

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

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TESTIMONY TO: Administrative Rules Committee

RE: Amendments to “Real Property Appraiser Rules and Regulations”

TESTIMONY BY: Joe Ibach
Chairman
ND Real Estate Appraiser Qualifications and Ethics Board

DATE: December 8, 2014

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

Only one area in the proposed rules resulted from a statutory change during the 2013 legislative session. It gives the Appraiser Board the authority to conduct criminal background checks.

2. Whether the rules are related to any federal statute or regulation.

The balance of the proposed rules result from federal mandates. Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) charges the Appraisal Foundation with the responsibility of establishing, improving, and promoting minimum uniform appraisal standards and appraiser qualifications criteria. The Appraisal Foundation serves as the parent organization for two independent boards or (i) The Appraisal Standards Board (ASB) and (ii) The Appraisal Qualifications Board (AQB).

The Appraisal Qualifications Board (AQB) establishes the qualification criteria for state licensing, certification, and recertification of appraisers. Title XI mandates that all state trainee, licensed and certified appraisers must meet the minimum education, experience, and examination requirements as promulgated by the AQB.

On December 9, 2011, the AQB approved revisions to the Real Property Appraiser Qualification Criteria for Trainee, Licensed, Certified Residential, and Certified General Appraiser classifications. These changes represent the minimum national requirements that each state must implement for individuals applying for appraiser licensure/certification no later than January 1, 2015. Accordingly, the North Dakota Appraiser Board has incorporated these revisions as part of Title 101, Appraiser Rules and Regulations. They are detailed in the response to Question 6.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

Guidelines, required revisions, information, etc. were collected from various federal agencies, state agencies, and other state appraiser regulatory agencies to assist in the development of the revisions to the North Dakota Appraiser Rules and Regulations. The Board’s legal counsel, a representative from the Attorney General’s office, was consulted to assure that the North Dakota guidelines/procedures for amending rules and regulations were followed. These consultations, combined with several Appraiser Board meetings, facilitated the final draft of the proposed revisions to rules and regulations, prior to the public hearing.

On June 30, 2014, the Appraiser Board adopted the proposed revisions to the rules and regulations. Notice of the public hearing was published in all North Dakota official county newspapers, as required. The public hearing was held on October 20, 2014. No comments were received at the hearing. Public comment period was scheduled through October 30, 2014. No comments were received. On June 30, 2014, the Board adopted the proposed revisions to the rules and regulations. The rules were sent to the Attorney General's office for review for legality. They were approved as such and, subsequently, filed with the Legislative Council for publication.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules.

No written or oral objections or complaints were received.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

Legal Fees:	\$4,000
Public Notice:	<u>\$1,950</u>
Approximate Cost:	\$5,950

6. An explanation of the subject matter of the rules and reasons for adopting those rules.

The changes in rules cover four main areas.

a. The **first** area relates to implementing legislation passed during the 2013 ND legislative session.

An amendment to Chapter 43-23.3-24 gives the Board the authority to conduct criminal history background checks on new applicants. The language incorporated into Title 101 is language that was initially adopted by the Appraiser Qualifications Board (AQB). The AQB received feedback from various States regarding the adopted language. *"The feedback suggests that the Background Check requirements place obligations on the State Appraiser Regulatory Agencies, instead of applicants for a real property appraiser credential..."* As a result of the feedback, the AQB has delayed the implementation of the Background Check provision until January 1, 2017.

Chapter 43-23.3-24 gives the Board the authority to conduct criminal history checks. Therefore, the Board will move forward with implementing the process.

b. The **second** area relates to amendments resulting from changes and interpretations in the criteria adopted by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation in 2011.

States must, at a minimum, adopt and implement the new criteria by January 1, 2015. The proposed rules reflect changes in the qualification requirements relative to qualifying education, continuing education, and experience for each classification or permit: 1) apprentice, 2) licensed, 3) certified residential, and 4) certified general. Therefore, the following changes are proposed:

SUPERVISOR/APPRENTICE RESPONSIBILITIES: Effective January 1, 2015, the AQB criteria requires:

The apprentice appraiser:

- Complete a Supervisory/Trainee course, the goal being to improve the level of knowledge and training of the apprentice and supervising appraiser.
- All education must be completed within the last five years. The national examinations are continuously revised and relate to current education under a required core curriculum.

The supervisory appraiser:

- Complete a Supervisory/Trainee course, the goal being to improve the level of knowledge and training of the apprentice and supervising appraiser.
- Be a certified appraiser. This proposed change no longer allows a licensed appraiser to supervise. It is important to note that the ND Appraiser Board did not support this change and addressed a letter to the Appraisal Qualifications Board (AQB) in opposition. However, the change was approved by the AQB and, therefore, the Board must adhere to the new criteria.
- Be in goodstanding and not subject to disciplinary action within any jurisdiction within the last three years.

The AQB has interpreted a "disciplinary action" to mean any adverse, final, and non-appealable decision by a state regulatory, administrative, or judicial authority of competent jurisdiction which affects an individual's ability to practice.

Examples of sanctions that would affect an appraiser's legal eligibility to engage in appraisal practice may include suspension or revocation.

Examples of sanctions that would not affect an appraiser's legal eligibility to engage in appraisal practice may include a monetary fine, letter of warning or reprimand, or education requirement.

- Be geographically competent.

QUALIFYING EDUCATION REQUIREMENTS: The AQB adopted various changes to the qualifying education, effective January 1, 2015:

- The new criteria established by the AQB requires an increase in college education for the licensed and certified residential levels:
Licensed level: In addition to completing 150 hours of required core curriculum as established by the AQB, an applicant for licensure must now complete 30 hours of college level education.
Certified residential: An applicant for licensure must now hold a bachelor's degree or higher.
- College courses in "lieu of a college degree" are no longer allowed for the certified levels. Applicants must hold a bachelor's degree or higher.
- Credit towards qualifying education may be obtained via the completion of a degree in Real Estate.
- An appraiser who holds a valid permit and makes application to upgrade only has to satisfy the education differences between the two credentials.

Educational requirements for each appraiser classification have increased throughout the years. This proposed change allows an appraiser with a valid permit, despite the year the appraiser received a permit, to upgrade under the same educational requirements.

EXAMINATIONS: An applicant for licensure or certification must complete an AQB approved national examination. Under current rules, the only pre-requisite to completing the national exam is successful completion of the required education. The national examinations have been revised and are more "education" and "experience" based. Therefore, under the proposed requirements, the applicant must complete both education and experience prior to sitting for the national examination.

RECIPROCITY: In practice, ND has an open-door reciprocity policy in place. If an appraiser licensed or certified in another state makes application via reciprocity, the Board will issue a permit if the appraiser is in goodstanding and the other State's current requirements are equivalent to ND's requirements. The proposed rule clarifies this policy.

- c. The **third** area relates to the only revision initiated by the Board.

FEES: Currently, the fee to obtain a temporary practice permit is \$150. This fee has not been increased since it was set in 1998. The Board is proposing a fee increase from \$150 to \$250.

d. The fourth area of changes is characterized as administrative in nature. Changes were made for consistency and clarification.

7. Whether a regulatory analysis was required by NDCC Section 28-32-08 and whether that regulatory analysis was issued.

No regulatory analysis was requested or required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000. Neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued.

No small entity economic impact statement was required as the agency is exempt from the requirement to prepare one.

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency.

State Fiscal Effect: Identify the fiscal effect on the state and agency appropriations compared to funding levels and appropriations anticipated under current law.

The Appraiser Board is supported entirely from special funds through licensure and other fees specified in state statute. The Appraiser Board does not receive an appropriation from the general fund.

The proposed amendments increase the fee an individual must pay to receive a temporary permit from \$150 to \$250, an increase of \$100. A temporary permit allows an appraiser from another state to work in North Dakota on an appraisal. The Board has averaged 130 permits a year for the past three years. Thus, the fiscal impact will approximate \$13,000/year on the regulated community.

The other amendments relate primarily to educational requirements to obtain a permit and background investigations. These amendments do not result in additional costs to the regulated community as they are necessary to comply with federal requirements that become effective January 1, 2015.

Revenues: Estimate revenues for the next two bienniums.

The Board expects an increase in Board revenue of approximately \$26,000 in each of the next two bienniums.

Expenditures: Estimate expenditures for the next two bienniums.

The Board does not anticipate that the proposed rule changes will increase any expenditure.

10. Whether a constitutional takings assessment was prepared as required by NDCC Sec. 28-32-09.

No takings assessment was prepared as the rules do not limit the use of real property.

11. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

These rules were not adopted as emergency rules. Therefore, no approval of emergency status was required.