

**MEETING AGENDA****TALCB Enforcement Committee**

4th Floor, Stephen F. Austin State Office Building
1700 North Congress, Austin, Texas 78701

Monday November 4, 2013, 12:00 p.m.

1. Call to order
2. Discussion and possible action regarding proposed amendment to 22 TAC §155.1 concerning Standards of Practice.
3. Discussion and possible action regarding proposed amendment to 22 TAC §153.24 concerning Complaint Processing.
4. Discussion and possible action regarding amending 22 TAC §153.20 concerning Guidelines for Revocation, Suspension, Denial of Licensure or Certification; Probationary License to make it a violation for a supervisor to refuse to sign an appraiser trainee's log for valid work performed under that supervisor
5. Discussion and possible action regarding preparation of a flow chart of the complaint process for the website
6. Discussion and possible action regarding possible rule clarifying USPAP definition of "appraisal report"
7. Discussion and possible action regarding requirements for maintenance of and documentation in an appraiser workfile
8. Discussion and possible action regarding a rule for appraiser violation of confidentiality
9. Discussion and possible action to regarding appraisers who falsify documents or information to get on an approved client list
10. Discussion and possible action regarding the following items (if time permits):
 - a. complaint processing including complaints received without an appraisal report, complaints on older files, multiple complaints, staff initiated complaints, scope of work rule violations, contested cases, and litigation negotiation process
 - b. SES division documentation policies, including information for the public, manual, procedures, website and forms
 - c. appraiser duty to disclose past listings
 - d. reviewing draft committee agendas
 - e. committee policies (staff and members)
11. Discussion regarding future meetings
12. Adjourn

The Enforcement Committee of the Texas Appraiser Licensing and Certification Board may meet with its attorney in executive session on any item listed above as authorized by the Texas Open Meetings Act, Tex. Gov't Code, §551.071 to consult with its attorney.

**PROPOSED RULE ACTION FROM
AUGUST 16, 2013 MEETING OF
THE TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD**

**Chapter 155. Rules Relating to Standards of Practice
22 TAC §155.1 concerning Standards of Practice**

§155.1 concerning Standards of Practice

(a) An appraisal or appraisal practice performed by a person subject to the Texas Appraiser Licensing and Certification Act must conform with the "Uniform Standards of Professional Appraisal Practice" (USPAP) of the Appraisal Foundation in effect at the time of the appraisal or appraisal practice.

~~(b) A Jurisdictional Exception is adopted for the members, staff, and peer review committee members of the Texas Appraiser Licensing and Certification Board for all appraisal reviews relating to enforcement and disciplinary cases, applications, renewals, and experience verification audits.~~

**PROPOSED RULE ACTION FROM
AUGUST 16, 2013 MEETING OF
THE TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD**

**Chapter 153. Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act
22 TAC §153.24 concerning Complaint Processing**

(a) –(i) no change

(j) In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Texas Occupations Code §1103.552, staff, the administrative law judge in a contested case hearing and the board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) A person will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than seven (7) years ago;

(B) A prior warning letter, contingent dismissal or discipline given less than seven years ago will not be considered unless the board had taken final action against the person before the date of the appraisal that led to the subsequent disciplinary action;

(C) Prior discipline is defined as any sanction (including administrative penalty) received under a board final or agreed order;

(D) A violation refers to a violation of any provision of the Act, Board Rules or USPAP;

(E) "Minor deficiencies" is defined as violations of the Act, Board Rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the appraiser's honesty, trustworthiness or integrity to the board, the appraiser's clients or intended users of the appraisal service provided;

(F) "Serious deficiencies" is defined as violations of the Act, Board Rules or USPAP which do impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the

appraiser's honesty, trustworthiness or integrity to the board, the appraiser's clients or intended users of the appraisal service provided;

(G) "Remedial measures" include, but are not limited to, training, mentorship, education, [reexamination](#), or any combination thereof; and

(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. If respondent completes all remedial measures required in the agreement within a certain prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.

(2) - (4) no change

(k) no change

AGENDA ITEM 4

Existing Rule:

22 Tex. Admin. Code § 153.15(f)(1) –

(f) Experience claimed by an applicant must be submitted on forms prescribed by the board.

(1) Experience claimed by an applicant shall be submitted upon an Appraisal Experience Log with an accompanying Appraisal Experience Affidavit.

Currently Proposed for Adoption on November 22, 2013:

22 Tex. Admin. Code § 153.17(c)(1) –

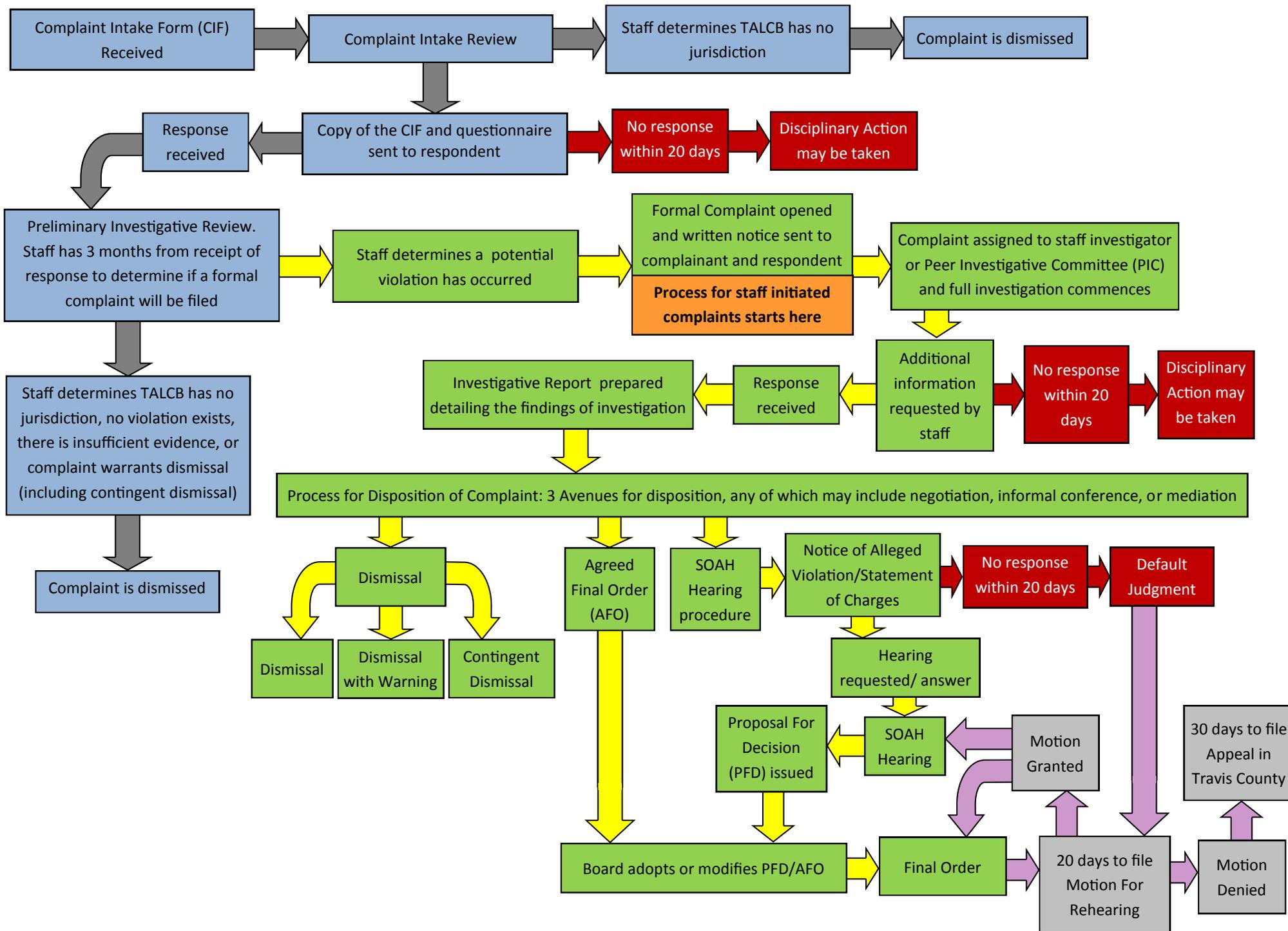
(c) Appraiser Trainees.

(1) Appraiser trainees must maintain ~~provide a copy of~~ an appraisal log and appraisal experience affidavits on forms prescribed by the board, for the period of authorization or approval being renewed. It is the responsibility of both the appraiser trainee and the sponsor to ensure the appraisal log is accurate, complete and signed by both parties at least quarterly or upon change in sponsors. The appraiser trainee will promptly provide copies of the experience logs and affidavits to the board upon request.

Uw i gungf 'Proposed Rule:

22 Tex. Admin. Code § 153.20(a)(26) – fails to approve, sign and deliver to their appraiser trainee the appraisal experience log and affidavit required by §§ 153.15(f)(1) and 153.17(c)(1) of this title for all experience actually and lawfully acquired by the trainee while under the appraiser's sponsorship.

TALCB COMPLAINT PROCESS



DEFINITIONS

106 Comment: Forming an opinion of market value is the purpose of many real property appraisal
 107 assignments, particularly when the client's intended use includes more than one intended user.
 108 The conditions included in market value definitions establish market perspectives for
 109 development of the opinion. These conditions may vary from definition to definition but
 110 generally fall into three categories:

- 111 1. the relationship, knowledge, and motivation of the parties (i.e., seller and buyer);
- 112 2. the terms of sale (e.g., cash, cash equivalent, or other terms); and
- 113 3. the conditions of sale (e.g., exposure in a competitive market for a reasonable time
 114 prior to sale).

115 ***Appraisers are cautioned to identify the exact definition of market value, and its authority,***
 116 ***applicable in each appraisal completed for the purpose of market value.***

117 **MASS APPRAISAL:** the process of valuing a universe of properties as of a given date using standard
 118 methodology, employing common data, and allowing for statistical testing.

119 **MASS APPRAISAL MODEL:** a mathematical expression of how supply and demand factors interact in a
 120 market.

121 **PERSONAL PROPERTY:** identifiable tangible objects that are considered by the general public as being
 122 "personal" - for example, furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and
 123 equipment; all tangible property that is not classified as real estate.

124 **PRICE:** the amount asked, offered, or paid for a property.

125 Comment: Once stated, *price* is a fact, whether it is publicly disclosed or retained in private.
 126 Because of the financial capabilities, motivations, or special interests of a given buyer or
 127 seller, the price paid for a property may or may not have any relation to the *value* that might
 128 be ascribed to that property by others.

129 **REAL ESTATE:** an identified parcel or tract of land, including improvements, if any.

130 **REAL PROPERTY:** the interests, benefits, and rights inherent in the ownership of real estate.

131 Comment: In some jurisdictions, the terms *real estate* and *real property* have the same legal
 132 meaning. The separate definitions recognize the traditional distinction between the two
 133 concepts in appraisal theory.

134 **REPORT:** any communication, written or oral, of an appraisal, appraisal review, or appraisal consulting
 135 service that is transmitted to the client upon completion of an assignment

136 Comment: Most reports are written and most clients mandate written reports. Oral report
 137 requirements (see the RECORD KEEPING RULE) are included to cover court testimony and
 138 other oral communications of an appraisal, appraisal review, or appraisal consulting service.

139 **SCOPE OF WORK:** the type and extent of research and analyses in an assignment.

140 **SIGNATURE:** personalized evidence indicating authentication of the work performed by the appraiser and the
 141 acceptance of the responsibility for content, analyses, and the conclusions in the report.

142 **VALUATION SERVICES:** services pertaining to aspects of property value.

143 Comment: Valuation services pertain to all aspects of property value and include services
 144 performed both by appraisers and by others.

RECORD KEEPING RULE288 **RECORD KEEPING RULE**

289 **An appraiser must prepare a workfile for each appraisal, or appraisal review, or appraisal consulting**
 290 **assignment. A workfile must be in existence prior to the issuance of any report. A written summary of an**
 291 **oral report must be added to the workfile within a reasonable time after the issuance of the oral report.**

292 **The workfile must include:**

- 293 • **the name of the client and the identity, by name or type, of any other intended users;**
- 294 • **true copies of any written reports, documented on any type of media. (A true copy is a replica of**
 295 **the report transmitted to the client. A photocopy or an electronic copy of the entire report**
 296 **transmitted to the client satisfies the requirement of a true copy.);**
- 297 • **summaries of all oral reports or testimony, or a transcript of testimony, including the**
 298 **appraiser's signed and dated certification;**
- 299 • **all other data, information, and documentation necessary to support the appraiser's opinions**
 300 **and conclusions and to show compliance with USPAP, or references to the location(s) of such**
 301 **other documentation; and**
- 302 • **a workfile in support of a Restricted Use Appraisal Report must be sufficient for the appraiser**
 303 **to produce a Summary Appraisal Report (for assignments communicated under STANDARDS 2**
 304 **and 8) or an Appraisal Report (for assignments communicated under STANDARD 10).**

305 **An appraiser must retain the workfile for a period of at least five years after preparation or at least two**
 306 **years after final disposition of any judicial proceeding in which the appraiser provided testimony related**
 307 **to the assignment, whichever period expires last.**

308 **An appraiser must have custody of the workfile, or make appropriate workfile retention, access, and**
 309 **retrieval arrangements with the party having custody of the workfile. This includes ensuring that a**
 310 **workfile is stored in a medium that is retrievable by the appraiser throughout the prescribed record**
 311 **retention period.**

312 **An appraiser having custody of a workfile must allow other appraisers with workfile obligations related**
 313 **to an assignment appropriate access and retrieval for the purpose of:**

- 314 • **submission to state appraiser regulatory agencies;**
- 315 • **compliance with due process of law;**
- 316 • **submission to a duly authorized professional peer review committee; or**
- 317 • **compliance with retrieval arrangements.**

318 Comment: A workfile must be made available by the appraiser when required by a state appraiser
 319 regulatory agency or due process of law.

320 **An appraiser who willfully or knowingly fails to comply with the obligations of this RECORD KEEPING**
 321 **RULE is in violation of the ETHICS RULE.**

145 **VALUE:** the monetary relationship between properties and those who buy, sell, or use those properties.

146 Comment: *Value* expresses an economic concept. As such, it is never a fact but always an
147 opinion of the worth of a property at a given time in accordance with a specific definition of
148 value. In appraisal practice, value must always be qualified - for example, market value,
149 liquidation value, or investment value.

150 **WORKFILE:** documentation necessary to support an appraiser's analyses, opinions, and conclusions.

DEFINITIONS

38 **APPRAISER’S PEERS:** other appraisers who have expertise and competency in a similar type of assignment.

39 **ASSIGNMENT:** 1) An agreement between an appraiser and a client to provide a valuation service; 2) the
40 valuation service that is provided as a consequence of such an agreement.

41 **ASSIGNMENT RESULTS:** an appraiser’s opinions and conclusions developed specific to an assignment.

42 Comment: Assignment results include an appraiser’s:

- 43 ▪ opinions or conclusions developed in an appraisal assignment, such as value;
- 44 ▪ opinions of adequacy, relevancy, or reasonableness developed in an appraisal review assignment;
- 45 or
- 46 ▪ opinions, conclusions, or recommendations developed in an appraisal consulting assignment.

47 **ASSUMPTION:** that which is taken to be true.

48 **BIAS:** a preference or inclination that precludes an appraiser’s impartiality, independence, or objectivity in an
49 assignment.

50 **BUSINESS ENTERPRISE:** an entity pursuing an economic activity.

51 **BUSINESS EQUITY:** the interests, benefits, and rights inherent in the ownership of a business enterprise or a
52 part thereof in any form (including, but not necessarily limited to, capital stock, partnership interests,
53 cooperatives, sole proprietorships, options, and warrants).

54 **CLIENT:** the party or parties who engage, by employment or contract, an appraiser in a specific assignment.

55 Comment: The client may be an individual, group, or entity, and may engage and communicate with
56 the appraiser directly or through an agent.

57 **CONFIDENTIAL INFORMATION:** information that is either:

- 58 ▪ identified by the client as confidential when providing it to an appraiser and that is not available
- 59 from any other source; or
- 60 ▪ classified as confidential or private by applicable law or regulation*.

61 *NOTICE: For example, pursuant to the passage of the Gramm-Leach-Bliley Act in November 1999, some
62 public agencies have adopted privacy regulations that affect appraisers. As a result, the Federal Trade
63 Commission issued a rule focused on the protection of “non-public personal information” provided by
64 consumers to those involved in financial activities “found to be closely related to banking or usual in connection
65 with the transaction of banking.” These activities have been deemed to include “appraising real or personal
66 property.” (Quotations are from the Federal Trade Commission, Privacy of Consumer Financial Information;
67 Final Rule, 16 CFR Part 313.)

ETHICS RULE

234 **If known prior to accepting an assignment, and/or if discovered at any time during the assignment,**
 235 **an appraiser must disclose to the client, and in the subsequent report certification:**

- 236 • **any current or prospective interest in the subject property or parties involved; and**
- 237 • **any services regarding the subject property performed by the appraiser within the three**
 238 **year period immediately preceding acceptance of the assignment, as an appraiser or in any**
 239 **other capacity.**

240 Comment: Disclosing the fact that the appraiser has previously appraised the property is permitted
 241 except in the case when an appraiser has agreed with the client to keep the mere occurrence of a
 242 prior assignment confidential. If an appraiser has agreed with a client not to disclose that he or she
 243 has appraised a property, the appraiser must decline all subsequent assignments that fall within the
 244 three year period.

245 **Management:**

246 **An appraiser must disclose that he or she paid a fee or commission, or gave a thing of value in**
 247 **connection with the procurement of an assignment.**

248 Comment: The disclosure must appear in the certification and in any transmittal letter in which
 249 conclusions are stated; however, disclosure of the amount paid is not required. In groups or
 250 organizations engaged in appraisal practice, intra-company payments to employees for business
 251 development do not require disclosure.

252 **An appraiser must not accept an assignment, or have a compensation arrangement for an**
 253 **assignment, that is contingent on any of the following:**

- 254 1. **the reporting of a predetermined result (e.g., opinion of value);**
- 255 2. **a direction in assignment results that favors the cause of the client;**
- 256 3. **the amount of a value opinion;**
- 257 4. **the attainment of a stipulated result (e.g., that the loan closes, or taxes are reduced); or**
- 258 5. **the occurrence of a subsequent event directly related to the appraiser's opinions and specific**
 259 **to the assignment's purpose.**

260 **An appraiser must not advertise for or solicit assignments in a manner that is false, misleading, or**
 261 **exaggerated.**

262 **An appraiser must affix, or authorize the use of, his or her signature to certify recognition and**
 263 **acceptance of his or her USPAP responsibilities in an appraisal, appraisal review, or appraisal**
 264 **consulting assignment (see Standards Rules 2-3, 3-6, 5-3, 6-9, 8-3, and 10-3). An appraiser may**
 265 **authorize the use of his or her signature only on an assignment-by-assignment basis.**

266 **An appraiser must not affix the signature of another appraiser without his or her consent.**

267 Comment: An appraiser must exercise due care to prevent unauthorized use of his or her signature.
 268 An appraiser exercising such care is not responsible for unauthorized use of his or her signature.

269 **Confidentiality:**

270 **An appraiser must protect the confidential nature of the appraiser-client relationship.**

271 **An appraiser must act in good faith with regard to the legitimate interests of the client in the use of**
 272 **confidential information and in the communication of assignment results.**

273 **An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations**
274 **applicable in an assignment.²**

275 **An appraiser must not disclose: (1) confidential information; or (2) assignment results to anyone**
276 **other than:**

- 277 • **the client;**
- 278 • **persons specifically authorized by the client;**
- 279 • **state appraiser regulatory agencies;**
- 280 • **third parties as may be authorized by due process of law; or**
- 281 • **a duly authorized professional peer review committee except when such disclosure to a**
282 **committee would violate applicable law or regulation.**

283 **A member of a duly authorized professional peer review committee must not disclose confidential**
284 **information presented to the committee.**

285 Comment: When all confidential elements of confidential information and assignment results are
286 removed through redaction or the process of aggregation, client authorization is not required for
287 the disclosure of the remaining information, as modified.

² Pursuant to the passage of the Gramm-Leach-Bliley Act in 1999, numerous agencies have adopted privacy regulations. Such regulations are focused on the protection of information provided by consumers to those involved in financial activities “found to be closely related to banking or usual in connection with the transaction of banking.” These activities have been deemed to include “appraising real or personal property.” (Quotations are from the Federal Trade Commission, Privacy of Consumer Financial Information; Final Rule, 16 CFR Part 313.)

Proposed Rules &/or Rules Changes

There is considerable disagreement with the interpretation of the Uniform Standards of Professional Appraisal Practice between members of the appraisal community and the Enforcement Division of the Texas Appraiser Licensing and Certification Board (TALCB). Clarifying the meaning of rules and the Uniform Standards of Professional Appraisal Practice (USPAP) by the TALCB would result in more certainty in enforcement and would result in less cases going to court.

The following are suggestions for rules and rule changes. I urge the members of the board to consider adopting some rule changes even if not presented as follows. The more certainty there is an interpretation of rules, the fairer the process can be and the intent of this board can be known to appraisers, the Enforcement Division and the public.

I know the following rules are not artfully stated. In fact, I assume an understanding of the Uniform Standards of Professional Appraisal Practice (USPAP) that you may not have. I am available for clarification of any of the following proposals. There would need to be work on the proper wording, form and to comply with Texas law. The intent is to show the needed changes, clarifications, or additions to the rules. I am hoping you see the need and can work out the needed language change.

Website: The TALCB website is used to post orders, usually Agreed Orders, between the Texas Appraiser Licensing & Certification Board and an appraiser. The website is open to the public for viewing and often decisions are made by appraiser's clients concerning placement of appraisers on approved lists based upon past board action.

Comment [KG1]: Agenda Item10b

The website serves an important function to assist the public by providing information needed concerning the quality of appraisers that might be used by management companies or financial institutions. However, the appraiser has no control over what is posted on the website and often the details of the Agreed Order that are posted are not agreed upon by the appraiser. Most Agreed Orders include a statement that the appraiser does not agree nor disagree with the findings of facts of the TALCB being enforcement committee. If details of the Agreed Order are posted, this statement also needs to be posted.

There needs to be a balance between the protection of the public and protection of the appraiser. **Public trust does not exclude the appraisers; public trust includes the appraisers.** Many Agreed Orders are entered into in lieu of a \$30,000-\$50,000 court case. Most Agreed Orders are educational in purpose and most appraisers who have a discipline with the TALCB take the education seriously. The inclusion on the website, especially for an indeterminate number of years, has been unduly punitive on appraisers who received discipline.

The ASC does not have a requirement that the state post appraiser disciplines on any website. Therefore, there is no mandate or requirement that the Texas Appraiser Licensing & Certification Board provide a website much less level of details that it posted on the website.

The following are proposed rules governing the website.

1. Limit the number of years a discipline is posted and available for review on the website.
 - A. For findings of intentional conduct, have the findings posted for 10 to 15 years.
 - B. For findings involving gross negligence, have the findings posted from 7 to 10 years.
 - C. All other violations of USPAP, have the findings posted for 5 years.
2. Delete all postings of Agreed Orders or orders that are older than 10 years on the current database.
3. Limit the findings of fact to just the USPAP number or rule numbers. State on the website that the appraiser did not necessarily agree to the findings of the TALCB's Enforcement Division but chose to accept for the purpose of expediting the process. List the discipline required of the appraiser including education, mentorship hours, logs, and administrative fees.

[Note: Anyone can, through open records, request more details of any Agreed Order. In fact, they may receive an entire copy of any Agreed Order or order from the Texas Appraiser Licensing and Certification Board.]

Report: there is disagreement over the definition of an “appraisal report” as defined in the Uniform Standards of Professional Appraisal Practice. If the board defines an appraisal report by rule there'll be certainty to this issue and less litigation because of the uncertainty.

Comment [KG2]: Agenda Item 6

The Uniform Standards of Professional Appraisal Practice definition of an appraisal report is as follows. Note that “assignment” and “client” are part of the last clause of the definition. Therefore, it is imperative to understand their meanings from USPAP.

134 **REPORT:** any communication, written or oral, of an appraisal, appraisal review, or appraisal consulting
 135 service that is transmitted to the client upon completion of an assignment

136 Comment: Most reports are written and most clients mandate written reports. Oral report
 137 requirements (see the RECORD KEEPING RULE) are included to cover court testimony and
 138 other oral communications of an appraisal, appraisal review, or appraisal consulting service.

39 **ASSIGNMENT:** 1) An agreement between an appraiser and a client to provide a valuation service; 2) the
40 valuation service that is provided as a consequence of such an agreement.

54 **CLIENT:** the party or parties who engage, by employment or contract, an appraiser in a specific assignment.

55 Comment: The client may be an individual, group, or entity, and may engage and communicate with
56 the appraiser directly or through an agent.

An “assignment” is defined as an agreement between the appraiser and the client. A “client” is defined as one by contract or employment to provide an appraisal service by the appraiser. Therefore, it is common agreement that an assignment and the client are defined as a consequence of the contract. Multiple submissions of reports, even signed appraisal reports, do not result in the fulfillment of the definition until the contract is completed. This means the last report submitted to the client completes the contract and is under the regulatory requirements of USPAP. If all preceding reports are to be considered equal to the final report (revised and ready for decision making by the client) then there is no reason to make corrections in a revised report. A simple letter or email would suffice. To judge knowingly reports that are not used to serve the intended use of the appraisal is both unnecessarily punitive and beyond the service to the public trust in an appraisal assignment that has as of that report date, yet to be complete.

The signature is evidence of the acceptance of the responsibility of the appraiser for the entire contents of the “report.” As previously stated, a “report” is one that's upon completion of an assignment. Therefore the definition of signature does not override that the only appraisal report that is anticipated to be subject to USPAP is the final report that completes the contract.

This does not mean that an Enforcement Division cannot look at previous submissions of appraisal reports for purposes of determining intent to mislead, intent to predetermine value, or intent to inflate a value. However, the plain reading of all key definitions within USPAP is that “upon completion of an assignment” is at the end of the contract.

The ASB intended to change the definition of “report” in the upcoming 2014 addition of the Uniform Standards of Professional Appraisal Practice. The original proposal was simply to leave out the clause “upon completion of an assignment.”

There is a policy issue over making the “report” the one submitted upon completion of an assignment. It encourages the appraiser to fix mistakes, clarify language and to have a chance to provide a service that meets client requirements before the client relies upon the report. It is illogical to have all submissions be subject to enforcement. If the client doesn't rely upon earlier submittals, why spend resources investigating them?

After significant public discussion, there was a proposal to take out the “upon completion of an assignment” and require the maintenance of workfiles for all

signed reports. However, after additional public input, the ASB tabled the change to the definition of “report” until the 2016 addition of the Uniform Standards of Professional Appraisal Practice.

It is noteworthy that in the Appraisal Institute, a report is any communication written or oral transmitted to the client. The clause “upon completion of the assignment” is not found in the definition in the Appraisal Institute. Any submittal of an appraisal opinion is held as an appraisal report in that private organization. This is a contradiction to definition found in the USPAP.

There has been significant cost in litigation over this issue. The Enforcement Division of the Texas Appraiser Licensing & Certification Board interprets “report” as any submittal like the Appraisal Institute definition. Their logic is that an appraisal report is upon completion of assignment when the appraiser intends the submittal to be upon completion of assignment. The Enforcement Division’s interpretation affectively gives no meaning to the clause that the Appraisal Standards Board (ASB) intends to deal with in their subsequent standards planned in the future.

[One could enter into a contract to deliver a good or service and at the anticipated completion of the contract delivered the good our service with the expectation that the contract is fully executed and met. However, if the contract terms were in fact not met, then corrections would have to be made as a part of the original contract. For example, a builder could deliver a house fully expecting that the house was constructed per plans and specifications. If in fact something was installed improperly, the builder would have to return to complete the house per plans and specifications to fulfill the original contract. In the same way, the intent of the appraiser or the client is not the controlling issue because of the definition of “client” in USPAP. The controlling issue is if the contract was in fact met. If there is new consideration or new terms, then multiple submissions of an appraisal report would in fact be a single appraisal as defined by USPAP.]

Regardless of how the board decides the definition of a “report”, the decision needs to be made so that it will bring certainty to the enforcement process. The consequence of making this decision would result in much less money spent in litigation. The following are proposals for the clarification of the definition of a “report.” I have included various options.

1. A “report” for purposes of enforcement is the report that satisfies the contract with the client. Previous submittals of documents that did not fulfill the contract will not be reviewed for USPAP compliance. However, any previous appraisal reports prior to the submittal of the final report may be used for evidence of inconsistency in the final report, or any intentional misconduct. There is only a duty to keep the “report” as part of a workfile and the history (which must be in the appraisal report) of the original assignment which required revision.

2. A “report” for purposes of enforcement is any signed report transmitted to a client. Any signed report submitted to a client may be the subject of review for enforcement of the Uniform Standards of Professional Appraisal Practice.

3. A “report” is any communication written or oral transmitted to the client. For purposes of enforcement and review for compliance with use any communication of an appraised value may be reviewed for compliance with the Uniform Standards of Professional Appraisal Practice. Such review of previous reports not used to complete the assignment for the client will only be subject to enforcement if necessary to provide proof of intent to deceive.

Workfile: USPAP requires that an appraiser maintain a workfile of any report for the longer of 5 years from the date of the report for 2 years after final disposition of the case.

Comment [KG3]: Agenda Item 7

150 **WORKFILE:** documentation necessary to support an appraiser’s analyses, opinions, and conclusions.

288 **RECORD KEEPING RULE**

289 **An appraiser must prepare a workfile for each appraisal, or appraisal review, or appraisal consulting**
 290 **assignment. A workfile must be in existence prior to the issuance of any report. A written summary of an**
 291 **oral report must be added to the workfile within a reasonable time after the issuance of the oral report.**

292 **The workfile must include:**

- 293 • **the name of the client and the identity, by name or type, of any other intended users;**
- 294 • **true copies of any written reports, documented on any type of media. (A true copy is a replica of**
 295 **the report transmitted to the client. A photocopy or an electronic copy of the entire report**
 296 **transmitted to the client satisfies the requirement of a true copy.);**
- 297 • **summaries of all oral reports or testimony, or a transcript of testimony, including the**
 298 **appraiser's signed and dated certification;**
- 299 • **all other data, information, and documentation necessary to support the appraiser's opinions**
 300 **and conclusions and to show compliance with USPAP, or references to the location(s) of such**
 301 **other documentation; and**
- 302 • **a workfile in support of a Restricted Use Appraisal Report must be sufficient for the appraiser**
 303 **to produce a Summary Appraisal Report (for assignments communicated under STANDARDS 2**
 304 **and 8) or an Appraisal Report (for assignments communicated under STANDARD 10).**

305 **An appraiser must retain the workfile for a period of at least five years after preparation or at least two**
 306 **years after final disposition of any judicial proceeding in which the appraiser provided testimony related**
 307 **to the assignment, whichever period expires last.**

308 **An appraiser must have custody of the workfile, or make appropriate workfile retention, access, and**
 309 **retrieval arrangements with the party having custody of the workfile. This includes ensuring that a**
 310 **workfile is stored in a medium that is retrievable by the appraiser throughout the prescribed record**
 311 **retention period.**

312 **An appraiser having custody of a workfile must allow other appraisers with workfile obligations related**
 313 **to an assignment appropriate access and retrieval for the purpose of:**

- 314 • **submission to state appraiser regulatory agencies;**
- 315 • **compliance with due process of law;**
- 316 • **submission to a duly authorized professional peer review committee; or**
- 317 • **compliance with retrieval arrangements.**

318 Comment: **A workfile must be made available by the appraiser when required by a state appraiser**
 319 **regulatory agency or due process of law.**

320 **An appraiser who willfully or knowingly fails to comply with the obligations of this RECORD KEEPING**
 321 **RULE is in violation of the ETHICS RULE.**

There is confusion over the minimum requirement for an appraiser to maintain a proper workfile.

If there is an appraisal that is delivered as an oral report USPAP requires the workfile to contain sufficient information to enable the appraiser to meet the requirements of a summary appraisal report (Standard Rule 2-2 (b)). If an appraisal delivers a restricted use report (as defined by Standard Rule 2-2 (c) then an appraiser must, at a minimum, be able to put together a report that complies with a summary report.

This appears to define a workfile minimum as one that complies with the ability to put together a summary report. However within the workfile rule, the appraiser also MUST include in a workfile “all data, information, and documentation necessary to support the appraiser’s opinions and conclusions or references to the location of such documentation.” (among other “must” included documentation).

This sentence produces a number of problems. One, there are enforcement arguments as to what is necessary to incorporate such documentation by reference. In addition, the requirement is not parallel. At the beginning it says that the appraiser must “provide all data, information and documentation” and at the end of the clause only references “documentation” for incorporation by reference.

Clarifying “incorporation by reference” and “minimum workfile” requirements will also ease litigation costs and create certainty in the enforcement process. The following is a FAQ from the ASB. The Enforcement Division says the reference must be very specific. Clarification is needed if the reference to MLS (for example) is enough in the workfile that data was viewed at the time of appraisal or if there must be more specific notation.

94. ADEQUACY OF WORKFILE DOCUMENTATION

Question: In the course of preparing my appraisals, I often research Multiple Listing Service (MLS) and other data sources. I use this information to develop conclusions regarding neighborhood value ranges and market trends. Is it necessary for me to include copies of this information in my workfile? Alternatively, can I simply reference the data sources in my workfile?

Response: References in the workfile to the location of documentation used to support an appraiser’s analyses, opinions, and conclusions can be adequate. It is not always necessary for the appraisal workfile to include all the documentation provided the referenced material is retrievable by the appraiser throughout the workfile retention period. Care should be exercised in the selection of the format and location of documentation.

The RECORD KEEPING RULE states that the workfile must include:

all other data, information, and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such other documentation. (Bold added for emphasis.)

An “appraisal” is defined as an opinion of value. However, one could read the requirement of the Record Keeping rule to require an appraiser have facts or data or information to support any opinion or conclusion found within appraisal report. If this is the requirement then no appraiser could possibly meet the workfile rule. Often adjustments are based upon judgment and not hard facts or data. If it were always possible to quantify every opinion or adjustment then an appraiser would not be needed but instead would be replaced with the computer algorithm.

The following are suggested rule changes.

(1) “data, information and documentation” includes reasoning or rationale that properly describes opinions and conclusions reached by an appraiser when doing an appraisal area. There is no intent that all opinions and conclusions always be supported by facts, data or documentation. There are times when opinions cannot be supported by actual facts, data or documentation.

(2) “incorporation by reference” is sufficient if the appraiser in his or her workfile identifies any source that was used at the time and appraisal was conducted that can be researched and produced at the time inquiry is found necessary. The appraiser’s workfile includes as a part of the workfile any documentation that was referenced within the workfile and can be reproduced at the time when an inquiry is found necessary.

Appraisal review: this is not the subject of a rule addition or change. The enabling statute for the Texas Appraiser Licensing & Certification Board states the purpose of the statute is to “regulate appraisals.” The Uniform Standards of Professional Appraisal Practice is a part of the Texas state law defines an “appraisal.” Standards covering an “appraisal” includes the ethics rule, competency, jurisdictional exception and Standard 1. Standard 2 governs the reporting of an appraisal. Standard 3 addresses both the development and the reporting of an “appraisal review.” The statute does not give authority to regulate appraisal reviews to the Texas Appraiser Licensing and Certification Board.

Comment [KG4]: Statutory issue

8 **APPRAISAL:** (noun) the act or process of developing an opinion of value; an opinion of value.
 9 (adjective) of or pertaining to appraising and related functions such as appraisal practice or
 10 appraisal services.

11 Comment: An appraisal must be numerically expressed as a specific amount, as a range of
 12 numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or
 13 numerical benchmark (e.g., assessed value, collateral value).

28 **APPRAISAL REVIEW:** the act or process of developing and communicating an opinion about the quality of
 29 another appraiser’s work that was performed as part of an appraisal, appraisal review, or appraisal consulting
 30 assignment.

31 Comment: The subject of an appraisal review assignment may be all or part of a report,
 32 workfile, or a combination of these.

The following is from the chapter that creates the TALCB.

Sec. 1103.002. PURPOSE. The purpose of this chapter is to:

- (1) conform state law relating to the regulation of real estate appraisers to the requirements adopted under Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and
- (2) enforce standards for the appraisal of real property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. [131](#), Sec. 1, eff. May 27, 2011.

The board may want to petition the next legislature to give them the authority to regulate appraisal reviews, if they wish. However, the plain reading of the statute does not currently give the Texas Appraiser Licensing & Certification Board the authority to regulate appraisal reviews, but only “appraisals.”

There has been much discussion concerning the application of the Uniform Standards of Professional Appraisal Practice to the Enforcement Division. The current rule exempts the Enforcement Division and any member of PIC to the Uniform Standards of Professional Appraisal Practice “as to reviews.” The Enforcement Division has petitioned to change this rule to exempt enforcement officers from all of USPAP.

It should be noted that the current rule is not a jurisdictional exception as per the Uniform Standards of Professional Appraisal Practice. A jurisdictional exception is one that precludes the appraiser from compliance with the Uniform Standards of Professional Appraisal Practice. The current rule does not preclude compliance with USPAP but instead exempts enforcement over the Enforcement Division for standards “as to reviews.”

To be an actual jurisdictional exception under USPAP the board would have to preclude the compliance of the Uniform Standards of Professional Appraisal Practice to the Enforcement Division. If you do this, there is a potential that under the **Robinson** case in Texas the Enforcement Divisions testimony may be excluded because it does not stand up to legal scrutiny for admissibility of expert testimony.

The Enforcement Division should not have to comply with Standard 3 in the normal course of business asked of them in their roles. The act of triaging cases should not be burdened with a requirement that Standard 3 be met for development and reporting of an appraisal review.

Therefore, it is suggested that the following be the rule but in place.

1. The Uniform Standards of Professional Appraisal Practice as related to Standard 3, the Jurisdictional Exception Rule and any appraisals that result from appraisal reviews will not be subject to enforcement by the Texas Appraiser Licensing & Certification Board for staff and Enforcement officers and members of PIC. However, staff is directed to comply with Standard 3 if the case is set as a contested case with the State Office of Administrative Hearings. If that enforcement officer concludes that an appraisal is “inflated”, or “concurrs with the value”, or believes the value is “too low” then the appraiser must develop this opinion in accordance with Standard 1 and report as required by Standard 3.

The purpose of the Uniform Standards of Professional Appraisal Practice is stated as one to contribute to the “public trust.” Exempting enforcement from all of the

requirements of the Uniform Standards of Professional Appraisal Practice would simply not promote public trust in the industry.

Intermediary litigation negotiation process: The current system of enforcement of regulations and USPAP results in unnecessary litigation costs to both appraisers and the Texas Licensing and Certification Board. At times an appraiser agrees that there is a violation of USPAP and would agree to education offered by staff, but refuses to sign an Agreed Order because of the alleged violations of USPAP or rules. Sometimes, litigation ensues because of the mere interpretation of parts of rules or USPAP. In fact, at least two litigated cases last year would probably not have gone to court if the board could have been approached prior to the case being tried at the State Office of Administrative Hearings (SOAH).

Comment [KG5]: Agenda Item 10a

The current system does not allow an attorney or an appraiser to get an audience with the board until an informal conference has been held in Austin with the Enforcement Division and then a subsequent case tried at the State Office of Administrative Hearings. The average case costs and appraiser between \$30,000 and \$40,000 to try. I would assume that the cost to the Texas Licensing & Certification Board is also substantial.

The TALCB did not always use SOAH for contested cases. In the early 2000s, and prior, a portion of the board heard contested cases involving appraisal issues.

When the board was convened, the board members who heard the cases would recuse themselves from a final vote.

To alleviate litigation costs, I suggest that a subcommittee of the Board be allowed to negotiate settlements between appraisers and Enforcement Division.

In the alternative, I suggest a rule that allows negotiation of Agreed Orders if the discipline or education is agreed upon, but the language of Rule or USPAP violations is not agreed upon.

Confidentiality: There is a recurring issue around the nation that places an appraiser in an ethics dilemma.

Comment [KG6]: Agenda Item 8

Many lenders and downstream recipients of loans in the secondary mortgage market receive appraisals that were done by appraisers for clients that are not the downstream lender or recipient of the appraisal report. Often, an appraiser is asked to comment on his or her appraisal report that was prepared for a client that is not the one asking for clarification. In fact, often the lender or recipient of the appraisal report is not even a listed intended user at the time of the contract.

The ASB requires confidentiality to be to clients (not to any other intended users), even clients that are no longer in business. Therefore, if an appraiser addresses the

concerns of the downstream recipient of the appraisal report they would be in violation of the Confidentiality Provision of the ethics rule. However, if they refuse to answer the concerns of the downstream recipient of the appraisal report that entity often retaliates by turning the appraiser in to a state board.

Some states have already addressed this issue. It is suggested that the Texas Licensing & Certification Board create a rule that will give certainty to this issue.

The following is a suggested rule concerning this problem.

(1) it is a violation of confidentiality for an appraiser to discuss an appraisal report that was prepared for another client without getting permission from that client to discuss said report. The appraiser has no duty to seek permission from the original client. Any person or entity that has in their possession and appraisal report that was not prepared for them as the named client has the duty to first get permission from the named client to discuss the appraisal report with the appraiser. However, to the extent that they have the appraisal document, that information is deemed to have been made public and is not subject to confidentiality. The appraiser may discuss any information that has been made public because it is not subject to confidentiality by definition.

Duty to disclose past listings: Standard Rule 1-5 requires an appraiser to analyze any current agreement of sale, listing, or option if available in the normal course of business. The ASB has issued advice on this subject through a frequently asked question concerning the duty of an appraiser to analyze and in his report or reports show the analysis of a path listing report. The ASB takes the position that an appraiser under Standard Rule 1-5 does not have a duty to analyze any expired listings. However the ASB in a frequently asked question stated that if an expired listing was considered significant information that would affect the results that an appraiser would have a duty under Standard Rule 1-1(b) to analyze the expired listing.

Comment [KG7]: Agenda Item 10c

604 **Standards Rule 1-5**

605 **When the value opinion to be developed is market value, an appraiser must, if such information is**
 606 **available to the appraiser in the normal course of business:¹⁴**

607 (a) **analyze all agreements of sale, options, and listings of the subject property current as of the**
 608 **effective date of the appraisal; and**

609 (b) **analyze all sales of the subject property that occurred within the three (3) years prior to the**
 610 **effective date of the appraisal.¹⁵**

611 **Comment:** See the **Comments** to Standards Rules 2-2(a)(viii), 2-2(b)(viii), and 2-2(c)(viii) for
 612 **corresponding reporting requirements relating to the availability and relevance of information.**

226. OBLIGATION TO ANALYZE PRIOR LISTINGS OF SUBJECT PROPERTY

Question: I know that Standards Rule 1-5(a) requires an appraiser to analyze all current listings of the subject property. Does it also require analysis of *prior* listings of the subject property?

Response: No. However, in the development of an appraisal, an appraiser is required under Standards Rule 1-1(b), to *not commit a substantial error of omission or commission that significantly affects an appraisal*. If information about a prior listing is known by the appraiser, and that information is relevant to solving the appraisal problem, it must be considered.

Appraisers are cautioned to be aware that an analysis of the subject's prior listing history may be required by assignment conditions that apply to some assignments.

This has created considerable confusion with appraisers and enforcement. It is suggested that the Board adopt a rule related to analyzing past listings.

The following is a suggested rule

(1) An appraiser must analyze and report both the listing price and the analysis of any expired listing price of the subject for a period of 2 years prior to the effective date of the appraisal when the listing price that is expired has a substantial affect on the results of the appraisal.

Contested cases: In cases set for the State Office of Administrative Hearings, the Enforcement Division frequently pleads with the request for revocation when suspension or revocation was not part of the original discussions.

Comment [KG8]: Agenda Item 10a

The logic behind pleading for revocation is that it would foster settlement of the case from the standpoint that an appraiser would not be willing to risk his or her certification or license to contest either discipline or the language of an Agreed Order. The effect of this is that almost every Agreed Order that is signed by an appraiser contains language that the appraiser strongly disagrees with.

Although one could argue that our system of administrative law has layers of protection for the license or certification holder, this is really negated by the opportunity of an appraiser to merely go before a judge for purposes of clarifying the write up of an Agreed Order. In most cases, the risk of potential loss of an entire career is not worth attempting to litigate in court a disagreement in findings of fact or the discipline that may be offered. The Enforcement Division uses this as leverage and often fails to seriously negotiate the language of an Agreed Order.

I would like to see a proposed rule, or at least guidance to the Enforcement Division, to not engage in these tactics. When an appraiser agrees to the discipline, but disagrees with the language of the Agreed Order, it would be expedient for both the board and the appraiser to be able to talk and negotiate language without having to

file a contested case. In fact, I believe it would greatly impact on the cost of litigation and add to the public trust.

I would like to see a rule that prohibits the pleading of revocation if negotiations fail and surrender was not a part of the offer to the appraiser by the Enforcement Division. As previously discussed, this problem may be negated with an intervention process by the board before a case is set for SOAH.

Older complaints: complaints often times are initiated on appraisals that are passed the five-year requirement of the workfile rule. The ASB is clear that the five-year requirement of keeping workfiles has nothing to do with any statute of limitations for board enforcement.

Comment [KG9]: Agenda Item 10a

It is suggested that a rule be developed for cases where an appraiser is defending the complaint concerning appraisal that was written over 5 years from the date of notification of the complaint.

Suggested rules are as follows

(1) an appraiser who receives a complaint concerning an appraisal report that was conducted past the five-year requirement of the workfile rule must not destroy his workfile if it is in existence, even though passed the five-year requirement, when receiving a complaint.

(2) if the appraiser who receives a complaint concerning an appraisal report was conducted past the 5 requirements the workfile rule does not have the workfile related to the appraisal report, then the appraiser will be asked to respond to the appraisal attempting to duplicate data, information and documentation that would have been used to create the appraisal report.

(3) regardless of having or not having a workfile with a notification of complaint passed the five-year period, the appraiser will not be disciplined for any workfile violation from UASBAP.

Two-year limitations: there is a two-year limitations written in the rules for the Texas appraiser license certification board. However, clarification is needed concerning the two-year limitations.

Comment [KG10]: Agenda Item 10a

The limitations as stated runs from 2 years of discovery of the problem or from the time the problem should have been discovered.

The issue is a client who conducts a review and appraisal, or should have conducted a review and appraisal, often should detect a poor appraisal shortly after it was transmitted to the client.

Often it is not until there is a loss on a loan that there is a subsequent review of an appraisal conducted when the loan was made. Often the review is conducted years after the appraisal was done.

Starting the two-year limitations from the time a review is done is sometimes years after the appraisal is actually transmitted to the client. This can be unfair when a market has gone down and the reviewer and client have the benefit of looking back in history. Furthermore, there is a question if the 2-year limitation should run within the agency from the time they actually receive an appraisal report or if it should begin to run once a sufficient investigation has been either concluded or substantially produced. Additionally, it is unclear if the limitations should run from the time the TALCB receives a complaint or from the time a client or user of the report find a potential problem with the appraisal report.

I'm suggesting the following rules.

- (1) Two-year limitations on complaints filed runs from either (1) when a client receives an appraisal report if the client has a system of review when the appraisal is received, (2) the date a property is foreclosed upon, (3) or when a review is conducted by client concerning the appraisal, (4) or when the TALCB receives a complaint, whichever is the earlier of any of these dates.
- (2) There will be a seven-year limitation from the time the appraisal is transmitted to the client to the filing of the complaint. If the report date has past the seven years limitations, the complaint will be dismissed.

Recognized appraisal methods and techniques and “peers”: Standard Rule 1-1(a) says an appraiser “must employ recognized appraisal methods and techniques that are necessary to produce credible results.” The Scope of Work Rule requires that appraisers determine and implement a scope of work that would satisfy what their “peers” would believe would result in a credible appraisal.

Comment [KG11]: Agenda Item 10a

As can be imagined, the application of such loose standards can result in disagreement. Often there is a legitimate disagreement between the appraiser and the Enforcement Division over what is acceptable appraisal methods and techniques and what appraiser’s peers would in fact do in a similar assignment.

It would foster settlement and reduce litigation costs if the PIC were used to settle what peers would do or what is recognized appraisal methods and techniques. Using outside disinterested appraisers who are actually in the field would also add to the appearance of fairness in the disciplinary process.

I'm suggesting the following rule.

|

(1) To determine a violation of SR 1-1(a) or the Scope of Work Rule any such issue must be established by agreement with an appraiser from PIC.

Multiple Complaints: A number of occurrences when a contested case is followed by another complaint. Generally, the Enforcement Division will combine the complaints into one SOHA case. However, there have been multiple times when a contested case is proceeding while there is another pending complaint.

Comment [KG12]: Agenda Item 10a

This can occur when either the agency has not proceeded to full investigation of the subsequent complaint, or when a complaint comes in during the filing of a contested case.

The practical problem is both the appraiser and the agency it is subject to are trying two different cases and are spending money to try two different cases.

Additionally, it is possible to use subsequent complaints as leverage to force a surrender because of the doubling the cost of litigation to try to separate cases. This is not to say that this occurs, however, it is a practical reality.

Absent a rule, an administrative law judge would probably not require an agency to complete investigation just to combine cases. Therefore, a rule would be necessary concerning this problem.

I suggest one of the following two rules to cover this.

(1) Before filing a contested case or win a contested case has been filed, all complaints that have been received will be combined into a single case. It will be acceptable to file a case while subsequent complaints are processed. However, all complaints will be combined into one trial before the trial proceeds.

(2) All complaints received prior to the following of a contested case to the State Office of Administrative Hearings will be combined into a single trial and cause number.

Staff Initiated Complaints: The TALCB Statute gives staff the authority to initiate complaints. There are two major problems with staff initiated complaints.

Comment [KG13]: Agenda Item 10a

(1) They can be used to target appraisers who do not have clients initiating complaints. (2) They are often done when a trainee is applying for experience credit. Often, there is a complaint against the training (experienced) appraiser and the trainee or licensed appraiser.

Staff initiated complaints are dominated by the following.

- Unsigned intake complaint forms
- Referrals from the Texas Department of Insurance (TDI)

- Experience reviews
- Reviews from log requirements from Agreed Orders

Because of this practice, training is one of the highest risk activities in the business of appraising. Many appraisers will refuse to train because of the increased chance of complaints that are staff initiated. (My son is training and I am advising him and his sponsor to go through another state for his General Certification, and only then apply for his certification in Texas through reciprocity.) Because of the 100% audit rule by the ASC to all boards, experience reviews guarantee that the Enforcement Division views an appraiser’s work and there is a chance a complaint can be filed. Furthermore, there are complaints initiated from Agreed Orders with log requirements. This gives the Enforcement Division the opportunity to enter into an Agreed Order with an appraiser, and then later go for his or her license or certification once there is an Agreed Order on the books. In other words, it increases the punishment because of the disciplinary matrix. The bonus system that now exists for investigators who reach their quota makes those logs ripe for the use in farming bonuses.

I suggest that there be a safety valve between the TALCB and staff concerning staff initiated complaints. I suggest a rule that would require one of the board members check off on the complaint and all staff initiated complaints be reviewed (also) by a member of PIC.

Submission of sample work by appraisers to potential clients: It is come to my attention from another state, that an appraiser was caught submitting false documents to try to be placed on approved potential client list. The appraiser falsified his signature and replaced the original appraiser’s signature with his own.

Comment [KG14]: Agenda Item 9

Although this is a deplorable practice, this does not actually fit within USPAP. Therefore, I suggest a specific rule requiring appraisers to not provide you falsified documents or information when attempting to be placed on approved client list.

This does not fit under USPAP because there’s actually not an “assignment.” In addition because there is not a contract, there is no “client.” When looking at the Ethics Rule, without an assignment, there is nothing that can be done for such practice.

Property Tax Experience

Comment [KG15]: Board/Licensing issue

State law requires the Appraisal Districts to comply with USPAP as to Mass Tax Appraising (this is Standard 6). The Comptroller of Currency has a program to evaluate Appraisal Districts. By law, an appraiser who works in an Appraisal District office must comply with Standard 6.

(e) Experience credit shall be awarded by the board in accordance with current criteria established by the Appraiser Qualifications Board and in accordance with the provisions of the Act specifically relating to experience requirements. An hour of experience means 60 minutes expended in one or more of the acceptable appraisal experience areas. Calculation of the hours of experience must be based solely on actual hours of experience. Any one or any combination of the following categories may be acceptable for satisfying the applicable experience requirement. Experience credit may be awarded for:

(1) Fee or staff appraisal when it is performed in accordance with Standards 1 and 2 and other provisions of the USPAP in effect at the time of the appraisal.

(2) Ad valorem tax appraisal which:

(A) conforms to USPAP Standard 6; and

(B) demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.

(g) An applicant may be granted experience credit only for real property appraisals which:

(1) comply with the USPAP in effect at the time of the appraisal;

(2) are verifiable and supported by workfiles in which the applicant is identified as participating in the appraisal process;

(3) were performed when the applicant had legal authority; and

(4) comply with the acceptable categories of experience as per the AQB experience criteria and stated in subsection (e) of this section.

The following is from Advisory Opinion 32. This addresses Mass Tax Appraisals and the following concerns Workfile Requirements.

Workfile Requirements

The RECORD KEEPING RULE requirement to prepare a workfile applies to appraisals and mass appraisals performed for ad valorem taxation assignments. An appraiser's assignment workfile preserves evidence of the appraiser's compliance with USPAP and other information as may be required to support the appraiser's opinions and conclusions.

For a mass appraisal assignment, compliance with the RECORD KEEPING RULE requires a workfile for the mass appraisal assignment, not a workfile for each property in the mass appraisal. The workfile for a mass appraisal contains the information to support the valuation of all properties in the mass appraisal. This supporting material may be documented in any form of media, including electronic files, and includes such items as property records, market data, sales ratios and other statistical studies, appraisal manuals and documentation, market studies, model building documentation, regulations, statutes, property photos, sketches, aerial imagery, maps, automated mapping and geographic information systems, worksheets, spreadsheets, and analysis reports. USPAP does not dictate the form or format of workfile documentation. There is no requirement that the contents of the workfile be held in a single location.

The retention of the workfile in support of an assignment for ad valorem taxation is governed by USPAP and may also be subject to retention schedules in the jurisdictions. The record retention time frames referenced in the RECORD KEEPING RULE are minimums. Retention beyond the USPAP requirements is permitted. Unless compelled by law or regulation, USPAP does not permit appraisers to destroy records prior to five years after preparation **for any reason**. An appraiser citing a jurisdictional exception must comply with the requirements of the JURISDICTIONAL EXCEPTION RULE.

An Appraisal District workfile includes their entire database, manuals, laws, etc. It is virtually impossible to amass all that would be the "workfile" for ad valorem taxation. A rule would be helpful that specifically applies to Appraisal District employees. It can be assumed, as a matter of law, the Appraisal Districts comply with the requirements of Standard 6 and this includes Workfiles that comply with USPAP.

The second part of the experience is as follows.

(B) demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.

This is not clear. It doesn't say the appraiser doing mass tax must comply with Standard 1. It says the appraiser must demonstrate proficiency in appraisal principles, techniques, or skills used by appraisers... Also, note the use of the "or" in the sentence. This in plain reading seems to say the appraiser must show one of the three listed "principles, techniques, or skills."

A rule needs to clarify what this means and how it is shown to the Enforcement Division.

Amnesty Education Program

Comment [KG16]: Education Subcommittee/Board

Texas has the opportunity to be a leader in establishing an Amnesty Education Program just as they have been when they established the Mentor Program. An Amnesty Education Program will result in better prepared and more competent appraisers. The board should consider an Educational Amnesty Program whereby an appraiser, at the appraiser's option, could take a curriculum and a resulting examination that addresses common areas of mistakes and appraisals that been identified through enforcement.

It can be and even should be argued that an appraiser, when becoming licensed or certified, agrees that they understand professional Standards and Ethics and have taken the required courses to be a competent appraiser. However, it is clear from the incidence of complaints and the common problems seen in enforcement, appraisers are somehow not getting the education necessary to avoid many common errors.

For example, the Enforcement Division uses a term called "the Fab 5" when describing 5 common mistakes seen in most residential appraisal reports. These mistakes include wrong reporting in the neighborhood box on the 1st page of URAR form, wrong zoning, unsupported or poorly supported lot values, poorly performed cost approaches, and lack of a statement as to the analysis of highest and best use in the appraisal. Additionally, appraisers often fail to adjust for location or other significant factors in the sales comparison approach. Appraisers often fail to identify the best comparable properties for appraisal.

It is suggested that a curriculum be developed with an appointed committee that deals directly with the Enforcement Division to identify common problems. These common problems and appraisals and appraisal reports, once identified, can be put in a packaged curriculum and given to proprietary schools to offer to appraisers on a voluntary basis.

At the end of the curriculum, the appraiser would be required to sit for an examination. The program would be completed only the appraiser performs at a predetermined level of correct answers on the examination.

Also required for the program is a certain number of hours before a mentor that is from the approved mentor list.

Upon completion of the program, if a complaint was initiated on appraisal that was conducted prior to the program the appraiser would have amnesty as to the common mistakes made within appraisals for any standard violations. The amnesty would not extend to potential intentional acts or gross negligence in any appraisal done prior to the program.

In the event a complaint is initiated on appraisal done prior to the amnesty program completion the Enforcement Division would PIC from a log of appraisal that was conducted after the completion of the program to ensure that the common mistakes were in fact corrected. If the chosen report does not show that the common errors were corrected, then the original report would be processed without amnesty.