



Texas Appraiser Licensing & Certification Board

Complaint Overview Handbook

October 9, 2019

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A. Introduction to Complaint Processing by TALCB

Who does TALCB Regulate?

TALCB regulates professional appraisal service providers in Texas, including:

- Certified General Appraisers
- Certified Residential Appraisers
- Licensed Residential Appraisers
- Appraiser Trainees
- Appraiser Continuing Education Providers
- Temporary practice permits
- Appraisal Management Companies

These professionals are required to have a license, approval, or certificate issued by the Board in order to engage in appraisal practice or provide appraiser continuing education.¹ A person may file a complaint with TALCB against any of these appraisal service providers if the person believes an appraisal service provider violated USPAP, Board Rules, or Statutes enforced by the Board, including situations involving unlicensed real estate appraisal or real estate appraisal management company activity.²

Basic Complaint Requirements

To investigate a complaint, the Board must have:

- (1) a signed complaint;
- (2) jurisdiction³;
- (3) probable cause to believe that a violation exists; and
- (4) the alleged violation must have occurred within the previous four years.⁴

A complaint must be signed because the Board cannot investigate anonymous complaints. The complaint must contain sufficient allegations of conduct which if true, would actually be a violation of the laws the Board enforces.

Filing Complaints

Complaints must be submitted in writing. The Board provides a complaint form that can be found on our website. The use of this form is not required. Signed complaints and supporting documents can be delivered to the Board by fax, email, mail, or hand delivery.

- **Fax number:** (512) 936-3966
- **Email address:** enforcement@talcb.texas.gov

¹ Section 1103.153, 1103.201 & 1104.101, Texas Occupations Code.

² Section 1103.451(b)(2) & 1104.204(b)(3), Texas Occupations Code.

³ Section 1103.451 & 1104.205, Texas Occupations Code.

⁴ Section 1103.451(e), Texas Occupations Code.

- **Mailing address:**

Texas Appraiser Licensing & Certification Board
ATTN: Enforcement
PO Box 12188
Austin, Texas 78711

- **Hand delivery:**

Texas Appraiser Licensing & Certification Board
Stephen F. Austin Building
1700 N. Congress Ave., Suite 400
Austin, TX 78701

TALCB staff or Board members may also file a complaint, and staff will conduct an investigation as necessary to enforce Chapters 1103 and 1104 of the Texas Occupations Code and Board Rules.⁵

B. Initial Processing of Complaints

All complaints received by the TALCB are assigned a complaint number and are then reviewed for basic requirements through the complaint intake process. During the intake process, the legal support staff and staff attorneys determine the following:

Is the Complaint Signed?

The TALCB cannot investigate anonymous complaints.⁶ Complaints that do not include a signature are immediately returned to the sender with a request for signature. If the complaint is signed and staff determines TALCB has jurisdiction over the subject matter and the persons who are the subject of the complaint, the complaint will be opened. A person who files a complaint is a “Complainant.”⁷ The complainant will receive an email acknowledging that the complaint has been opened or explaining why a complaint was not opened.

What if the TALCB does not have Jurisdiction?

Complaints regarding matters outside the jurisdiction of the TALCB are closed without an investigation. The complainant will receive a notice indicating that the complaint has not been opened. The notice will state the reason the complaint was not opened. For example, the TALCB does not have jurisdiction over complaints against county appraisal districts or complaints solely disputing value. Staff may request additional information from any person, if necessary, to determine how to proceed with the complaint resolution.⁸ If TALCB enforcement staff

⁵ Section 1103.451(b) and 1104.204(b), Texas Occupations Code.

⁶ 22 Texas Admin. Code §153.24(a) & 159.204(a)

⁷ 22 Texas Admin. Code §153.24(a)(1)-(2) & §159.204(a)(1)-(2)

⁸ 22 Texas Admin. Code §153.24(e) & §159.204(e)

determines the Board lacks jurisdiction over the allegations in the complaint,⁹ staff will dismiss the complaint. If the Board has jurisdiction over the complaint, the complaint will be opened.

Should the Complaint be Abated?

The Board has adopted a policy to abate, or suspend investigation, of any complaints that are involved in civil litigation. If a complaint is filed with the Board and involves a matter that is in civil litigation, the complaint will be abated until civil litigation is resolved. When a case is abated, TALCB will send notice of the abatement to the respondent and the complainant. TALCB will also instruct the respondent to maintain a true, correct, and complete work file, appraisal reports, and any other records connected with the appraisal activity that is the subject of the complaint until notified by TALCB. Staff reviews the status of abated cases quarterly. Once the civil litigation matter is resolved, TALCB will lift the abatement, request a response to the complaint (along with the related work file materials) and begin investigating the complaint.

C. Opening a Complaint

Complaint Intake

If the complaint and supporting documents meet all of the basic requirements, the complaint is opened for investigation.

Who Must Respond to a Complaint

The respondent is the person(s) that is the subject of the complaint. If the respondent is a TALCB license holder, TALCB will send notice of the complaint to the respondent's email address on file with TALCB.

Complaint Notice

The notice of complaint includes:

1. Instructions on how and when to submit a response;
2. Complaint Questionnaire form;
3. Copy of Complaint filed, which will be redacted to protect the identity of the complainant;¹⁰
4. All supporting documents filed with the complaint; and
5. Copy of TALCB Complaint Process & Resolution Overview

D. Complaint Response

Complaint Response & Request for Extension

Each respondent must submit a response within 20 days of receiving notice of the complaint. The 20-day period may be extended for good cause upon request in writing or by e-mail.¹¹ As part of the response, the respondent must include the following:

⁹ 22 Texas Admin. Code §153.24(a)(1)-(2); §159.204(a)(1)-(2)

¹⁰ Section 1103.460(d-1) and 1104.2082(e-1), Texas Occupations Code.

¹¹ 22 Texas Admin. Code § 153.24(g); § 159.204(g)

1. a copy of the appraisal report that is the subject of the complaint;
2. a copy of the respondent's work file associated with the appraisal(s) listed in the complaint, with the following signed statement attached to the work file(s):
I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE;
3. a narrative response to the complaint, addressing each and every allegation in the complaint;
4. a list of any and all persons known to the respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the respondent's possession, contact information;
5. any documentation that supports respondent's position that was not in the work file, as long as it is conspicuously labeled as non-work file documentation and kept separate from the work file. The respondent may also address other matters not raised in the complaint that the respondent believes need explanation; and
6. a signed, dated and completed copy of any questionnaire sent by Board staff.¹²

Once the response is received, the case manager will assign the complaint to an investigator.

E. Complaint Investigation

Complaint Prioritization

The Board prioritizes complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the Acts or Board Rules that:

1. Evidence serious deficiencies, including:
 - a. Fraud;
 - b. Identity theft;
 - c. Unlicensed activity;
 - d. Ethical violations;
 - e. Violations of appraiser independence; or
 - f. Other conduct determined by the Board that poses a significant risk of public harm; and
2. Were done:
 - a. with knowledge;
 - b. deliberately;
 - c. willfully; or

¹² 22 Texas Admin. Code §153.24(g)(1)-(6); §159.204(g)(1)-(6)

- d. with gross negligence¹³

Initial Triage

The assigned investigator evaluates the allegations in the complaint and response within 14 days of receipt of the response to determine if:

1. the case might warrant dismissal;
2. there is evidence of a potential violation that may warrant disciplinary action; or
3. the complaint should be referred to the high-risk team.

If at any time TALCB staff determines the complaint allegations may present a high risk of public harm, staff will escalate the complaint to the High Risk Team. The High Risk Team, consisting of an attorney, an investigator, and a legal assistant, expedites the investigation and resolution process, which may include a temporary suspension hearing if there is evidence of a continuing threat to the public welfare.¹⁴ Complaints alleging mortgage fraud or in which mortgage fraud is suspected may be investigated covertly and will be referred to the appropriate prosecutorial authorities.¹⁵

If the investigator and staff attorney determine that no violation exists, the complaint is dismissed, and the respondent and complainant are notified.

Formal Notice & Periodic Notice

If the investigator determines the complaint warrants further investigation, a Formal Notice of Complaint is sent to the respondent and complainant notifying them the investigation will proceed.¹⁶ In addition, both the complainant and respondent will receive periodic updates regarding the complaint status by e-mail every 90 days until final disposition.¹⁷

Complaint Investigation

The investigator reviews each complaint to ensure compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHS. 1103 and 1104 (Act) and 22 TEX. ADMIN. CODE CHS. 153, 155, 157 and 159 (Rules). During the investigation, the investigator may need to gather additional information. The investigator may request an investigative conference with the respondent to have a discussion of the facts and circumstances of the alleged violations. The investigative conference is discussed in more detail below. Once the investigation is complete, the investigator prepares a written investigative report and makes a recommended disposition based on the factors enumerated in Board rules¹⁸ and the Board's penalty matrix.¹⁹

¹³ 22 Tex. Admin. Code § 153.24(b); § 159.204(b)

¹⁴ Section 1103.551, Texas Occupations Code.

¹⁵ 22 Tex. Admin. Code § 153.24(d); §§ 159.204(d)(1)

¹⁶ 22 Tex. Admin. Code § 153.24(j); § 159.204(j)

¹⁷ Section 1103.163(c), Texas Occupations Code.

¹⁸ 22 Tex. Admin. Code §§ 153.24(l)(1)(A) – (K); 159.204(l)(1)(A)-(L)

¹⁹ 22 Tex. Admin. Code § 153.24(l)(3); § 159.204(l)(3)

F. Complaint Disposition

After the investigation is complete, the complaint is referred to the Board's legal staff for review and disposition. A staff attorney reviews the complaint, the response provided by the respondent, the investigative report and findings, and all other relevant information to determine whether a violation of USPAP, Board Rules, or the Act has occurred. If the staff attorney determines that a violation has occurred, the staff attorney makes a recommendation to the Director of Standards and Enforcement Services (SES) on the appropriate remedy for the violation. When making a recommendation for disposition, the staff attorney considers the factors enumerated in Board rules²⁰ and ensures the recommendation is consistent with the Board's penalty matrix.²¹ A complaint may be resolved through a non-disciplinary method (which results in a dismissal) or through formal discipline.

Non-disciplinary Dismissals

Dismissal

If the investigation shows the incident is outside the jurisdiction of the Board, no violation occurred, there is insufficient evidence to prove a violation occurred, or the complaint involves first or second-time minor deficiencies, the complaint may be dismissed.²²

Dismissal with Non-Disciplinary Warning Letter

If the investigation uncovers minor deficiencies that warrant a warning, the investigator will prepare a written summary of the case which includes the allegations, the response to the allegations, the investigator's findings, and the investigator's recommendation for resolution. The Board's penalty matrix allows for disposition through non-disciplinary warning when only minor deficiencies exist. Warning letters can be used as evidence if a similar situation arises in the future.²³

Contingent Dismissal

If the investigation uncovers violations of USPAP, the Act, or Board rules, the investigator completes a written investigative report and a disposition factor analysis worksheet to determine the proper disposition of the complaint.²⁴ The Board's penalty matrix provides for disposition through contingent dismissal for complaints with minor deficiencies under certain circumstances. A contingent dismissal is also available for serious deficiencies if the respondent has no prior formal discipline. A contingent

²⁰ 22 Tex. Admin. Code §§ 153.24(l)(1)(A) – (K); 159.204(l)(1)(A)-(L)

²¹ 22 Tex. Admin. Code § 153.24(l)(3); § 159.204(l)(3)

²² 22 Tex. Admin. Code § 153.24(l)(3)(A)(i),(D)(i); § 159.204(l)(3)(A)(i),(D)(i)

²³ 22 Tex. Admin. Code § 153.24(l)(3)(A)(ii); §159.204(l)(3)(A)(ii)

²⁴ 22 Tex. Admin. Code § 153.24(l).

dismissal is not available as an outcome once the case has proceeded to a contested case hearing at the State Office of Administrative Hearings (“SOAH”).²⁵ If the investigator finds that the identified deficiencies can be remedied through education or mentorship, the investigator will include the recommendation in the disposition factor analysis worksheet. Once the investigation is complete, the complaint is referred to the Board’s legal staff for review.

The staff attorney will review the complaint file and conduct a legal analysis to determine if disposition through contingent dismissal is appropriate. If the staff attorney finds that a contingent dismissal is warranted, the staff attorney will make a recommendation to the Director of SES. If the Director approves the recommendation, the staff attorney will present the offer to the respondent.

Formal Disciplinary Action

If the investigation uncovers (1) minor deficiencies coupled with certain aggravating circumstances or (2) serious deficiencies, the investigator may recommend formal discipline to include any of the below sanctions as a means to resolve the complaint:²⁶

1. Remedial measures;
2. Required adoption of written preventative policies or procedures;
3. Probationary period with provisions for monitoring an appraiser’s practice;
4. Restrictions on supervising trainees;
5. Restrictions on scope of practice;
6. Administrative penalty;
7. Refund;
8. Period of Suspension; or
9. Revocation.

The investigator will complete an investigative report and disposition factor analysis worksheet, and refer the complaint file to legal staff for review. The staff attorney will make a recommendation for disposition and resolution to the Director of SES. Upon approval by the Director, the staff attorney will present the offer to the respondent.

Formal disciplinary actions are resolved through Agreed Orders or through an order from the Board after a hearing at SOAH.

²⁵ Section 1103.518(2)(A)-(H) and 1104.214(2)(A)-(G), Texas Occupations Code.

²⁶ 22 Tex. Admin. Code § 153.24(l)(3); §159.204(l)(3)

Agreed Final Order

An Agreed Final Order is entered when the respondent and the Board agree to specific disciplinary action to resolve the case.²⁷

Notice of Violation and Penalty

If a respondent does not respond to a complaint, the Board will send a Notice of Alleged Violation and Penalty to the respondent as a means to resolve the complaint matter. The Notice will set forth the parties, the alleged violations, and recommended sanctions, and provide a conspicuous notice to the respondent about the right to a hearing and how to request a hearing.²⁸ If the respondent does not respond and does not request a hearing in writing within 20 days, a Final Default Order imposing the recommended sanctions will be automatically entered against the respondent.

Proposal for Decision – SOAH Hearing

If the Board and the respondent cannot reach an agreed resolution, the staff attorney will draft and file a Statement of Charges with SOAH and request a hearing to be scheduled. SOAH typically sets a hearing date 30-90 days from the date of the hearing request. Once the hearing is scheduled, TALCB sends a Notice of Administrative Hearing to the respondent.²⁹ Hearings are held before an Administrative Law Judge (ALJ) in SOAH's offices in Austin. The respondent may appear in-person or may request to appear by telephone. Within 60 days after the hearing, the ALJ will issue a Proposal for Decision (PFD). The PFD includes the ALJ's findings of fact and conclusions of law.³⁰ Parties have a limited time to file exceptions to the PFD. If exceptions are filed, parties have additional time to file a reply.³¹ The ALJ will review any exceptions and replies that are filed by the parties and may or may not revise the PFD based on the exceptions and replies.³² The PFD is then presented to the Board for consideration at the next regularly scheduled Board meeting. The Board may adopt the PFD as written, make changes to the PFD, or remand the PFD to SOAH for further action by the ALJ.³³

Failure to Appear – SOAH Hearing

If the respondent receives proper notice of a contested case hearing scheduled at SOAH but fails to appear at the hearing, the ALJ may conduct the hearing or return the matter to the Board to enter a Default Order, as the ALJ finds appropriate. The respondent is bound by results of the Order, as if the respondent appeared at the hearing.³⁴

²⁷ Section 1103.459 and 1104.2081, Texas Occupations Code.

²⁸ Section 1103.5011(a),(b)(1)-(3); 1104.209(a),(b)(1)-(3), Texas Occupations Code

²⁹ Section 1103.503 and 1104.212, Texas Occupations Code.

³⁰ Section 1103.518 and 1104.214, Texas Occupations Code.

³¹ 1 Tex. Admin. Code § 155.507(b);

³² 1 Tex. Admin. Code § 155.507(c)-(d);

³³ 22 Tex. Admin. Code § 157.17(a)

³⁴ Section 1103.510 and 1104.2132(a)-(b), Texas Occupations Code.

In addition, if the respondent fails to appear, the ALJ may award reasonable costs and attorney's fees, including but not limited to, preparation for the hearing, cost of discovery, witness expenses, investigative expenses, and SOAH expenses.³⁵ Further, AMCs may be ordered to pay reasonable costs even after a fully litigated hearing.³⁶

G. Alternative Dispute Resolution

To avoid the expense of litigation for both parties, the Board may also engage in three methods of alternative dispute resolution – investigative conferences, negotiations, and mediation.

Investigative Conference

The respondent may meet with the Board staff for an Investigative Conference. The purpose of the conference is to facilitate an investigative discussion of the facts and circumstances of the alleged violations. The investigative conference provides the respondent and staff an opportunity to address concerns revealed by the investigation. Board staff will provide the respondent with a Statement of Investigative Conference Procedures and Rights (IC Form) not later than three days before the date of the investigative conference, which should be reviewed, signed and returned to Board staff before the conference begins.³⁷

Upon timely request by the respondent and execution of the Board's confidentiality agreement, staff will provide the respondent with the investigative report not later than 5 days prior to the conference. Participation in an investigative conference is not mandatory and may be terminated at any time by either party.

After the investigative conference, the Board staff may propose a settlement offer to the respondent or recommend that the complaint be dismissed. The respondent may accept, reject, or make a counter offer to the proposed settlement not later than ten (10) days following the date of the investigative conference.

Negotiation

The Board staff and the respondent may enter into an agreement for settlement at any time, without engaging in an investigative conference. Negotiations may be conducted in person, by phone, or through written communications, including email.³⁸ Any agreement must be in writing and adopted by both sides before it becomes effective.

Mediation

If the Board staff and the respondent are unable to reach an agreement through the investigative conference or negotiations, the parties may consent to mediation. With the consent of all parties, the Board staff will request a date and time for the mediation from SOAH, who will send notice of the mediation to the parties. The notice will identify the

³⁵ Section 1103.523 and 1104.2132(c), Texas Occupations Code.

³⁶ Section 1104.214, Texas Occupations Code.

³⁷ 22 Tex. Admin. Code § 157.31

³⁸ 22 Tex. Admin. Code § 157.32(a)-(b)

mediator and include the date, time and place of the mediation. The parties attending the mediation must have authority to settle the complaint. Any agreement signed by the Board staff at mediation is subject to final approval of the Board. A respondent participating in mediation must pay one-half of the mediation fee directly to the Board before the date of mediation.³⁹

³⁹ 22 Tex. Admin. Code § 157.33