

■ ■ ■ ■ ■ ■

Appraisal Subcommittee

Federal Financial Institutions Examination Council

April 21, 1999

Philip McGinnis, Chairperson
Division of Professional Regulation
Council of Real Estate Appraisers
Cannon Building, Suite 203
P. O. Box 1401
Dover, DE 19903

Dear Mr. McGinnis:

Thank you for your assistance in the March 15-16, 1999 Appraisal Subcommittee (“ASC”) review of Delaware’s appraiser regulatory program (“Program”), including the Council of Real Estate Appraisers (“Council”) and Division of Professional Regulation (“Division”).

Our review revealed serious weaknesses in Delaware’s Program. Improvements are needed in the following areas:

- **Complaint investigation and resolution practices are ineffective.**

Sections 2938, 2939, and 2940 of Title 29, Subchapter II of the Delaware Code (“Code”) provide the Council with clear authority to receive complaints, make probable cause determinations, hold hearings and determine disciplinary sanctions. As discussed below, this authority, in practice, has not been implemented appropriately.

The Council received 20 appraiser-related complaints from 1994 through 1998. All complaints have been resolved. We reviewed 11 of the 20 complaints. Complaint investigation and resolution time periods ranged from six to 33 months, with most cases taking about a year.

No complaints have ever reached the Council for hearing. In fact, all cases but one have been dismissed by the Division on recommendation by either the Division’s Investigative Section (“Section”) or the Office of the Attorney General. Only one case resulted in a consent agreement, which was negotiated between the appraiser and an investigator in the Section. The Section, in practice, closes complaints without recommendation from, or review by, the Council, and the Council receives no status or disposition reports from the Section.

The Section has four investigators reviewing complaints. Three have no Uniform Standards of Professional Appraisal Practice (“USPAP”) training and one is a former appraiser Trainee, with minimal USPAP training. Complaints are assigned to them on a rotating basis.

Some of the complaint files noted they were closed because there was no “harm to the public.” For example, in 1996, the Council’s Administrative Assistant filed a complaint regarding an appraiser who was awarded a certified general credential on the basis of unsupervised experience that was outside the appraiser’s scope of practice under Delaware law. The Council voted, at its May 21, 1996 meeting, to refer this matter to the Section. The investigator closed the case without action because, although the facts in the complaint were accurate, *i.e.*, the appraiser was not qualified to perform appraisals at the certified general level, there was “no harm to the public.” We disagree with this philosophy. A violation, regardless of severity, should not be dismissed out of hand. Such actions should be investigated and

appropriate sanctions ordered. If statutory, regulatory, or USPAP violations are proven to have occurred, action must be taken.

To address these problem areas:

1. The Council, Division, and Section need to balance their duties and responsibilities for protecting the public with their responsibility under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“Title XI”), to effectively supervise licensed and certified appraisers by ensuring their compliance with USPAP;
 2. The Division needs to recognize, in practice, that only the Council is authorized under State law to take disciplinary action against State certified or licensed appraisers;
 3. The Council, Section, and Office of the Attorney General should take steps to establish meaningful communications and reporting mechanisms between them. The Council member assigned as contact person for a complaint should play an active role in assisting the Section in its duties regarding appraiser-related complaints, and investigators should not close cases without Council knowledge with no action or upon settlement agreement;
 4. The Division must assure that all investigators have adequate USPAP training; and
 5. Complaints should be investigated and resolved in a timely manner.
- **National Registry data and fees are not submitted properly.**

The Council does not submit National Registry data or fees to the ASC in a timely manner. The submitted data often is inadequate or incomplete and, sometimes, misleading, resulting in inaccurate invoices and the listing of appraisers on the National Registry who have not paid Registry fees. The Council must submit accurate National Registry data on a monthly basis and remit Registry fees as provided in sections C and D of ASC Policy Statement 8.

Delaware allows appraisers to opt on and off the National Registry at different times during the State’s two-year credentialing cycle, resulting in appraisers who have active licenses but are legally ineligible to perform appraisals in connection with federally related transactions. House Bill No. 65, which is scheduled for introduction in the Delaware House of Representatives on April 20, 1999, if passed, would require certified and licensed appraisers to pay the National Registry fee. In effect, it would eliminate an appraiser’s ability to opt on or off the National Registry. If the bill does not become law, the Council will need to recall all appraiser credentials for appraisers who are not eligible to perform appraisals in connection with federally related transactions and overstamp the credentials with “Not Eligible To Appraise Federally Related Transactions” as specified in ASC Policy Statement 8. Additionally, the Council will have to notify all lending institutions requiring appraisals in Delaware of the dual licensing status in Delaware. The Council must keep the ASC informed of the progress of House Bill No. 65.

- **File Documentation is inadequate.**

Documentation in the complaint files was incomplete. In some instances, ASC staff could not determine why complaints were closed. A similar problem existed regarding the Council’s review of educational providers and instructors. Our staff could not locate the criteria used in this process, even though Council staff believed that such criteria exist. In addition, education files did not contain documentation supporting why courses were disapproved, and no documentation existed regarding the instructor review/approval process. Lack of documentation also was found in the application review process. Application files were incomplete. Some did not contain any documentation indicating that a review was performed. Others did not indicate whether

applicants were issued credentials. The Council and Department must clearly document their appraiser-related actions in appropriate files.

- **Temporary practice does not conform to Title XI.**

The Council issues temporary practice permits for less than a six-month period and does not provide for an “easy” time extension as required by ASC Policy Statement 5. While § 2937(a)(1) f.(2) of Title 24 of the Delaware Code authorizes the Council to issue temporary practice permits on an assignment basis, permits are issued with expiration dates based on a much shorter time frame, in almost all cases, days or weeks. The Council must modify its regulations, if necessary, and its practices to issue temporary practice permits for a minimum of six months and provide for at least one “easy” extension, as required by Title XI and ASC Policy Statement 5.

The Council “approves” temporary practice permits at regularly scheduled meetings. The action taken at the meetings appears confusing as the Council believes that it is approving temporary practice permits when, in fact, it is ratifying the prior issuance of permits by the staff. We did not discover any instance where the Council disapproved or failed to ratify the issuance of a temporary practice permit. To avoid confusion, however, the Council should clarify that staff temporary practice permit issuances are final Council actions under delegated authority, and that the Council is acknowledging these actions and not approving them.

- **Reciprocity agreements do not exist.**

Delaware awards reciprocity on a case-by-case basis, *i.e.*, by endorsement. It does not have reciprocity agreements with other States. The Council does not believe that it has the authority to enter into such agreements. House Bill No. 69, which is scheduled for introduction in the Delaware House of Representatives on April 20, 1999, will, if passed, provide the Council with clear authority to enter into reciprocal agreements. Please keep us advised regarding the status of this Bill.

Please respond to our findings and recommendations within 60 days from the date of this letter. Until the expiration of that time period or the receipt of your response, we consider this field review to be an open matter. After receiving your response or the expiration of the 60-day response period, whichever is earlier, this letter, your response and any other correspondence between you and the ASC regarding this field review become releasable to the public under the Freedom of Information Act and will be made available on our Web site.

If you have any questions, please contact us.

Sincerely,

Herbert S. Yolles
Chairman