



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION



August 30, 2004

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Ms. Virginia M. Gibbs, Chairperson
Appraisal Subcommittee
2000 K Street, NW, Suite 310
Washington, DC 20006

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Dear Chairperson Gibbs:

Thank you for your letter dated June 7, 2004, summarizing the Appraisal Subcommittee review findings for Florida. First, I would like to commend the professionalism and knowledge demonstrated by your field review staff. They provided valuable guidance during the field review process. Additionally, the Department has continued to receive input from your staff every time we have requested guidance.

I have shared your findings with the staff of the Division of Real Estate, Office of the General Counsel, and Division of Service Operations, as well as the members of the Florida Real Estate Appraisal Board. Each program area has addressed the problems noted in the Florida appraisal program, and I am able to offer the following:

- The Department's process for issuing appraiser certifications does not have a reliable means for validating qualifying education and experience claims.

The Department takes your concerns regarding our application processing very seriously. The Division of Service Operations has proposed, and in many instances already implemented, changes to the business processes for applications to comply with ASC Policy Statement 10. The Department currently allows the use of affidavits attesting to the fact that the applicant has met the education and experience requirements for certification. Your findings indicate that some files did not contain the affidavits and that there has been insufficient effort to verify the veracity of the affidavits.

First, the Division of Service Operations has placed renewed emphasis on the necessity to maintain documents relating to the appraisal application process. The staff will ensure proper maintenance of the affidavits and other application documents. Second, the Department has taken steps to comply

with ASC Policy Statement 10 by ensuring that Florida has in place a reliable means of validating the attest statement claims regarding education and experience. We are mindful of the proposed changes to Policy Statement 10 that would prohibit the use of affidavits and will be proactive in planning changes to our process so that there is no delay in compliance. The Bureau of Education and Testing is also focusing on ways to monitor and validate pre-certification education in a manner similar to the system for continuing education.

Additionally, Florida Administrative Code Rule 4.005 establishes the Appraisal Board's method for verifying experience. The rule requires the Department to conduct experience audits of at least ten percent of applicants for initial certification. The Department has compiled the list of appraisers who were issued initial certified credentials on or after August 1, 2001 and conducted experience audits since the last field review. Unfortunately, the number of audits performed is less than the ten percent the rule requires. The Department has reassigned the staff with the most experience to expedite these reviews. The department has more than doubled the number of staff members assisting with the completion of the experience audits and is continuing to train additional employees. In order to address this issue in an ongoing manner the Department has developed an experience log form that will become a part of the application process.

- The Department does not have a reliable means of validating continuing education claims of appraisers applying to renew certified credentials.

The Department has been able to implement the electronic continuing education tracking system for the 2002-2004 renewal period. All continuing education providers are now required to submit student rosters electronically to the Department of Business and Professional Regulation. Therefore, the Department will monitor one hundred percent of the certified appraisers whose credentials were renewed on or after August 31, 2001 and are still licensed by the Department for continuing education obtained in the 2002-2004 renewal period. The electronic continuing education tracking system will not address the continuing education for the period of August 31, 2001 through November 1, 2002. Neither Licensees nor providers were required to maintain proof of completion of continuing education by statute or administrative rule prior to December 1, 2002. Therefore, the Department proposes to proceed with the prospective one hundred percent continuing education verification.

Further, the Department has elected to automatically place licensees in inactive status on November 30, 2004 if the continuing education requirements have not been completed. This includes the requirement to complete the 15-hour and 7-hour National USPAP courses or their equivalent. In order to be removed from inactive status (non renewed), a licensee will need to provide proof of completed continuing education and file a reactivation application.

- Florida has not adopted AQB criteria that became effective January 1, 2003.

During the 2003 legislative session, the Florida Legislature approved a substantial rewrite of Chapter 475, Florida Statutes. Pursuant to the changes, the Appraisal Board began an intensive rulemaking process for eighteen Appraisal Board rules. Florida Administrative Code Rules 4.001 and 4.003 address this issue. The Appraisal Board changed the rules to require completion of the 15-hour and 7-hour National USPAP courses or their equivalent. I am pleased to report that the amended rules are effective as of May 25, 2004. Also, course providers are now offering the required course.

The Department is identifying all certified appraisers who may have taken a course other than the 15-hour or 7-hour National USPAP course.

- Given the substantial backlog of cases, Florida's complaint investigation and resolution process does not comply with ASC Policy Statement 10.

The Department shares in your concerns regarding our aged case inventory. In order to enforce Chapter 475, the practice act for real estate appraisers, the department must comply with the Administrative Procedures Act, Florida Statute 120, which governs statewide administrative agency action. The Administrative Procedures Act is one of the most time intensive regulatory schemes in the nation and the Department is unable to take any actions, which are inconsistent with it. All cases must adhere to the following disciplinary process:

- (1) An investigator notices the licensee of the consumer complaint. The licensee has twenty-one days after notice to respond to the complaint. An assigned attorney prepares a recommendation for the probable cause panel of the Board in the form of a draft closing order or administrative complaint. The panel either finds probable cause of violation or closes the complaint. Following a finding of probable cause, the attorney serves it on the licensee by certified mail, by hand-service, or by publication over a four-week period.
- (2) The licensee has twenty-one days from the date of service to respond to the administrative complaint by either disputing or not disputing the complaint's factual allegations and electing a hearing. If facts are in dispute, the licensee may elect a hearing before an administrative law judge (ALJ) at the Division of Administrative Hearings (DOAH), for an adjudication of the facts. As parties, the Department and licensee may conduct discovery, introduce evidence, offer testimony, and cross-examine witnesses.
- (3) DOAH generally schedules hearings no less than 30 days and no more than 90 days after one is requested. Following hearing, the parties may submit proposed recommended orders (PROs) to the ALJ, who renders a decision

- (4) within 30 days after the hearing or receipt of the transcript. If the parties submit proposed recommendations more than 10 days after hearing or receipt of the transcript, the ALJ's deadline is waived.
- (5) Either party may file exceptions to the ALJ's recommended order within 15 days of the date it is issued. The prosecutor places the ALJ's recommended order on the board's agenda. The board office files the final order with the agency clerk and serves it on the parties to the action.

While the Administrative Procedures Act is by no means the sole reason for the number of aged cases, it is an obstacle to timely resolutions of administrative actions. The department is allocating additional legal resources to expedite the resolution process.

In recent years, the Department has experienced an unusual turnover in the investigative and legal sections of the Division of Real Estate. The complex nature of the appraisal process requires well-trained, highly qualified investigators and attorneys. The Division has retained qualified appraisal investigators and attorneys and placed an emphasis on educating these individuals. For instance all investigators and attorneys for the Division of Real Estate received seven hours of USPAP education in December of 2003. Half of the attorneys have completed a two-day appraisal training course since the field review.

Since the field review, the uniform complaint document has been amended to easily identify appraisal complaints in our incoming mail. The goal of the complaints department is to review those complaints the day of receipt to ensure that the investigation begins immediately. To aid in more rapid investigation, the Division of Real Estate has identified and further trained our brightest appraisal investigators and assigned them to an appraisal task force. The primary goal of the task force is to substantially reduce the time required to complete appraisal investigations. The task force is traveling the state, attacking the more complex appraisal cases.

The Department has shifted the appraisal attorney's workload in order to shorten the length of the administrative process and comply with the ASC Policy Statement 10.

Additionally, the Appraisal Board has joined our efforts to address this concern by scheduling additional probable cause meetings, expanding general meetings to ensure more time to resolve legal cases and exploring other methods of increasing efficiency.

- Florida's regulations and approval process for distance education courses are not consistent with the AQB criteria.

Florida Administrative Code Rule 61J1-4.003 addresses this issue. Changes to this rule were adopted on May 25, 2004, which will encompass the AQB requirements for

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distance education. As there are courses currently approved for distance education that did not meet said requirements, the Department is proposing to allow a six-month grace period, which will enable providers to obtain IDECC (or its equivalent) approval.

- Temporary practice permits are not issued within five business days as prescribed by the ASC Policy Statement 5.

While this has been an ongoing issue for the Department, currently all temporary practice permit applications are processed as top priority. To further reduce the processing time, the Department is proposing technological changes to allow application approval prior to money validation. As the processing delay appears to be between application receipt and validation, this new procedure would allow the approval of the application prior to money validation. Upon approval the revenue section would be notified to validate the monies and apply them to the application record.

Also, the Department now relies on the National Registry to verify the status of the temporary permit applicant in lieu of requiring a letter of good standing. This further reduces processing time of the applications.

I trust that the information in this letter serves to assure you of Florida's commitment to compliance. I am confident that the follow-up visit will reveal a serious, concentrated effort by the Department and the Appraisal Board to ensure that Florida complies with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Sincerely,

A handwritten signature in black ink that reads "Diane Carr". The signature is written in a cursive, flowing style.

Diane Carr
Secretary
Department of Business and Professional Regulation