

FROM

(TUE)MAY 2 2006 16:35/ST. 16:34/No. 6880075356 P 2



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May 2, 2006

**VIA FIRST CLASS MAIL, FAX NO. 202-293-6251
AND EMAIL ben@asc.gov**

Ben Henson, Executive Director
Appraisal Subcommittee
2000 K Street N.W.
Suite 310
Washington, D.C. 20006

RE: Commonwealth of Pennsylvania, Bureau of Professional and Occupational
Affairs v. [DELETION], File No.: [DELETION, Docket No.: [DELETION]

Dear Mr. Henson:

On behalf of Kenneth W. Lee, the attorney for [DELETION], and the Commonwealth of Pennsylvania, Department of State, Prosecution Division, this is a request for an opinion/ruling of the Appraisal Subcommittee ("ASC") in regard to an issue concerning passing test scores on an appraisal examination. The specific inquiry is whether the ASC would assign a negative inference to the Pennsylvania State Board of Certified Real Estate Appraisers' (the "Appraiser Board") standards enforcement by determining that the Appraiser Board's actions would be inconsistent with the policies, practices or procedures under Title XI of the Federal Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. Sections 3310-3352, if the Appraiser Board were to allow a certified real estate appraiser to continue to possess her certificate where:

- The appraiser took the national uniform certified residential real estate appraiser examination and was issued a passing score report immediately after completing the examination,
- The Appraiser Board issued a certificate to the appraiser several days later based, in part, on the passing score report, and
- Respondent otherwise complied with the application requirements for certification and recertification,

BUT WHERE

- The testing service has since alleged that the passing score report was issued in error because:
 - the cut score was allegedly set at 75 as far back as 1997,
 - the cut score was allegedly inadvertently set at 70 for the particular test given to the Appraiser and others during a 2 1/2 month period
 - the Appraiser scored a 72
- The Appraiser Board has not published, by regulation or otherwise, the necessary score to pass the examination,
- At least one other state (Ohio) approved by the ASC references a passing score of 70 on the national uniform residential appraiser examination in its regulations, Ohio Administrative Code §13011-11-3-05(G),
- Neither FIRREA, the regulations promulgated there under, nor the criteria set by the Appraiser Qualifications Board provide for a minimum passing score for the national uniform examination, and
- FIRREA, per Section 3345(e), reserves unto the states discretion as to test qualifications/scores.

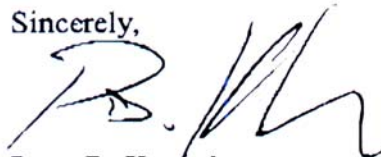
The parties to a disciplinary matter are attempting to determine the scope of any flexibility the Appraiser Board (and consequently, the Prosecution Division) enjoys in determining the "passing score" so as to be able to properly negotiate the resolution of the pending matter.

FROM

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If you have any further questions or concerns, please feel free to contact me at the above address.

Sincerely,



Peter D. Kovach
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State

POK/pdk

cc: Denise Graves (via email denise@asc.gov)
Kenneth W. Lee, Esquire (via fax no. 717-232-6802)

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