

APPRAISER LICENSING AND CERTIFICATION BOARD

Heber M. Wells Building

Room 210

9:00 a.m.

October 28, 2009

MINUTES

STAFF MEMEBERS PRESENT:

Deanna D. Sabey, Division Director
Mark Fagergren, Education/Licensing Director
Dee Johnson, Enforcement Director
Traci Gundersen, Assistant Attorney General
Jennie Jonsson, Hearing Officer
Renda Christensen, Board Secretary
Carla Westbroek, Appraiser Education/Licensing Coordinator
Jim Bolton, Investigator
Ken Wamsley, Investigator
Craig Livingston, Investigator

BOARD MEMBERS PRESENT:

Ronald M. Smith, Chair
Craig Morley, Vice Chair
Paul W. Throndsen, Board Member
Debra Sjoblom, Board Member
Jeanette Payne, Board Member

GUESTS:

Darrin Liddell, Appraisal Institute
Kevin Prowell, Alliance AMC
Austin Christensen, Alliance AMC
Peter J. Christensen, UAR
Kim Wilson
Allen Larsen, United Appraisers of Utah

The October 28, 2009 meeting of the Appraiser Licensing and Certification Board began at 9:05 a.m. with Chair Smith conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

The Minutes for the September 23, 2009 telephonic meeting were reviewed and found to have one correction needed. On page 2, Chair Smith's comment was that "...segmented applications by the end of 2008" needs to be corrected to 2007. With this correction, the minutes approved as written.

DIVISION REPORT

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey discussed the Home Valuation Code of Conduct (“HVCC”). The HVCC is controversial with a number of appraisers, lenders, and real estate agents. The Division has received numerous complaints about how the HVCC is slowing down transactions. There is a moratorium bill, HB-3044, regarding the HVCC running through the legislature. The bill calls for an 18-month moratorium, and is currently in committee. Board Member Payne mentioned HVCC is set to expire in July 2010.

Director Sabey wanted to congratulate Mr. Fagergren and his staff for their fine work in producing a successful Instructor Development Workshop.

Discussion of Appraisal Management Company Rule – Jennie Jonsson

Review of Comments Received from Public

Ms. Jonsson discussed the draft of R162-150 that was initially made effective on August 21, 2009. It has not been published on the DAR website because they are at least three months behind in updating their website. These changes are still out for public comment, and the public comment period ends on November 2, 2009. These changes can be made effective as early as November 9, 2009.

The changes that are under public comment right now are to change the wording with regard to the requirement that AMC employees who are choosing appraisers have to have had the USPAP class. The wording has been changed to “taken and passed” a USPAP course.

Under the unprofessional conduct section, R162-150-3, there have had some comments on the addition of Section I. The comments have generally been that the industry feels that the BPO is not appropriate for originating a mortgage loan, but that clients are willing to use them for things such as MIP evaluations, loan modification, etc.

There is some concern that an AMC is required to require an appraiser to disclose the total fee and its breakdown in the body of the appraisal, but there is no similar duty being imposed on appraisers. AMC's are concerned that if they are required to require the appraiser to disclose it, but the appraiser refuses to, that this could be considered unprofessional conduct to them but not to the appraiser.

There have also been comments about the AMC's fees must be disclosed to the lender and should be included in the closing documents, but should not be required to be disclosed to the appraiser or included in the body of the appraisal report.

Finally, the Division has received comments as to the prohibition against the AMC's inhibiting or prohibiting communication between the appraiser and the client. There was some concern that the HVCC requires the AMC to buffer communication and they feel that our rule is in conflict with the HVCC buffering requirement.

Chair Smith said there were two things being discussed: first, the comment under review for the changes in the comment period now; and, the prohibition against using the AMC giving a BPO or other estimation of value that doesn't qualify as an appraisal for purposes of getting a mortgage loan.

There were six comments submitted from the following:

Rels Valuation, Timothy O'Brien
Specialized Appraisal, Craig Peterson
Utah Association of Realtors, Peter Christensen
Appraisal Institute, Dan Brammer
Appraisal Institute, Darrin Liddell (Free & Associates)
I-net Mortgage Corp., Gregory Cutt

A motion was made and accepted to close the public portion of the meeting.

CLOSED TO PUBLIC

INFORMAL HEARINGS

10:10 James Benjamin Hickman – Experience Review
John Brian Hickman – Trainer, Brother

11:05 Jason Olson – Experience Review

A motion was made to go into Executive Session from 11:55 a.m. to 12:55 p.m.

CLOSED TO PUBLIC

Executive Session: Strategy Session to Discuss Pending Litigation – Blaine Ferguson and Laurie Noda, Assistant Attorney's General.

CLOSED TO PUBLIC

1:00 Mark B. May – Disciplinary Hearing

A motion was made to go into Executive Session from 1:55 p.m. to 2:10 p.m.

OPEN TO PUBLIC

Discussion of Appraiser Trainee Rule (and other affected rules) – Jennie Jonsson
Ms. Jonsson discussed R162-110, Trainee Registration. This rule will bring trainees under the requirement of having fingerprints in order to register, and to renew their registration every two years.

There was a suggested amendment to add in sub-section 9, Re-registration of Existing Trainees, under (vii), “..Division approved continuing education or AQB qualifying education..” Under sub-section (d), a motion was made to delegate the character and

competency issue, similar to the Real Estate and Mortgage Commissions. The wording will be changed to "...the application will be reviewed by the division hearing officer for a decision, or at the discretion of the hearing officer referred to the Board for decision." The motion was passed unanimously.

A motion was made to start the Trainee Registration rule into the rulemaking process. This motion was passed unanimously.

Ms. Jonsson presented several suggestions on Rule 162 to the Board for their consideration. Under 101.2.5, the licensee now has 12 months to reinstate a license. Under R162-102.1.1.2, the wording was added to remind the licensee that any work performed at a time when the applicant was not registered with the Division as a trainee shall not be awarded as experience credit. Because the reinstatement period is now 12 months, the new sub-section 102.3.2.2, Reinstatement, was added.

In R162-104-1, Measuring Experience, the wording has been changed from "points" to "hours", and because of this change, 104-1.1.2 has new text reflecting the hours required. Chair Smith suggested changing the hours for mass appraisers under sub-section (g) data input, the number is currently .05 hours, to .25 hours. A motion was made to approve this change, and it was approved unanimously.

R162-105.3, Trainees, has been revised and some sections moved to the new rule, R162-110, Trainee Registration. In sub-section 105.2.10.1, a sentence was added to remind the supervising appraiser to personally inspect all property when the appraisal report scope of work or certification requires appraiser inspection.

Under the statute that was passed during the last legislative session, we are able to exempt by rule certain people from complying with USPAP. Under R162-106-1.1, it lists those who would be under this exemption. Chair Smith has proposed four more categories which he suggests be added: Board of Equalization Hearing Officer, members of the Board of Equalization, Administrative Law Judge and State Tax Commissioner when acting in their official capacity. After discussion, a motion was made to add these four individuals. The vote was in favor: Chair Smith, Vice Chair Morley, Board Member Payne; against, Board Member Thronsen; and, abstention: Board Member Sjoblom.

A motion was made to begin this rule in the rulemaking process as amended. This motion was passed unanimously.

The Board expressed their thanks to Ms. Jonsson for her hard work in getting these rules completed.

A motion was made to go into Executive Session from 3:24 p.m. to 3:36 p.m.

INVESTIGATIONS REPORT – Dee Johnson (Continued)

Mr. Johnson said there is one stipulation to present today for the Board's review. This person was informed that he could appear today, but has chosen not to appear.

Stipulations for Review

Jerry E. Larrabee

Mr. Johnson reported in the month of September the Division received 11 complaints; screened 1 complaint; opened 12 cases; closed 12 cases; leaving the total number of appraisal cases at 80. Mr. Johnson said we will be seeing these numbers increasing in the near future.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported the Division had a successful Instructor Development Workshop.

The number of licensees has been remaining constant.

Mr. Fagergren wanted to thank Ms. Jonsson and Ms. Buchi for their work in compiling copies of the current rules and statutes. Copies of these were given to all members of the Board for their use.

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

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

Danette Brooks, LA Candidate	Zack Buck, LA Candidate
Stephen S. Burgoyne, LA Candidate	Patrice Kaio Fano, LA Candidate
Bradley H. Gubler, CR Candidate	Nathan P. Herrscher, LA Candidate
Mark A. Huebner, CR Candidate	Mark A. Mendoza, LA Candidate
Darrell Moss, CG Candidate	Adam T. Mulcock, CR Candidate
Jay Newbold, LA Candidate	Sandon B. Effefson, LA Candidate

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

W. Ken Cole, Jr., CR Candidate
Casey W. Hatch, CR Candidate

Discipline List for Board's Consideration

Rich Fresques
Mark G. Wiedeman

BPO Committee Report – Vice Chair Morley

Vice Chair Morley reported there was a telephone meeting recently held. The Utah Association of Realtors was going to meet with their legislative committee and come up with some potential language changes to introduce the legislation during the 2010

session. Vice Chair Morley recommended they review the Nevada statutes to help clarify any questions they might have and use as a model for their wording.

CLOSED TO PUBLIC

Discussion of Violation and Enforcement Uniformity

A motion was made to go into Executive Session from 4:02 p.m. to 4:17 p.m.

OPEN TO PUBLIC

Results of Executive Session

Results of Stipulations:

Jerry E. Larrabee – The Board did not accept this Stipulation.

The Board has approved this list as presented:

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

Danette Brooks, LA Candidate	Zack Buck, LA Candidate
Stephen S. Burgoyne, LA Candidate	Patrice Kaio Fano, LA Candidate
Bradley H. Gubler, CR Candidate	Nathan P. Herrscher, LA Candidate
Mark A. Huebner, CR Candidate	Mark A. Mendoza, LA Candidate
Darrell Moss, CG Candidate	Adam T. Mulcock, CR Candidate
Jay Newbold, LA Candidate	Sandon B. Effefson, LA Candidate

The Board has approved this list as presented:

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

W. Ken Cole, Jr., CR Candidate
Casey W. Hatch, CR Candidate

Discipline List for Board's Consideration

Rich Fresques – The Board has approved his renewal.

Mark G. Wiedeman – Chair Smith has recused himself, and the Board has approved him.

A motion was made and accepted to adjourn the meeting at 4:20 p.m.