

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.207.401 fees, 24.207.404) NOTICE OF AMENDMENT,
appraisal review - USPAP exemption,) ADOPTION, AND REPEAL
24.207.406 definitions, 24.207.501)
examination, 24.207.502 application)
requirements, 24.207.504 approval of)
qualifying and continuing education)
courses, 24.207.508 ad valorem)
appraisal experience, 24.207.509)
qualifying experience, 24.207.515)
inactive license/certification,)
24.207.516 inactive to active license,)
24.207.517 trainee requirements,)
24.207.518 mentor requirements,)
24.207.1501 registration and renewal)
of appraisal management companies,)
24.207.2101 continuing education -)
compliance and auditing, 24.207.2301)
unprofessional conduct for appraisers,)
24.207.2305 unprofessional conduct)
for appraisal management companies;)
the adoption of New Rule I)
incorporation by reference of the real)
property appraiser qualification)
criteria, New Rule II appraiser)
reporting obligations to the board,)
New Rule III appraisal management)
company reporting obligations to the)
board; and the repeal of ARM)
24.207.403 regulatory reviews,)
24.207.503 experience - number of)
hours required, 24.207.505 qualifying)
education requirements for licensed)
real estate appraisers, 24.207.506)
qualifying education requirements for)
residential certification, 24.207.507)
qualifying education requirements for)
general certification, 24.207.510)
scope of practice, 24.207.2102)
continuing education noncompliance)

TO: All Concerned Persons

1. On November 2, 2018, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-42 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 2166 of the 2018 Montana Administrative Register, Issue No. 21.

2. On November 26, 2018, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the November 30, 2018, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Several commenters expressed concern with the amendment of ARM 24.207.401 to delete the renewal fee for Appraisal Management Companies (AMCs) having more than 200 engagements during the previous renewal cycle. The commenters believed the change will negate the "discount" provided to smaller AMCs and diminish available funding to adjudicate potential disciplinary cases.

RESPONSE 1: Currently, the board charges \$1,000 to AMCs with fewer than 200 engagements (small AMC) and \$3,000 to those with more than 200 engagements (large AMC). The proposed change will require all AMCs to pay what "smaller" AMCs have already been paying and therefore does not negate a "discount" provided to small AMCs. The board rejected a revenue-neutral approach to avoid imposing additional fees on small AMCs and conducted a five-year projection that demonstrated no significant impact on the board's funding, including funding to prosecute and adjudicate disciplinary cases. The two-tiered fee structure required the department to engage in additional programming and auditing of the number of engagements, and overall did not provide a benefit that outweighed its administrative burdens.

COMMENT 2: Two commenters were concerned that eliminating the \$450 fee required in ARM 24.207.401(2)(l) would diminish the funding available to the board to conduct audits of AMCs as required by statute.

RESPONSE 2: A drafting error was made in the initial notice by removing the \$450 fee from (2)(l) after the board decided to only strike the last phrase of (2)(l) regarding additional costs above \$450. Therefore, the board is not eliminating the fee and is amending the rule by adding (2)(h) to retain the \$450 fee. The board determined the audit is circumscribed in its scope and there is no reason to believe that the statutorily authorized audit to review procedures should expand beyond this cost.

COMMENT 3: The board received several comments regarding ARM 24.207.508 and the number of hours of mass appraisal or "ad valorem" experience the board should accept to meet the experience requirement. Some supported the proposed 80%, some wanted the percentage increased to 100%, and others wanted none of the experience to count.

Those wanting none of the experience to count argued that public welfare was at risk under the proposal. The commenters noted that supervisors of persons performing mass appraisals are not always certified appraisers and do not have the education necessary to mentor the candidate or sign an experience log. Others argued that "assessing" and "appraising" are different. Commenters were concerned regarding how the board would ensure that mass appraisals were performed in accordance with USPAP.

Commenters in favor of having mass appraisal experience count for all the required experience hours argued that the selection of 80% by the board was arbitrary, and noted that because it is difficult to maintain mentors, requiring 20% of the hours to be done under a mentor effectively allows no hours to count.

One commenter urged the board to outline a process by which an applicant would be assigned to a mentor to facilitate completion of 20% mentorship.

RESPONSE 3: Numerous individuals have reported difficulty in finding a supervisor/mentor. The board understands that the Appraisal Subcommittee is in the early stages of exploring virtual training to address this need. In the meantime, the board cannot require a mentor to supervise trainees.

The AQB unequivocally allows 100% of mass appraisal experience performed in conformance with USPAP standards 1, 2, 3, 4, 5, and/or 6 to count toward the experience requirement. Standards 5 and 6 address mass appraisals. The AQB thus recognizes that individuals applying under mass appraisal experience may not have their work supervised by a certified appraiser. Further, even if there is a difference between "appraising" and "assessing," the AQB recognizes the difference to be negligible or irrelevant. These conclusions are the legal consequences of the federal regulation of the profession.

The board is poised in its choice between adopting the AQB position on mass appraisal experience or to become stricter than the federal minimum. The board's tendency to count all or a substantial portion is indicated by the principle that all licensure qualifications are designed to establish minimum competency. Experience is just one of the measures of minimum competency. In addition to the number of hours of experience, an appraiser must also pass appraisal-specific education and an examination to become licensed. Together, these requirements ensure that a licensee achieves a level of minimum competency without unnecessarily restricting entry into the profession. In furtherance of continued competency, the board requires relevant continuing education and subjects the licensee to a complaint and disciplinary process – both minimum standards required by the AQB.

None of the comments elicited a basis for the board to change its preference toward counting all or a substantial portion of mass appraisal experience. However, the board concluded it had insufficient information to properly address how it will verify that mass appraisal experience conforms with USPAP. Therefore, the board is not proceeding with the amendments to ARM 24.207.508 and will refer this rule to a work group to study. The board will propose alternative amendments for public comment in a future rulemaking proposal.

COMMENT 4: One commenter expressed concern that other states may not reciprocate Montana licenses if Montana accepts ad valorem experience.

RESPONSE 4: The board cannot issue an advisory opinion on or predict another licensing agency's decision-making. The board can only reiterate that the AQB does not place a limit on the amount of ad valorem/mass appraisal experience that may be used toward the experience requirement provided the experience complies with USPAP Standards 5 and 6. For appraisers performing federally related transactions, Policy Statement 5 of the Appraisal Subcommittee requires states to adopt policies to issue reciprocal credentials to appraisers who hold valid credentials from a Title XI-compliant state if the credentialing requirements of the home state meet or exceed those of the reciprocal credentialing state. The board understands the AQB reciprocity policy to be interpreted broadly, rather than restrictively.

COMMENT 5: Several commenters opposed the amendment of ARM 24.207.518 believing it would allow licensed appraisers to become mentors. The commenters were also concerned that amending the rule would allow an appraiser to become a mentor if they have not been a certified appraiser for at least three years.

RESPONSE 5: AQB qualifications criteria clearly specifies that only certified appraisers may be a mentor, and the mentor must have been an appraiser for at least three years before being allowed to mentor a trainee. However, because (1) inadvertently included the term "licensed," the board is amending the section to remove the incorrect term.

COMMENT 6: Two commenters supported the incorporation by reference of the Appraiser Qualifications Board (AQB) criteria in New Rule I because it standardizes the requirements for licensure and may streamline the process for licensure.

RESPONSE 6: The board agrees with the commenters and is adopting New Rule I as proposed.

COMMENT 7: Two commenters opposed the incorporation of the Appraiser Qualifications Board (AQB) criteria, asserting there is no shortage of appraisers in the state, and that adoption of the current AQB qualifications criteria will erode the quality of appraising in the state and erode public trust.

RESPONSE 7: The board disagrees with the commenters. While the board has in the past discussed availability of appraisers in Montana and nationwide, the board did not focus its decision to adopt the AQB criteria by reference on this factor. Rather, the board focused on the inefficiency of replicating or modifying the standards that are otherwise specified by the AQB of the Appraisal Foundation, an organization whose federally legislated mandate is to set minimum standards.

The AQB published numerous exposure drafts and carefully considered comments and statistical analysis before adopting the current qualifications criteria. It is the board mission to protect public safety and welfare by enacting regulations that target legitimate risks, but without unnecessarily interfering with job creation, competition, and economic growth. While a state may exceed the AQB minimum standards, the board finds no compelling evidence to do so. The board finds

justification lacking to maintain a set of standards in Montana that exceed the AQB standards.

The board asserts that it is incumbent on the states to minimize the variations in professional standards to facilitate license mobility and therefore minimize the analysis required when considering an application by reciprocity. The board believes that time not spent on these analytics and curating a set of separate administrative rules can be devoted to enforcement activities.

COMMENT 8: Many commenters believed the adoption of New Rule III to change the AMC reporting period from 30 days to 10 days will create a significant administrative burden for AMCs. The commenters stated there are various examples within Montana regulations where licensees are granted a 30-day reporting period and ask for the same consideration in this rule.

The commenters requested the board clarify that (1)(a) through (c) will not require AMCs to submit a new application whenever there is a change in a controlling person, contact person, or owner. The commenters also expressed concern that (1)(e) appears to require the reporting of all litigation even when not associated with the AMC obligations to the state. The commenters requested the board clarify that AMCs must report only those legal or disciplinary judgments against the AMC, the controlling person, or contact person.

RESPONSE 8: The department is standardizing the reporting period for all types of reportable information to provide internal consistency and to convey the urgency of updating the department regarding the information. The 10-day notification is urgent because of the good moral character and background check the department is required to perform on particular affiliates of an AMC.

The AMC will not be required to fill out a new application if there is a change of owner, controlling person, or contact person. However, 37-54-503 and 37-54-504, MCA, require these affiliates, i.e., an owner of an AMC or a contact individual, including a controlling person of the company designed as a contact individual, to be of good moral character and submit to a background examination. The board must also inquire as to licensure in good standing of such persons. Therefore, as part of the notification of change, it is necessary that the individual complete a form and the board to conduct the background examination to ensure that the qualifications stated in the statute are met.

Section 37-1-105, MCA, requires applicants for licensure and renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. The board agrees with the commenters that the proposed language on reporting may be overly broad. The comment suggests overall that the rule is not clearly worded. The board is therefore not adopting New Rule III at this time and will include a more clearly worded version in a future rulemaking notice.

4. The board has amended ARM 24.207.404, 24.207.406, 24.207.501, 24.207.502, 24.207.504, 24.207.509, 24.207.515, 24.207.516, 24.207.517, 24.207.1501, 24.207.2101, 24.207.2301, and 24.207.2305 exactly as proposed.

5. The board has adopted New Rule II (24.207.519) exactly as proposed.

6. The board has repealed ARM 24.207.403, 24.207.503, 24.207.505, 24.207.506, 24.207.507, 24.207.510, and 24.207.2102 exactly as proposed.

7. The board has amended ARM 24.207.401 and 24.207.518 with the following changes, stricken matter interlined, new matter underlined:

24.207.401 FEES (1) through (2)(g) remain as proposed.

(h) All audited registered appraisal management companies shall pay an audit fee in the amount of \$450 within 30 days of receiving notification of selection for audit.

(3) remains as proposed.

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, 37-54-212, 37-54-302, 37-54-310, MCA

24.207.518 MENTOR REQUIREMENTS (1) A ~~licensed~~ or certified appraiser who intends to supervise a trainee shall first obtain a license endorsement by applying to the board as required in ARM 24.207.502.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, MCA

8. During the preparation of this notice, a typographical error was discovered in one of the authorizing citations for New Rule I (24.207.203). Therefore, the board has corrected the authorizing statute with the following change, stricken matter interlined, new matter underlined:

NEW RULE I (24.207.203) INCORPORATION BY REFERENCE OF THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA (1) through (3) remain as proposed.

AUTH: 37-1-131, ~~37-43-105~~, 37-54-105, MCA

IMP: 37-1-131, 37-1-203, 37-1-321, 37-54-105, MCA

9. The board did not amend ARM 24.207.508.

10. The board did not adopt New Rule III.

BOARD OF REAL ESTATE APPRAISERS
THOMAS STEVENS, CERTIFIED
GENERAL APPRAISER
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 2, 2019.