

UTAH APPRAISER LICENSING AND CERTIFICATION BOARD
HEBER M WELLS BUILDING

Room 210
9:00 a.m.
June 26, 2019
TELEPHONE

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Mark Fagergren, Education and Licensing Director
Kadee Wright, Chief Investigator
Chad Tengler, Real Estate Analyst
Elizabeth Harris, Assistant Attorney General
Stephen Gillies, Assistant Attorney General
Mary Martinez, Board Secretary
Kendelle Christiansen, Licensing Specialist
Desha Pages, Licensing Specialist
Craig Livingston, Investigator

BOARD MEMBERS PRESENT:

John Ulibari, Chair
Jim Bringhurst, Board Member
Keven Ewell, Board Member
Rich Sloan, Board Member

PUBLIC MEMBERS PRESENT:

Scott S. Dibiasio - Telephone
Vern Meyer

The June 26, 2019, meeting of the Appraiser Licensing and Certification Board began at 9:04 a.m. with Chair John Ulibari conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes –

A motion was made and seconded to approve the May 22, 2019 minutes. Vote: Chair Ulibari, yes; Board Member Bringhurst, yes; Board Member Ewell, yes; Board Member Sloan, yes. The motion passes.

The Board Members approved the 2020 Calendar.

Public Comment Period

No public Comment

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart reported that a month prior to the meeting he met with his staff and requested that each of them answer the following question:

- If you had to eliminate one prohibition or one requirement of appraisers, what would it be?

Director Stewart's objective is to take an in-depth look at the statutes and rules that we currently have in place.

- Does what the Division have in place make sense? Are the rules appropriate?
- Do we have too many statutes and rules? Are there things that can be eliminated?
- There are more restrictions for statutes and rules pertaining to Appraisers;
 - Cannot conflict with USPAP.
 - Cannot conflict with the Appraisal Sub Committee's policy statements.

Director Stewart has received some feedback from his staff for appraisal rules. His goal is:

- Take a closer examination of the current statutes and rules.
- Evaluate the current Division rules and identify those that should not be changed.
- Identify rules that do not need state involvement or oversight.
- Identify rules the Division might potentially remove without conflicting with USPAP or the Appraisal Sub Committee's policy statements?

The Director will meet with the various sections of the Division over the next two weeks. He would like to present to the Board a report for its consideration as to whether there are rules that the Board might choose to eliminate.

The Director will update the board as we move forward.

ENFORCEMENT REPORT – Kadee Wright

Ms. Wright reported in May the Division received 4 complaints; closed 3 cases; leaving 33 appraisal cases open with the Division. There are a total of 2 cases pending with the AG's office.

Ms. Wright had no stipulations to present for the Board's consideration.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren discussed the 502 Non-Residential Relocation Assistance and the 900 Principles of RE engineering courses. He requested the Board members' feedback.

- After reviewing the material, the courses were so specialized in the application the Division wondered if it would be applicable. This is a very small niche; however some appraisers will have an interest.
- Mr. Fagergren felt it would not violate the requirement for a topic.
- Board member Ewell commented:
 - This material would be beneficial particularly for those who provide the services.

- Chair Ulibari stated the courses do not deal with Appraisal theory or practice directly. However, he can see the applicability to some individuals.
- The Board members agreed they had reviewed the recommended courses and are comfortable with them.

Mr. Fagergren reported there were five candidates approved by both the education and experience review committees for exams.

- Rhett Lance Peterson, approved to sit for the licensed appraiser exam.
- Jessica A. Rees, approved to sit for the licensed appraiser exam.
- Gordon Hofheins, approved to sit for the licensed appraiser exam.
- Jonathan Davis; Certified Residential candidate, recommended to sit for exam.
- Kelly Stapley; Certified Residential candidate, recommended to sit for exam.

There were two who were recommended for approval by the Education Review Committee and recommended for denial by the Experience Review Committee.

- Gary McBride, Denied for the licensed appraiser exam.
- Patience Fisher; Certified Residential candidate, denied to sit for the exam.

'Yes' answers approved by Division Representatives.

- Mark D. Peterson – LA Renewal; Investigation: Failed to adjust comparable sales, failed to analyze and report several comparable properties. \$3,000 fine and 18 Hour CE requirement.
- Angela Bair – CR Renewal; Failed to complete required CE courses for renewal of ID Real Estate Sales license. Discovered during CE audit, fined \$550. Fine paid 5/29/2019.
- Frank Fehribach – Temp CG; MI appraiser license renewal denied for failing to comply with CE requirements. Is now actively licensed in Michigan.
- J. Martell Bodell II – CR Renewal; UT Fined \$18,000, required to take 21 hrs CE. Last payment and proof of completed CE due by June 28, 2019.
- Jeffrey K. Johnson – CR Renewal; HUD sent notice of appraisal deficiencies. They required remedial education which has been satisfied.
- Robert John Strchota – Temp CG; Minnesota-request of a file over a litigated matter. Iowa-closed. In South Dakota he should have disclosed that Minnesota had an ongoing investigation.

Mr. Fagergren discussed Administrative Rules regarding trainees and when a license is needed.

- They are required to be registered before they perform inspections.
- Required to do 35 inspections with a supervisor.
- Section 61-2g-301 refers to when a license is required. A license is not required in certain conditions. Mr. Fagergren read from section (2)(g);
 - An individual such as a researcher or secretary who does not render significant professional assistance, as defined by the Board, in arriving at a real estate appraisal analysis, opinion, or conclusion.

- Section 61-2g-302 refers to registration as a trainee. Mr. Fagergren read from section (1);
 - An individual shall register with the division as a trainee before the individual acts in the capacity of a trainee or earns experience for licensure.
- Section 61-2g-205 Duties of the board. Mr. Fagergren read from section (2)(a)(b)(i)(ii)
 - (2) The board shall:
 - (a) determine the experience and education requirements appropriate for a person licensed under this chapter;
 - (b) determine the experience and education requirements appropriate for a person certified under this chapter:
 - (i) in compliance with the minimum requirements of Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and
 - (ii) consistent with the intent of this chapter;
 - (c) determine the appraisal related acts that may be performed by:
 - (i) a trainee on the basis of the trainee’s education and experience;
 - (ii) clerical staff; and
 - (iii) a person who:
 - (A) does not hold a license or certification; and
 - (B) assists an appraiser licensed or certified under this chapter in providing appraisal services or consultation services.
- Section 61-2g-401 refers to State-certified and state-licensed appraisers—Restrictions on use of terms—Conduct prohibited or required—Trainee. Mr. Fagergren read from section (5), (a), and (b).
 - (5) If a trainee assists a state-certified appraiser in the preparation of an appraisal report, the appraisal report shall disclose:
 - (a) The trainee’s name; and
 - (d) The extent to which the trainee assists in the preparation of the appraisal report.

BOARD AND INDUSTRY ISSUES

Director Stewart presented the proposed rule amendment for appraiser evaluation. This topic was discussed last month. Board member Sloan submitted some board member comments to the Division based on the previous draft of rule amendment. Mr. Barney reviewed those suggestions and incorporated some suggestions into the current draft. The current draft was reviewed by the Board members.

- One of the changes: CE Banking changed to upload to the database.
- The board reviewed and approved the changes.

A motion was made and seconded to approve the rule amendment to move to the public comment phase. Vote: Chair Ulibari, yes; Board Member Bringhurst, yes; Board Member Ewell, yes; Board Member Sloan, yes. The motion passes.

Two emails were received regarding the Bifurcated Appraisal. Both emails commented on similar issues. Chair Ulibari requested Vern Meyer (UAA) to summarize the email that he sent.

- What is the board's view on the inspection as an important part of the appraisal?
There is a lot of worry across the nation. The Appraisal Organizations of North Carolina and Virginia are currently in battles with the legislature to outlaw the bifurcated appraisal.
 - An Appraiser who does not inspect the property doesn't have the information needed.
 - No rule on what inspector's qualifications and training are.

Mr. Meyer thought the Division rules stated the inspections had to be done by a qualified individual.

- The concern about a bifurcated appraisal is; any individual can do an inspection there is no criteria for minimum qualifications out there. Inspections by a person other than the appraiser are being pushed by Fannie Mae and Freddie Mac,
 - They would like to streamline the appraisal process. Day one program: This is property inspection waivers. No appraisal done at all. The process would be:
 - Can they give a waiver? This would speed up the process. And saves the homeowner money. It alleviates the lender from buyback requirements.
 - If there is not enough information from previous appraisal reports. In this case a property inspection would be performed.
 - Could be exterior only, from the street.
 - Could be interior inspection
 - Then sent back to Fannie Mae/Freddie Mac at this point they will decide if there is enough information to approve a mortgage application.
 - If more information is needed then they may go into the appraisal process. Take the information and send to an appraiser and have them provide the appraisal.
 - It would still be a 1004 or 1004p form. There is a Scope of Work issue that requires the appraiser to sign the report who inspected the subject property and any comparable properties.

Mr. Meyer stated appraisers are concerned about the unintended consequences of property inspections being done by someone other than the appraiser. Nothing in the handbook requires that the appraiser perform an inspection. Also, lenders use AMCs to make appraisal assignments. There is no requirement that an AMC use an appraiser to perform a property inspection, if one is required.

Mr. Meyer requested that if there is a decision made the recommendation should come from the Division of Real Estate rather than the Board.

Director Stewart asked who was opposing the Bifurcated Appraisal in the other states. Mr. Meyer advised it was the Appraiser Board in Virginia.

- They feel there is no safety net.
- They are concerned about the Hybrid appraisal reports.

- Individuals who know nothing about real estate making comments and doing inspections. Hiring whoever can be found to go to a property and take pictures.
- It's not the type of information that needs to go into an appraiser report that is being delivered to the appraisers.

Mr. Meyer made a personal two-step recommendation, if the division decides to allow these bifurcated appraisals to happen:

- In the appraisal report the individual who does the inspection should be identified in the body of the appraisal report along with their title, type of license, etc. If they have no license the individual must provide a summary of their experience.
- The entire inspection report provided should be appended to the appraisal report. Otherwise it will not be available to anyone or anywhere else. Other outside information used in an appraisal is available elsewhere such as county records and zoning ordinances. These types of information relied on by appraisers are open sources available to anyone reviewing an appraisal report.

Chair Ulibari asked Mr. Meyer in his opinion as an appraiser what percentage does the inspection contribute to the overall appraisal report?

Mr. Meyer advises that in his opinion the inspection is the only way you can get the information on quality, condition, location, and view is from an inspection of the property. In summary he believes the inspection contributes 5 to 10% to the overall appraisal report.

Board member Ewell stated there is a shift in the industry. Lenders are always trying to move fast. He questions, as appraisers, how can we streamline this process, make it less expensive to the consumer but still provide the same protection as with the current model using an inspection of the property by the appraiser?

The board needs to do some form of evaluation to determine the value of an inspection of the property by the appraiser.

- Fannie Mae/Freddie Mac are no longer federally related transactions and do not require an appraisal.
- Where does the Industry go to promote public trust? Something reasonable should be provided to the consumer to base their decision on and they can move forward to buy a home.

A motion was made and seconded to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Ulibari, yes; Board Member Bringhurst, yes; Board Member Ewell, yes; Board Member Sloan, yes. The motion passes.

CLOSED TO PUBLIC

An Executive Session was held.

OPEN TO PUBLIC

Director Stewart advised that the Board met in Executive Session to determine which candidates would be approved or denied to sit for the appropriate exams. The Board has agreed with the recommendation of the Education and Experience Review committees for Rhett Lance Peterson, Jessica A. Rees, Gordon Hofheins, Jonathan Davis, and Kelly Stapley to sit for their corresponding exams. They have also voted and agreed with the recommendation of the Education and Experience Review committees to deny Gary McBride and Patience Fisher. All the candidates will be notified by mail.

Director Stewart will research to find a definition for significant assistance and will email the board the answer. The director advised there was a video released regarding the Bifurcated Appraisal by John Brennen of the Appraisal Foundation.

Mr. Brennen's comment was based on USPAP, not referring to Utah Statutes and Rules. In his opinion an unlicensed person could perform an inspection as long as all they reported were facts, such as numbers as bedrooms and bathrooms. Qualities and condition would require an appraiser's license.

A motion was made and seconded to adjourn the meeting. Vote: Chair Ulibari, yes; Board Member Bringhurst, yes; Board Member Ewell, yes; Board Member Sloan, yes. The motion passes. The meeting adjourned at approximately 10:53 a.m.