March 13, 1998

Mr. Stewart A. Leach, Program Administrator
Board of Real Estate Appraisers
Division of Real Estate
State of Colorado
1900 Grant Street; Suite 600
Denver, CO 80203

Dear Mr. Leach:

Thank you for your February 9, 1998 memorandum reque ting oursreview of House Bill 98-1282 ("bill"), which you enclosed. We received your request by fax on February 9, 1998. Please excuse our delay in responding We. understand that the bill would place the Board of Real Estate Appraisers' ("Board") "under the direction and supervision of [its] principal department [,] *i.e.*,   "
the Division of Real Estate, and it would place "any powers, duties, and functions not specifically vested by statute in the [Board], including, but not limited to, all budgeting, purchasing, planning, and related management functions . . . under the direction and supervision of the head of the [Real Estate] Division." The bill also would delete language finding that the Board's current structure "will provide the autonomy necessary to avoid potential conflicts of interest between the responsibility of the [ ]oardB . . and the responsibility of the division in the regulation of real estate brokers and salesmen . . . ." You are concerned that the Bill might affect the Board's independence.

We share your concerns. Appraisal Subcommittee ("ASC") Policy Statement 1 sets out our standards regarding the structure and independence of State appraisal regulatory agencies. As you know, ASC Policy Statements interpret Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Policy Statement   , in pertinent part, states:

> The ASC does not impose any particular organizational structure upon the States. It is recognized that each State may have legal, fiscal, regulatory or other valid constraints that determine the structure and organization of its [State appraiser regulatory agency ("State agency")]. States, however, should adopt and maintain an organizational structure for appraiser certification licensing and supervision that avoids conflicts of interest or the appearance of such conflicts. Ideally, States should maintain totally independent State agencies answerable only to the governor or a cabinet level official who has no regulatory responsibility for real estate licensing/certification, promotion, development or financing functions ("realty related activities"). A State, however, may choose to locate its State agency within an existing regulatory body. Any State with its appraiser regulatory function in a department that regulates realty related activities must ensure that adequate safeguards exist to protect the independence of the appraiser regulatory function.
>
> A State agency may be headed by a board commission or individual. The organizational structure should provide maximum insulation for the State agency from the influence of any industry or organization whose members

have a direct or indirect financial interest in the outcome of the agency's decisions.

Persons appointing officials to a State agency should not be associated or affiliated with an affected industry, i.e., they should not have a direct or indirect financial interest in realty related activities. A State agency head, appointed by the governor and confirmed by the State legislature, would generally be considered independent.

* * *

The ASC strongly urges that State agency decisions, especially those relating to license or certificate issuance, revocation and disciplinary actions, not be made by State officials who also are responsible for realty related activities. State officials should accept and implement the actions of the appraiser board unless they are inconsistent with the public interest and trust. Additionally, such State agency decisions should be final administrative actions subject only to appropriate judicial review.

Please keep us informed about the status of the Bill. If you have any further questions, please do not hesitate to contact us.

Sincerely,

Ben Henson
Executive Director