

Charles W. Drago, Secretary

Charlie Crist, Governor

**Minutes of
THE FLORIDA REAL ESTATE APPRAISAL BOARD
October 27 & 28, 2008
General Meeting**

Chair Joni Herndon called the meeting of the Florida Real Estate Board to order, at approximately 9:05 a.m., in Fort Lauderdale, Florida, on this Monday, the 27th day of October, 2008.

Member Small offered the Invocation and Vice-Chair Rogers led the Pledge of Allegiance. The Chair introduced the members present: Vice-Chair Michael Rogers, Cynthia Wright, Jay Small and Susan Dailey. Michael Gross, Assistant Attorney General, appeared as counsel for the Board. Mr. Gross declared a quorum present.

Division staff present at the meeting: Thomas O'Bryant, Jr., Division Director and Executive Director for the Board; Robert Minarcin, Senior Attorney; Fred Clanton, Investigations Supervisor; Beverly Ridenauer, Government Analyst II; Peggy Hanna, Government Analyst I; Peter Patterson, Government Analyst I; Lori Crawford, Deputy Clerk. Official Reporting Service (954.467.8204) provided court reporter services.

Approval of the Minutes

The Board unanimously approved the Minutes of the August 4 & 5, 2008, General Meeting as written.

Summary of Applicants:

New Applicants:

Ms. Ridenauer presented the Summary of Applicants and the Board decisions are as follows:

| | |
|----------|---|
| 01-10-08 | Ray Anthony Price – Registered Trainee – Approved |
| 02-10-08 | Bradley Scott Haun – Registered Trainee – Approved |
| 03-10-08 | Phillip Forrest Wilson – Residential Appraisal Instructor – Withdrawn |
| 04-10-08 | Ricardo Lugo – Registered Trainee – Denied |
| 05-10-08 | Andrew Jackson Chastain – Registered Trainee – Approved |

Board Business

Rules Report

Counsel Gross advised the Board there are five rules pending at this time. In order to move the rules to the next stage of rulemaking, the Board must decide if there is an impact on small business. If so, a Statement of Estimated Regulatory Costs (SERC) must accompany each rule as it is presented to the Joint Administrative Procedures Committee (JAPC) for approval.

The Board addressed **Rule 61J1-6.001 – Experience Requirement:**

Upon motion by Member Dailey with second by Vice Chair Rogers, the Board voted to approve the following language with one technical change:

(5) ...description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser...of supervising appraiser (~~if applicable~~), and correct technical error for reference to Section 475.611(1)(~~e~~)(q).

(5)(b) Mass Appraisals Ad valorem tax appraisals

1. Mass appraisals must be as set forth in Standard Rule 6 of the 2008-2009 Edition of the Uniform Standards of Professional Appraisal Practice as defined in Section 475.611(1)(q), F.S. ~~Experience credit shall be credited when it is demonstrated that the applicant:~~

- ~~a. Used techniques to value properties similar to those used by appraisers; and~~
- ~~b. Effectively used the appraisal process.~~

2. Mass appraisal experience claimed by the applicant should be given credit to the extent that it demonstrates proficiency in appraisal practices, techniques, or skills used by appraisers practicing under USPAP Standard 1 adopted in June 1997. Components of the mass appraisal process on which credit will be given are:

- ~~a. Highest and best use analysis;~~
- ~~b. Model specification (developing the model); and~~
- ~~c. Model calibration (developing adjustments to the model).~~

~~All other components of the mass appraisal process are not eligible for experience credit.~~

3. In developing a mass appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques necessary to produce and communicate credible mass appraisals. Mass appraisals must be as set forth in Standard Rule 6 of the Uniform Standards of Professional Appraisal Practice as defined in Section 475.611(1)(q), F.S.

4. Mass appraisal experience shall include:

- a. Identifying properties to be appraised;
- b. Defining market area of consistent behavior that applies to properties;
- c. Identifying characteristics (supply and demand) that affect the creation of value in that market area;

d. Determining highest and best use;

(1) Demonstrate proficiency with elements and concepts of highest and best use through separate analysis if not contained in the appraisals submitted for audit;

e. Developing a model structure to determine the contribution of the individual characteristics affecting value;

f. Calibrating the model structure to determine the contribution of the individual characteristics affecting value;

g. Applying the conclusions reflected in the model to the characteristics of the property or properties being appraised ; and

h. Reviewing the mass appraisal results.

All other components of the mass appraisal process are not eligible for experience credit.

5. 4. Experience will be granted for appraisals of individual parcels of real estate.

In response to Member Wright's comment that she would like to see a separate licensing category for mass appraisal experience, Director O'Bryant stated the Department would agree. It would take legislative action to implement an entirely new license category. There is also a question of how to manage the regulation from a federal level. The Director stated state regulatory agencies across the country are asking the same questions and it will take federal action first before Florida can take any action toward separate licensing.

Statement of Estimated Regulatory Costs (SERC)

Counsel Gross provided a background on what the Statement of Economic Cost (SERC) is and how it impacts rule making by the Department and the Board. He stated with the statutory changes that became effective on July 1, 2008 the SERC is no longer an option, but is now a required step in the rule making process.

Board Counsel reported there are several rules that are ready to move forward, but are awaiting the required SERC, which must be approved by the Board before the rules can move to the next step.

Director O'Bryant said the Department has determined that from the perspective of the FREAB, a SERC will be required for every change to the Florida Administrative Code. The forms require determination of economic impact, if any, on small businesses, small municipalities, and small counties because of the property appraiser offices. The Director provided the Board with an outline of the types of information that will be used to determine the estimate of economic cost.

The completed forms will accompany the final version of the rule language to be adopted by the Board, enabling the Board to see the economic impact of the rule on small businesses. While the Division is still working on the internal business process and its impact on Staff at this time, the completed forms will be provided to the Board as quickly as possible for their consideration.

Application by Convicted Felons

Counsel Gross reported to the Board that as a result of an inquiry at the last Board meeting, he has conducted research into the issue of establishing a minimum limit of lapsed time between the date of the felony conviction and when an applicant can file an application. He said setting a time limit would have the effect of placing a greater burden on the applicant to overcome the Notice of Intent to Deny that finds that a sufficient time has not passed. Restoration of civil rights could also be used in conjunction, as a guideline for an applicant with a felony conviction to make application.

Mr. Gross has not drafted any potential language, but will look at the pending language from the Office of Financial Regulation as they develop rules governing mortgage broker applicants.

Director O'Bryant asked that he be permitted to discuss this topic with the Office of General Counsel before any further discussion takes place.

Digital Signatures

Counsel Gross introduced a letter from Dennis Black, which suggests the return to written signatures only due to the problems with digital signatures. Uniform Standards of Professional Appraisal Practice (USPAP) permit use of digital signatures only when an appraiser has sole, complete control over the access to the signature.

The Board took no action on this topic, but discussed it at length. Some of the points of the discussion were:

- What a signature is from a legal perspective; Legally there is nothing wrong with a digital signature if used properly
- Use caution in adopting a rule or changes to Statute; changes of this nature may be considered as establishing a benchmark as to what constitutes a signature, which is different than what common law would designate as a signature.
- There will never be one hundred percent compliance
- Moving back to paper would create a problem for lenders whose systems are now set up to receive and move documents forward electronically.
- It is an opportunity to protect residential appraisers from the demands placed on them by those clients requiring a digital signature, which can then be severed from a document.
- The choices have come down to a decision by the residential appraiser as to how much income he can afford to turn down because he is standing up for his ethics.
- Someone has to stand up and protect the small appraiser shops because the economic impact to them is of key importance to the appraiser industry.
- Slowing down the "mortgage machine" may not be a bad thing to do at this time.

- There is new technology that can be used to enable an appraiser to have "sole control" of an electronic signature. If an appraiser has "sole control" of their digital signature, it will prevent the use of another's signature, authorized or unauthorized.
- The Board's rule that it is unethical to use someone else's signature is meant to enforce discipline on the minority of individuals who have unethical intentions.

Director O'Bryant pointed out the exposure draft of the 2010 USPAP edits the definition of what constitutes a signature. There are also proposed changes to the Management Section of the Ethics Rule stating it is unethical for an appraiser to affix the signature of another without their consent. He further stated there would be a severe economic impact for lenders to return to paper.

Broker's Price Opinion

Board Counsel Gross introduced the topic by providing a definition of a real estate broker from Part I, Chapter 475.01(1)(a), Florida Statutes which expressly excludes appraisal services that must be conducted by an appraiser. The appraiser law, Chapter 475, Part II, Florida Statutes, does not provide an exemption, exception or provision for an appraiser to do a broker price opinion (BPO).

During the discussion that was conducted, the following points were made:

- There is no provision for an appraiser, who holds no other real estate license, to perform broker price opinions. The only way an appraiser could perform broker price opinions is if they hold both licenses. This situation may cause confusion if an appraiser, who holds both licenses chooses to perform broker price opinions. The situation would call for full disclosure in writing and possibly a written acknowledgement by the client, that the broker's price opinion was being performed as a real estate license holder.
- The definition of an appraisal in the Uniform Standards of Professional Appraisal Practice (USPAP) includes the language "an opinion of value" and a broker price opinion is an "opinion of value". Therefore many states are reviewing the language and process to determine if a broker is permitted to provide an "opinion of value".
- This topic was discussed at the recent Association of Appraiser Regulatory Officials (AARO) meeting. The goal is to change the process so brokers are not performing appraisals for lenders and labeling them as broker price opinions.
- The broker price opinions are used by lenders during the default process to determine what is a current marketable value. Lenders need to know what price the property can be listed at to sell it within a certain number of days.
- Additional comment led to the suggestion that if the goal is to prevent lenders from accepting something other than an appraisal at the beginning of the loan process, then changing the statute under Chapter 475, Part I real estate law, not the appraiser law may be the solution.

The Board determined that Florida Statutes do not prohibit an appraiser, who also holds a current, active real estate broker's license from performing a broker price opinion.

Mutual Recognition Agreements

Director O'Bryant asked the Board to terminate the mutual recognition agreements that currently exist with Alabama, Georgia and Kentucky. He explained that Chapter 61J1-3.004, F.A.C. replaces the agreements and is in compliance with the Appraiser Qualifications Board guidelines.

Upon motion by Member Dailey, with second by Member Wright, the Board voted unanimously to terminate the mutual recognition agreements.

Experience Requirements

Supervisory Experience:

Director O'Bryant asked the Board for guidance in developing language to define the qualifications to become a supervisory appraiser. The current definition of a supervisory appraiser under Chapter 475.611(1) (o) & (p), F.S. permits an individual to become a supervisor the day their license is issued.

The Board identified at least two elements to qualify as a supervisory appraiser; length of time the supervising appraiser has held their credentials and qualifying education. The Director reminded the Board that any changes to the supporting rules will need to include a Statement of Estimated Cost (SERC) to explain the economic impact to appraisers.

In conjunction with this topic, the Board reviewed the Chair's Discipline Report. The report has been developed at the Chair's request for the purpose of identifying the length of time between the date a registered trainee was licensed and the date a complaint against that trainee was received. The Board asked to have the report revised to include the length of time the supervising appraiser held their credentials before the complaint was received. Further discussion will be held when the revised report is available.

The Board also discussed the content of the existing three-hours Roles and Rules of Supervisors and Trainee Appraisers. Member Wright identified a particular course that was denied because it did not follow the specific outline of Rule 61J1-4.003(1), but was enhanced so it included those topics and was interesting as well. Director O'Bryant stated he would review the course to see why it was denied and bring it back before the Board for discussion.

Practicum Experience:

Director O'Bryant reported to the Board the Division will begin discussions with colleges and universities to share ideas on how to work with practicum experience at their level because the programs that are in place are at through colleges and universities. Since there must be a supervisor involved with the process the instructor will be the supervisor. This is a unique situation and is a major issue being discussed with the Appraisal Subcommittee due to the limit of three trainees under one supervisor.

The Division is obtaining more information from other states at this time to see how they are putting their programs into effect. As the model for the program is developed, it will be shared with interested parties. The Department will not be developing the course.

Licensed Appraisers

The Federal Housing Administration (FHA) has notified the Department that only certified appraisers may request and receive reinstatement on the FHA appraiser roster. Licensed appraisers will no longer be approved by the FHA to perform appraisals, effective October 1, 2008.

Florida changed its licensing law in 2006 to discontinue issuing the "Licensed" appraiser credential. Those individuals who were licensed appraisers were permitted to continue working with that credential. Florida currently has sixty-two licensed appraisers. This change by the FHA requires some action be taken to ensure there is a plan to guide licensed appraisers in the right direction.

Director O'Bryant stated he will discuss with our ASC Policy Manager during her visit on November 14th to seek some guidance in the matter.

Administrative Matters

Ratification of Suspended Licenses

Upon motion by Member Small with second by Vice Chair Rogers, the Board voted unanimously to ratify the reinstatement of registered trainee license of Albert F. Arguello.

Upon motion by Member Small with second by Vice Chair Rogers, the Board voted unanimously to ratify the reinstatement of certified general appraiser license of David J. Smith.

Ratification of Course Approvals

Upon motion by Member Small with second by Member Dailey, the Board voted unanimously to ratify the course approvals for the weeks of July 29, 2008 and August 11, 2008.

Director's Comments

Director O'Bryant provided a brief update regarding the following topics:

- Financial Reports - Director O'Bryant provided a report on the Financial Report dated June 30, 2008. He expressed concern for the projected revenue and expenses for the next five years and believes the Board will be operating in a deficit position for those years.
- 2009 FREAB Calendar - Director O'Bryant reported to the Board as part of the budget reductions, the Board will not have any meetings that require travel during 2009.

Following discussion and upon motion by Member Wright, with second by Member Dailey, the Board voted to approve the 2009 meeting calendar.

- ASC Priority Visit - The Division has worked diligently with the Board to remove Florida from the ASC's probationary list. We have succeeded in the effort and this year we will not undergo a Field Review. Since we are one of the states that has a large appraiser licensee base, we will be having an ASC Priority Visit on November 14, 2008. This will include a two-hour visit where we will discuss any issues either may have.
- New Staff - The Director introduced staff members Margaret (Peggy) Hanna and Peter Patterson. Their addition will help create the Appraisal Section within the Division of Real Estate.

Chair's Comments

The Chair commented on the following:

- Broker Price Opinion form - The Chair asked Board Counsel Gross and Director O'Bryant to comment on the form that is being used to perform the broker price opinions. She stated it is formatted to resemble an appraisal report form. Director O'Bryant asked that she and Vice-Chair Rogers attend the upcoming meeting of the Florida Real Estate Commission on December 16, 2008 to make a presentation.
- Errors and Omissions Insurance (E & O Insurance) - Chair Herndon asked Board Counsel Gross to address concerns about appraiser E & O insurance which does not cover appraisers who use a portal to submit appraisal reports.

Board Counsel Gross stated he had not seen a copy of the policy nor the AppraisalPort contract and was relying solely on the materials he had been provided. He provided a brief explanation of what he believed the insurance policy covered and rights that may be given up by the appraiser as a result of the AppraisalPort agreement. In his opinion, the AppraisalPort contract was more damaging to the appraiser because if they create a problem the appraiser is being held responsible.

- Appraisal Management Companies - The Chair asked Director O'Bryant how to begin the process of regulating appraisal management companies. He suggested working with both the Department and the Division of Real Estate and external partners to develop a plan to move forward. Following discussion, the Board decided to contact the Appraisal Institute about establishing a task force to assist with the project.

Correspondence

The Board reviewed two pieces of correspondence:

- Request for a definition of a "true copy" - Board Counsel Gross will respond in writing to this request as it needs to be made in the form of a request for a declaratory statement under the guidelines of Chapter 120.57, Florida Statutes.
- St. Petersburg Times news article - Member Small cautioned the appraisers in the audience to be careful to not put themselves in a position where their motives can be misconstrued. There is probably someone who is always watching what is being done for the purpose of gathering information to build a case to support one cause or another.

Public Comments

The Board received comments from the audience.

There being no other business, the Chair adjourned the meeting at approximately 4:35 p.m.

October 28, 2008

Chair Joni Herndon reconvened the meeting of the Florida Real Estate Board at approximately 8:45 a.m., in Fort Lauderdale, Florida, on this 28th day of October, 2008.

Member Small offered the Invocation and Vice-Chair Rogers led the Pledge of Allegiance. The Chair introduced the members present: Vice-Chair Michael Rogers, Cynthia Wright, Jay Small and Susan Dailey. Michael Gross, Assistant Attorney General, appeared as counsel for the Board. Mr. Gross declared a quorum present.

Division staff present at the meeting: Thomas O'Bryant, Jr., Division Director and Executive Director for the Board; Bob Minarcin, Chris Lindamood, Allison McDonald, Senior Attorneys; Fred Clanton, Investigations Supervisor; Beverly Ridenauer, Government Analyst II; Peggy Hanna, Government Analyst I; Peter Patterson, Government Analyst I; Lori Crawford, Deputy Clerk. Official Reporting Service (954.467.8204) provided court reporter services.

Member Jay Small announced his term on the Board will expire as of October 31, 2008 and he anticipates this will be the last meeting he will attend. Chair Herndon read into the record a Resolution from the Members of the Florida Real Estate Appraisal Board recognizing Mr. Small's many years of service to the State of Florida and the appraisal industry. A copy of that resolution is attached to and a part of these minutes.

Legal Docket

The Board addressed the Legal Agenda, consisting of 49 docket items. The Board considered forty-four docket items and approved the continuance or withdrawal of five docket items. The Board's decisions on these matters are maintained at the Division of Real Estate headquarters.

Public Comments

The Board received comments from the audience.

Adjournment

There being no further business and no objection, the Chair adjourned the meeting at approximately 6:05 p.m. The Florida Real Estate Board will hold its next general meeting on December 8th and 9th, 2008 in Orlando, Florida.

ATTEST:

Joni L. Herndon, Chair
Florida Real Estate Appraisal Board

Thomas W. O'Bryant, Jr., Executive Director
Florida Real Estate Appraisal Board

Date _____

Date _____

Prepared by: _____
Beverly Ridenauer
Government Analyst II

Date _____