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## **In the defense of all the appraisers**

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You might have heard a lot about the increased number of appraiser licensing board complaints, but what you do not know could hurt your status as an appraiser.

The Appraisal Subcommittee (ASC) starting in 2009 exploded with activity including Appraiser License Board audits that pressured the state boards to improve enforcement of USPAP and Appraisal Qualifications Board continuing education requirements. The activity of the Appraiser License Board was further stimulated by the Dodd-Frank mandatory whistle-blower clause. This federal mandate requires mortgage lenders and almost anyone involved in the mortgage food chain to turn-in an appraiser suspected of violating USPAP. Many complaints come from borrowers and others from Fannie Mae review appraisers. Fannie Mae guidelines are not within the jurisdiction of the licensing boards, nor do the appraisal reviews address USPAP violations, but the alleged guideline violations are often woven into the complaint as vague and often ambiguous USPAP violations. USPAP is statutory law and a violation of the statute is relevant and admissible evidence of negligence. In addition to threatening the appraiser's license status, an appraiser can be sued in civil court for negligence.

When the licensing boards issue a complaint against an appraiser (called the respondent), the licensing board not only determined what state law or regulation was violated, they also set the detailed punishment.

This licensing board dispute resolution system is controlled by Administrative Law wherein the procedures are far different from typical civil law procedures. Rules of evidence and discovery as they operate in civil cases do not apply in administrative proceedings. The crime of armed robbery has a Statute of Limitations requiring the charge to be brought within six years. The Statute of Limitations does not apply to appraiser license holders.

The licensing board prosecutors and administrative magistrates are professional, experienced, and overburdened. If you are not able to negotiate a dismissal or reduction in the alleged charges and proposed sanctions, you will have to appear at a full hearing. The hearing is similar to a civil trial with an administrative law hearing officer, prosecutor, witnesses, and other evidence in the form of exhibits. The prosecutor's burden of proof at the hearing is just to tilt the scale to 51% more likely that the alleged charges are true than not true. The burden of proof to convict you of the statutory charges is not clear and convincing evidence nor beyond a reasonable doubt, just 51% more likely that you violated the law.

Typically, the first complaint notice to the appraiser is a fourteen day notice from an investigator requesting the appraiser's workfile and a response to the allegations. You are required to respond. Although the Miranda Warning does not apply in civil matters, you should know that anything you say may be used against you in the hearing process. The second notice is an Order to Show Cause Letter. The Show Cause letter details the charges against you. You are required to respond and

present a defense. If you do not, the alleged charges and proposed sanctions will become a reality. The sanctions proposed by the Licensing Board for most alleged charges are typically a fine of several hundred to several thousand dollars, timed probation, and 30 plus hours of additional education. Similarly, be aware of your requirement to verify your continuing education credit. Failure to present verification could result in a \$2,500 fine and six months probation.

Roger Durkin, ASA, an attorney and appraiser at Durkin Valuation Consultants, Boston.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540