



**GEORGIA REAL
ESTATE
APPRAISERS BOARD**

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October 20, 2006

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Virginia M. Gibbs
The Appraisal Subcommittee
2000 K Street - Suite 310
Washington DC 20006

RE: The ASC's September 25, 2006, letter regarding compliance with Title XI
of the Financial Institutions Reform, Recovery, and Enforcement Act
(Title XI)

Dear Ms. Gibbs

**Georgia's appraisal regulatory program has been, is, and will continue
to be in compliance with Title XI.**

The ASC has alleged a contrary conclusion by incorrectly analyzing both federal requirements and the data it collected about Georgia's program. Why? Even if the ASC's specific allegations were accurate, any reasonable assessment of the full scope of Georgia's appraiser regulatory program would still find it "substantially compliant." Yet, as readers will see, even the ASC's myopic allegations are incorrect.

The most favorable feature of the ASC's work in the Georgia "field review" is that it led to the discovery of a few minor processing errors.

The most disturbing feature of the ASC's work in the Georgia "field review" is its express refusal to consider data that we supplied to it before it decided what allegations to make. That refusal brings into question the ASC's objectivity and causes us to rethink the level of our cooperation in any future "reviews."

The only realistic assessment of the ASC's work in the Georgia "field review" is that it wasted some of the ASC's abundant resources and that it squandered a significant amount of Georgia's modest resources in a virtually fruitless endeavor.

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The best hope for the ASC to play any worthwhile role in appraisal regulation is the adoption of a new approach to its "monitoring" and "oversight" responsibilities under Title XI. We have outlined a two-step process that can accomplish that change in the attached Exhibit 6. The ASC cannot be an effective regulator if it continues and expands its current "field review" program. That program only emulates the paper-pushing model of regulatory agencies that have failed in their missions.

We have corrected the minor processing errors the ASC's reviewers noted and will continue to seek to avoid such errors. However, as the attached Exhibits 1-5 demonstrate, the ASC has identified nothing in Georgia's operating policies and laws that conflicts with Title XI. Thus, the ASC should immediately retract the allegations in its letter and acknowledge that the Georgia appraiser regulatory program complies with the requirements of Title XI. Since the Georgia Real Estate Appraiser Board (GREAB) complies with Title XI, the allegations in the ASC's letter warrant neither further special action on our part nor any additional uncompensated demands on our time and resources.

For the Board



Charles Bramlett
Chair



Charles Clark
Real Estate Commissioner

cc: Ben Henson

Virginia M. Gibbs
October 20,2006

EXHIBIT 1

ASC Allegation #1 - Georgia issued certified appraiser credentials without ensuring that the applicants' experience was obtained over at least a 24-month or 30-month period as required by Appraiser Qualifications Board ("AQB") criteria.

GREAB RESPONSE

The GREAB does not believe that mistakes the ASC makes in maintaining and updating accurately the National Federal Registry mean that the ASC is non-compliant with Title XI. Similarly, processing errors we make do not constitute non-compliance with Title XI.

Allegation #1 is a prime example of how the ASC appears to assume that somehow processing errors are a deliberate attempt not to comply with Title XI. The facts do not support that notion. The GREAB did notify our application processing vendor of the AQB's criteria that the 2,000 hours of experience required to become a certified residential appraiser could not be earned in an average normal work year, but must be spread over two years (or over thirty months to become certified general). In fact, despite strong reservations about being a party to the enforcement of such anti-competitive criterion, at the ASC's behest, we changed the Affidavit of Experience that our applicants must sign to include a statement in which they affirm that they had earned their experience over twenty-four or thirty months. Our vendor has consistently contacted us about application anomalies. Thus, we know they have made their usual good faith effort to meet all of our requirements. When the field review staff raised a concern about this issue to the Board, we immediately directed that (a) our staff revisit our vendor's check list for processing applications (our vendor in turn immediately instituted new quality control standards) and (b) our staff check every application the vendor had processed since January 1,2003.

In our audit of 465 examination applications for certified classifications, we found that 412 of the candidates filed logs that correctly included appraisals with the required hours over the required periods of time. Fifty-three candidates filed logs that necessitated our sending letters requesting further data. The logs they filed with their applications for examination identified the required hours but apparently not over the AQB's required time period. Forty-five of the fifty-three indicated that they had sent us only partial logs with their original applications. Their original submission had focused on the required hours.

They have now submitted their complete logs that reflect they had completed the required hours of experience over the required time period prior to their making application. Eight of the fifty-three sent us new logs that reflected completion of the required hours but not over the required time before they made application for examinations (thus apparently making affidavits they had signed false). Three of the eight had the requisite twenty-four or thirty months by the time they applied for the classification, but had not had it when they signed the Affidavit. Four of the eight had the requisite twenty-four or thirty months by the time we re-evaluated their applications. The GREAB has imposed appropriate disciplinary actions on each of their classifications. One of the eight had not reached the required twenty-four month period of experience. The GREAB has disciplined his classification including restricting his authorization to practice to performing only the activity of a State Licensed Real Property Appraiser. We have revised issue dates of the eight as appropriate.

With slight variations in the numbers, we notified the ASC of these actions on September 11, 2006. The ASC's letter of September 25 stated that ASC members refused to consider that response in their deliberations. That letter made it appear as though the ASC did not want to let facts get in the way of messages it wanted to send. Why? Whenever we find an error in processing, does "substantial compliance" mean we are not to correct it until the ASC has decided how it wants it corrected?

Virginia M. Gibbs
October 20, 2006

EXHIBIT 2

ASC Allegation #2 - Georgia renewed certified appraiser credentials without ensuring that the applicants had taken the 7-hour National USPAP Update Course, as required by AQB criteria.

GREAB RESPONSE

The ASC and State regulators should tread carefully in their uncritical embrace of and enforcement of the AQB's anti-competitive (e.g. experience requirements and increased education), monopolistic (e.g. USPAP courses), and status seeking (e.g. degree requirements) criteria. In recent years, the Federal Trade Commission and the Department of Justice have pursued enlightened policies to encourage full competition in free markets. We doubt that the criteria and actions of the non-governmental private trade association Appraisal Foundation and its subsidiary, the AQB, in this area could withstand legal scrutiny from those agencies. Neither can the passive endorsement of those criteria and actions by the ASC and state regulators. Unfortunately, on these issues Federal and state regulators have sought refuge in that last sad bastion of the unthinking bureaucrat: "The law makes us do it."

Allegation #2 is based on an incorrect premise. Consider the following points:

1. The AQB's statement of its criteria expressly begins by acknowledging the right of the States to have more stringent requirements than the AQB adopts. Clearly, taking a fifteen hour course on the same subject matter offered in a seven hour format is a more stringent requirement and thus complies with Title XI. Indeed, we suspect the only reasons for a seven hour course are (a) to soothe the egos of more experienced appraisers who do not like to be seen in a course with beginners and (b) to increase profit levels for the Foundation since it collects the same fee from students for either course and presumably has lower costs in producing materials for the seven hour course.
2. The most common complaint our staff receives from appraisers is the lack of availability of seven hour courses. When they call, they often say "I can't find a seven hour course, but I can find the fifteen hour course." The ASC's allegation makes us believe that it would have us respond to that with: "Tough, that's your problem, not ours. You should have thought about it earlier." Are we to assume

that the ASC would have us deny renewal of their classifications and put them out of business until they find a seven hour course?

3. AQB certified instructors who teach the two courses tell us that the only difference in a seven hour course and a fifteen hour course is length and depth of coverage. In the seven hour course they focus on how the Standards have changed from last year. In the fifteen hour course they teach all of the content from the seven hour course and provide more in-depth coverage of all Standards. Rather than accepting the AQB's statements about the course on Standards, the ASC and its staff should take them outside the immediate purview of the AQB and see what actually is taught. Do not be duped by AQB arguments that the seven hour course covers content that differs significantly from that in the fifteen hour course.
4. Since the AQB created the seven hour course, the GREAB has allowed appraisers who choose to do so to take the seven hour course instead of a fifteen hour course. We will continue to do so unless (a) an appraiser chooses to take a fifteen hour course for professional improvement or for time constraint reasons or (b) the Board determines through its disciplinary proceedings that an appraiser needs to take the fifteen hour course. If an appraiser determines that she needs to revisit the Standards more thoroughly than the seven hour course does, are we to tell her that she may not use the fifteen hour course for USPAP continuing education (CE) credit, but that she must also take the seven hour course that covers some of the same material in an abbreviated fashion?
5. Prior to last year, Georgia law allowed appraisers to take either course. Legally, we can not retroactively require an additional course even if we thought it were appropriate. The ASC's remedy for what it inappropriately identifies as non-compliance is illegal in Georgia. Thus, we could not implement that remedy if we wanted to do so.
6. The AQB's requirement that every appraiser take a USPAP course periodically and that every appraiser pay it a fee to do so is unethical, if not illegal. Does the ASC really want to be a party to enforcing anti-competitive and monopolistic behavior by a private non-governmental trade association whose primary interest is to protect the financial position of its members?
7. Some ASC actions suggest that perhaps the ASC has concerns about whether the AQB has the legal authority to do what it does, We note that in the not too distant past the ASC asked attorneys from its department to opine that Title XI by implication does allow the AQB to set its broad-ranging "criteria." We disagree with that position. We also note that the ASC apparently also recognizes its shaky

legal basis since it has sent its officials to Congress to support the adoption of H.R. 1295 that includes a provision that would expressly expand the AQB's authority in this area.

In light of all of the above-cited points, Georgia is in compliance with Title XI and the ASC's allegation is wrong.

Virginia M. Gibbs
October 20,2006

EXHIBIT 3

ASC Allegation #3 - Georgia's regulatory requirements for reinstating lapsed appraiser credentials are inconsistent with AQB criteria.

GREAB RESPONSE

Allegation #3 is simply wrong. As a part of the ASC's rationale for this allegation, your letter notes:

In September 2005, the AQB issued an Interpretation stating that, prior to reactivation, credential holders in "inactive" status must complete all continuing education hours that would have been required if the credential had been "active," including the most recent edition of the 7 hour National USPAP Update Course, or its equivalent.

Our rule about which the ASC complains does not relate to "active" and "inactive" appraisers. Since 1990, our rules and practices have always required exactly what the AQB's 2005 "interpretation" states. If an appraiser is inactive, in order to activate, she must have completed all CE that she would have been required to complete had she been active. In our regulatory system an "inactive" appraiser is one who has met all of the requirements to renew a classification except completing CE requirements.

The Rule provision about which the ASC complains is predicated on an entirely different status and set of circumstances. It refers to a person whose classification is "lapsed," not "inactive." An appraiser whose classification has lapsed has not met any of the requirements for renewal of a classification. He is presumed to have abandoned the classification. In this circumstance, the GREAB decided that if the lapsing had been for an extended period of time, simply paying fees and taking a few CE courses would not be appropriate. Instead, such a person should take a more extensive and comprehensive course to refresh himself on the fundamental principles including USPAP.

We regret if we did not make this distinction clear to the "field review" team.

Virginia M. Gibbs
October 20, 2006

EXHIBIT 4

ASC Allegation #4 - Complaint Investigation and Resolution.

GREAB RESPONSE

The allegations in this section fail to provide a reasonable justification for the actions for which the ASC calls. In addition, they fail to take into account the limited resources at the state level as compared to the federal level. Simultaneously, they suggest a disregard for the due process rights of appraisers; and in pursuit of the "speedy justice" reasoning in "Statement 10," the analysis of the data gathered seems to reflect a desire to discredit our investigative efforts rather than to portray them accurately.

ASC "Statements" are not Title XI. While they may be useful to the ASC in attempting to determine what its position on an issue may be, they are not law nor are they the appropriate standard for measuring compliance with Title XI. While the ASC may certainly contend that our regulating is not consistent with its "Statements," it is incorrect and irresponsible to assert that therefore we do not comply with Title XI.

The ASC's "Policy Statement 10" also ignores the difference that a State's limited resources make in regulating any profession. That "Policy Statement" appears to assume that State regulatory agencies have the same abundant, unrestricted resources that the ASC enjoys. They do not. Consider three aspects of our situation (which may be better than most States):

1. Staff turnover will always impact caseloads. During the time period covered by the chart in the ASC's September 25 letter, we lost two experienced investigators to retirement and to another job opportunity. When they left, their pending cases fell to less experienced investigators with already heavy caseloads.
2. Compounding that problem, we had funding for only two investigative positions. The figures in the ASC's chart reflect a 40% increase in complaints from the first time period it identified to the second. During most of the second time period, all Georgia agencies experienced declines or no increase in funding due to a sluggish economy. The GREAB was no exception. Despite many administrative and procedural changes designed to help handle this increased workload, we were not able to handle the 40% increase as promptly as we would have preferred.

3. During this period the complexity of our cases also increased significantly. Mortgage fraud that had occurred extensively in Georgia began to surface in the *Requests for Investigation* that we received. Such fraud reflected appraisal issues and practices that are much more time consuming to investigate successfully.

Our time delays would have been even worse had the Real Estate Commission not been willing to share some of its resources to investigate more quickly some of the mortgage fraud cases in which the Commission and the Board had a common interest. We appreciate their willingness to do so, but we cannot rely on that as a constant resource.

The ASC's "Policy Statement 10" also appears to ignore due process rights of appraisers. Title XI does not waive the due process rights of real property appraisers. Thus, ASC "Statements" can not waive an appraiser's due process rights and should not encourage States to do so.

Your staff frequently uses the catch phrase "justice delayed is justice denied" to explain "Policy Statement 10's" one year time period for completion of investigation and prosecution. We too prefer quick resolutions. Whenever the facts permit, we process complaints as quickly as possible. As the figures in the ASC's chart indicate, over 95% of our cases meet or exceed the ASC's one year standard. Your staff has also told state regulators that the one year limit applies even if other state agencies and the courts become involved in the prosecution despite the fact that those agencies have other competing priorities.

Of course, nothing in Title XI supports those positions. In Georgia, we do not take lightly either allegations of wrong-doing by appraisers nor threatening a person's livelihood. We investigate thoroughly and act to stop wrong-doing. The Annual Reports that we have sent to the ASC each year reflect that on average in each of the last three years, despite the staffing problems cited above, our investigative staff has completed 501 cases per year. Last fiscal year in the area of mortgage fraud alone, we took fifty-five actions against appraisers found involved in mortgage fraud. We revoked classifications of forty-five appraisers, suspended two, fined and reprimanded six, and reduced two to lower classifications. These actions arose out of ninety-one Requests for Investigation (thirteen appraisers were named in multiple cases).

Yet, despite our aggressive actions against wrong-doers, when complaints suggest we should take action against an appraiser's livelihood, we act prudently. We practice due process. In doing so, we must take special care to be certain of our evidence. We must consider carefully whatever response an appraiser has to our inquiries before we bring charges. We must reasonably forebear what appears to be an appraiser's efforts to

unreasonably delay or frustrate the process. We must avoid arbitrary time limits that are not appropriate no matter how reasonable they may appear to those with abundant resources. Title XI does not require that we trample on others' due process in the name of speedy justice. We will not do so.

The ASC's chart in your letter regarding our investigations appears to reflect accurately our grand totals of investigations. We are uncertain whether your identified "Complaints outstanding for more than 1 year" totals include both cases under investigation and cases referred to the Attorney General for disciplinary action. In any event, we are not certain that the investigative case data we gave the review team is precise with regard to whether cases are "open" or "completed." Since the "field review," we have learned of some computer anomalies that make the open case data less reliable. For example, we have learned that in querying the system for some old cases, a first query produces a closed case and a second query on the same record will produce an open case. When we checked the actual files, we found that the cases were closed. In addition, a number of cases that we reported as "open" had in fact been "completed." Our investigative tracking system was developed in the 1980s and has had little change or updating since. We are in the process of developing an entirely new system for our investigations unit that should eliminate such anomalies with better technology.

Our supervisory staff has reviewed each case open more than a year. As of October 19, 2006, they identified that twenty-six cases are in some stage of the investigatory process and "open" for more than a year. Six of those cases involve certified appraisers. In addition, forty cases are in post-investigative status and at various stages of our formal disciplinary process. Eight of those forty cases involve certified appraisers. Two cases are still open because after the Board revoked the Respondent's classification, she continued to practice. The Board is seeking prosecution of those cases through the District Attorney for criminal violations of the Appraiser Act.

In addition, even if all of the data we gave the field review team were precise, the ASC's chart does not properly analyze the meaning of those numbers. The chart asserts that 25% of our investigative cases are "Complaints outstanding more than 1 year." That statement is true only if one considers open investigations (70 divided by 284). A more appropriate analysis of the data would indicate that less than five percent of all cases (70 divided by 1,518) are open for more than one year.

Finally, if your chart intended to identify only cases still in the investigative stage, then the twenty-six cases we have identified as in that stage on October 19, 2006, divided by 1,518 would indicate that less than two percent of all cases are still in that "outstanding for more than 1 year" status.

Virginia M. Gibbs
October 20, 2006

EXHIBIT 5

ASC Allegation #5 - Georgia failed to retain adequate documentation to support appraiser credentials and approved education courses.

GREAB RESPONSE

Allegation #5 is wrong. We did have the complete documentation for the seventy files that the review team examined. Unfortunately, it was in two locations. We simply had not merged the documents from the two locations. That has now been done. The "education course listings" to which the ASC letter referred are no longer paper records. Since January 1, 2003, our approved schools have submitted them to us electronically. They are in our computer system attached to the individual appraiser's record. Similarly, our examination provider submits examination results electronically. We see no need to generate a paper record of these documents to put in a paper file.

With regard to our education files, we do retain all documents our Rules require approved schools to submit to us. Our Rules require schools to retain copies of course descriptions, learning objectives, and other required data. Their failure to do so is a ground for disciplinary action. The GREAB has adopted rules to treat its approved course providers as the professional educators they are. They have responded with excellent work, and not one of them has had to be disciplined by the GREAB for Rule or Code infractions. In light of those rules that have been in place without incident since the early 1990s and adopted without objection from the ASC, we see no reason to increase the amount of paper we store.

Virginia M. Gibbs
October 20,2006

EXHIBIT 6

GREAB RECOMMENDED PLAN OF ACTION

Rationale

When our colleagues from other states have impugned the quality of the ASC's "field reviews" of their work, we have taken their remarks with a grain of salt. After reading the ASC's allegations in its September 25 letter regarding its "field review" of Georgia's regulatory program, we now understand how well founded their remarks were. By not properly analyzing the requirements of Title XI and the AQB and the data its reviewers gathered in Georgia, the ASC has inaccurately represented both federal requirements and our regulatory operations.

Title XI calls for the ASC to "monitor" state regulators. Other than the National Registry's program for fee collections, "field reviews" appear to be the ASC's sole method of "monitoring." However, given the content of the ASC's letters to State regulators after conducting "field reviews," those "field reviews" are actually more of a "gotcha" exercise than "monitoring." Effective monitoring can take many forms that are not nearly as intrusive and abusive as "field reviews" and are less costly.

Each year the GREAB sends the ASC a comprehensive Annual Report of our regulatory activities. The GREAB suspects that most other state regulatory agencies prepare or can prepare similar reports that will let the ASC handle its "monitoring" responsibilities less intrusively, more comprehensively, at less cost, and without the deleterious side effects that its "field review" program engenders.

Apparently, the ASC has little appreciation for the negative financial impact of its "field review" program on States with limited resources. The staff resources States have to expend to get ready for and to recover from that "field review" could be far better used to, for example, work on older investigative cases. While "field reviews" may have initially provided useful data to the ASC, they no longer result in constructive improvement of regulation. The ASC's plan to increase their frequency will only further sap the meager resources and energies of State regulatory agencies. The types of allegations the ASC makes from the data it gathers in "field reviews" will only increase ill-will for the ASC among State regulators.

The ASC administers a law that suffers from serious constitutional problems, and it works in a federal-state regulatory effort with no precedent. That enabling statute, the ASC's granting almost every request for money the Appraisal Foundation makes, the ASC's blacking out names of apparent wrong-doers when it supplies requested copies of audits of its grants to the Appraisal Foundation, and the actions of the ASC in publicly condemning state regulators - all reinforce the image of the ASC as simply a financing tool of The Appraisal Foundation, rather than a regulator.

Yet, the ASC should be making a major regulatory difference. To do so will require drawing on the imagination and effectiveness the ASC demonstrated in getting the whole appraisal regulatory scheme in place in the 1990s. That was a good start, not an end.

PLAN

I. The ASC:

- a. abandons its policy of "field reviews" and
- b. ceases funding the AQB to fly around the country to meet in closed session in order to generate anti-competitive and monopolistic criteria designed primarily to protect and promote the financial interests of existing practitioners and The Appraisal Foundation.

II. The ASC redirects all of the financial resources previously devoted to the activities in I. above into investments to:

- a. develop computer programs that support effective regulatory practices and offering them cost free to the States,
- b. identify effective model regulatory programs and encourage (not force) all States to consider implementing them,
- c. provide and fund training programs for investigators, and
- d. develop a strike force of investigators to be made available to States at their request when a State is hit unexpectedly by large numbers of complaints or unusual practices.

If the ASC believes that Title XI will not let it pursue possibilities such as those we outline above, then the ASC should find a way to get that authority.