



MONTANA DEPARTMENT OF COMMERCE

Professional and Occupational Licensing Division

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BOARD OF REAL ESTATE APPRAISERS (406) 444-3561

September 30, 1999

Herbert S. Yolles, Chairman
Appraisal Subcommittee
2000 K Street NW, Suite 310!
Washington, DC 20006

Dear Mr. Yolles:

On behalf of the Board of Real Estate Appraisers and the Montana Department of Commerce, we want to extend our appreciation to the Appraisal Subcommittee for the review on June 7-8, 1999 and the extension of time in which to respond. We provide the following response to the "serious weaknesses" identified in your letter of July 22, 1999:

- **Complaints are not resolved**

An internal audit of the complaint files in the office revealed the following

Fiscal Year	Received	Dismissals	Disciplinary Actions	License Denials	Contested Case Hearings Pending	Open
1994	14	13	1	0	0	0
1995	11	9	2	0	0	0
1996	14	12	2	0	0	0
1997	28	17	6	3	2	0
1998	35	19	2	2	12	0
1999	61	33	2	1	6	19
TOTALS	163	103	15	6	20	19

The complaint summarization was conducted on a fiscal year basis, i.e. July 1 to June 30. Records show that there were 15 signed Final Orders wherein disciplinary actions were taken against licensees. The types of disciplinary actions instituted included probationary periods, fines, remedial continuing education, and monitoring of practice. There are 20 complaints that are currently noticed and proceeding to a contested case hearing.

While the high turnover in the Division may have led to the conclusion that there has been a lack of effective legal assistance to the Board, the above statistics prove otherwise. The Department has successfully reclassified all of the attorney positions to achieve parity with other

state agencies. Of the past six (6) attorneys who have left the Division, two did so for personal reasons and four moved to other positions for higher pay. We feel that this current upgrade will help mitigate our high attrition. While the attrition may have contributed to the perception that there is an apparent lack of effective cooperation between the Board and the legal staff, the allegation that cases have not been prosecuted is erroneous.

Further, using the Attorney General's office for enforcement activities for the Board of Real Estate Appraisers or any of our Boards could create a conflict for that agency as the Division currently relies on the Attorney General for hearing officers to conduct all contested case hearings. Our current staff has amassed a thorough knowledge of Title XI and USPAP during their tenure. Jennifer Massman, Department Legal Counsel, has more knowledge of USPAP than any attorney currently assigned to the Attorney General's office. In fact, the Board would be losing considerable expertise at this point to transfer Board work to another attorney outside the Division.

The Board, with the assistance of the Montana Department of Commerce, makes every effort to investigate and resolve complaints in a timely and effective manner. However, once a Notice is filed, the Division has no control over the time it takes to resolve a contested case. It is entirely within the discretion of the Attorney General's office as to how quickly a case proceeds to conclusion.

We are prepared to submit a quarterly report to provide you with current information on all open complaints. A sample of the report will be sent to you under separate cover. We hope that the format will be suitable.

- **Board policy regarding temporary practice does not conform to Title XI and ASC Policy Statement 5.**

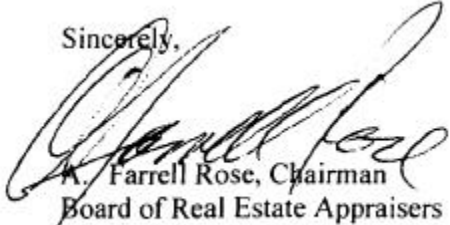
A review of the statutes governing the issuance of temporary practice permits has revealed that the Board does not have the authority to issue such a permit unless the appraiser has applied for permanent licensure in the State of Montana. The Board of Real Estate Appraisers has not adopted any rules governing the issuance of temporary practice permits. The Montana Legislature convenes every two years. The next session of the legislature will commence in January 2001. Until that time, the Montana Board of Real Estate Appraisers will not be able to issue temporary practice permits to applicants who have not applied for permanent licensure with the state. Applicants may apply for permits under the law governing reciprocity so long as the licensing standards in their original state of licensure are substantially equivalent or greater than the standards under which a Montana permit is granted.

- **The Board's file documentation needs to be improved.**

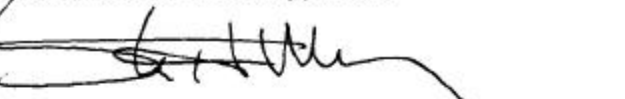
The Board and Department of Commerce concur that not all files were maintained in any particular order. The Department of Commerce has already filled the position of Board Administrator and the process of cleaning up the files has begun. Filing is sometimes a matter of "personal preference" and the Department will ensure that records are maintained in an orderly fashion. If there is a specific requirement in Title XI as to how files are to be maintained and what are considered "master" files, we would appreciate receiving a copy.

The Board and the Department of Commerce are prepared to answer any specific questions that you may have in regard to this response and would welcome a follow-up review to ensure that improvements have been made.

Sincerely,



A. Farrell Rose, Chairman
Board of Real Estate Appraisers



Stephen H. Meloy, Administrator
Division of Professional & Occupational Licensing
Department of Commerce

cc: Honorable Governor Racicot