agent rendering a price opinion in conjunction with a listing. The statute is also silent on the fee issue. Director Steinagel said the Division would help facilitate a meeting. Vice Chair Morley suggested that Director Steinagel mention the working group to the Real Estate Commission when they next meet to see if they would like to attend. Ms. Gundersen said that she would put together some examples of wording that might help.

CLOSED TO PUBLIC

A motion was made to go into Executive Session from 10:25 a.m. to 10:35 a.m.

OPEN TO PUBLIC

A motion was made to allow Director Steinagel to sign the Stipulations on behalf of the Board.

Review of Stipulations

Christian E. Bitton - Approved

Bonita Loudermilk - Approved

Certified and Licensed Appraiser Applicants Approved by both Education and Experience

Review Committees:

Kevin Boren, CR Candidate - Approved

Rachelle Hubsmith, CR Candidate - Approved

Justin W. Evans, LA Candidate - Approved

Allen Mead, LA Candidate - Approved

A motion was made to adjourn at 10:38 a.m.