

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

Minutes- July 30, 2019

Board Meeting – Radisson Hotel- 605 E Broadway, Bismarck

Chairperson Timian called the meeting to order at 9:00 AM. Roll call was taken.

Board Members present:

Chairperson Tim Timian

Corey Kost

Kathy Maier

Brock DesLauriers

Staff Present:

Jodie Campbell

David Campbell

Allyson Hicks, Legal Counsel

Applicant:

Kaitlyn Timian is making application for certified general and was present for discussion. Review of Ms. Timian's application indicates she meets the education and experience hour requirements for certification. Reports were reviewed by an independent reviewer.

Discussion took place. Review of the reports indicates compliance with the minimum standards set forth in USPAP for certified general. Based on the reviews, Corey Kost moved to approve Kaitlyn Timian for certified general. Kathy Maier seconded the motion. Chairman Timian called for the vote. Corey Kost, Brock DesLauriers, Kathy Maier and Tim Timian voted yes to the motion. Motion carried.

ND Attorney General's Letter Opinion 2019-L-04:

Prior Board Attorneys provided the Board with an interpretation of NDCC 43-23.3-04, finding North Dakota a voluntary licensure state. Current Legal Counsel questioned this interpretation. After a number of discussions, the Board decided to look to the Attorney General for an official opinion as to whether ND is a voluntary or mandatory licensure state.

The Board received the Attorney General's Opinion, dated June 26, 2019. The Opinion read "under N.D.C.C § 43-23.3-04, a permit is required to perform real estate appraisals in North Dakota." Therefore, ND is a mandatory licensure state.

Discussion took place:

Legal Counsel clarified that under the statute there are exemptions: 1) a broker who gives an opinion of value in the process of advising a client as to the recommended listing price or purchase price of real estate and 2) an employee giving an opinion of value to an employer for internal purposes. Furthermore, N.D.C.C. 57-02 exempts tax assessors who are providing an opinion of value regarding assessments.

An appraiser practicing in state, who does not hold a license, is not in the purview of this Board. As a mandatory state an unlicensed appraiser practicing in state is guilty of a class A misdemeanor. A complaint or any damage done by an unlicensed appraiser is not in the purview of this Board and would be forwarded to the States Attorney for criminal prosecution.

ASC Decision for One-Year Waiver on Appraiser Licensure Requirements:

The Board questions how the ASC's decision in issuing a 12-month waiver relates to the Attorney General's Opinion that ND is a mandatory state.

Points of Discussion included:

- According to ND state law (consumer protection) all persons performing appraisals must have a state license, regardless of the waiver. This is a consumer protection issue, and in the case of a consumer protection issue, state law trumps federal law. Under ND law the Board has no provision to offer a waiver. The state law is as it stands, any individual performing as an unlicensed appraisal would be taking a risk.
- The Board can only advise the unlicensed appraiser that a permit is required to practice in state.
- The Board should consider drafting a unilateral statement by the Board of the current status of our law.
- The original intent of our law was to operate as a voluntary state. The Board has operated under that

intent since day one. However, with the recent Attorney General's Opinion, we must proceed as a mandatory state. The language in statute appears to read confusing. Therefore, the Board discussed modifying statute. With that in mind, the Board must determine whether to proceed as a mandatory or a voluntary state. It was suggested drafting language both ways, as if voluntary and as if mandatory.

- There are individuals working towards a ND licensure or certification permit under the perception that ND is a voluntary state. The Board discussed modifying rules to clarify and/or provide a mechanism or path for such an applicant to move forward. It was suggested bringing back the transitional permit.
- The residential and commercial thresholds may be increasing. If the residential threshold is raised, in 60 days, the residential portion of the waiver is done.
- Scott Dibiaso, with the Appraisal Institute, provided comment on the waiver relative to the Attorney Generals opinion that ND is a mandatory licensure state. He discussed the rules relating to raising the residential threshold to \$400,000 and the nonresidential threshold to \$1,000,000, indicating that once these actions occur, the waiver is moot as 90% of the transactions in ND will be exempt.
- Mr. Dibiaso further discussed the waiver. In 1989 when FIRREA was enacted, the federal government delegated to the states the responsibility of licensing and certifying appraisers to perform appraisals for federally related transactions. It appears that what the ASC has done by this waiver, is rescinded that authority. If ND were to require a license or certification permit to provide an appraisal to a ND federally regulated financial institution, when the federal government has said a federally regulated financial institution in ND does not have to use a person who is licensed or certified to provide a USPAP compliant appraisal, you may be running into the issue of preemption of federal law.
- Legal Counsel commented that while there may be validity to Mr. Dibiaso's comments regarding preemption, it is not up to the Board to decide, that is an analysis that every states attorney will have to make.
- The Board discussed drafting a form letter, if a complaint is received against an unlicensed appraiser, to refer the individual to the local county states attorney or city attorney as the Board does not have jurisdiction over unlicensed appraisers.
- The Board further discussed being proactive in communication with the other stakeholders. The waiver addresses a possible one-year extension, where the ASC will re-visit the issues noted in the waiver in 12 months. The applicants of the waiver must show that steps are being taken to alleviate any scarcity concerns. While it may not be the Board's responsibility to set up a meeting with the applicants of the waiver, the Board's concerns are to protect public trust. Therefore, the Board will consider scheduling a meeting to address the concerns.

Chairman Timian opened the floor for comments from those in attendance. Legal Counsel reminded everyone that there will be no legal advice given to the public.

Experience credit was a main topic of discussion. The Board may want to clarify in rules what experience will be allowed, as well as a timeline in accepting experience.

Corey Kost moved for adjournment. Kathy Maier seconded the motion. Chairman Timian called for the vote. Corey Kost, Kathy Maier, Brock DesLauriers and Tim Timian voted yes. Motion Carried. Meeting adjourned.

Respectfully submitted,



Jodie R. Campbell
Executive Secretary