



Arizona Real Estate Appraisal News

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Department of Financial Institutions

Volume 1, Issue 1

Real Property Appraisal Licensing - Then and Now

Special points of interest:

- Maricopa County covers 9,266 square miles, making it about the size of New Hampshire.
- The Sonoran Desert is one of the wettest and greenest deserts in North America, thanks to 3-15 inches of annual rainfall
- Phoenix is home to the largest municipal park in North America. South Mountain Park and Preserve covers more than 16,500 acres and has more than 50 miles of hiking, biking and equestrian trails.

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At the end of August, several Arizona Real Estate Appraisers will have been licensed for twenty-five years in our state. The law initially became effective June 18th, 1990, but was not implemented until there was time to set up and staff the office. Therefore, the first licenses were not issued until August 1991. According to our database, 718 appraisers were first licensed in our state on August 15th, 1991. Of the original 718, there were 274 whose licenses were up for renewal in August of this year. The fact that nearly 40% of the originally licensed appraisers have remained active for this period is impressive.

Today, the average employee stays in a job 4.6

years per the Bureau of Labor Statistics. This statistic may not be as relevant to a Real Estate Appraiser, as they are often independent contractors instead of employees. But given 38% of the initial licensees have consistently renewed their licenses in the past, says something about the stability of the industry.

While researching the history of the real property appraisal licenses, a newsletter that was published by the Arizona Board of Appraisal in July 2000 was found. This newsletter included the following number of appraisers.

We have included the current number in each category for comparison purposes:

	July 2000	July 2016
Licensed	363	163
Certified Residential	668	1,103
Certified General	<u>637</u>	<u>768</u>
Total AZ Appraisers	1,668	2,034

The above numbers do not include temporary practice permits.

The highest number of appraisal credentials we had in our state was in 2008 when we had 3,065 appraisers. This number followed the national trends with their highest number of appraisal licenses in the same year. We believe the increase was caused by the atypical demand for appraisals in 2005, 2006 & 2007. That level of demand is not expected to return anytime soon. However, there appears to be a higher demand now than in recent years, causing some to be concerned about a shortage of appraisers. The Appraisal Foundation's Qualifications Board is listening to ideas on easing the criteria to become an appraiser. (See article later in this publication for more information). At least for the moment, it appears we still have approximately 20% more appraisers than in the year 2000.



Proposed Rules for AMCs Transmission of Annual Registry Fees

The Federal Financial Institutions Examination Council (FFIEC), has published their proposed rulemaking to implement collection and transmission of annual AMC (National) Registry fees. The collection of the fees will not start anytime soon, but if the current proposal is adopted, it will mean AMCs registered in our state will need to submit \$25.00 for each appraiser who has performed an appraisal on a “covered transaction” in the prior year. The AMCs will be responsible for the submission of these fees. The AMC fee is not to be confused with the \$80.00 fee each appraiser must submit with their two-year renewal, to be on the National Registry.

So what is an appraisal on a “covered transaction”? An appraisal on a covered transaction is an appraisal performed for a lender on a consumer’s principal residence. It applies to loans made by both federally regulated banks and credit un-

ions, as well as those loans for HUD/FHA, VA, Fannie Mae and Freddie Mac. There are no de minimis appraisal threshold exemptions for this type of a loan collateralized by a consumer’s primary residence.

For some of the states, implementing the AMC rules will be more of a challenge than in our state. We are classified as a *Mandatory State*, which means all real property appraisals require the appraiser to be licensed in our state. There are a few exceptions to licensure as noted in A.R.S. 32-3602. However, these exceptions would not involve a loan through any of the entities mentioned in this article. We will need to have our statutes revised to comply with the AMC Final Rules by August 10, 2018. While that may seem like it is far in the future, this date will be here before we know it.

Speaking of Statute Changes...There Weren’t Any

HB2560 failed to pass in the last legislative session. In addition to conforming language changes, this bill would have removed the requirement for Supervisory Appraisers to inspect every property with their Appraiser Trainees. We were all disappointed that HB2560 did not pass, despite receiving no opposition.

For a bill to be considered by the Governor for approval, typically it must go through committee hearings, be approved in a floor vote, and be read aloud three times in the House and the Senate. HB2560 originated in the House and passed through all of the requirements. It then went over to the Senate and passed through two committee hearings and a floor vote. It was twice read aloud before the legislator's adjourned. It did not have its third or final read, thus, it did not pass because of a procedural motion. In case you are interested, you can see how this bill progressed by clicking on this link

http://www.azleg.gov//FormatDocument.asp?inDoc=/legtext/52leg/2r/bills/hb2560o.asp&Session_ID=115

The Department will be running this bill again in 2017. Stephen Briggs is available to answer any questions and can be reached at sbriggs@azdfi.gov.

The Appraisal Foundation’s Qualifications Board is listening to ideas on raising the criteria to become an appraiser.

Appraiser Discipline and E & O Insurance

by Peter Christensen

The views and opinions expressed are those of the Author and do not necessarily reflect the views and opinions of AZDFI.

*Excellence is
the gradual
result of
always striving
to do better*

*-Pat Riley
NBA Coach*

In Arizona, there is no legal requirement for real estate appraisers to carry errors and omissions insurance (E&O). Only one state, in fact, requires appraisers to be insured – Colorado. Nevertheless, most Arizona appraisers who perform fee work for clients, like most appraisers across the country, currently maintain E&O. Appraisers generally carry it for two reasons: either they want the legal defense and financial protection provided by E&O in the event of a professional liability claim, or they just buy it because their clients or AMCs require it.

Whatever the reason for having E&O, when a state disciplinary matter occurs, appraisers understandably worry about the impact that the disciplinary matter may have on their insurance. Common fears are that their insurer will not renew their policy or that the insurer will increase their premium. These fears do have a rational basis but they are sometimes excessive. The imposition of serious discipline against an appraiser – such as a license suspension based on significant violations of USPAP or intentional wrongdoing – almost certainly will result in an insurer's decision to not renew the appraiser's policy or a substantial rate increase. The insurer's reasoning is usually that, based on statistical experience, an appraiser with serious discipline is more likely to have a legal claim against them down the road and is a more risky financial bet on average for the insurer.

At the other end of the spectrum, the underwriting rules for a few appraiser E&O programs have resulted in the non-renewal of E&O (or denial of a new policy) even when no discipline is imposed after the filing of a complaint to the state. Under the rules that apply in these programs, the insurance carrier may non-renew a policy or deny new insurance coverage when only a complaint has been filed and no actual discipline has occurred.

It's important to understand, however, that underwriting rules vary widely among E&O programs. One insurance carrier's reaction regarding a disciplinary matter may be different than another carrier's – it all depends on the underwriting rules that each carrier creates for a particular E&O program.

“Should I report the filing of a complaint against me with the state to my E&O insurance provider?” This question arises because of the fear that reporting the complaint will result in non-renewal or a higher premium. Regardless of those fears, however, and regardless of whether non-renewal or a higher premium may actually result, the safest course for an appraiser is always to report the filing of a complaint to his or her E&O carrier promptly upon receipt of first notice of the complaint. There are two main reasons for this.

The first reason is simply to secure the assistance and policy benefits that the appraiser may have under his or her E&O. Most E&O policies have some type of coverage for assistance in connection with defending a disciplinary complaint. Your policy may cover the cost of an attorney if legal assistance is needed in responding to the complaint or at a hearing. Some E&O programs also maintain legal departments that can help you informally by reviewing your correspondence with the state before you submit anything. This can be valuable assistance because it may come from legal counsel who have seen hundreds of other disciplinary matters and who have the experience to evaluate an appropriate response.



To be eligible for such coverage benefits, an appraiser generally must report the disciplinary matter to the E&O provider within a certain timeframe. This deadline will vary from policy to policy, but it generally will be within 30 or 60 days of when the appraiser receives first notice of the complaint. While a majority of disciplinary investigations opened against appraisers probably do not require any attorney assistance and can be handled by the appraiser directly, it is still important to report every matter upon receipt of first notice to preserve the availability of coverage. A complaint that doesn't seem serious at the beginning might escalate into something worse down the road.

The second reason to report a complaint to your E&O provider is critical to understand. Virtually all applications for new E&O or for renewal of E&O have variations of two questions. One question addresses the existence of past or pending disciplinary investigations and asks something like this: "Have you been disciplined or investigated by any state licensing, administrative or regulatory board as a result of appraisal activities?" The other question addresses existing or potential legal claims and asks something like: "Are there any pending facts or circumstances which could result in a claim being made against you?"

If an appraiser fails to answer these questions accurately by omitting the mention of a disciplinary complaint to the state, and then receives a policy based on that application, the appraiser is jeopardizing the potential coverage under the policy not only for the omitted disciplinary matter (and any legal claim for damages in court that might be filed later) but is also potentially jeopardizing his or her coverage for any future claim. This is because the omission of the information from the application may give the insurer the right to rescind the policy if the omission is discovered later. As an attorney, I have seen heartbreaking instances (I'm not speaking about any claims handled in the E&O program for which I am general counsel) in which appraisers failed to report disciplinary matters on their applications and were later sued in serious lawsuits. When the appraisers reported the lawsuits for coverage and the E&O carriers discovered the omissions, the E&O carriers were within their legal rights to rescind the policies and deny coverage for the lawsuits. This is the reason why it's always safest for an appraiser to report a disciplinary matter to his or her E&O and include mention of it on the application – regardless of the

potential impact on renewal or premium. Failing to do this creates the risk of having no coverage at all. It's important also to understand that this means reporting a complaint or investigation – regardless of whether it actually results in discipline or admonishment (whether public or private).

"What if my E&O provider non-renews me or raises my rate?" This is not the inevitable result of reporting a complaint to an E&O provider. Even when an E&O application asks for information regarding disciplinary matters or disclosure of circumstances that may lead to a claim, the insurance carrier's response is not necessarily going to be non-renewal or a premium increase. As mentioned above, the underwriting rules vary in different programs, and some carriers actually look at the seriousness of the matter to evaluate whether it is something that should affect the issuance of E&O or the premium that is charged. A complaint filed by a borrower over a claimed "low value" or a complaint resulting in no sanctions or in a minor warning, for example, may have little or no consequence in some E&O programs. There is also no "blacklist" for insurance purposes – each determination legally must be made under an insurance carrier's own underwriting rules.

When an insurance carrier decides to non-renew a policy or quotes a much higher renewal premium, however, an appraiser can shop for alternatives with other E&O providers. The suggestion that I would have for appraisers in this circumstance is to start the shopping process early (at least 30 days before the end of the appraiser's current policy) and to engage in actual person-to-person discussions with E&O providers to get feedback on the application process and different options, rather than trying to handle it via on-line applications. Only the most severe disciplinary punishments will make an appraiser truly uninsurable or push the E&O premium beyond a realistic range.

AUTHOR BIO

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ASC Compliance Review of Arizona’s Appraiser Regulatory Program

On June 7th & 8th of this year, the staff of the Appraisal Subcommittee (ASC) conducted an ASC Compliance Review to determine our Appraisal Program’s compliance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended. The Program has been awarded an ASC Finding of *Excellent*. Thus, our Program will remain on a two-year Review Cycle. The rating of Excellent is the second consecutive time Arizona has received this grade in the last four years. The rating from the 2012 review indicated the Program was in need of improvement.

The Excellent ratings reflect the hard work of the Board members back then, and the steps taken by the staff now to maintain a healthy, low-risk of failure environment, for the Appraisal Program in our state.

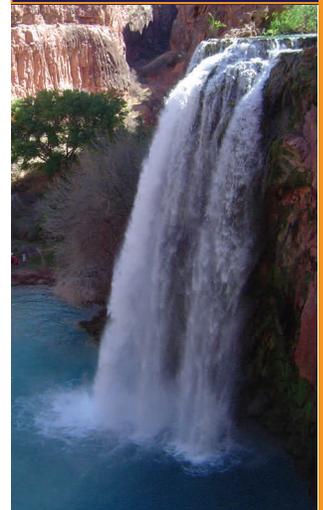
The Complaint Process

Appraisers know all too well that change is inevitable; and, ultimately, imminent. Since moving to the Department of Financial Institutions, the Real Estate Appraisal Division (“Division”) has spent much time reviewing the processes used daily in our work. Superintendent Charlton embraces more transparency in the Division; similar to what has been achievable throughout the rest of the Department. Some of what has been reviewed includes the complaint process and related documentation; the way we generally communicate with different parties; and what we share or don’t share with the public. We must always consider requirements from the Appraisal Subcommittee (ASC). According to ASC’s Policy Statement 7, “Title XI requires the ASC to monitor the States for the purpose of determining whether the State processes complaints and completes investigations in a reasonable time period, appropriately disciplines sanctioned appraisers and maintains an effective regulatory program.”

As part of the new complaint process, the Division is sharing the Investigation Report with the Appraiser and providing an opportunity to

respond before any action is taken. Another change that takes effect immediately, for any new complaints coming into our office, is that we will now be sharing the response to the complaint given to us by the respondent (typically the appraiser named in the complaint) with the complainant (the individual making the complaint). This is being done with the goal that some issues may be resolved early in the process. Complainants felt under the prior process as though they were left in the dark with regard to the complaint process. This may enlighten them and give them additional voice. This will give appraisers an opportunity to explain to the Complainant why and how they did what they did in the report, and why they made certain choices. However, it should be noted that this will not keep the complaint from being investigated, even if both parties come to an understanding about the complaint. Per ASC Policy Statement 7, “States must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint.”

Superintendent
Charlton embraces
more transparency
in the Division



The Bottom Line

Appraisers understand that there are real people affected by the outcome of every appraisal; people whose refinance or sale may not go forward - sometimes at great expense; clients who need to rely on the value in a report to protect their assets. There are many individuals, many entities, who rely on the appraisal to be as accurate as possible; to give the best information about a property’s value. Not every contract can be successful and not every refinance can occur, this is life. However, if appraisers do their best job for their clients, effectively and with purpose; then the work is valid. If due diligence isn’t practiced in completing research and all phases of development, then it is possible that work is not valid, and that affects us all. It’s not an easy job, but it’s an important one.



Most Common USPAP Violations

The following are examples of the most common violations seen by the Division when investigating complaints.

Understand and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

USPAP Standard Violated

SR1-1(a) Understand and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

- ◆ Failing to adequately analyze seller concessions; utilizing blanket statements that do not reflect an analysis, e.g. “Concessions were derived from ARMLS listings and/or realtors. No adjustments were made due to the non-verifiable, unrecorded nature of the information received”, “Typical seller concessions are 3% to 3.5% or less. There is no adjustment for any seller concessions which are less than 3.5%.”
Fannie Mae Guidelines state “The need to make negative dollar adjustments for sales or financing concessions and the amount of the adjustments to the comparable sales is not based on how typical the concessions might be for a segment of the market area. Large sales or financing concessions can be relatively typical in a particular segment of the market and still result in sale prices that reflect more than the value of the real estate.”
- ◆ Failing to recognize market trends such as sale prices bumped up to cover seller concessions or 100% list to sale price ratio, but the majority of sales have seller concessions.
- ◆ Failing to recognize or analyze external obsolescence when there is a large variance between the cost and sales comparison approach value conclusions.
- ◆ Applying unsupported adjustments that are inconsistent or unreasonable: e.g. GLA adjustments of \$20/SF on a \$1,000,000 property; site size adjustments of \$1.00/SF when the subject site value is estimated at \$30.00/SF; adjustment for a fireplace exceeds that of a full bathroom.

SR1-1(b) Not commit a substantial error of omission or commission that significantly affects an appraisal.

- ◆ Features of the comparable sales are not reported accurately and result in incorrect adjustments that affect the adjusted range of the sales and no longer support the market value: e.g. GLA is overstated and adjustment should be upward rather than downward; bathroom count is incorrect and adjustment is going the wrong direction; significant feature such as a pool is missed and therefore adjustment is lacking.

SR1-1(c) Not render appraisal services in a careless or negligent manner by making a series of errors that in the aggregate affects the credibility of the assignment results.

- ◆ Making changes to information in the sales grid and not making the necessary changes to the narrative analysis.
- ◆ Narrative comments that do not apply to the subject property or assignment: e.g. “the cost approach was not applicable” when the property is new construction and the approach was completed; “adjustments were applied to the comparable sales for differences in GLA, bathroom, and garage counts” when none of the comparables were adjusted for any of these factors.
- ◆ Reporting multiple data fields incorrectly: sales price, GLA, room counts; applying adjustments inconsistently or in the wrong direction.

SR1-4(a) Adequately collect, verify, and analyze comparable sales data.

- ◆ Failing to accurately report the relevant features of the comparable sales and adequately support adjustments.
- ◆ Failing to verify if GLA includes guest house or basement square footage and applying a separate line item adjustment for these areas (double counting).
- ◆ Failing to report property features such as solar systems, room additions, extensive remodeling, or upgraded site improvements.
- ◆ Using verbiage such as: “Adjustments are considered to be self-explanatory”. Simply stating they are self-explanatory is not sufficient analysis or support and does not reflect recognized appraisal methodology.

SR1-4(b)(i) Develop an opinion of site value by an appropriate method or technique.

- ◆ Failing to adequately analyze and support the contributory value of the subject site, especially in high value properties: e.g. Site value estimate of \$10,000 on a \$350,000 property.



Most Common USPAP Violations, Continued

The following are examples of the most common violations seen by the Division when investigating complaints.

Reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion(s).

- ◆ Using Assessor’s Full Cash Value to support opinion of site value when other sales or methodologies are available.

SR1-4(b)(ii) adequately analyze comparable cost data to estimate the cost new of the improvements.

- ◆ Not reflecting accurate cost figures from cited source, e.g. “cost source is Marshall Swift average quality” yet cost figures applied are of much higher quality construction.
- ◆ Identifying the subject as good quality in the improvement description and applying average quality cost figures.

SR1-4(b)(iii) Analyze available data to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).

- ◆ Failing to recognize and analyze external and functional obsolescence. i.e. Large variances in the value conclusions between the cost and sales comparison approach without analysis or application of external obsolescence.

SR1-5(a) –Analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal.

- ◆ Simply reporting the factual terms of the purchase contract and not the *results of the analysis* of the document.
- ◆ Providing blanket statements that do not constitute an analysis, e.g. “an executed copy of the contract was provided and is in the file”; “The subject is currently under pending contract for \$215,900 with the seller to pay up to \$5,000 towards the buyer’s closing”; “The purchase contract is a standard AAR purchase contract. 15 pages of contract, addendum and supporting documents were analyzed.”

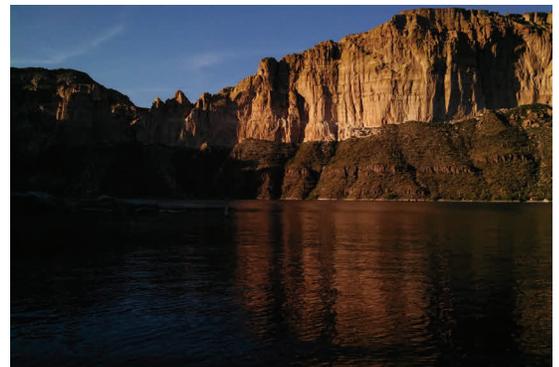
- ◆ Reporting a recently cancelled or expired listing of the subject and not analyzing its effect on the opinion of market value: e.g. subject listing history reports a recently expired listing for 6 months at an asking price of \$500,000 and the market value is estimated to be \$650,000.

SR1-5(b) –Analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal.

- ◆ Simply reporting the factual terms of the prior sale, rather than providing an analysis.
- ◆ Making blanket statements that do not analyze the data, e.g. “No other prior sales of the subject other than those listed above were noted”; “The subject last transferred on the date and for the amount noted above”; “Prior sales data for the subject property and comparables provided above.”

SR1-6 (a) Reconcile the quality and quantity of data available and analyzed within the approaches used and (b) Reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion(s).

- ◆ Simply stating an approach was not completed does not constitute an explanation for its exclusion.
- ◆ Failing to analyze large value conclusion differences between the approaches utilized.





Clearly and accurately set forth the appraisal in a manner that will not be misleading.

Most Common USPAP Violations, Continued

Violations of Standard 1: Real Property Appraisal Development also results in a violation of Standard 2: Real Property Appraisal Reporting.

SR 2-1(a) Clearly and accurately set forth the appraisal in a manner that will not be misleading.

2-1(b) Contain sufficient information to enable the intended user of the appraisal to understand the report properly.

2-2(a)(viii) Summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions, including the exclusion of the sales comparison approach, cost approach, or income approach must be explained.

Helpful resources for appraisal development questions include:

Fannie Mae Selling Guide:

<https://www.fanniemae.com/content/guide/sel072616.pdf>

Appraisal Foundation, Appraisal Practices Board Valuation Advisories:

https://appraisalfoundation.org/imis/TAF/Resources/Guidance/TAF/Valuation_Advisories.aspx?hkey=d74f24ae-8dcb-412e-947f-6df153626ae2

HUD:

<http://portal.hud.gov/hudportal/HUD>

AQB First Exposure Draft of Changes to Real Property Appraiser Qualification Criteria

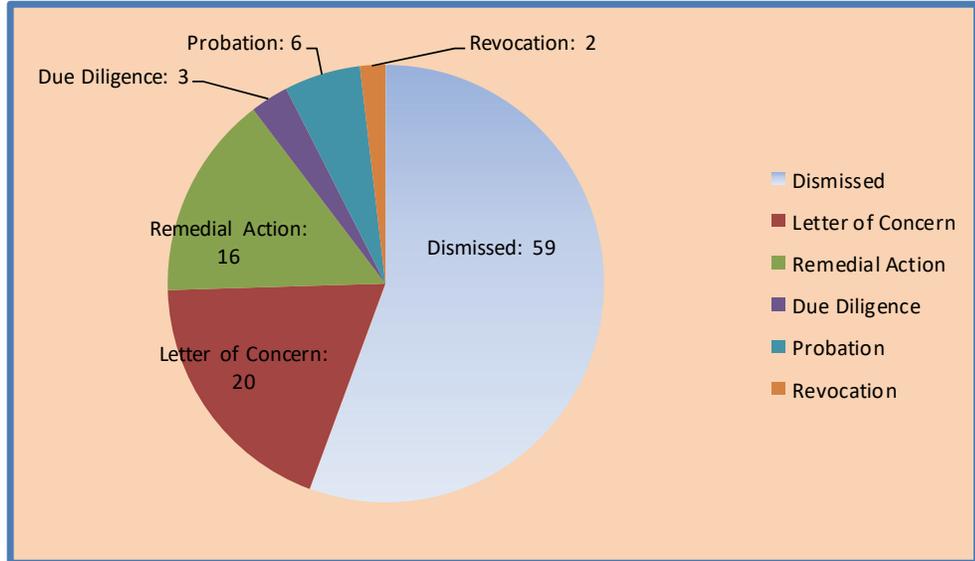
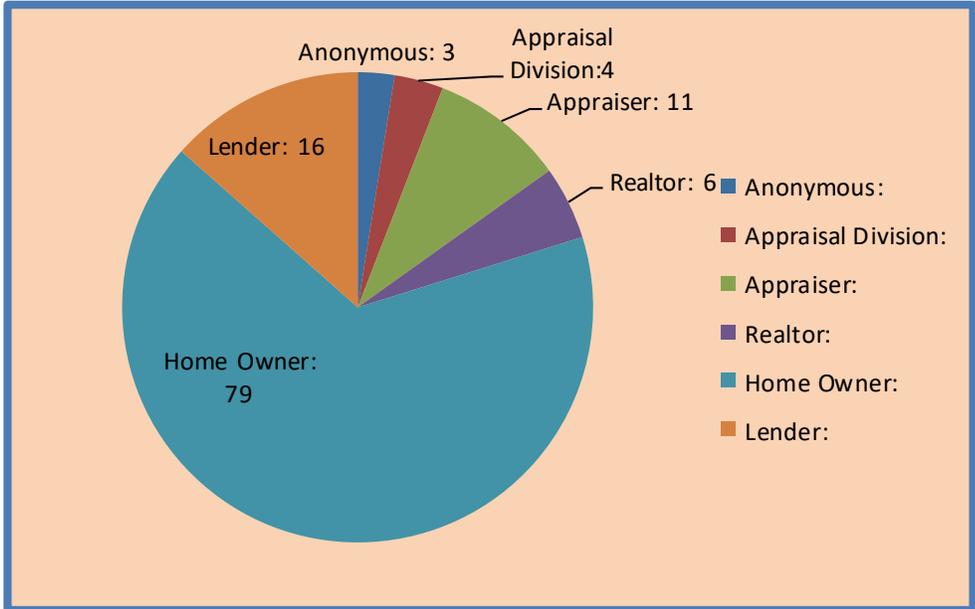
The AQB meeting held in Phoenix on April 8th of this year had one of the largest turnouts of any meeting held in the recent past. Over 200 in attendance listened to the latest decisions and proposals by not only the Appraisal Qualifications Board, but also the Appraisal Standards Board, and the Appraisal Practices Board. Since that meeting, our staff has received several inquiries about either becoming an appraiser or coming back into the profession now that they heard there is an easing of the qualifications coming. Please be aware that no changes have been made as yet, nor will any changes be forthcoming immediately. If the AQB makes any changes to the current 2015 Appraiser Qualification Criteria, it will likely take a few years for this change to occur. They cannot enact change without giving appropriate time for the public to comment on the proposal, and giving the states time to change their laws. To see the latest news and Exposure Drafts, please visit the Appraisal Foundation's website at www.appraisalfoundation.org under their heading of *Standards and Qualifications*.





Complaint Statistics

Complaint Statistics from 7/1/2015 to present. Since transferring to DFI, 119 complaint cases have been opened. The following charts depict the source of the complaints opened and the final resolution of cases that have been adjudicated in that time.



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