

Appraisal Subcommittee
Federal Financial Institutions Examination Council

January 28, 2010

Devon V. Bijansky, Assistant General Counsel
Texas Real Estate Commission
P.O. Box 12188
Austin, TX 78711-2188

Dear Ms. Bijansky:

This letter responds to your November 03, 2009 letter. In that letter you request guidance on behalf of the Texas Appraiser Licensing and Certification Board (“Board”) regarding opening and investigating a complaint in cases where there is pending *civil* litigation which may unintentionally give one of the parties the “upper hand.”

In your letter you state two specific examples to buttress the Board’s view that complaints involving civil litigation should not be considered until the litigation is complete: (1) a complaint may be filed “for no purpose other than to call into question the credibility, competence, and reputation of the adverse party or of an appraiser testifying as an expert witness”; and (2) it is possible that “the work of the Board’s investigator may be discoverable and might be used to bolster one party’s contention of negligent behavior.”

The Appraisal Subcommittee (ASC) believes that the decision to pursue a complaint should be based on the merits of the complaint rather than the existence of civil litigation. Policy Statement 10E sets forth the following:

Each state agency must ensure that its entire system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well-documented manner. . . .State agencies need to process complaints of appraisers misconduct or wrongdoing on a timely basis. Absent special documented circumstances, final State agency administrative decisions regarding complaints should occur within one year of the complaint filing date.

Therefore, a policy or regulation that prevents the initiation of a complaint investigation due solely to pending litigation would not be consistent with Policy Statement 10E. However, in the event that a State appraiser regulatory agency or Board determines that an investigation would interfere with on-going civil litigation and may negatively impact the parties, the Agency or Board must, at a minimum, document the file. The documentation must be sufficient to enable ASC investigators to understand the specific reasons for the Agency or Board’s determination that initiating an investigation would be detrimental to the parties or the adjudication process.

Please contact us if you have any questions.

Sincerely,



James R. Park
Executive Director