



Oregon

John A. Kitzhaber, MD, Governor

Appraiser Certification and Licensure Board

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May 15, 2013

The Honorable Representative Paul Holvey, Committee Chair
House Committee on Consumer Protection and Government Efficiency
900 Court Street NE H-277
Salem, OR 97301

Re: SB 617 A-Engrossed
Agency: Appraiser Certification and Licensure Board (Board)
Agency Position: Neutral

Dear Chair Holvey and Members of the Committee:

For the past 12 years, the Appraiser Certification and Licensure Board has delegated a significant amount of authority to our Administrator to investigate complaints against appraisers, identify violations of the Uniform Standards of Professional Appraisal Practice (USPAP), establish appropriate sanctions and negotiate settlement terms with appraisers with the proposed settlement terms conditioned on ratification by the Board at its regular quarterly meeting.

This system was adopted following a time period during the mid to late 1990's when the Board was in serious trouble with the Appraisal Subcommittee (ASC). The ASC is the federal agency responsible for oversight of all state appraiser boards to ensure each state's entire system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well-documented manner.

The ASC requires all state appraiser boards to issue final administrative decisions regarding complaints within one year of the complaint filing date. In 1999 the Board had 206 open complaint files 74% of which were two to four years old without resolution; today the Board has 65 open cases.

To perform its federally mandated oversight function, the ASC conducts biennial 3-day on-site audits on all state appraiser boards. For the past 12 years, the Board has received very favorable audit findings from the ASC. During their July 2012 audit visit, ASC auditors complemented the Board stating, "they consider Oregon to be one of the top appraisal licensing programs in the country". During the 2010 audit they stated, "we use Oregon as an example when [jurisdictions] need to make changes we refer them to your state."

Since 1998 the Board has utilized a Sanction Guidelines Grid (see Exhibit 1) to ensure fair and consistent treatment in the application of sanctions between appraisers for similar violations. Many states have requested copies of and

information about our Sanctions Guidelines grid to assist in their efforts to improve fairness and consistency in the enforcement of USPAP.

Within the last couple years, there has been significant turnover on the Board as well as new Board leadership. The new board has taken action to reclaim its decision-making authority regarding the determination of what constitutes a violation of an appraiser's professional standards of practice (USPAP). This decision was not meant to reflect a lack of confidence in the competency of the staff but rather as a reaffirmation of the Board's commitment to its responsibilities to practitioners and, most importantly, to the public and the users of appraisal services.

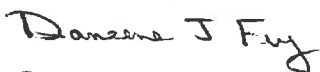
During the January 28, 2013 Board meeting (see Board minutes excerpt - Exhibit 2) I announced the creation of the Board's Enforcement Oversight Committee. The committee has several responsibilities that are outlined in the minutes of its first meeting (see Exhibit 3) including exerting influence and oversight over the Board staff regarding whether an objective basis exists for alleged violations. The committee will review staff's investigative reports before making a recommendation to the full board that will have sole authority to determine what constitutes violations of USPAP. The Administrator will no longer have that authority. Twenty-four days after this change was initiated at the January 28th meeting, SB 617 was introduced in the Senate.

According to the Legislative Fiscal Office, passage of SB 617 would have a *significant* fiscal impact. The Board would have no choice but to pass on this impact to its licensees in the form of fee increases (estimated to be approximately 20% per two year license cycle) since the Board is a self-sustaining agency operating primarily through fees collected for various licenses, certificates and registrations issued. Also, the Board's semi-independent status does not afford the opportunity to draw from the Emergency Board in the event that the Board's expenses exceed income and operating reserves.

We believe the changes in our complaint and enforcement processes (outlined above) accomplishes the primary objective of SB 617 A-Engrossed without the added administrative support cost of an outside three appraiser panel as proposed in this bill.

If you have any questions I will be happy to visit with you or your staff.

Respectfully,



Daneene J. Fry, Board Chair
Medford, OR
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**APPRAISER CERTIFICATION AND LICENSURE BOARD ADMINISTRATIVE RULES
(OAR Chapter 161)**

(1) Sanction Guidelines Grid:

	1st Board Action	2nd Board Action	3rd Board Action	4th Board Action
ORS 674.850 Unlicensed Activity	\$500 Civil Penalty plus \$1,000 for 2nd & subsequent offenses	\$500 Civil Penalty plus \$1,000 for 2nd & subsequent offenses	\$500 Civil Penalty plus \$1,000 for 2nd & subsequent offenses	\$500 Civil Penalty plus \$1,000 for 2nd & subsequent offenses
ORS 674.850 Violation of Final Order of the Board, Final Judgment by the Court	90 Day Suspension plus \$500 Civil Penalty per violation	Revocation plus \$500 Civil Penalty per violation		
ORS 674.140 (3), (10) and (12) Knowingly	\$500 Civil Penalty per violation plus Reprimand and/or Education	\$500 Civil Penalty per violation plus 90 Day Suspension and/or Education	\$500 Civil Penalty per violation plus Revocation	
ORS 674.140 (3) Negligently	\$500 Civil Penalty per violation plus Reprimand and/or Education	\$500 Civil Penalty per violation plus Reprimand and/or Education	\$500 Civil Penalty per violation plus 90 Day Suspension	\$500 Civil Penalty per violation plus Revocation
ORS 674.140 (6)	\$500 Civil Penalty per violation plus 90 Day Suspension	\$500 Civil Penalty per violation plus 150 Day Suspension	\$500 Civil Penalty per violation plus Revocation	
ORS 674.140 (4), (8) and (9)	\$500 Civil Penalty per violation plus Revocation or denial of application			
ORS 674.140 (2) and (7)	Civil Penalty (\$100-\$250 per violation) and/or Education	Civil Penalty (\$250-\$500 per violation) and/or Education and/or Reprimand	\$500 Civil Penalty per violation plus 60 Day Suspension	\$500 Civil Penalty per violation plus Revocation
ORS 674.140 (1) and (13) Knowingly/Fraudulently	\$500 Civil Penalty per violation plus Revocation			
ORS 674.140 (1), (11) and (13) Negligence/Competency	\$500 Civil Penalty per violation plus Reprimand and/or Education	\$500 Civil Penalty per violation plus 90 Day Suspension and/or Education	\$500 Civil Penalty per violation plus Revocation	

Dismissed with Counsel –

MOTION #13

Cook moved and Davis seconded that:

The Board ratify the Dismissal with Counsel in Case Number 12-1964.

Roll-call vote. Motion passed unanimously.

Appraisal Express Corp (an AMC) Update:

Keith summarized the status of Board's investigation and settlement negotiations with this AMC, who was conducting business as an appraisal management company in Oregon without being registered. Ultimately, the owner of the company rejected the Board's proposed settlement. Therefore, Keith requested authorization from the Board to proceed with issuance of a notice of proposed disciplinary action.

MOTION #14

Cook moved and Terjeson seconded that:

The Board authorize staff to issue a notice of proposed disciplinary action against Appraisal Express in ACLB Case No. 12-2002, including the proposed civil penalty assessment.

Roll-call vote. Motion passed. Davis voted no.

Licensing Report (Keith):

Keith reported the current number of active and inactive licensees effective January 1, 2013, and the current number of registered appraiser assistants.

Budget Report (Terjeson/Standley):

Terjeson gave a brief summary regarding the Board's current budget.

Fry again stressed the importance of all Board members completing the ethics training course.

Legislative Report (Keith):

HB 2171: This bill provides that a person has a right to trial in circuit court if an agency proposes to impose civil penalties of \$2,000 or more.

LC 2681/HB 2531: This bill amends the definition of appraisal management company.

Keith advised Board members that the Governor has prohibited agencies from taking a position, or lobbying in support of or against bills affecting the agency.

Sales Concessions:

Chamber Rosters – Committee Assignments – Schedules: Rosters and committee assignments and schedules were provided to the Board members.

Establishment of Standing Committees for the Board:
Rules and Policies Committee
* Enforcement Oversight Committee *
Budget Committee



Appraiser Certification and Licensure Board Enforcement Committee Meeting March 15, 2013

Attendance:

Board Members- Brad Armbrust, Committee Chair
Dori Davis, Committee Member
Phil Johnson, Committee Member
Danee Fry, Ex-officio Committee Member, Board Liaison

Staff: Bob Keith, Board Administrator

Public: None

Committee Chair Armbrust asked Board Chair Fry to share why she formed this committee and what her overall vision and goals are for the committee. Fry stated that the Board has been criticized in the recent past for insufficient involvement in the complaint and enforcement process¹. She indicated that the committee would exert influence and oversight over the Board staff, particularly with respect to determination of whether an objective basis for alleged violations exist.

Johnson stated his thought that the committee should also pay close attention to ensure an appraiser's/AMC rights to due process are respected and followed and to insure the Board policies are followed.

Davis expressed concern and advised the committee not to "micro-manage" the Board staff in the early stages of Allegation Report and Complaint processing or in the investigative function of the staff. Armbrust said that the Board staff were very knowledgeable professionals and should be allowed to do their jobs, but that the committee and ultimately the Board should have responsibility for determining

¹ Note: The Appraisal Subcommittee (ASC) of the Federal Financial Institution Examination Council has been charged by the United States Congress with the responsibility for oversight for all State appraisal regulatory functions. The ASC performs biannual (3-day) on-site audits to ensure compliance with Federal law, including appraiser regulator enforcement activities. The ASC audit findings have not been critical with the level of Board involvement in the complaint and enforcement process. To the contrary, the ASC has been very complimentary of the Board's enforcement activities.

whether an objective basis for alleged violations exist and whether to proceed with discipline.

Fry stated that initially she would like to have the committee enter the complaint investigation and enforcement process after staff has investigated a complaint and written an investigative report. This report, and other information to be determined at a future date, should be provided to each Enforcement Committee member prior to its meeting to determine whether or not an objective basis to believe violations exist and to make a recommendation to the full Board regarding the subsequent course of action. The committee discussed and ultimately agreed with Fry's suggestion.

Fry indicated that she wanted the Enforcement Committee to take over the responsibility of performing the semi-annual Enforcement Oversight reports given to the full Board. Keith suggested that during this function, the committee could examine past Allegation Reports that resulted in "no action taken" as well as those that led to Complaints and provide feedback and direction to the staff to ensure that proper decision-making is being employed by the staff in both instances.

Fry expressed a concern about how complaints are handled that are filed against current or past Board members, appraisers that are relatives or close friends of staff members or in "high-profile" or potentially controversial cases. After discussion, the committee decided that in these cases the Enforcement Committee would review the Board's enforcement case file (not the staff) to determine whether no action or dismissal is appropriate or whether to send the case to an outside contract (appraiser) reviewer who would report back directly to the committee. The committee would then make a recommendation to the full Board regarding the appropriate course of action.

Fry stated that there is currently an open enforcement file regarding a complaint against a former Board chair. The committee instructed Keith to provide each member with a complete copy of the Board's enforcement file (to date). The committee members will individually examine the enforcement file, set a date for an in-person meeting to discuss an appropriate course of action and then make a recommendation to the full Board.

The committee agreed that more details need to be worked out along with specific policies and procedures, but those will be accomplished in future committee meetings.