



# Guidance Document 20-01

Adopted October 15, 2020

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**SUBJECT:** Consideration of Disciplinary Action Imposed Against a Real Property Appraiser by Another Appraiser Regulator Agency

**LEGAL REFERENCE:** Neb. Rev. Stat. § 76-2227(4)(c), (5) (Laws 2016, LB731, § 9); Neb. Rev. Stat. § 76-2228.02(1)(c), (3) (Laws 2014, LB717, § 16); Neb. Rev. Stat. § 76-2230(3)(a)(ii)(B) (Laws 2019, LB77, § 6); Neb. Rev. Stat. § 76-2238(1), (2), (12), (19), (21) (Laws 2015, LB139, § 59); 298 NAC Chapter 6, § 005.01D.2 (2019)

## SUMMARY OF ACTION

Adopted by the Board at its August 15, 2019 meeting.

## BACKGROUND

The appraiser credential renewal laws and regulations of an appraiser regulatory agency in another jurisdiction (“Subject Appraiser Regulatory Agency”) require that credentials be issued for a two-year period. However, the laws and regulations also require that the credential holder pay appraiser credentialing fees annually. This places an undue burden on the credential holder to pay the annual credentialing fee at the end of the first year of the two-year credentialing period. It is the practice of the Subject Appraiser Regulatory Agency to take disciplinary action against any credential holder who fails to pay the annual renewal fee in a timely manner, which includes suspension of his or her credential. The Subject Appraiser Regulatory Agency also reports this disciplinary action to the Appraisal Subcommittee as required in ASC Policy Statement #3, but may not be adequately informing the credential holder of the disciplinary action taken against him or her. This practice by the Subject Appraiser Regulatory Agency creates confusion for the credential holder as to how this disciplinary action must be reported to appraiser regulatory agencies in other jurisdictions. Many credential holders incorrectly report this disciplinary action, which often leads to additional actions by an appraiser regulatory agency.

The Appraisal Foundation addressed this very issue in its updated Real Property Appraiser Qualifications Criteria effective on January 1, 2020 ("2020 Criteria"). On page 13 of the 2020 Criteria, The Appraisal Foundation added a new interpretation that applies to the eligibility of supervisory appraisers who have received disciplinary sanctions for "administrative" reasons, as opposed to sanctions that were "practice-based." Specifically, sanctions imposed as a result of administrative actions not related to an individual's obligations of ethical and competent appraisal practice do not disqualify a credential holder from being a supervisory appraiser. According to the 2020 Criteria, examples may involve isolated administrative responsibilities including late payment of fees, failure to timely renew a credential, or failure to notify a regulatory office of a change in contact information. The above-mentioned interpretation was added to the 2020 Criteria in consideration of appraiser regulatory agencies denying supervisory appraiser applications or removing supervisory appraiser status because of the action taken by the Subject Appraiser Regulatory Agency.

## **ANALYSIS**

The mission of the Nebraska Real Property Appraiser Board is to administer and enforce the Nebraska Real Property Appraiser Act and Nebraska Appraisal Management Company Registration Act with efficiency, equity, and integrity, to not only ensure that the citizens of Nebraska are protected and served, but also that the appraisal business community is highly qualified through education, experience, and examination. Furthermore, it is the Board's intent that its Enforcement Program is educational in nature when possible. The language in the Real Property Appraiser Act allows the Board to carry out its mission, and specific language pertains to qualifications for real property appraisers, or reasons for the Board to take disciplinary action, as related to applicants and credential holders.

In accordance with Neb. Rev. Stat. § 76-2227, applications for initial credentials, upgrade of credentials, credentials through reciprocity, temporary credentials, and renewal of credentials must: (4)(c) certify that the applicant's appraiser credential, or any other registration, license, or certification, issued by any other regulatory agency or held in any other jurisdiction, has not been revoked or suspended within the five-year period immediately preceding the date of application; and, (5) credentials shall be issued only to persons who have a good reputation for honesty, trustworthiness, integrity, and competence to perform assignments in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualification has been presented to the board upon request and a completed application has been approved.

N.R.S § 76-2228.02(1)(c), (3); N.R.S. § 76-2230(3)(a)(ii)(B); and 298 NAC Chapter 6, § 005.01D.2 all establish specific criteria that would eliminate an applicant from being approved by the Board. In accordance with N.R.S § 76-2228.02(1)(c), an applicant to be a supervisory appraiser must have not successfully completed disciplinary action by the board or any other jurisdiction, which action limited the real property appraiser's legal eligibility to engage in real property appraisal activity within three years immediately preceding the date the written request for approval as supervisory appraiser is submitted by the applicant or trainee real property appraiser on a form approved by the board; and (3) says, that a certified real property appraiser disciplined by the board or any other appraiser regulatory agency in another jurisdiction, which discipline may or may not have limited the real property appraiser's legal eligibility to engage in real property appraisal activity, shall not be eligible as a supervisory appraiser as of the date disciplinary action was imposed against the appraiser by the board or any other appraiser regulatory agency.

298 NAC Chapter 6, § 005.01D.2 requires that an instructor applicant for an education activity that holds a credential as an appraiser, not have had a credential revoked, suspended, or have surrendered a credential in lieu of disciplinary action within three years.

N.R.S. § 76-2230(3)(a)(ii)(B) also requires that an applicant for the certified residential classification upgrading from the licensed classification must not have been subject to a nonappealable disciplinary action by the board or any other jurisdiction, which action limited the real property appraiser's legal eligibility to engage in real property appraisal activity within five years immediately preceding the date of application for the certified residential real property appraiser credential if he or she would like to upgrade without completing additional qualifying education.

Finally, N.R.S. § 76-2238 establishes the acts or omissions considered grounds for disciplinary action or denial of an application by the Board. The following specific statutes apply to this matter:

- (1) Failure to meet the minimum qualifications for credentialing established by or pursuant to the Real Property Appraiser Act;
- (2) Procuring or attempting to procure a credential under the act by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the board or procuring or attempting to procure a credential through fraud or misrepresentation;
- (12) Any violation of the act or any rules and regulations adopted and promulgated pursuant to the act;
- (19) Suspension or revocation of an appraisal credential or a license in another regulated occupation, trade, or profession in this or any other jurisdiction or disciplinary action taken by another jurisdiction that limits the real property appraiser's ability to engage in real property appraisal activity;
- (21) Failure to report disciplinary action taken against an appraisal credential or any other registration, license, or certification issued by any other regulatory agency or held in any other jurisdiction within sixty days of receiving notice of such disciplinary action;

Although it has been standard practice for the Board to not take adverse action on an application or against a credential holder for an action taken by another appraiser regulatory agency that would not be a violation of the Real Property Appraiser Act, the disciplinary action taken by the Subject Appraiser Regulatory Agency compromises the Board's ability to carry out its mission effectively due to the following:

- (1) The Subject Appraiser Regulatory Agency's disciplinary action results in the suspension of the appraiser's credential, which has immediate ramifications according to the language found in N.R.S § 76-2228.02(1)(c), (3), N.R.S. § 76-2230(3)(a)(ii)(B), and 298 NAC Chapter 6, § 005.01D.2. Under certain conditions, the applicant is disqualified.
- (2) Disciplinary action, with or without a suspension, taken by any appraiser regulatory agency requires additional background work and research by the Board's staff to gather information for the Board to make an informed decision regarding the application or the status of the credential holder. Given the unjust nature of the disciplinary action imposed by the Subject Appraiser Regulatory Agency for this matter, and the volume of such actions, the required background work and research has a negative impact on the Board's operational efficiency.

- (3) The Subject Appraiser Regulator Agency may not be adequately informing the credential holder of the disciplinary action taken against him or her. This practice by the Subject Appraiser Regulatory Agency creates confusion for the credential holder as to how this disciplinary action must be reported, which may result in the Board denying the application for being untruthful.

The Appraisal Foundation is authorized by the U.S. Congress to develop the Real Property Appraiser Qualification Criteria through its Appraiser Qualifications Board. 12 U.S.C. § 3345 specifies the certification and licensing requirements for real property appraisers, which includes the following for the minimum qualifications for a trainee real property appraiser or supervisory appraiser:

*(e) Minimum Qualification Requirements. Any requirements established for individuals in the position of 'Trainee Appraiser' and 'Supervisory Appraiser' shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.*

As mentioned in the Background section, The Appraisal Foundation also addressed this very issue in its 2020 Criteria due to appraiser regulatory agencies denying supervisory appraiser applications or removing supervisory appraiser status because of the action taken by the Subject Appraiser Regulatory Agency.

## **GUIDANCE**

Due to the unjust burden placed on a credential holder to accurately report such action, and compromise to the Board's ability to carry out its mission, the Board will no longer recognize any action taken by any appraiser regulatory agency, with or without suspension or revocation, as disciplinary action, if such action has been verified by the Director to involve an appraiser regulatory agency's isolated administrative responsibilities including, but not limited to, late payment of fees related to credentialing, failure to timely renew a credential, or failure to notify a regulatory office of a change in contact information; and such action is deemed by the Director to not be related to the credential holder's ethical behavior or competency as a real property appraiser, and no harm to the public is found.