



## Real Estate Appraiser Licensure and Certification Board

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Governor Mitchell E. Daniels, Jr.

January 7, 2008

Dear Ms. Gibbs:

This letter addresses your November 15, 2007 letter regarding your October 2007 visit. During your staff's visit we had the opportunity to discuss many issues discussed in your July 2007 letter.

In your July 25, 2007 and November 2007 letter you stated, "Indiana approved continuing education courses that appeared inconsistent with AQB criteria and failed to document the continuing education course approval process".

In our May 2007 letter we stated the courses appearing inconsistent with AQB criteria were approved for Real Estate Broker and Salesperson continuing education. At the time these courses were taken Indiana Administrative Code 876 IAC 3-5-10, allowed courses from other professions to be accepted for appraiser continuing education.

We will address the following matters in our response to your July 25, 2007 and November 2007 correspondence:

1. We have completed our review of the course material and have determined all of the courses to be AQB compliant.
2. We are actively engaged in legislative activities and the administrative rule making process to make major changes to ensure our licensure laws, administrative rules, and continuing education programs conform to AQB criteria.

**We have completed our review of the course material and have determined all of the courses to be AQB compliant and consider this matter to be closed.**

Indiana has reviewed the materials from the courses in question and has determined that all of them:

1. National Association of REALTORS® Code of Ethics;
2. Premier School of Real Estate Code of Ethics and Professional Standards;
3. Metropolitan Indianapolis Board of REALTORS® Code of Ethics;
4. Fort Wayne Area Association of REALTORS® Code of Ethics;
5. License and Escrow Law;
6. Agency Law;
7. Multi-Generational Marketing;
8. Innovative Marketing;
9. Click & Close: Working with the e-buyer;
10. Listing Contract & Related Documents;
11. Settlement Procedures; and
12. Effective Negotiations

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meet AQB criteria and are acceptable for an Appraiser's continuing education.

The Board's view of AQB criteria for continuing education at the time the courses were offered are in fact AQB compliant. According to the AQB, the purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his/her skill, knowledge and competency in real estate appraising.

The National Association of REALTORS® Code of Ethics; Premier School of Real Estate Code of Ethics and Professional Standards; Metropolitan Indianapolis Board of REALTORS® Code of Ethics; and The Fort Wayne Area Association of REALTORS® Code of Ethics meet AQB criteria because their Code of Ethics specifically addresses appraisers.

The Realtor's Code of ethics underscores the importance of remaining a knowledgeable professional, and competent in the real estate industry is very similar to portions of USPAP.

**Realtor's Code of ethics:**

"Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

**USPAP:**

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The purpose of USPAP is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to interested users of their services in a manner that is meaningful and not misleading.

**Realtor's Code of ethics:**

"Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor."

**USPAP:**

"To promote and preserve the public trust inherent in professional appraisal practice, and appraiser must observe the highest standards of professional ethics."

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**Realtor's Code of ethics:**

In recognition and appreciation of their obligations to clients, customers,

the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession.

REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

**USPAP:**

"An Appraiser must not misrepresent his or her role when providing valuation services that are outside of appraisal practice"

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**Realtor's Code of ethics:**

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

**USPAP:**

An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests. Honesty, impartiality, and professional competency are required of all appraisers under USPAP.

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**Realtor's Code of ethics:**

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its

spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

**USPAP:**

Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; or 1. alternatively, must: disclose the lack of knowledge and/or experience to the client before accepting the assignment; 2. take all steps necessary or appropriate to complete the assignment competently; and 3. describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.

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**Realtor's Code of ethics:**

Standard of Practice 1-14: Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation.

**USPAP:**

It is unethical for an appraiser to accept an assignment, or to have compensation arrangement for an assignment, that is contingent on any of the following: 1. the reporting of a predetermined result; 2. a direction in assignment results that favors the cause of the client; 3. the amount of value opinion; 4. the attainment of a stipulated result; or 5. the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment.

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**Realtor's Code of ethics:**

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. (Amended 1/95)

Standard of Practice 11-1

When REALTORS® prepare opinions of real property value or price, other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, such opinions shall include the following:

- identification of the subject property
- date prepared
- defined value or price
- limiting conditions, including statements of purpose(s) and intended user(s)
- any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
- basis for the opinion, including applicable market data
- if the opinion is not an appraisal, a statement to that effect (Amended 1/01)

#### **USPAP:**

Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; or 1. alternatively, must: disclose the lack of knowledge and/or experience to the client before accepting the assignment; 2. take all steps necessary or appropriate to complete the assignment competently; and 3. describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.

The Board believes **License and Escrow Law** meets AQB criteria and specifically enhance an appraiser's competency in real estate appraising. The Administrative rules of the Appraiser Board fall under the same portion of Indiana Law as that of the Indiana Real Estate Commission. Therefore, there is little distinction between the two professions, and thus, a review of the license law is acceptable for Appraiser continuing education. Moreover, the Appraiser Administrative rules also require that an appraiser complete four hours of license law update every renewal cycle.

The Board believes **Agency Law** meets AQB criteria and specifically enhance an appraiser's competency in real estate appraising. Agency Law is the relationship from the mutual consent between principal and agent that the agent will act on the principal's behalf and subject to the principal's control. Some of the sources of Agency Law are common Law and Case Law. Because there is a significant focus on case law, these situations can increase the competency of an appraiser in the practice as a licensed professional. There is also a significant focus on the fiduciary duties of agents involved in a real estate transaction, and therefore, is applicable to real estate appraisers. This course also focuses on the National Association of Realtors Code of ethics, and is also applicable and conforms to AQB criteria for the reasons outlined in the section above addressing the code of ethics. .

The Board believes **Multi-Generational Marketing** and **Innovative Marketing** meets AQB criteria and specifically enhances an appraiser's competency in real estate appraising. Multi-Generational Marketing and Innovative Marketing focuses on understanding how a licensee can help their clients by helping themselves, developing a client list of value to other agents, developing assets to sell when a licensee is ready to retire from practice, and developing ways for a licensee to assist consumers by reducing their search for real estate. An appraiser can draw connections between the effective marketing strategies outlined in this course and the Ethics Rule of USPAP that an appraiser should not advertise in a manner that, "is false, misleading, or exaggerated".

The Board believes **Click & Close** meets AQB criteria and specifically enhances an appraiser's competency in real estate appraising. This course focuses on understanding a changing demographic through technological aspects. It also has a significant focus on a culturally diverse client base. This is obviously a fundamental concept that appraisers must understand, as USPAP clearly states that their appraisal reports cannot be influenced by race, gender or other cultural factors.

The Board believes **Listing Contract & Related Documents** meets AQB criteria and specifically enhances an appraiser's competency in real estate appraising. Listing Contract & Related Documents summarizes the purpose of the listing agreement, the establishment of agency, requirements of a legal contract and the components of a listing agreement. This course also identifies the legal obligations of all parties involved the property and explores the type and terms of contracts, antitrust ramifications, seller obligations, fair housing information, agency disclosure, burden on a professional, seller's offer to marketplace, agency disclosure, miscellaneous provisions (read and understood, receipt of copies, entire agreements, (parole evidence rule, dissemination of information, legality of FAX transmissions, default, additional provisions). There are many aspects outlined in this course that are also covered in USPAP.

The Board believes **Settlement Procedures** meets AQB criteria and specifically enhances an appraiser's competency in real estate appraising. Settlement procedures focuses on pre-settlement responsibilities; the purchase contract; choosing a title and settlement agent; the responsibilities of a settlement agent; title work; examination of title work; clearing difficult exceptions; old mortgages; divorces; deceased title holders; judgments; and identity affidavits. The board believes this helps in improving an appraiser's competency because it contributes to an appraiser's competency in understanding the entire real estate transaction and their competency in properly identifying the problem to be addressed and having the proper knowledge and experience to complete an assignment.

The Board believes **Effective Negotiations** meets AQB criteria and specifically enhances an appraiser's competency in real estate appraising. This course assists licensees in determining situations that require a negotiator to the benefit of the seller, buyer or both, and learning how to effectively negotiate to a successful close. This course also focuses on effectiveness in serving the needs of the consumer.

This course also spends a considerable amount of time discussing many forms of negotiations that help the appraiser understand that negotiating is to confer or simply communicate with another person or persons to reach a conclusion.

According to the instructor, everyone negotiates at one level or another, including professionals performing a service.

The instructor also said, "for an appraiser, they need to know how to negotiate with their lender/client in regards to fees they charge, time for turnaround and a host of other items that come into play. They have to negotiate with the listing company to set up the site visit and then often have to negotiate with the licensees in order to substantiate their work. And if the homeowner is present during the visit, the appraiser should be at the top of their negotiation game!"

This course is also beneficial to an appraiser and meets AQB Criteria because while the course focuses on negotiations, not all negotiations involve an attempt at selling or buying or to win over an opponent. It has more to do with sharing thoughts and ideas (or in the case of an appraiser, his or her opinion of value) and communicate that message in a manner that results in joint success.

This course is beneficial to appraisers because it helps them understand and implement the rules of conduct in a successful negotiation to avoid conflict with the client, the property owner, the property buyer and the licensees. Knowing these rules of conduct will prevent an appraiser from being manipulated by any of these parties.

Any appraiser who regularly practices the art of principled negotiations could satisfy lender clients and continued work orders, have satisfied licensees who would willingly participate in assisting the appraiser with comps, trends and other information, and would prevent the public and appraiser from engaging in a disagreement which could lead an appraiser from violating the ethics rule.

Moreover, this course is beneficial to appraisers and increases their knowledge, skills and ability because it will allow an appraiser to be prepared to defend their work when recognizing a situation with adverse consequences. This further assists the appraiser by helping them to understand the importance of knowing how to coordinate evidence to back their opinion.

The instructor believes "if an appraiser understands the methods of principled negotiations they would also be prepared to working with many (Type-A, hard-driving) real estate people without the risk of intimidation and the possibility of "bumping values" to satisfy a difficult agent. That's worth the price of admission alone."

**We are actively engaged in legislative activities and the administrative rule making process to make major changes to ensure our licensure laws, administrative rules, and continuing education programs conform to AQB criteria.**

In 2007, our legislature passed and our Governor signed Senate Enrolled ACT ("SEA377") making significant changes to the way the Appraiser Board approves continuing education and gives the Board greater administrative rule making flexibility in how they determine what courses are acceptable for appraiser continuing education. The Governor signed SEA 377 on April 25, 2007, and the law giving the Board the authority to promulgate the necessary rules (LSA 07-338) took effect on July 1, 2007. (In Indiana all new laws go into effect on July 1<sup>st</sup>.)

Contrary to your November 13, 2007 letter that "ASC staff learned that the Board never began the rulemaking process and was only now currently reviewing a draft rule change." This statement is entirely false.

The Notice of Intent of the rule change (LSA #07-338) was filed in the Indiana Register on June 20, 2007, even before SEA 377 became law in July of 2007. Moreover, Board staff contacted ASC staff on June 20, 2007 notifying them we have begun the rule making process.

The Board has included ASC staff on discussions regarding LSA #07-338 and has provided them with copies of the rule as early as August 30, 2007. Moreover, the Board discussed LSA #07-338 with ASC staff in September, and provided them an updated copy of the rule and requested feedback to ensure that the rule change conformed to Title Xi.

LSA #07-338 amends 876 IAC 3-5 to implement rule changes based on SEA 377 regarding the approval of continuing education providers either by the Real Estate Appraiser Licensure and Certification Board or the Appraisal Qualifications Board under the oversight of the Appraisal Subcommittee. It also amends 876 IAC 3-5 to:

1. Ensure compliance with SEA 377 by requiring defining which continuing education courses will be approved by the Real Estate Appraiser Licensure and Certification Board and which will be approved by the Appraisal Qualifications Board. The Board made the determination that any course less than or seven hours in length will be able to seek

approval from the Board, all other courses, including distance education, must seek approval from the AQB.

2. Ensure compliance with SEA 377 and Financial Institutions Recovery, Reform, and Enforcement Act of 1989 [12 U.S.C. 3331-3351] by clarifying what types of courses will be approved by the Real Estate Appraiser Licensure and Certification Board.
3. Ensure compliance with SEA 377 by repealing the requirement for providers of continuing education programs to seek approval from the Board.
4. Ensure compliance with the Financial Institutions Recovery, Reform, and Enforcement Act of 1989 [12 U.S.C. 3331-3351], ("Title XI") by repealing the ability for Appraisers to use continuing education hours for their Real Estate Broker's license to count towards the continuing education requirement for their Appraiser license. Also amends 876 IAC 3-5 to permit Internet and distance based continuing education provided the course is approved by the Appraisal Qualifications Board. Effective 30 days after filing with the Publisher.

Indiana has engaged in proactive measures to meet ASC benchmarks to transform Indiana Code and Administrative Rules on numerous occasions. These proactive legislative and administrative code mutations to comply with Title XI are often a deviation from the guiding principles of the Indiana Professional Licensing Agency and the management of the State of Indiana to remove barriers to practice. We are complying with your mandates and believe that these proactive changes will make our continuing education requirements compliant with Title XI once LSA #07-338 is signed in early 2008.

The Board would also direct your attention to the improvements our program has made over the last two years. In fact, during the testimony of Jenny Tidwell, the ASC policy manger for Indiana, she stated in her testimony before the Indiana Real Estate Appraiser Licensure and Certification Board on October 11, 2007:

"I have not yet, in my history with the ASC seen a state come as far in the last two years as Indiana has at achieving this purpose (Title XI). This program has just improved dramatically, and I think you all deserve to take just a second and pat yourselves on the back for all the hard work you've done.... You are achieving the purpose that the whole Title XI was setup for".

For informational purposes I have enclosed a guide sheet on how the administrative rule promulgation process works in Indiana and a copy of LSA 07-338.



The Board looks forward to implementing our new administrative rules in 2008 and continuing our compliance with Title XI and following the laws and Constitution of the State of Indiana.

Sincerely,

Joseph C. Traynor, Chairman  
Real Estate Appraise Licensure and Certification Board

Cc: Frances L. Kelly, Executive Director, Indiana Professional Licensing Agency  
Wade Lowhorn, Deputy Director, Indiana Professional Licensing Agency;  
Barbra McNutt, Chief Legal Counsel, Indiana Professional Licensing Agency  
Nicholas Rhoad, Director, Indiana Real Estate Commission;