STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BOARD OF REAL ESTATE APPRAISERS
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

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ADVISORY RULING

No. 2010-02

Advisory Ruling Requested by: Carol Leighton, Administrator
Board of Real Estate Appraisers
Department of Professional and Financial Regulation
35 State House Station
Augusta, ME 04333

Topic: Applicability of USPAP Standard 3 to Examinations of Appraisals Submitted with License Applications

REQUEST FOR ADVISORY RULING

By letter dated February 2, 2010, Carol Leighton requested an opinion as to whether Uniform Standards of Professional Appraisal Practice (USPAP) Standard 3 applies to investigation reports performed by the Board's investigator. In the course of discussing this letter and issuing Advisory Ruling No. 2010-01 on April 6, 2010, the Board felt it appropriate to address the ancillary issue of whether USPAP Standard 3 applies to Board members when they examine appraisals submitted with license applications Pursuant to the authority granted in 5 M.R.S. § 9001 and Board of Real Estate Appraisers Rules chapter 150, the Board considered this ancillary issue at its March 2 and April 6, 2010, meetings and now issues the following advisory ruling.

STATEMENT OF FACTS

The Maine Board of Real Estate Appraisers is the state agency that is responsible for processing applications for the various real estate appraising licenses. For some levels of licensure, the applicants are required to submit samples of their appraisal work in order to demonstrate experience performing certain types of appraisals. When the Board receives such sample appraisal reports, it assigns one Board member to examine the reports and determine whether the reports are in compliance with USPAP standards.

When performing such an examination, the Board member fills out a form checklist for each appraisal report that asks whether the report meets the requirements of certain USPAP standards. The Board member simply fills out the form by checking boxes and may provide further explanation if he/she finds that the USPAP standard was not met. The Board member does not reach an opinion of value or opine as to accuracy of the licensee's value conclusion with respect to the real property that is the subject of the appraisal report.

The applicant's application package is then scheduled for discussion before the entire Board at a public Board meeting. At this Board meeting, the examining Board member presents his/her findings with regard to USPAP compliance and may make a recommendation as to whether the application should be granted or denied based on the sample appraisal reports. The Board uses the checklist and recommendation when determining initially whether to grant or deny the application.

APPLICABLE LAW

Pursuant to 32 M.R.S. § 14028 and Chapter 240 of the rules of the Maine Board of Real Estate Appraisers, licensed real estate appraisers in Maine must comply with USPAP standards.

USPAP Standard 3 applies to "an appraiser acting as a reviewer" when "developing an appraisal review assignment."[1] Standard 3 notes that "the term 'reviewer' is used to refer to an appraiser performing an appraisal review."[2]

USPAP Standard 3 requires that, when performing an appraisal review, the review appraiser comply with a number of specified requirements when developing the appraisal review and completing a report of the appraisal review.

USPAP defines an appraiser as follows: "one who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective."[3]

USPAP defines "valuation services" as "services pertaining to aspects of property value."[4]

USPAP defines "value" as "the monetary relationship between properties and those who buy sell, or use those properties."[5]

USPAP defines "appraisal review" as follows: "the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal, appraisal review, or appraisal consulting assignment."[6]

Maine law does not otherwise define the term "appraisal review."

Maine law defines the term "real estate appraiser" as follows: "'Real estate appraiser' means a person who engages in real estate appraisal activity for a fee or other valuable consideration. 'Real estate appraiser' includes review appraisers and appraisal administrators."[7]

DISCUSSION AND RULING

The fundamental issue presented by the subject request is whether under Maine law the examining Board member must comply with USPAP Standard 3 when completing the checklist for the Board as described in the Statement of Facts. The succinct answer to that question is, "No." When performing such an examination, the Board member is not performing an "appraisal review" under Maine law that would require the member to adhere to USPAP Standard 3 when completing the checklist form.

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[1] *USPAP* Standard 3 at U-30 (2010-2011 Ed.).
[2] *Id.*
[3] *USPAP* Definitions at U-1 (2010-2011 Ed.).
[4] *Id.* at U-4.
[5] *Id.*
[6] *Id.* at U-1.
[7] 32 M.R.S. §14002(13).

As a preliminary matter, it is important to acknowledge and reiterate that the sole purpose of the Board "is to protect the public health and welfare." 10 M.R.S. § 8008. The Board "carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners." *Id.*

It is also important to note that the checklist completed by the Board member is prepared for use by the Board, itself, which is composed of five licensed real estate appraisers and two public members. The checklist is not intended for use by any member of the public, nor is it intended to be used as an appraisal review.

Several factors distinguish the typical appraisal review from the subject checklist. First, the purpose of an appraisal is to determine an opinion of value. Accordingly, the purpose of an appraisal review is typically to determine whether the appraiser reached an appropriate value or performed the appraisal in a manner that would enable him or her to reach an appropriate value. In contrast, the purpose of examining the appraisal reports in an application package is to determine whether or not the applicant is capable of performing appraisals that comply with USPAP standards. The Board member does not opine as to the appropriateness of the applicant's value conclusion. The Board member merely states whether certain USPAP standards are met.

Second, the typical review appraiser performs a review for a client who has some type of interest (e.g., legal, financial, or otherwise) in determining the value of the subject property. On the other hand, the Board member examines the sample appraisals in order to assist the Board in fulfilling its legislative mandate to ensure that it issues licenses only to qualified applicants. The Board's interest and concern is not with respect to the subject property, but with respect to the applicant.

Third, the Board's sole purpose is to protect the public health and welfare. One way in which the Board accomplishes this mission is by processing license applications in a fair and expedient manner. Requiring a Board member to adhere to USPAP Standard 3 in instances where the Board member does not evaluate the appraiser's value conclusion would create an unnecessary expense and burden on the system that would be inconsistent with the legislative mandate to protect the public health and welfare.

It is, therefore, the opinion of this Board that a Board member's examination of sample appraisals submitted with an application package as described above is not an appraisal review under Maine law. Moreover, the Board member is not be required to comply with USPAP Standard 3 when completing the checklist.

SPOPE OF ADVISORY RULING

This advisory ruling is not binding upon the Maine Board of Real Estate Appraisers, but justifiable reliance upon this ruling shall be considered in mitigation of any penalties sought to be assessed in any subsequent enforcement action initiated by the Board.

SIGNED Wendyann Boston **DATE** 5/7/2010

Wendyann Boston, Chairperson
Maine Board of Real Estate Appraisers