

STATE OF COLORADO

Division of Real Estate
Erin Toll
Director

1560 Broadway, Suite 925
Denver, Colorado 80202
Telephone (303) 894-2166
FAX (303) 894-2683
www.dora.state.co.us/real-estate

Department of Regulatory Agencies
D. Rico Munn
Executive Director



Bill Ritter, Jr.
Governor

March 2, 2007

Ms. Virginia M. Gibbs
Appraisal Subcommittee
Federal Financial Institutions Examination Council
2000 K Street NW, Suite 310 !
ashington !C 20006

Dear Ms. Gibbs,

Thank you for your letter dated January 5, 2007 concerning the Appraisal Subcommittee's ("ASC") review of the Colorado Division of Real Estate ("DRE") and Colorado Board of Real Estate Appraisers' ("CBREA") real estate appraiser regulatory program ("Appraiser Program" or "Program"). Although the ASC's review noted several disconcerting deficiencies regarding our Appraiser Program, as the new Director of the Division of Real Estate, I am looking forward to using the ASC's findings as a tool to enhance the Program. To that end, we have made and will continue to make significant improvements to both DRE and CBREA operations. I have outlined these enhancements below, and have addressed the ASC's specific requests detailed in the January 5th letter.

Introduction and Overview of Significant Changes

I was appointed to the Director position on September 5th, shortly before the ASC team visited Denver to wind down the audit. Before coming here, I was the Deputy Commissioner of Insurance in charge of enforcement and investigations, among other things. I look forward to continuing to build on the experiences I gained at the Division of Insurance and employ the many successful policies and procedures related to complaint investigation and enforcement, an area of deficiency noted by the ASC, here at the DRE.

Shortly before the audit, the Department of Regulatory Agencies ("DORA"), the DRE's umbrella agency, initiated a reorganization of the DRE. The goal of the reorganization was to improve the DRE's regulatory effectiveness and efficiency. More than fifty

percent of the staff and six of the seven management team staff are new to the DRE. The new staff ensures that it will not be "business as usual" at the DRE.

In addition, virtually all staff roles have been revamped. In particular, the Appraiser Program is no longer a "silo" at the DRE; rather, the Program is subject to assessment and review by the entire management team. In their new roles, DRE staff is better able to address many of the ASC's concerns. Their dedication to the improvement of the Appraiser Program is evidenced by the recommendation to and CBREA approval of the several aggressive enforcement actions that have captured the media's attention.

Our new Executive Director of DORA, Rico Munn, is dedicated to improving the DRE's Appraiser Program. His efforts are explained below and include an infusion of DORA funds for more attorney general assistance.

As the media, the legislature and other regulatory bodies continue to focus on Colorado's abysmal standing as a leader in foreclosures and mortgage fraud nationwide, we expect resources for our Appraiser Program to increase. Colorado consumers, as well as state officials, have an interest in upgrading the current regulatory scheme to address appraisers' perceived contributions to the foreclosure problem in this state. Indeed, as of the date of this letter, Colorado legislators have introduced three proposed bills to address these issues.

While the above are not specific changes to our Program requested by the ASC, we hope you will agree the above factors will significantly improve our current Program. Below, we have addressed the ASC's specific concerns.

The DRE has taken several significant steps to improve the investigation and resolution process.

1. The DRE is in the process of developing and implementing specific plans to reduce the backlog of outstanding complaints and to process complaints in a timely manner. The specific plans include the following:
 - a. **Contracts with Private Entities.** The DRE, in compliance with the ASC's Policy Statement # 1 and applicable DORA policies, is contracting with private individuals to assist in the investigation process regarding certified and licensed appraisers. To date, the DRE has contracted with eleven certified appraisers. The DRE exercised due diligence in identifying and selecting these contractors. The selected individuals have excellent credentials and reputations within the appraiser community.

The contracts between the DRE and these individuals are in writing and comply with the requirements set forth in Policy Statement # 1. The contracts also clearly describe the duties, rights and responsibilities of the parties, including specific expectations on standards and time frames for

performing case investigations. The contracts also address records security, privacy of personal information, confidentiality of documents, access to and ownership of records and documents, conflicts of interest and other requirements of Policy Statement # 1.

In the past few weeks, the DRE has assigned approximately 50 cases for investigation by these private contractors. As the contractors complete investigations, additional cases will be assigned to the contractors until there is no backlog. The cost of this endeavor to the DRE is expected to be between \$100,000 and \$150,000 or more.

- b. **Funding.** The DRE has sought and largely received additional funding dedicated to the appraiser program to improve investigations and resolution.
 - i. With the support of the Executive Director, the DRE has sought an additional 1.5 FTE from the legislature dedicated to the appraiser program. This request was recently approved by the Office of State Planning and Budget. The request must be approved by the Joint Budget Committee of the state legislature. We should have final word by the end of March.
 - ii. The Executive Director recently approved an additional \$81,000 in the DRE's legal services budget to obtain more assistance from the Office of the Attorney General in prosecuting appraiser cases. This very significant infusion of resources for the investigation and resolution process has increased the DRE's budget for legal services by over 125% for appraiser cases compared to the \$63,600 spent by the DRE for legal services for appraiser cases in the previous fiscal year.
 - iii. The DRE sought and the Executive Director approved an additional capital outlay for investigator recording equipment, and recording equipment for CBREA meetings and rulemaking hearings.
- c. **Legal services.** Previously, only .5 FTE of Assistant Attorney General time was allotted to the appraiser program. Thanks to the Executive Director, the DRE secured additional funding for legal services, as explained above. Therefore, within the last few weeks, a full FTE of Assistant Attorney General time was devoted to the appraiser program. For cases CBREA refers to our attorneys, the additional attorney should improve turnaround times.
- d. **Delegation of statutory authority for minor matters to DRE from CBREA.** Upon a review of CBREA's functioning as a regulatory body, the DRE determined that a significant amount of Board meeting time was consumed handling minor cases, counteroffers and administrative matters. Particularly regarding counteroffers, significant delays resulted because the

Board meets only monthly. Accordingly, adopting an approach utilized by sister Divisions within the Department, the DRE identified more minor, administrative-type decisions regularly made by the Board. Using that list, the DRE sought and received CBREA approval to delegate those lesser decision items to DRE staff. The implementation of these delegations will greatly improve the DRE's ability to process complaints and obtain final State administrative decisions on a timely basis as required by ASC Policy Statement # 10.

- e. **Triage and fining hierarchy.** To ensure consistency, and to promote more efficient case handling at both the DRE and CBREA level, the DRE identified the most significant cases and prioritized or "triaged" them. This way, it is easier for investigators and the Board to prioritize cases and appropriately invest resources. In addition, the DRE developed guidelines for determining appropriate fines and penalties.

f. Investigators' tools.

- i. When I took this position in September of 2006, I learned that DRE investigators have never had access to the multiple listing service (MLS) on behalf of the DRE. MLS is the system used by appraisers to compare properties and is critical for an accurate appraisal. Obviously, without such access, it is exceedingly inefficient to conduct investigations. After five months of negotiating, on February 12, 2007, the DRE obtained access to this critical database. This tool will improve the efficiency of investigations, allowing for complaints to be processed on a timely basis.
 - ii. In January 2007, the DRE purchased digital recorders for investigators to increase efficiency when conducting witness interviews. (Previously, investigators had no recording devices.)
- g. **Staffing and roles.** Pursuant to a Division-wide reorganization, and upon the recommendation of an independent business consultant, all staff roles were and are still being revamped. The following details the revamped roles that contribute to efficiencies with the appraisal program, mainly by increasing the amount of time investigators have to focus on their cases.
- I. Investigators no longer answer telephone calls and give legal advice to callers. Previously, a significant portion of their day was spent answering phone calls. Rather, the DRE hired five new operational support staff whose main function is to respond to telephone calls. Callers are directed to the Division's website or their local trade association to obtain legal advice.

- ii. Investigators are no longer spending their time reviewing and approving continuing education courses. This function has been transferred to the new compliance section, allowing the staff appraisers to fully concentrate on investigations.
 - iii. Shortly after the audit, we created several complaint intake positions designed to free up investigator time.
 - iv. Shortly after the audit, we created a new compliance section. The section is led by the new Chief Enforcement Officer, Mike Beery, who supervises the complaint intake, tracking and stipulation tracking staff.
 - v. The approximately twelve investigators were split into two teams, and I promoted two investigators to oversee these teams. The head of the appraiser team, Carlotta Knox, has received national recognition for her work investigating mortgage fraud in Colorado.
 - vi. As noted above, we are seeking an additional 1.5 FTE from the legislature dedicated to the appraiser program.
 - vii. Staff performance plans have been revised to reflect expectations with respect to the appraiser program.
- h. **Online complaints.** The DRE has created an online complaint form for review appraisers to reduce investigator workload. This form is more detailed than the consumer form due to review appraisers' greater expertise. The form improves the efficiency of investigations.
2. The DRE is working with an outside contractor to maintain an effective electronic complaint tracking system.
- a. As the auditors noted, the DRE has no efficient, electronic case management tool. Recognizing that such a case management tool is critical to successfully manage complaints filed with the DRE, staff is working diligently with our current vendor to improve this function. At Department request, the vendor has contracted with a consulting firm to work closely with DRE staff to identify gaps in the system's current functions. Consulting firm staff began work in early February, and works closely on a daily basis with Division staff to address needs. We hope to have this efficient, electronic case management tool fully in place in about six months.
 - b. In the meantime, staff has consolidated all individually-maintained tracking spreadsheets into one spreadsheet document. This excel document is available to all staff on the DRE's shared drive. Security measures have been implemented so that only select staff may add or remove cases from

the document. However, all staff is allowed to view the case list, allowing for improved case management and eliminating the inconsistent data problems associated with the previous individually maintained spreadsheets as noted by the audit.

The excel document tracks cases from receipt through investigation. from investigation through resolution, and from resolution through compliance. While this stop-gap measure is not ideal, it has significantly improved the DRE's ability to manage its cases until the ultimate electronic solution described in sub-paragraph a above is implemented. A copy of this spreadsheet document will be provided to the ASC quarterly as requested in the ASC's January 5, 2007 letter.

- C. We created two new positions in the newly-created compliance section whose function is to do complaint intake and track compliance with stipulated agreements. This will ensure ownership of this particular function.
3. The DRE is maintaining copies of all documentation supporting CBREA decisions in accordance with Policy Statement 10 E. Staff roles have been revamped. One staff member is dedicated to recording CBREA decisions. The minutes of the meetings are disseminated to all management level staff for review. The minutes are maintained. In addition, a different staff person monitors compliance with CBREA decisions.

The DRE is processing temporary practice applications in accordance with Title XI and ASC Policy Statement # 5.

1. As noted in the January 5,2007 letter from the ASC, DRE corrected previous deficiencies in processing temporary practice permits. In August of 2006, the DRE changed procedures to ensure that temporary practice applications are processed within five business days of receipt, as required by Title XI and ASC Policy Statement # 5. Since the ASC audit, the DRE has continued to ensure that all complete temporary practice applications are processed within five days of receipt.
2. The Division has also corrected its website to show that the temporary practice permits are valid for the term of the assignment. Temporary practice permits are no longer assigned an expiration date of 90 days from the date of issuance. Instead, temporary access permits are valid for at least six months, and may be renewed for additional six month periods simply by contacting the Division. This process was implemented in consultation with ASC representative Jenny Tidwell. Copies of the modified web pages relating to temporary practice permits will be provided to ASC representative Jenny Tidwell.

The DRE documents conformance to AQB experience criteria before granting appraiser credentials to tax assessors.

The DRE has carefully reviewed the information provided in the January 5, 2007 ASC letter concerning the granting of appraiser credentials to tax assessors based on experience affidavits. We understand the importance of ensuring all appraisers are properly credentialed. The ASC requests that we identify all appraisers who were issued credentials supported by mass appraisal experience since 1991, determine their compliance with AQB criteria and Policy Statement 10, and commence license downgrade actions against those who are deficient. Unfortunately, compliance with this request is impossible.

The DRE cannot comply with the above requests for several reasons. We do not maintain internally or have access to this historical data. We have attempted to obtain the information through external sources. We have contacted tax assessors' offices in Colorado, and are informed they do not maintain employee information back to 1991. Neither state law nor state archive retention policies require extended maintenance of this information. In short, we have no way of determining which appraisers were issued appraiser credentials supported by mass appraisal experience since the inception of the program in 1991. It simply cannot be done.

We also note that this issue was never identified in previous audits. Indeed, it's our understanding there was considerable confusion and uncertainty in the past surrounding the AQB Criteria, Interpretations and ASC Policy Statements relating to this issue. We also understand that Arkansas and possibly other states have raised the same or similar concerns with the ASC.

We recognize that even though the ASC did not identify this issue in any of the numerous previous audits, letters or phone calls, we are obliged to comply with applicable laws. However, this lack of notice and confusion around legal interpretation of applicable policies as evidenced by other states' concerns, demonstrate that neither the Board nor the DRE purposefully failed to comply with this requirement. In light of these issues, and since compliance in the manner the ASC requests is impossible, we hope that the ASC will give careful consideration to our suggested alternative methods. We hope the ASC will agree these methods efficiently and effectively address the issues.

The ASC letter instructs the DRE to perform six actions. The DRE proposes implementing the following alternative:

1. As requested by the ASC in the January 5, 2007 letter, the DRE has ceased awarding certified credentials to applicants relying on mass appraisal experience unless the appraiser provides the DRE with an experience log that conforms fully to the AQB's experience requirements for certification. The DRE requires all such applicants to submit an acceptable experience log. The DRE will only grant credentials to such applicants if the experience logs

are in a form approved by the ASC. The DRE currently has received approval from ASC representative Jenny Tidwell to use two forms of experience logs for these applicants. Copies of the forms of these logs will be provided to the ASC for review.

2. The DRE will send letters to every tax assessor office in Colorado. The letter will ask assessors to identify assessor employees who received appraiser credentials based on mass appraisal experience after January 1, 2005 (the effective date of ASC Policy Statement 10F, which prohibited States from accepting experience-related affidavits from applicants for certification), and before to the extent possible. The deadline for response to this letter is April 30, 2007. To urge compliance with our request, our letter asserts that the Board may be forced to initiate any available legal processes to suspend affected appraisers employed by tax assessors' offices.
3. The DRE will ask the Board to adopt rules requiring the individuals identified in paragraph 2 above to submit acceptable experience logs prior to renewal of their licenses. To the extent legally permissible, licenses for individuals who fail to submit the logs will not be renewed. The DRE will notify the ASC of each license not renewed as a result of this action.
4. The DRE will post information on its website and in its newsletter informing all appraisers who were credentialed using mass appraisal experience that they are required to comply with AQB Criteria and Policy Statement 10.
5. The DRE will ask all appraisers to self-identify their credentialing upon renewal and will take appropriate steps to ensure proper credentialing for those who used mass appraisal experience.

The DRE is implementing measures to address continuing education concerns.

The DRE acknowledges the requirements of ASC Policy Statement # 10F, which provides guidance on the acceptance of affidavits in recognizing education for certification renewal. The DRE also acknowledges that the CE audit conducted in 2006 indicated more than 10% of certified appraisers audited failed to meet AQB minimum continuing education criteria. Accordingly, the DRE must take remedial action to address the apparent weakness of the continuing education affidavit process. While the DRE recognizes the requirement to take such remedial action, we must do so in a manner that does not jeopardize the investigation and enforcement activities being implemented within the DRE as previously mentioned.

Over the last three months, the DRE has already implemented measures designed to address continuing education compliance concerns. We have hired a web programmer, who is making significant improvements to the DRE's web page. These improvements will include technological improvements so that licensees will be notified by email of the release of the DRE newsletter and other important announcements.

This will provide the DRE with additional ways in which to publish the names of licensees who are not compliant with continuing education requirements and to remind licensees of continuing education requirements.

The ASC letter instructs the DRE to perform four actions or provide an alternative. As an alternative, the DRE is exploring several other options designed to address the concerns with continuing education compliance. The options under consideration, which we will implement upon discussion and consultation with the ASC and CBREA, include:

1. **Abandoning the affidavit process and implementing a program for 100% continuing education compliance.** The DRE has asked for proposals from its examination and licensing technology vendor. While the DRE lacks the technical expertise and staffing to implement a system designed for 100% compliance, Colorado law allows the DRE to contract with vendors who have such expertise in order to develop, implement, and administer licensing functions, such as a system to allow 100% compliance.

Such contract may authorize the contractor to collect fees directly from licensees for performing the function. See §§ 24-34-101(6) and (7), and 12-61-705, C.R.S. Such a system would require course providers to upload course certificates for licensees completing courses and require licensees to take courses only from vendors who agree to upload such course certificates. Licensees who fail to comply with continuing education requirements would not be allowed to renew their licenses.

2. **Continuing with the affidavit process, but implementing several enhancements designed to dramatically improve continuing education compliance.** These enhancements would include adopting an emergency rule to increase the penalties for failing to have the required CE as attested on the affidavit, increasing the scope of the audits, using well-established and valid random sampling criteria, publishing the names of non-compliant licensees in a variety of ways, and notifying licensees of the DRE's increased audit scopes in order to deter non-compliance.

The DRE proposes working with ASC staff and CBREA to come up with mutually agreeable remedial actions by June 30, 2007 that are designed to dramatically improve continuing education compliance in Colorado.

The DRE has implemented measures designed to improve the process for education course approvals or disapprovals.

The DRE is working with the appraisal industry to find ways to streamline and improve the course approval process, while allowing DRE appraisers to focus solely on investigations. We have contacted a number of key course providers and solicited input. We modified our web page to say that course providers offering courses

approved through the AQB Course Approval Program no longer need to apply for approval. We also discussed this issue with the Board, who authorized the formation of a task force to make recommendations on the course approval process. Proposals under consideration include:

1. Requiring the use of the AQB Course Approval Program for all qualifying education courses, effective July 1, 2007.
2. Allowing continuing education courses, programs and seminars approved through the AQB Course Approval Program automatic approval without further approval from the DRE.
3. Using the Board as one avenue to approve continuing education courses, programs and seminars that do not have approval from the AQB Course Approval Program.
4. Allowing approved course providers to offer continuing education courses, programs and seminars without advance approval from the DRE, but requiring such course providers to give quality assurances to the DRE.

As part of this new course approval program, the DRE will require the maintenance of documentation supporting decisions to approve or disapprove educational courses until, at a minimum, the next ASC field review of the Program.

The DRE is retaining adequate documentation to substantiate the appraiser credentials were issued in compliance with AQB criteria.

In response to the ASC audit, the DRE no longer destroys experience logs 90 days after taking action on an application. The DRE is maintaining experience logs and other documentation supporting experience claims and will do so until, at a minimum, the ASC has conducted its next scheduled on-site field review.

The DRE has taken action to address the concern over a distance education course that failed to conform to AQB criteria.

The ASC letter instructs the DRE to perform four actions. Rather, the DRE performed the following actions. Within thirty (30) days of the January 5, 2007 ASC letter, the DRE identified all persons who took this distance education course. We contacted the course provider, and he provided a roster of everyone who took the course. After receiving this information, the DRE categorized each person on the roster into one of five categories. The results are as follows:

1. Number who took the course, but did not complete it per the roster: 14
2. Number who took and completed the course but are not appraisers in our database: 7

3. Number who took and completed the course and who are registered appraisers: 4
4. Number who took and completed the course and are licensed or certified appraisers who have renewed their credentials since taking the course: 16
5. Number who took and completed the course and are licensed or certified appraisers who have NOT renewed their credentials since taking the course: 2

In consultation with ASC Representative Jenny Tidwell, the DRE sent letters to those individuals in categories 4 and 5 above. The letter sent to individuals in category 4 requires the individuals to either provide evidence that they met the continuing education requirements without counting the disapproved distance education course, or to provide evidence of completing an acceptable 2 hour course taken by March 16, 2007. The new course would be applied to the previous license renewal period. The letter sent to the individuals in category 5, informs them that the course was disapproved. and that they cannot count the course when they renew their license.

DRE will advise the ASC in writing of the appraisers who do not comply with the approach set forth above. which was approved in advance by the ASC.

Conclusion

The DRE and CBREA recognize the serious nature of the audit findings. The DRE and CBREA ask that the ASC acknowledge that the DRE has undergone a complete reorganization. Among other things, we have implemented policies and procedures, hired staff. contracted out investigations, revised staff roles and obtained funding to ensure a more efficient and effective appraiser regulatory program. Accordingly, please accept the DRE and CBREA's suggested remedial actions, where they differ from those of the ASC

We would like to thank Jenny Tidwell, appraisal policy manager for ASC. She was professional and courteous throughout the audit period.

Sincerely,



Erin Toll
Director

Cc: D. Rico Munn, Executive Director, Department of Regulatory Agencies
Keren Prior. Chair, Colorado Board of Real Estate Appraisers