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RULE ADOPTION
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF REAL ESTATE APPRAISERS
Disciplined Licensees Or Certificate Holders; Prohibited Activities

Adopted New Rule: N.J.A.C. 13:40A-7.9

Proposed: March 17, 2003 at 35 N.J.R. 1359(a).

Adopted: June 10, 2003 by the State Board of Real Estate Appraisers, Barry Krauser, President.

Filed: June 12, 2003 as R.2003 d.275, without change.

Authority: N.J.S.A. 45:14F-8.

Effective Date: July 7, 2003.

Expiration Date: June 7, 2007.

Summary of Public Comment and Agency Response:

The Board did not receive any comments.

Federal Standards Statement

The Appraisal Standards Board of the Appraisal Foundation is authorized pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989 to promulgate the Uniform Standards of Professional Appraisal Practice (the USPAP), which are the standards applicable to appraisal reports used in Federally related transactions.

Pursuant to N.J.A.C. 13:40A-6.1, the USPAP are the standards to which New Jersey appraisers must conform. Although the USPAP may thus be viewed as a Federal standard, there is no enforcement mechanism in the USPAP. It is left to the state real estate appraiser boards to provide a system whereby standards are enforced, pursuant to the laws of the individual states. Although the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC) monitors the state boards as well as the Appraisal Foundation, the ASC itself has no independent enforcement authority. Thus, the adopted new rule deals with the manner in which standards may be enforced by the State Board, that is, disciplinary action and the manner in which it is implemented, is dictated by State statute and is not subject to Federal requirements or standards, other than Federal constitutional standards with regard to due process.

Full text of the adoption follows:

<< NJ ADC 13:40A-7.9 >>

13:40A-7.9 Disciplined licensees or certificate holders; prohibited activities

(a) When used in this section, "steps of the valuation process" means any and all work performed by or at the direction of an individual including, but not limited to, the gathering of any data from which to extract information and market trends, the analysis of data, such as sales, cost, and income data pertaining to a property being appraised, and the reconciliation of the data to form a value conclusion.

(b) No later than the effective date of a suspension, revocation or voluntary surrender, any suspended or revoked licensee or certificate holder, or any licensee or certificate holder who has agreed to a voluntary surrender of his or her license or certificate, to be deemed a revocation, shall immediately forward the original license or certification to the

Board office located at Post Office Box 45032, 124 Halsey Street, Third Floor, Newark, New Jersey 07101. With respect to suspensions of a finite term, at the conclusion of the term, the licensee or certificate holder may contact the Board office for the return of the documents previously surrendered to the Board.

(c) Any licensed or certified appraiser who is under active disciplinary suspension pursuant to a Board order or consent agreement, or whose license or certification has been revoked or surrendered, shall cease and desist from engaging in the practice of real estate appraising in all respects, and shall refrain from engaging in any work or activities, including any of the steps of the valuation process, in connection with any appraisal assignment for real estate located in the State of New Jersey. No suspended or revoked licensee or certificate holder shall charge, receive or share in any fee for professional services rendered by himself or herself or others while barred from engaging in real estate appraising. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred prior to the effective date of the Board action. Failure to comply with this provision shall be deemed professional misconduct.

(d) Any New Jersey licensed or certified real estate appraiser who assists a suspended or revoked real estate appraiser in the performance of steps in the valuation process or employs or provides payment for services in any capacity rendered by any suspended or revoked real estate appraiser, whether payment is made to the appraiser as an employee or as an independent contractor, shall be deemed to have aided and abetted unlicensed or uncertified practice pursuant to N.J.S.A. 45:1-21(n), and to have engaged in professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(e) Any payment made to or received by a suspended or revoked licensee or certificate holder by any New Jersey licensed or certified real estate appraiser will be presumed to be related to the practice of real estate appraising, unless the licensee or certificate holder or suspended or revoked licensee or certificate holder can affirmatively demonstrate by clear and convincing evidence that the moneys were unrelated to the practice of real estate appraising.

(f) Any Board licensee or certificate holder who has been subject to any of the following actions by the Department of Housing and Urban Development (HUD) shall be deemed to have engaged in professional misconduct pursuant to N.J.S.A. 45:1-21(e), as well as pursuant to N.J.S.A. 45:1-21(g): a debarment, a limited denial of participation, a suspension, as defined by 24 C.F.R. § 24.105; or a removal from the HUD's FHA Appraiser Roster pursuant to 24 C.F.R. 200.204, and accordingly, may be subject to sanction pursuant to N.J.S.A. 45:1-21 or N.J.S.A. 45:1-22.