



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

JOHN ELIAS BALDACCI
GOVERNOR

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DIRECTOR

ADVISORY RULING
No. 2010-01

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 Investigation Reports

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. Pursuant to the authority granted in 5 M.R.S. § 9001 and Board of Real Estate Appraisers Rules chapter 150, the Board considered the request at its March 2, 2010, meeting and now issues the following advisory ruling .

STATEMENT OF FACTS

The Maine Board of Real Estate Appraisers contracts with a single Maine licensed appraiser to perform investigations of complaints against licensees. The purpose of a complaint investigation is to determine whether there exists evidence of the licensee(s) having violated Maine law.

Oftentimes, the Board or its Complaint Officer requests that the investigator draft a written report of the investigation. The investigation report describes the nature of the complaint and the licensee's response to the complaint. It also summarizes the investigator's actions including the results of any research and the content of any interviews performed by the investigator. The report describes the evidence collected and analyzes the extent to which the evidence may or may not indicate that the licensee has violated Maine law.

When performing such an investigation, the investigator 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 investigated appraisal. In each written investigation report, the investigator includes the following certification:

Although I am a licensed/certified general appraiser, and qualified and competent to perform appraisal reviews of the subject property and appraisal report, the Board has assigned this case to me only for the purpose of investigating whether

the appraiser has violated the Uniform Standards of Professional Appraisal Practice and applicable laws and rules of the State of Maine. Thus, this investigative report to the Board is not an appraisal review assignment intended to fully comply with every aspect of Standard Rule 3 of the Uniform Standards of Professional Appraisal Practice.

The Board uses the investigation report as tool to assist it when determining whether to dismiss the complaint or proceed to hearing on the complaint.

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

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).

DISCUSSION AND RULING

The fundamental issue presented by the subject request is whether under Maine law the Board investigator must comply with USPAP Standard 3 when completing an investigation report for the Board as described in the Statement of Facts. The succinct answer to that question is, "No." Notwithstanding USPAP Frequently Asked Question ("FAQ") 275,⁸ when performing an investigation at the request of the Board, the Board's investigator is not performing an "appraisal review" under Maine law that would require the investigator to adhere to USPAP Standard 3 when issuing the type of investigative report described above.

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 investigation report completed by the Board investigator is prepared for use by the Board, itself, which is composed of five licensed real estate appraisers and two public members. The investigation report 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 investigation report. 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 the subject investigation is to determine whether or not there is evidence indicating that the licensee has violated Maine law when performing an appraisal. The investigator does not opine as to the appropriateness of the appraiser's value conclusion. The investigator merely states the results of his investigation, describes the evidence obtained, and analyzes the evidence against the requirements of Maine law.

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 investigator performs an investigation in order to assist the Board in fulfilling its legislative mandate to enforce Maine's real estate appraising laws. The Board's interest and concern is not with respect to the subject property, but with respect to the licensed appraiser.

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 complaints against licensees in a fair and

⁸ The Appraisal Foundation publishes *USPAP Frequently Asked Questions*, which is a form of guidance issued by the Appraisal Standards Board (ASB) to offer advice from the ASB for the resolution of appraisal issues and problems. *USPAP FAQ* is not a part of USPAP and the advice presented may not represent the only possible solution to the issues discussed. USPAP FAQ 275 poses the question of whether a state-certified appraiser who serves on the appraisal review panel for a state board of licensure must comply with USPAP Standard 3 when "asked to review an appraisal report" prepared by the subject of a complaint. The ASB responds that the individual would have to follow USPAP standard 3 unless the state exempts such actions from Standard 3. The ASB also advises the appraiser to discuss the assignment with the state board to ensure there is no misunderstanding as to whether or not Standard 3 would apply to the assignment.

expedient manner whether it be swiftly dismissing complaints that lack merit or ensuring prosecution of complaints in which there exists evidence of a violation of law. It is imperative that the Board's investigator be able to gather evidence and report the results of the investigation to the Board in a most efficient and expeditious manner. An investigator who does not hold a Maine appraisal license is under no obligation to adhere to the requirements of USPAP. Requiring an investigator who is licensed as a Maine appraiser to adhere to USPAP Standard 3 in instances where the investigator 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 the investigation described above is not an appraisal review under Maine law. Moreover, the investigator would not be required to comply with USPAP Standard 3 when developing the investigation or when filing a report of the investigation.

SCOPE 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
Wendyann Boston, Chairperson
Maine Board of Real Estate Appraisers

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