

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.207.508 pertaining to ad)
valorem tax appraisal experience)

TO: All Concerned Persons

1. On April 26, 2019, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-43 regarding the public hearing on the proposed amendment of the above-stated rule, at page 420 of the 2019 Montana Administrative Register, Issue No. 8.

2. On May 21, 2019, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the May 24, 2019 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 supported the proposed amendment noting that while the scope of work in mass appraisal is different than that of a single property appraisal, the skills required for each are the same and are gained through field work, data collection, in-office mentoring, and value setting. The commenter asserted that because individuals, whether involved in mass appraisal or single property appraisal, may have different levels of experience, the AQB requires a three-prong approach for certifying appraisers that includes education and examination in addition to experience.

RESPONSE 1: The board notes the commenters' support as consistent with the board's reason for the rule proposal. The board recognizes that the appraisal industry is evolving due to changes in technology, finance, and legislation, and that it is appropriate to embrace a broader view of the appraisal industry that fits within the qualification and practice standards of the Appraisal Foundation (i.e., AQB criteria and USPAP). The proposal to modify this rule is consistent with the board's adoption of the AQB criteria in its entirety.

COMMENT 2: One commenter supported the amendments and stated that allowing ad valorem tax appraisal experience will provide an alternative avenue to obtaining a single property appraiser license, with the understanding that the ad valorem applicant is also required to complete the AQB education and exam criteria for licensure. The commenter stated it is currently difficult to obtain that experience unless a person personally knows a certified appraiser willing to mentor them as they gain that experience.

RESPONSE 2: The board notes the commenter's support of the proposed rule as consistent with the board's reason for the rule proposal.

COMMENT 3: In opposing the amendments, several commenters opined that an alternate path for Department of Revenue (DOR) appraisers to apply ad valorem appraisal experience toward licensure without undergoing a training program is different than what is required for all other applicants and unfair for those who had to do a mentorship to become licensed. They further stated that a mentor provides for a greater understanding of the appraisal process which would be absent for ad valorem tax appraisers.

RESPONSE 3: The board notes that many of the commenters were licensed appraisers who expressed unfairness in providing an alternate path to licensure. It is important for the board to be responsive to changes in the industry and continue to advocate for licensure, so individuals can be held accountable for performing work according to standards.

The type of work that is done by ad valorem appraisers is different from that done by single property appraisers, but both types of experience are accepted by the Appraisal Qualifications Board of the Appraisal Foundation (AQB). Both types of applicants are subject to training and supervision and will be required to complete the same number of hours of their relevant experience. Department of Revenue supervisors are not required to be licensed or certified appraisers but will be required to attest that all hours submitted by the ad valorem applicant comply with USPAP, just as single property appraiser supervisors do for single property appraiser trainees.

Ideally, all mentors who supervise single property appraisers provide a greater understanding of the appraisal process to their trainees. However, because the quality of supervision may vary from individual to individual, the only way to quantify the quality of the supervision is to set minimum standards for how the work is to be done and have the individual supervisor attest that those standards have been met in the performance of the experience. In this regard, there is no difference between ad valorem and single property appraisers.

COMMENT 4: Several commenters opposed the changes because they would allow people to acquire licensure or certification with a fraction of the experience, education, and hard work that others have dedicated.

RESPONSE 4: While the board acknowledges that ad valorem experience and single property appraisal experience are different, the AQB criteria will require both types of applicants to have the same number of hours of experience, the same education courses, and to pass the same licensing examination. In addition, the board will require ad valorem tax appraisers to submit evidence of International Association of Assessing Officers (IAAO) training and testing relevant to the license type applied for and one demonstration appraisal report meeting USPAP Standards 1 and 2. The written report is required because the board understands that the underlying work product is different for ad valorem appraisers than it is for fee appraisers who do produce Standards 1 and 2 reports as part of their experience.

COMMENT 5: One commenter asserted that the proposed changes will result in an overabundance of appraisal licensees and will negatively impact existing Montana appraisers.

RESPONSE 5: The board does not have authority to control or limit the number of licenses it issues. Such controls or limits could be considered an illegal restraint of trade and subject the board and board members to antitrust liability. The board's mission is to regulate to protect Montana consumers of appraisal services without engaging in unreasonable restraint of trade. Arguably, an overabundance of Montana appraisers would benefit consumers by increasing the turnaround time of appraisals, choice, cost, and innovation.

COMMENT 6: Many commenters opposed the amendments because the experience gained through conducting ad valorem appraisals does not involve the entire appraisal process required by the AQB definition of "experience hours," as follows:

The quantitative experience requirements must be satisfied by time spent in the appraisal process. The appraisal process consists of: analyzing factors that affect value; defining the problem; gathering and analyzing data; applying the appropriate analysis and methodology; and arriving at an opinion and correctly reporting the opinion in compliance with USPAP. *Real Property Appraiser Qualifications Criteria* (eff. May 1, 2018), Part V, ¶B

The commenters noted that if ad valorem appraisers have duties that meet each of the factors listed in the definition, the experience would be acceptable and opined that assessors use formulas and do not analyze market data.

RESPONSE 6: The board acknowledges that the experience of an ad valorem appraiser is different than that gained by a single property appraiser. Assessors do not just use formulas, they also analyze market data. The commenters seem to fail to recognize that the AQB allows for the different types of experience. The definition of qualifying experience for licensure is not limited to Part V, ¶B as suggested by the comment. It is defined in Part V ¶¶A through H and in Part V, ¶E, the AQB specifically acknowledges that "mass appraisal" is acceptable real property appraisal practice for experience credit. "Ad valorem tax appraisal" is a type of "mass appraisal" recognized by USPAP Standards 5 and 6.

COMMENT 7: One commenter argued against the proposal stating there should be no exceptions to the AQB's experience requirements.

RESPONSE 7: As noted in RESPONSE 6, the allowance of ad valorem tax (mass appraisal) experience is not an exception to the *Real Property Appraiser Qualifications Criteria* (May 1, 2018).

COMMENT 8: One commenter suggested only allowing a portion of the mass appraisal experience to count toward the total hours.

RESPONSE 8: In the past, the board's rule only gave credit for 50 percent of the total experience hours of ad valorem work. This is inconsistent with the AQB criteria and unreasonable because of the relative difficulty individuals experience in finding single property appraisal supervisors who will hire a trainee.

COMMENT 9: One commenter urged the board to require submission of more than one report demonstrating all approaches to value and understanding of property-specific appraisal work, as is required for "traditional" applicants.

RESPONSE 9: Because the scope of practice associated with the license will produce Standards 1 and 2 reports, the board determined it is necessary for an applicant to demonstrate the ability to produce one demonstration report complying with Standards 1 and 2. The evidence considered by the board in proposing that one report be required does not support requiring more than one report.

COMMENT 10: One commenter questioned how, aside from administrative efficiency, the board's adoption of the AQB requirements in whole protects the public and how the proposed rule better serves the public.

RESPONSE 10: The AQB requirements represent a U.S. congressionally authorized, national standard to become an appraiser and to perform appraisals. The board must meet or exceed this standard. Where the board has evidence of a legitimate risk to consumers not addressed by the federal law, it has the authority to propose regulations that are stricter than the federal law. Except as noted for training certification and a demonstration report, the board has no evidence to support stricter requirements.

The AQB requirements adopted by the board protect the public by providing consumers with independent, consistent, and objective appraisals.

From an antitrust perspective, the board must also balance anti-competitive impacts with pro-competitive impacts. The pro-competitive impacts of the proposed change will better serve the public by providing an opportunity for more practitioners to enter the profession and relieve the stress on rural areas experiencing a lack of appraisers. Mortgage consumers may be able to achieve appraisals more quickly and less expensively. The real estate appraisal practice act in Montana only requires licensure for the performance of federally related transactions, allowing unlicensed persons to perform appraisals outside of this boundary. Licensure allows the board to exercise jurisdiction over an individual's practice and allows consumers a path to file complaints for unprofessional conduct.

COMMENT 11: One commenter opposed counting experience gained by county assessors because their property assessments are often biased and unfounded. Another commenter asserted that certain county Department of Revenue appraisal offices engage in unethical behavior.

RESPONSE 11: The board does not share the opinions expressed in the comments.

COMMENT 12: One commenter was concerned that if a person, after receiving a license based on ad valorem experience, leaves Department of Revenue employment, the person would still hold a license and prepare appraisals in "direct competition with qualified, certified individuals."

RESPONSE 12: The commenter appears to understand the board to be proposing a new license category to issue licenses for ad valorem appraisers. While some states have created such licenses, that is not the board's proposal. Further, the board does not exist to protect existing licensed appraisers from competition from new appraisers.

COMMENT 13: One commenter urged the board to provide Department of Revenue employees a path to certification that requires IAAO education and defined years of experience, if those Department of Revenue employees still meet the same education and experience as required of everyone in the past.

RESPONSE 13: The commenter offers no evidence or rationale for this assertion other than the implicit idea of "fairness." As market conditions, federal regulation, and technology impact the appraisal industry, the Appraisal Foundation and the board have reduced the required number of hours of experience and education. Individuals licensed when the requirements were more onerous could argue that reducing the requirements was unfair to them. The changes to the rules have been made and individuals may apply for licensure under the rules in effect at the time of their applications. Additionally, see RESPONSES 3, 4, and 6.

COMMENT 14: One commenter asserted that compliance with USPAP on all levels is being removed.

RESPONSE 14: The commenter provides no evidence or rationale for the assertion. Further, *Real Property Appraiser Qualifications Criteria* (eff. May 1, 2018), Part V, ¶E states in relevant part as follows:

All experience must be obtained after January 30, 1989, and must be USPAP-compliant. An applicant's experience must be in appraisal work conforming to Standards 1, 2, 3, 4, 5, and/or 6, where the appraiser demonstrates proficiency in appraisal principles, methodology, procedures (development), and reporting conclusions.

The board will select work product from the mass appraisal experience log and review it against this standard. The board must maintain documentation of this review for compliance auditing by the Appraisal Subcommittee policy managers.

COMMENT 15: A few commenters argued that allowing persons with mass appraisal experience to perform single property appraisals will drastically reduce the

quality of appraisals, jeopardize the housing market, and result in substantial liabilities for homeowners. The commenters further asserted that accepting experience from mass appraising lowers the bar for entry into the profession and threatens the appraisal profession.

RESPONSE 15: The acceptance of "mass appraisal experience" by the AQB is a strong indicator that individuals whose experience is gained by doing mass appraisals are no more or less likely to produce substandard appraisals than single property appraisers that would negatively impact the housing market or threaten the appraisal profession. Given the endorsement of this type of experience by the AQB, speculation about what may transpire is not sufficient evidence to vary from the AQB standard. The board will monitor the impact of broadening the allowable experience to become licensed through the complaint process.

COMMENT 16: A few commenters described the appraisal industry as "under attack" and asserted that the rule proposal is a subterfuge to relegate the profession to obscurity. They also stated that allowing "untrained" people is a waste of all the work appraisers have done since 1989 to convince the public that appraisers are trustworthy and valuable.

RESPONSE 16: The board's authority is limited to setting and enforcing standards for licensure that protect the public interest. The board's jurisdiction and mission are limited to acting in the public interest, and neutral with respect to the appraisal industry. As repeated throughout the board's responses, allowing credit for mass appraisal experience does not mean that applicants will not be required to take education and pass a licensing examination.

The board does agree with the cause-and-effect argument between allowing ad valorem experience to qualify an individual for licensure and the reputation of all appraisers.

4. The board has amended ARM 24.207.508 exactly as proposed.

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 August 13, 2019.