Arizona Department of Financial Institutions

SUBSTANTIVE POLICY STATEMENT

Section: Real Estate Appraisal **July 3, 2015**
Subject: Procedures for Hearings and Disciplinary Proceedings **Policy Statement #REA-1**

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under A.R.S. § 41-1033 for a review of the statement.

STATEMENT OF PURPOSE AND SCOPE

Senate Bill 1480, 2015 Leg., 52nd Reg. Sess. (Az. 2015), repealed the State Board of Appraisal ("Board") and all authority of the Board was moved to the Superintendent and the Arizona Department of Financial Institutions ("Department"), which succeeded to the authority, powers, duties and responsibilities of the Board.

This Substantive Policy is intended to inform the regulated real estate appraisers industry (including trainees, appraisers, property tax agents and appraisal management companies) of the Department's opinion and approach to the requirements of currently existing real estate appraisal statutes and rules, pending further legislative changes and rulemaking. Specifically, this Substantive Policy Statement is intended to inform the regulated real estate appraisers industry of the stages and steps associated with the complaint resolution process and the administrative procedures for hearings and disciplinary proceedings, in the light of the consolidation of the Board and the Department.

PROCEDURES FOR COMPLAINT REVIEW AND DISCIPLINARY PROCESS

1. INITIAL REVIEW AND INVESTIGATION: The Department will screen all complaints to ensure each complaint meets the minimum information criteria and any jurisdictional requirements. *See* A.R.S. § 32-3605. For instance, A.A.C. R-4-46-301(A)(1) requires that a complaint include:
    a. The name of the respondent against whom the allegations are being made,
    b. The action that is the basis of the complaint,
    c. The time-frame in which the action occurred,
    d. Each violation alleged to have been committed by the respondent, and
    e. A copy of the report, if the complaint includes allegations concerning an appraisal, consulting assignment, or property tax appeal.

    If the complaint meets the minimum and jurisdictional requirements, the Department will promptly initiate investigation of the complaint and notify the Respondent within 14 days of receipt of the complaint. The Department will provide the Respondent with a copy of the complaint and provide an opportunity to submit a written response within 30 days of notifying Respondent of the complaint. In the process of investigation, the Department may also contact the Complainant, Respondent or third parties, or subpoena additional

information. The Department may decide that the investigation requires a qualified investigator to prepare an investigative report, or that the Department should consult with a specialized subject matter expert. At the conclusion of its initial review or investigation, the Department may find either that the Respondent is (i) in compliance (e.g., that the complaint allegations, even if true, do not constitute a violation of the law or regulations, the allegations are not supported by sufficient credible evidence, or, the facts show a complete defense or legal justification), in which case the Department will close the complaint and dismiss any pending matters; or (ii) the Department may decide to proceed with further administrative action.

2. CONTINUED INVESTIGATION/SETTLEMENT DISCUSSIONS: If the Department finds that violations of laws or regulations may have occurred but that suspension or revocation is not immediately warranted, the Department may contact the Respondent and offer an opportunity to participate in an interview or a settlement conference.

   The Department will disclose to the Respondent its findings, and, if appropriate, will provide a consent agreement to resolve the matter by agreement. The Respondent may submit additional evidence or request an in-person conference in lieu of or in addition to a written response. In this intermediate stage, the Department may also request or subpoena additional information, or conduct further investigation.

   The Department may resolve a matter at any point by settlement in which the Respondent agrees to accept disciplinary or remedial action by consent in lieu of a disciplinary order. Actions may include a letter of remedial action, a payment of civil penalty, a letter of due diligence (which may include education and mentorship), probation, restriction on the nature and scope of practice, suspension, or revocation.

3. ADMINISTRATIVE HEARINGS: If the Department finds that a violation of law or regulations has occurred, the Department may issue a Notice of Hearing setting forth its findings of fact, describing the required disciplinary or remedial action.

   The Respondent may agree to disciplinary action, or request an informal settlement conference and/or request a hearing before an administrative law judge at the Office of Administrative Hearings (OAH). The administrative law judge will hear the case and issue a recommended decision as prescribed in A.R.S. § 41-1092.08, which the Superintendent may then accept, reject, or modify, before issuing a final order. (The final order may be further submitted for re-hearing or judicial review.)

   The Department may initiate administrative action at any time it determines that suspension (including summary suspension) or revocation may be warranted.

4. COMPLIANCE FILE REVIEW: If the Department's final decision includes the imposition of education, mentorship, suspension or the like, the Department will conduct compliance reviews to ensure compliance with the order. The Department may direct further investigation or open a complaint for noncompliance.

5. 12-MONTH FILE REVIEW: The Department will review all complaints that are still open 12 months after the Department received the initial response to the complaint. The purpose of the review is to ensure that each complaint is processed expeditiously. As a result of this

review, the Department may affirm or modify its prior decision (if any), may dismiss the complaint, or may direct the staff to proceed with further action.

Authority: 2015 Ariz. Legis. Serv. Ch. 19 (S.B. 1480), A.R.S. § 32-3601 *et seq.*

Effective Date: July 3, 2015