

Administrator's report



By Bob Keith, ACLB Administrator

During the 2001 Legislative session the Board, the Appraisal Coalition, and many others fought hard for the Board to become a semi-independent agency and to preserve its policy making authority. They believed that the public would best be protected if decisions affecting rules governing real estate appraisers were made by a Board comprised of predominately real estate appraisers rather than by an Executive Director of a large state super-agency.

In the past the Board was not permitted to have autonomy over its own budget. That authority was held by the state agency under which the Board operated. Since semi-independence, the Board has the authority to adopt its own budget which is not subject to review and approval by the Legislature. However, the Board still has financial accountability because a copy of the budget is required as part of the Board's report to the Legislature and Governor at the beginning of each Legislative session. In addition, an annual financial statement must be provided to the Department of Administrative Services by September 28th of each year.

The Board cannot adopt or modify its budget without first holding a public hearing and providing notice of the hearing to all holders of licenses issued by the Board. Such notice of the October 20, 2003 public hearing on the budget is contained in this newsletter. The Board has established a proposed budget for the 2003-2005 biennium by temporary rule and will consider public input on the budget prior to adopting the final 2003-2005 budget by permanent rule.

Presently, the Board's proposed 2003-2005 budget projects expenditures in excess of revenues, however the Board is *not* proposing to increase license fees at this time. Instead, any deficit will be met out of reserves that were brought forward at the time the Board became semi-independent.

As you might expect, enforcement activities consume considerable staff time and resources. The Enforcement Actions section of this newsletter gives a report of the Board's enforcement activities during the past year. The Board has been active in enforcing USPAP and has revoked, suspended, and/or refused to renew a number of licenses; many of which involved contested case (administrative) hearings with complex issues. In addition, there have been a number of disciplinary actions taken against appraisers that involve civil penalties (fines) and/or required appraisal education.

The number of complaints filed against appraisers is on the rise and we continue to operate with a staff of 3.5 full-time employees (FTE) which is down from 5 FTE prior to semi-independence. In spite of these reductions, the results from our Appraisal Subcommittee (ASC) review last March were very favorable. The Chairman of the ASC wrote: "We are pleased to inform you that based on our review, your Program functions effectively and in a manner consistent with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended. We are pleased that the Board has maintained its efforts to investigate and resolve complaints effectively."

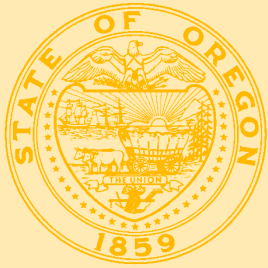
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Appraiser Certification and Licensure Board of Oregon



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The final word on assignment letters

Perhaps the most often asked question here at the Board office pertains to letters of assignments and/or changing the client's name on an appraisal report.

Usually, the scenario goes something like this: A lender or mortgage broker (Lender A) orders an appraisal which the appraiser completes and delivers. Then the borrower decides to switch to a different lender/broker (Lender B). Lender A then issues an "assignment letter" which ultimately ends up in the hands of the appraiser.

With most assignment letters, Lender A signs over its rights and/or interests in an appraisal report to Lender B who is now supposedly free to use the appraisal report for their own loan decision. In most cases Lender B will not make the loan unless the appraisal report identifies them as the appraiser's client. The problem is they are *not* the client. (USPAP defines "client" as "*the party or parties who engage the appraiser in a specific assignment*"). Usually at this point Lender B asks the appraiser to change the client name on the appraisal report from Lender A's name to their name. **THIS IS NOT ALLOWED BY USPAP - DON'T DO IT!**

Alternatively, some assignment letters are addressed to the appraiser whereby Lender A instructs the appraiser to basically assign or transfer "client-hood" from Lender A to Lender B and then change the client's name on the original appraisal report. **DON'T DO IT!** Lender B is not the client because they did not engage the appraiser in a specific assignment.

To recap the problem, Lender B has an appraisal report they say they *will not* use because their name is not listed as the client and the appraiser cannot change the client name on the report because Lender B is not the client; Lender A is. There are two solutions. First, *Federal Financial Regulatory* agencies have rules in

place that allow the receiving lender to use such appraisals without being readdressed (See §34.43(c)(2) of Chapter 1 of Title 12 of the Code of Federal Regulations). Remind Lender B of this and inform them that this is the easiest solution. Second, the appraiser can have Lender B order (engage them in) a new appraisal assignment. Thus a new client relationship is established and the appraiser is free to complete the new appraisal which happens to be on the same property with the same borrower.

It is not necessary for the appraiser to obtain an assignment letter or permission from Lender A to re-appraise the property since the engagement to perform an appraisal from Lender B constitutes an entirely new assignment. There is no rule in USPAP or in the Oregon Administrative Rules that requires an appraiser to wait six months (or any amount of time) before re-appraising the same property.

The appraiser has three options for accepting the new assignment. The first option is to start from scratch and re-inspect the property, research current market data and issue a value opinion with a current effective date.

The second option saves time by having Lender B order a retrospective appraisal specifying the exact effective date of value which should be identical to the previous appraisal completed for Lender A. This eliminates the need to re-inspect the subject property and to perform additional market data research (since the effective date of value is the same for both appraisals).

The appraiser should exercise care to clearly identify that the (new) appraisal report contains a retrospective value and must be certain to date the new appraisal report with the current date of report. Since the time involved under this scenario is

usually considerably less than performing a whole new appraisal; many appraisers negotiate a lower fee and faster turn-around time with the new client.

The third option is to not re-inspect the subject property but research current market data and issue a value opinion with a current effective date. This requires using an extraordinary assumption that the condition of the property as of the current (effective) date of value is the same as it was when last inspected for the previous appraisal assignment. Remember to make the appropriate disclosures in the appraisal report when utilizing an extraordinary assumption.

When option two or three above is used, it is highly advisable to clearly communicate with the new client, at the time of the assignment, to ensure the option chosen will satisfy underwriters and/or any other intended users of the appraisal report.

Sometimes Lender A is unhappy about their borrower switching to Lender B and would prefer that the appraiser not facilitate the switch by performing a new appraisal for Lender B. Many appraisers make a business decision to not jeopardize their relationship with Lender A by appraising the property for Lender B without an assignment letter or permission from their first client. This is a business decision and is not directly addressed in USPAP.

It is important to remember that all appraisal assignments require a workfile compliant with the Ethics Rule-Record Keeping section in USPAP. Be sure to keep separate workfiles for each appraisal. As such, it would be necessary to either copy relevant data from the first appraisal workfile to insert in the second workfile (or simply make reference in the second workfile as to where the data relied upon for the second appraisal is located i.e. in the workfile for the first appraisal).

Some appraisers mistakenly believe that performing a second appraisal on the same property for a different client

(within a short time frame) violates the Confidentiality section of the Ethics Rule. This is not true. However, the unauthorized communication of confidential information from Lender A's appraisal to Lender B is a violation of Confidentiality. Further, the appraiser must never divulge the assignment results from Lender A's appraisal, even if they are the same as those for Lender B.

"Confidential information" is often misunderstood to mean just about anything contained in the work file or appraisal report. USPAP defines "confidential information" as *"information that is either identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or classified as confidential or private by applicable law or regulation"*.

In summary, assignment letters alone do not make it permissible for appraisers to change the name of the client in an appraisal report. To do so is a violation of USPAP. An appraiser is permitted to re-appraise the same property within any time period for a different client but a new client relationship must be established.

The appraiser has three options in performing a new assignment. Two of those options could save time and money for the new client but clear appraiser-client communication needs to occur to ensure that the client understands what they are getting.

Finally, separate complete work files must be maintained for both appraisals.

On a related note, the Appraisal Standards Board recently voted to approve two new Advisory Opinions. One relates to "Readdressing (Transferring) a Report to Another Party" and the other relates to "Appraising the Same Property for a New Client". These Advisory Opinions will be issued in the 2004 edition of USPAP and will provide more detailed advice regarding these issues than what was previously available. ■

ACLB Board member vacancy

The governor's office is currently accepting applications for a public member position to serve on the board effective immediately upon confirmation. The member in this position serves a four-year term. If you or someone you know is interested in being considered for this appointment, contact Nancy Goss-Duran, (503) 378-8471, in the office of the Governor, or go on-line at, www.governor.state.or.us/forms/Interestformdown.pdf for an application. ■



Visa

MasterCard

ACLB takes credit cards

The ACLB now accepts Visa and MasterCard credit card payments for fees. Credit card payments may be made by walk-in, phone, or mail. Credit card forms may be obtained on the ACLB Web site.

To use your credit card, provide the name of the cardholder as it appears on the credit card, the credit card number, and the expiration date. ■

Sales concessions

Many appraisers have the mistaken belief that adjustments to comparable sales for seller paid concessions are not required if such concessions are typical in a market area. Examples of seller paid concessions include (but are not limited to): buyer's loan origination fees, escrow fees, inspections fees, payment of condominium/PUD fees, refunds (or credit for) the buyers expenses, absorption of monthly payments, and the inclusion of non-realty items.

The need to make negative adjustments and the amount of the adjustments to the comparable sales for sales concessions and financial concessions are not based on how typical the concessions might be for a particular segment of the market area – sales concessions can be relatively typical in a particular segment of the market and still result in sales prices that reflect more than the market value of the real property.

Adjustments based on mechanical dollar-for-dollar deductions, that are equal to the cost of the concessions, are not necessarily appropriate. The effect of the sales concessions on sales prices can vary with the amount of the concessions and differences in various markets. The adjustments must reflect the difference between what the comparables actually sold for with the sales concessions and what they would have sold for without the concessions so that the dollar amount of the adjustments will approximate the market's reaction to the concessions.

Here is a classic example involving the analysis of a comparable sale. Assume that an appraiser, who is developing an opinion of market value, finds a comparable sale that had a typically motivated and knowledgeable seller who had listed their house in the MLS for

\$125,000. The property was exposed to the market for a reasonable period of time (typical for the market segment) and experienced no significant changes during the listing period. The property is then sold and closed for \$130,000 with the seller contributing \$5,000 towards that buyers loan fees and closing costs (sales concessions). In this example, it is reasonable to assume that the seller would have accepted a full price cash offer (or terms equivalent to cash) for \$125,000 at any point during the listing period. The fact that the seller accepted an offer of \$130,000 that required him/her to pay \$5,000 of sales concessions still results in a net sales price of \$125,000. The value of the real property is \$125,000 and the value of the sales concessions (non-realty items) is \$5,000. The sum of the two does not equal the market value of the real property. It doesn't matter whether every sale in the market area sold with similar sales concessions or not.

Perhaps a more extreme example will help to illustrate the fallacy of not making adjustments to comps for sales concessions. Modifying the above example, suppose the property is listed for \$125,000 and the seller accepts an offer for \$140,000 but they must leave a new \$15,000 boat in the garage for the buyer at the close of escrow. The market value of the real property is still \$125,000 but the value of the sales concessions (the boat) is \$15,000. The fact that the seller and buyer both agreed to these terms does not cause the market value of the real property to be \$140,000. The \$140,000 is certainly "a value" but the definition of that "value" is different from the definition of market value. This does not change if it is "typical in the market" for sellers to park a boat in the garage at close of escrow.

The above example also serves as an excellent reminder of the importance of verifying comparable sales data with a reliable source. In some cases, real estate brokers balk at disclosing the terms of sale or sales concessions. If so, there are other sources that could provide that information, such as the buyer and seller involved in the transaction. Their names can be obtained from the recorded deed.

If a comparable property sold for an amount greater than it's listing price, the appraiser must provide an explanation in the appraisal report. Assuming that the broker, seller, and/or buyer are not helpful in providing an adequate explanation, the appraiser should strongly consider excluding that comp from the analysis. If the comp must be used in the analysis, the appraiser may elect to use an extraordinary assumption stating that the difference between the list price and sale price is assumed to represent sales concessions, upgrades in the property, or whatever. Naturally, appropriate disclosures of the extraordinary assumption and resulting adjustments to the comp must be made in the appraisal report.

Keep in mind that the use of an extraordinary assumption regarding sales concessions may be a source of concern for underwriters or other intended users of an appraisal report. As a result, clear communication should occur with the client before the use of an extraordinary assumption in this situation.

The failure to properly account for sales concessions results in misleading appraisals and numerous USPAP violations in Standards 1 and 2 and possibly the Conduct Section of the Ethics Rule. ■

Request for minimum valuations

By Kirsten Jepsen, Enforcement Officer
Division of Finance and Corporate Securities

The Division of Finance and Corporate Securities (Division) licenses and regulates a majority of the mortgage bankers and brokers in Oregon. The Division and the ACLB have a working relationship to address those issues that overlap between appraisals and mortgages and to coordinate enforcement efforts where appropriate. These efforts have increased the Division's awareness of the regulations on appraisal practices and what mortgage licensees and their loan originators have done to encourage appraisers to violate those regulations. As a result, the Division has taken a more proactive stance in educating licensees and loan originators about the regulations and taking enforcement actions when the actions of loan originators or licensees cross the line.

The laws that empower the Division to act also have their limitations. There is no specific statute or administrative rule under the Oregon Mortgage Lender Law, ORS 59.840 et seq., that prohibits a licensee or loan originator from causing or attempting to cause an appraiser to violate a regulation. However, ORS 59.865(2) allows the Division to place a condition, revoke, suspend or deny a license to any applicant that has engaged in unfair or unethical practices or conduct in connection with the mortgage business. There have not been any cases that have interpreted this language in the courts, but it is the Division's position that it would be unethical or unfair of a mortgage lender to cause or attempt to cause an appraiser to do something in furtherance of a mortgage transaction that would violate the regulations on appraisal practice.

On January 1, 2002, a new law, ORS 59.971, took effect that placed prohibitions on an individual loan

originator's actions. It was the first time the Division actually had specific authority over the individual acting as a loan originator for a licensee. ORS 59.971(1) prohibits a loan originator from engaging in unfair or unethical behavior in connection with the mortgage business. The same interpretation that applies to the company with regard to influencing an appraiser also applies to the loan originator. Therefore, the Division would also consider it unethical or unfair for a loan originator to cause or attempt to cause an appraiser to do something in furtherance of a mortgage transaction that would violate the regulations on appraisal practices.

The Division has taken steps to educate licensees and loan originators about these limitations. Our agency has participated in compliance seminars that included information about this interpretation, and the Division has developed an informational letter for instances when it appears that a company needs to know of the prohibition. In addition, the Oregon Association of Mortgage Broker's Education Committee received approval to teach an Appraisals 101 course to loan originators for continuing education credit that includes information about appraisal basics and regulations on the typical standard appraisal for a residential transaction.

In addition to spreading the word about the prohibition, the Division has taken enforcement actions in this area. The most typical enforcement issue involving appraisers is a licensee or loan originator placing a minimum value or otherwise indicating that a specific value is necessary. Some examples of the things that we have told licensees and loan

originators are prohibited include indicating a minimum value that the appraiser should report, in any manner conditioning the payment of the appraisal on the reporting of a specific value or communicating in any manner that the appraisal should reflect any information that is not accurate, such as changes in the size or location of the appraised property. In addition, the Division has had cases where the proof of the activity is sufficient to charge the licensee with the violation as part of administrative action. In one case, the Division included a charge that the licensee had been pressuring appraisers to provide higher values than were warranted as part of the charges supporting the revocation of that company's license. In that case, the licensee had provided both written and verbal statements to the appraiser that the licensee really needed a higher value to make the deal work in a manner intended to cause the appraiser to increase the value of the property.

The Division looks forward to continued coordination with the ACLB to address issues affecting our licensees, loan originators and appraisers. If you have any questions or concerns about a mortgage licensee or a specific loan originator, you may contact the Division at (503) 378-4140 or by e-mail at dcbs.dfcsmail@state.or.us. ■



Recertifications of value: *potential trouble for appraisers?*

You did an appraisal five months ago for your highest volume client who calls today to request a “recertification of value”. Can you legally do it?

The answer is a definitive NO! And the answer is yes; appraisers legally do them every day. How can the answer be both no and yes?

The explanation lies in whose definition of “recertification of value” is being used. Loan officers and mortgage brokers often use this term to describe a request to provide an indication of value today in relation to a value opinion that was communicated in a prior appraisal. They typically ask for a short letter stating that the value of the subject property has not gone down, is at least the same as it was five months ago, or that values in the market area have not gone down since the effective date of the appraisal. So the answer is no; no matter what label is attached to it, such an assignment is truly an appraisal and must meet USPAP requirements! DON'T DO IT in the way it is being requested by the client!

The appraiser's definition of “recertification of value” should be the same as described in USPAP's. Advisory Opinion 3 (which was revised in 2003) states “*A Recertification of Value is performed to confirm whether or not the conditions of a prior appraisal have been met ... It does not change the effective date of the value opinion*”. In common terms, this is widely known in both the lending and appraisal communities as a “442”. It simply confirms that some condition(s) of value has been satisfied.

A good example is an appraisal of property involving proposed improvements. Say, for instance, five months ago you appraised a property consisting of a vacant site

assuming proposed improvements were 100% complete as of the valuation date. In the eyes of USPAP, a recertification of value today simply confirms that a condition to value (construction of the improvements) has been satisfied; the effective date of value does not change. The same can be said for other conditions of an appraisal such as required repairs, permit approvals, etc. So the answer is yes; a recertification of value is legal. It all depends on who's asking and what their definition of the term is.

Why can't you accommodate the client's request to write a one or two paragraph letter stating that the value of the subject property has not decreased since the original valuation date or that the value today is at least the same as it was five months ago? The reason is, any expression of value or direction of value *is an appraisal* and to write it down on paper makes it an appraisal report. As a result, these types of recertification letters violate just about every Standard Rule in Standards 1 and 2 and most likely the Record Keeping section of the Ethics Rule as well.

Some clients and appraisers may ask the two-paragraph quickie type, “when did the rules change prohibiting recertifications of value?” The answer is they have never been permitted under USPAP. The definition section of USPAP states that an “appraisal” is “the act or process of developing an opinion of value *An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion*”

Standard 1 identifies all of the steps that must be followed in

order to develop a credible opinion of value, which includes “not more than” or “not less than” a previous value opinion. Standard 2 identifies the requirements for not communicating an appraisal in a misleading manner by outlining twelve items that must be contained in every appraisal report (*see Standards Rule 2-2 (a), (b) and/or (c)*). The Record Keeping section of the Ethics Rule requires that a workfile must exist for every appraisal assignment and that it must contain documentation necessary to support an appraiser's analysis, opinions, and conclusions.

Now that we have covered what you cannot do, let's talk about what you can do, and how you can give the client an updated value with a current date and stay in compliance with USPAP. It's not as burdensome as you might think but it is a little more involved than a two paragraph letter.

Advisory Opinion 3 was revised for the 2003 USPAP and it provides advice from the Appraisal Standards Board (ASB) on the **Update of a Prior Appraisal**. It states:

Regardless of the nomenclature used, when a client seeks a more current value or analysis of a property that was the subject of a previous assignment, this is not an extension of the prior assignment that was already completed — it is simply a new assignment ... the same USPAP requirements apply when appraising or analyzing a property that was the subject of a prior assignment.

Regarding **Development Requirements**, the ASB writes:

The scope of work in the new assignment may be different from the scope of work in the prior one. Rather than duplicating steps in the appraisal process, the appraiser can elect to incorporate some of the analysis from

the previous assignment (those items that the appraiser concludes are credible and in compliance with the applicable development Standard) into the new assignment through the use of an extraordinary assumption.

Regarding **Reporting Requirements**, the ASB writes:

The new report is not required to have the same level of detail as the original report – i.e. a different report option may be used. However, the new report must contain sufficient information to be meaningful and not misleading to the intended users. There are three ways that the reporting requirements can be satisfied for these types of assignments:

1. Provide a new report that contains all the necessary information/analysis to satisfy the applicable reporting standard, *without incorporation* of the prior report by either attachment or reference.
2. Provide a new report that *incorporates by attachment* specified information/analysis from the prior report so that, in combination, the attached portions and the new information/analysis added satisfies the applicable reporting requirements.
3. Provide a new report that *incorporates by reference* specified information/analysis from the prior report so that, in combination, the referenced portions and the new information/analysis added satisfies the applicable reporting requirements. This option can only be used if the original appraiser's firm and the original intended users are involved, since the prior report was issued from that appraiser to those intended users, assuring they have access to a copy. When this incorporation by reference option is used, the following items from that prior report must be specifically identified in the new report to avoid being misleading:

- Subject property
- Client and any other intended users
- Intended use
- Appraiser(s)
- Effective date of value or assignment results
- Date of report, and
- Interests appraised

When information is being extended to the report by use of an extraordinary assumption, the requirements in USPAP for use of an extraordinary assumption must be met.

Don't forget that every appraisal report, including an Update of a Prior Appraisal, requires a certification.

Regarding **Confidentiality Requirements**, the ASB writes:

In all assignments, the appraiser must comply with *Confidentiality* section of the Ethics Rule with respect to handling of confidential information – i.e. if the prior appraisal report included any confidential information, its disclosure in a new report to a different client or intended users might violate the Ethics Rule.

Regarding **Record Keeping Requirements**, the ASB writes:

If the assignment includes use of, or reliance upon, all or part of a prior report, that report (or the portions used or relied upon) must be retained in the work file or the new assignment or its location must be properly referenced in the work file.

In summary, users of appraisal services sometimes request recertifications of value asking the appraiser to indicate something to the effect that the value of a property today has not



Thank you!

The members of the Appraiser Certification & Licensure Board and the staff thank the members of the Appraisal Review & Advisory Committee (ARAC) for volunteering their time to review appraisals submitted with complaints or audits for USPAP compliance.

If you are a licensed or certified appraiser in Oregon and not a member of ARAC, and have an interest in serving on the committee, you may contact the ACLB office, (503) 485-2555, for further information. ■

changed since the previous valuation date. Although users will often act as if this is "no big deal, these requests must be treated as new appraisal assignments and completed in compliance with USPAP. Advisory Opinion 3 of USPAP's 2003 edition offers advice on how to complete an update of a prior appraisal. Reliance on Advisory Opinion 3 from a previous edition of USPAP will not provide proper direction due to significant changes in that Advisory Opinion that became effective in 2003. The current edition of USPAP is available on-line at www.appraisalfoundation.org.

Administrator's news and notes

Forms on the Web



All license- and registration-application and renewal forms are now available on our Web site. ACLB will no longer be mailing renewal forms. If you do not have access to the Internet, call our office, (503) 485-2555, and we will mail or fax you the necessary forms.

In addition to licensing and renewal application forms, course providers may get course-provider and course-approval-application forms from our Web site, www.oregonaclb.org. Click on "Important Forms" located in the header box at the top of the home page. ■

What's the most important item to read in this newsletter? Everything! *The Oregon Appraiser* is our best opportunity to get important information into your hands. If you don't take the time to review it, you may miss important information and changes that affect you personally and professionally. Life would much less complicated if things didn't change, but we all know change is inevitable and the appraisal profession is definitely not immune! Please take a moment to bring yourself up to date by reading *The Oregon Appraiser*. A little time spent today may eliminate some grief later. Here are just a few important changes that you should be aware of:

- The new 7-hour USPAP Update course which is now part of the 28-hour continuing education requirement each time you renew your license or certificate. Although you no longer need to take the 15-hour USPAP course at least once every five years, this course can still be used for continuing education credit. However, it's very important to note that this course *will not be accepted as a substitute* for the new 7-hour USPAP Update course.
- We no longer send license renewal notifications. We still get surprised responses from people when they call wondering where their renewal is. This change was implemented two years ago in an effort to reduce expenditures. License renewal applications and credit card payment forms are available on our website at www.oregonaclb.org. Click on "Important Forms" and look in the "Renewal Process" section to find the appropriate forms.

- A significant change has occurred in the Sanctions Guidelines Grid. Any third Board action taken against an appraiser for violation(s) of USPAP or an Administrative Rule is grounds for a \$500 civil penalty per violation plus a 60-day suspension. This penalty was *formerly* assessed as a result of the fourth Board Action against an appraiser.
- The format of the Enforcement Actions has changed. This section of *The Oregon Appraiser* has historically provided the names of appraisers who have been sanctioned along with the corresponding Rule citation, number of violations, and the sanction imposed. In this issue we have included a brief summary of what occurred that constituted the violation(s). Hopefully this information will be useful to appraisers to know what to avoid.

Also please remember that Administrative Rules state that it is the



responsibility of each licensee, certificate

holder, registered appraiser assistant, or appraiser applicant to notify the Board of a change of mailing address. Change of address notification must be made in writing (letter, e-mail, or fax), within 10 business days from the change of address. These change notifications are very important and failure to make the appropriate notification may result in a civil-penalty fine. ■

Questions & answers

From the Appraisal Standards Board

This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. The ASB USPAP Q&A is issued to inform appraisers, regulators, and users of appraisal services of the ASB responses to questions raised by regulators and individuals; to illustrate the applicability of the Uniform Standards of Professional Appraisal Practice (USPAP) in specific situations; and to offer advice from the ASB for the resolution of appraisal issues and problems.

Q A client has requested that I perform a limited appraisal with the only departure being omission of the cost approach. I have determined that while the cost approach is applicable, it is not necessary to develop a credible appraisal. Although I am not reporting it, must I develop and retain a copy of the cost approach in my workfile?

A No. USPAP does not require appraisers to develop or retain a cost approach in this situation. The Record Keeping section of the ETHICS RULE states, in part:

... the content of a workfile for a Limited Appraisal need only reflect consideration of the USPAP requirements from which there have been no departure and that are required by the specific Limited Appraisal assignment.

Q Can an appraiser use is “any” type of hypothetical condition in developing an appraisal?

A No. The Comment to Standards Rule 1-2(h) states:

A hypothetical condition may be used in an assignment only if:

- use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison;
- use of the hypothetical condition results in a credible analysis; and
- the appraiser complies with the disclosure requirements set forth in USPAP for hypothetical conditions.

Q I delivered an appraisal report to my client. A week later, an entity other than one of the identified intended users contacted me and asked that I provide a “reliance letter”, enabling them to rely on the appraisal report for their investment purposes. My client says they have no problem with my doing that. Can I provide this entity with such a letter, even though I had not originally identified them as an intended user?

A No. You cannot add what is in effect a new “intended user” after the completion of an assignment, no matter what terminology you use.

USPAP defines *intended user* as:

The client and any other party as identified, by name or type, as users of the appraisal, appraisal review, or appraisal consulting report by the appraiser on the basis of communication with the client *at the time of the assignment.*

The proper way to handle this is to initiate a new assignment with this entity as the client and provide them an appraisal, being careful to develop an appropriate scope of work consistent with their own intended use. This new assignment could be based on virtually the same data and analysis, and the value conclusion might be the same. However, in the new assignment you must consider the assignment parameters most appropriate to the scope of work for that client and the assignment, which could well be different from those of your prior client. ■



Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
A Statement of Need and Fiscal Impact accompanies this form.

Appraiser Certification and Licensure Board 161
Agency and Division Administrative Rules Chapter Number

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Rules Coordinator Telephone

1860 Hawthorne Avenue NE, Suite 200, Salem, Oregon 97303
Address

October 20, 2003, 9:00 am. West Coast Bank, 2nd Floor Community Conf. Room, 301 Church Street NE, Salem OR Terry Bernhardt
Hearing Date Time Location Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request? Yes No

RULEMAKING ACTION

ADOPT:

AMEND: 161-002-0000, 161-006-0025, 161-006-0160, 161-010-0080, 161-015-0030, 161-020-0045, 161-020-0055,
161-020-0140, 161-025-0000, 161-025-0005, 161-025-0010, 161-025-0030, 161-025-0050, 161-050-0040,
161-050-0050

REPEAL:

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.
Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 183.341(4) and ORS 674.305(8) and ORS 674.310
Statutory Authority: ORS

Other Authority

ORS 674.305(8) and 674.130
Statutes Implemented: ORS

RULE SUMMARY

Proposed changes to Oregon Administrative Rules 161, Division 2 regarding definitions; Division 6 regarding adoption of 2003-2005 biennium budget, and complaints and investigations; Division 10 regarding licensure and certification requirements; Division 15 regarding submission of application; Division 20 regarding education courses and requirements; Division 25 regarding scope of practice and procedures and records retention requirements; and Division 50 regarding address changes and reciprocity.

October 20, 2003 R. A. Keith 08/15/03
Last Day for Public Comment Authorized Signer and Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday. ARC 920-1997

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing accompanies this form.

Appraiser Certification and Licensure Board

OAR Chapter 161

Agency and Division

Administrative Rules Chapter Number

In the Matter of the amendment of rules relating to definitions)	Statutory Authority,
(161-002-0000); budget (161-006-0025); complaints and investigations)	Statutes Implemented,
(161-006-0160); submission of application (161-015-0030); criteria)	Statement of Need,
for approval of a course as qualifying education (161-020-0045);)	Principal Document Relied Upon,
criteria for approval of a course as continuing education (161-020-0055);)	Statement of Fiscal Impact
distance education courses, correspondence courses and video remote)	
TV educational offerings (161-020-0140); scope of practice for State)	
Certified General Appraiser (161-025-0000); scope of practice for)	
State Certified Residential Appraiser (161-025-0005); scope of practice)	
for State Licensed Appraiser (161-025-0010); scope of practice for)	
Appraiser Assistant (161-025-0030); records and appraisal report)	
retention requirements (161-025-0050); address change (161-050-0040);)	
reciprocity (161-050-0050); and appraiser assistant registration)	
requirements (161-010-0080))	

Statutory Authority: ORS 674.305(8), ORS 674.310 and ORS 183.341(4)

Other Authority: Attorney General’s Uniform and Model Rules of Procedure

Statutes Implemented: ORS 674

Need for the Rule(s): ORS 674.305(8) authorizes the Board to adopt rules necessary for the administration of ORS Chapter 674. ORS 674.310(1) requires the Board to do all things necessary and convenient to carry into effect the provisions of Chapter 674, Oregon Revised Statutes and of the Federal Financial Institutions Reform, Recovery and Enforcement Act (FFIRREA) of 1989.

Documents Relied Upon: Chapters 674 and 183, Oregon Revised Statutes; the Federal Financial Institutions Reform, Recovery and Enforcement Act (FFIRREA) of 1989 and Guidelines thereto published by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Fiscal and/or Economic Impact: None

Administrative Rule Advisory Committee consulted?: No.

Dated this 15th day of August, 2003.

Appraiser Certification and Licensure Board

R. A. Keith
R. A. (Bob) Keith, Administrator

New USPAP continuing education requirements



Visit our Web site!

The Appraiser Certification and Licensure Board Web site contains valuable information concerning real estate appraiser licensing:

- fees for services
- a search engine for a listing of approved education courses
- a search engine for a listing of Oregon appraisers
- link to The Appraisal Foundation
- links to other state appraiser boards
- appraiser application and renewal forms
- a list of ACLB members and staff
- a list of states with Oregon reciprocity, along with e-mail and Web addresses
- Q & A's on USPAP by the ASB
- newsletters from the ACLB and other state boards

Our Web site address:
www.oregonaclb.org. ■

Did you miss the article in the last newsletter regarding changes in USPAP education requirements? The Appraisal Foundation's 7-hour National USPAP Update Course, or its equivalent, is now required as part of your 28-hour continuing education requirement each time you renew your license. For the remainder of this article both the 7-hour National USPAP Update Course and its equivalent will be referred to as "Update Course."

If your license expires between now and December 31, 2004, you must submit an Update Course completion certificate with your renewal application.

If your license required renewal between January 1, 2003 and May 31, 2003 and you did not take Update Course beforehand you must complete the course prior to the December 31, 2004 deadline - even though you will not actually need to submit the course completion certificate until your next renewal in your birth month of 2005. From that point forward you will need to submit an Update Course completion certificate with each license renewal.

If your license renewed between January 1, 2003 and May 31, 2003 you were not required to complete the 7-hour National USPAP Update Course prior to that renewal. However, you are required to complete this course before December 31, 2004 even though you will not renew your license again until sometime in 2005. From that point forward you will need to submit an Update Course completion certificate with each license renewal.

For example, assume you renewed your license in April 2003 without first completing the Update Course, your next renewal is due at the end of April, 2005. Now suppose you wait until January to take the Update Course for the first time. While you

would have completed the course three months before you need it for your next renewal, it would be one month after the December 31, 2004 deadline.

What does that mean in layman's terms? You'll won't be in compliance with your education requirements, which means, you are subject to disciplinary action that includes a civil penalty. We don't want you to learn of this oversight and its consequences after the fact when it's too late to take corrective measures to avoid disciplinary action by the Board.

If your license required renewal between January 1, 2003 and May 31, 2003 and you took the Update Course and submitted the completion certificate with your renewal, then you must submit an Update Course completion certificate with every license renewal from this point forward.

If you are a new licensee and have not yet held your license for a full two-year license cycle, the same rules and deadlines apply.

You are welcome to take the **15-hour National USPAP Course**, or its equivalent, as part of your 28-hour continuing education requirement, but this course **cannot be used as a substitute for the 7-hour National USPAP Update Course**.

Remember that you are ultimately responsible to know and understand all of the rules that pertain to your license (e.g. continuing education and renewal requirements). If you have questions please call the Board office at 503-485-2555. Relying on others to provide accurate information could be costly! If you are also licensed in another state keep in mind that requirements in that state could be different than in Oregon. You should contact officials in that state to ensure compliance with their requirements. ■

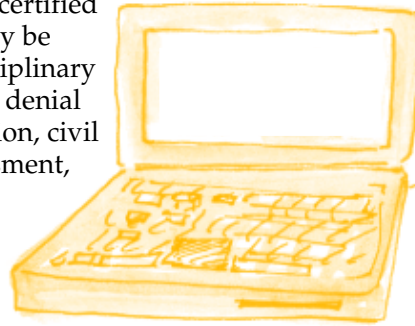
It's your responsibility to understand and comply with rules and statutes

The ACLB recently revised all applications to include the appraiser's acknowledgement and agreement to comply with Oregon Revised Statutes (ORS) Chapter 674, and Oregon Administrative Rules (OAR) Chapter 161.

Whether you are an appraiser assistant or a licensed-certified appraiser, you are required to comply with ACLB statutes (laws) and rules. In order to comply with these statutes and rules you must read them. The Board revises its administrative rules periodically, so if you haven't read them recently, please do so. Statutes and rules can

be found on our website at www.oregonaclb.org. Click on "Rules and Statutes".

Applicants, appraiser assistants, and licensed/certified appraisers may be subject to disciplinary action such as denial of an application, civil penalty assessment, suspension or revocation of their license for failure to comply with statutes and administrative rules. So, take a few moments



to read and understand them and, if you have questions, please call the Board office.

To receive copies of future notices regarding administrative rule hearings and proposed rule changes, submit a written request with your name, address, and phone number to: Jan Cannon, Appraiser Certification and Licensure Board, 1860 Hawthorne Ave NE, Suite 200, Salem, Oregon 97303. ■

Administrator's Report Continued

One of the Board's biggest concerns is our registered appraiser assistant program and the lack of adequate direct supervision by supervisory appraisers. We have increased the frequency of auditing appraiser assistant's work experience as a part of the application process and have been surprised by the percentage of appraisal work that is not USPAP compliant. We have heard troubling reports from a number of sources that:

- new appraiser assistants are starting out performing entire appraisals and writing appraisal reports without much (if any) training or supervision;
- appraiser assistants are inspecting subject properties and comparable sales alone and the supervisory appraiser is failing to disclose his/her lack of inspection(s);

- supervisors are telling their appraiser assistants to represent themselves as appraisers to the property owners, and;
- supervisors are "teaching" their assistants how to avoid reporting negative attributes of a property to avoid "killing the deal".

All of these practices are problematic and represent serious violations of USPAP and administrative rules. In addition, these deficiencies result in delays for appraiser assistants becoming licensed, or the Board's refusal to issue them a license because their work experience is not USPAP compliant.

The Board is in the process of changing its administrative rules to improve the appraiser assistant/supervisory appraiser program. In addition, the Board is considering

other rule changes relating to complaints and investigations, licensure and certification requirements, application and examination process, education courses and requirements (including distance education), scope of practice and procedures, records retention requirements, address change requirements and reciprocity. The Board will hold a public hearing on all of these proposed rule changes during its October 20, 2003 meeting. To view the proposed rule changes go to our web site at www.oregonaclb.org and click on "Updates to OAR Chapter 161."

If you have questions or concerns please contact me, 503-485-2555 or send e-mail to me at, bob@oregonaclb.org. ■

Enforcement actions — July 1, 2002 – July 31, 2003



Notice: *The Board recently changed the administrative rule (OAR 161-006-0175) regarding ascending severity of sanctions for appraisers with multiple disciplinary actions. Effective May 1, 2003, any appraiser who has a third Board Action for violation of USPAP or Administrative Rule(s) is subject to a \$500 civil-penalty fine, per violation, and a 60-day suspension. This was previously the sanction for a fourth Board Action. Any appraiser who has fourth Board Action for violation of USPAP or Administrative Rule(s) is subject to a \$500 civil-penalty fine, per violation, and revocation of their license. This was previously the sanction for a fifth Board Action.*

Revocation

Segur, Harvey J. – C000491. Stipulated Final Order entered November 11, 2002. Revocation. The Board agreed to waive proposed civil penalty of \$43,000 for 86 violations of OAR 161-025-0060 (USPAP) conditioned upon Segur's compliance with the stipulated agreement which required that he not reapply for licensure, certification or registration with the Board and that he would not conduct or offer to conduct real estate appraisal activity in the State of Oregon. Violation of order to result in assessment of maximum penalty as well as any other sanction provided by law.

Tolles, Terrance N. – L001149. Stipulated Final Order entered June 25, 2003. Revocation. Material misrepresentation and participation in "flipping"/ mortgage fraud on no less than three occasions related to reports issued in 2002. The Board alleged and Tolles agreed that Tolles knowingly falsified market values by deliberately utilizing sales that were not comparable to subject properties in order to inflate property values and knowingly failed to verify and accurately report property ownership. Violation of order to result in re-opening of all cases covered under the stipulated agreement and seek

maximum civil penalty upon verification of specific USPAP violations as well as pursuing disciplinary action for failure to comply with a Final Order of the Board.

Revocation and Renewal Denial

Dawell, Charles C. "Bud" – C000242. Final Order entered March 21, 2003. Revocation, denial of certificate renewal, \$500 civil penalty, plus the assessment of a \$1,500 civil penalty that had been suspended in a previous Consent Order. The Final Order entered March 21, 2003 has been appealed. Dawell failed to comply with a Final Order of the Board (the previous Consent Order) which required that he: 1) successfully complete a report writing course within six months of the date the Consent Order was signed and 2) not have a legitimate complaint filed against him within one year of the date of the Consent Order. Dawell failed to complete the required course within the specified time frame, had another legitimate complaint filed within one year of stipulated agreement, and his behavior in matters related to the complaint repeatedly demonstrated negligence or incompetence.

Mitchell, Sykes – L000342. Final Order entered July 28, 2003. Revocation. Renewal of license denied, and \$500 civil penalty. Failure to comply with a Final Order of the Board which required certain education courses to be completed within one year of the date Mitchell signed the order. The Board found that failure to comply with the Consent Order constitutes incompetent and untrustworthy conduct.

Surrender in Lieu of Disciplinary Action

Howell, D. D. "Doc" – L000308. Stipulated Final Order entered May 5, 2003, assessing a \$2,250 civil penalty for violations of OAR 161-025-0060 (USPAP-2002 Edition). Howell admitted to violations and agreed to permanent surrender of his license. The Board agreed

to stay the \$2,250 civil penalty conditioned upon permanent license surrender and that Howell agree to never reapply for an appraiser license in Oregon.

USPAP violations: Ethics Rule – Conduct – falsely certified he had no significant professional assistance; Ethics Rule – Record Keeping – failed to keep true copy of appraisal report, no support of land value, RCN, depreciation, or large adjustments for age/condition adjustments; Standards Rule 1-1(a) – inappropriate appraisal methodology – depreciation reported as \$7,769 per year of effective age in the cost approach and \$1,500 per year of effective age in the sales approach; Standards Rule 1-2(b) – failed to identify the intended use of the appraisal, Standards Rule 1-4(b)(i)(ii)(iii) – failed to value site by appropriate method, failed to analyze comparable cost and depreciation data; Standards Rule 1-5(a) and (c) – failed to analyze current listing of subject and failed to properly reconcile indicated (adjusted) value of comparable sales; Standards Rule 2-1(a) – issued a misleading appraisal report; Standards Rule 2-2(b)(ii)(vii)(ix) – failed to state intended use, failed to summarize the extent of appraisal assistance, and failed to summarize appraisal procedures followed and the reasoning that supports the analysis, opinions, and conclusions e.g. land value, RCN, depreciation, and adjustments for age/condition; Standards Rule 2-3 – failed to identify in the certification the name of the person providing significant appraisal assistance.

Violations of OAR 161-025-0060 (USPAP) and/or OAR 161-025-0010 (Scope of Practice)

Suspensions

Mercado, Neville C. – C000362. Stipulated Final Order entered September 20, 2002, assessing a \$2,500 civil penalty for violations of OAR 161-025-0060 (USPAP-2000 Edition), and assessing a \$500 civil penalty and

a 90-day suspension for failure to comply with a Final Order of the Board. Failure to comply with the conditions of the previous stipulated agreement also resulted in the Board withdrawing its pending waiver of the remaining civil penalty of \$2,050 related to two other cases. Final Order of the Board required certain education be completed within six months of the date the previous stipulation was signed. Mercado admitted to violations and agreed to pay \$3,050 in civil penalties, to participate in a real estate appraisal activity audit program, and to suspend his supervision of appraiser assistants for one year. The Board agreed to waive 90-day suspension and \$2,000 of civil penalty if all conditions of stipulation are met by September 20, 2003.

USPAP violations: Ethics Rule-Conduct Section-use of comparable sales 20+ miles away in a market not directly competing with the subject property, failure to acknowledge closer sales, and failure to explain why closer sales were not considered and/or utilized; Standards Rule 1-1(b)-errors of omission/commission regarding comp selection; Standards Rule 1-4(a)-failure to analyze available comparable sales data; Standards Rule 2-1(a) – preparation and issuance of misleading report.

Woodburn, Peter T. – L000387. Stipulated Final Order entered July 14, 2003, suspending Woodburn’s license for 90 days, requiring 30 hours of additional education, and assessing a \$3,500 civil penalty for violations of OAR 674.150 and OAR 161-025-0050 (failure to produce records) and OAR 161-025-0060 (USPAP-2001 Edition). Woodburn admitted to violations and agreed to a 30-day suspension of his license commencing September 1, 2003, payment of a \$2,500 civil penalty no later than September 15, 2003, and successful completion of an Applied Residential Case Study course no later than January 15, 2004. The Board agreed to stay imposition of the suspension and to waive the remaining \$1,000 civil penalty if Woodburn meets all conditions of stipulated agreement.

USPAP violations: Ethics Rule-Record Keeping Section-failure to produce records; Standard Rule 1-1(a) inconsistent and misleading analysis related to depreciation-Cost Approach indicated \$4,000/yr whereas Sales analysis indicated only \$2,000/yr; Standards Rule 1-1(b)-substantial errors of omission that significantly affected the appraisal-Comp No. 1 had second lot, Comp No. 2 had an in-ground pool and Comp No. 4 was an adult foster care with functional issues; Standards Rule 1-1(c)-carelessness and negligence: stated lot sizes, GLA and number of fireplaces for Comp Nos. 1 & 3; Standards Rule 1-2(b)-failure to identify intended use; Standards Rule 1-4(a)-failure to analyze available comparable sale data; Standards Rule 2-1(a)-misleading report: omitted comparable sales in closer proximity, incorrectly stated that Comp Nos. 2, 3, and 4 were .25 miles, 2 miles and 2 miles away respectively when they were actually 6 miles, 4.5 miles and 2.8 miles away, Standard Rule 2-2-failure to state reporting option; Standards Rule 2-2(b)(ii)-failure to state intended use; and Standard Rule 2-2(b)(ix)-failure to summarize reasoning to support analysis, opinions and conclusions related to comp selection.

Civil Penalties and/or Required Education

Gilbert, Dan T. – L001068. Stipulated Final Order entered March 19, 2003, assessing a \$1,750 civil penalty for violations of OAR 161-025-0060 (USPAP-2002 Edition (2 reports)). Gilbert agreed to pay \$700 and attend a National USPAP Course. The Board agreed to waive the remaining civil penalty of \$1,050 upon receipt of Gilbert’s \$700 payment and verification of successful completion of the agreed upon education course no later than September 15, 2003. Gilbert issued the original appraisal report then, four months later, issued a two sentence letter stating “After researching recent sales data and reviewing the appraisal I completed on June 21, 2002, it is my opinion that the subject property is worth at least \$650,000 as October 21, 2002. This opinion is made

based on the assumption that no significant changes have been made to the subject property.”

USPAP violations in the original assignment: Ethics Rule-Record Keeping – no support for land value; Standards Rule 1-1(a) – inappropriate appraisal methodology – depreciation reported as \$6,970 per year of effective age in the cost approach and \$500 per year of effective age in the sales approach.

USPAP violations in the subsequent assignment: Ethics Rule-Record Keeping – failed to retain all data, information, and documentation necessary to support the opinions and conclusions and to show compliance with this rule and all other applicable standards; Standards Rule 2-1(b)-report failed to contain sufficient information to enable the intended users of the appraisal to understand the report properly; Standards Rule 2-2-failed to state prominently which appraisal reporting option was utilized; Standards Rule 2-2(b) (ii), (iii), (iv), (v), (vi), (vii), (ix), (x), (xi), and (xii); Standards Rule 2-3-failed to include a certification.

MacDowell, Patrick M. – L001043. Stipulated Final Order entered March 3, 2003, assessing a \$1,250 civil penalty for violations of OAR 161-025-0060 (USPAP-1998 Edition). MacDowell admitted to violations and agreed to pay \$500. Board agreed to waive remaining civil penalty of \$750.

USPAP violations: Ethics Rule – Record Keeping Section- MacDowell stated in the appraisal report that site, view, and design adjustments were estimated from local residential paired land and improved sales data, the extraction method, and from on site-inspection. Neither the appraisal report nor the workfile contained paired sales data or market extractions; Standards Rule 1-1(a) – inappropriate appraisal methodology – depreciation reported as \$3,300 per year of effective age in the cost approach and \$1,000 per year of effective age in the sales approach; Standards Rule 1-3(a)-failure to consider factors such as the non-conforming nature of the property and mini-

Enforcement actions Continued

mum lot size requirements; Standards Rule 2-1(a)-preparation and issuance of misleading report – made contradictory statements in the appraisal report regarding departure, use of the income approach, inspections of the subject and comps, and the reporting option utilized; Standards Rule 2-1(b) – failure to report sufficient information regarding off-site improvements and access to subject property via a one mile (+/-) long gravel driveway that was not part of the subject property; Standards Rule 2-2(b)(viii)-failure to summarize information considered and reasoning to support the land value which was 54% of total property value; Standards Rule 2-2(b)(ix)-failure to summarize reasoning in support highest and best use conclusions.

May, Rick V. – C000586. Stipulated Final Order entered February 27, 2003, assessing a \$1,250 civil penalty for violations of OAR 161-025-0060 (USPAP-1998 Edition). May admitted to violations and agreed to pay \$500. Board agreed to waive remaining civil penalty of \$750.

USPAP violations: Ethics Rule – Record Keeping Section- May stated in the appraisal report that site, view, and design adjustments were estimated from local residential paired land and improved sales data, the extraction method, and from on-site inspection. Neither the appraisal report nor the workfile contained paired sales data or market extractions; Standards Rule 1-1(a) – inappropriate appraisal methodology – depreciation reported as \$3,300 per year of effective age in the cost approach and \$1,000 per year of effective age in the sales approach; Standards Rule 1-3(a)-failure to consider factors such as the non-conforming nature of the property and minimum lot size requirements; Standards Rule 2-1(a)-preparation and issuance of misleading report – made contradictory statements in the appraisal report regarding departure, use of the income approach,

inspections of the subject and comps, and the reporting option utilized; Standards Rule 2-1(b) – failure to report sufficient information regarding off-site improvements and access to subject property via a one mile (+/-) long gravel driveway that was not part of the subject property; Standards Rule 2-2(b)(viii)-failure to summarize information considered and reasoning to support the land value which was 54% of total property value; Standards Rule 2-2(b)(ix)-failure to summarize reasoning in support highest and best use conclusions.

Goschie, Andrea L. fka Deglow, Andrea L. – L000172. Stipulated Final Order entered August 21, 2002, assessing a \$3,000 civil penalty for violations of OAR 161-025-0060 (USPAP-2000 Edition). Goschie admitted to violations and agreed to pay \$1,750 and attend an Applied Residential Case Study course. The Board waived \$1,250 of civil penalty upon receipt of \$1,750 payment and verification of Goschie's successful completion of agreed upon course.

USPAP violations: Ethics Rule-Conduct Section – failure to inspect exterior of comparable sales as indicated in certification and misrepresented source for basis of RCN; Ethics Rule-Record Keeping Section – no documentation to support land value, no written summary of testimony with corresponding signed and dated certification; Standards Rule 1-2(a) – failure to identify other intended users i.e. other party to lawsuit, court, etc.; Standards Rule 1-2(b) – failure to correctly identify intended use; Standards Rule 1-4(a) – no analysis of comparable sales, no reasoning to support use of sale 7 miles away, no reasoning to support negative adjustment on a comparable whose site was less than half the size of the subject; Standards Rule 1-4(b)(i) – failure to value site by appropriate method; Standards Rule 1-4(b)(ii) – incorrectly stated RCN

based on source relied upon; Standards Rule 1-5(a) – failure to analyze current listing; Standards Rule 2-2(b) – failure to include sufficient information; Standards Rule 2-2(b)(i) – failure to state the identity of intended users; Standards Rule 2-2(b)(ii) – failure to accurately state the intended use of the report; Standards Rules 2-2(b)(ix) – failure to summarize reasoning to support land size adjustments, land value for the subject, why the square footage of a low cost garage conversion was added to the GLA of Comparable No. 3.

Ferris, Kelly L. – L000254. Stipulated Final Order entered November 21, 2002, assessing a \$1,500 civil penalty for violations of OAR 161-025-0060 (USPAP-2001 Edition). Ferris admitted to violations and agreed to pay \$600 and attend an Applied Residential Case Study course. The Board waived \$900 of civil penalty upon receipt of \$600 payment and verification of Ferris' successful completion of agreed upon course.

USPAP violations: Ethics Rule-Record Keeping Section – no support for lot size adjustment to Comp No. 1, no support for statement that comparable sales have floor plan designs similar to the subject, no description of subject's barn/shop; no evidence to support that comparable sales were in similar condition to subject; Standards Rule 1-1(c) – failure to avoid a series of errors which affected the credibility of the results of the appraisal; Standards Rule 1-2(e)(i)(a) – failure to identify physical and legal characteristics relevant to intended use: remodeling, permits, description of outbuildings, functional obsolescence (ceiling, metal flat roof, floor plan); Standards Rule 1-2(g) – failure to identify extraordinary assumptions with regard to whether the remodel was in compliance with building codes; Standards Rule 1-5(b) – no analysis of previous sale of the subject 9 months prior for \$175K in relationship to value opinion

which was \$30K higher which equates to a 23%/yr. appreciation given the fact that the report states that values are stable and there were no adjustments for time; Standards Rule 2-1(c) – carelessness/negligence that affected the creditability of the results of the appraisal; Standards Rule 2-2(b)(iii) – failure to summarize sufficient information regarding physical and legal aspects of subject property; Standards Rule 2-2(b)(ix) – no reasoning to support outbuilding and lot size adjustments; Standards Rule 2-2(b)(x) – no reasoning to support highest and best use as stated in report; Standards Rule 2-2(b)(xi) - failure to identify and explain permitted departures.

Kraft, Michele L. – L001093. Stipulated Final Order entered November 21, 2002, assessing a \$2,000 civil penalty for violations of OAR 161-025-0060 (USPAP-2001 Edition) and OAR 161-025-0010(1)(c) (scope of practice). Kraft admitted to violations and agreed to pay \$750 and attend 15-hour USPAP course. The Board waived \$1,250 of civil penalty upon receipt of \$750 payment and verification of Kraft's successful completion of agreed upon course.

USPAP violations: Ethics Rule – Conduct Section – misrepresented method of calculating land value and misrepresented location and neighborhood characteristics. Kraft identified neighborhood as suburban with small acreage parcels and 94% SFR use. The neighborhood boundaries reported contained nearly 300 square miles which consists of predominately larger acreage farm and forest parcels; Ethics Rule – Record Keeping Section – workfile did not contain data to support statements made in the report regarding: calculation of land value by extraction, zoning, tax deferral, soil/crop suitability and highest and best use. Workfile contained printouts dated after date of complaint; and Competency Rule-not competent to appraise SFR's on 100 acre agricultural zoned property with a transaction value in excess of \$250,000.

Bull, Paul R. – C000279. Stipulated Final Order entered November 26, 2002, assessing a \$1,500 civil penalty for violations of OAR 161-025-0060 (USPAP-2001 Edition) and failure to produce records which is grounds for discipline as provided in ORS 674.140(6). Bull admitted to violations and agreed to pay \$900. Board agreed to waive remaining penalty of \$600 upon receipt of Bull's \$900 payment.

USPAP violations: Ethics Rule – Record Keeping Section – failure to produce and no documentation to support land value; Standards Rule 1-1(b)-failure to value bonus room as finished GLA; Standards Rule 1-4(b)(i)-failure to value site by appropriate method; and Standards Rule 2-1(b)-failure to include sufficient information regarding bonus room.

Wilson, John H. – CR00009. Stipulated Final Order entered March 17, 2003, assessing a \$1,500 civil penalty for violations of OAR 161-025-0060 (USPAP-2001 Edition). Wilson admitted to violations and agreed to pay a \$600 civil penalty and attend an Applied Residential Case Study course. The Board agreed to waive the remaining civil penalty of \$900 upon receipt of \$600 payment and verification of Wilson's successful completion of the agreed upon course.

USPAP violations: Ethics Rule-Conduct Section – Inflated Cost Approach and inconsistent treatment of basement; Ethics Rule-Record Keeping Section- no documentation to support the land value and the RCN in the Cost Approach, no signed certification; Standards Rule 1-1(a) - inappropriate appraisal methodology – depreciation reported as \$3,450 per year of effective age in the cost approach and \$500 per year of effective age in the sales approach. Wilson counted the basement RCN twice in the cost approach. Depreciated value per square foot of basement area in the cost approach was 6.2 times higher than contributory value (adjustment amount) in the sales comparison adjustment grid; Standards Rules 1-1(b) counted basement

RCN twice in Cost Approach; Standards Rule 1-4(b)(ii)-failure to analyze comparable cost data. Wilson reported the house RCN to be \$60/sf and the garage RCN to be \$30/sf. His reported source for RCN (Marshal & Swift) actually indicates RCN for the house of \$52.37/sf and \$18.00/sf for the garage; Rule 2-1(a) – misleading report; Standards Rule 2-2(b) (iii) failure to summarize sufficient information to identify relevant characteristics of the subject (basement / quality of construction); and Standard Rule 2-2(b) (ix) – failure to summarize procedures followed and reasoning that supports value conclusion.

Freitag, Garry M. – L001066. Stipulated Final Order entered February 28, 2003 assessing a \$1,500 civil penalty for violations of OAR 161-025-0060 (USPAP-2001 Edition). Freitag admitted to violations and agreed to pay a civil penalty of \$600 and attend a 15-hour National USPAP Course. The Board agreed to waive the remaining penalty of \$900 upon receipt of \$600 payment *and* verification of Freitag's successful completion of the agreed upon course no later than September 1, 2003.

USPAP violations: Standards Rule 1-2(e)(i)-failure to identify physical characteristics of the property that were relevant to the purpose and intend use of the report (subject is an earth-sheltered house); Standards Rule 1-3(a)-failure to identify and analyze the effect of existing land use regulations (report gives two different zoning classifications); Standard Rule 1-4(a)- inappropriate use of three waterfront comparables for a non-waterfront subject; Standards Rule 1-5-failure to analyze prior sale; Standards Rule 2-1(a)-misleading report-described subject as "ranch design", no rooms below grade" and "overall . . .very typical for immediate area." The subject is an earth-sheltered house; Standard Rule 2-2(b) (iii)-failure to summarize information sufficient to identify relevant physical characteristics; and Standards Rule 2-2(b) (ix)-failure to summarize reasoning to support highest and best use.

The danger of *ex parte* communications

Ex parte communications, which include instances of individual appraisers contacting members of the ACLB to get information about a pending or denied application; to discuss a pending complaint, supervisory audit or disciplinary action; or to attempt to influence a board decision, are improper and may be detrimental to the individual appraiser.

Ex parte communications are any oral or written communications received by ACLB members or the presiding officer, whether a hearing officer or an administrative law judge, when all parties are not present.

Such communications could cause a board member who may have voted in the individual appraiser's favor to abstain from voting on the application or disciplinary action in question when it comes before the ACLB.

Please address questions regarding applications, audits, and disciplinary matters to the ACLB staff. The staff will provide information and advice on procedures. ■

Fedosky, Whitney A. – L000876. Stipulated Final Order entered November 25, 2002, assessing a \$2,500 civil penalty for violations of OAR 161-025-0060 (USPAP-2000 Edition). Fedosky admitted to violations and agreed to pay the \$2,500 civil penalty.

USPAP violations: Ethics Rule-Records Keeping Section-no documentation to support land value, GRM, location adjustment; no signed certification; Standard Rule 1-1(c)-incorrect statements regarding property location outside flood plain, GRM used was outside the range of GRM's indicated by the comps, erroneously reported that the Court House was on the subject's street when it's actually in another city, described subject as "older home" when it is actually a 4 year old 4-plex; Standards Rule 1-4(b)(i)-failure to value the site by appropriate method; Standards Rule 1-5(c)-failure to reconcile the applicability/suitability of approaches used; and Standards Rule 2-2(b)(ix)-failure to summarize reasoning to support analysis, opinions and conclusions regarding: 1) inclusion of Grants Pass and Roseburg in the subject's market area (subject located in Glendale); 2) lack of functional obsolescence due to subject's atypical characteristics; 3) land value; 4) location adjustment; and 5) improvement living area adjustment.

Eames, Barry R. – L000110. Stipulated Final Order entered March 20, 2003, assessing a \$3,000 civil penalty for violations of OAR 161-025-0060 (USPAP-2002 Edition). Eames admitted to violations and agreed to pay a \$1,500 civil penalty and successfully complete an Applied Residential Case Study course. The Board agreed to waive the remaining penalty of \$1,500 upon receipt of \$600 payment *and* verification of Eames' successful completion of the agreed upon course no later than September 15, 2003.

USPAP violations: Ethics Rule-Record Keeping Section-no signed certification, no documentation to support statement in the 2055 form that "research revealed a total of 12 sales and 5 listings"; Stan-

dards Rule 1-1(b)-contributory value of attic living area omitted from first version of appraisal and 2.01 acres omitted from the subject site size; Standards Rule 1-3(a)-zoning incorrectly reported as FF when it was actually RR-2 and could be partitioned into additional parcels; Standards Rule 1-5(c)-failure to reconcile quantity and quality of data in Sales Approach-Comp 3 clearly reflected highest degree of similarity to subject and lowest indication of value; however most weight given to Comps 1 and 2 which had much lower degree of similarity and indicate the highest value; Standards Rule 2-1(b) insufficient information; Standards Rule 2-2(b)(x)- failure to summarize reasoning to support highest and best use; and Standards Rule 2-2(b)(xi)-failure to state and explain permitted departures (subject was a limited appraisal).

Rhoten, Ross M. – L000764. Stipulated Final Order entered May 15, 2003, assessing a \$1,500 civil penalty for violations of OAR 161-025-0060 (USPAP-2001 Edition). Rhoten admitted to violations and agreed to pay \$750. The Board agreed to waive the remaining civil penalty of \$750 upon receipt of his \$750 payment.

USPAP violations: Ethics Rule-Record Keeping Section-no documentation to support land value; Standard Rule 1-1(b)-omission of functional obsolescence due to lack of covered auto storage; Standards Rule 1-5(c)-no reconciliation in Sales Approach; Standard Rule 2-2(b)(ix)-failure to summarize information considered and reasoning to support conclusions.

Swift, David B. – L001111. Stipulated Final Order entered July 23, 2003, assessing a \$1,500 civil penalty for violations of OAR 161-025-0060 (USPAP-2002 Edition-2 reports). Swift admitted to violations and agreed to pay a \$600 civil penalty and successfully complete a 30-hour Applied Residential Case Study course. The Board agreed to waive the remaining penalty of \$900 upon receipt of \$600

payment and verification of Swift's successful completion of the agreed upon course no later than January 28, 2004.

USPAP violations: Ethics Rule-Record Keeping Section-no support for land value; Standards Rule 1-1(a)-inappropriate appraisal methodology-depreciation per year of effective age was significantly higher in the cost approach than in the sales approach and utilized the same dollar adjustment per acre for land size differences of two comps which had 1 and 20 acres; Standards Rule 1-1(c) – for one comp: failure to adjust for location difference, inaccurately reported the percentage of finished basement and type of finish and failed to analyze the sales price which was \$4,500 higher than the listing price; Standards Rule 1-2(e)(i) – failure to identify physical characteristics relevant to assignment i.e. quality of

construction; Standards Rule 1-3(a) – unsupported effective age for the subject property; Standards Rule 1-4(a) – failure to value the site by appropriate method or technique; Standards Rule 1-4(b)(iii) – failure to analyze comparable data to estimate depreciation; Standards Rule 1-5(c) – failure to reconcile adjusted sales price in sales approach ; Standards Rule 2-2(b)(iii) – failure to summarize information sufficient to identify the physical characteristics of the subject – updating that would support a 10-year effective age; and Standard Rule 2-2(b)(ix)-failure to summarize reasoning to support: the depreciation variance between the cost and sales approaches; the lack of location adjustment for Comp No. 2; lack of adjustment comp sale price above listing price; and failure to support reasoning for the reconciliation within the sales approach. ■

The importance of records production

Cyndie Standley-Compliance Coordinator

Board staff often request appraisal records in the course of investigating inquiries and complaints filed with the Board, conducting audits, and processing new applications.

Many of you who are licensed with the Board know that submitting your appraisal reports and workfiles in a timely manner is crucial and can be costly if you don't. This article is really for those of you who haven't heard from us, but may at some time in the future.

In 1998, the Board sought a way to ensure equitable treatment of all cases brought before the Board. As a result, the Board created our Sanction Guidelines Grid which was incorporated into our administrative rules. As you can see when reviewing the Grid, the Board takes a very dim view of a person's failure to provide documents that will assist the Board and staff in bringing cases to a close:

Applicable Reference	1st Board action	2nd Board action	3rd Board action
ORS 674.140 (6)	\$500 civil penalty per violation plus 90 day suspension	\$500 civil penalty per violation plus 150 day suspension	\$500 civil per penalty per violation plus revocation

So, if you should ever receive a notice from our office regarding a complaint or an audit, please take the time to read the letter completely and pay close attention to any designated time frames. It will save you a lot of grief in the long run. ■

Criminal background checks

The ACLB conducts criminal background checks of all applicants for new and renewal appraiser licenses and certificates and of appraiser assistants.

Applications require that applicants disclose all convictions of misdemeanors and felonies. Applicants not reporting all convictions of misdemeanors and felonies face a delayed application process and possible disciplinary action or denied application. ■

USPAP

on line



The 2003 Uniform Standards of Professional Appraisal Practice can now be viewed on The Appraisal Foundation's Web site under the ASB heading. There is a link to the table of contents on the Appraiser Certification and Licensure Boards' Web page, www.oregonaclb.org ■

Change of address?

Don't forget that all appraisers, appraiser assistants, and applicants are required to notify the ACLB in writing of changes of address within 10 days of the change. You may send postal mail, faxes, or e-mail to:

Appraiser Certification and Licensure Board
1860 Hawthorne Ave. NE, Ste. 200
Salem, Oregon 97303
Phone: (503) 485-2555
Fax: (503) 485-2559
E-mail: jan@oregonaclb.org

This newsletter is published by the Oregon Appraiser Certification and Licensure Board for professionals licensed by the ACLB.

440-3221 (8/03)

Appraiser reciprocal agreements

Listed below are states with which the ACLB has reciprocity for real estate appraiser licensing and certification. You may contact the ACLB or any listed state for information and an application packet for reciprocal licensing or certification.

State	Phone	E-mail
Alabama	(334) 242-8747	N/A
Arizona	(602) 542-1539	Logan_Edward@pop.state.az.us
Arkansas	(501) 296-1843	ALCB@mail.state.ar.us
California	(916) 263-0880	tmajewski@orea.ca.gov
Idaho	(208) 334-3233	drandall@ibol.state.id.us
Illinois	(217) 785-9634	mbrown@bre.state.il.us
Kentucky	(606) 246-2011	Sam.Blackburn@mail.state.ky.us
Louisiana	(504) 925-4783	N/A
Maine	(207) 624-8520	Kimberly.j.baker-stetson@state.me.us
Massachusetts	(617) 727-3055	N/A
Missouri	(573) 751-0038	rfitzwar@mail.state.mo.us
Montana	(406) 444-3561	losandro@state.mt.gov
Nebraska	(402) 471-9015	mjhass@linux3.nrc.state.ne.us
New Hampshire	(603) 271-6186	ssullivan@nhreab.state.nh.us
New York	(212) 220-1682	N/A
North Carolina	(919) 420-7920	NCAB@ncab.org
North Dakota	(701) 222-8083	ndapprbd@btigate.com
Ohio	(216) 787-3100	N/A
Oklahoma	(405) 521-6636	reab@insurance.state.or.us
South Dakota	(605) 773-4608	sherry.bren@state.sd.us
Tennessee	(615) 741-1831	smoore3@mail.state.tn.us
Texas	(512) 465-3950	rcliner@talcb.state.tx.us
Washington	(360) 753-1062	RealEstate@dol.wa.gov
West Virginia	(304) 558-3919	wvappbd@wvnm.wvnet.edu
Wyoming	(307) 777-7141	cander2@missc.state.wy.us



ACL B

Appraiser Certification and Licensure Board
1860 Hawthorne Ave. NE, Ste. 200
Salem, Oregon 97303