

DRAFT REGULATIONS

SUGGESTION – REPEAL SECTION ENTIRELY

~~264 CMR 1.00: —DISCIPLINARY PROCEEDINGS—~~

~~Section~~

~~1.01: Preface~~

~~1.02: Definitions~~

~~1.03: General Provisions~~

~~1.04: Dispositions of Complaints~~

~~1.05: Adjudicatory Hearing Procedures~~

~~1.06: Final Decision and Order and Miscellaneous Provisions~~

~~1.01: Preface~~

~~264 CMR 1.00 governs the disposition of matters relating to the practice of real estate appraisal by any person applying for, holding or having held a license or certificate issued by the Board of Real Estate Appraisers under M.G.L. c. 112, §§ 173 through 195, and the conduct of adjudicatory hearings by the Board. 264 CMR 1.00 is based on the principle of fundamental fairness to licensees and shall be construed to secure a speedy and just disposition.~~

~~1.02: Definitions~~

~~Adjudicatory hearing. A formal administrative hearing conducted pursuant to M.G.L. c. 30A.~~

~~Board. The Board of Registration of Real Estate Appraisers.~~

~~Complaint. A communication filed with, or by, the Board that charges a licensee with misconduct.~~

~~Informal. Not subject to strict procedural or evidentiary rules~~

~~Licensee. For the purposes of this section, a person holding or having held any type of license or certificate issued pursuant to M.G.L. c. 112, §§ 173 through 195.~~

~~Order to Show Cause. A document issued by the Board ordering a licensee to appear before the Board for an adjudicatory proceeding and show cause why the licensee should not be disciplined.~~

~~Party. A respondent, prosecutor representing the Board, or intervenor in an adjudicatory proceeding pursuant to 801 CMR 1.01(9).~~

~~Presiding Officer. The individual(s) duly designated by the Board to conduct an adjudicatory proceeding, as provided in 801 CMR 1.00.~~

~~Quorum. Five members of the Board.~~

~~Respondent. The licensee named in an Order to Show Cause.~~

~~Uniform Standards of Professional Appraisal Practice (USPAP). the 2014-2015 edition, effective January 1, 2014, of the uniform appraisal standards document titled *Uniform Standards of Professional Appraisal and Advisory Opinions*, including comments and statements, established and published by the Appraisal Standards Board (ASB). Prior to January 1, 2014, the 2012-2013 edition shall remain in effect.~~

~~1.03: General Provisions~~

DRAFT REGULATIONS

- ~~(1) Communications. All written correspondence must be addressed to and filed with the Board of Registration of Real Estate Appraisers.~~
- ~~(a) Disciplinary Proceeding. Communications by parties regarding disciplinary proceedings shall be in writing and directed to Board members as follows: Seven (7) copies to the Chair of the Board, one (1) copy to the Board Counsel, one (1) copy to the presiding officer, and one (1) copy to each party.~~
- ~~(b) Identification and Signature. All papers filed with the Board in the course of a disciplinary proceeding must contain the name, address, and telephone number of the party making the filing and must be signed by either the party or an authorized representative.~~
- ~~(c) Date of Receipt. Communications are deemed received on the date of actual receipt by the Board.~~
- ~~(d) Ex Parte Communication with Board Members. No party, or his or her representative(s) shall engage in *ex parte* communications with individual Board members regarding a disciplinary proceeding.~~
- ~~(2) Service. All papers served must be accompanied by a certificate of service.~~
- ~~(a) Service by the Board. The Board shall provide notice of its actions in accordance with the Standard Adjudicatory Rules, set forth in 801 CMR 1.01(4)(b) and (5)(f), or otherwise with reasonable attempts at in hand service, unless the respondent otherwise has actual notice of the Board's action. Where these rules provide that the Board must notify parties, service may be made by first class mail.~~
- ~~(b) Service by the Respondent. When a Presiding Officer has jurisdiction over an adjudicatory proceeding, proper service by the respondent includes filing copies of all papers and exhibits with:~~
- ~~1. the Board, care of its counsel;~~
 - ~~2. the presiding officer assigned to the adjudicatory proceeding; and,~~
 - ~~3. the prosecutor assigned to the adjudicatory proceeding.~~
- ~~(c) Notice of Appearance. A notice of appearance on behalf of a respondent shall be deemed an agreement to accept service of any document on behalf of the respondent, including a Final Decision and Order of the Board.~~
- ~~(3) Time.~~
- ~~(a) Computation of Time. The Board shall compute time in accordance with 801 CMR 1.01(4)(e).~~
- ~~(b) Extension of Time. The Board, in its discretion, may extend any time limit prescribed or allowed by 264 CMR 1.00.~~
- ~~(4) Decisions by the Board: Quorum. Unless 264 CMR 3.00 provides otherwise, a majority of members present and voting at a Board meeting shall make all decisions and the Board shall record its decision in the minute of its meetings. A quorum is five members of the Board (M.G.L. c. 13, § 92).~~
- ~~(5) Availability of Board Records to the Public. The availability of the Board's records to the public is governed by the provisions of the Public Records Law as set forth in M.G.L. c. 66, § 10 and M.G.L. c. 4, m § 7, clause 26.~~
- ~~(6) Public Nature of Board Meetings Under 264 CMR 1.00.~~
- ~~(a) All meetings of the Board are open to the public to the extent required by M.G.L. c. 30A, § 11A.~~
- ~~(b) As provided by M.G.L. c. 30A, § 11A, a Board meeting held for the purpose of making a decision required in an adjudicatory proceeding is not open to the public.~~
- ~~(7) Public Nature of Evidentiary Hearings. Evidentiary hearings before individual presiding officers are generally open to the public, but the Board may carry out its functions under 264 CMR 1.00 in closed session if either:~~

DRAFT REGULATIONS

- ~~(a) these functions affect an individual licensee, the licensee requests that the Board function in closed session, and the Board or presiding officer determines that functioning in closed session would be consistent with law and in the public interest; or,~~
- ~~(b) *Sua Sponte*, if the Board or presiding officer determines that functioning in closed session would be consistent with law and in the public interest.~~

1.04: Disposition of Complaints:

~~(1) Initiation. Any person, organization, member of the Board, or the Board itself, may make a complaint to the Board that charges a licensee with misconduct. The Board, in its discretion, may investigate anonymous complaints.~~

~~(2) Grounds for Complaints:~~

~~(a) Specific Grounds for Complaints Against Licensees. A complaint against a licensee may be based on any of the following: Acts or omissions as set forth in M.G.L. c. 112, § 189; conduct in violation of M.G.L. c. 112, § 61; commitment of an offense against any provision of the laws of the Commonwealth of Massachusetts relating to the practice of real estate appraisal, or any rule or regulation adopted thereunder; conduct which places into question the licensee's competence to practice as real estate appraiser; acting as a real estate appraiser while the ability to practice is impaired by alcohol, drugs; failure, without cause, to cooperate with any request by the Board to appear before it or provide requested information to the Board; knowingly permitting, aiding or abetting an unlicensed person to perform activities requiring a license; conviction of a felony or a crime involving moral turpitude; continuing to practice while his/her license/certificate is lapsed, suspended, or revoked; having been disciplined in another jurisdiction in any way by the proper licensing authority, institution, society, credentialing board, agency, or court for reasons substantially the same as those set forth in M.G.L. c. 112, §§ 61 and 189 and 264 CMR 1.04(2); cheating on or attempting to compromise the integrity of any licensing examination; or having acted in a manner which is professionally unethical according to the ethical standards of the profession of real estate appraisal; failure to provide a current address to the Board; and/or failure to adhere to the *Uniform Standards of Professional Appraisal Practice*, 2005 edition, as published by the Appraisal Standards Board of the Appraisal Foundation.~~

~~(b) Other Grounds for Complaints Against Licensees. Nothing herein shall limit the board's ability to adopt policies and grounds for discipline through adjudication as well as through rule making.~~

~~(3) Complaint Committee. The Board may establish Complaint Committee(s) to review complaints charging a licensee with misconduct~~

~~(4) Investigations:~~

~~(a) Preliminary Investigation. A Board investigator shall conduct such preliminary investigation, which may include a request for an answer from the licensee, as is necessary to allow the Board or a Complaint Committee to determine whether a complaint is frivolous or lacking in either merit or factual basis. The investigation may include an answer from the licensee.~~

~~(b) Answer. A licensee shall respond to a request for an answer to the complaint during the investigation of the complaint within the time required. An answer must address the substantive allegations set forth in the complaint and any additional information sought by the Board or its investigator.~~

~~(c) Dismissal. If after a preliminary investigation, the Board or a Complaint Committee determines that a complaint is frivolous or lacking in either legal merit or factual basis, it may dismiss the complaint with or without prejudice.~~

~~(d) Subsequent Inquiry and Investigation. If after a preliminary investigation, the Board or a Complaint Committee finds that the complaint is neither frivolous nor lacking in legal merit or factual basis, the Board or Complaint Committee shall conduct, or cause to be conducted, any reasonable subsequent inquiry or investigation it deems necessary to determine the truth and validity of the allegations set forth in the complaint.~~

~~(e) Conference. To facilitate the disposition of a complaint, at any time prior to the commencement of an adjudicatory proceeding, the Board or a Complaint Committee may request any person to attend an investigative conference for fact finding purposes. The Board~~

~~or Complaint Committee shall give timely notice of the conference and make reference to the complaint or provide a statement of the nature of the issues to be discussed.~~

~~(f) Additional Information. At any time during an investigation, the Board or a Complaint Committee may request additional information or documentation from the licensee.~~

~~(g) Investigation of Anonymous Complaints. The Board, in its discretion, may investigate anonymous complaints.~~

~~(5) Referral of Complaint to Another Agency. If a Complaint Committee or Board investigator determines that a communication does not relate to any of the matters set forth in M.G.L. c. 112 §§ 61 and 189, an 264 CMR 1.04(2), a Complaint Committee or investigator may refer the communication to the proper authority or regulatory agency.~~

~~(6) Dismissal by Board or Complaint Committee. Upon receipt of a licensee's answer or at any point during the course of investigation or inquiry into a complaint, the Board or Complaint Committee may determine that there is not and will not be sufficient evidence to warrant further proceedings or that the complaint fails to allege misconduct for which a licensee may be sanctioned by the Board. In such event, the Board or Complaint Committee may close the complaint or dismiss the complaint with or without prejudice.~~

~~(7) Order To Show Cause. If a Complaint Committee determines that there is reason to believe that the conduct alleged occurred and constitutes a violation for which a licensee may be sanctioned by the board, the Complaint Committee or the Board may issue an Order to Show Cause.~~

~~(8) Referral by the Board. If a determination is made to issue an Order To Show Cause, then the Board shall refer the matter for prosecution and an adjudicatory hearing shall be scheduled.~~

~~(9) Informal Action. The Board may take such informal action as it deems a complaint warrants, including the issuance of an advisory letter to the licensee detailing the Board's concerns and any recommendations to the licensee. An advisory letter does not constitute disciplinary action.~~

~~(10) Appointment of a Presiding Officer. The Board may appoint a presiding officer to preside over the adjudicatory proceeding.~~

1.05: Adjudicatory Hearing Procedures

~~After the Board issues an Order to Show Cause, the Board shall conduct all hearings in accordance with the Standard Adjudicatory Rules of Practice and Procedure set forth in 801 CMR 1.00 et seq. and M.G.L. c. 30A~~

1.06: Final Decision and Order and Miscellaneous Provisions

~~(1) In General. Every Final Decision and Order of the Board requires the concurrence of a majority of the Board. If the presiding officer is a member of the Board, the presiding officer's vote counts only in the event the Board is not otherwise able to reach a final decision.~~

~~(2) Sanctions. In the disposition of a complaint brought before the Board, the Board may revoke, suspend, or cancel the license or certificate, or fine, place on probation, reprimand, censure, require the performance of public service in a manner and at a time and place to be determined by the Board, require a course of education or training or otherwise discipline or limit the practice of a licensee.~~

~~In addition, consistent with 264 CMR 1.00, 801 CMR 1.00 et seq. and M.G.L. c. 30A, or otherwise by agreement with the licensee, the Board may restrict a licensee from accepting or performing certain appraisal assignments or types of appraisals, if the Board determines that:~~

DRAFT REGULATIONS

- ~~(a) the licensee has engaged in a pattern or practice that calls in to question his or her competence; or,~~
~~(b) the restrictions are otherwise warranted for the health, safety or welfare of the public.~~
- ~~(3) Reinstatement. A person whose license has been revoked or suspended by the Board may apply for reinstatement as ordered by the Board. An application for reinstatement addressed to the Board, must be made in the form the Board prescribes, and will be granted only if the Board determines that doing so would advance the public interest. Applicants for reinstatement are required to explain in detail to the Board why favorable action on the reinstatement request is warranted and provide a detailed summary of how the applicant spent time during the non-licensed period, including professional activities, any remediative activities, and academic or other continuing education activities. An applicant for reinstatement must also provide to the Board notarized statements from at least three (3) persons at least one (1) of whom must be a real estate appraiser currently licensed by the Board, who have read the Board's Final Decision and Order regarding the applicant and who are able to attest to the character of the applicant, and to the applicant's work and professional history since the license revocation or suspension. A copy of the Board's Final Decision, the Consent Agreement, or other such instrument must accompany the application for reinstatement. An applicant for reinstatement may also be required to appear before the Board and achieve a passing score on the current licensure examination. If the Board denies a petition for reinstatement, the applicant shall not re-petition the Board for reinstatement until at least one (1) year after the date of denial, unless the Board orders otherwise.~~
- ~~(4) Removal of Probation. Upon the completion of the term of probation, the applicant must notify the Board in writing of his or her compliance with the conditions, if any, of probation. The notice must accompany a copy of the Board's Final Decision and Order, the Consent Agreement, or other such instrument. In addition, satisfactory evidence must be submitted to the Board proving that all conditions of the Probation, if any have been met.~~
- ~~(5) Resignation.~~
- ~~(a) A licensee who is named in a complaint, who is the subject of an investigation by the Board, or who is the respondent in a disciplinary action, with the assent of a majority of the Board may submit his or her resignation to the board in writing stating that: he or she desires to resign; his or her resignation is tendered voluntarily; he or she realizes that resignation is a final act which deprives a person of all privileges of registration, including reinstatement, and is not subject to reconsideration or judicial review; and that he or she is not currently licensed to practice in any other state or jurisdiction, will make no attempt to gain licensure elsewhere, and will resign any other licenses contemporaneously with his or her resignation in the Commonwealth of Massachusetts.~~
- ~~(b) If a complaint investigation, or Order to Show Cause arises solely out of a disciplinary action in another jurisdiction, within the meaning of 264 CMR 1.04(2)(a), the licensee may submit a resignation pursuant to 264 CMR 1.06(5)(a), but need not make any representation regarding licensure status in other jurisdictions, is permitted to gain licensure elsewhere, and need not resign any other licenses contemporaneously with the resignation.~~
- ~~(6) Unauthorized Practice. The Board may refer any incidents of unauthorized practice of real estate appraisal which comes to its attention in accordance with M.G.L. c. 112, § 194.~~

REGULATORY AUTHORITY

~~264 CMR 1.00: M.G.L. c. 13, § 92; c. 112, § 173 through 195.~~