

**REPORT
 HIGHLIGHTS**
 PERFORMANCE AUDIT

Subject

Following the savings and loan crisis of the late 1980s, Congress passed laws requiring federally regulated financial institutions to use licensed or certified appraisers for real estate-related transactions and allowing states to establish agencies to regulate appraisers. The Arizona Board of Appraisal was created in 1990 and regulates over 1,700 appraisers.

Our Conclusion

The Board has improved its complaint-handling process since our 1998 report despite a growing workload. However, the Board needs to take further steps to separate its investigation and adjudication functions and should seek statutory authority to recover investigation and hearing costs. The Board should also provide complete and accurate complaint information to the public.



2003

Board Can Further Improve Complaint Processing

In 1998, we found that the Board had a backlog of an estimated 100 complaints, half of which had been open more than 300 days. The Board has since eliminated the backlog, and auditor review of a random sample of 79 complaints found that the Board has reduced its complaint-processing time to an average of 198 days. This is longer than the 180 days expected of most Arizona regulatory boards, but within the 1-year standard established by the federal Appraisal Subcommittee, which oversees state appraisal boards.

Despite significant improvements in its complaint handling, the Board can still improve some aspects of its process.

Separating investigation from adjudication—When the Board receives a complaint, a board member who is an appraiser is assigned to conduct the initial review of the complaint and evidence. After reviewing the available evidence to identify potential violations, the appraiser board member presents the complaint to the Board and discusses what action to take, such as dismissal or further investigation by a contract investigator.

Currently, the board member who conducted the initial investigation continues to vote on the actions the Board takes to resolve the complaint, whether it be dismissal, remedial action, or discipline. This



participation in both the complaint investigation and adjudication is inappropriate.

Attorney General recommends separation—The Attorney General's *Agency Handbook* advises against agency decision-makers being involved in complaint investigations. Because of the cost of hiring or contracting for an investigator, it may not be fiscally prudent for the Board to abandon assigning complaints to board members for an initial investigative review. However, the investigating board member can avoid the conflict by simply not being involved in making motions or voting on adjudicatory decisions.

Authority to recover costs—Like other regulatory boards, the Appraisal Board can incur significant costs in handling complaints and disciplining licensees. Costs include contract investigators to investigate some complaints and the Office of Administrative Hearings (OAH) to conduct formal hearings. We saw investigative costs that ranged from \$600 to \$2,600 per complaint. OAH hearing costs for one complaint were \$1,150 and almost \$10,000 for another complaint.

While the Board already has authority to recover costs associated with disciplining tax agents, it does not have the authority

Growing Disciplinary Workload

- 181 complaints received in FY 2001
- 222 complaints received in FY 2002
- 5 hearings before OAH in FY 2001
- 13 hearings before OAH in FY 2002
- 18 hearings before OAH in first 3/4 of FY 2003

to do so with appraisers. At least nine other Arizona regulatory boards have authority to recover investigative and/or hearing costs from licensees who are found to have violated board statutes and regulations.

If given the authority to recover costs, the Board needs to begin tracking expenses for each case. The Board knows the hourly rates of its contract investigators, and the amount charged by OAH and the Attorney General. The Board just needs to track the costs to their respective cases.

Recommendations

The Board should:

- Require that investigating board members not be involved in adjudicatory decisions
- Track complaint-handling costs per case
- Request statutory authority to recover complaint-handling costs for disciplined appraisers

Board Should Provide Complete and Accurate Complaint Information

Although the Board has taken steps to improve public access to complaint information over the last few years, the Board still does not provide complete information. The information that should be available over the phone includes the type of violation the appraiser committed and how the appraiser was disciplined, if at all.

Phone calls to the Board—We made five calls to the Board to assess the information it provides regarding appraisers who have had complaints filed against them. We were not given complete and accurate information as required by board policy for any of the five calls. For example:

- we **were not** told that two appraisers were on probation,

- we **were** told that an appraiser with a dismissed complaint did not have any complaints, and
- we **were not** told the reasons why two appraisers received due diligence letters.

Although the Board has only four staff, each should clearly understand his or her role in providing information to the public. To make the information consistent and complete, the Board should also classify the nature of complaints. The Board has considered implementing guidelines for classifying the violations found in a complaint on a scale of 1 to 5, with 5 being the most serious. There would be an associated description of the types of violations that fall within each category. For example, a level-2 complaint would be

one in which a series of mistakes affected the appraisal's credibility. The Board should implement such guidelines so staff can use them to provide information on the nature of complaints.

Letters of remedial action—In 2001, the Board received authority to take remedial action, which it does not consider to be a form of discipline. The Board uses letters of remedial action when it wants to warn appraisers to change their practices in order to avoid future problems. In these

cases, the Board dismisses the complaint and writes a letter informing the licensee not to make the same mistake again. It may also require the appraiser to take continuing education classes. However, the Board does not inform the public that it has taken these actions.

Because letters of remedial actions involve the Board's formal decisions, they are public information under the public records law. Therefore, the Board should ensure that this information is available to the public.

Recommendations

The Board should:

- Train staff to understand their role in providing complete and accurate complaint information
- Classify the nature of each complaint to assist staff in providing complete and accurate complaint information
- Inform the public of remedial actions

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