Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2012 Sunset Review: Board of Real Estate Appraisers

October 15, 2012

Consumer Protection

Department of Regulatory Agencies

Executive Director's Office
Barbara J. Kelley
Executive Director

John W. Hickenlooper
Governor

October 15, 2012

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 mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA 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 2013 legislative committee of reference. The report is submitted pursuant to section 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 Part 7 of 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 changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley

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Executive Director

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Department of Regulatory Agencies

2012 Sunset Review:
Colorado Board of Real Estate Appraisers

Summary

What Is Regulated?
Real estate appraisers (appraisers) estimate the value of commercial and residential real estate. To develop an appraisal, an appraiser must research market areas, gather data, use analytical techniques, and apply knowledge, experience and professional judgment.

Why Is It Regulated?
The federal government requires appraisers to obtain a license or certificate from the state and sets minimum standards. The federal Financial Institutions Reform, Recovery, and Enforcement Act and the subsequent Part 7 of Article 61 of Title 12, Colorado Revised Statutes, were created to protect consumers from unqualified or incompetent appraisers.

Who Is Regulated?
Colorado regulates 3,518 appraisers, including: registered appraisers, licensed appraisers, certified residential appraisers, and certified general appraisers.

How Is It Regulated?
Appraisers must be licensed or certified by the Board of Real Estate Appraisers (Board) in order to perform a real estate appraisal connected to a federally-related transaction. In order to obtain a registration, license, or certification, an applicant must complete the required education and experience, and pass the relevant examination.

What Does It Cost?
In fiscal year 10-11, the total expenditures to oversee the program were $725,338, and there were 8.4 full-time equivalent employees associated with the program.

What Disciplinary Activity Is There?
Between fiscal years 06-07 and 10-11, the Board issued 802 final agency actions including: revocations, suspensions, probation or practice limitation, education requirements, letters of admonition, restitution, and over $350,000 in fines.

Key Recommendations

Continue the Board for nine years, until 2022.

The Board was created to comply with federal law, and it protects the public by ensuring that appraisers are qualified to appraise real estate. It also protects the public by removing unqualified or incompetent appraisers from the market.

Create a certification specific to tax appraisers.

The federal law, that requires the regulation of real estate appraisers, mandates the education, examination, and experience requirements that are relevant to real estate appraisers who appraise property for the purpose of mortgage lending, not for ad valorem taxation. The daily tasks of the two types of appraisers are distinctly different. Therefore, a separate certification for tax appraisers may be better suited to ensuring that tax appraisers have the necessary skills and knowledge germane to appraising real property for tax assessment purposes.

Repeal the registered appraiser license type.

Registered appraisers, who are essentially trainees, must be supervised during the training period and cannot complete an appraisal without the licensed or certified appraiser taking full responsibility for it. According to professional standards, anyone can contribute to an appraisal as long as it is clearly attributed in the report and a licensed or certified appraiser takes responsibility for the appraisal report and the work product. Therefore, eliminating this license type should not compromise public protection and will not violate any federal laws.

Major Contacts Made During This Review

Appraisal Foundation, The
Appraisal Institute, Colorado Chapter
Appraisal Subcommittee
Colorado Assessors' Association
Colorado Association of Real Estate Appraisers
Colorado Association of Realtors
Colorado Association of Tax Appraisers
Colorado Board of Real Estate Appraisers
Colorado Coalition of Appraisers
Colorado Department of Local Affairs, Division of Property Taxation
Colorado Department of Law
Colorado Division of Real Estate
International Association of Assessing Officers
Northern Colorado Association of Real Estate Appraisers

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria[1] and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- 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;
- 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;
- 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;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- 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;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- 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;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

[1] Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.askdora.colorado.gov.

The regulatory functions of the Board of Real Estate Appraisers (Board) in the Division of Real Estate (Division) as enumerated in Part 7 of Article 61 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2013, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the real estate appraiser licensure program by the Board pursuant to section 24-34-104, C.R.S.

Sections 12-61-720 and 12-61-721, C.R.S., create a conservation easement program and the Conservation Easement Oversight Commission (Commission) within the Division of Real Estate. Since the Commission is essentially a separate program from the Board and the sections that create it have a separate repeal date, it will not be addressed in this sunset review, except to provide a general outline of the program for background information.

The purpose of this review is to determine whether the currently prescribed regulation of real estate appraisers should be continued for the protection of the public and to evaluate the performance of the Board. During this review, the Board and the Division must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff attended Board meetings; interviewed Division staff; reviewed Board records and minutes, including complaint and disciplinary actions; interviewed officials with state and national professional associations; interviewed real estate appraisers, county assessors, and tax appraisers; reviewed Colorado statutes and Board rules; and reviewed the laws of other states and the federal government.

Profile of the Profession

Real estate appraisers (appraisers) estimate the value of commercial and residential real estate.[2]

An appraisal is an opinion of value. To develop an appraisal, an appraiser must research market areas, gather data, use analytical techniques, and apply knowledge, experience, and professional judgment.[3]

To do so, they take into account unique characteristics of the property and the area. They consider the condition of the foundation, roof, and any renovations, and take pictures of the outside of the building in addition to any particular rooms or features that may need to be documented. They also take into account comparable sales, lease records, location, view, previous appraisals, and income potential. Appraisers must maintain a meticulous record of their research, observations, and methods.[4]

An appraiser may have a general practice or may specialize in a particular type of real estate, such as commercial sales of hotels and retail stores.[5]

The federal government requires appraisers who value property related to a federal loan transaction to obtain a license or certificate from the state and sets minimum standards for appraisals. Requirements for state licensure or certification vary by state, but appraisers that assess residential real estate are generally required to have an associate's degree, and appraisers that assess commercial real estate are required to have a bachelor's degree.[6]

Many states also require a license for an appraiser who is in training but has not yet completed all the requirements for a license. In Colorado, an appraiser who is in training is required to register with the Board.

County assessors also estimate the value of commercial and residential real estate, but unlike appraisers, they mostly work for the government and value real estate for tax assessment purposes only.[7] While the federal government does not mandate licensure of county assessors, some states do require them to be licensed. Colorado does not require county assessors to be licensed, but all employees who work in county assessment offices must be registered, licensed, or certified as real estate appraisers in order to value real property for tax assessment purposes.

[2] For readability, "real estate" and "real property" are treated as synonymous terms in this report.
[3] *The Appraisal of Real Estate,* The Appraisal Institute (2008), p. 10.
[4] Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-2011 Edition: Appraisers and Assessors of Real Estate.* Retrieved on October 20, 2011, from http://www.bls.gov/oco/ocos300.htm
[5] Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-2011 Edition: Appraisers and Assessors of Real Estate.* Retrieved on October 20, 2011, from http://www.bls.gov/oco/ocos300.htm
[6] Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-2011 Edition: Appraisers and Assessors of Real Estate.* Retrieved on October 20, 2011, from http://www.bls.gov/oco/ocos300.htm
[7] Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-2011 Edition: Appraisers and Assessors of Real Estate.* Retrieved on October 20, 2011, from http://www.bls.gov/oco/ocos300.htm

Many appraisers work through appraisal management companies, which act as a third-party intermediary between appraisers and their clients, primarily lenders.

As of the writing of this report, 31 states, including Colorado, have adopted legislation requiring appraisal management companies to register with the state, and 5 states are considering legislation to do so.

Legal Framework

History of Regulation

After the savings and loan crisis in the 1980s, the U.S. Congress adopted the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). Title XI of FIRREA establishes minimum requirements for real estate appraisers (appraisers). Under this law, all states must establish licensing and certification programs consistent with its requirements. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that was signed into law in 2010 amended several financial and consumer protection laws including Title XI of FIRREA.

In response to a sunrise application and FIRREA, in 1990, the Colorado General Assembly passed a bill to govern the practice of real estate appraisal and established the Board of Real Estate Appraisers (Board) within the Division of Real Estate (Division) in the Department of Regulatory Agencies. In the original law, it was unlawful for anyone to act as an appraiser without a license or certification, including all persons holding office as a county assessor and employees of county assessor offices who appraise real property for tax assessment purposes.

Since enacting the law, the General Assembly has amended it numerous times.

In 1992, the General Assembly established a registration requirement for those who are in training to become fully licensed appraisers.

In 1996, following a sunset review, the General Assembly eliminated the requirement for county assessors to be registered since the Colorado Supreme Court determined it to be an unconstitutional requirement. However, employees of county assessor offices who perform real estate appraisals are still required to be registered. It also changed the membership on the Board to increase the ratio of public members and prohibited appraisers from receiving contingency fees.

In 2000, the General Assembly increased the authority of the Board to allow public censure for a violation of the statute.

Following a sunset review in 2002, the General Assembly prohibited the Board from granting continuing education for attendance at Board meetings. It also closed to public inspection, except by court order, any complaint dismissed by the Board.

Before 2009, any violation of Part 7 of Article 61 of Title 12, Colorado Revised Statutes (C.R.S.), was a criminal offense. The General Assembly narrowed this to apply only to specific violations.

Previously, it was a criminal offense to perform a real estate appraisal without a license, unless an individual was operating under an exemption. In 2009, the General Assembly limited this to apply only to a real estate appraisal in conjunction with a debt instrument that is federally guaranteed, or regulated pursuant to Title 12, United States Code.

The General Assembly also increased the punishment for unlicensed practice or other specific violations from a Class 3 misdemeanor to a Class 1 misdemeanor and increased the punishment for any subsequent convictions, within five years, from a Class 1 misdemeanor to a Class 5 felony.

In 2012, the legislature adopted House Bill 1110 in response to the Dodd-Frank Act, which requires the states to register appraisal management companies.

Summary of Current Laws

Federal Regulation

The Appraisal Subcommittee (ASC) is a federal agency that oversees state compliance with FIRREA. If it finds that states are not compliant with the requirements of FIRREA, the ASC has the authority to deny state-licensed appraisers the ability to perform real estate appraisals in federally related transactions. The Dodd-Frank Act provides the ASC with the additional authority to sanction state regulatory programs.

Two entities that have a considerable impact on the regulation of appraisers are the Appraisal Qualifications Board (AQB) and the Appraisal Standards Board (ASB). These boards are housed in the Appraisal Foundation, a private, non-profit organization authorized by FIRREA.

The AQB is a five-member board that establishes the minimum education and experience requirements for state-licensed appraisers and creates a national examination for state licensure. The ASB is a six-member board that determines the Uniform Standards of Professional Appraisal Practice (USPAP), the generally accepted standards of professional practice for appraisers in the United States. FIRREA requires compliance with USPAP for all real estate appraisals in federally related transactions. Board members on both boards are appointed by the Board of Trustees of the Appraisal Foundation.

In addition to other education requirements, all licensed or certified appraisers must complete 15 hours of classroom education in USPAP.[8]

[8] The Appraisal Foundation. *The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.* (January 2012), p. 6.

The AQB requires appraisers to pass an examination approved by the National Uniform Licensing and Certification Examinations, or an equivalent state examination approved by the AQB.[9]

The AQB also requires appraisers to complete a minimum of 14 hours of continuing education each year and a seven-hour course in USPAP every two years.[10]

State Regulation

The laws that govern the regulation of appraisers are housed in Part 7 of Article 61 of Title 12, C.R.S. (Act).

An appraiser is defined as someone who is paid to provide 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 estate.[11]

However, an appraiser does not include:[12]

- Anyone who only conducts appraisals of personal property (as opposed to real estate);
- Anyone licensed as a real estate broker who provides an opinion of value that is not represented as a real estate appraisal and is not used to obtain financing;
- Anyone licensed as a certified public accountant, provided such opinions of value for real estate are not represented as an appraisal;
- Any corporation, which is acting through its officers or regular salaried employees, when conducting a valuation of real property rights that are owned, to be purchased, or sold by the corporation;
- Anyone who conducts appraisals strictly of water rights or of mineral rights;
- 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 real estate being valued is $5,000 or less;
- Any officer, director, or regular salaried employee of a financial institution or its affiliate who makes, for internal use only, 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 real estate; and

[9] The Appraisal Foundation. *National Uniform Licensing and Certification Examinations.* Retrieved on December 29, 2011, from https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=taf&WebCode=NULCE
[10] Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-2011 Edition: Appraisers and Assessors of Real Estate.* Retrieved on October 20, 2011, from http://www.bls.gov/oco/ocos300.htm
[11] § 12-61-702(5)(a), C.R.S.
[12] § 12-61-702(5)(b), C.R.S.

- Any officer, director, or regular salaried employee of a financial institution or its affiliate who makes 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.

The Board registers, licenses, and certifies appraisers. The Board is vested with rulemaking, enforcement, and administrative authority, and it may delegate, in writing, specific enforcement and administrative authority to the Director of the Division (Director).[13]

The Board consists of seven members, who serve three-year terms, including:[14]

- Three licensed or certified appraisers, one with expertise in eminent domain;
- One county assessor in office;
- One officer or employee of a commercial bank with experience in real estate lending; and
- Two members of the public who may not be engaged in any of the businesses represented by any of the other Board members.[15]

The Governor appoints the members of the Board, with the consent of the Colorado Senate, and the Governor may remove Board members for misconduct, incompetence, or neglect of duty.[16]

The Board is charged with adopting rules necessary to comply with FIRREA. The Board is prohibited from establishing any requirements that are more stringent than federal law,[17] and any provision in the Act that is not compliant with FIRREA is invalid.[18]

The Board may apply for any necessary waivers from licensing requirements in FIRREA.[19]

The Board is required to provide to the ASC a list of individuals licensed or certified by the Board and pay a registry fee for each listed individual.[20]

[13] §§12-61-704(1)(a) and (g), C.R.S.
[14] § 12-61-703(1), C.R.S.
[15] Effective July 1, 2013, one of the public member board seats will be reallocated to an officer or employee of an appraisal management company.
[16] § 12-61-703(1), C.R.S.
[17] § 12-61-704(1)(a), C.R.S.
[18] § 12-61-717, C.R.S.
[19] § 12-61-704(1)(j), C.R.S.
[20] §§ 12-61-715(1)(a) and (b), C.R.S.

The Act establishes four levels of regulation for appraisers:[21]

- Registered appraiser;
- Licensed appraiser;
- Certified residential appraiser; and
- Certified general appraiser.

By rule, only individual appraisers who hold a particular level of license[22] may use a designated title, such as registered appraiser or certified general appraiser, and these titles may not be used by groups, corporations, businesses, or other entities.[23]

A registered appraiser, essentially a trainee, may value only those properties that the supervising appraiser is permitted and competent to appraise.[24]

A licensed appraiser may value one to four unit residential properties that are not complex and have a transaction value of less than $1 million, and one- to four-unit residential properties that are complex and have a transaction value of less than $250,000.[25]

A certified residential appraiser may value one- to four-unit residential properties without regard to transaction value or complexity. These properties may include vacant or unimproved land that is to be used for development for a one- to four-unit residential property, or vacant or unimproved land for which the highest and best use is a one- to four-unit residential property. These properties do not include vacant or unimproved land that has the potential for subdivision development for which the subdivision development analysis method of land valuation is necessary and applicable.[26]

A certified general appraiser may value all types of real property.[27]

The Board is required to establish requirements for initial licensure in accordance with FIRREA.[28]

[21] § 12-61-706(1)(b), C.R.S.
[22] Unless a particular license type is specifically addressed, the term “license”, and other similar words, will apply to all forms of regulation required by the Act, including registration, certification, and licensure.
[23] 4 CCR 725-2, § 12.1.
[24] 4 CCR 725-2, § 1.12.
[25] 4 CCR 725-2, § 1.13.
[26] 4 CCR 725-2, § 1.14.
[27] 4 CCR 725-2, § 1.15.
[28] § 12-61-706(1)(a), C.R.S.

By rule, to become a registered appraiser, an applicant must complete the core curriculum required in the 2008 Real Property Appraiser Qualification Criteria adopted by the AQB, established by FIRREA, including:[29]

- 30 hours covering basic appraisal principles;
- 30 hours covering basic appraisal procedures; and
- 15-hour national USPAP course.

An applicant to become a registered appraiser must also pass the registered appraiser examination.[30]

To become a licensed appraiser, an applicant must complete the same curriculum as a registered appraiser in addition to the following coursework:[31]

- 15 hours covering residential market analysis, and highest and best use;
- 15 hours covering residential appraiser site valuation and cost approach;
- 30 hours covering residential sales comparison and income approaches; and
- 15 hours covering residential report writing and case studies.

An applicant to become a licensed appraiser must also have 2,000 hours of appraisal experience over a period of at least 12 months and pass the licensed appraiser examination.[32]

To become a certified residential appraiser, an applicant must complete the same coursework as a licensed appraiser in addition to the following coursework:[33]

- 15 hours covering statistics, modeling, and finance;
- 15 hours covering advanced residential applications and case studies; and
- 20 hours covering appraisal subject matter electives.

An applicant to become a certified residential appraiser must also have at least an associate's degree from an accredited school, or successfully complete 21 semester credit hours or 32 quarter credit hours in the following subjects:[34]

- English composition;
- Principles of economics;
- Finance;
- Algebra, geometry, or higher mathematics;
- Statistics;
- Computer science; and
- Business or real estate law.

[29] 4 CCR 725-2, § 2.1(A).
[30] 4 CCR 725-2, § 2.1(B).
[31] 4 CCR 725-2, § 2.2(A).
[32] 4 CCR 725-2, §§ 2.2(B) and (C).
[33] 4 CCR 725-2, § 2.3(A).
[34] 4 CCR 725-2, § 2.3(A).

Additionally, to become a certified residential appraiser, an applicant must complete 2,500 hours of appraisal experience over a period of at least 24 months and pass the certified residential appraiser examination.[35]

To become a certified general appraiser, an applicant must complete the same coursework as a registered appraiser in addition to:[36]

- 30 hours of general appraiser market analysis and highest and best use;
- 15 hours of statistics, modeling, and finance;
- 30 hours of general appraiser sales comparison approach;
- 30 hours of general appraiser site valuation and cost approach;
- 60 hours of general appraiser income approach;
- 30 hours of general appraiser report writing and case studies; and
- 30 hours of elective coursework covering appraisal matters.

An applicant for a certified general appraiser must also have a bachelor's degree from an accredited school, or successfully complete at least 30 semester credit hours or 45 quarter credit hours in the following subjects:[37]

- English composition;
- Macroeconomics;
- Microeconomics;
- Finance;
- Algebra, geometry, or higher mathematics;
- Statistics;
- Computer science;
- Business or real estate law; and
- Two electives in accounting, geography, agricultural economics, business management, or real estate.

An applicant to become a certified general appraiser must also complete 3,000 hours of appraisal experience earned over a period of at least 30 months of which at least 1,500 hours must be in non-residential property.[38]

To become a certified general appraiser, an applicant must also pass the certified general appraiser examination.[39]

By rule, the Board requires all license types to complete 42 hours of continuing education upon renewal every three years,[40] including a national, seven-hour USPAP update course every two years.[41]

[35] 4 CCR 725-2, §§ 2.3(B) and (C).
[36] 4 CCR 725-2, § 2.4(A).
[37] 4 CCR 725-2, § 2.4(A).
[38] 4 CCR 725-2, § 2.4(B).
[39] 4 CCR 725-2, § 2.4(C).
[40] 4 CCR 725-2, § 7.2.
[41] 4 CCR 725-2, § 7.19.

Employees of county assessor offices who perform real estate appraisals are required to obtain a license from the Board, and they are subject to the Act.[42] However, county assessors and their staff may not be disciplined for performing appraisals beyond their level of competency when performing appraisals in fulfillment of their official duties.[43]

An applicant may be licensed by endorsement if he or she has a license in good standing in another jurisdiction, and:[44]

- The applicant presents proof of having credentials and qualifications that are substantially equivalent to the requirements of the Act; or
- The other jurisdiction requires other similar credentials and qualifications for licensure.

The Board is required by federal law to issue a temporary license to an appraiser who is licensed or certified in another state as long as the appraiser's business in Colorado is of a temporary nature. [45]

The Board has the authority to deny an application for a license if it determines that the applicant does not have the necessary qualifications. The Board may also consider qualities such as honesty and truthfulness, and whether the applicant has been convicted of any crimes involving moral turpitude.[46]

Anyone representing property owners as an advocate in tax or valuation protests and appeals is exempt from the licensing requirements of the Act.[47]

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[42] § 12-61-706(5), C.R.S.
[43] § 12-61-706(5)(b), C.R.S.
[44] § 12-61-708(1), C.R.S.
[45] § 12-61-708(2), C.R.S.
[46] §§ 12-61-709(1) and (2), C.R.S. Effective July 1, 2013, the Board is authorized to consider an applicant's truthfulness, honesty, moral character, and whether the applicant has been convicted of a crime.
[47] § 12-61-712(3), C.R.S.

The Board has the authority to deny or refuse to renew any license, or revoke or suspend any license, issue a letter of admonition, or impose probation or public censure for:[48]

- Being convicted of or pleading guilty or *nolo contendere* to a felony if the felony is related to the ability to act as a real estate appraiser;
- Violating the Act;
- Accepting payment or other compensation to influence the outcome of an appraisal;
- Using misleading, deceptive, or false advertising;
- Using fraud or misrepresentation to obtain a license or certificate;
- Conducting an appraisal in a fraudulent manner or using misrepresentation in an appraisal;
- Acting in a manner which does not meet the generally accepted standards of professional appraisal practice as adopted by the Board;
- Performing appraisal services beyond his or her level of competency; or
- Having an adverse or disciplinary action in another state, territory, or country relating to a license or other authorization to practice as an appraiser.

Anyone who has had a license revoked must wait two years to apply for a new license.[49]

The Board is authorized to conduct disciplinary hearings, and it has investigative subpoena authority and may seek an injunction against anyone violating the Act.[50]

The Board may send a letter of admonition by certified mail when a complaint or an investigation discloses an instance of misconduct 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 letter must advise the appraiser of the right to make a written request, within 20 days after receipt of the letter of admonition, to the Board to begin formal disciplinary proceedings.[51]

The Board may impose public censure if, after notice and hearing, the Director determines that a licensee has violated the Act.[52]

[48] §§ 12-61-710(1) and (2), C.R.S.
[49] § 12-61-710(5)(a)(II), C.R.S.
[50] §§ 12-61-704(1)(i) and 12-61-713, C.R.S.
[51] § 12-61-710(2.5), C.R.S.
[52] § 12-61-710(5)(e), C.R.S.

The Board may also impose a fine as follows:[53]

- A fine of not less than $300 but not more than $500 for each act or occurrence for the first violation; and
- A fine of not less than $1,000 but not more than $2,000 for each act or occurrence for any subsequent violations.

The following acts are defined as unlawful:[54]

- Accepting payment or other compensation to influence the outcome of an appraisal;
- Using fraud or misrepresentation to obtain a license or certificate as an appraiser in Colorado;
- Conducting an appraisal in a fraudulent manner or using misrepresentation in an appraisal;
- Performing 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, United States Code, without being licensed by the Board;
- Misrepresenting a consulting service as an independent appraisal; or
- Failing to disclose, in connection with a consulting service, the fact that a contingent fee is or will be paid.

It is also unlawful to accept a fee for an independent appraisal assignment that is contingent upon:[55]

- The reporting of a predetermined analysis, opinion, or conclusion;
- The analysis, opinion, or conclusion reached; or
- The consequences resulting from the analysis, opinion, or conclusion.

Anyone who commits an act that is defined as unlawful in the Act is subject to discipline[56] and guilty of a Class 1 misdemeanor, which is punishable by 6 to 18 months imprisonment or a fine of $500 to $5,000, or both. Any subsequent unlawful act is a Class 5 felony punishable by one to three years imprisonment and a mandatory period of two years of parole or a fine of $1,000 or $100,000.[57]

[53] § 12-61-710(6), C.R.S.
[54] § 12-61-712(1), C.R.S.
[55] § 12-61-712(1)(b), C.R.S.
[56] §§ 12-61-712(1)(a) and 12-61-710(1)(b), (c), (e), and (f), C.R.S.
[57] §§ 12-61-712(2), 18-1.3-501(1)(a), and 18-1.3-401(1)(a), C.R.S.

Colorado allows an income tax credit for taxpayers who donate a perpetual conservation easement to a governmental entity or a charitable organization.[58] A conservation easement allows the owner of the easement to place a prohibition, limitation, or obligation on the land, water, or the airspace above, for conservation purposes.[59]

When an appraiser conducts a conservation easement appraisal, he or she must submit a copy of the appraisal with an affidavit to the Division.[60] The Board may discipline an appraiser who fails to do so.[61]

Sections 12-61-720 and 12-61-721, C.R.S., create a conservation easement program and the Conservation Easement Oversight Commission within the Division. These sections have separate repeal dates from the rest of the Act and repeal on July 1, 2018.

[58] § 39-22-522(2), C.R.S.
[59] § 38-30.5-102, C.R.S.
[60] § 12-61-719(1), C.R.S.
[61] § 12-61-719(6), C.R.S.

Program Description and Administration

The Colorado Board of Real Estate Appraisers (Board) is vested with the authority to regulate appraisers in Colorado. The seven-member Board meets bimonthly to approve licenses, review complaints, take disciplinary action, promulgate rules, and make policy decisions.

The Board is housed in the Department of Regulatory Agencies (DORA), Division of Real Estate (Division), which performs the operational and administrative functions of the Board.

Table 1 shows the Board expenditures and full-time equivalent (FTE) employees for the period under review.

Table 1
Agency Fiscal Information
By Fiscal Year

Fiscal Year	Program Expenditures	FTE
06-07	$518,543	6.0
07-08	$639,972	7.8
08-09	$592,805	6.8
09-10	$757,101	8.4
10-11	$725,338	8.4

The above expenditures reflect staffing, operating, legal, and Board meeting costs.

The fluctuations in expenditures are generally due to fluctuations in the use of investigative and legal services. Under the fiscal accounting rules, the funding code for appraisers is the same as the funding code for real estate brokers, and the Division does not track these programs separately. Accordingly, the expenditures in the table reflect the Division's allocation of costs of the appraisal program relative to real estate brokers, a much larger program.

In 2011, Division staff was reorganized. Previously, the Division was comprised of the Real Estate Broker, Real Estate Appraiser, and Mortgage Loan Originator sections. Under the restructuring, it is now organized into the following sections:

- Education, policy, and communications;
- Expedited settlement and enforcement;
- Investigations and compliance; and
- Licensing.

The restructure of the Division is intended to streamline its operations and to make regulation across all license types more consistent.

The Board and its operational and administrative functions are cash funded by the license fees and fines it collects from appraisers.

Table 2 includes the Board licensing fees in 2012.

Table 2
Board Licensing Fees
Calendar Year 2012

Fee Type	Registered	Licensed	Certified Residential	Certified General
License by Examination	$230	$280	$280	$280
License by Endorsement	$230	$280	$280	$280
Renewal	$114	$240	$240	$240
Reinstatement*	$152	$280	$280	$280
Reinstatement**	$190	$320	$320	$320

*License lapsed one year or less.
**License lapsed more than one year and less than two years.

Licensing and renewal fees are determined annually, for each three-year renewal cycle, to cover the costs of the program and the national registry fee for the Appraisal Subcommittee (ASC). The national registry fee is $40, and it is not assessed to registered appraisers since this license type is not federally required.

Licensing

The Board regulates four different levels of appraisers:[62]

- Registered appraiser;
- Licensed appraiser;
- Certified residential appraiser; and
- Certified general appraiser.

Unless a particular license type is specifically addressed in this report, the term "license," and other similar words, applies to all forms of regulation required by the Act including registration, certification, and licensure.

Anyone who performs a real estate appraisal in Colorado is required to hold a license, and it is a criminal offense for anyone who is not licensed by the Board to perform an appraisal in conjunction with a debt instrument that is federally guaranteed, or regulated pursuant to Title 12, United States Code.

[62] § 12-61-706(1)(b), C.R.S.

In order to be licensed as an appraiser in Colorado, applicants must complete the following steps:

- Complete the required education;
- Complete any required experience;
- Pass the relevant state examination;
- Submit an application and the required documentation; and
- Pay the required fee.

A licensing specialist reviews the completed application to ensure that it meets the necessary criteria and performs a criminal background check. If the application is without issues, a license may be administratively issued. Applications that are incomplete after a reasonable amount of time are discarded, and an applicant must submit a new application, the required documentation, and pay the fee again.

The Board delegates much of its licensing authority to staff. Only applications that have serious issues are brought before the Board.

To change from one level of license to another, for example from registered appraiser to licensed appraiser, an appraiser must pass a national examination and submit an application for a license upgrade. A licensing specialist runs a name-based criminal background check. Then Division staff reviews appraisals performed by the applicant to ensure that the applicant demonstrates proficiency in appraisal principles, methodology, development, and reporting. If the application and the work product review are without issue, a license upgrade may be administratively issued.

Many appraisers perform appraisals in multiple states. Because minimum licensing requirements are federally mandated, appraisers licensed in other states already meet the qualifications necessary to ensure competency in Colorado, so they may be licensed by endorsement or apply for a temporary permit.

A temporary permit is valid for six months, but only for the individual properties specified on the permit, and an appraiser is only allowed two temporary permits in a 12-month period.

In order to obtain a license by endorsement or a temporary permit, an appraiser simply submits an application and pays a fee. Then a licensing specialist checks the ASC database for any discipline in other states and performs a criminal background check. If the application is without issues, a license may be administratively issued.

Table 3 shows the licensing activity for all appraisers over the five fiscal years indicated, not including temporary permits.

Table 3
Total Number of Appraiser Licenses
All License Types
By Fiscal Year

Fiscal Year	New Applicants	Renewals	Reinstatements	Current
06-07	639	1,737	61	4,880
07-08	535	1,490	49	4,610
08-09	207	1,174	28	4,202
09-10	363	1,172	40	3,800
10-11	198	1,021	49	3,518

Including all license types, the number of appraisers has decreased every year during the period under review, and overall the number of licensed appraisers in Colorado has decreased by 28 percent over the five-year period under review. This is consistent with the nationwide contraction in the real estate market. Other factors may have also contributed to a general decline in licensed appraisers.

The Home Valuation Code of Conduct (HVCC) is an agreement that is intended to decrease lender influence in an appraisal. Previous to the HVCC, appraisers for the most part worked independently. Now many lenders order appraisals through Appraisal Management Companies (AMC's), which garner a portion of the appraisal fee.

According to Division staff, the HVCC has affected the income earned by appraisers who work for AMC's, and since the adoption of the HVCC, many appraisers have indicated that they could not afford to renew their licenses.

A temporary permit is available for $75. The temporary permit allows appraisers who are licensed in another state to perform specific appraisals in Colorado without obtaining a permanent license. The federal government requires all states to offer a temporary permit. Since requirements for trainees vary from state to state, the temporary permit is not available to trainees from other states.

Table 4 provides the number of temporary permits issued to appraisers from other states over the five years under review.

Table 4
Number of Temporary Permits
By Fiscal Year

Fiscal Year	Permits
06-07	128
07-08	136
08-09	133
09-10	155
10-11	148

The number of temporary permits issued in Colorado remained fairly consistent compared to the permanent license types.

Table 5 shows the number of registered appraisers in Colorado over a five-year period.

Table 5
Number of Registered Appraisers
By Fiscal Year

Fiscal Year	New Applicants	Renewals	Reinstatements	Current
06-07	249	425	27	1,393
07-08	189	296	21	1,066
08-09	58	248	6	774
09-10	58	158	11	544
10-11	66	136	4	437

Registered appraisers, who are in training to become fully-licensed appraisers, must work under the supervision of a licensed or certified appraiser. The number of registered appraisers dropped precipitously over a five-year period, nearly 70 percent, and the number of new applicants for registration dropped about 75 percent.

Table 6 shows the number of licensed appraisers in Colorado over a five-year period.

Table 6
Number of Licensed Appraisers
By Fiscal Year

Fiscal Year	New Applicants	Renewals	Reinstatements	Current
06-07	127	328	15	1,041
07-08	82	335	9	974
08-09	18	173	4	729
09-10	30	142	3	626
10-11	15	129	1	506

A licensed appraiser is only authorized to value one- to four-unit residential properties that are uncomplicated and have a transaction value of less than $1 million and one- to four-unit residential properties that are complicated and have a transaction value of less than $250,000.[63]

Since fiscal year 06-07, the number of licensed appraisers has dropped by about 50 percent. In fiscal year 10-11, there were nearly 90 percent fewer applications to become fully licensed than in fiscal year 06-07. As discussed earlier, this profession has been significantly impacted by the nationwide downturn in the real estate market and other factors.

As of 2009, the Federal Housing Administration (FHA) now requires appraisers to be state certified in order to conduct appraisals for FHA insured mortgage loans. As the largest insurer of mortgages in the world, this policy in particular affected the ability of licensed appraisers to compete with certified appraisers. According to Division staff, many lenders have adopted similar requirements.

Table 7 provides the number of certified residential appraisers over the five-year period under review.

Table 7
Number of Certified Residential Appraisers
By Fiscal Year

Fiscal Year	New Applicants	Renewals	Reinstatements	Current
06-07	183	520	3	1,134
07-08	169	437	10	1,408
08-09	56	492	7	1,503
09-10	215	448	9	1,456
10-11	63	376	11	1,431

[63] 4 CCR 725-2, § 1.13

A certified residential appraiser may value one- to four-unit residential properties without regard to transaction value or complexity.

Unlike the other license types, the number of certified residential appraisers has actually increased by approximately 20 percent. This increase may be due, in part, to the requirement for FHA appraisals to be performed by certified appraisers, and other similar requirements. However, while certified residential appraisers are not declining at the high rate of other license types, the number of new applicants at this level fluctuates from year to year.

Table 8 illustrates the number of certified general appraisers in Colorado for the five years under review.

Table 8
Total Number of Certified General Appraisers
By Fiscal Year

Fiscal Year	New	Renewals	Reinstatements	Current
06-07	80	464	16	1,312
07-08	95	422	9	1,162
08-09	75	261	11	1,196
09-10	60	424	17	1,174
10-11	54	380	33	1,144

A certified general appraiser may value all types of real property.[64]

The certified general appraiser license type is the highest level of licensure possible for an appraiser, and it is the most stable of all the license types.

While there has been some decline in the total number of current certified general appraisers from fiscal years 06-07 to 10-11, the decrease is not as dramatic as in the training or entry-level license types.

Appraisers must renew their licenses every three years. To renew a license, all license types, including registered appraisers, are required to have completed 42 hours of continuing education upon renewal.

Tax appraisers, who work in county assessor offices and value real estate for tax assessment purposes, are required to be registered, licensed, or certified by the Board. The Division does not track tax appraisers separately from real estate appraisers, so it is difficult to know exactly how many tax appraisers are licensed in the program. The Colorado Association of Tax Appraisers estimates that approximately 685 county employees are appraising real estate for tax purposes in assessor offices around the state.

[64] 4 CCR 725-2, § 1.15

Examinations

The Board regulates four levels of appraisers:

- Registered,
- Licensed,
- Certified residential, and
- Certified general.

Each level of regulation requires a unique examination.

To be registered as an appraiser in Colorado, candidates are required to pass an examination developed by the state. The registered appraiser license type is primarily a training license, but it is also the minimum level of licensure required for tax appraisers.

To become licensed or certified, a candidate must pass an examination approved by the Appraisal Qualifications Board (AQB).[65]

In 2008, the AQB increased the qualifications required to be licensed or certified, and the AQB contracted with Comira to develop the National Uniform Licensing and Certification Examinations (AQB examinations) to be used in conjunction with the new qualifications.[66] Previously, the AQB approved state examinations and examination vendors in Colorado.

Table 9 illustrates the different examinations by license type, including the length, the number of questions, and the cost of each exam.

Table 9
Examinations by Type

Examination Type	Length	Questions	Cost
Registered	3 Hours	100	$85
Licensed	6 Hours	150	$125
Certified Residential	6 Hours	150	$125
Certified General	8 Hours	150	$125

The examinations are administered throughout the year by PSI Exams at testing centers in Colorado Springs, Denver, Durango, Fort Collins, Grand Junction, and Pueblo.[67]

[65] The Appraisal Foundation. *The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.* (January 2012), p. 6.
[66] The Appraisal Foundation. *National Uniform Licensing and Certification Examinations.* Retrieved on December 29, 2011, from https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=taf&WebCode=NULCE
[67] PSI Exams. Real Estate Appraiser Candidate Information Bulletin, pp. 3-4.

Table 10 shows the number of first-time examinees that took the Colorado Registered Appraiser examinations and the pass rates over a five-year period.

Table 10
Colorado Registered Appraiser Examination
By Fiscal Year

Fiscal Year	Examinees	Pass Rate
06-07	264	55%
07-08	184	59%
08-09	113	68%
09-10	133	67%
10-11	140	66%

The pass rates for the Colorado Registered Appraiser examinations improved in fiscal year 08-09 and have been relatively consistent since then.

Table 11 shows the number of examinations for licensed and certified appraisers taken over a five-year period and the corresponding pass rates.

Table 11
Licensed and Certified Appraiser Examinations in Colorado
By Fiscal Year

Fiscal Year	State Examination Examinees	State Examination Pass Rate	AQB Examinees	AQB Pass Rate
06-07	379	72%	NA	NA
07-08	636	77%	10	30%
08-09	NA	NA	50	34%
09-10	NA	NA	196	49%
10-11	NA	NA	78	69%

*The numbers in fiscal years 06-07 and 07-08 are for all license types, including registered appraisers.

The examinations for licensed and certified appraisers changed in 2008. In Table 11, the effect of the new examinations is clear. In fiscal year 08-09, the pass rate for licensed and certified appraisers was as low as 34 percent. The pass rate has increased each year as appraisers and the educational programs have adapted to the new examinations.

A comparison of the Colorado pass rates with the national pass rates in Table 13 on the following page shows a similar trend.

Table 12 shows the number of AQB examinations taken nationally by examination type.

Table 12
AQB Examinations
National Number of Examinations by Calendar Year

Type	2008	2009	2010	2011
Licensed Residential	1,096	872	329	191
Certified Residential	2,848	3,146	1,266	770
Certified General	824	772	399	391
Total	**4,768**	**4,790**	**1,994**	**1,352**

Nationally, the number of examinations given in 2010 dropped dramatically from the two previous years. This could be attributed to fewer people entering the profession due to a decline in the real estate market and other factors affecting the profession.

Table 13 provides the national pass rates for the AQB examinations by examination type.

Table 13
AQB Examinations
National Pass Rates by Calendar Year

Type	2008	2009	2010	2011
Licensed	40%	53%	52%	61%
Certified Residential	41%	57%	55%	70%
Certified General	58%	57%	59%	73%
Average	**46%**	**56%**	**55%**	**68%**

About half of all examinees for licensure failed to pass the AQB examinations during the first three years they were administered. This is the case not only for the higher level examinations (certified residential and certified general appraiser), but also for the entry-level examination (licensed appraiser).

In 2011, the pass rates increased to a more reasonable level across all license types. However, the pass rate for the licensed appraiser examination remains relatively low at 61 percent.

Audits

Appraisers are required by federal law to complete 14 hours of continuing education every year and a seven-hour Uniform Standards of Professional Appraisal Practice (USPAP) update course every two years.

The ASC, which monitors the compliance of state regulators with federal law, requires the Division to audit continuing education compliance. The Division performs an audit of 10 percent of licensed and certified appraisers for compliance with the 42-hour continuing education requirement, and as a condition of licensure, all license types are required to submit a copy of the course certificate demonstrating completion of the seven-hour USPAP update course or pay a fine.

Table 14 shows the results of the most recent continuing education audits available.

Table 14
Continuing Education Audits
By Renewal Period

Renewal Period	Audited	Compliant
2006-2008	139	86%
2007-2009	137	83%
2008-2010	133	92%
2009-2011	168	91%

Between 10 and 15 percent of licensed and certified appraisers failed to complete the required continuing education over the four renewal periods reported. Anecdotally, some appraisers report that they cannot afford to pay for the continuing education courses, which may contribute to the rate of noncompliance.

Table 15 shows the results of the audits of USPAP update course compliance over four renewal periods.

Table 15
USPAP Update Course Audits
By Renewal Period

Renewal Period	Audited	Compliant
2006-2008	933	64%
2007-2009	1,074	58%
2008-2010	957	61%
2009-2011	870	71%

All licensed appraisers are required to complete a seven-hour USPAP update course every two years. The course must be taken every other year.

The compliance with the USPAP update course requirement is considerably lower than compliance with the overall continuing education requirement. Over a third of appraisers are not compliant with the USPAP update course requirement.

The three-year renewal cycle may contribute to the rate of noncompliance. In some renewal cycles, licensees may only be required to take the course once, but in the following cycle they would be required to take the course twice. Appraisers who are licensed in Colorado and in other states that have a two-year cycle find it difficult to understand why they are not compliant in Colorado when they are compliant in other states.

Complaints and Disciplinary Actions

The Board takes complaints from any person or entity, including but not limited to real estate buyers, sellers, lenders, and other governmental entities. The Board may also initiate a complaint on its own motion.

Table 16 illustrates the type and number of complaints received by the Board over the period under review.

Table 16
Complaints by Fiscal Year

Complaint Types	06-07	07-08	08-09	09-10	10-11
Competency	2	0	0	1	18
Criminal Convictions	5	0	0	0	0
False Application	1	0	0	0	0
Noncompliance	84	152	5	2	34
USPAP Standards 1 and 2	170	159	222	181	166
USPAP Standard 3	3	0	0	0	0
USPAP Standards 4 and 5	3	0	0	0	0
USPAP Standard 6	0	0	0	0	0
Fraudulent Appraisal	5	0	0	0	0
Other	20	4	0	0	0
Total	**293**	**315**	**227**	**184**	**218**

"Noncompliance" refers to violations of the continuing education requirements, and "other" is a catchall category that is no longer used.

Noncompliance with continuing education complaints decreased dramatically in fiscal year 08-09 because of a change in the Division's approach to these cases. Previously, Division staff opened complaints for each of these cases. Now, it simply inactivates or refuses to renew the license of an appraiser who is noncompliant.

By far the majority of the complaints allege failure to comply with USPAP standards 1 and 2.

USPAP standards are the generally accepted standards of practice recognized by federal law.

> **USPAP Standard 1: Real Property Appraisal, Development** requires appraisers "to identify the problem,[68] determine the scope of the work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal."[69]
>
> **USPAP Standard 2: Real Property Appraisal, Reporting** requires appraisers to report the results of a real estate appraisal "in a manner that is not misleading."[70]
>
> **USPAP Standard 3: Appraisal Review, Development and Reporting** requires appraisers who are reviewing another appraiser's work to "identify the problem, determine the scope of the work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal review." It also requires them to report the results of an appraisal review "in a manner that is not misleading."[71]
>
> **USPAP Standard 4: Real Property Appraisal Consulting, Development** concerns real estate appraisal consulting assignments and requires appraisers "to identify the problem, determine the scope of the work necessary to solve the problem, and correctly complete research and analyses necessary to produce credible results."[72]
>
> **USPAP Standard 5: Real Property Appraisal Consulting, Reporting** requires appraisers to report the results of a consulting assignment "in a manner that is not misleading."[73]

[68] The industry uses the word "problem" in an appraisal context to mean: What is the nature of the assignment? For example, the assignment may be to determine the fair market value of a house for a real estate transaction.
[69] *Uniform Standards of Professional Appraisal Practice, 2012-2013 Edition*, Appraisal Standards Board, p. U-16.
[70] *Uniform Standards of Professional Appraisal Practice, 2012-2013 Edition*, Appraisal Standards Board, p. U-22.
[71] *Uniform Standards of Professional Appraisal Practice, 2012-2013 Edition*, Appraisal Standards Board, p. U-31.
[72] *Uniform Standards of Professional Appraisal Practice, 2012-2013 Edition*, Appraisal Standards Board, p. U-39.
[73] *Uniform Standards of Professional Appraisal Practice, 2012-2013 Edition*, Appraisal Standards Board, p. U-42.

USPAP Standard 6: Mass Appraisal, Development and Reporting requires anyone performing a mass appraisal "to be aware of, understand, and correctly employ those recognized methods and techniques necessary to produce and communicate credible mass appraisals."[74]

In reference to disciplinary actions, the Board has the authority to revoke a license, deny a license, suspend a license, place a license on probation, limit an appraiser's practice, require remedial education, apply for an injunction, issue a letter of admonition, and issue a fine.

DORA staff reviewed a random selection of complaint files from fiscal year 09-10 and found that the majority of the complaints were for appraisals related to residential mortgage loans. According to Division staff, approximately 10 percent of the complaints are related to commercial real estate appraisals. The Division also occasionally receives complaints related to other types of appraisals, such as conservation easements, or appraisals for divorce settlements.

Complaints were primarily filed by homeowners and lenders. Other complainants included buyers, real estate agents, and mortgage loan originators.

Table 17 shows the Board's disciplinary actions and dismissals over the five fiscal years reported.

Table 17
Final Agency Actions
By Fiscal Year

Type of Action	06-07	07-08	08-09	09-10	10-11
Revocation/Surrender/Relinquishment	10	52	41	21	24
Suspension	0	9	10	2	0
Probation (Practice Limitation)	11	11	11	26	15
Remedial Education	22	29	8	4	1
Letters of Admonition	2	10	1	10	12
Fines	38	69	40	47	90
Stipulations/Diversion	11	32	24	26	83
Total Disciplinary Actions	**94**	**212**	**135**	**136**	**225**
Total Dismissals	105	109	67	36	90

The types of discipline imposed by the Board most frequently are revocations, surrenders, and fines. Over five years, the Board revoked or accepted a voluntary surrender of the licenses of over 150 appraisers. In fiscal year 10-11, the Board significantly increased its use of fines.

[74] *Uniform Standards of Professional Appraisal Practice, 2012-2013 Edition*, Appraisal Standards Board, p. U-46.

In fiscal year 10-11, the Board significantly increased its use of a diversion program, in which licensees sign a stipulated agreement to comply with certain conditions. If they meet the required conditions, such as completing specific education, then no discipline is imposed and the complaint is dismissed. This process allows for agency actions to be more corrective than punitive for low-level violations that do not rise to the level of an ongoing public threat. In fiscal year 10-11, 83 appraisers entered into such agreements, compared to only 11 appraisers in fiscal year 06-07.

The Board issued 35 letters of admonition over a five-year period. If the Board finds an instance of misconduct that does not warrant formal action but that should not be dismissed as without merit, it may issue a letter of admonition.

No injunctions were sought and no licenses were denied over the five-year period.

Table 18 shows the fines collected over a five-year period.

Table 18
Fines Collected
By Fiscal Year

Fiscal Year	Number of Fines	Total Value of Fines
06-07	38	$75,150
07-08	69	$106,250
08-09	40	$50,660
09-10	47	$58,479
10-11	90	$61,600

The total number of fines spiked in fiscal year 07-08 and nearly doubled in fiscal year 10-11 compared to the other three years. However, the total value of fines in fiscal year 10-11 did not increase substantially while the total value of fines issued in 07-08 was much higher than in the subsequent years. The difference in fining authority is primarily due to changes in Division staff, which makes recommendations to the Board regarding fines and other discipline.

In previous years, the Board failed to comply with the ASC requirement to close 90 percent of all complaints within a year. Over the last year, the Division has undergone some significant structural changes, and Division staff and leadership are working to streamline the investigative process. Division staff report that they have also hired additional investigators and should be compliant with the ASC requirement within the next 12 to 18 months.

Analysis and Recommendations

Recommendation 1 – Continue the Board of Real Estate Appraisers for nine years, until 2022.

The laws that govern real estate appraisers (appraisers) are contained in Part 7 of Article 61 of Title 12, Colorado Revised Statutes (C.R.S.), (Act) and the Colorado Board of Real Estate Appraisers (Board) is vested with the authority to license and discipline appraisers.

The federal government requires all states to establish programs to regulate appraisers that meet the minimum requirements set by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). The Appraisal Subcommittee (ASC) is the federal entity that oversees the state regulatory programs for appraisers. If states do not comply with the minimum requirements of FIRREA, the ASC would cease to recognize the credentials of Colorado appraisers, which would significantly restrict the state's real estate market and preclude consumers from obtaining federally related mortgage loans in Colorado. The ASC also has the authority to sanction states for noncompliance with FIRREA.

The Board regulates four levels of appraisers:

- Registered appraiser;
- Licensed appraiser;
- Certified residential appraiser; and
- Certified general appraiser.

Sunset reviews are guided by statutory criteria found in section 24-34-104, C.R.S., and the first criterion asks whether regulation is necessary to protect the health, safety, and welfare of the public.

The Act protects the public by ensuring that appraisers are qualified to appraise real property. The qualifications required for these license types are outlined in this report beginning on page 12. The Act also protects the public by vesting the Board with the authority to sanction, or if necessary, remove from the marketplace incompetent or unscrupulous appraisers.

A real estate appraisal is an opinion of value. An appraiser determines an opinion of value by one of the following approaches:[75]

- In the cost approach, an appraiser estimates the cost to construct a new building, taking into account the building's age and how much it may have depreciated over time;

- In the market approach, an appraiser uses sales of nearby properties to determine the value of a property; and

- In the income approach, an appraiser takes into account any income from rents, operating expenses, and the expected financial return from an investment property.

Real estate appraisals are used to determine the amount of a mortgage loan on a residential property. They are also used in the sale of commercial real estate, to settle divorces and estates, and to estimate the cost to relocate an employee.

If an appraiser does not develop an opinion of value based on credible facts, he or she may undervalue or overvalue a property. This can have serious consequences for the marketplace. For example, a homeowner may be prevented from selling or refinancing a home, or a borrower may lose money by overpaying for a property. In a mortgage transaction, a bank uses the property itself as the collateral. If the buyer defaults on a mortgage loan, the bank may foreclose on the property. For this reason, an accurate real estate appraisal is especially important in a mortgage transaction. If a property is overvalued, the property itself may not be sufficient collateral to cover the loan amount.

Moreover, if appraisers undervalue properties, they may artificially depress real estate values in an area. Likewise, if appraisers overvalue properties, the real estate market may experience a bubble, in which real estate is artificially inflated.

As authorized in section 24-34-104, C.R.S., the General Assembly may continue this program for any period between 1 and 15 years. This program is federally required and has been in existence for over 20 years. Since there were very few significant issues in this review and the program seems to be effective in protecting the public, another review of this program is not necessary for several years.

Therefore, the General Assembly should continue the regulation of appraisers for nine years, until 2022.

[75] Colorado Division of Property Taxation. *Understanding Property Taxes in Colorado.* Retrieved May 23, 2012, from http://www.douglas.co.us/assessor/documents/Understanding_Property_Tax_001.pdf

Recommendation 2 – Create a certification specific to tax appraisers.

FIRREA is a federal law that sets the minimum requirements for real estate appraisers. Under this law, all states must establish licensing and certification programs consistent with its standards.

Colorado requires employees of county assessors who appraise real estate for tax assessment purposes (tax appraisers) to maintain, at a minimum, registration as a real estate appraiser.[76] The Act requires the counties to pay all costs incurred by a tax appraiser to maintain registration, licensure, or certification.[77] This includes the cost of a license, the cost of education, and any continuing education requirements.

Colorado is one of the few states that require tax appraisers to be regulated as real estate appraisers. Regulating tax appraisers as real estate appraisers is problematic.

FIRREA is not intended to regulate tax appraisers. It was created to regulate real estate appraisers who perform appraisals for federally related transactions, such as loans insured by the Federal Housing Authority or loans purchased on the secondary market by Fannie Mae or Freddie Mac. FIRREA, consequently, mandates the education, examination, and experience requirements that are relevant to real estate appraisers who appraise property for the purpose of mortgage lending.

The daily tasks of the two types of appraisers are distinctly different. For the most part, tax appraisers use mass appraisal techniques to value property for the purpose of ad valorem taxation, and real estate appraisers perform single-property appraisals, or fee appraisals, to value a particular property on a single date for the purpose of a mortgage loan.

For a mass appraisal, a tax appraiser gathers data on all real estate in a county and values a group of properties as of a specific date using common data, standardized methods, and statistical testing. To determine value, a tax appraiser must rely on valuation equations, tables, and schedules developed through mathematical analysis of market data.[78]

Tax appraisers also perform single-property appraisals, but, in general, only when an assessed property value is appealed.

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[76] § 12-61-706(5)(a), C.R.S.
[77] § 12-61-706(5)(c), C.R.S.
[78] *Standard on Mass Appraisal of Real Property,* The International Association of Assessing Officers (2012), p. 18.

While the requirements to obtain registration as a real estate appraiser apply generally to both mass appraisal and single-property appraisal, they do not ensure possession of the particular skills relevant to mass appraisal for ad valorem taxation. The qualifications for real estate appraisers are determined at the federal level, not by the Board, to ensure that real estate appraisers are competent to value real property for mortgage loan transactions.

Considering the purpose of regulation is to protect the public from unskilled practice, the minimum qualifications required for tax appraisers should reflect the work that is actually performed.

Additionally, Recommendation 3 of this sunset report proposes eliminating the registered license type. If this occurs, then the counties would be required to advance any registered appraisers on staff to the licensed level. This is likely to impose a hardship on the counties and the individual tax appraisers.

Because the Act requires counties to pay all costs incurred by a tax appraiser to maintain registration, licensure, or certification, counties would be required to pay for registered appraisers on staff to obtain the additional courses necessary to become licensed appraisers. Currently, the Board requires 75 clock hours of coursework to become registered and 150 clock hours of coursework to become licensed. However, in 2015, the Appraisal Qualifications Board will require licensed appraisers to obtain a minimum of 30 semester credit hours of accredited college-level education or an associate degree. This is a dramatic increase over the current requirements.

In addition to the educational requirements, in order to become a licensed appraiser, an applicant must demonstrate 2,000 hours of appraisal experience. Since the majority of work performed by a tax appraiser does not apply to the appraisal experience recognized by the ASC, it is difficult for a tax appraiser to obtain the hours necessary to become a licensed appraiser.

Therefore, a separate certification for tax appraisers may be better suited to ensuring that tax appraisers have the necessary skills and knowledge germane to appraising real property for tax assessment purposes.

The General Assembly should require employees of county assessor offices to obtain a certification specific to property valuation for ad valorem taxation. It should also require the Board to promulgate rules regarding minimum qualifications and professional standards of practice.

Nothing should prevent a county from hiring a licensed or certified real estate appraiser to perform the work of a tax appraiser or prevent a tax appraiser from becoming licensed or certified as a real estate appraiser.

Additionally, any registered appraisers who are currently working in county assessor offices should be provided two years to obtain certification as a tax appraiser, or licensure or certification as a real estate appraiser.

Recommendation 3 – Repeal the registered appraiser license type.

In section 12-61-706, C.R.S., the General Assembly authorizes four levels of regulation for appraisers, including the registered appraiser. This license type serves two purposes. First, it creates a registration for persons who are in training to become licensed or certified appraisers. Second, it is the minimum level of licensure required for tax appraisers.

The statutory criteria that guide sunset reviews asks whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms.

Since Recommendation 2 of this sunset report proposes creating a separate license type for tax appraisers, the only remaining purpose this license type serves is a training license.

It is unnecessary to maintain a license simply for trainees.

Trainees must be supervised during the training period and cannot complete an appraisal without the licensed or certified appraiser taking full responsibility for it. According to professional standards, anyone can contribute to an appraisal as long as it is clearly attributed in the report and a licensed or certified appraiser takes responsibility for the appraisal report and the work product.

Therefore, eliminating this license type should not compromise public protection and will not violate any federal laws.

The General Assembly should repeal the registered appraiser license type.

Recommendation 4 – Repeal references to a three-year renewal fee.

In section 12-61-707(1)(a), C.R.S., the Act appears to provide the Director of the Division of Real Estate (Director) with the discretion to determine the renewal period, but section 12-61-707(1)(b), C.R.S., which follows, refers to a three-year renewal fee.

Currently, the Director has established a three-year renewal period. Because of the statutory references to a three-year renewal fee, it is unclear whether this may be changed.

It is important for regulatory agencies to have the ability to determine renewal periods for a variety of reasons.

First, state agencies must be able to anticipate the cost of the program in order to set license fees. A regulatory agency may require a small program to renew annually since the cost of the program may fluctuate more dramatically with fewer licensees to cover the expenses. A larger program may renew every two years since the cost of the program may be more stable with more licensees to bear the burden of regulation. It is more difficult for a regulatory agency to anticipate the cost of a program over a three-year period.

This program, in particular, has experienced fairly dramatic fluctuations in cost and number of licensees. In fiscal year 08-09, the expenditures of the program were about $590,000, but by fiscal year 10-11, they were approximately $760,000. At the same time, the contraction in the real estate market caused a 16 percent decrease in the number of licensees.

Having a three-year renewal period makes it more difficult to anticipate the cost of the program. This, in turn, makes it even more difficult to set fees at the appropriate level.

Second, the three-year renewal period that is currently in place creates some confusion among licensees. Federal law requires appraisers to complete 14 hours of continuing education each year and a seven-hour Uniform Standards of Professional Appraisal Practice (USPAP) update course every two years. Therefore, in Colorado, appraisers must complete 42 hours of continuing education every renewal period and a seven-hour USPAP update course every two years, which means that during some renewal periods, they are required to complete the USPAP course once, but during other renewal periods, they must complete it twice.

Division staff and licensed appraisers have voiced frustration with the three-year renewal period. A one or two-year renewal period would be less confusing for licensed appraisers and more efficient for staff.

For these reasons, the General Assembly should repeal references to a three-year renewal fee.

Recommendation 5 – Amend the language related to denial of a license to require the Board to define moral character.

In section 12-61-709, C.R.S., the Board is authorized to consider an applicant's truthfulness, honesty, moral character, and whether an applicant has been convicted of a crime.

In 1996, the "good moral character" standard was repealed following a sunset review because it was too vague to be useful. How does one determine good moral character? The Board could potentially deny a license for any criminal activity, no matter how insignificant, for a poor credit report or for a letter of reference that contained allegations of immoral behavior. The Board was instead provided the authority to deny a license to someone who had committed a crime of moral turpitude, thereby limiting the Board's authority to deny a license to cases of criminal activity.

However, in 2012, the General Assembly amended the Act and reintroduced the moral character standard.

Since moral character is a vague standard, the Board should be required to define what it means. Doing so would provide applicants some guidance and would provide the Board itself with some parameters.

Therefore, the General Assembly should amend the language in section 12-61-709, C.R.S., to require the Board to define moral character.

Recommendation 6 – Amend the language in the grounds for discipline to include any cause for which the issuance of a license or certification may have been denied.

Prior to licensure, the Board is required to establish whether an applicant has good moral character.[79] The authority provided in the grounds for discipline is far more limited once an individual has already been licensed.

The language in the grounds for discipline limits the Board's authority to consider a felony conviction only "if the felony is related to the ability to act as an appraiser."

The Board is interpreting this language narrowly. For example, in considering discipline for an existing licensee, the Board considers whether the crime relates to the appraiser's integrity or his or her ability to analyze market data. The Board does not necessarily consider a violent crime, such as murder or rape, as being related to the ability to act as an appraiser.

On the other hand, if the Board were considering an application for licensure, it is required to establish good moral character and would, therefore, most likely consider crimes such as murder and rape.

The statutory criteria that guide a sunset review ask whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practice.

[79] § 12-61-709, C.R.S.

Appraisers may be required to enter people's homes in the performance of their job. The Board should be provided the authority to determine whether an individual is likely to pose a physical or financial threat to consumers.

Whether someone commits a crime before licensure or after licensure should not matter. The Board should be provided the authority to discipline a licensee for the same reasons a license would have been denied. Doing so in the Act would enhance public protection by providing the Board with the necessary authority to revoke the license of someone who may have been denied a license had they committed the act previous to licensure.

Therefore, the General Assembly should amend the language in the grounds for discipline to include any cause for which the issuance of a license or certification may have been denied.

Recommendation 7 – Authorize the Board to discipline a licensee who has received a deferred judgment for a criminal conviction.

Currently, the Act allows the Board to discipline an appraiser who has been convicted of a felony or has had accepted by a court a plea of guilty or *nolo contendere* to a felony related to the ability to practice.[80]

However, if an appraiser pleads guilty to a felony and receives a deferred judgment, the Board may not take disciplinary action based on the deferred judgment.

In a deferred judgment, a defendant pleads guilty to a charge, and the court provides the defendant a probationary period prior to a conviction or sentencing. If the defendant completes the probationary period without violating the terms, the court may dismiss the charges. However, if the defendant does not comply with the terms and conditions of the probation, the court may enter a conviction and proceed to sentencing.

According to section 18-1.3-102(2), C.R.S., upon full compliance with the conditions of a deferred judgment, a plea of guilty is withdrawn and the charge upon which the judgment and sentence of the court was deferred may be dismissed with prejudice.

In 1990, the Colorado Board of Nursing disciplined a registered nurse, in part, based on a guilty plea for felony check fraud. However, the nurse had already successfully completed the terms of the deferred judgment, and the guilty plea and the conviction for felony check fraud were no longer in existence, so the Colorado Court of Appeals ruled that the Nursing Board could not use the previous guilty plea as grounds for discipline.[81]

[80] § 12-61-710(1)(a), C.R.S.
[81] *Weber v. Colo. State Bd. of Nursing,* 830 P.2d 1128, 1132 (Colo. App. 1992).

The court stated that other statutes, such as those for school teachers, specifically allow for discipline based on a guilty plea that results in a deferred judgment, and since the nursing practice act did not, the court concluded that the legislature did not intend a guilty plea that resulted in a deferred judgment to be used as grounds for discipline.[82]

The statutory criteria that guide a sunset review ask 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.

If the Board cannot remove an appraiser from the market when it finds him or her to be unsafe based on a technicality, then public protection is compromised.

For these reasons, the General Assembly should amend the grounds for discipline to allow the Board to impose discipline or deny a license in case an appraiser has received a deferred judgment for a criminal conviction.

[82] *Weber v. Colo. State Bd. of Nursing,* 830 P.2d 1128, 1132 (Colo. App. 1992).