

APPRAISER REGISTRATION AND CERTIFICATION

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Dmitrich

AN ACT RELATING TO SECURITIES DIVISION - REAL ESTATE DIVISION;
CLARIFYING THE DEFINITION OF SENIOR APPRAISER; REVISING THE
TEMPORARY PERMIT PROCESS; CLARIFYING THE DISCIPLINARY PROCESS; AND
MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

61-2b-2, as last amended by Chapter 131, Laws of Utah 1996

61-2b-22, as last amended by Chapter 245, Laws of Utah 1991

61-2b-28, as last amended by Chapter 162, Laws of Utah 1993

61-2b-29, as last amended by Chapter 131, Laws of Utah 1996

61-2b-31, as last amended by Chapter 162, Laws of Utah 1993

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **61-2b-2** is amended to read:

61-2b-2. Definitions.

As used in this chapter:

(1) (a) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or identified real property.

(b) Appraisals shall be classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment in accordance with the following definitions:

(i) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that estimates the value of an identified parcel of real estate or identified real property at a particular point in time.

(ii) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that relates to the nature, quality, or utility of identified real estate or identified real property.

(iii) "Review assignment" means an unbiased analysis, opinion, or conclusion that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment.

(2) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

(3) (a) "Appraisal report" means any communication, written or oral, of an appraisal.

(b) An appraisal report shall be classified by the nature of the assignment as a valuation report, analysis report, or review report in accordance with the definitions provided in Subsection (1)(b).

(c) The testimony of a person relating to the person's analyses, conclusions, or opinions concerning identified real estate or identified real property is considered to be an oral appraisal report.

(4) "Board" means the Real Estate Appraiser Registration and Certification Board that is established under this chapter to provide technical assistance and make recommendations to the division and perform certain ancillary functions.

(5) "Certified appraisal report" means a written or oral appraisal report that is certified as such by a state-certified general appraiser or state-certified residential appraiser. The certification of an appraisal report by a state-certified real estate appraiser represents to the public that the appraisal report meets the appraisal standards established under this chapter.

(6) (a) (i) "Consultation service" means an engagement to provide a real estate valuation service analysis, opinion, conclusion, or other service that does not fall within the definition of appraisal.

(ii) "Consultation service" does not mean a valuation appraisal, analysis assignment, or review assignment as provided in Subsection (1)(b).

(b) Regardless of the intention of the client or employer, if a person prepares an unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to be an appraisal and not a consultation service.

(7) "Contingent fee" means a fee or other form of compensation, payment of which is dependent on or conditioned by:

(a) the reporting of a predetermined analysis, opinion, or conclusion by the person performing the analysis, opinion, or conclusion; or

(b) achieving a result specified by the person requesting the analysis, opinion, or conclusion.

(8) "Division" means the Division of Real Estate of the Department of Commerce.

(9) "Federally related transaction" means any real estate related transaction which is required by federal law or by federal regulation to be supported by an appraisal prepared by a state certified appraiser.

(10) "Real estate" means an identified parcel or tract of land including improvements if any.

(11) "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

(12) "Real estate related transaction" means:

(a) the sale, lease, purchase, investment in, or exchange of real property or an interest in real property, or the financing of such a transaction;

(b) the refinancing of real property or an interest in real property; or

(c) the use of real property or an interest in real property as security for a loan or investment, including mortgage-backed securities.

(13) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(14) "Senior appraiser" means a person grandfathered under this chapter who holds a current, valid state [certification] registration as a real estate appraiser whose registration was issued to the person based on the person's experience or designation as a member in good standing in an appraisal organization that is a member of the Appraisal Foundation.

(15) "State-certified general appraiser" means a person who holds a current, valid certification as a state-certified general appraiser issued to him under the provisions of this chapter. The state-certified general appraiser classification consists of those persons who meet the requirements for certification relating to the appraisal of all types of real estate.

(16) "State-certified residential appraiser" means a person who holds a current, valid certification as a state-certified residential real estate appraiser issued to him under the provisions

of this chapter. The state-certified residential appraiser classification consists of those persons who meet the requirements for certification that relate to the appraisal of residential real estate in federally related transactions.

(17) "State-registered appraiser" means a person who holds a current, valid state registration as a real estate appraiser issued to him under the provisions of this chapter. The state-registered appraiser classification consists of those persons who meet the requirements for registration that relate to the appraisal of all types of real estate in transactions that are not federally related transactions.

(18) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property that is prepared by a person who is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering the analysis, opinion, or conclusion.

Section 2. Section **61-2b-22** is amended to read:

61-2b-22. Registration or certification requirements for nonresidents -- Temporary permits -- Revocation.

(1) Each applicant for registration or for certification under this chapter who is not a resident of this state shall submit with his application an irrevocable consent that service of process upon him may be made by delivery of the process to the director of the division if, in an action against the applicant in a court of this state arising out of the applicant's activities as a real estate appraiser in this state, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant.

(2) A nonresident of this state who has complied with the provisions of Subsection (1) may obtain a registration or certification in this state by complying with all of the provisions of this chapter relating to registration or certification.

(3) A nonresident of this state who has complied with the provisions of Subsection (1) may obtain a temporary registration or certification to perform a contract relating to the appraisal of real estate or real property in this state. To qualify for the issuance of a temporary registration or certification, an applicant must:

- (a) submit an application on a form approved by the division;
- (b) submit evidence that he is registered or certified in the state in which he primarily conducts business;
- (c) certify that no formal charges alleging violation of state appraisal registration or certification laws have been filed against the applicant by the applicant's state of domicile; and
- (d) pay an application fee in an amount established by the division with the concurrence of the board.

(4) ~~[Each temporary permit shall expire six months from the date of issuance. A temporary permit may not be renewed]~~ In accordance with Title 63, Chapter 46a, the division, with the concurrence of the board, shall make rules establishing the duration of a temporary permit and procedures for renewal of a temporary permit.

(5) A temporary permit issued under this section shall be immediately and automatically revoked if the appraiser's license is suspended or revoked in the appraiser's state of domicile.

(6) Any person whose license has been revoked under Subsection (5) is entitled to a postrevocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 3. Section **61-2b-28** is amended to read:

61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.

(1) The division may investigate the actions of any person registered or certified under this chapter, or an applicant for registration, certification, or renewal, and may initiate an agency action in accordance with Title 63, Chapter 46b, Administrative Procedures Act, ~~[to revoke, suspend, place on probation, or deny the registration or certification, order remedial education, or impose a penalty not to exceed \$1,000 for any of the acts or omissions set forth in Section 61-2b-29]~~ to impose disciplinary action on a person registered or certified under this chapter or to deny issuance to an applicant of an original or renewal registration or certification.

(2) The division may subpoena witnesses, take evidence, and require by subpoena duces tecum the production of books, papers, contracts, records, other documents, or information relevant to the investigation. The division may serve subpoenas by certified mail. Each failure to respond

to a subpoena by a person registered or certified under this chapter is considered to be a separate violation of this chapter.

(3) (a) If the director has reason to believe that any person has been or is engaging in acts constituting violations of this chapter, and if it appears to the director that it would be in the public interest to stop these acts, he shall issue and serve upon the person an order directing that person to cease and desist from those acts.

(b) Within ten days after receiving the order, the person upon whom the order is served may request an adjudicative proceeding.

(c) Pending the hearing, the cease and desist order shall remain in effect.

(d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(4) (a) After the hearing, if the board agrees that the acts of the person violate this chapter, the board shall issue an order making the cease and desist order permanent.

(b) If no hearing is requested and if the person fails to cease the acts, or after discontinuing the acts, again commences the acts, the executive director shall commence an action in the name of the Department of Commerce and Division of Real Estate, in the district court in the county in which the acts occurred or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter.

(5) The remedies and action provided in this section do not limit, interfere with, or prevent the prosecution of any other remedies or actions including criminal proceedings.

Section 4. Section **61-2b-29** is amended to read:

61-2b-29. Disciplinary action -- Grounds.

[The following acts and omissions shall be considered grounds for disciplinary action] The board may order disciplinary action against any person registered or certified under this chapter. Board action may include revoking, suspending, or placing a person's registration or certification on probation, denying a person's registration or certification, ordering remedial education, and imposing a penalty upon a person not to exceed \$1,000 per violation based on any of the following grounds for disciplinary action:

(1) procuring or attempting to procure registration or certification under this chapter by fraud or by making a false statement, submitting false information, making a material misrepresentation in an application filed with the division;

(2) paying money or attempting to pay money other than the fees provided for by this chapter to any member or employee of the division to procure a registration or certification under this chapter;

(3) an act or omission in the practice of real estate appraising which constitutes dishonesty, fraud, or misrepresentation;

(4) entry of a judgment against a registrant or certificate holder on grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

(5) a guilty plea to a criminal offense involving moral turpitude which is held in abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a criminal offense involving moral turpitude;

(6) engaging in the business of real estate appraising under an assumed or fictitious name not properly registered in this state;

(7) paying a finder's fee or a referral fee to a person not registered or certified under this chapter in connection with an appraisal of real estate or real property in this state;

(8) making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(9) ~~[violation of]~~ violating or disregarding any provision of this chapter, an order of the board, or any rule issued under this chapter;

(10) violation of the confidential nature of governmental records to which a person registered or certified under this chapter gained access through employment or engagement as an appraiser by a governmental agency;

(11) acceptance of a fee for performing an appraisal as defined in Subsection 61-2b-2(1) if in fact the fee is or was contingent upon the appraiser reporting a predetermined analysis, opinion, or conclusion or is or was contingent upon the analysis, opinion, conclusion, or valuation reached or upon the consequences resulting from the appraisal assignment;

- (12) unprofessional conduct as defined by statute or rule; or
- (13) any other conduct which constitutes dishonest dealing.

Section 5. Section **61-2b-31** is amended to read:

61-2b-31. Disciplinary hearing process.

(1) Before disciplinary action may be taken by the board against a registrant or certificate holder, the division shall notify the registrant or certificate holder and ~~[schedule]~~ commence an adjudicative proceeding.

(2) If, after the hearing, the board determines that the registrant or certificate holder has violated this chapter, ~~[his registration or certificate may be suspended, revoked, or denied reissuance]~~ the board may impose disciplinary action by written order ~~[of the board]~~ as provided in Section 61-2b-29.

(3) The board may conduct hearings with the assistance of an administrative law judge or may delegate hearings to an administrative law judge. If the hearing is delegated by the board to an administrative law judge, the judge shall submit written findings of fact, conclusions of law, and a recommended order to the board for its consideration.

(4) (a) Any applicant, registrant, certificate holder, or person aggrieved, including the complainant, may obtain judicial review of any adverse ruling, order, or decision of the board. Any appeal shall be governed by the Utah Rules of Appellate Procedure.

(b) If the applicant, registrant, or certificate holder prevails in the appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, registrant, or certificate holder as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.