

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
President of the ND Real Estate Appraiser Qualifications and Ethics Board

DATE: December 11, 2007

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

The rules have been amended to reflect statutory changes. Chapter 43-23 was amended by adding another credential level or the "certified residential" level. The addition of the certified residential credential gives the residential appraiser the option of expanding their abilities to complete more complex assignments.

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. They mandate that all state licensed and certified appraisers must meet the minimum education, experience, and examination requirements as promulgated by the AQB.

On February 20, 2004, the AQB approved revisions to the Appraiser Qualification Criteria for Trainee, Licensed, Certified Residential, and Certified General Appraiser classifications, effective January 1, 2008. These changes represent the minimum national requirements that each state must implement for individuals applying for appraiser certification as of January 1, 2008. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB. Therefore, the North Dakota Appraisal 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 10 newspapers in the state on August 14; 15 newspapers on the 15th; 8 newspapers on the 16th; 8 newspapers on the 17th; 4 newspapers on the 18th; and 6 newspapers on August 20, 2007.

The public hearing was held on September 18, 2007. No oral comments were received at the hearing. Public comment period was scheduled through September 28, 2007. Two individuals submitted written comments. On October 9, 2007, 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 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.

The Board received written comments from two individuals.

Mr. Stefan Olafson of Grand Forks, ND, submitted a letter dated September 25, 2007, with various comments and/or concerns. One of the first items of comment was a request to define compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) in Rules. Legal Counsel clarified that, if a definition is not provided in Rules, then a dictionary definition applies. Therefore, defining "compliance" in rules is not necessary. Board members were in agreement with Legal Counsel's recommendation.

Mr. Olafson had a concern that the composition of the Board violates federal law governing boards since, currently, all the appraiser members on the Board are members of the Appraisal Institute. The members of the Board do not believe any Federal law is violated simply by being members of the same professional organization. Each of the appraiser members of the Board have indicated that they do not represent any professional appraisal organization when making their decisions. Rather, they represent what they believe to be in the best interests of the public. John MacMaster, public member of the Board, firmly stated that he feels it is important that the Board be made up of persons with expertise in appraisal matters, due to the appraisal specific materials addressed by the Board.

ND State law addresses the make up of the Board and the terms served by these individuals. State law can not be changed by Rules and Regulations. It is the Governor who has the authority to appoint members to the Appraisal Board and he has no obligation whatsoever that these appointees belong to a specific professional appraisal organization.

Mr. Olafson expressed the opinion that Board member terms be limited to two, five-year terms served non-consecutively. Legal counsel stated Board member terms are set by law, NDCC 43-23.3-02. Again, State law can not be changed by Rules and Regulations.

Mr. Olafson made several suggestions with respect to how an applicant should demonstrate credible experience. It appeared that he would like the Board to provide a specific format, checklist or guideline for an appraiser to follow. Board members believe that this basic format already exists; the format is the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP requirements mandate that the appraiser seek the training and knowledge to complete the assignment competently and assignments and property types can vary significantly. To attempt to provide further checklists would be futile since a checklist for one property type may not be applicable for another property type. (Perfection is not required by the provisions of USPAP nor is it sought by the North Dakota Appraisal Board.)

Mr. Olafson also addresses various concerns about the level of disciplinary action, including limitations on when suspension and/or revocation would be implemented. The Board members and legal counsel disagreed with several of his suggestions with respect to many of these issues.

Mr. Olafson suggested that the Board not revoke a license based solely on technical violations of USPAP. Board members disagreed and believe that a technical violation can be a significant violation.

Next, Mr. Olafson suggested that a predetermined punishment of suspension for "failure to report such knowledge is a direct violation". As legal counsel explained, the "failure to report..." is already addressed in the Rules. The Board, with the support of legal counsel, does not agree with a predetermined punishment.

At the recommendation of legal counsel, the Board will not agree to limiting grounds for revocation to only when an appraiser is found guilty of a Class A misdemeanor or greater. Should the Board follow Mr. Olafson's suggestion, there would be no grounds to revoke any permit. Why have a system of licensure and certification in place?

Mr. Olafson inferred that the Board does not provide "due process". Legal counsel clarified that, in fact, the Board already provides due process, except in cases where the individual waives the right. At the recommendation of legal counsel, the Board has proposed repealing Section 101-03.1-02-02 Consideration. As legal counsel explained, it could be inferred that, when taking disciplinary action, the Board would have to consider each and every one of the listed considerations before taking any action and this would be inappropriate to do so. The Board was in agreement with legal counsel and, therefore, is proposing to repeal this section.

Mr. Olafson proposed giving client complaints precedence. Board members, with the full support of legal counsel, were not in agreement with this proposal. It would not be appropriate to give client complaints precedence. The most serious complaints should be given precedence.

Mr. Olafson addressed the issue of signed complaints. The Board has addressed this issue in the past and encourages complaints be signed. However, the Board should not be prohibited from investigating simply because the complaint was not signed. The Board needs to be able to take action without a written signed complaint.

Mr. Olafson requested that complaints filed by appraisers be fully open to the public. Legal counsel stated that confidentiality or open records cannot be provided by rule. It is by law.

After considerable discussion of Mr. Olafson's suggested changes, the Board voted not to adopt or modify the Rules and Regulations to reflect the suggested changes submitted by Mr. Olafson.

Mr. Marc Weinberg, General Counsel for the Appraisal Subcommittee provided a letter via e-mail dated September 28, 2007, with the following suggested changes.

a. American Council on Education (ACE) is no longer is approved by the AQB. This change is suggested for the apprentice and licensing categories, but must be made in the certification categories. This language appears throughout the rule package;

b. Experience does not include "authorship." This provision appears throughout the rules and needs to be stricken;

c. Teachers of appraisal courses cannot be awarded qualifying education credit for teaching. And, this section is too vague. It needs to be stricken throughout the rule package;

d. The paragraph relating to experience needs to be stricken. In its place, substitute paragraph III.E.4. of the generic AQB criteria. This language also appears throughout the rule package;

e. Additional paragraph relating to experience requires the *applicant* to submit one, two-four family residential appraisal report or non-residential appraisal report to the Board for review. The Board selects two other reports from the log for review. The Board needs to clarify that it, and not the applicant, must choose the first report, as required by new ASC Policy Statement 10 G;

f. Inactive Status- A licensed or certified appraiser on inactive status MUST (not "may") not engage . . . ";

g. Inactive Status- Second last line, add after "including the" the phrase, "most recent edition of the" . . . "; and

h. The paragraph relating to educational credit for "real estate related appraisal topics" needs to be addressed. The State included a new "(9) Real estate appraisal (valuations or evaluations)." This is not a "related" topic. It is THE topic covered by this rule. Including it in the list of "related" topics, to me, seems redundant and potentially confusing. I would recommend removing it.

The Board discussed the various issues proposed by Mr. Weinberg and the only recommendation from Mr. Weinberg that the Board did not approve was that of changing "may" to "must" in the active status. At the recommendation of Legal Counsel, the Board agreed not to make the change. "May" is the appropriate language.

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: \$3785.00

Public Notice: \$1497.00

Approximate Cost: \$5282.00

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

The changes in the rules cover three main areas.

The first area includes changes related to significant changes in the criteria adopted by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation. The new AQB requirements become effective on January 1, 2008. In order to be in compliance with these AQB requirements, changes in State law and/or rules and regulations needed to be adopted and reflected prior to January 1, 2008.

The new rules now reflect changes in the qualification requirements to include qualifying education, continuing education, experience, and examination requirements for the apprentice level, the licensed level, and the certified level permit(s). Additional clarification was added to address the responsibilities and expectations of the "supervisor appraiser" who will serve as the mentor to future appraisers in the State.

These changes made in North Dakota statute and in these rules and regulations will now insure that the requirements of the various permit levels offered in North Dakota will meet the minimum requirements promulgated by the AQB.

The second area includes changes related to the addition of a new permit level, or that of a Certified Residential permit. Previously, North Dakota did not offer this level. However, the Board recognized that other States (as well as the Appraisal Qualifications Board of the Appraisal Foundation) did offer this level and felt the appraisers in the State may wish to meet the qualification requirements necessary to obtain this Certified Residential level.

Over the past year, considerable interest has been expressed by many licensed appraisers and even many apprentice appraisers to seek the Certified Residential permit. Current estimates are that about one-third of the licensed permit holders are presently seeking to upgrade to the Certified Residential permit level. In addition, several of the apprentice appraisers have expressed a desire to meet the criteria requirements of the Certified Residential permit, rather than the lower criteria requirements of the licensed permit.

The third area of changes can be characterized as administrative in nature to include removing, adding or clarifying wording throughout the rules and regulations. At the recommendation of legal counsel, the Board has repealed Section 101-03.1-02-02 and Chapter 101-03.1-02-02. Legal counsel explained it could be inferred that, when taking disciplinary action, the Board would have to consider each and every one of the listed considerations before taking any action and this would be inappropriate to do so. In addition, Chapter 101-03.1-01 addresses many issues related to unprofessional conduct. Finally, the Uniform Standards of Professional Appraisal Practice (USPAP) includes an ethics rule that addresses items such as conduct, management, confidentiality, and record keeping and all permitted appraisers are required to follow the provisions of USPAP.

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 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.

10. **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.