



California Office of Real Estate Appraisers

Director

Bob Clark ~

*Licensing/Enforcement
Update
State and Federal Issues*

Northern California Chapter of the Appraisal Institute

Pleasanton ~ September 16, 2010

To protect public safety by ensuring the competency and integrity of licensed real estate appraisers.

H.R. 4173 – Appraisal Issues

- Federal appraisal independence standards (CA SB 223 – 10/5/07)
- Required reporting of USPAP violations & National Appraiser Complaint Hotline (Larger enforcement caseload – OREA staffing ?)
- Customary and reasonable fees to appraisers (“...established by objective third-party information...” – Tasking and timing for establishment of fees ?)
- Elimination of the Home Valuation Code of Conduct
- Appraisal Management Company registration (CA SB 237 – 1/1/10)
- National Registry listing of AMCs (Collection of registry fees ?)
- Increased resources and authority to the ASC
 - Increase in National Registry fees (\$40 to \$80)
 - Grants to states for appraisal regulation
 - Possible imposition of interim actions and suspensions, alternative to “the derecognition of a State agency”
- RESPA amendment – “...may include...a clear disclosure of...”

SECTION 1472. APPRAISAL INDEPENDENCE REQUIREMENTS

(g) Rules and Interpretive Guidelines-

(1) IN GENERAL- Except as provided under paragraph (2), The Board (of Governors of the Federal Reserve System), the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau (of Consumer Financial Protection) may jointly issue rules, interpretive guidelines, and general statements of policy with respect to acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), (f), (h), and (i)

(2) INTERIM FINAL REGULATIONS- The **Board shall**, for purposes of this section, **prescribe interim final regulations no later than 90 days after the date of enactment of this section** defining with specificity acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations. Rules prescribed by the Board under this paragraph shall be deemed to be rules prescribed by the agencies jointly under paragraph (1).

(i) Customary and Reasonable Fee-

(1) IN GENERAL- Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies.

Regulations - OREA Rulemaking

- Emergency re-adoption of Appraisal Management Company registration regulations (SB 237) on July 21, 2010, extending them to October 20, 2010.
- Regular rulemaking documents for Appraisal Management Company registration to be submitted to the Office of Administrative Law in September, pending approval by Business, Transportation & Housing Agency.
- Regular rulemaking filing that implements Appraisal Subcommittee requirements and extension of license fee reduction (through June 30, 2014) approved by the Office of Administrative Law on August 24, 2010 for adoption and filing with the Secretary of State.

Appraisal Management Company Registration

Business & Professions Code Section 11320.5

No person or entity shall act in the capacity of an appraisal management company without first obtaining a certificate of registration from the Office of Real Estate Appraisers.

- **Effective January 1, 2010 (No “Grace Period” Provision)**
- **Emergency Regulations extended to October 20, 2010**
- **Regular Rulemaking to be filed in September**

AMC Prohibited Actions

- *Withholding or threatening to withhold timely payment for an appraisal.*
- *Providing to an appraiser an anticipated, estimated, encouraged, or desired valuation in an appraisal report.*
- *Conditioning the amount of an appraisal fee on the concluded value in an appraisal report, or on a preliminary value estimate.*
- *Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report.*
- *Requesting that an appraiser provide estimated values of comparable sales at any time before the appraiser completes an appraisal report.*
- *Prohibiting a contracted appraiser/client from disclosing the fee for an appraisal assignment in the body of the appraisal report.*

AMC Prohibited Actions

- *No AMC may alter or modify a completed appraisal report submitted by an independent appraiser, including the permanent removal of the appraiser's signature or seal, or by adding or removing any information from an appraisal report with an intent to change the value conclusion.*
- *No AMC may require an appraiser to provide it with the appraiser's digital signature or seal; however, an appraiser is not prohibited from voluntarily providing his or her digital signature or seal to another person.*
- *No AMC may remove an independent appraiser from their panel of approved appraisers without prior written notice that includes evidence which supports that the appraiser has violated USPAP or other applicable appraisal regulations or state statutes, or evidence which demonstrates substandard performance, improper or unprofessional behavior, or other substantive deficiencies.*

As of September 13, 2010:

| | |
|--|------------|
| <i>AMC Applications Received</i> | <i>196</i> |
| <i>Certificates of Registration Issued</i> | <i>154</i> |
| <i>Issuances Pending Payment</i> | <i>22</i> |
| <i>Formal Complaints Submitted</i> | <i>20</i> |

Most Common Complaints:

- *Pressure to increase values*
- *Dictating use of specific comparable sale(s) to increase value*
- *Fee amount contingent upon value conclusion*
- *Removal from an AMC's approved panel without cause*
- *Failure to pay for contracted appraisal, or unreasonable delay in payment*

AMC as Authorized Agent for a Client

The Appraisal Foundation FAQ #95

Question:

I accept assignments from an Appraisal Management Company (AMC) that has informed me they are an authorized agent for the lenders they represent. The AMC does not want me to list their name as the client, and asks that I only list the name of the lender they are representing. USPAP says the appraiser's client is the party who engages the appraiser. Is it ethical to omit the AMC's name as the client on my reports?

Response:

Yes. If the AMC is acting as a duly authorized agent for a lender, identifying only the lender as your client is acceptable.

Most Common Complaint from AMCs, Mortgage Brokers, Realtors

***GEOGRAPHIC
COMPETENCY***

Comment – Competency
Rule of USPAP (2008–
09)

“In an assignment where geographic competency is necessary, an appraiser preparing an appraisal in an unfamiliar location must spend sufficient time to understand the nuances of the local market and the supply and demand factors relating to the specific property type and the location involved...If an appraiser is not in a position to spend the necessary amount of time in a market area to obtain this understanding, affiliation with a qualified local appraiser may be the appropriate response to ensure development of credible assignment results.”

USPAP Competency Rule
(2010–11)

AN APPRAISER MUST: 1) be competent to perform the assignment; 2) acquire the necessary competency to perform the assignment; or 3) decline or withdraw from the assignment.

BEING COMPETENT - The appraiser must determine, prior to accepting an assignment, that he or she can perform the assignment competently. Competency requires: 1) the ability to properly identify the problem to be addressed; and 2) the knowledge and experience to complete the assignment competently; and 3) recognition of, and compliance with, laws and regulations that apply to the appraiser or to the assignment.

ACQUIRING COMPETENCY - If an appraiser determines he or she is not competent prior to accepting an assignment, the appraiser must: 1) disclose the lack of knowledge and/or experience to the client before accepting the assignment; 2) take all steps necessary or appropriate to complete the assignment competently; and 3) describe, in the report, the lack of knowledge and/or experience and the steps taken to complete the assignment competently.

License Statistics

■ **Active Licenses 9/10/10 *** **14,343** (9,932 AR-AG)
(AT & AL Combined: 30.75% ~ AR & AG Combined: 69.25%)

■ **Active Licenses 1/1/09** **17,647** (9,726 AR-AG)
(AT & AL Combined: 44.89% ~ AR & AG Combined: 55.11%)

■ **Active Licenses 1/1/07** **20,164** (7,982 AR-AG)
(AT & AL Combined: 60.41% ~ AR & AG Combined: 39.59%)

* 18.72% decline since 1/1/09 ~ 28.87% decline since 1/1/07

Licensee Ages

(August 20, 2010)

| <u>AGE</u> | <u># of Licensees</u> | <u>% of Population</u> |
|-------------------|-----------------------|------------------------|
| Over 80 years old | 69 | .48% |
| 70 - 80 years old | 507 | 3.52% |
| 60 - 70 years old | 2,540 | 17.63% |
| 50 - 60 years old | 4,579 | 31.78% |
| 40 - 50 years old | 3,976 | 27.59% |
| 30 - 40 years old | 2,212 | 15.35% |
| 20 - 30 years old | 526 | 3.65% |

~ 53.4% of OREA licensees are more than 50 years of age ~

~ Average age of total license population is 50.8 years old ~

~ Age range is 20 years old (3 ATs) to 93 years old (1 AG) ~

Enforcement Statistics

| | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> |
|--|-------------|-------------|-------------|-------------|
| Complaints Received | 443 | 550 | 538 | 580 |
| Investigations Completed | 212 | 214 | 231 | 589 |
| <small>(2009 includes Full Investigations & Closed at Screening)</small> | | | | |
| Cases Closed | 213 | 182 | 231 | 588 |
| Citations | 80 | 80 | 84 | 77 |
| Closed - No Action | 40 | 29 | 47 | 203 |
| Revocations | 9 | 9 | 15 | 26 |
| Stayed Revocations | 2 | 2 | 1 | 20 |
| Stipulated Settlements | 28 | 17 | 21 | 18 |
| Voluntary Surrenders | 5 | 7 | 37 | 20 |
| Warnings | 49 | 38 | 26 | 224 |

Executed Decisions

July 1, 2009 through December 31, 2009

95 Decisions resulting in \$64,250 in fines, \$65,218 in enforcement costs, and 1,440 hours of imposed basic education.

January 1, 2010 through September 10, 2010

110 Decisions resulting in \$53,000 in fines, \$84,555 in enforcement costs and 2,160 hours of imposed basic education.

Pending Investigations

May 22, 2009 – 430 open cases

September 10, 2010 – 279 open cases

OREA "Report Card"

"As detailed in the attached Follow-up Report, California resolved one of the two concerns identified in the January 19, 2010 Compliance Review Report. California also made significant progress toward addressing the second concern identified. In addition, California addressed recommended actions to strengthen the Program. We commend California's Program for its efforts and the progress made."

(Excerpt from July 15, 2010 letter from the Appraisal Subcommittee regarding follow-up to June 2009 review of OREA's regulatory and enforcement program.)

Common Residential Deficiencies

1-2(e)(i)

- Misrepresentation of site & building physical characteristics (lack of permits on improvement additions)
- Inaccurate zoning references

1-3(a)

- Failure to accurately analyze market conditions
- Failure to analyze legal conformity (effect of zoning on use and value)

1-4

- Verification of information often inadequate
- Omission of relevant comparable sales
- Cost references not understood nor adequately supported

1-5

- Failure to analyze current listing or past sales history

2-3

- False certifications

Appraisers'

Responsibilities

- *Always comply with USPAP*
- *Practice due diligence - verify data and sources*
- *Be aware of and report on physical defects*
- *Use photographs as protection*
- *Practice technical and geographic competency*
- *Understand and properly explain any extraordinary assumptions and/or hypothetical conditions*
- *When in doubt, disclose*
- *Practice effective record keeping*
- *Observe the primary tenets of the Conduct section of the Ethics rule:*
 1. *Objectivity*
 2. *Impartiality*
 3. *Independence*

Administrative Law

Process

- A. Investigative Process
 - 1) Fact finding
 - 2) Conference with respondent (opportunity to support analysis/conclusions – Legal counsel may be present)
 - 3) Investigative report
- B. Management Decision of Discipline
 - 1) Letters of warning
 - 2) Disciplinary sanctions
- C. Pleadings
 - 1) Citation
 - 2) Accusation
 - 3) Include findings and prayer
 - 4) Opportunity for settlement

Administrative Law Process (Continued)

D. Appeal Process

- 1) Notice of defense
- 2) Schedule of hearing
- 3) Mandatory Settlement Conference

E. Administrative Law Hearing

- 1) Opportunity for representation
- 2) Conducted as a trial
- 3) Administrative law judge presides
- 4) Final decision
- 5) Director's adoption of decision
- 6) Appeal rights to Superior Court

www.orea.ca.gov

Home | [About OREA](#) | [Contact Us](#) | [Map](#) | [Privacy Notice](#) | [Customer Survey](#) | [Related Sites](#)

GOVERNOR SCHWARZENEGGER
Visit his Website

DALE E. BONNER
2011 Agency Secretary

BOB CLARK
Director

California Real Estate & Financial Services License Status Check

SEARCH APPRAISERS

NEW LICENSE REQUIREMENTS

FILE A COMPLAINT

REGISTERED AMCs

OREA Links

As a result of Governor Schwarzenegger's Executive Order S-13-09 of July 1, 2009, the Office of Real Estate Appraisers will be closed on the first, second and third Fridays of each month (and the fourth Friday in January 2010) through June of 2010.

- List of currently [Registered AMCs](#) - Updated 4/12/2010
- The [2010 Edition of USPAP](#) became effective on January 1, 2010. See also: [2010 - 2011 Revisions to USPAP and USPAP Advisory Opinions](#)
- The [Fall 2009 edition](#) of OREA's newsletter, The California Appraiser is now available.
- **Appraisal Management Company Registration**
California Governor Schwarzenegger signed Senate Bill 237 into law on October 11, 2009, mandating the registration of appraisal management companies with the Office of Real Estate Appraisers (OREA). Under SB 237, OREA must develop and adopt regulations governing the implementation of the registration process, with specified minimum requirements, and establish the fees to be imposed in an amount sufficient to cover OREA's administrative costs for the registration and regulation of appraisal management companies.
OREA's approved emergency regulations were filed with the Secretary of State on January 21, 2010. Said regulations shall be in effect for 180 days, or until OREA completes the Regular Rulemaking process.
[AMC Registration -- Approved Emergency Regulations](#)
[AMC Application -- Form 5001](#)
[Controlling Person Application -- Form 5002](#)
- **Attention OREA Course Providers and USPAP Instructors**
The 2008-09 USPAP basic and recertification courses may only be offered until 12/31/09. After January 1, 2010, only the 2010-11 versions of USPAP can be offered. Currently all USPAP instructors are certified until March 31, 2010. Instructors must successfully complete The Appraisal Foundation's online Instructor Recertification Course (IRC) between October 1, 2009 and March 31, 2010, in order to retain their instructor certification. Instructors are not permitted to teach the 2010-11 version of USPAP prior to completing this recertification process.

Popular Links

- Find an Appraiser
- Find Education
- Check Your Application
- Renew Online
- Disciplinary Actions - Active Licensees
- 2008 Basic Education Modules/Subtopics - (pdf)
- Laws and Regulations
- License Requirements
- Temp Practice Permits
- Reciprocity
- Cert. of Good Standing
- Letter of License History
- Forms
- [Course Provider Info](#)
- **Enforcement**
- FAQ's


 California **Office of Real Estate Appraisers**

[Skip to: Content](#) | [Footer](#) | [Accessibility](#)

California This Site

[Home](#) | [About OREA](#) | [Contact Us](#) | [Map](#) | [Privacy Notice](#) | [Customer Survey](#) | [Related Sites](#)

Popular Links

- » [Find an Appraiser](#)
- » [Find Education](#)
- » [Check Your Application](#)
- » [Renew Online](#)
- » [Disciplinary Actions - Active Licensees](#)
- » [2008 Basic Education Modules/Subtopics - \(pdf\)](#)
- » [Laws and Regulations](#)
- » [License Requirements](#)
- » [Temp Practice Permits](#)
- » [Reciprocity](#)
- » [Cert. of Good Standing](#)
- » [Letter of License History](#)
- » [Forms](#)
- » [Course Provider Info](#)
- » [Enforcement](#)
- » [FAQ's](#)
- » [OREA Publications](#)
- » [Press Releases](#)
- » [Job Opportunities](#)

Enforcement Unit

Complaints against licensed appraisers (or applicants) will not be accepted unless the complaint form REA 4001 (see below) is completed, signed and dated in compliance with California Code of Regulations Title 10, Chapter 6.5, Section 3726.

- » [Consumer's Guide](#) (pdf) - A Consumer's Guide to Filing a Complaint and the Investigation Process.
- » [Licensee Complaint Form](#) (pdf) >> Download the complaint form and instructions.
- » [AMC Complaint Form](#) (pdf) >> Download the AMC complaint form and instructions.

OREA's mission is to protect public safety by continuously improving and promoting the integrity and professionalism of the real estate appraisal industry. OREA protects public safety by:

- » Investigating complaints against licensees and persons acting in a capacity that requires a license.
- » Investigating the background and conduct of applicants and licensees and
- » Investigating complaints against educational course providers.

There are four types of investigations commonly conducted by OREA, which are described in the following table:

Enforcement Investigations

OREA Complaint Process

- Go to www.orea.ca.gov to obtain complaint forms (REA 4001 or REA 6001) or call (916) 552-9000.
- OREA makes every effort to keep a complainant's identity confidential; however, anonymity is not guaranteed as a complainant may be subpoenaed to testify before an Administrative Law Judge.
- Summarize complaint in a chronological manner, explaining what happened, what was said, who said it, who was present, and when & where the conversations or events took place. Be specific.
- Sufficient documentary evidence and/or a willingness to testify are crucial to the successful prosecution of unlawful appraisal practice or violation of AMC laws and regulations. Please provide legible copies of all documents related to the complaint.



**OREA needs
your help....**

**PLEASE
submit the
complaint !**



California Office of Real Estate Appraisers

QUESTIONS?