

# State Appraiser Regulatory Agency Board Member Training



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## Table of Contents

<b>INTRODUCTION.....</b>	<b>4</b>
<b>SECTION 1.....</b>	<b>5</b>
<b>Why Does the Board Exist? .....</b>	<b>5</b>
<b>Administrative Powers .....</b>	<b>5</b>
<b>Protecting the Public .....</b>	<b>6</b>
<b>Rules of Order.....</b>	<b>7</b>
<b>SECTION 2.....</b>	<b>8</b>
<b>Duties of Board Members.....</b>	<b>8</b>
<b>Board Member Basics .....</b>	<b>8</b>
<b>Policy Issues vs. Legal Issues.....</b>	<b>8</b>
<b>What makes a good Board Member?.....</b>	<b>8</b>
Integrity .....	8
Service .....	9
Sacrifice.....	9
Vision .....	9
Commitment .....	9
Consumer Protection.....	9
Board Speaks As One .....	10
Board Membership vs. Society Membership: Two Separate Missions .....	10
Fairness and Balance.....	10
Responsibility and Authority .....	11
<b>Legal Considerations.....</b>	<b>11</b>
As A Board Member, Thou Shall Not: .....	11
Government Ethics.....	12
Due Process .....	12

What is Conflict of Interest? .....	12
What is Bias?.....	13
Board Member / Staff Immunity - Varies by State.....	13
Eroding Government Immunity.....	14
Open Meetings Act.....	14
Executive Sessions.....	14
Public Record.....	15
<b>SECTION 3.....</b>	<b>16</b>
<b>The Enforcement Process.....</b>	<b>16</b>
<b>Factors to Consider When Imposing Penalties.....</b>	<b>18</b>
<b>SECTION 4.....</b>	<b>19</b>
<b>TAB 1 - Federal Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA)</b>	
<b>TAB 2 - Title XI of FIRREA in Relation to Federal Financial Regulatory Agencies</b>	
<b>TAB 3 - Title XI of FIRREA in Relation to the States</b>	
<b>TAB 4 - The Appraisal Subcommittee</b>	
<b>TAB 5 - Appraisal Subcommittee Policy Statements</b>	
<b>TAB 6 - The Appraisal Foundation</b>	
<b>TAB 7 - Example of Voluntary Consistent Enforcement</b>	
<b>Tab 8 - The Appraiser Qualifications Board</b>	
<b>TAB 9 - The Appraisal Standards Board - USPAP</b>	
<b>TAB 10 - The Appraisal Practices Board</b>	
<b>SECTION 5</b>	
<b>RESERVED FOR “YOUR” STATE’S RULES AND REGULATIONS</b>	

# Appraiser Regulatory Agency Board or Commission Member Training

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## INTRODUCTION

The purpose of this manual is to provide orientation to individuals who are appointed to serve on a state appraiser regulatory licensing board or commission (Board) or to serve as a program director in those cases where a Board is either advisory (advisory boards do not have decision or policymaking authority) or there is no board or commission. For the purpose of this document the terms board, commission, board member, and commission member are meant to include program directors. It is important to provide orientation to help familiarize individuals with state government, the laws and other matters that relate to the functioning of Boards, and the guidelines under which Board members should operate. Additionally, in many instances, Board members do not have full-time professional staff to assist them.

This manual is not intended to answer every question or address every matter that a Board member may face. It is intended to provide basic knowledge regarding the operation of most Boards. Based on each individual's experience, there may be comments or suggestions to improve the manual for future editions.

# SECTION 1

## Why Does the Board Exist?

- 1) Purpose of Board - Boards are created for the express purpose of protecting the public. Generally, the statutes and regulations which are enforced by boards are enacted to protect the general public or some specific identifiable sector of the public.
- 2) Protecting the public - The purpose of professional licensing is to protect the health, safety, and welfare of the public by assessing minimum education and experience requirements for initial entry into a profession, and by enforcing laws and regulations to ensure continued competence and ethical behavior on the part of professional practitioners.
- 3) Statutorily derived - To better understand the purpose and function of the Board, each individual must be familiar with the statutes that establish the legal authority.
  - a) State practice acts: A practice act will commonly contain provisions authorizing the Board to adopt administrative regulations. Such regulations will correspond to the appropriate statute and apply with the same force of law as the statutes, and thus should be scrupulously followed except in cases where they are in direct conflict with statutory provisions. If such a conflict exists, the statute controls.
  - b) Federal laws
  - c) Properly promulgated rules and regulations

## Administrative Powers

- 1) Administrative
  - a) Administer program
  - b) Issuance of credentials
  - c) Education Approval
  - d) ASC Data Base Maintenance

- 2) Judicial
  - a) Adjudicate contested cases
  - b) Interpret statute, rules and regulations
- 1) Executive
  - a) Enforce
  - b) Investigate
  - c) Prosecute
- 2) Legislative
  - a) Rulemaking authority
  - b) Recommend statutory amendments as required

## Protecting the Public

- 1) Establish credentialing criteria for profession consistent with AQB Criteria
  - a) Examinations
  - b) Education
  - c) Experience
- 2) Review credential applications
  - a) New and renewal applications
  - b) Ultimate goal must always be that every person who meets accepted minimum qualifications and poses no unacceptable risk to the public may obtain a license.
- 3) Grant/deny/set conditions for credentialing
  - a) Conditions can be fraught with peril
  - b) Must have statutory authority
  - c) Waiver of constitutional protections questionable
- 4) Establish minimum education and continuing education requirements
- 5) Enforce professional standards (USPAP)
- 6) Review/seek amendments to statutes and rules
  - a) Antiquated sections, language
  - b) Constitutional problems (vagueness, etc.)
  - c) Changes in criteria
- 7) Promulgate rules and policies
- 8) Regulatory role/enforcement
  - a) Contested case resembles jury trial
    - i) Licensee has due process rights
    - ii) Board members may sit as “jurors”
    - iii) State has burden of proof
    - iv) Full discovery
    - v) Hearing officer presides

## Rules of Order

- 1) General guidelines - Most states have established rules of order that they must follow that include:
  - a) Quorum necessary for official business
  - b) Motion and second required for action
  - c) Vote in open session required for Board action
  - d) Chair does not make motions
  - e) Chair does not vote (generally, however, may vote to break a tie)
  - f) No vote while in Executive Session
- 2) May adopt Robert's Rules of Order or another set of rules of order that are similar

## SECTION 2

### Duties of Board Members

- 1) Appointment authority (Governor, agency, etc.)
- 2) State reposes special trust and confidence in Board members fidelity and abilities
- 3) Significant responsibility and authority

### Board Member Basics

- 1) Board member is official representative of the state
- 2) Essential to:
  - a) Display professionalism
  - b) Exercise sound judgment in official capacity
  - c) Avoid conflicts of interest and bias

### Policy Issues vs. Legal Issues

- 1) Policy/discretionary issues are:
  - a) Exclusive domain of the Board and include matters such as, but not limited to:
    - i) Granting/denying license applications
    - ii) Placing conditions on licenses
    - iii) Type and amount of continuing education requirements
- 2) Legal issue are:
  - a) Whether or not Board has authority to take the proposed action
  - b) Title XI compliance

### What makes a good Board Member?

#### Integrity

- 1) Has courage of convictions to withstand pressure to be swayed from public protection agenda
- 2) Is honest about personal agenda and leaves it outside the Board room
- 3) Reveals any actual or perceived conflicts of interest and appropriately recuses self from decisions or actions in those areas of interest
- 4) Maintains confidentiality associated with examinations, disciplinary proceedings, and other pertinent matters



### **Service**

- 1) Seeks and finds personal gratification through service to others
- 2) Is available for all regulatory activities, to be called on short notice, to travel, to be flexible in scheduling commitments and handling cancelations, and is not over-booked with other obligations
- 3) Provides accurate and timely submission of reports, vouchers and other documentation associated with Board service

### **Sacrifice**

- 1) Tolerates inconvenience, frustration and scheduling conflicts to be available for Board service
- 2) Subjugates need for gratification to the greater good, and consequently postpones, minimizes, or foregoes it altogether
- 3) Rises above temptations for personal gain and avoids mutual benefit transactions available to private sector leaders that would pose conflicts of interest in the public

### **Vision**

- 1) Uses knowledge of regulatory history, concepts, and rationale including law, rule, regulation, and administrative policy to articulate ideas and plans for refining, enhancing, and developing measures of public protection, standards of licensure and practice, and systems of regulating practitioners
- 2) Acts as a role model for the profession and general public by discussing and presenting the Board's mission and function in the community whenever appropriate
- 3) Encourages public awareness of the standards and legal requirements of professional credentials, practices, and conduct

### **Commitment**

- 1) Understands and embraces the central mission of the Board as protecting the public, not advocating for the profession
- 2) Demonstrates interest and ability in learning about administering law, rule, regulation, policy, and the necessary protocols and procedures
- 3) Abides by the legal and ethical responsibilities associated with Board membership
- 4) Remains current with cross-professional issues and trends inside and outside the jurisdiction

### **Consumer Protection**

- 1) Has experience in consumer advocacy and/or civic or public service organizations

- 2) Actively seeks to provide relevant information about professional practice and regulation to the consumer public and its organizations, including the solicitation of consumer concerns and ideas
- 3) Provides appropriate nominations of individuals qualified to be consumer members of the Board

### **Board Speaks As One**

- 1) Paramount importance to proper function
- 2) Board is government entity
- 3) Individual members do not speak for the Board except in pre-determined, limited cases wherein the Board designates a member to speak to a group
- 4) Individual members do not discuss Board business outside properly convened meetings
- 5) Individual members do not offer opinions to citizens
- 6) Individual members advise others that Board members:
  - a) May not speak for the Board
  - b) May not discuss Board business outside of a Board meeting
  - c) May call the Board office to bring an issue before the Board at an official Board meeting

### **Board Membership vs. Society Membership: Two Separate Missions**

- 1) Board mission - Protect public by regulating the profession
- 2) Society mission - Promote the profession and not a particular organization

### **Fairness and Balance**

- 1) Deliberate, not quick to judge, and approaches the work of the Board without bias, dispassionately, disinterested, and dissociated from positions on partisan issues
- 2) Respects the rights of all parties
- 3) Mindful of standards and strives to interpret them to be as inclusive as possible, not exclusionary
- 4) Understands and applies processes and procedures uniformly
- 5) Understands the difference between high and minimally acceptable standards of competence and practice
- 6) Operates primarily on the basis of cooperation, conflict resolution, and team efforts, not individualism, egotism, factionalism, charisma, or confrontation
- 7) Accepts conflicts as they arise in the normal course of events and approaches them as opportunities for greater understanding and improved functioning

## **Responsibility and Authority**

- 1) Board members have a far reaching impact on all issues coming before the Board
- 2) Members must comply with the law
- 3) Members must avoid conflicts of interest and bias
- 4) General responsibilities:
  - a) Uphold the Constitution of the United States and of the State
  - b) Abide by the laws of the United States and of the State
  - c) Carry out the policies and objectives of the State as established by statute, executive order, or rule, while adhering to established standards for work and performance
  - d) Work in cooperation with Board staff, and act within the scope of delegated legal authority
  - e) Protect and conserve all property owned, held by, or leased to the state, including public records
  - f) Be honest and fair in performing public service
  - g) Strive to be honorable, courteous, and dedicated to advancing the public good
  - h) Avoid conduct that compromises the integrity of the public office or creates the appearance of impropriety

## **Legal Considerations**

Many states have laws or regulations that govern a Board member's ethical behavior and conflict of interests. It is important to know your state's laws and regulations.

### **As A Board Member, Thou Shall Not:**

- 1) Use your public position for personal gain
- 2) Take official action in any matter in which you have a close personal or financial relationship to a party
- 3) Engage in any activity which conflicts with your position
- 4) Give preferential treatment to any person
- 5) Use or allow the use of state property for other than official state business
- 6) Make any decisions which are not independent and impartial
- 7) Use or allow the use of by any private party official information obtained through your position with the state unless available to the public or allowed by law
- 8) Award, participate in a decision to award, or administer a state contract if there is a close personal or financial relationship with anyone that is an involved party
- 9) Accept meal expense, lodging, travel or expense reimbursement from anyone other than the state without approval
- 10) Accept any fee, compensation, gift, payment of expense, or any other thing of value in circumstances which may create the appearance of conflict of interest or impropriety

### Government Ethics

- 1) No public official, public member or public employee shall use his/her office or position for his/her private benefit. Public member is typically defined as: “a member appointed to a part-time position on a state board, commission, or council.”
- 2) Misuse of public office:
  - a) Public officials, employees, and members shall not use public funds, time, personnel, equipment, etc. for:
  - b) Private benefit, or
  - c) Political campaign activity
  - d) No dissemination of official information obtained through, or in connection with, the official position unless:
  - e) Information is public information (Public Records Act),
    - i) Authorized by law (court order), or
    - ii) State Attorney General advises on public records requests
- 3) Official decisions and votes - Board members shall not make official decisions or vote on such matters if the member has a personal or private interest in the matter.

### Due Process

- 1) Fairness
- 2) Procedural – the process
- 3) Substantive – the merits
- 4) Elements:
  - a) Notice
  - b) Opportunity to be heard
  - c) Right to cross-examine witnesses
  - d) Right to have representation
  - e) Right to submit evidence
  - f) Right to a fair and impartial hearing officer or tribunal
  - g) Right to a written decision

### What is Conflict of Interest?

Conflict of interest is having any interest, financial or otherwise, direct or indirect, or engaging in any business or transaction or professional activity or incurring any obligation of any nature, which is in substantial conflict with the proper discharge of the Board member’s duties in the public interest.

### What is Bias?

- 1) Bias is prejudice that may prevent a fair hearing with respect to any of the parties involved. Bias may be:
  - a) Personal
  - b) Financial
  - c) Political

### Personal Bias

- 1) Biased statements and strongly held opinions
  - a) Opinions as to law or policy
  - b) Prejudgment of the facts

### Financial Bias

- 1) Personal benefit from decision. Any personal stake in the outcome for yourself, a family member, an associate, etc.

### Political Bias

Interference from legislative branch

### Recusal

- 1) If there is bias or conflict of interest a Board member must recuse himself or herself
- 2) Recusal is necessary if:
  - a) Circumstances tempt departure from strict duty to the state, or
  - b) Circumstances give appearance of bias

### Board Member / Staff Immunity - Varies by State

- 1) Public employee is any officer, employee or servant of governmental entity with or without compensation.
- 2) Immune from liability while acting within the scope of duties. Immunity for action, or omissions of the Board.
  - a) Acting within the scope of duties means: *“Performing any duties which a government entity requests, requires or authorizes a public employee to perform, regardless of the time and place of performance.....”* however, this means lawful requests, etc.
- 3) Three important issues:
  - a) Immunity is qualified, not absolute. Immunity can be eroded.
  - b) Immunity does not mean a Board member cannot be sued; however, the board member will not have to pay for defense or pay judgment.
  - c) Immunity does not apply to independent contractors.

## **Eroding Government Immunity**

### ***Conduct outside "scope of duties"***

- 1) Official acts done for wrongful purpose
  - a) Malicious prosecution/denial of license
  - b) Altering official state documents such as applications, minutes, licenses, etc. (felony)
  - c) "Bad" conduct by one public employee may implicate others
  - d) Ignorance is not necessarily a defense

### ***Regulating the Profession***

- 1) Unlicensed practice
  - a) Cease and desist letters
  - b) Board may or may not have jurisdiction over non-licensees
- 2) Injunction
- 3) Subpoena authority
- 4) Criminal prosecution by District or County and Prosecuting Attorney

### ***Regulatory Action Must Comply With Board Rules and Regulations***

- 1) Boards must comply with their own state's rules and regulations

### **Open Meetings Act**

- 1) Most states require that all Board meetings of an agency will be public meetings
  - a) Open to the public at all times except as otherwise noted (executive sessions)
  - b) No action shall be taken except in public meeting
  - c) Minutes to be kept/recorded/published
- 2) Violations of Open Meetings Act may result in a misdemeanor punishable by a fine for knowingly and willfully taking an action or conspiring to take an action in violation of the Act
  - a) May avoid violation if minutes of regular meeting or executive session show member's objection either at current meeting or next regular meeting
  - b) Any actions taken where the Open Meetings Act is not followed are subject to being null and void

### **Executive Sessions**

- 1) Some state Boards may be authorized to hold executive sessions not open to the public for specific items.
  - a) Consider the right to practice of professional persons
  - b) Hear complaints or charges
  - c) Discuss pending litigation
  - d) Discuss personnel issues

- 2) There must be a motion, a second, and a majority vote in public meeting for an action to be taken
- 3) Board may deliberate in executive session, but Board action must be taken in open session, and in some states, the party in interest may request the entire matter be discussed in open session
- 4) Minutes must be kept for executive session however; these minutes are confidential and are released only if ordered by a court

#### **Public Record**

- 1) States may define public record very broadly
- 2) States may give broad authority for citizens to review records; some records may be considered private information
- 3) Trends, sunshine laws, and confidentiality

## SECTION 3

### The Enforcement Process

- 1) Steps in the Enforcement Process. Regulation is enacted to protect the public's health, safety and welfare. Boards are obliged to discipline practitioners who violate Board law or regulation.

Board members should fully understand their state's adjudicatory process and options for hearing and decision proceedings as well as the types of sanctions available to the specific jurisdiction. These may include the authority to: negotiate formal discipline without a hearing; summarily suspend prior to a hearing; Summary Decision in cases where the facts are not disputed; fines; and reimbursement to the State for adjudicatory expenses among other options.

- a) The enforcement process consists of seven (7) steps
  - i) Intake – Receiving and acknowledging complaints, setting up files and initiating complaint tracking
  - ii) Assessment – Screening complaints; determining the type of response appropriate for the complaint; determining jurisdiction. Assigning an investigator or investigative teams for determining the details of the case and producing a report
  - iii) Investigation – Determine the details of the case, collect evidence, and produce a report
  - iv) Review – Determining the disposition of investigated complaints: those without merit, closed; those with merit, an Investigation – determination of the level of action to be taken
  - v) Formal and Informal Hearings
    - (1) Resolution by informal hearings or conference resulting in negotiated discipline and settlement by stipulation, consent, settlement, or other such agreement
    - (2) Resolution by formal hearings before the board duly authorized hearing officer or administrative law judge
    - (3) Summary Decision / Sanction Hearing
  - vi) Final Order – Determining facts, legal conclusions and sanctions in appropriate cases



- vii) Compliance – Following up on all final orders to assure the orders are being obeyed
- b) Characteristics of a Strong Enforcement Process
  - i) Common points can be made about a strong enforcement process. State boards should:
    - (1) Publicize their existence and role in handling consumer complaints.
      - Options include: a toll-free complaint line; a information brochure with wide distribution; notices about where and how to file complaints posted in all licensed professionals' offices; a public service TV and radio ad; speeches by board members to community associations; a coordination of publicity/consumer information with in-state consumer groups, including complaint filing information in statute and/or rules.
    - ii) Observe due process by separating:
      - (1) investigations
      - (2) prosecutions
      - (3) hearings and final decision-making
  - c) Types of Disciplinary Sanctions:
    - i) Administrative Fine: A monetary penalty imposed by an administrative agency for violation of administrative rules.
    - ii) Censure/Public Reprimand: An expression of displeasure. The mildest form of Discipline.
    - iii) Deny the Renewal or revocation of the right to renew: A refusal to reinstate or renew the license.
    - iv) Injunction: A court action prohibiting or compelling conduct by a licensee.
    - v) Restricted License: A specific reduction in the scope of practice allowed a licensee.
    - vi) Revocation: An involuntary permanent termination of a license.
    - vii) Suspension: A temporary termination of a license.
    - viii) Surrender: Voluntary relinquishment of a license.
    - ix) Direction of fees collected from a consumer by a practitioner (limited restitution).
    - x) Restitution: Payment made to the party “injured” by the licensee’s actions or inactions. (May be consented to as part of a negotiated settlement in States where it is not provided for by statute.)
    - xi) Cease or Desist or Fine using the state consumer protection act.
  - d) Board member liability in the imposition of penalties.
  - e) Fair, impartial.
  - f) Ex parte communications.

## Factors to Consider When Imposing Penalties

- 1) The severity of the offense
- 2) The danger to the public
- 3) The number of repetitions of offenses
- 4) The length of time since date of violation
- 5) The number of complaints filed against the licensee
- 6) The length of time licensee has practiced.
- 7) The actual damage, physical or otherwise, to the public (if allowed by State law and appropriate. Lesser damage should not lessen the penalty imposed for the violations of the law and USPAP).
- 8) The deterrent effect of the penalty imposed
- 9) The effect of the penalty upon the licensee's livelihood
- 10) Any efforts for rehabilitation
- 11) The actual knowledge of the licensee pertaining to the violation
- 12) Attempts by licensee to correct or stop violations or refusal by licensee to correct or stop violations
- 13) Related violation against a license in another state including findings of guilt or innocence, penalties imposed, and penalties served provided a Board has the statutory authority.
- 14) Any other mitigating or aggravating circumstances

## **SECTION 4**

**TAB 1 - Federal Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA)**

**TAB 2 - Title XI of FIRREA in Relation to Federal Financial Regulatory Agencies**

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**TAB 4 - The Appraisal Subcommittee**

**TAB 5 - Appraisal Subcommittee Policy Statements**

**TAB 6 - The Appraisal Foundation**

**TAB 7 - Example of Voluntary Consistent Enforcement**

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**TAB 10 - The Appraisal Practices Board**

## SECTION 5

**RESERVED FOR "YOUR" STATE'S RULES AND REGULATIONS**