



TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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512-465-3900

April 7, 2004

The Honorable Greg Abbott
Attorney General of Texas
Post Office Box 12548
Austin, TX 78711-2548

Attention: Opinion Committee

Dear General Abbott:

FILE # ML-43618-CA
I.D. # 43618

At its meeting on February 19, 2004, the Texas Appraiser Licensing and Certification Board (TALCB) authorized me to request an opinion of your office concerning the ability of TALCB to establish educational requirements for an appraiser trainee.

The Texas Appraiser Licensing and Certification Act (Title 7, Chapter 1103 of the Occupations Code) authorizes TALCB to create certain categories of licensure and registration patterned after the categories recognized by the Appraiser Qualifications Board (AQB). Section 1103.152 (b) states as follows:

The board may:

- (1) establish certificate and license categories that are consistent with the categories recognized by the Appraiser Qualifications Board, the Appraisal Standards Board, and the Appraisal Subcommittee; and*
- (2) prescribe qualifications for each category that are not more stringent than the qualifications established for that category by the Appraiser Qualifications Board, the Appraisal Standards Board, and the Appraisal Subcommittee.*

Consistent with the statutory authority outlined here, TALCB has created an appraiser trainee classification which is modeled on the "Trainee Real Property Appraisal Classification" recognized by the Appraiser Qualifications Board. Furthermore, the Act authorizes the TALCB to require certain standards for each category as long as the requirements are in compliance with the AQB eligibility standards. This authority is outlined in Section 1103.151 as follows:

The board may adopt.....

- (2) rules relating to the education and experience required for certifying or licensing an appraiser that are consistent with, but not more stringent than, the guidelines recognized by the Appraisal Subcommittee...*

In light of the above statutory provisions it is important to state the minimal requirements for an appraiser trainee as set forth by the AQB in its document entitled "The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria." The AQB outlines the following under the category " Trainee Real Property Appraiser Classification of the Appraiser Qualification Criteria."

*D. An appraiser trainee **must** meet the following requirements:*

*....2. Education. **Prerequisite to application.***

a. 75 classroom hours of courses in subjects related to real estate appraisal which shall include coverage of the Uniform Standards of Professional Appraisal Practice. (Emphasis added)

With the statutory authority to establish categories consistent with those recognized by the AQB and the authority to adopt rules relating to education and experience consistent with the AQB guidelines, the TALCB has created an appraiser trainee classification and now wishes to clarify and modify the eligibility requirements for applicants so that they are consistent with the requirements of both Texas statute and the AQB. Currently, these eligibility requirements are **not consistent** with the guidelines recognized by the AQB or the Appraisal Subcommittee, as required by Section 1103.151 of the Act.

To this end, the TALCB Rules seeks direction as to its ability to propose and enact the following amendment to its Rules establishing minimum education requirements for an appraiser trainee consistent with those recognized by the AQB.

Amend Rule 153.21 (a) to read as follows:

A person desiring to be an appraiser trainee under the sponsorship of one or more state certified appraisers may apply to the board on the application form prescribed by the board. A prospective trainee must be a citizen of the United States or a lawfully admitted alien; be at least 18 years of age; be a legal resident of this state for at least 60 days immediately before the filing of the application; provide evidence of the successful completion of 75 classroom hours in courses approved by the board, including 15 classroom hours in a class devoted to the Uniform Standards of Professional Appraisal Practice; and satisfy the board as to the prospective trainee's honesty, trustworthiness, and integrity. Once a person is approved as an appraiser trainee by the board, the person may perform appraisals or appraiser services only under the active, personal, and diligent direction and supervision of a sponsoring certified appraiser unless one of the following events occurs....

We believe that the provisions of 1103.152 and 1103.151 in the Act cited above provide authority to the Board to ensure that its eligibility standards for an appraiser trainee are consistent with those of the AQB. However, some individuals have made reference to 1103.353 which spells out four specific requirements for a trainee and maintain that these are the only qualifications for an appraiser trainee. It is clear that while these four may be necessary requirements they are in no way sufficient requirements for an appraiser trainee. In addition to the authority given to the Board in 1103.152 and 1103.151 to impose educational requirements, appraiser trainees are required to meet the conditions of 1103.351 (have one or more sponsors) and 1103.352 (apply on a form prescribed by the board).

Finally, some have attempted to distinguish the category of appraiser trainee from that of other levels of licensure by maintaining that an appraiser trainee is something distinct from the "certificate or license categories" mentioned in the Act. This is not the definition established in the Rules adopted by the TALCB.

Rule 153.1 of the Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act provides a number of definitions in the Board's effort to carry out the provisions of the Act. Subsections (29) and (30) read as follows, with emphasis added:

"(29) License The whole or a part of any board permit, certificate, approval, registration or similar form of permission required by law."

(30) Licensee - A person certified, licensed, approved, authorized or registered by the board under the Texas Appraiser Licensing and Certification Act."

The above definitions are meant to apply to the terms and provisions cited in the Act and were adopted to assist in the implementation of the Act. It is therefore relevant to look at the provisions in the Act relating to the category of appraiser trainees, Subchapter H of the Act. Attention should be given to the following which appears as Section 1103.354(a):

"(a) An appraiser trainee approved by the board may perform an appraisal under the direction of a sponsor of the trainee." (Emphasis added)

Likewise, the following section (1103.355. Disciplinary Procedures for Appraiser Trainees) refers to the ability of the Board to "suspend or revoke an appraiser trainee's authority to act as an appraiser trainee..." (Emphasis added)

Clearly, in adopting the definitions to be employed in administering the Act, the Board viewed a "license" as granting authority to act or permission required by law. If permission by law were not required to perform certain duties as an appraiser trainee, then the requirement to obtain a document from the Board as an appraiser trainee would not be needed. Likewise, the Board could not "suspend or revoke" an appraiser trainee's "authority to act" if the appraiser trainee had not been previously **authorized** to perform certain functions or duties.

Under Subchapter H of the Act an appraiser trainee is **approved** by the board to do certain things ("perform an appraisal under the director of a sponsor of the trainee"). Under 153.1 (30) of the Board's Rules, a **licensee is defined as someone who is "approved...by the board under the Texas Appraiser Licensing and Certification Act."** Moreover, a license is defined as "the whole or a part of any board...**approval...or similar form of permission required by law."** Clearly, to engage in the activities allowed to an appraiser trainee one must first receive the "permission required by law" and the Board is authorized in the Act to withdraw that permission when conditions and behavior dictate.

It would follow from the above reading of the Act and the Rules adopted consistent with the Act that an appraiser trainee is approved by the board to perform certain functions and that those approved by the board are further defined as licensees. Moreover, the board is authorized in the Act to suspend or revoke the authority granted to the appraiser trainee. Therefore, by definition in the Rules, an appraiser trainee is a licensee who has received

a license from the Board. In this context, the Board has the ability to establish educational requirements for the granting of the license to act as an appraiser trainee.

Therefore, we would request clarification as to the ability of the TALCB to enact such educational requirements for those wishing to become recognized as Appraiser Trainees.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wayne Thorburn', followed by a long horizontal flourish line extending to the right.

Wayne Thorburn
Commissioner

cc: L. W. (Wayne) Mayo, Chair