

CANNON BUILDING
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STATE OF DELAWARE
DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

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PUBLIC MEETING MINUTES:	COUNCIL ON REAL ESTATE APPRAISERS
MEETING DATE AND TIME:	Tuesday, March 15, 2011 at 9:30 a.m.
PLACE:	861 Silver Lake Boulevard, Dover, Delaware Conference Room A , 2nd floor of the Cannon Building
MINUTES APPROVED:	April 19, 2011

Members Present

William Diveley, Chair, Professional Member
Gary V. Parker, Vice Chair, Professional Member
Stephen Huston, Professional Member
Brad Levering, Professional Member
Frank Smith, Public Member
Yvonne Rickards, Public Banking Member
Ronald Mandato, Professional Member
Richard Wheeler, Public Member

Division Staff/Deputy Attorney General

Patricia Davis-Oliva, Deputy Attorney General
Nicole Williams, Administrative Specialist II

Members Absent

Frank Long, Public Member

Others Present

Earl Loomis
James Rostocki

Call to Order

Mr. Diveley called the meeting to order at 9:34 a.m.

Review and Approval of Minutes

Mr. Huston stated that there was one noted correction to strike a sentence from the last paragraph on page two. Mr. Long made a motion to approve the minutes with the correction, seconded by Mr. Huston. Motion carried unanimously.

Unfinished Business

Complaints 19-07-09, 19-10-09, & 19-14-09: Kelly Leaberry –Disciplinary Hearing

Mr. Diveley stated for the record that the hearing scheduled for Ms. Leaberry has been rescheduled until the April 19th meeting date at 9:30 a.m. There was no further discussion by the Council.

Regulation of Appraisal Management Companies (AMC's)

Mr. Levering stated that the subcommittee has discussed the AMC legislation and Ms. Davis-Oliva has drafted the proposed bill. Mr. Mandato stated that the only pending discussion was the Relocation Company language and if it should be included in the bill. Ms. Davis-Oliva clarified to the Council what a Relocation Company is. Ms. Davis-Oliva stated that Relocation Management companies exist under the manufactured home owner's act.

Mr. Mandato stated that a management company must clearly define a system for training those individuals that work for management companies who are not appraisers but reviewers. He clarified that the AMC law does not need to define a training system, as this can be worked out in regulations. Mr. Diveley concurred.

Mr. Mandato stated that payment within 45 days is standard and should be the maximum. Mr. Levering added that a large number of AMCs are coming into effect now. Mr. Diveley questioned why the Council is regulating the financial agreement between the appraiser and the management company. Mr. Mandato clarified that the Council will not be regulating that agreement.

Mr. Mandato added that 19 states have already adopted the AMC legislations and 6 other states are in the process of adopting the AMC legislation. Ms. Davis-Oliva will revise the draft in bill format. Mr. Levering made a motion to accept the changes to the draft and send to the legislature, seconded by Mr. Diveley. Motion unanimously carried.

Review of Rule 4.2.4: Supervision of Trainees after Sanction by Council

Mr. Diveley stated that the Council requested to discuss this matter. Ms. Davis-Oliva stated that currently the regulation states that any sanction on a supervisor bars them from supervising any trainees for the next three years, starting immediately, which public comment at prior meetings alleged was essentially punishing the trainees for the disciplinary actions of the supervisor. Ms. Davis-Oliva added that Mr. Loomis recommended that any sanction on the supervisor will not affect his or her current immediate trainees but the supervisor will not be able to supervise any future trainees for the next three years.

Mr. Levering inquired about what sanctions the Council currently has the power to impose. Mr. Parker stated the six sanctions. Mr. Huston inquired if the Council has a sanction to send a letter of concern. Ms. Davis-Oliva advised that they currently cannot send a letter of concern because they did not move forward with that bill. Ms. Davis-Oliva advised that she will pull the minutes to determine why the Board abandoned that plan. Mr. Levering stated that a letter of concern would not affect the status of trainees, however anything harsher than that should affect the trainees because the Council's role is to protect the safety and welfare of the public. Mr. Levering then added that a supervisor can continue to supervise trainees if the sanction is only a letter of concern but any sanction above a letter of concern will prohibit supervision of trainees. Mr. Levering stated there should be some type of cut off for when a supervisor can no longer supervise trainees due to his or her sanctions. The Council further discussed. Mr. Levering believes that minor infractions should not cause the supervisor to lose his or her trainees but major infractions, such as fraud or loss of a license, should mean that the supervisor would lose his current trainees and not be allowed to supervise trainees for the next three years. Mr. Diveley suggested the language read any sanction so egregious above a letter of reprimand would cause the supervisor to not be able to supervise future trainees and lose his or her current trainees. Mr. Parker stated that Mr. Loomis's suggestion is a good one and that currently the mechanism in place does not involve creating new criteria. Currently, if an appraiser does receive a discipline in another jurisdiction then he has to come before the board and explain that situation. The Council further discussed.

Mr. Wheeler stated that maybe there should be a thirty (30) day window provided for the trainees to be able to find a new supervisor once the current supervisor has been sanctioned. Mr. Mandato agreed that is a good idea except that once the supervisor is under investigation the trainee has more than enough time to find a new supervisor because a complaint could take up to eighteen months to be completed. Mr. Levering was in favor of leaving the current regulation as it stands with no changes. Mr. Huston again stated that it is not fair to punish the trainee for an infraction of the supervisor that has nothing to do with the trainee as the supervisor can still work but the trainee cannot work. Mr. Huston further added that the livelihood of the trainee is being taken away. There was further discussion.

Mr. Smith would like to have these situations reviewed on a case by case basis. Mr. Diveley expressed concerns that reviewing these situations in that manner would harm the consistency of the Council.. Ms. Davis-Oliva clarified that the Division's position is that it is in the best interest of the Council to establish guidelines that are consistently followed, avoiding deciding whether to enforce a provision on a case by case basis because one of the most important things that the Board can do is remain consistent in disciplinary procedures and actions and how licensees are treated.

Mr. Parker inquired about the basis for implementing this rule in the first place. Mr. Huston answered that he did not recall what the impotence was for Mr. Witt requesting this rule be placed into the regulations. Mr. Levering responded that Mr. Witt placed this rule into effect to make sure that trainees were not trained by supervising appraisers who had been disciplined because of a concern that trainees were not being trained

properly. Mr. Huston posited that when the Council first implemented this rule, it may not have looked at the full ramifications of this specific rule on licensees. The Council further discussed. Mr. Parker suggested that the rule should remain as is, but the Council should ensure the trainees are aware of the situation pertaining to this specific rule. There being a general consensus to allow the regulation to stand as is, there was no further discussion.

Status of Complaints

Mr. Diveley advised that complaint 19-12-09 was dismissed by the Attorney General's office and complaint 19-01-10 was closed by the Investigative Unit of the Division. There was no further discussion on these complaints by the Council.

New Business

Review of Certified Residential Application

Lee Clagett: Licensed in MD but their qualifications are not similar to DE's original license requirements prior to the 08 AQB change – Ms. Williams advised that Mr. Clagett's Maryland license verification showed qualifications that meet Delaware's standards. Mr. Diveley made a motion to grant Mr. Clagett's application as a Certified Residential Real Property Appraiser, seconded by Mr. Parker. Motion carried unanimously.

Review of Upgrade Application to Certified Residential

Judith Magann: Request to Sit for Exam and Review of Degree, Qualifying Education, and Experience Log – Mr. Huston made a motion to approve to sit for exam seconded by Mr. Parker. Motion carried unanimously.

James Rostocki: Request to Sit for Exam and Review of Degree, Qualifying Education, and Experience Log – Mr. Parker made a motion to approve to sit for exam, seconded by Mr. Diveley. Motion carried unanimously.

Ratification of Issued Licenses

Katherine Bergen: Trainee – Supervisor: Michael Samuels, X1-0000133
Bruno Petrillo, PA – Certified Residential
Daniel Williams, NJ, PA – Certified Residential
Ted Ganderton, PA – Certified Residential
James Rutter, PA – Certified Residential
Maureen Mastroieni, PA, NJ, MD, VA – Certified General
Bradford Houpt, PA, NJ – Certified General

Mr. Parker made a motion to propose to deny Mr. Ganderton's application due to 24 Del. C §4008 (5), seconded by Mr. Diveley. Motion carried unanimously.

Mr. Parker made a motion, seconded by Mr. Huston, to ratify the above list excluding Mr. Ganderton. Motion carried unanimously.

Ratification of Issued Continuing Education Activities

Mr. Mandato made a motion to ratify the continuing education activities listing, seconded by Mr. Smith. Motion carried unanimously.

Review of Temp Applications

Ms. Williams stated that the following permits were issued as the applicants licenses were in good standing on the National Registry. Mr. Diveley announced the listing of the temporary permits issued below.

Thomas Shields – Sussex Co.
Jason Shultz – New Castle Co.
Jerry Gislair, II – New Castle Co.
David McArdle – Sussex Co.
John Williams – Sussex Co.
Norman Lezotte – 2 different assignments in New Castle Co.
Peter Brennan – New Castle Co.
Mark Bryant – New Castle Co.
Dan Kennedy – Kent Co.

There was no further discussion by the Council.

ASC Field Review for 2011 – Ms. Williams advised that this matter will be discussed after public comment.

Correspondence from the ASC Regarding the April AARO 2011 Spring Conference in San Antonio, TX

Ms. Williams inquired if the Council would like to send a representative. Mr. Levering volunteered. Ms. Williams advised she will submit the travel request to the Division Director to seek approval.

Other Business before the Council (for discussion only)

There was no other business before the Council for discussion. Ms. Davis-Oliva advised that the letter of concern was drafted up in bill form but did not get submitted into legislation for review. Ms. Davis-Oliva advised that she will resubmit it this legislative session.

The Council recessed for a five minute break at 10:19 a.m. The Council reconvened at 10:26 a.m.

Public Comment

Mr. Loomis addressed the Council. He stated that he will be instructing the DE law rules and regulations course at the end of this month and advised that he would like to provide complaint information to his class as well and inquired if it was public information. He informed the Council that he will withhold the names from his information but would like to provide the details of both the disciplinary complaint and the disciplinary outcomes. Ms. Davis-Oliva added that all complaints are public information and that Mr. Loomis can contact the Division to obtain that information.

ASC Field Review for 2011

Mr. Neal Fenochietti introduced his self and Ms. Vicki Ledbetter and then provided some background information regarding what the Appraisal Subcommittee (ASC) does during their field review process for each state. He advised that the ASC develops policy statements that measure the compliance of state regulatory bodies according to Title XI. He advised that after his presentation he will touch on the new Dodd-Frank bill that has been recently enacted.

Mr. Fenochietti first stated that the Delaware Council's complaint process is now in compliance according to this current field review for the State. In 2009, when the ASC last completed the field review, the complaint process was an area out of compliance. Mr. Fenochietti added that the Division staff was very professional and courteous during the entire review process.

To begin, Mr. Fenochietti stated to the Council a couple of regulations that flagged concern during the ASC field review. Mr. Fenochietti questioned Rule 2.5.4's requiring compliance with continuing education at the time of renewal when there exists a justifying reason for noncompliance with the CE requirements. He advised the Council to take caution when enforcing this regulation and to consider clarifying it in their future rule changes.

Regarding Rule 2.5.6, Mr. Fenochietti advised that business courses related to real estate appraisal have been removed from the continuing education listing by the AQB as they do not relate to the professional appraisal process. Mr. Fenochietti recommended the Council remove that topic from this course listing in the regulation.

Mr. Fenochietti noted that in reading the minutes, some discussion was had by the Council regarding changing or altering the statutory language regarding the definition of licensed appraiser. Mr. Diveley advised of the Council's ultimate determination to change as the Council was unaware of the definition provided by Title XI. Mr. Fenochietti reviewed the ASC's definition for the Council as stated in Title XI. He cautioned the Council to be sure not to change the language of the definition other than what the Federal statute requires. Mr. Parker inquired if the ASC could offer a solution to clarify this definition for licensed appraisers for the Council. Mr. Fenochietti advised that while the ASC cannot provide a solution per say they can offer the Council a suggestion to mirror the language and add to it by clarifying the definition. Mr. Parker and Mr. Huston advised that they did add to the current language with clarification and did not change the current definition. Ms. Ledbetter advised that the Council can make the language more stringent by adding a caveat or limitation specific to the state but could not change the language of the Federal law that is required. Mr. Fenochietti cautioned the Council to stay with their original definition but consider only adding to that definition specifically for Delaware, i.e., by adding that Delaware licensed appraisers cannot appraise property with a market value of more than one million dollars so that the language is clear and still complies with the federal standard.

Mr. Collins clarified that Mr. Fenochietti's reading of the federal statute's use of the term "value" is interpreted to be "transaction value" because the statute says value in the definition. Mr. Neal clarified that the federal statute states "a federally related transaction value." There was additional discussion.

Mr. Neal advised the Council to look to both Title XI and the new Appraisal Qualifications Board (AQB) criteria when developing new rules and regulations so that regulatory amendments are not conflicting with the Federal regulations and law.

Mr. Fenochietti advised that temporary practice permits must be issued in a timely manner, five days after receipt of temporary permit application. This was another area of concern. However, he advised that the Council's reporting to the national registry was compliant. He advised that all discipline reporting is current and timely reported.

In regard to applications, Mr. Fenochietti stated that applications appeared to be in order and following the AQB requirements and federal requirements. The signature and state certification of the supervising appraiser must be on the log and the current log for the State does not have this requirement. Mr. Diveley inquired if each page of the experience log must have the signature. Mr. Neal advised that the AQB is still discussing that matter and at this time it is not required, but most states require the signature and certification number be included on each page.

Mr. Fenochietti advised that reciprocity is highly encouraged by the ASC and that he was glad to see Delaware is open to endorsement by any state so long as they meet the Delaware's requirements. This area is compliant.

During the continuing education review, Mr. Fenochietti questioned the Council about reviewing USPAP courses and how they verify that the instructor is both an AQB approved USPAP instructor and a certified appraiser. He advised that the Council can check the AQB website for certification. Ms. Williams stated that she will amend the application to include language that the instructor must be AQB certified and a certified appraiser.

Mr. Fenochietti inquired if the Council has used the AQB core curriculum matrix for approval of qualifying education courses. He advised that his recommendation will be that review of education is in compliance. Mr. Fenochietti concluded his comments regarding the field review.

Mr. Parker inquired from the ASC about the trainee being penalized for the supervising appraiser's infraction. Mr. Fenochietti advised that the matter is a difficult issue to resolve as he sees both points of view and advised that he would have to refer to the AQB on that matter as the ASC has no position on that matter. Mr. Fenochietti suggested giving an advisory letter to the supervisor or a recommendation of taking remedial courses. Ms. Ledbetter advised the Council to see page 10 of the AQB criteria regarding this matter of supervising appraisers with disciplinary sanctions. Mr. Fenochietti advised the Council of the third exposure draft coming out by the AQB in a couple of weeks and strongly advised the Council to comment on that exposure draft.

Mr. Fenochietti clarified that disciplines of fines or remedial education are not viewable by the public but only by other state regulatory bodies. The contact for retrieving that type of information would have to be from the State regulatory body. The private side of the national registry is only accessible by another regulatory body, not by the public.

Mr. Huston inquired about how many states have adopted the discipline matrix from the AQB. Mr. Neal advised that most states are using it as a guide but are tweaking it to tailor specifically to their state's standards.

Mr. Neal opened the floor to the Council regarding questions about the Dodd-Frank bill. Mr. Neal opened the floor to any additional questions or comments by the Council. The Council and the ASC discussed briefly the new changes with the Dodd-Frank bill.

The Council thanked the ASC for their presentation and review comments. There was no further discussion.

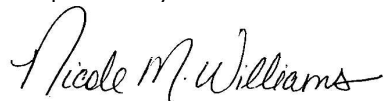
Next Meeting

The next meeting is scheduled for April 19, 2011 at 9:30 a.m. in Conference Room A second floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Adjournment

Mr. Mandato made a motion, seconded by Mr. Parker to adjourn the meeting. There being no further business before the Council, the meeting adjourned at 11:50 a.m.

Respectfully submitted,



Nicole M. Williams
Administrative Specialist II