

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

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TESTIMONY TO: Administrative Rules Committee

RE: Amendments to "Real Property Appraiser Rules and Regulations"

TESTIMONY BY: Joe Ibach
Chairman of the ND Real Estate Appraiser Qualifications and Ethics Board

DATE: June 14, 2012

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

The rules implement changes from the most recent legislative session. Amendments to Chapter 43-23 clarified that should the Board deny an applicant for licensure or certification, whether it is through the full application process or via reciprocity, the Board must specify the basis for denial.

2. Whether the rules are related to any federal statute or regulation.

Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) charges the Appraisal Foundation with the responsibility of establishing, improving, and promoting minimum uniform appraisal standards and appraiser qualifications criteria. The Appraisal Foundation serves as the parent organization for two independent boards or (i) The Appraisal Standards Board (ASB) and (ii) The Appraisal Qualifications Board (AQB).

The Appraisal Qualifications Board (AQB) establishes the qualification criteria for state licensing, certification, and recertification of appraisers. Title XI mandates that all state licensed and certified appraisers must meet the minimum education, experience, and examination requirements as promulgated by the AQB.

The AQB approved revisions to the Appraiser Qualification Criteria and the Interpretations to the Criteria in 2010 for Trainee, Licensed, Certified Residential, and Certified General Appraiser classifications. As these changes represent the minimum national requirements that each state must implement for individuals applying for appraiser licensure/ certification, the North Dakota Appraiser Board has incorporated these revisions as part of the North Dakota Appraiser Rules and Regulations.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

Guidelines, required revisions, information, etc. were collected from various federal agencies, state agencies, and other state appraiser regulatory agencies to assist in the development of the revisions to the North Dakota Appraiser Rules and Regulations. Legal counsel of the Office of Attorney General was consulted to assure that the North Dakota guidelines/procedures for amending rules and regulations were followed. These consultations, along with numerous Appraisal Board meetings, facilitated the final draft of the proposed revisions to rules and regulations, prior to the public hearing.

Notice of the public hearing was published in all North Dakota official county newspapers, as required. Notice of the public hearing was published in 51 newspapers in the state in January 2012.

The public hearing was held on February 29, 2012. No oral comments were received at the hearing. Public comment period was scheduled through March 10, 2012. Various written comments were received. On April 10, 2012, the Board considered all comments, made changes where appropriate, and adopted the proposed revisions to the rules and regulations. The rules were sent to the Attorney

General's office for review for legality and approved as such and subsequently filed with the Legislative for publication.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules.

Four individuals submitted comment regarding the increase in fees:

The Board discussed each comment and voted not to make any changes to the fees based on the following: 1) The initial application fee, as well as renewal fees have not been raised for over 14 years; 2) The Board is an autonomous Board with all costs of operation spread among 250-260 appraisers; 3) The Board has been running on a deficit over the past five years, significantly reducing savings reserves; 4) The Board provides (and this is not required) a copy of USPAP to all active credentialed renewing appraisers every two years. It is important to note that the ND Appraiser Board is one of few states that provide a copy of USPAP to all state active credentialed appraisers. If the Board did not provide USPAP, the cost to purchase a copy from the Appraisal Foundation would be \$75; and 5) The Board has been sponsoring education to help offset operating costs. With the exception of the USPAP Update course, the supervisory/trainee course, and perhaps other specialized education, the Board would like to turn the sponsorship of continuing education in ND over to the ND appraiser associations.

The following comments were received from Mr. Jim Parks, Executive Director on behalf of the Appraisal Subcommittee:

1. N.D. Admin. Code §§ 101-02-02-03. 2, 6, 7 and 101-03.1-01-01.10 allow a licensed level appraiser to supervise an apprentice. Please be advised that as of July 1, 2013, the ASC will begin monitoring State Programs for compliance with the Dodd-Frank Act requirement that any minimum qualification requirements established by a State for individuals in the position of "trainee appraiser" and "supervisory appraiser" must meet or exceed the minimum Appraiser Qualifications Board (AQB) Criteria. ASC staff will work with States to evaluate designations such as "registered appraiser," "apprentice appraiser," "provisional appraiser," or any other similar designation to determine if, in fact, the designation should be "trainee appraiser" and therefore administered to comply with Title XI requirement.

The Board determined that the rules do meet the minimum requirements as established by the Appraisal Qualifications Board and therefore, no further changes were required.

2. N.D. Admin. Code §§ 101-02-02-03. 6. d. (5); 101-02-02-05, 5. g. (5); 101-02-02-05.1. 5. g. (5); and 101-02-02-06. 5. g. (5) do not require actual work hours for verification of experience credit claimed. AQB Criteria requires that verification of experience credit claimed by the number of actual work hours. The regulation could specify a "not to exceed" number of allowable hours for a particular appraisal assignment.

The Board considered and further amended the rules to clarify that the Board will set a maximum number of hours an applicant can claim for each assignment.

3. N.D. Admin. Code § 101-02-02.1-01 requires issuing a reciprocal credential to an application who is credentialed in good standing by another State if the State's current requirements for credentialing are at least substantially equivalent to the current requirements imposed by North Dakota. Please be advised that effective July 1, 2013, States will be monitored for compliance with the amendment to Title XI concerning reciprocity. The reciprocity policy that States should have in place by July 1, 2013, will require, at the very least, that a State issue a reciprocal credential if: (1) the appraiser holds a valid credential from that State and the credentialing requirements of that State meet or exceed those of the reciprocal credentialing State. A State may not impose additional impediments to issuance of reciprocal credentials. A State may be more lenient in the issuance of reciprocal credentials (a more open door policy). Therefore, the rule as applied must not require more of an applicant than is allowed by the required policy. Other requirements in § 101-02-02.1-01, such as grounds for denial under North Dakota Century Code section 43-23.3-22, or certification that disciplinary proceedings are not pending, or requiring work product if the applicant has a history of disciplinary action may only be required of the applicant if those are requirements the State imposes on its own applicants for credentialing.

The Board determined that the rules and Board policy are no more stringent for an applicant making application via reciprocity than that of a ND resident making full application. Therefore, the Board determined no changes were required.

4. N.D. Admin. Code § 101-04-01-01.2 m. states that three hours of continuing education credit, per continuing education cycle, may be granted for attendance at a face-to-face meeting with the board and that the attendee must attend the meeting in its entirety. To comply with the AQB Criteria, the rule must also require that the Board meeting be at least three hours in length.

The Board further amended the rules requiring Board meetings be at least 3 hours in length before an attendee can receive continuing education credit for attendance.

Mr. Dan Van Winkle of First Class Mortgage provided the following comment:

"Prior to HVCC and now AIR appraisals in our area ranged from \$300 to \$450. Since that May 1st, 2009 timeframe we've seen appraisals are now starting at the \$450 range and we've seen them as high as \$1500. When we've contacted the AMC's they say the appraisers are jacking up the prices but when we talk to the local appraisers they are stating the AMC's are inflating the prices so they can increase their fee income. After attending a seminar in Florida I was made aware of what the state of Illinois is now requiring of their appraisers. They require all appraisers to list on the appraisal what they were paid for a fee. The State of Illinois wanted to have the breakout of the fees on the HUD but they found that that process would take too long to get implemented.

So, my suggestion for the board would be to consider amending their guidelines so it requires the appraisers to list the fees that they were paid for the appraisal. I think that benefits the customers by forcing the appraisers and AMC companies to come clean with what they are truly charging the customer. Everyone else in the mortgage process has to disclose their fees.....mortgage lenders, title companies, and now is our opportunity to find out who is truly gouging the customers. "

The North Dakota Appraiser Board discussed the above comment received from Mr. Van Winkle and agreed to consider this issue when drafting legislation regarding Appraisal Management Companies (AMC's) to be introduced by the Board in the 2013 Legislative Session. Therefore, the Board voted not to make any changes to the proposed rules.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

Legal Fees:	\$3540.00
Public Notice:	<u>\$1648.90</u>
Approximate Cost:	\$5188.90

6. An explanation of the subject matter of the rules and reasons for adopting those rules.

The changes in the rules cover four main areas.

The first area includes implementing legislation from the most recent legislative session.

Amendments to Chapter 43-23 clarified that, should the Board deny an applicant for licensure or certification, whether it is through the full application process or via reciprocity, the Board must specify the basis for denial.

The second area includes amendments related to changes and interpretations in the criteria adopted by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation in 2010. The new rules now reflect changes in the qualification requirements to include qualifying education, continuing education, and experience, for the apprentice level, the licensed level, and the certified level permit(s).

- 1) Credit toward qualifying education requirements can be obtained by the completion of a graduate (master or doctoral) degree in real estate.
- 2) College level education completed at a foreign college or university may be acceptable provided the education has been evaluated and deemed equivalent by an accredited degree-granting U.S. college or university.
- 3) Currently, ND utilizes a "point system" to verify experience credit. The AQB criteria requires applicants for licensure/certification track actual hours worked per appraisal. Therefore, the "point

system” has been revised to actual hours spent on an assignment, subject to a maximum number of hours established by the board.

The third area of changes address revisions initiated by the Board.

FEES:

As explained above in #4, the Board approved an increase in fees for the following reasons:

- 1) The initial application fee, as well as renewal fees, have not been raised for over 14 years;
- 2) The Board is an autonomous Board with all costs of operation spread among 250-260 appraisers;
- 3) The Board has been running on a deficit over the past five years, significantly reducing savings reserves;
- 4) The Board provides (and this is not required) a copy of USPAP to all active credentialed renewing appraisers every two years. It is important to note that the ND Appraiser Board is one of few states that provides a copy of USPAP to all state active credentialed appraisers. If the Board did not provide USPAP, the cost to purchase a copy from the Appraisal Foundation would be \$75; and
- 5) The Board has been sponsoring education to help offset operating costs. With the exception of the USPAP Update course, the supervisory/trainee course, and perhaps other specialized education, the Board would like to turn the sponsorship of continuing education in ND over to the ND appraiser associations.

APPRENTICE/SUPERVISORY PROGRAM:

The new rules require both apprentice and supervisory appraiser 1) register with the Board; 2) notify the Board when supervision is terminated; 3) complete an apprentice/supervisory course; and 4) complete an open book examination covering NDCC Chapter 43-23.3 and Title 101.

Under the new rules the Board will be allowed to develop an apprentice/supervisor program. The goal of this program, as discussed by the Board would be to improve the level of knowledge and training of the apprentice and supervisor appraiser.

In addition, the new rules specify that the supervising appraiser may be disciplined if the Board determines the supervisor has failed to supervise an apprentice. Current rules require the supervisory appraiser accept full responsibility for appraisals completed by the apprentice/supervisor. Therefore, if reports are found to be in violation of USPAP the Board should have the authority to seek disciplinary action against the supervisor.

QUALIFYING EDUCATION REQUIREMENTS

Current rules allow for only a portion of qualifying education to be completed through distance education (online, video-conferencing, internet, etc.). New rules “open the door” to allow an applicant to complete all hours of qualifying education through distance education.

EXPERIENCE:

New rules allow an applicant for upgrade to voluntarily submit work product to the Board for review for compliance with the *Uniform Standards of Professional Appraisal Practice* (USPAP). It is important to note that if violations are found through the review process, the Board will not initiate a complaint, as this process is meant to be an educational tool to assist the apprentice, as well as the supervisor in completing USPAP compliant work product.

INACTIVE STATUS:

Current rules require a licensed or certified appraiser on inactive status to complete 28 hours of continuing education every two years as part of the renewal process. Under the new rules, a licensed or certified appraiser on inactive status will not be required to meet continuing education hours while on inactive status.

RECIPROCITY:

New rules revise the issuance of permits to applicants licensed or certified by another state.

Under past policy, the Board would consider issuing a permit to an applicant via reciprocity provided the requirements of the state in which the applicant was initially licensed or certified in were substantially equivalent to those of North Dakota's at the time of initial licensure or certification. Substantial equivalent included verification that work product was reviewed as part of the applicant's initial application process. In addition the applicant had to: 1) certify that the applicant was in good standing in all jurisdictions where the applicant held a permit; 2) certify that disciplinary proceedings are not pending the applicant in any

jurisdiction; and 3) pay the application fee. This policy came into effect at a time when a majority of states did not review work product as part of the application process.

However, given the recent changes in the market and the shortage of appraisers in ND, the Board felt it was time to revise the reciprocal application process.

Under current policy, the Board will consider issuing a permit to an applicant through reciprocity provided the applicant comes from a state whose current requirements are substantially equivalent to North Dakota's current requirements for licensure or certification. This change in policy/rules opens the door for numerous nonresident appraisers to become licensed or certified in ND.

The applicant must also: 1) certify that he/she is in good standing in all jurisdictions where the applicant holds a permit; 2) certify that disciplinary proceedings are not pending in any jurisdiction; and 3) pay the application fee.

The Board does reserve the right to request review of work product if the applicant has a history of disciplinary action.

TEMPORARY PRACTICE:

Current rules do not limit the number of times an out-of-state appraiser can make application for a temporary permit in state.

The Appraisal Subcommittee (ASC) conducted its bi-yearly State Review of the ND Appraiser Program in 2010. As part of the state review the ASC Staff reviewed the log of temporary permits issued by the Board in the previous two years and found abuse occurring by certain appraisers. The ASC Staff clarified that temporary practice is a right granted by Title XI. Furthermore, ASC Policy Statement 5 indicates that temporary practice applications can be limited if the Board finds that an out-of-state appraiser is appraising in the state on a regular basis. ASC Staff stated that two to three applications per year per appraiser is typical and encouraged the Board to look at limiting the number of temporary practice applications allowed per year per appraiser.

Therefore, under the new rules an applicant may not complete more than six assignments per year via a temporary permit.

APPLICATION OF STANDARDS:

Under the new rules, the Board members, as well as Board Reviewers/Investigators may be exempt from completing a Standard 3 Review.

The Board views their responsibility in a role other than that of a review appraiser and therefore amended the rules to reflect this responsibility. Relative to review of work product for applications and complaints, the Board has to make a decision as to whether work product complies with USPAP. An independent Standard 3 Review is completed to assist in their decision. The Board considers the Standard 3 Review, but may also consider items beyond the Standard 3 review to arrive at their decision, identifying issues they feel the reviewer has missed or overemphasized. Therefore, the ultimate decision as to compliance with USPAP is the responsibility of the Board.

CONTINUING EDUCATION:

To encourage appraisers to attend board meetings and here the Board deliberate, the new rules were amended to allow 3 hours of continuing education credit per continuing education cycle for attendance at a face-to-face meeting of the Board.

The **fourth** area of changes can be characterized as administrative in nature to include adding or clarifying wording throughout the rule, as well as removing all rules that no longer apply.

7. Whether a regulatory analysis was required by NDCC Section 28-32-08 and whether that regulatory analysis was issued.

No regulatory analysis was requested or required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000, and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.

8. **Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued.**

No small entity economic impact statement was required because the agency is exempt from the requirement to prepare one.

No small entity regulatory analysis was required because the agency is exempt from the requirement to prepare one.

9. **Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency.**

A fiscal note was not required because these rules have no fiscal effect.

10. **Whether a constitutional takings assessment was prepared as required by NDCC Sec. 28-32-09.**

No takings assessment was prepared because the rules do not limit the use of real property.

11. **If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.**

These rules were not adopted as emergency rules. Therefore, no approval of emergency status was required.