

Texas Administrative Code
Title 22. Examining Boards
Part 8. Texas Appraiser Licensing and Certification Board
Chapter 159. Rules Relating to the Provisions of the Texas Appraisal Management Company Registration and Regulation Act

22 TAC § 159.1

§ 159.1. Definitions

Currentness

- (a) AMC--Appraisal management company.

- (b) AMC Act--Chapter 1104, Texas Occupations Code, Texas Appraisal Management Company Registration and Regulation Act.

- (c) Administrative law judge--A judge employed by the State Office of Administrative Hearings (SOAH).

- (d) Advertising--A written or oral statement or communication by or on behalf of an AMC that induces or attempts to induce a member of the public to use the services of the AMC, including but not limited to all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards.

- (e) Applicant--A person seeking to become registered under the AMC Act.

- (f) Appraisal firm--An entity that employs appraisers on an exclusive basis and receives compensation for performing appraisals and issuing appraisal reports in its own name.

- (g) Appraiser contact--A person designated by an AMC pursuant to § 1104.103(b)(6) of the AMC Act to respond to and communicate with appraisers on the AMC's appraisal panel regarding appraisal assignments.

- (h) Board--The Texas Appraiser Licensing and Certification Board.

(i) Commissioner--The Commissioner of the Board.

(j) Day--A calendar day unless clearly indicated otherwise.

(k) License--The whole or a part of any Board permit, certificate, approval, registration or similar form of permission required by Chapter 1103 or 1104, Texas Occupations Code.

(l) License holder--A person licensed or registered by the Board under the AMC Act.

(m) Party--The Board and each person named or admitted as a party.

(n) Person--Any individual, partnership, corporation, or legal entity.

(o) Primary contact--A person who meets the definition of “controlling person” in § 1104.003 of the AMC Act and is designated by an AMC pursuant to § 1104.104 of the AMC Act as the primary contact for all communication between the Board and the AMC.

(p) Respondent--Any person subject to the jurisdiction of the Board, registered or unregistered, against whom any complaint has been made.

(q) SOAH--State Office of Administrative Hearings.

(r) USPAP--Uniform Standards of Professional Appraisal Practice.

Credits

Source: The provisions of this §159.1 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668.

Current through 42 Tex.Reg. No. 2444, dated May 5, 2017, as effective on or before May 12, 2017

22 TAC § 159.1, 22 TX ADC § 159.1

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22 TAC § 159.3

§ 159.3. Appraisal Management Company Advisory Committee

Currentness

- (a) A quorum of the committee consists of two members.

- (b) The committee may meet at the call of the chair or upon the request of a majority of its members. The committee shall meet at the request of the Board.

- (c) Unless state law or Board rules require otherwise, meetings shall be conducted in accordance with Robert's Rules of Order.

- (d) At the end of a term, members shall continue to serve until their successors are qualified.

Credits

Source: The provisions of this §159.3 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.3, 22 TX ADC § 159.3

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22 TAC § 159.4

§ 159.4. Appraisal Management Company Advisory Committee

Currentness

(a) This chapter does not apply to appraisal management services provided:

(1) for the appraisal of:

(A) commercial property; or

(B) residential properties of more than four units; or

(2) by persons exempted under § 1104.004, the AMC Act.

(b) For the purposes of § 1104.004 of the AMC Act:

(1) a person exclusively employs appraisers on an employer and employee basis for the performance of appraisals if the person does not also employ appraisers as independent contractors or under any other arrangement;

(2) a person employs not more than 15 appraisers on an exclusive basis as independent contractors for the performance of appraisals if:

(A) the person prohibits the independent contractors from performing appraisals for others; and

(B) the person does not employ more than 15 appraisers as independent contractors at any time;

(3) a subsidiary of a financial institution is not a department or unit within the institution;

(4) an AMC that requires an employee of the AMC who is an appraiser who provided no significant real property appraisal assistance to sign an appraisal that is completed by another appraiser who contracts with the AMC, is not exempt from the registration requirement or other requirements of the AMC Act; and

(5) an AMC has an appraisal panel of not more than 15 appraisers at all times during a calendar year if:

(A) the AMC does not have more than 15 appraisers on its panel at any time; and

(B) an appraiser who has been removed from the AMC's panel is not added back to the panel within 12 months after the date of removal.

(c) A person may solicit prospective panelists in anticipation of acting as an AMC without being registered as an AMC, provided that it is registered prior to forming a panel, accepting an appraisal assignment, or performing any other act constituting an appraisal management service.

(d) For the purposes of the AMC Act, a property is located in Texas if it is located wholly or partly in the state.

Credits

Source: The provisions of this §159.4 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.4, 22 TX ADC § 159.4

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22 TAC § 159.52

§ 159.52. Fees

Currentness

(a) The Board will charge and the Commissioner will collect the following fees:

- (1) a fee of \$3,300 for an application for a two-year registration;
- (2) a fee of \$3,000 for a timely renewal of a two-year registration;
- (3) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a registration within 90 days of expiration; a fee equal to two times the timely renewal fee for the late renewal of a registration more than 90 days but less than six months after expiration;
- (4) the national registry fee in the amount charged by the Appraisal Subcommittee for the AMC registry;
- (5) a fee of \$10 for each appraiser on a panel at the time of renewal of a registration;
- (6) a fee of \$5 to add an appraiser to a panel in the Board's records;
- (7) a fee of \$5 for the termination of an appraiser from a panel;
- (8) a fee of \$25 to request a registration be placed on inactive status;

(9) a fee of \$50 to return to active status;

(10) a fee of \$40 for preparing a certificate of licensure history or active licensure;

(11) a fee for a returned check equal to that charged for a returned check by the Texas Real Estate Commission;

(12) a fee of \$20 for filing any request to change an owner, primary contact, appraiser contact, registered business name or place of business;

(13) a fee of \$50 for evaluation of an owner or primary contact's background history not submitted with an original application or renewal;

(14) a fee of \$20 for filing any application, renewal, change request, or other record on paper when the person may otherwise file electronically by accessing the Board's website and entering the required information online; and

(15) any fee required by the Department of Information Resources for establishing and maintaining online applications.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a check which has been returned, and who have not made good on that check within 30 days, for whatever reason, must submit all future fees in the form of a cashier's check or money order.

(c) AMCs registered with the Board must pay any annual registry fee as required under federal law. All registry fees collected by the Board will be deposited in the Texas Treasury Safekeeping Trust Company to the credit of the appraiser registry fund. The Board will send the fees to the Appraisal Subcommittee as required by federal law.

Credits

Source: The provisions of this §159.52 adopted to be effective March 5, 2012, 37 TexReg 483; amended to be effective December 22, 2013, 38 TexReg 9050; amended to be effective December 14, 2014, 39 TexReg 9668; amended to be effective January 1, 2017, 41 TexReg 9707.

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22 TAC § 159.101

§ 159.101. Use of Business Name

Currentness

A license holder must notify the Board, on a form approved by the Board, within 30 days after the license holder starts or stops using a business name other than the name in which the license holder is registered.

Credits

Source: The provisions of this §159.101 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.102

§ 159.102. Eligibility for Registration; Ownership

Currentness

For the purpose of certifying to the Board that an applicant has reviewed the owners of the entity as required by the AMC Act and that no such owner has had a license to act as an appraiser denied, revoked, or surrendered in lieu of revocation unless the license was subsequently granted or reinstated, the applicant may rely on the Appraisal Subcommittee's online National Registry database.

Credits

Source: The provisions of this §159.102 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.103

§ 159.103. Applications

Currentness

- (a) An application must be accompanied by one completed and signed Owner/Primary Contact Background History form for the primary contact and each owner of more than 10% of the company.

- (b) An application may be rejected if incomplete.

- (c) An application may be considered void and subject to no further evaluation or processing if an applicant fails to provide information or documentation within 60 days after the Board makes written request for the information or documentation.

- (d) License holders must retain documents establishing ownership for a period of five years from the date the application was filed.

Credits

Source: The provisions of this §159.103 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.103, 22 TX ADC § 159.103

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22 TAC § 159.104

§ 159.104. Primary Contact; Appraiser Contact

Currentness

(a) A license holder must give the Board written notice of any change to the contact information for its primary contact or appraiser contact within 15 days of the change.

(b) If a license holder's primary contact or appraiser contact changes, the license holder must give the Board written notice of the change, including all information required by § 1104.103(b) (4) and (6) of the AMC Act, and, if appropriate, documentation that the person is qualified to serve under § 1104.104(b) of the AMC Act, within 15 days of the change.

(c) A license holder must give the Board written notice within 15 days if its primary contact or appraiser contact ceases to serve in that role and a qualified replacement is not immediately named. If a license holder's primary contact or appraiser contact ceases to serve in that role and the license holder does not give the Board written notice of a replacement, the license holder will be placed on inactive status.

(d) A primary contact who assumes that role during the term of the registration must provide the Board written consent to a criminal history background check, as required by § 1104.102 of the AMC Act. If the person does not satisfy the Board's moral character requirements, the Board will remove the person from its records and the license holder will be placed on inactive status. Such a decision by the Board may be reviewed and reconsidered by the Commissioner if the license holder submits a written request for reconsideration within ten days of notice that the person does not qualify to serve as primary contact. The license holder will remain on inactive status while the request for reconsideration is pending.

(e) The appraiser contact must hold an active, current license issued by an appraiser regulatory agency within the jurisdiction of the Appraisal Subcommittee.

Credits

Source: The provisions of this §159.104 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668.

§ 159.104. Primary Contact; Appraiser Contact, 22 TX ADC § 159.104

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22 TAC § 159.105

§ 159.105. Denial of Registration

Currentness

(a) AMCs, persons who own more than 10% of an AMC, and individuals who act as the primary contact for an AMC must be honest, trustworthy, and reliable. Accordingly, such persons must satisfy the Board of their honesty, integrity, and trustworthiness before a registration may be issued or renewed.

(b) The board deems the following felonies and misdemeanors directly related to the field of appraisal management and suggestive of a lack of the requisite moral character:

- (1) offenses involving fraud or misrepresentation;
- (2) offenses against real or personal property belonging to another, if committed knowingly or intentionally;
- (3) offenses against public administration;
- (4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;
- (5) offenses involving moral turpitude; and
- (6) offenses of attempting or conspiring to commit any of the foregoing offenses.

(c) In determining whether a criminal offense by an applicant, the primary contact, or an owner of more than 10% of the AMC prevents the issuance of a registration, the Board will consider the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a registration to provide appraisal management services;

(3) the extent to which a registration might offer an opportunity to engage in further criminal activity of the same type as that which the person had previously been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to be involved, directly or indirectly, in performing the duties and discharge the responsibilities of AMC.

(d) In determining the present fitness of a person who has committed an offense under this section, the Board will consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the person.

(e) A person is presumed to lack the requisite moral character if less than two years has elapsed since the offense was committed.

§ 159.105. Denial of Registration, 22 TX ADC § 159.105

(f) An applicant is presumed to be unfit to perform appraisal management services if the person has violated the appraiser independence standards of Section 129E of the Truth in Lending Act (15 U.S.C. § 1601 et seq.). This presumption may be rebutted by credible evidence to the contrary.

(g) It is the responsibility of the applicant to the extent possible to secure and provide the Board the recommendations of the prosecution, law enforcement, and correctional authorities, as well as evidence, in the form required by the Board, relating to whether the applicant has maintained a record of steady employment, has maintained a record of good conduct, and is current on the payment of any outstanding court costs, supervision fees, fines, and restitution.

(h) A currently incarcerated individual does not possess the required good moral character.

(i) The primary contact and each owner of more than 10% of the AMC must consent in writing to a criminal history background check at the time the company submits an application.

(j) An application for renewal that is proposed to be denied by Standards and Enforcement Services Division staff may be reviewed and reconsidered by the Commissioner if the applicant submits a written request for reconsideration within ten days of notice of the proposed denial. The right to request reconsideration is distinct from, and in addition to, an applicant's right to appeal a proposed denial before SOAH.

Credits

Source: The provisions of this §159.105 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.107

§ 159.107. Expiration

Currentness

A registration is valid for the term for which it is issued by the Board.

Credits

Source: The provisions of this §159.107 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.108

§ 159.108. Renewal

Currentness

(a) The Board will send a renewal notice to the license holder's primary contact at least 180 days prior to the expiration of the license.

(b) To renew a license, a license holder must:

(1) submit an application as required by § 1104.103 of the AMC Act; and

(2) pay all applicable renewal fees established in § 159.52 of this chapter.

(c) It is the responsibility of the license holder to apply for renewal in accordance with this section sufficiently in advance of the expiration date to ensure that all renewal requirements, including background checks, are satisfied before the expiration date of the license.

(d) Failure to receive a renewal notice from the Board does not relieve the license holder of the responsibility to timely apply for renewal.

(e) An application for renewal is not complete, and no renewal will issue, until all application requirements are satisfied.

Credits

Source: The provisions of this §159.108 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668.

§ 159.108. Renewal, 22 TX ADC § 159.108

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22 TAC § 159.108, 22 TX ADC § 159.108

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22 TAC § 159.109

§ 159.109. Inactive Status

Currentness

(a) To elect to be placed on inactive status, a license holder must do the following:

(1) file a request for inactive status on a form approved by the Board and pay the required fee; and

(2) confirm in writing to the Board that the license holder has given written notice of its election to go inactive to all appraisers listed on the license holder's appraiser panel at least 30 days prior to filing the request for inactive status.

(b) In order to return from inactive status to active status, a license holder must submit to the Board a completed Request for Active Status form and proof of compliance with all outstanding requirements for active registration.

(c) A license holder that has elected or been placed on inactive status may not engage in any activity for which registration is required until an active registration has been issued by the Board.

(d) The appraiser panel of a license holder on inactive status will remain in place.

(e) A license holder may renew on inactive status. To renew on inactive status, a license holder must satisfy:

(1) all requirements under subsection (a) of this section; and

(2) all renewal requirements for an active registration under § 159.108 of this chapter.

Credits

Source: The provisions of this §159.109 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective September 11, 2013, 38 TexReg 5879; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.109, 22 TX ADC § 159.109

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22 TAC § 159.154

§ 159.154. Competency of Appraisers

Currentness

(a) In addition to verifying an appraiser's licensure as required by § 1104.152 of the AMC Act, an AMC must, at the time of or before making an assignment to an appraiser, obtain a written certification from the appraiser that the appraiser:

- (1) is competent in the property type of the assignment;
- (2) is competent in the geographical area of the assignment;
- (3) has access to appropriate data sources for the assignment;
- (4) will immediately notify the AMC if the appraiser later determines that he or she is not qualified under paragraph (1), (2), or (3) of this subsection to complete the assignment; and
- (5) is aware that misrepresentation of competency is subject to the mandatory reporting requirement in § 1104.160 of the AMC Act.

(b) An AMC that has reviewed an appraiser's work must consider the findings of the review in verifying competency for the purpose of assigning future work.

(c) For the purposes of verifying that an appraiser has not had a license denied in another jurisdiction, an AMC may rely on information provided by the appraiser.

Credits

§ 159.154. Competency of Appraisers, 22 TX ADC § 159.154

Source: The provisions of this §159.154 adopted to be effective March 5, 2012, 37 TexReg 483; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.155

§ 159.155. Periodic Review of Appraisals

Currentness

(a) A license holder must review the work of appraisers performing appraisal services on 1-4 family unit properties collateralizing mortgage obligations by performing a review in accordance with Standard 3 of USPAP of:

(1) one of the first five appraisals performed for the license holder by each appraiser, prior to making a sixth assignment; and

(2) a total of five percent, randomly selected, of the appraisals performed for the AMC for each twelve-month period following the date of the AMC's registration.

(b) Appraisals performed pursuant to subsection (a)(1) of this section will be counted toward the calculation of five percent for the purposes of subsection (a)(2) of this section.

(c) A review pursuant to subsection (a)(1) of this section is not required if the first five appraisals by an appraiser were completed before the AMC was required by the AMC Act, to be registered with the Board.

(d) In addition to satisfying the requirements of § 1104.153 of the AMC Act, the review appraiser must have access to appropriate data sources for the appraisal being reviewed.

(e) A certified residential appraiser may perform a review of a residential real estate appraisal completed by a certified general appraiser if the review appraiser is otherwise permitted by the Texas Appraiser Licensing and Certification Act to perform the assignment.

(f) An appraiser conducting a review under § 1104.155 of the AMC Act and this rule must ensure compliance with the USPAP and with § 1104.154 of the AMC Act.

(g) In order to satisfy the requirements of § 1104.155 of the AMC Act, this rule and USPAP, a license holder performing a review must adhere to the following minimum scope of work:

(1) research and consult the appropriate data sources for the appraisal being reviewed to, at a minimum, validate the significant characteristics of the comparables and the essential elements of the transactions including:

(A) the multiple listing service(s) or other recognized methods, techniques and data sources for the geographic area in which the appraisal under review was performed, if the appraisal under review included a sales comparison approach;

(B) published cost data sources and other recognized methods, techniques and data sources for the geographic area in which the appraisal under review was performed, if the appraisal under review included a cost approach;

(C) the comparable rental data, income and expense data, and other recognized methods, techniques and data sources for the geographic area in which the appraisal under review was performed, if the appraisal under review included an income approach; and

(D) the sales or listing history of the property which is the subject of the appraisal under review, if that property was sold within the three years prior to the effective date of the appraisal under review or listed for sale as of the effective date of the appraisal under review;

(2) state the reviewer's opinions and conclusions about the work under review for each of the approaches to value utilized in the appraisal under review, including the reason for any disagreements;

(3) identify if the appraisal under review omitted an approach to value, a particular piece of information, or an analysis of either that was necessary for credible assignment results, identify what was omitted and explain why it was necessary for credible assignment results;

(4) identify the client, any intended users and the effective date of the appraisal review;

(5) state that the appraisal review's intended use and purpose is to satisfy the requirements of § 1104.155 of the AMC Act and this rule, including ensuring that the appraisal under review complies with the USPAP edition in effect at the time of the appraisal;

(6) state that the scope of work for the appraisal review is commensurate with the requirements of § 1104.155 of the AMC Act, this rule and USPAP edition in effect at the time of the appraisal review and that the scope of work ensures the development of credible assignment results and that no assignment conditions impose limitations which make the results of the review not credible;

(7) identify the appraisal under review, including:

(A) any ownership interest of the appraiser or reviewer in the property that is the subject of the appraisal under review;

(B) the report date and effective date of the appraisal under review;

(C) the effective date of the opinions or conclusions in the appraisal under review;

(D) the physical, legal, and economic characteristics of the property, properties, property type(s), or market area in the appraisal under review; and

(E) the name of all appraisers who signed or provided significant professional assistance in the appraisal under review;

(8) state clearly and conspicuously, all extraordinary assumptions and hypothetical conditions and state that their use might have affected the review; and

(9) contain a certification which complies with USPAP Standards Rule 3-6.

(h) While not required by § 1104.155 of the AMC Act or this rule, if the reviewer elects to develop an opinion of value, review opinion, or real property appraisal consulting conclusion, the review must comply with the additional provisions of USPAP governing the development of an opinion of value, review opinion, or real property appraisal consulting conclusion.

Credits

Source: The provisions of this §159.155 adopted to be effective March 5, 2012, 37 TexReg 483; amended to be effective December 4, 2012, 37 TexReg 9509; amended to be effective September 11, 2013, 38 TexReg 5879; amended to be effective December 14, 2014, 39 TexReg 9668.

§ 159.155. Periodic Review of Appraisals, 22 TX ADC § 159.155

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22 TAC § 159.156

§ 159.156. Business Records

Currentness

(a) For the purposes of the requirement in § 1104.156(c) of the AMC Act regarding retention of written records of substantive communications between an AMC and an appraiser, a communication is substantive if it relates to the appraiser's qualifications or to the scope of work of an assignment.

(b) An AMC may not require an appraiser to keep confidential the existence of the appraiser's business relationship with an AMC or the fact that the appraiser has received any specific assignment from the AMC to perform an appraisal.

(c) A business entity registered as an AMC must maintain documentation showing that it has complied with the requirements contained in its governing documents for changing officers or managers. The business entity must promptly provide to the Board upon request all business formation, ownership and representative authorization records and changes thereto required to be kept by the business entity by law.

(d) Written records include electronic records.

Credits

Source: The provisions of this §159.156 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective September 12, 2012, 37 TexReg 7175; amended to be effective December 14, 2014, 39 TexReg 9668.

Current through 42 Tex.Reg. No. 2444, dated May 5, 2017, as effective on or before May 12, 2017

22 TAC § 159.156, 22 TX ADC § 159.156

Texas Administrative Code
Title 22. Examining Boards
Part 8. Texas Appraiser Licensing and Certification Board
Chapter 159. Rules Relating to the Provisions of the Texas Appraisal Management Company Registration and Regulation Act

22 TAC § 159.157

§ 159.157. Compensation of Appraisers

Currentness

(a) A license holder must compensate the appraisers on the panel based on a compensation policy, established by the license holder, that provides for customary and reasonable fees by taking into consideration the requirements of and any presumptions available under federal law.

(b) A license holder must reassess its compensation policy at least annually and shall retain, for a period of five years, records of all compensation information that formed the basis for the policy.

(c) A license holder must make any fee schedule adopted under its compensation policy available to each appraiser on its panel.

(d) A license holder may not require an appraiser to sign a certification that a fee for an assignment is customary and reasonable.

Credits

Source: The provisions of this §159.157 adopted to be effective March 5, 2012, 37 TexReg 483; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.157, 22 TX ADC § 159.157

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22 TAC § 159.159

§ 159.159. Disclosure of Registered Name and Registration Number

Currentness

(a) For the purposes of the AMC Act, “documents used to procure appraisals” include written documents and electronic communications, including e-mail, used for that purpose, but does not include general advertisements and supporting documentation.

(b) On all documents used to procure appraisals, an AMC must disclose the name it registered with the Board, any other name that it uses in business and the registration number received from the Board.

Credits

Source: The provisions of this §159.159 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective September 11, 2013, 38 TexReg 5879; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.161

§ 159.161. Appraiser Panel

Currentness

(a) If an appraiser is not employed by the AMC or already a member of the AMC's panel, an AMC must add the appraiser to the AMC's panel no later than the date on which the AMC makes an assignment to the appraiser.

(b) To add an appraiser to a panel, the AMC must:

(1) initiate the appropriate two-party transaction through the Board's online panel management system, including payment of any required fee(s); or

(2) submit a notice on a form approved by the Board for this purpose, including the signatures of the appraiser and the AMC's primary contact, and the appropriate fee(s).

(c) An appraiser or an AMC may terminate the appraiser's membership on a panel by:

(1) submitting a termination notice electronically through the Board's online panel management system, including payment of any required fee; or

(2) submitting a notice on a form approved by the Board for this purpose and the appropriate fee(s).

(d) If an appraiser terminates his or her membership on a panel, the appraiser must immediately notify the AMC of the termination. If an AMC terminates an appraiser's membership on a panel, the AMC must immediately notify the appraiser of the termination.

(e) If an appraiser's license is suspended or revoked, the Board will remove the appraiser from any panels on which the appraiser is listed with no fee charged to the AMC or the appraiser.

(f) If an appraiser's license expires, the Board will:

(1) change the appraiser's license status the month following expiration of the license; and

(2) remove the appraiser from any panels on which the appraiser is listed with no fee charged to the AMC or the appraiser once the license can no longer be renewed.

Credits

Source: The provisions of this §159.161 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective June 10, 2012, 37 TexReg 4224; amended to be effective December 14, 2014, 39 TexReg 9668; amended to be effective January 1, 2017, 41 TexReg 9708.

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22 TAC § 159.161, 22 TX ADC § 159.161

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22 TAC § 159.162

§ 159.162. Dispute Resolution

Currentness

- (a) A license holder must provide a dispute resolution process for appraisers.

- (b) The dispute resolution process must provide for either:
 - (1) review by an external third party; or

 - (2) internal review by a person whose position within the company is above the level of the person responsible for the decision or action under review.

- (c) A license holder's dispute resolution process for appraisers must provide for:
 - (1) a written response to the request for review;

 - (2) a written statement of the outcome of the dispute resolution process; and

 - (3) copies of all relevant documentation to the appraiser upon written request.

- (d) An appraiser who is aggrieved under § 1104.157 or § 1104.161 of the AMC Act must utilize the license holder's dispute resolution process before filling a complaint against the AMC with the Board.

Credits

Source: The provisions of this §159.162 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668.

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22 TAC § 159.162, 22 TX ADC § 159.162

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22 TAC § 159.201

§ 159.201. Guidelines for Revocation, Suspension, or Denial of a License

Currentness

(a) The Board may suspend or revoke a license issued under provisions of the AMC Act, or deny issuing a license to an applicant, any time it is determined that the person applying for or holding the license or the AMC's primary contact:

(1) disregards or violates a provision of the AMC Act or Board rules;

(2) is convicted of a felony;

(3) fails to notify the Board not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud or moral turpitude;

(4) fails to notify the Board not later than the 30th day after the date of incarceration if the person, in this or another state, has been incarcerated for a criminal offense involving fraud or moral turpitude;

(5) fails to notify the Board not later than the 30th day after the date disciplinary action becomes final against the person with regard to any occupational license the person holds in Texas or any other jurisdiction;

(6) fails to comply with the USPAP edition in effect at the time of the appraisal or appraisal practice;

(7) acts or holds any person out as a registered AMC under the AMC Act or another state's act when not so licensed or certified;

- (8) accepts payment for appraisal management services but fails to deliver the agreed service in the agreed upon manner;

- (9) refuses to refund payment received for appraisal management services when he or she has failed to deliver the appraiser service in the agreed upon manner;

- (10) accepts payment for services contingent upon a minimum, maximum, or pre-agreed value estimate;

- (11) offers to perform appraisal management services or agrees to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate;

- (12) makes a material misrepresentation or omission of material fact;

- (13) has had a registration as an AMC revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is an offense under Texas law;

- (14) procures a registration pursuant to the AMC Act by making false, misleading, or fraudulent representation;

- (15) has had a final civil judgment entered against him or her on any one of the following grounds:
 - (A) fraud;

 - (B) intentional or knowing misrepresentation; or

 - (C) grossly negligent misrepresentation in the making of real estate appraiser services;

- (16) fails to make good on a payment issued to the Board within 30 days after the Board has mailed a request for payment by certified mail to the license holder's primary contact as reflected in the Board's records;

- (17) knowingly or willfully engages in false or misleading conduct or advertising with respect to client solicitation;

(18) uses any title, designation, initial or other insignia or identification that would mislead the public as to that person's credentials, qualifications, competency, or ability to provide appraisal management services;

(19) requires an appraiser to pay for or reimburse the AMC for a criminal history check;

(20) fails to comply with a final order of the Board; or

(21) fails to answer all inquiries concerning matters under the jurisdiction of the Board within 20 days of notice to said person's or primary contact's address of record, or within the time period allowed if granted a written extension by the Board.

(b) The Board has discretion in determining the appropriate penalty for any violation under subsection (a) of this section.

(c) The Board may probate a penalty or sanction, and may impose conditions of the probation, including, but not limited to:

(1) the type and scope of appraisal management practice;

(2) requirements for additional education by the AMC's controlling persons;

(3) monetary administrative penalties; and

(4) requirements for reporting appraisal management activity to the Board.

(d) A person applying for reinstatement after revocation or surrender of a registration must comply with all requirements that would apply if the registration had instead expired.

(e) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under the AMC Act or under the laws of this State.

(f) The Board may not investigate under this section a complaint submitted either more than two years after the date of discovery or more than two years after the completion of any litigation involving the incident, whichever event occurs later, involving the AMC that is the subject of the complaint.

(g) Except as provided by [Texas Government Code §402.031\(b\)](#) and [Texas Penal Code §32.32\(d\)](#), there will be no undercover or covert investigations conducted by authority of the AMC Act.

Credits

Source: The provisions of this §159.201 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668; amended to be effective December 11, 2016, 41 TexReg 9708.

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22 TAC § 159.204

§ 159.204. Complaint Processing

Currentness

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the AMC named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff will:

(1) assign the complaint a case number in the complaint tracking system; and

(2) send written acknowledgement of receipt to the complainant.

(b) If the staff determines at any time that the complaint is not within the Board's jurisdiction, or that no violation exists, the complaint will be dismissed with no further processing. The Board or the Commissioner may delegate to staff the duty to dismiss complaints.

(c) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

(1) may be investigated covertly; and

(2) will be referred to the appropriate prosecutorial authorities.

(d) Staff may request additional information necessary to determine how to proceed with the complaint from any person.

(e) As part of a preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation will be sent to the Respondent unless the complaint qualifies for covert investigation and the Standards and Enforcement Services Division deems covert investigation appropriate.

(f) The Respondent must submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response must include the following:

(1) A copy of the appraisal report(s), if any, that is (are) the subject of the complaint;

(2) A copy of the documents or other business records associated with the appraisal report(s), incident(s), or conduct listed in the complaint, with the following signed statement attached to the response: I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY BUSINESS RECORD ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL BUSINESS RECORD, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS BUSINESS RECORD OR ALTERED. (SIGNATURE OF RESPONDENT);

(3) A narrative response to the complaint, addressing each and every item in the complaint;

(4) A list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) Any documentation that supports Respondent's position that was not in the original documentation, as long as it is conspicuously labeled as additional documentation and kept separate from the original documentation. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(g) Staff will evaluate the complaint within three months of receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the AMC Act, Board rules or USPAP exists to pursue investigation and possible formal disciplinary action. If staff determines there is no jurisdiction, no violation exists, or there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection (k) of this section, the complaint will be dismissed with no further processing.

(h) A formal complaint will be opened and investigated by a staff investigator or peer investigative committee if:

(1) the informal complaint is not dismissed under subsection (g) of this section; or

(2) staff opens a formal complaint on its own motion.

(i) Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(j) The staff investigator or peer investigative committee assigned to investigate a formal complaint will prepare a report detailing all findings.

(k) In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Chapter 1104, Texas Occupations Code, staff, the administrative law judge in a contested case hearing and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) An AMC will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than ten years ago;

(B) A prior warning letter, contingent dismissal or discipline given less than ten years ago will not be considered unless the Board took final action against the AMC before the date of the incident that led to the subsequent disciplinary action;

(C) Prior discipline is defined as any sanction, including an administrative penalty, received under a Board final or agreed order;

(D) A violation refers to a violation of any provision of the AMC Act, Board rules, or USPAP;

(E) “Minor deficiencies” is defined as violations of the AMC Act, Board rules, or USPAP which do not call into question the qualification of the AMC for licensure in Texas;

(F) “Serious deficiencies” is defined as violations of the Act, Board rules or USPAP which do call into question the qualification of the AMC for licensure in Texas;

(G) “Remedial measures” include training, auditing, or any combination thereof; and

(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. If Respondent completes all remedial measures required in the agreement within a certain prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the discipline, including:

(i) Whether it concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions imposed;

(iii) The length of time since the previous discipline;

(D) The difficulty or complexity of the incident at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal or instance of conduct or multiple appraisals or instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal

report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The business operating history of the AMC, including:

(i) The size of the AMC's appraiser panel;

(ii) The length of time Respondent has been licensed as an AMC in Texas;

(iii) The length of time the AMC has been conducting business operations, in any jurisdiction;

(iv) The nature and extent of any remedial measures and sanctions the Respondent had received related to the areas in which violations were found; and

(v) Respondent's affiliation with other business entities;

(K) Whether Respondent can improve the AMC's practice through the use of remedial measures; and

(L) Whether Respondent has voluntarily completed remedial measures prior to the resolution of the complaint.

(3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures;

(ii) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(C) 1st Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(D) 2nd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;

(iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(E) 2nd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;
- (vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;
- (vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;
- (viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(F) 2nd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;
- (vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(G) 3rd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(H) 3rd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;
- (vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;
- (vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;
- (viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(I) 3rd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A revocation; and
- (ii) Minimum of \$7,000 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules, or the Act; each day of a continuing violation is a separate violation.

(J) 4th Time Discipline--violations of the AMC Act, Board rules or USPAP will result in a final order which imposes the following:

- (i) A revocation; and

(ii) \$10,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(K) Unlicensed AMC activity will result in a final order which imposes a \$10,000 in administrative penalties per unlicensed AMC activity; each day of a continuing violation is a separate violation.

(4) In addition, staff may recommend any or all of the following:

(A) Reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;

(B) Probating all or a portion of any remedial measure, sanction, or administrative penalty for a period not to exceed three years;

(C) Requiring additional reporting requirements;

(D) Payment of costs expended by the Board associated with the investigation, and if applicable, a contested case, including legal fees and administrative costs; and

(E) Such other recommendations, with documented support, as will achieve the purposes of the AMC Act, Board rules, or USPAP.

(l) Agreed resolutions of complaint matters pursuant to [Texas Occupations Code §1104.208\(a\)\(3\)](#) must be:

(1) Approved by the Board; and

(2) Signed by:

(A) Respondent;

(B) Respondent's attorney, if respondent is represented;

(C) A representative of the Standards and Enforcement Services Division; and

(D) The Commissioner.

Credits

Source: The provisions of this §159.204 adopted to be effective November 3, 2011, 36 TexReg 7320; amended to be effective December 14, 2014, 39 TexReg 9668; amended to be effective September 7, 2015, 40 TexReg 5789.

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