

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO BOARD OF REAL ESTATE APPRAISERS

2001 SUNSET REVIEW



STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
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Bill Owens
Governor

October 15, 2001

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Board of Real Estate Appraisers. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2001 Legislative Committees of Reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

"The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination...."

The report discusses the question of whether there is a need for the regulation provided under Article 61 of Title 12, C.R.S. The report also discusses the effectiveness of the board and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in black ink that reads "M. Michael Cooke".

M. Michael Cooke
Executive Director

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Background

The Sunset Process

The regulation of real estate appraisers is subject to sunset review as provided for in Section 24-34-104, C.R.S. More specifically, Section 12-61-703 (6), C.R.S. provides for the repeal of Part 7 (Real Estate Appraisers), effective July 1, 2002 unless continued by the General Assembly. Prior to such repeal, the Colorado Board of Real Estate Appraisers (board) must be reviewed by the Department of Regulatory Agencies (DORA). DORA's findings and recommendations are submitted via this report to the Legislative Committee of Reference of the Colorado General Assembly. This report contains specific recommendations for the General Assembly's consideration.

The primary purpose of this sunset review was to determine whether the Colorado Board of Real Estate Appraisers should be continued for the protection of the public, and to evaluate the performance of the board. During the review period, the board must demonstrate that there is a need for the program's continued existence, and that the program offers the least restrictive regulation consistent with the public interest.

Methodology

DORA's work included meetings and contacts with program staff and stakeholders, attendance at board meetings, a literature review including the real estate appraiser statute and rules, and analysis of program elements, including enforcement actions. The sunset evaluation criteria that guided our work are reproduced in Appendix B.

Profile of the Profession

Real estate appraisers estimate the value of real estate through sales comparisons, cost of replacement, and income potential. They deal with both land and the buildings on it. Trees, landscaping, water supply, minerals, farm crops, and other features may add or detract from the market value of real estate. Small buildings such as garages or large structures such as bridges and tunnels affect the value of property. Real estate appraisers consider these and other features in order to arrive at the market value. The work of real estate appraisers consist of six basic steps: investigation, research of court records and

deeds, analysis of the neighborhood around the property, property inspection, analysis of the data, and writing of the appraisal report. An appraisal of business or industrial property may require more detailed steps.¹

When performing an appraisal, basic factors such as the demand for that type of property, uses of the property, and recent market activity (sales, leases, financing) are considered. In addition, the physical condition of a property is a significant factor in its valuation since it affects marketability and functionality. A property in good condition will typically sell or lease for a higher price and in a shorter time than a similar property in poorer condition.

In performing their work, real estate appraisers are expected to be able to identify major problems of condition when they walk through a property. In addition, they are required to take the general condition of the property into account when estimating monetary value, and to report this to their client. Examples of poor condition include foundation or wall cracking, a roof in disrepair, and water leakage. Real estate appraisers are not expected to conduct a detailed, system by system inspection of all the components of a property. Some of these functions may be performed by engineers or home inspectors. When a residential appraiser determines the value of a home for FHA loan purposes, they are required to make observations of the property and to report these as part of the FHA "Valuation Conditions" report. These are considered to be simple notations and observations, not technical inspections. As a specific example, the appraiser will turn on the heating system and observe if it warms up the house, if it makes any odd noises, and if there are any strange smells. The appraiser will not check the heat exchanger for cracks, or look for leaks in the distribution system. The appraiser will look up at the roof, probably using binoculars, but will not be up on the roof itself. If an appraiser in an FHA transaction observes a possible hazardous condition, they advise the lender to have an inspection by an appropriate professional.

¹ Career Center, University of Missouri 1999,
<http://web.missouri.edu/~cppcwww/holland/s/realestateappraiser.html>

In terms of education and training, many colleges offer programs to study real estate and appraisal. Studies in economics, business administration, architecture, finance, law, engineering, sociology, and English will prove helpful in this work. Appraisal associations offer courses in real estate appraisal. The National Association of Independent Fee Appraisers and other organizations offer courses in the theory and practice of appraising. The Appraisal Institute sponsors educational seminars, courses, and workshops on the valuations of residential and income-producing properties, market analysis techniques, and standards of professional practice. It also offers instruction to prepare practitioners for state certification and licensing exams.² The specific educational requirements for Colorado are presented in some detail in this document.

History of Regulation

The failure during the 1980s of many financial institutions, especially savings and loans associations, subjected the real estate industry and appraisers to increased federal oversight. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989, as amended, as well as federal regulations led to the use of state certified or licensed real estate appraisers to perform federally related transactions. The Appraisal Subcommittee (ASC) of The Federal Financial Institutions Examination Council was established to oversee state appraiser certification and licensing programs. To be legally eligible to perform appraisals for federally related transactions, state-certified or licensed appraisers had to be listed on the National Registry of State Certified or Licensed Appraisers (Registry).³

In Colorado the first appraiser practice act of 1990 required elected and appointed assessors to be licensed. The Adams County Assessor challenged this requirement in court. As final arbiter, the Colorado Supreme Court ruled that the qualifications for county officers that are specified in Article XIV, Section 10 of the Colorado Constitution are exclusive. The Constitution states “no person shall be eligible to any county office unless he shall

² Career Center, University of Missouri 1999,
<http://web.missouri.edu/~cpcwww/holland/s/realestateappraiser.html>

³ Federal Deposit Insurance Corporation,
<http://www.fdic.gov/news/news/financial/1998/fil9884b.html>

be a qualified elector; nor unless he shall have resided in the county one year preceding his election." "Eligible" refers to capacity of holding office. The word "eligible" as used in constitutions and statutes refers to holding office. Therefore, if qualified at the time of commencement of the term or induction into office, the disqualification of the candidate at the time of election or appointment is immaterial.⁴ Consequently, there is no legal authority to require additional qualifications, including licensure.⁵ In *Reale v. Board of Real Estate Appraisers* the Colorado Supreme Court held that while the text of the constitution, rules of constitutional construction, and the precedents of this court all support the adoption of the majority rule, "...it is important to recognize that this rule is grounded, ultimately, on unassailable principles of democratic governance. If the qualifications set out in Article XIV, section 10 for the office of county assessor can only be read as establishing a minimum requirement, and not as a limitation on the imposition of additional qualifications by the General Assembly then there can be no doubt that the General Assembly would have the power to add qualifications for other constitutional offices...As such, the most fundamental right reserved to the people—the right to vote for representatives of their choice---would hinge not on constitutional guarantees, but on the General Assembly's willingness to abstain from imposing additional qualifications for holding constitutional offices...."

As a result of the 1996 sunset review, the provision that elected county assessors be licensed was repealed on the grounds that it was unconstitutional. The requirement that employees of elected county appraisers be licensed was maintained, and the period for staffers to get licensed was increased from one to two years.

Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)

That part of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 that is of most interest for present purposes is Title XI known as the Appraisal Reform Amendments, which are contained in 12 U.S.C. Sections 3331 through 3351.

⁴ *Cox v. Starkweather*, 128 Colo. 89, 260 P.2d 587 (1953).

⁵ *Reale v. Board of Real Estate Appraisers*, 880 P.2d 1205 (Colo. 1994).

The purpose of Title XI is to ensure that federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, and by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) was amended by FIRREA so as to create an Appraisal Subcommittee within the Council. The basic purpose of the Appraisal Subcommittee is to monitor the requirements established by states for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility. The subcommittee is also charged with reviewing the practices, procedures, activities, and organizational structure of the Appraisal Foundation.

To assure the availability of state certified and licensed appraisers for the performance in federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers, states were authorized to establish a state appraiser certifying and licensing agency. In addition, states were to promulgate a set of rules, which at a minimum were to specify that real estate appraisals be performed in accordance with generally accepted appraisal standards as set by the Appraisal Standards Board of the Appraisal Foundation, and, secondly, that such appraisals be written appraisals. The effective date for the use of a certified or licensed appraiser was December 31, 1992.

Each state with an appraiser certifying and licensing agency whose certifications and licenses comply with FIRREA is required to transmit to the Appraisal Subcommittee a roster listing individuals who have received state licensure, and collect from such individuals who perform or plan to perform appraisals in federally related transactions, an annual registry fee of not more than \$25, such fees to be transmitted by the state agencies to the Council on an annual basis.

Section 1113 of Title XI provides criteria by which an appraisal in connection with a federally related transaction will be performed by a state certified appraiser. A “state certified real estate appraiser” means any individual who has satisfied the requirements for state certification as a real estate appraiser as set by the Appraiser Qualification Board of the Appraisal Foundation. On the other hand, a “state licensed appraiser” is simply one who meets the requirements established by each state. State agencies must consider whether transactions, either individually or collectively, are of sufficient financial or public policy importance to the United States that an individual who performs an appraisal in connection with such transactions should be a state certified appraiser. The use of a state certified appraiser is not discretionary, however, for all federally related transactions having a value of a million dollars or more. A state licensed appraiser may perform appraisals for one-to-four unit single family residences, unless the size and complexity of the property requires a state certified appraiser.

Summary of Statute and Regulations

The regulation of Colorado real estate appraisers is addressed in Part 7 of Article 61 of Title 12, C.R.S. The intent of the law is to comply with the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989". More specifically, Colorado's law aims to implement the minimum requirements of federal law in the least burdensome manner to real estate appraisers.⁶

"Real estate appraiser' or 'appraiser' means any person who provides for a fee or a salary an opinion of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate and includes one who estimates value and who possesses the necessary qualifications, ability, and experience to execute or direct the appraisal of real property."⁷ Notable exemptions from this definition include persons who conduct appraisals strictly of personal property, licensed brokers or salespersons who provide an opinion not characterized as an appraisal, certified public accountants, right-of-way acquisition agents, persons conducting appraisals strictly for water or mineral rights, personnel of financial institutions who conduct internal valuations, and corporations conducting real estate valuations of their own property or property that will be purchased or sold by the corporation.

Commonly, the reason for conducting a property valuation is to obtain an independent appraisal, which means "an engagement for which an appraiser is employed or retained to act as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in or aspects of identified real estate."⁸ In this sense, real estate appraisers are like certified public accountants who provide independent verification of a publicly traded company's financial statements.

⁶ §12-61-701, C.R.S.

⁷ §12-61-702 (5)(a), C.R.S.

⁸ §12-61-702 (4.5), C.R.S.

Powers and Duties of the Board of Real Estate Appraisers (§12-61-703 and §12-61-704, C.R.S.).

A seven member board in the Division of Real Estate exercises regulatory oversight of real estate appraisers. The board's members are appointed by the Governor with the consent of the Senate. Section 12-61-703, C.R.S. stipulates that three members shall be licensed or certified appraisers, one of whom shall have expertise in eminent domain matters, one shall be a county assessor in office, one shall be an officer or employee of a commercial bank experienced in real estate lending, and two shall be members of the public at large not engaged in any of the businesses represented by the other members of the board.

The Colorado Board of Real Estate Appraisers has several powers and duties. The main function of the board is to promulgate and amend, as necessary, rules and regulations for the implementation and administration of the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989". In addition, the board must keep abreast of any new amendments and requirements imposed by federal law. The board cannot, however, establish any requirements that are more stringent than the requirements of applicable federal law.⁹

In practical terms the board issues, denies, or refuses to renew registrations, certificates, or licenses. It takes disciplinary actions and employs administrative law judges to conduct any required hearings. The board may revoke or suspend any registration, license, or certificate; issue a letter of admonition to a licensee or certified person; impose public censure; or place on probation a person under its jurisdiction.

Section 12-61-709, C.R.S. empowers the Colorado Board of Real Estate Appraisers to determine whether an applicant possesses the necessary qualifications for registration, licensure, or certification. The board may consider such qualities as the applicant's truthfulness and honesty and whether the applicant has been convicted of a crime involving moral turpitude. If the board determines that an applicant does not possess the necessary qualifications, the board may deny the application, but must provide a written statement specifying the basis for the denial. Upon such a denial, applicants can request a hearing before the board.

⁹ §12-61-704 (a), C.R.S.

Section 12-61-706 (2), C.R.S. empowers the board to set by rule continuing education requirements for persons under its jurisdiction. However, the board cannot set more stringent requirements than any relevant law. If there is no applicable federal law, the board must consider other guidelines, such as the most recently available criteria published by the Appraiser Qualifications Board of the Appraisal Foundation, or a successor organization.

Another important duty of the board is to develop or purchase any examination required for the administration of the real estate appraiser statute, to offer the exam at least twice a year, and to establish a passing score for each examination which reflects a minimum level of competency.

Prohibited Activities (§ 12-61-710, C.R.S.)

In general, grounds for disciplinary action involve a real estate appraiser who has failed to act in a manner which meets the generally accepted standards of professional appraisal practice as adopted by the board by rule and regulation. Another broad criterion is whether an appraiser has performed appraisal services beyond his or her level of competency. An appraiser may also be subject to disciplinary action if he or she has been convicted of a felony related to the ability to act as a real property appraiser. Similarly, discipline may be imposed if a real estate appraiser has been subject to an adverse or disciplinary action in another state.

Specific prohibited acts include:

- accepting any fees, compensation, or other valuable consideration to influence the outcome of an appraisal;
- advertising which is misleading, deceptive, or false;
- conduct of an appraisal in a fraudulent manner, or misrepresentation in any such activity;
- fraud or misrepresentation in obtaining a license or certificate.

Standards of professional conduct and disciplinary procedures are enumerated in the Rules of the Colorado Board of Real Estate Appraisers.

Summary of Rules of the Colorado Board of Real Estate Appraisers, 2001

The Colorado Board of Real Estate Appraisers has promulgated a comprehensive set of rules that govern the licensing of real estate appraisers in Colorado. The rules are delineated in fifteen chapters. Of these, arguably the most important are those dealing with Requirements for Licensure (Chapter 2), Continuing Education Requirements (Chapter 7), Standards of Professional Appraisal Practice (Chapter 11), and Disciplinary Procedures (Chapter 13).

Requirements for Licensure

As set out in Chapter two, the requirements for licensure are built on a base of real estate appraisal education, and successful completion of an appropriate examination. Specific and additional requirements are dependent on the level of licensure. A Colorado Registered Appraiser must have at least 75 classroom hours of real estate appraisal education, including at least 15 hours of Uniform Standards of Professional Appraisal Practice (USPAP) courses. In general, the education at this level must emphasize basic appraisal principles and procedures.

An applicant for licensure as a Colorado Licensed Appraiser must meet the preceding level's requirements and an additional 15 hours of classroom education. The emphasis must be on the appraisal of typical, non-complex one to four unit residential properties. In addition to the courses covered to become a registered appraiser, a candidate must exhibit knowledge of the "income approach" emphasizing the gross rent multiplier, estimation of income and expenses, and operating expense ratios. Prospective Colorado Licensed Appraisers must also have at least 2,000 hours of real estate appraisal experience gained across a period of not less than 12 months.

In order to be licensed as a Colorado Certified Residential Appraiser an applicant must meet the requirements of a Colorado Licensed Appraiser and an additional 30 classroom hours of education. The educational program must emphasize the appraisal of one to four unit residential properties, including the appraisal of complex residential properties. In addition to the courses covered to become a licensed appraiser, a candidate must exhibit knowledge of direct capitalization and narrative

report writing. At this level of licensure, the experience requirement consists of a minimum of 2,500 hours, which must have been gained across a period of at least 24 months. This real estate appraisal experience must include appraisal of complex residential properties. At least 1,500 hours must be experience in the valuation of non-residential properties.

In order to be licensed as a Colorado Certified General Appraiser, a candidate must meet the requirements of a Colorado Licensed Appraiser and an additional 90 hours for a total of 180 classroom hours of real estate appraisal education. The course emphasis must be on the appraisal of nonresidential properties. More specifically, knowledge must have been gained concerning cash flow estimates, measures of cash flow, and discounted cash flow analysis. The work experience requirement at this level of licensure is a minimum of 3,000 hours, which must have been gained across a period of at least 30 months. At least 1,500 hours must be experience in the valuation of non-residential properties.

Continuing Education Requirements

Chapter seven of the rules promulgated by the Colorado Board of Real Estate Appraisers deals with continuing education requirements. A licensed real estate appraiser must complete at least 42 classroom hours of training during a given, three-year licensing period in order to renew his or her license. At least four of these hours must be in appraisal ethics and the Uniform Standards of Professional Appraisal Practice. Continuing education courses and programs must be taken from providers approved by the board. The board has established general parameters for the approval of education programs, such as the adequacy of physical facilities and course currency.

The type of continuing education providers that the board approves includes universities and colleges, proprietary schools, real estate organizations, and state and federal government agencies. In addition, the board accepts approved courses from The Appraisal Foundation. In order to be approved providers must furnish information regarding their programs, such as course outlines, texts, and instructor qualifications. Courses must last at least two hours in length with no segment being less than an hour's duration. Typical topics include real estate valuation, real estate law, and land use planning, zoning, and taxation.

Standards of Professional Appraisal Practice

The Colorado Board of Real Estate Appraisers, pursuant to Section 12-61-710(1)(g), C.R.S., as amended, has adopted as the generally accepted standards of professional appraisal practice the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of The Appraisal Foundation. The standards promulgated through July 9, 2000 are currently in force.

Disciplinary Procedures

Complaints from the public alleging a violation of the real estate appraiser act must be written and in a form acceptable to the Colorado Board of Real Estate Appraisers. The board may also act on its own volition. Complaints of record are closed to public inspection during the investigatory period, during other due process actions, or until dismissed. On the other hand, complainants and respondents, and their respective attorneys, may have access to complaint files subject to certain limitations. Any disciplinary hearing conducted on behalf of the board must be conducted by an administrative law judge from the Division of Administrative Services.

Upon written notification from the board that a complaint has been filed, the licensee must submit to the board a written answer. Failure to submit a written answer within the time set by the board in its notification may constitute grounds for disciplinary action. Licensees must also notify the board in writing of any disciplinary action taken by another state or competent jurisdiction.

Program Description and Administration

The Colorado Board of Real Estate Appraisers was created in 1990 to comply with the federal Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989, which arose out of the savings and loans crisis of that time. Title XI of FIRREA requires each state to establish a real estate appraiser licensing program.

The board exists to protect Colorado consumers from unscrupulous or incompetent real estate appraisers by engaging in a combination of the following:

- Ensuring that applicants at each level of licensure meet the specific minimum requirements for appraisal education, appraisal examination, and appraisal experience;
- Ensuring licensees maintain competency through continuing education;
- Investigating complaints, and taking appropriate corrective and disciplinary actions against licensees.

In addition, the Colorado Board of Real Estate Appraisers promulgates rules, sets standards of professional conduct, determines the need for administrative hearings, conducts public meetings, approves continuing education courses, and issues, renews, or denies licenses. Another program outcome is the education of consumers concerning real estate appraisals and appraisers' roles in the wider context of real estate transactions. The board also fulfills an important public purpose by acting as a source of information for persons or organizations seeking appraisers for assignments in Colorado. Finally, the board fulfills a role unique in the United States by licensing real estate appraisers employed by county assessors under the same terms and conditions as all other real estate appraisers.

Complaints/Disciplinary Actions

Currently the Colorado Board of Real Estate Appraisers has jurisdiction over 3,585 licensees and 64 temporary practice permit holders. A typical reason for granting a temporary practice permit would be to allow a qualified out-of-state appraiser to conduct an assignment in Colorado. The number of licensees by license type from 1995 through 2000 is depicted in Table 1. The table is arranged in descending order of licensing rigor from Certified General Appraisers to Registered Appraisers. The latter may be considered to be an apprenticeship category. A common career path for many real estate appraisers in Colorado is to start out as a Registered Appraiser in a county assessor's office.

For the period under review, the greatest percentage of change occurred between 1999 and 2000. During this time, the total number of licensees ranged from a reduction of 0.42% in 1999 to an increase of 7.87% in 2000.

Table 1

Number of Colorado Licensees by Category, 1995-2000

License Category	1996	1997	1998	1999	2000
Certified General Appraiser	1,178	1,181	1,160	1,086	1,131
Certified Residential Appraiser	738	789	811	842	914
Licensed Appraiser	512	524	525	565	616
Registered Appraiser	828	805	836	825	918
Totals	3,256	3,299	3,332	3,318	3,579

The day-to-day operations of the Colorado Board of Real Estate Appraisers are carried out by 3.5 full-time equivalents (FTEs). Only two staff members are fully dedicated to performing tasks for the board. The remaining 1.5 FTEs perform other duties for the Division of Real Estate. The staff is allocated as depicted below.

Position:	FTE
Program Administrator	1.00 (100% Board of Appraisers)
Investigator	1.00 (100% Board of Appraisers)
Licensing Specialist	0.75 (Shared w/other DORE functions)
General Support	0.25 (Shared w/other DORE functions)
Other Licensing Staff	0.50 (Shared w/other DORE functions)
Total	3.50

Table 2 is a five-year overview of board expenditures in comparison to one of its most important public protection functions---complaints received and disciplinary actions taken. Total board expenditure for FY96-00 increased from \$345,208 to \$400,078. This represents a 16% increase for the period under review. As the double asterisk note of Table 1 explains, total board expenditure is estimated at 11.4% of Division of Real Estate appropriations. The Colorado Board of Real Estate Appraisers does not keep discrete budgetary information concerning its operations.

Table 2

Agency Complaint, Disciplinary Action, and Budget Summary Information

Fiscal Year	Total Complaints Received	Total Disciplinary Actions*
95-96	71	37
96-97	102	55
97-98	112	56
98-99	129	108
99-00	95	64
Totals	509	320

* Total Disciplinary Actions reflects complaints closed within the fiscal year, as well as remaining complaints from the prior fiscal year.

** Total board expenditure is estimated at 11.4% of Division of Real Estate Appropriations.

As required by federal law and regulation, all complaints which result in formal disciplinary action, including public censure, fines, remedial education, probation, supervised practice, suspension or revocation are reported to the federal Appraisal Subcommittee. Complaints resolved with the informal action known as a Letter of Admonition are not reported. The general public can access the Subcommittee Internet database and discover if an appraiser has been suspended or revoked. Other actions (fines, coursework, and so on) are accessible only to state regulatory agencies with proper authorization.

Written complaints are often preceded by telephone contact between a staff member and the complainant. Upon receipt of a written, signed complaint, program staff opens a case file. Complaints go through initial screening by the Program Administrator to ascertain if the board has jurisdiction, if there are possible violations, and to suggest likely lines of inquiry for investigation. A copy of the complaint is sent to the licensee, with a request for his/her response and relevant documentation. Investigation usually also involves interviews of complainant and respondent, records research, and inspection of properties.

Major sources of complaints are other appraisers, mortgage underwriters and property owners. In the event of allegations of major infractions, which are supported by documentation, staff opens a complaint on behalf of the board. Similarly, staff opens complaints when an investigation uncovers violations by licensees who were not the object of the original complaint. Anonymous complaints are reviewed by appropriate staff. If there are allegations of minor misconduct, the documents are sent to the licensee with a cover memorandum urging them to pursue a remedial course of action.

A written report with select exhibits is forwarded to each board member approximately one week prior to a regularly scheduled board meeting. The entire complaint file is available at the meeting. The board discusses each case and determines a course of action by vote. Staff advances recommendations based on previous board actions in similar cases. A typical outcome is for the board to refer the matter for a hearing by the Division of Administrative Hearings, with an offer for a stipulated settlement. Most first time violators are offered a "neither admits nor denies" type of stipulation with requirements for a fine, half of which is suspended if remedial education is completed in a timely manner. Repeat offenders and truly egregious first time offenders are offered stipulations in which they must admit specific violations, and may be subject to fines, education, probation, a period of supervised practice, suspension, or revocation. Very few cases actually go to formal hearing.

Staff monitors compliance with stipulated settlements by use of paper and electronic "tickler files". Most licensees comply with remedial education requirements well before the deadlines set by the stipulation. When appropriate coursework is not available, the board has authorized staff to accept suitable alternatives, or to grant extensions of time to comply.

Table 3 and Table 4 show, respectively, complaints by category and type of disciplinary action taken over a five-year period. As Table 3 clearly depicts, the majority of complaints concern standard of practice issues. By this one indication, it appears that the appraiser regulatory scheme is meeting its primary objective of quality assurance since very few other complaints can be construed as being directly relevant to the work products of real estate appraisal.

Table 3

Complaint Information by Category

Category of Complaints	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00
Practicing without a License	1	1	1	1	3
Standard of Practice	64	91	104	116*	84*
Fee Dispute	3	11	3	11	6
Scope of Practice					
Sexual Misconduct					
Substance Abuse					
Theft**	1		1	1	
Felony Conviction					
Other			3		2
Totals	71	102	112	129	95

* Includes continuing education violations.

** Accepting fee, but failing to perform appraisal.

According to the Program Administrator, during fiscal year 2000-2001 complaints were received at over twice the rate of the previous several years. Approximately 250 complaints have been opened in fiscal year 00-01, against an average of 112 for fiscal years 97-98, 98-99 and 99-00. Major outside complaint sources are review appraisers, lending underwriters, and property owners. Internal complaints arise from investigation of outside complaints and continuing education audits.

As Table 4 below shows, the Colorado Board of Real Estate Appraisers utilized most of the disciplinary options available to it during the period under review. The disciplinary action of choice, however, was the injunction/stipulated agreement. Across the review period, this method alone represented over 60% of the total actions taken.

Table 4

Disciplinary Action Information

Type of Action	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00
Revocation		3	3	3	3
Surrender of License / Retirement					
Suspension with / without Probation	1			5	3
Probation (no suspension) / Practice Limitation					
Letter of Admonition	13	10	6	23	6
License Granted with Probation / Limitations	3	5	6	11	1
License Denied after Hearing	3	3	2	9	7
Injunction / Stipulated Agreement*	27	34	39	68	44
Fine					
Other					
Totals	37	55	56	108	64

*Stipulated Agreement may include any combination of probation, fine, remedial education, supervision, or independent review.

In summary, the Colorado Board of Real Estate Appraisers and its staff appear to be performing in a relatively efficient and effective manner, and within the overall purpose and mission of the program. More specific recommendations for program improvement and the successful administration of Part 7 of Article 61 of Title 12, C.R.S. follow.

Analysis and Recommendations

Recommendation 1 - Continue the Colorado Board of Real Estate Appraisers until 2013.

Real estate appraisers are defined as being “public” because of their fiduciary relationship to clients and to third parties who might have occasion to rely on the work product of appraisers. Users of appraisal services rely on the opinions and work products of appraisers to make informed decisions regarding private and public investments. The failure during the 1980s of many financial institutions, especially savings and loans associations, subjected appraisers to increased oversight.¹⁰ The Colorado Board of Real Estate Appraisers is the main regulatory entity that provides local oversight of real estate appraisers.

More specifically, the board disciplines licensees, determines the need for administrative hearings, promulgates rules, sets standards of professional conduct, conducts public meetings, approves continuing education courses, and issues, renews, or denies licenses. By helping to ensure the independence of real estate appraisals, the board functions to maintain the orderly conduct of financial transactions concerning real estate, especially home ownership.

The Colorado Board of Real Estate Appraisers plays another important role by licensing real estate appraisers employed by county assessors under the same terms and conditions as all other real estate appraisers.

Several stakeholders we contacted expressed satisfaction with the board’s performance, size, and composition. The board is aided at reasonable cost by 3.5 full-time equivalents who are employees of the Division of Real Estate of the Department of Regulatory Agencies. As stated on the Division of Real Estate’s web site, board members are appointed by the Governor and confirmed by the State Senate. Board members serve staggered three year terms. Since July 1, 1997 the composition of the Board as prescribed by law is three practicing appraisers, an elected county assessor, a banker with real estate lending experience, and two public members who shall not be appraisers, bankers or assessors.¹¹ In short, the Colorado Board of Real Estate Appraisers is broadly representative of significant stakeholders and the public, operates effectively, and generally serves the public interest in an open and balanced manner.

¹⁰ “Professional Standards for the Appraiser”, 22 Colo. Law. 1263 (1993).

¹¹ http://www.dora.state.co.us/Real-Estate/appraisr/appr_bd.htm

In conclusion, the Colorado Board of Real Estate Appraisers functions to protect the public by administering Part 7 of Article 61 of Title 12, C.R.S. ("Real Estate Appraisers"). Consequently, the board should be continued until 2013.

Recommendation 2 - Make complaint of record requirements more consistent with other state boards and agencies by amending Subsection (7) of Section 12-61-710, C.R.S., and make the Board's records and papers subject to Sections 24-72-203 and 24-72-204, C.R.S. regarding public records and confidentiality.

In general, the General Assembly's policy regarding striking the appropriate balance between the public's right to know and the privacy rights of licensees concerning disciplinary matters has been to keep complaints of record closed during the preliminary phases of enforcement activity. Consequently, the powers of the Colorado Board of Real Estate Appraisers should be modified to mirror more closely the authority of other state regulatory boards and agencies, such as the State Board of Accountancy, the disciplinary authority of the Director of the Division of Registrations over acupuncturists, and the State Board of Registration for Professional Engineers and Professional Land Surveyors.

To effect this recommendation Subsection (7) of Section 12-61-710, C.R.S. should be amended as follows:

Complaints of record in the office of the board and the results of staff investigations ~~may, in the discretion of the board,~~ **shall** be closed to public inspection, ~~except as provided by court order,~~ during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee, **except as provided by court order. Complaints of record that are dismissed by the board and the results of investigation of such complaints shall be closed to public inspection, except as provided by court order. The board's records and papers shall be subject to the provisions of sections 24-72-203 and 24-72-204, C.R.S., regarding public records and confidentiality.**

In summary, this recommendation makes the powers and duties of the Colorado Board of Real Estate Appraisers more consistent with other Colorado regulatory boards, and is in keeping with the policies of the General Assembly.

Recommendation 3: Reform continuing education requirements by repealing Board Rule 7.16.

Section 12-61-706 (1) and (2), C.R.S. authorize the Colorado Board of Real Estate Appraisers to implement the minimum requirements necessary to comply with federal law and to utilize the criteria established by the federal Appraiser Qualifications Board (AQB). AQB criteria presently require at least 14 classroom hours of continuing education per year, for a total of 42 hours across the three year renewal period.

In interpreting their mandate the Colorado Board of Real Estate Appraisers promulgated Rule 7.16, which states that

Licensees who attend a regular business meeting and/or rule-making hearing of the Board shall receive 2 classroom hours of continuing education credit for such attendance. Continuing education credit for meeting and/or hearing attendance shall be granted for attendance at no more than one meeting and/or hearing per calendar year, and no more than a total of three meetings and/or hearings per license renewal period.

Since licensees can choose at their discretion which particular board function to attend, there is no guarantee that the subject matter addressed at the meeting will be suitable to the needs or shortcomings of a given licensee. Consequently, this rule should be repealed.

Appendix A - Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

**Appendix B –
Real Estate
Appraisers
Statute**

12-61-701. Legislative declaration. The general assembly finds, determines, and declares that this part 7 is enacted pursuant to the requirements of the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989". The general assembly further finds, determines, and declares that this part 7 is intended to implement the minimum requirements of federal law in the least burdensome manner to real estate appraisers.

12-61-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Appraisal", "appraisal report", or "real estate appraisal" means a written analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. Such terms include a valuation, which is an opinion of the value of real estate, and an analysis, which is a general study of real estate not specifically performed only to determine value; except that such terms include any valuation completed by any appraiser employee of a county assessor as defined in section 39-1-102 (2), C.R.S. Such terms do not include an analysis, valuation, opinion, conclusion, notation, or compilation of data by an officer, director, or regular salaried employee of a financial institution or its affiliate, made for internal use only by the said financial institution or affiliate, concerning an interest in real estate that is owned or held as collateral by the said financial institution or affiliate which is not represented or deemed to be an appraisal except to the said financial institution, the agencies regulating the said financial institution, and any secondary markets that purchase real estate secured loans. Any such appraisal prepared by an officer, director, or regular salaried employee of said financial institution who is not registered, licensed, or certified under this part 7 shall contain a written notice that the preparer is not registered, licensed, or certified as an appraiser under this part 7.

(2) "Board" means the board of real estate appraisers created in section 12-61-703.

(2.5) "Consulting services" means services performed by an appraiser that do not fall within the definition of an "independent appraisal" in subsection (4.5) of this section. "Consulting services" includes, but is not limited to, marketing, financing and feasibility studies, valuations, analyses, and opinions and conclusions given in connection with real estate brokerage, mortgage banking, and counseling and advocacy in regard to property tax assessments and appeals thereof; except that, if in rendering such services the appraiser acts as a disinterested third party, the work shall be deemed an independent appraisal and not a consulting service. Nothing in this subsection (2.5) shall be construed to preclude a person from acting as an expert witness in valuation appeals.

(3) "Director" means the director of the division of real estate.

(4) "Division" means the division of real estate.

(4.3) "Financial institution" means any "bank" or "savings association" as such terms are defined in 12 U.S.C. sec. 1813, any state or industrial bank incorporated under title 11, C.R.S., any state or federally chartered credit union, or any company which has direct or indirect control over any of such entities.

(4.5) "Independent appraisal" means an engagement for which an appraiser is employed or retained to act as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in or aspects of identified real estate.

(5) (a) "Real estate appraiser" or "appraiser" means any person who provides for a fee or a salary an opinion of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate and includes one who estimates value and who possesses the necessary qualifications, ability, and experience to execute or direct the appraisal of real property.

(b) "Real estate appraiser" does not include:

(I) Any person who conducts appraisals strictly of personal property;

(II) Any person licensed as a broker or salesperson pursuant to part 1 of this article who provides an opinion of value that is not represented as an appraisal and is not used for purposes of obtaining financing;

(III) Any person licensed as a certified public accountant pursuant to article 2 of this title, and otherwise regulated, provided such opinions of value for real estate are not represented as an appraisal;

(IV) Any corporation, which is acting through its officers or regular salaried employees, when conducting a valuation of real estate property rights owned, to be purchased, or sold by the corporation;

(V) Any person who conducts appraisals strictly of water rights or of mineral rights;

(VI) Any right-of-way acquisition agent employed by a public entity who provides an opinion of value that is not represented as an appraisal when the property being valued is five thousand dollars or less;

(VII) Any officer, director, or regular salaried employee of a financial institution or its affiliate who makes, for internal use only by the said financial institution or affiliate, an analysis, evaluation, opinion, conclusion, notation, or compilation of data with respect to an appraisal so long as such person does not make a written adjustment of the appraisal's conclusion as to the value of the subject real property;

(VIII) Any officer, director, or regular salaried employee of a financial institution or its affiliate who makes such an internal analysis, valuation, opinion, conclusion, notation, or compilation of data concerning an interest in real estate that is owned or held as collateral by the financial institution or its affiliate.

(6) (Deleted by amendment, L. 2000, p. 177, § 1, effective August 2, 2000.)

12-61-703. Board of real estate appraisers - creation - compensation - immunity - repeal of part. (1) There is hereby created in the division a board of real estate appraisers consisting of seven members appointed by the governor with the consent of the senate. Of such members, three shall be licensed or certified appraisers, one of whom shall have expertise in eminent domain matters, one shall be a county assessor in office, one shall be an officer or employee of a commercial bank experienced in real estate lending, and two shall be members of the public at large not engaged in any of the businesses represented by the other members of the board. Of the members of the board appointed for terms beginning July 1, 1990, the commercial bank member, the county assessor member, and two of the appraiser members shall be appointed for terms of three years, and the public member and the remaining appraiser members shall be appointed for terms of one year. Members of the board appointed after July 1, 1990, shall hold office for a term of three years. The additional public member of the board of real estate appraisers authorized by this

subsection (1) shall not be appointed before the earliest date on which one of the four appraiser members' terms expires after July 1, 1996. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor shall have the authority to remove any member for misconduct, neglect of duty, or incompetence.

(2) The board shall exercise its powers and perform its duties and functions under the division as if transferred thereto by a type 1 transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2.5) (a) The general assembly finds, determines, and declares that the organization of the board under the division as a type 1 agency will provide the autonomy necessary to avoid potential conflicts of interest between the responsibility of the board in the regulation of real estate appraisers and the responsibility of the division in the regulation of real estate brokers and salesmen. The general assembly further finds, determines, and declares that the placement of the board as a type 1 agency under the division is consistent with the organizational structure of state government.

(b) and (c) (Deleted by amendment, L. 96, p. 1190, § 3, effective July 1, 1996.)

(3) Each member of the board shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of registrations pursuant to section 24-34-102 (13), C.R.S. Payment for all such per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund provided for in section 12-61-705.

(4) Members of the board, consultants, and expert witnesses shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith pursuant to this part 7.

(5) A majority of the board shall constitute a quorum for the transaction of all business, and actions of the board shall require a vote of a majority of such members present in favor of the action taken.

(6) This part 7 is repealed, effective July 1, 2002. Prior to such repeal, the board of real estate appraisers shall be reviewed as provided in section 24-34-104, C.R.S.

12-61-704. Powers and duties of the board. (1) In addition to all other powers and duties imposed upon it by law, the board has the following powers and duties:

(a) To promulgate and amend, as necessary, rules and regulations pursuant to article 4 of title 24, C.R.S., for the implementation and administration of this part 7 and as required to comply with the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", and with any requirements imposed by amendments to such federal law. The board shall not establish any requirements that are more stringent than the requirements of any applicable federal law.

(b) To charge application, examination, and registration, license, and certificate renewal fees established pursuant to section 12-61-111.5 from all applicants for registration, licensure, certification, examination, and renewal under this part 7. No fees received from applicants seeking registration, licensure, certification, examination, or renewal shall be refunded.

(c) (I) To keep all records of proceedings and activities of the board conducted under authority of this part 7, which records shall be open to public inspection at such time and in such manner as may be prescribed by rules and regulations formulated by the board.

(II) The board shall not be required to maintain or preserve licensing history records of any person licensed or certified under the provisions of this part 7 for any period of time longer than seven years.

(d) Through the department of regulatory agencies and subject to appropriations made to the department of regulatory agencies, to employ administrative law judges on a full-time or part-time basis to conduct any hearings required by this part 7. Such administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(e) To issue, deny, or refuse to renew a registration, license, or certificate pursuant to this part 7;

(f) To take disciplinary actions in conformity with this part 7;

(g) To delegate to the director the administration and enforcement of this part 7 and the authority to act on behalf of the board on such occasions and in such circumstances as the board directs;

(h) (I) To develop or purchase any examination required for the administration of this part 7, to offer each such examination at least twice a year or, if demand warrants, at more frequent intervals, and to establish a passing score for each examination which reflects a minimum level of competency;

(II) If study materials are developed by a testing company or other entity, the board shall make such materials available to persons desiring to take examinations pursuant to this part 7. The board may charge fees for such materials to defray any costs associated with making such materials available.

(i) In compliance with the provisions of article 4 of title 24, C.R.S., to make investigations, subpoena persons and documents, which subpoenas may be enforced by a court of competent jurisdiction if not obeyed, hold hearings, and take evidence in all matters relating to the exercise of the board's power under this part 7;

(j) Pursuant to sec. 1119 (b) of Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", to apply, if necessary, for a federal waiver of the requirement relating to certification or licensing of a person to perform appraisals and to make the necessary written determinations specified in said section for purposes of making such application.

12-61-705. Fees, penalties, and fines collected under part 7. All fees, penalties, and fines collected pursuant to this part 7 shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund, created in section 12-61-111.5.

12-61-706. Qualifications for registration, licensing, and certification of appraisers - continuing education. (1) (a) The board shall, by rule, prescribe requirements for the initial registration, licensing, or certification of persons under this part 7 to meet the requirements of the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989" and shall develop or purchase examinations to be passed by applicants. The board shall not establish any requirements for initial registration, licensing, or certification that are more stringent than the requirements of any applicable federal law; except that all applicants shall pass an examination developed or purchased by the board. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the appraiser qualifications board of the appraisal foundation or its successor organization.

(b) The four levels of appraiser licensure, pursuant to paragraph (a) of this subsection (1), shall be defined as follows:

(I) "Certified general appraiser" means an appraiser meeting the requirements set by the board for general certification;

(II) "Certified residential appraiser" means an appraiser meeting the requirements set by the board for residential certification;

(III) "Licensed appraiser" means an appraiser meeting the requirements set by the board for a license;

(IV) "Registered appraiser" means an appraiser meeting the requirements set by the board for registration.

(2) The board shall, by rule, prescribe continuing education requirements for persons registered, licensed, or certified under this part 7 as needed to meet the requirements of the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989". The board shall not establish any continuing education requirements that are more stringent than the requirements of any applicable law; except that all persons registered, licensed, or certified under this part 7 shall be subject to continuing education requirements. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the appraiser qualifications board of the appraisal foundation or its successor organization.

(3) Any provision of this section to the contrary notwithstanding, the criteria established by the board for the registration, licensing, or certification of appraisers pursuant to this part 7 shall not include membership or lack of membership in any appraisal organization.

(4) (Deleted by amendment, L. 96, p. 1192, § 5, effective July 1, 1996.)

(5) (a) Subject to section 12-61-714 (2), all appraiser employees of county assessors shall be registered, licensed, or certified as provided in subsections (1) and (2) of this section. Obtaining and maintaining a registration, license, or certificate under any one of said subsections (1) and (2) shall entitle an appraiser employee of a county assessor to perform all real estate appraisals required to fulfill such person's official duties.

(b) Appraiser employees of county assessors who are employed to appraise real property shall be subject to all provisions of this part 7; except that appraiser employees of county assessors who are employed to appraise real property shall not be subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official duties. County assessors, if registered, licensed, or certified as provided in subsections (1) and (2) of this section, shall not be subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official duties.

(c) All reasonable costs incurred by an appraiser employee of a county assessor to obtain and maintain a registration, license, or certificate pursuant to this section shall be paid by the county.

(6) to (8) (Deleted by amendment, L. 96, p. 1192, § 5, effective July 1, 1996.)

(9) The board shall not issue an appraiser's license as referenced in subparagraph (III) of paragraph (b) of subsection (1) of this section unless the applicant has at least twelve months appraisal experience.

12-61-707. Expiration of licenses - renewal - penalties. (1) (a) Any registration, license, or certificate issued by the board shall expire on December 31 of the second year following issuance if not timely renewed; except that the initial registration, license, or certificate issued to a person shall expire on December 31 of the year of issuance and shall be renewed as provided in this section. Upon compliance with this section and any applicable rules and regulations of the board regarding renewal, including the payment of a renewal fee plus a reinstatement fee established pursuant to paragraph (b) of this subsection (1), the expired registration, license, or certificate shall be reinstated. No real estate appraiser's registration, license, or certificate that has not been renewed for a period of time greater than two years shall be reinstated, and such person shall be required to make new application for registration, licensure, or certification.

(b) A person who fails to renew his or her registration, license, or certificate prior to January 1 of the year succeeding the year of the expiration of such registration, license, or certificate may have it reinstated if the person does any one of the following:

(I) Makes proper application, within thirty-one days after the date of expiration, by payment of the regular three-year renewal fee; or

(II) If proper application is made more than thirty-one days, but within one year, after the date of expiration, by payment of the regular three-year renewal fee and payment of a reinstatement fee equal to one-third the regular three-year renewal fee; or

(III) If proper application is made more than one year, but within two years, after the date of expiration, by payment of the regular three-year renewal fee and payment of a reinstatement fee equal to two-thirds the regular three-year renewal fee.

(2) In the event the federal registry fee to be collected by the board and transmitted to the federal financial institutions examination council is adjusted during the period prior to expiration of a license or certificate, the board shall collect the amount of the increase in such fee from the holder of the license or certificate and shall forward such amount to the said council on an annual basis.

(3) (a) If the applicant has complied with this section and any applicable rules and regulations of the board regarding renewal, except for the continuing education requirements pursuant to section 12-61-706, the licensee may renew the license on inactive status. An inactive license may be activated if the licensee submits written certification of compliance with section 12-61-706 for the previous licensing period. The board may adopt rules establishing procedures to facilitate such a reactivation.

(b) The holder of an inactive license shall not perform a real estate appraisal in conjunction with a debt instrument that is federally guaranteed, in the federal secondary market, or regulated pursuant to title 12, U.S.C.

(c) The holder of an inactive license shall not hold himself or herself out as having an active license pursuant to this part 7.

12-61-708. Licensure or certification by endorsement - temporary practice. (1) The board may issue a license or certification to an appraiser by endorsement to engage in the occupation of real estate appraisal to any applicant who has a license, registration, or certification in good standing as a real estate appraiser under the laws of another jurisdiction if:

(a) The applicant presents proof satisfactory to the board that, at the time of application for a Colorado registration, license, or certificate by endorsement, the applicant possesses credentials and qualifications which are substantially equivalent to the requirements of this part 7; or

(b) The jurisdiction that issued the applicant a license or certificate to engage in the occupation of real estate appraisal has a law similar to this subsection (1) pursuant to which it licenses or certifies persons who are licensed real estate appraisers in this state.

(1.2) The board may specify by rules and regulations what shall constitute substantially equivalent credentials and qualifications and the manner in which credentials and qualifications of an applicant will be reviewed by the board.

(2) Pursuant to section 1122 (a) of Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", the board shall recognize, on a temporary basis, the license or certification of an appraiser issued by another state if:

(a) (Deleted by amendment, L. 96, p. 1194, § 6, effective July 1, 1996.)

(b) The appraiser's business is of a temporary nature; and

(c) The appraiser applies for and is granted a temporary practice permit by the board.

12-61-709. Denial of registration, license, or certificate - renewal. (1) The board is empowered to determine whether an applicant for registration, licensure, or certification possesses the necessary qualifications for registration, licensure, or certification required by this part 7. The board may consider such qualities as the applicant's truthfulness and honesty and whether the applicant has been convicted of a crime involving moral turpitude.

(2) If the board determines that an applicant does not possess the applicable qualifications required by this part 7, or such applicant has violated any provision of this part 7 or the rules and regulations promulgated by the board or any board order, the board may deny the applicant a registration, license, or certificate or deny the renewal or reinstatement of a registration, license, or certificate pursuant to section 12-61-707; and, in such instance, the board shall provide such applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications or professional competence required by this part 7. Such applicant may request a hearing on such determination as provided in section 24-4-104 (9), C.R.S.

12-61-710. Prohibited activities - grounds for disciplinary actions - procedures. (1) A real estate appraiser is in violation of this part 7 if the appraiser:

(a) Has been convicted of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony if the felony is related to the ability to act as a real property appraiser. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be conclusive evidence of such conviction or plea. In considering the disciplinary action, the board shall be governed by the provisions of section 24-5-101, C.R.S.

(b) Has violated, or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of this part 7 or rule or regulation promulgated pursuant to this part 7 or any order of the board established pursuant to this part 7;

(c) Has accepted any fees, compensation, or other valuable consideration to influence the outcome of an appraisal;

(d) Has used advertising which is misleading, deceptive, or false;

(e) Has used fraud or misrepresentation in obtaining a license or certificate under this part 7;

(f) Has conducted an appraisal in a fraudulent manner or used misrepresentation in any such activity;

(g) Has acted or failed to act in a manner which does not meet the generally accepted standards of professional appraisal practice as adopted by the board by rule and regulation. A certified copy of a malpractice judgment of a court of competent jurisdiction shall be conclusive evidence of such act or omission, but evidence of such act or omission shall not be limited to a malpractice judgment.

(h) Has performed appraisal services beyond his level of competency;

(i) Has been subject to an adverse or disciplinary action in another state, territory, or country relating to a license, certificate, registration, or other authorization to practice as an appraiser. A disciplinary action relating to a registration, license, or certificate as an appraiser registered, licensed, or certified under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons shall be deemed to be prima facie evidence of grounds for disciplinary action or denial of licensure or certification by the board. This paragraph (i) shall apply only to violations based upon acts or omissions in such other state, territory, or country that are also violations of this part 7.

(2) If an applicant, a registrant, a licensee, or a certified person has violated any of the provisions of this section, the board may deny or refuse to renew any registration, license, or certificate, or, as specified in subsections (2.5) and (5) of this section, revoke or suspend any registration, license, or certificate, issue a letter of admonition to a licensee or certified person, place a registrant, licensee, or certified person on probation, or impose public censure.

(2.5) When a complaint or an investigation discloses an instance of misconduct by a registered, licensed, or certified appraiser that in the opinion of the board does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition by certified mail to the appraiser against whom a complaint was made. The letter shall advise the appraiser of the right to make a written request, within twenty days after receipt of the letter of admonition, to the board to begin formal disciplinary proceedings as provided in this section to adjudicate the conduct or acts on which the letter was based.

(3) A proceeding for discipline of a registrant, licensee, or certified person may be commenced when the board has reasonable grounds to believe that a registrant, licensee, or certified person has committed any act or failed to act pursuant to the grounds established in subsection (1) of this section or when a request for a hearing is timely made under subsection (2.5) of this section.

(4) Disciplinary proceedings shall be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(5) As authorized in subsection (2) of this section, disciplinary actions by the board may consist of the following:

(a) Revocation of a registration, license, or certificate. (I) Revocation of a registration, license, or certificate by the board shall mean that the registered, licensed, or certified person shall surrender his or her registration, license, or certificate immediately to the board.

(II) Any person whose registration, license, or certificate to practice is revoked is rendered ineligible to apply for any registration, license, or certificate issued under this part 7 until more than two years have elapsed from the date of surrender of the registration, license, or certificate. Any reapplication after such two-year period shall be treated as a new application.

(b) Suspension of a license. Suspension of a license or certificate by the board shall be for a period to be determined by the board.

(c) Probationary status. Probationary status may be imposed by the board. If the board places a licensee or certified person on probation, it may include such conditions for continued practice as the board deems appropriate to assure that the licensee or certified person is otherwise qualified to practice in accordance with generally accepted professional standards of professional appraisal practice as adopted by rule and regulation of the board, including any or all of the following:

(I) The taking by him of such courses of training or education as may be needed to correct deficiencies found in the hearing;

(II) Such review or supervision of his practice as may be necessary to determine the quality of his practice and to correct deficiencies therein; and

(III) The imposition of restrictions upon the nature of his appraisal practice to assure that he does not practice beyond the limits of his capabilities.

(d) (Deleted by amendment, L. 96, p. 1195, § 8, effective July 1, 1996.)

(e) Public censure. If after notice and hearing the director or the director's designee determines that the licensee has committed any of the acts specified in this section, the board may impose public censure.

(6) In addition to any other discipline imposed pursuant to this section, any person who violates the provisions of this part 7 or the rules and regulations of the board promulgated pursuant to this article may be penalized by the board upon a finding of a violation pursuant to article 4 of title 24, C.R.S., as follows:

(a) In the first administrative proceeding against any person, a fine of not less than three hundred dollars but not more than five hundred dollars per violation;

(b) In any subsequent administrative proceeding against any person for transactions occurring after a final agency action determining that a violation of this part 7 has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars.

(7) Complaints of record in the office of the board and the results of staff investigations may, in the discretion of the board, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.

(8) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding before the board pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

(9) Any board member having an immediate personal, private, or financial interest in any matter pending before the board shall disclose the fact to the board and shall not vote upon such matter.

(10) Any registrant, licensee, or certified person having direct knowledge that any person has violated any of the provisions of this part 7 shall report such knowledge to the board.

(11) The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in this section may reconsider its prior action and reinstate or restore such registration, license, or certificate or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

12-61-711. Judicial review of final board actions and orders. Final actions and orders of the board under sections 12-61-709 and 12-61-710 appropriate for judicial review shall be judicially reviewed in the court of appeals, in accordance with section 24-4-106 (11), C.R.S.

12-61-712. Unlawful acts. (1) It is unlawful for any person to:

(a) Violate any provision of this part 7 or, on and after July 1, 1997, to perform a real estate appraisal in conjunction with a debt instrument that is federally guaranteed or in the federal secondary market or regulated pursuant to title 12, U.S.C., without first having obtained a registration, license, or certificate from the board pursuant to this part 7;

(b) Accept a fee for an independent appraisal assignment that is contingent upon:

(I) The reporting of a predetermined analysis, opinion, or conclusion; or

(II) The analysis, opinion, or conclusion reached; or

(III) The consequences resulting from the analysis, opinion, or conclusion;

(c) Misrepresent a consulting service as an independent appraisal;

(d) Fail to disclose, in connection with a consulting service for which a contingent fee is or will be paid, the fact that a contingent fee is or will be paid.

(2) Any person who violates any provision of subsection (1) of this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. Any person who subsequently violates any provision of subsection (1) of this section within three years after the date of a conviction for a violation of subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

(3) A person who represents property owners as an advocate in tax or valuation protests and appeals pursuant to title 39, C.R.S., shall be exempt from the licensing requirements of this part 7.

12-61-713. Injunctive proceedings. (1) The board may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to perpetually enjoin any person from committing any act prohibited by the provisions of this part 7.

(2) Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided in this part 7.

(3) When seeking an injunction under this section, the board shall not be required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

12-61-714. Special provision for appraiser employees of county assessors. (1) Except as provided in subsection (2) of this section, unless a federal waiver is applied for and granted pursuant to section 12-61-704 (1) (j), on and after July 1, 1997, any person acting as a real estate appraiser in this state in conjunction with a debt instrument that is federally guaranteed or in the federal secondary market or regulated pursuant to title 12, U.S.C., shall be registered, licensed, or certified as provided in this part 7, and, on and after said date, no person shall practice in conjunction with a debt instrument that is federally guaranteed or in the federal secondary market or regulated pursuant to title 12, U.S.C., without such a registration, license, or certificate or hold himself or herself out to the public as a registered, licensed, or certified real estate appraiser unless registered, licensed, or certified pursuant to this part 7.

(2) Any appraiser employee of any county assessor who is employed to appraise real property shall be registered, licensed, or certified as provided in this part 7 and shall have two years from the date of taking office or the beginning of employment to comply with the provisions of this part 7.

12-61-715. Duties of board under federal law. (1) The board shall:

(a) Transmit to the appraisal subcommittee of the federal financial institutions examinations council, no less than annually, a roster listing individuals who have received a certificate or license as provided in this part 7;

(b) Collect from individuals who have received a certificate or license as provided in this part 7 an annual registry fee of not more than twenty-five dollars, unless the appraisal subcommittee of the federal financial institutions examinations council adjusts the fee up to a maximum of fifty dollars, and transmit such fee to the federal financial institutions examinations council on an annual basis; and

(c) Conduct its business and promulgate rules and regulations in a manner not inconsistent with Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended.

12-61-716. Business entities. (1) A corporation, partnership, bank, savings and loan association, savings bank, credit union, or other business entity may provide appraisal services if such appraisal is prepared by individuals registered, certified, or licensed in accordance with this part 7. An individual who is not a registered, certified, or licensed appraiser may assist in the preparation of an appraisal if:

(a) The assistant is under the direct supervision of a registered, certified, or licensed appraiser; and

(b) The final appraisal document is approved and signed by an individual who is a registered, certified, or licensed appraiser.

12-61-717. Provisions found not to comply with federal law null and void - severability. If any provision of this part 7 is found by a court of competent jurisdiction or by the appropriate federal agency not to comply with any provision of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", such provision shall be null and void, but the remaining provisions of this part 7 shall be valid unless such remaining provisions alone are incomplete and are incapable of being executed in accordance with the legislative intent of this part 7.

12-61-718. Scope of article - regulated financial institutions - de minimis exemption. (1) (a) The provisions of this article shall not apply to an appraisal relating to any real estate-related transaction or loan made or to be made by a financial institution or its affiliate if such real estate-related transaction or loan is excepted from appraisal regulations established by the primary federal regulator of said financial institution and the appraisal is performed by:

(I) An officer, director, or regular salaried employee of the financial institution or its affiliate; or

(II) A real estate broker or salesperson licensed under this article with whom said institution or affiliate has contracted for performance of the appraisal.

(b) Such appraisal shall not be represented or deemed to be an appraisal except to the said financial institution, the agencies regulating the said financial institution, and any secondary markets that purchase real estate secured loans. Such appraisal shall contain a written notice that the preparer is not registered, licensed, or certified as an appraiser under this part 7. Nothing in this subsection (1) shall be construed to exempt a person registered, licensed, or certified as an appraiser under this part 7 from regulation as provided in this part 7.

(2) Nothing in this article shall be construed to limit the ability of any federal or state regulator of a financial institution to require the financial institution to obtain appraisals as specified by the regulator.

(3) Repealed.