

BOARD OF ELECTRICAL EXAMINERS
REAL ESTATE COMMISSION
BOARD OF PILOT COMMISSIONERS
BOARD OF ACCOUNTANCY
REGISTRATION FOR PROFESSIONAL LAND SURVEYORS
BOARD OF EXAMINERS OF ARCHITECTS
BOARD OF CHIROPRACTORS
BOARD OF COSMETOLOGY AND BARBERING
BOARD OF DENTAL EXAMINERS
BOARD OF MEDICAL PRACTICE
BOARD OF NURSING
BOARD OF EXAMINERS IN OPTOMETRY
BOARD OF PHARMACY
BOARD OF PLUMBING EXAMINERS
EXAMINING BOARD OF PHYSICAL THERAPY
BOARD OF PODIATRY
ADULT ENTERTAINMENT COMMISSION
COUNCIL ON REAL ESTATE APPRAISERS
GOVERNOR'S MAGISTRATE SCREENING COMMITTEE



STATE OF DELAWARE
DIVISION OF PROFESSIONAL REGULATION

CANNON BUILDING,
861 SILVER LAKE BLVD., STE. 203
DOVER, DELAWARE 19904-2467

BOXING LICENSES
GAMING CONTROL BOARD
BOARD OF REGISTERED GEOLOGISTS
BOARD OF LANDSCAPE ARCHITECTURE
DEADLY WEAPONS DEALERS
BOARD OF EXAMINERS OF PSYCHOLOGISTS
BOARD OF FUNERAL SERVICES
BOARD OF VETERINARY MEDICINE
BOARD OF EXAM. OF NURSING HOME ADMIN.
BOARD OF EXAMINERS OF SPEECH/LANGUAGE
PATHOLOGISTS, AUDIOLOGISTS AND
HEARING AID DISPENSERS
BOARD OF CLINICAL SOCIAL WORK EXAMINERS
BOARD OF PROFESSIONAL COUNSELORS OF
MENTAL HEALTH
BOARD OF OCCUPATIONAL THERAPY
PHYSICIAN ASSISTANT ADVISORY COUNCIL
BOARD OF MASSAGE AND BODY WORK
COMMITTEE OF DIETETICS/NUTRITION
RESPIRATORY CARE PRACTICE ADVISORY COUNCIL

TELEPHONE: (302) 739-4522
FAX: (302) 739-2711

August 24, 1999

Mr. Ben Henson
Appraisal Subcommittee
Federal Financial Institutions Examination Council
2000 K Street, NW
Suite 310
!



Dear Mr. Henson:

I am following up your letter of July 13 to Philip McGinnis, chairman of the Council on Real Estate Appraisers, in an effort to clarify apparent misunderstanding of the information in Mr. McGinnis's letter of June 15. Let me take this opportunity to provide additional detail regarding the role of the Division of Professional Regulation which applies not only to the Council on Real Estate Appraisers, but also to the other professional licensing entities which appear above on our letterhead.

The Division of Professional Regulation is an umbrella agency established under 29 Delaware Code, Section 8807 (formerly Section 8810) which has "administrative, ministerial, budgetary, clerical and *exclusive* [emphasis added] investigative functions" for boards and commissions. Please note that in the enabling statute for the Council on Real Estate Appraisers, at 24 Delaware Code, Section 2938, the first sentence of that section says, "All complaints shall be received and investigated in accordance with §8810(h) of Title 29." A copy of §8807(h), formerly §8810(h), is enclosed.

Thus, the investigative procedures called for in the statute are those being followed. Accordingly, the investigation is conducted by the Division of Professional Regulation, which is empowered to close investigations or to forward **them to the Office** of the Attorney General. An investigation forwarded to the Office of the Attorney General is reviewed and is subject to the absolute discretion of the Attorney General to dismiss a case, reach a consent agreement or prosecute the case before the appropriate

With respect to consent agreements, the earlier April 21 letter from Herbert Yolles made reference to a "consent agreement which was negotiated between the appraiser and an investigator..." That statement is incorrect. As the paragraph above indicates, consent agreements are negotiated by the deputy attorney general assigned to prosecute a complaint, never by an investigator.

I am somewhat puzzled by the second paragraph of your July 13 letter which begins, "In our April 2 [sic] letter, we noted that the Delaware Code provides the Council of [sic] Real Estate Appraisers with clear authority to receive complaints, make probable cause determinations, hold hearings and determine disciplinary sanctions." The Council is indeed clearly authorized under §2934(b)(3) to "conduct hearings upon charges calling for discipline..." and under §2939 to "impose any of the following sanctions..." which range from a reprimand to revocation of a certification or license. However, the Council's duty to hold hearings and impose sanctions can only proceed upon a decision by the Attorney General to prosecute a complaint before the Council.

There may be some potentially contradictory language in the statute in that §2938 begins with the sentence quoted above that "All complaints shall be received and investigated in accordance with §8810(h) of Title 29" and then follows along later saying "The Council may investigate the actions of a...real estate appraiser..." As explained above, we follow the clear language of the first sentence.

Your letter of April 21 also talks about the Council having authority to "make probable cause determinations." I must assume you are inferring that power - those words do not appear anywhere in the statute. Therefore, we rely upon the explicit powers of the Division of Professional Regulation with respect to the investigation of complaints.

You may be interested in knowing that at one time a number of years ago, boards and commissions in Delaware did investigate complaints. The numerous due process problems caused by a system in which board members, who were not trained as investigators, both investigated the complaints and then judged their own evidence led to the statutory changes creating the system now in the Delaware Code.

Our present system basically follows the model of the criminal justice system: the investigators, who are all retired law enforcement officers, serve the investigative function of the police in the criminal system; the civil prosecutor from the Attorney General's Office serves the same function as a criminal prosecutor; and **the Council acts** as judge and jury. The fact that only one contact person, who is subsequently recused should a case go to a hearing, has knowledge of the facts of the **case and the identity of** the individuals involved serves to keep the Council unbiased until it hears the evidence and renders a judgment based on that evidence. To us, this system of separating **the roles of** investigation, prosecution and judgment is superior to the old one.

As I review the bulleted items on the first page of your July 13 letter. I am perplexed by the continued failure of either explanations offered in person during the field review or the explanation offered in Mr. McGinnis's June 15 letter to hour any

field review or the explanation offered in Mr. McGinnis's June 15 letter to have any effect on the preconceptions or misperceptions expressed there. However, let me address each bullet:

- o Complaints have indeed reached the Council in the form of consent agreements negotiated by the prosecuting deputy attorney general and subsequently approved by the Council or disapproved by the Council and renegotiated by the prosecutor. The negotiation of consent agreements by the Attorney General and dismissals of cases by the Division of Professional Regulation and the Attorney General are within the authority of both agencies - again I refer you to the enclosed 29 Del. C., Section 8807(h).

- o The authority in 29 Del. C., Section 8807(h) is exercised prior to a complaint reaching the Council, and the exercise of that authority is not subject to review by the Council. The statement that "the Council receives no status or disposition reports..." is erroneous. Copies of final reports of investigations are forwarded to the contact person for each complaint, as set out in the statute referenced above.

- o The Division of Professional Regulation has six investigators, all of whom have extensive investigative backgrounds from their careers in city, state or federal law enforcement. There is absolutely no need to have all of the investigative staff trained in USPAP given the small number of complaints generated and the availability of a Council contact person in the event that a complaint is of such a complicated nature that the investigator needs technical advice or assistance. Ironically, the Division has been questioned in the past by the Joint Sunset Committee of the Delaware General Assembly for having a Council-licensed individual conducting investigations.

- o The closing of a case due to "no harm to the public" is an appropriate exercise of the discretion inherent in the authority of either the Division of Professional Regulation or the Attorney General. Please note the second paragraph of this letter and the enclosed copy of the pertinent statute.

- o Complaint investigation and resolution times can be extensive depending upon the total number of complaints pending before this Division at any time, the need to prioritize cases of an urgent nature or cases involving multiple complaints against a licensed professional, as well as the many competing demands on the resources of the Attorney General's Office. In any event, the provision of additional staff to this Division or to the Attorney General is solely within the purview of the Governor and General Assembly of Delaware.

Your letter also indicated that you found no documentation of dismissals being reported to the Council. That statement is not accurate: those dismissals are recorded in meeting minutes, as the examples enclosed indicate. Enclosed also are copies of the orders resulting from complaints which were resolved with consent agreements.

With respect to the pending legislation, House Bills 65 and 69, both bills passed the Delaware House of Representatives and are pending in the Delaware Senate. The Delaware General Assembly returns to session in January, 2000.

The Division of Professional Regulation acknowledges and accepts responsibility for the confused documentation with regard to the Federal Registry. Those duties have now been assigned to a different staff person with proven abilities.

The biennial licenses for the licensees of the Council on Real Estate Appraisers expire in October, 1999. When the Division sends out renewal notices, licensees will be notified of a requirement for both payment of the biennial license fee and payment of the federal registry fee for two years in order to renew the license. Subsequently, each new licensee will be required to pay the two-year fee. We believe that making licensure contingent upon payment of the two-year fee rather than requesting annual fee payments should alleviate the problem of non-paying licensees.

In closing, let me express my concern regarding the alarming number of misstatements in both the April 21 and July 13 letters. To whatever extent any of these misstatements are the result of inadequate communication on the part of this Division, I sincerely hope that the clarifications in this letter put this matter to rest.

Sincerely,



Carol Ellis
Director

Enclosures

cc: Members, Council on Real Estate Appraisers
Deputy Attorney General Sherry Hoffman