

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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July 15, 1997

Mr. Herbert S. Yolles
Chairman
Appraisal Subcommittee, FFIEC
2100 Pennsylvania Ave, NW, Suite 200
Washington, DC 20037

Re: Your letter dated May 23, 1997.

Dear Mr. Yolles:

Thank you and your staff for the prompt written response concerning the recent review of the Texas Appraiser Licensing and Certification Board (TALCB) program. We appreciate the thoroughness and professionalism that Ben Henson and Vicki Ledbetter exhibited in performing the TALCB review.

The TALCB has carefully reviewed and considered the various Appraisal Subcommittee (ASC) findings and recommendations:

- Several deficiencies threaten the integrity of the Board's enforcement program.... For these reasons, the Board should:
 1. Ensure that all enforcement meetings by the Board and [Enforcement] Committee are documented, at a minimum, by meeting minutes. Additionally, all enforcement recommendations, decisions and other activities should be clearly documented. Committee reports should provide an explanation of why the action to dismiss or sanction an appraiser was taken, and the enforcement log should include a brief description of the nature of the case. The Committee should be instructed to refer to the log, note actions taken under similar circumstances and ensure that each case file contains a written record documenting the case's passage through the investigatory and decision making process.

TALCB Response:

Written minutes will be kept of all enforcement meetings with notations concerning actions taken or recommended and explanations and reasons for those decisions. A more detailed log of complaints (referred to as an enforcement log in your letter) will be developed and kept. Members of the Enforcement Committee may refer to the log to note types of actions

previously taken in similar complaints and circumstances.

2. Ensure that all complaint cases are reviewed, investigated and resolved in a consistent manner. The level of disciplinary action should relate to the severity of the violation.

TALCB Response:

As noted in 1. above, Enforcement Committee minutes and a more detailed complaint log, as well as increased awareness by the TALCB staff and Enforcement Committee Board members as to previous actions and determinations, should better assure that all complaint cases are reviewed, investigated and resolved in a more consistent manner.

3. Obtain necessary resources to ensure that professional investigatory and enforcement resources are available to the Board. The Board should make another specific request of the Texas Legislature's Appropriations Committee to amend the Board's budget to obtain the services of a professional investigator. Sufficient resources in these areas should help to ensure that complaints are investigated in a timely manner; investigations are conducted professionally; disciplinary actions are appropriate to the violations; and any resulting penalties are imposed uniformly. Additional resources also should help ensure that the enforcement process, as a whole, follows appropriate documentation standards and is consistent with both State and Federal Law.

TALCB Response:

Due to the timely (faxed) arrival of the Appraisal Subcommittee letter dated May 23, 1997, with findings and recommendations from the April 16-18, 1997, review of the TALCB program, the TALCB was able to secure appropriations for a 1.0 FTE (full time equivalent) enforcement/investigator position for FY-98 and FY-99. As you know, the Texas Legislature only meets every other year (in odd-numbered years) for 140 days. The 75th Legislature adjourned on June 2, 1997. A rider to the additional appropriation requires the TALCB to increase fees to cover the cost of the increased appropriation (both direct and indirect costs). We intend to have the new investigator position filled shortly after the start of FY-98 (September 1, 1997), and are currently reviewing various options for the investigator position.

The TALCB legal counsel, an Assistant Attorney General, will be asked to help develop more detailed procedures and formats for ensuring that adequate and appropriate documentation is kept and maintained. This may also include developing a standardized "litigation binder" for those complaints being referred to the State Office of Administrative Hearings (SOAH) for a formal hearing.

4. Review the current "peer review" process and initiate changes to improve the timeliness, consistency and effectiveness of the process. The Board should establish firm due dates for peer review reports. The Board also might consider using a single peer reviewer or creating a way to reconcile differences between peer reviewers before the reports are finalized.

TALCB Response:

Changes already have been made in the last few months to speed the peer review process, primarily by obtaining an advanced commitment by the peer reviewer(s) to review the appraisals and return the findings to the TALCB within 45-60 days.

The TALCB will be extensively reviewing the peer review process and effective ways to reconcile differences in the peer reviewers' findings in light of the ASC concerns. While some of the possible changes may be accomplished by Rule or policy changes, some may need to wait for the 76th Texas Legislature (January-June 1999) to effect changes in the Act regarding peer reviewers and the peer review process.

- Unreconciled differences exist between The National Registry of State Certified or Licensed Real Estate Appraisers ("Registry") and the State's appraiser roster.

TALCB Response:

We have reviewed the differences in the ASC Federal Registry records and our records with the Texas Real Estate Commission Department of Information Services and the Accounting Department, on whom we depend for accurate and timely data. Commissioner Liner's letter dated July 3, 1997, with the submission of the federal registry fees, should reconcile the ASC and TALCB federal registry fee records.

- Temporary practice permits expire 60 days after issuance, contrary to the ASC Policy Statement 5.

TALCB Response:

Section 15 (c) (3) of the Texas Appraiser Licensing and Certification Act (Act) specifies that "the appraiser's business in this state is of a temporary nature not to exceed 60 days." We do not believe that § I 5(c) of the Act violates the amended ASC Policy Statement 5 regarding temporary practice. Policy Statement 5 applies to appraisers from another State who are appraising property that is considered to be part of a *federally related transaction*. We believe that the 60-day time limit in §15(c) of the Act applies only to those out-of-state appraisers who are appraising in a non-federally related transaction. Note that nowhere in § I 5(c) is "federally related transaction" mentioned. Thus our law

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is in compliance with ASC Policy Statement 5 as it does not limit the time period to those appraising as part of a federally related transaction to less than six months.

Section 5(a)(1) of the Act specifies that the Board may "adopt rules for the licensing and certification of real estate appraisers in this state in accordance with this Act and consistent with, but no more stringent than, applicable federal law." The Board is in the process of reviewing its rules regarding temporary practice and will not limit those appraising real property in federally related transactions to less than six months in this State. The Board will also adopt rules to implement an effortless method by which the out-of-state appraiser may obtain an extension of the time period.

The Board agrees that the Act should be amended when the Legislature convenes in 1999 to specify the temporary practice time limits for both federally and non-federally related transactions.

We appreciate the ASC's review of the Texas program with your findings and recommendations. Your observations and guidance will help us make the TALCB more effective and efficient in carrying out its responsibilities and help Texas develop an outstanding program.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Benjamin E. Barnett
Chairman

Copy: Ben Henson, Executive Director