

UTAH APPRAISER LICENSING AND CERTIFICATION BOARD
HEBER M WELLS BUILDING
Room 250
9:00 a.m.
October 30, 2019

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:

Jeffrey T. Morley, Chair
Keven Ewell, Vice Chair
Jim Bringhurst, Board Member
John Ulibari, Board Member
Rich Sloan, Board Member

PUBLIC MEMBERS PRESENT:

No Public

The October 30, 2019, meeting of the Appraiser Licensing and Certification Board began at 9:01 a.m. with Chair Morley conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes –

A motion was made and seconded to approve the September 25, 2019 minutes. Vote: Chair Morley, yes; Vice Chair Ewell, yes; Board Member Bringhurst, yes; Board Member Ulibari, yes; Board Member Sloan, yes. The motion passes.

Public Comment Period

No public Comment

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart announced Chad Tengler's is no longer with the Division and Joy Natale has replaced him, she is in her second week with the division. Joy Natale

introduces herself. She has been an attorney for 22 years and looks forward to working with the Division.

Proposed statutory change.

- The issue of strict liability. Proposing that the Division put language into the statute clarifying that violations of Utah law are strict liabilities. That would mean that the Division and the board do not have to prove intent, unless intent is specifically required. The issue has not come up before, but the Division of Occupational and Professional Licensing added language to their statute last session because of a lawsuit that appeared as though the issue could come up, where an attorney could argue that the Division had to prove intent where the Division was alleging that a violation took place when that's not the intent of the law. This would clarify in statute that persons are strictly liable for violations. .
- This proposal would go to the legislature, which then would require 2 public hearings. At the hearings the public is able to voice in opposition to or in favor of the proposed statutory change.
- There was no opposition to the statutory change when DOPL requested the change and it has passed and become law.

ENFORCEMENT REPORT – Kadee Wright

Ms. Wright reported that in September the Division received 2 complaints; closed 2 cases; leaving 26 appraisal cases open with the Division. There are a total of 2 cases pending with the AG's office.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported that he and Kadee Wright had just recently returned from the Appraiser Regulatory ("AARO") conference with many other states. One of the first meetings they attended was the Appraiser Standards Board meeting where the primary area of discussion was evaluations vs. appraisals.

This same issue has also come up in the State of Utah. He was pleasantly surprised to be in the position that the Division is in compared to what other states are in, as Utah has already made significant progress towards allowing appraisers to perform evaluations. Many other states are just beginning this process. The National Appraisal Foundation is leaving it to each state as to how to deal with them.

Mr. Fagergren received a phone call regarding this same evaluation issue and the rule that is pending before the board. The caller stated that he was aware that the Division is seeking by rule to exempt appraisers from having to comply with USPAP for standards 1 and 2 for evaluations, but the rule is exempting rule 1, 2 and 3. Standard 3 deals with reviews only and not reporting. The question is, it seems like the division rule should exempt appraisers from either Standards 1 and 2, or Standards 1, 2, 3, and 4. Mr. Fagergren wondered whether the intent was to include an exemption from Standard 4 or whether the intent was to exempt only Standards 1 and 2. Mr. Fagergren indicated

that the proposed rule is to exempt for appraisers for standards 1,2 and 3, and that the proposed rule amendment is different from what he thought was proposed which was to exempt appraisers from Standards 1 and 2 only, not 1, 2 and 3.

The board noted that appraisers could not be exempted from the ethics rules but could be exempt from Standards. Standards 3 and 4 address the review of an evaluation. The review of an evaluation is not typically done by an appraiser but is done by trained staff at lending institutions. It is being discussed by the board to either exempt appraisers from both Standards 3 and 4 or neither of them. If an appraiser is being exempt from reviewing an evaluation or writing a report on an evaluation, essentially it's up to the lending institute to decide the scope of work, where they decide whether a review is conducted. It seems as though that this has come about because the lender wants to do the thing for less money and if you hire someone that is less trained or qualified, you get to pay less, so that is the reason that non appraisers are being used to do evaluations.

BOARD AND INDUSTRY ISSUES – Justin Barney

Mr. Barney reported that the Division has filed a proposed Rule amendment which does include the exemption for standards 1 through 3, it has been through the rule making process, public comment has been received and is now closed. There is one public comment that was received by email from the Appraisal Institute, which stated that A.I. is supportive of the proposed Rule Amendment regarding appraisers and evaluations, there is also another part of the proposed rule amendment which would require an appraisal school or continued education course of completion for each student that they are also in favor of. They are in favor of the Rule Amendment as it has been written and suggest a possible future amendment later.

- The proposed Rule Amendment was filed on August 28th and was open for public comment through October 15th and is now available to be made effective.
- It would be made effective with exemption with standards 1 through 3, if that is not the Commissions intended Mr. Barney can put it on hold.
- The Division requests that it be adopted by removing standard 3 or adding 4, that would need to be done by adding another proposed rule amendment.
- Director Stewart suggests letting the rule filing go forward, as long as having standard 3 in there wouldn't cause any problem while it's being amended to remove standard 3.
- The board does not see it an issue moving forward as proposed.
- Mr. Barney stated that there is one other provision in the proposed rule amendment and it states that an appraiser performing an evaluation does not receive experience credit.
- The board agrees and believes that this is the intent of the proposed rule amendment.
- The Board questions if this is something that needs to be voted on in order for the proposed rule amendment to go into effect. Mr. Barney stated that it is something that would require a vote and if voted on it is available to make effective today or in the near future.

- Director Stewart suggests putting something on the record about what the boards opinions are on the proposals from the Appraisers Institute as they are recommending a change to the proposed rule, the division should specifically mention that change and why the board is in favor of it or not.
- Mr. Fagergren gives a brief overview on the current proposed rule, which is that within 10 days of the completion of a course offering if a student provides the information regarding their name and license number that the provider electronically bank or submit that information. The proposal from the institute is that it should be done within the time period granted by the division and an extension. Mr. Fagergren does not see any reason they should need an extension, he explains that providers should understand, but some licensees have stated that the 10 days has become a burden.
- The board agrees that leaving the 10 day rule in place and not offering the extension is what is being agreed upon, as there has only been one instance in the past with a minor violation.

A motion was made and seconded to approve the proposed amendment. It will become effective today 10-30-19. Passes unanimously with the concurrence of the Division.

Mr. Fagergren gave an update on the latest meeting he attended and explained that there were representatives from the American Bankers Association and they each spoke regarding evaluations and what their concerns were.

- ABA stated that banks have done evaluations for many years for low dollar, low risk loans. The banks also choose the evaluator.
- Regarding the increased minimum threshold, they see no immediate changes or use of evaluations
- The Bank of America representative stated that there was a lack of clarity for evaluations and who can perform them. They requested that the Standards Board provide minimum requirements and standards.
- According to REVAA, evaluations are not appraisals and should not be considered or covered by USPAP and should be done by Federal bank regulators and not the ASB.
- PNC Banks stated they want uniformity and clarity for evaluations and reviews.
- Regulators from Louisiana and Texas stated that they currently in the process of taking action where they believe evaluations are appraisals and should be done by a licensed professional, unless you work for a bank or are a Real Estate licensee. Regulators from Alabama and Oregon believe just the opposite and think there should be no standard for evaluations.
- Industry Experts including the Appraisal Institute, the National Association of Realtors, American Society of Appraisers (“ASA”) and The Network, expressed their concerns regarding the issue of evaluations vs. appraisals.
- North Dakota Governor requested a waiver for appraiser requirements, they were granted a 1 year exemption.
- David Bunton stated that 90% of sales currently do not require an appraiser and also expressed the risk and gave many statistics on the matter.

- Mr. Fagergren gave an update on PREA courses which will count towards 33% of the non-residential experience needed. He also reminded that students would need to take all of the qualifying courses before they can register.
- There is a need for PREA mentors; they will review the progress of registered students.
- Real Estate workshop at the U of U is being discussed.
- The State of Utah does not license trainees, where we are in the position to possibly change the statute to allow trainees to sign an appraisal report. Such a proposal will require legislative approval.
- Supervising: Certified appraisers are only allowed to certify up to 3 trainees at a time. The standard states that unless a state has a progress and monitoring oversight they cannot be allowed more.
- There is a strong support for appraisers to adopt the nationwide licensing system. Mr. Fagergren agrees as it would be burdensome to keep track all of state licensees. He then asks the board if the state should have a limit on exams an applicant can take after multiple failed exams. He also suggests requiring applicants get a background check to receive a temp license, current they are allowed a waiver.
- A list of granted licenses was reviewed and a list of denials.

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 Morley, yes; Vice Chair Ewell, yes; Board Member Bringhurst, yes; Board Member Ulibari, yes; Board Member Sloan, yes. The motion passes.

CLOSED TO PUBLIC

An Executive Session was held.

OPEN TO PUBLIC

Mr. Barney stated the Appraisal Board met in executive session to consider Andrew W. Luikart and Richard Peterson and the list of license denials. A decision has been made and the applicant's will be informed of the decision by mail. The board has asked that they update the agenda for the next meeting to address the amendment to standard 3 and 4 and prepare for a conversation at that time.

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