

GEORGIA REAL ESTATE APPRAISERS BOARD

Investigations and Hearing Process

The Appraisal Act provides that The Board may, upon its own motion, and shall, upon the sworn written request of any person, investigate the actions of any appraiser, appraisal management company (AMC), applicant or school approved by the Board. The law limits the Board's investigative authority solely to issues related to the Appraisal Act.

The Board's investigations do not determine whether a violation of any other area of law has occurred. For example, the Board cannot settle such issues as loan amounts a lender may make based on an appraisal, repairs to property, or payments of fees to appraisers. The law of contracts controls these issues. If the parties cannot resolve such issues themselves, they should consult an attorney or the small claims court of their county for assistance.

Anyone who files a request for investigation with the Board and has suffered a financial loss should not wait for the results of a Board investigation before consulting an attorney. The Board cannot help replace a financial loss. The law allows the Board to reprimand, suspend, or revoke a classification and/or to impose fines or education requirements.

The Board may only investigate real estate appraisers or persons performing the acts of an appraiser without proper registration, licensure, or certification. It cannot take action against persons acting properly under an exception to registration, licensure, or certification requirements.

The public and all appraisers should understand two basic facts regarding Board investigations. First, when the Board initiates an investigation no one should make the inference that the Board believes a violation of the law has occurred or is charging anyone with a violation of the law. Nothing could be further from the truth. Only after reviewing the results of an investigation might the Board allege that a violation has occurred and bring charges. If it does bring charges, the Board, not the person who requested the investigation, is the Complainant in the matter. Second, unless the Board orders a formal hearing, the name of the person requesting the investigation and all other materials in the Board's investigative file remain confidential and closed to the appraiser being investigated and to the public.

THE INVESTIGATIVE REPORT

Upon receipt of a sworn, written request for investigation, the request is reviewed and the Board may contact the person making the request to clarify the nature of the issues involved. Then the Investigations Area Supervisor (IAS) assigns the case to an investigator. The IAS normally assigns cases on a 'first come, first served' basis. The investigator assigned to the case begins the investigative process by contacting the party requesting the investigation. Then, the investigator proceeds to contact other persons who may have information relevant to the case and to gather other appropriate evidence.

If an appraiser's activities become the subject of an investigation, he or she may expect the following procedures to occur. The investigator assigned to the case will contact the appraiser to set an appointment at a reasonably convenient time with sufficient uninterrupted time to discuss the case. If the conference reveals the need for further meetings, the appraiser and investigator again should set another time reasonably convenient to both. Upon contacting an appraiser, the investigator will try to indicate what, if any, documentary material the appraiser will need to have at the conference. The appraiser should make every effort to make that material available or to be able to indicate to the investigator where to obtain it. If the investigator asks for copies of any documents and the appraiser supplies the copies, the investigator will pay a reasonable cost for those copies if the appraiser supplies to the investigator a written receipt of the cost. If it is necessary for the investigator to take the originals to another place to be copied, the appraiser should ask the investigator for a receipt detailing all originals the investigator takes. Generally speaking, an appraiser must produce documents related to a real estate appraisal that might normally be kept in an office file (for example, comparable sales used, appraisal reports, etc.). If the appraiser has any doubt about giving any document to an investigator, he or she should consult legal counsel before turning over the document.

Once the investigator has completed the investigation, the IAS reviews it for thoroughness. A typical report involves the investigator's stating who requested the investigation, on whose activities, and the general nature of the problem. For example, 'A lender alleges that an appraiser failed to do a site

inspection of a property on which the appraiser issued an appraisal report.' The investigator then recites the facts discovered in the investigation.

The Real Estate Commissioner then has four options: (1) to require further investigation; (2) to refer the case to the Attorney General's office for review if it appears that a substantial violation of the Appraisal Act has occurred; (3) to recommend to the Board to close the case if the facts clearly indicate no violation of the Appraisal Act; and (4) to refer the case to the full Board for it to determine an appropriate disposition. Most cases fall into the last two categories.

When the Real Estate Commissioner refers a case to the full Board, the investigator follows the same procedures in making a report. The investigator summarizes the case using no names. Based on the facts presented, the Board decides whether to investigate the case further, to close it, or to send it to the Attorney General's office for a hearing.

When the Board or the Commissioner sends a case to the Attorney General's office, the Assistant Attorney General assigned to the Board evaluates the case for the legal sufficiency of evidence. If the Attorney General's office finds the evidence lacking, it returns the case to the Board for the Board's staff to investigate further or for the Board to decide whether to pursue the matter further.

THE SETTLEMENT AND HEARING PROCESS

If the Attorney General's office finds the evidence legally sufficient, the Board has requested that office to draft a proposed Consent Order setting forth the facts of the case, how those facts violate the law, and possible sanction for settling the case. The Board then reviews that Consent Order; and if it finds its terms acceptable, it forwards the Consent Order to the appraiser as an offer of settlement.

This 'consent' process can save a great deal of time and expense when there is little dispute about the facts of the case and how to settle it. In a consent settlement, the Board does not hold a hearing to determine specific findings of fact and conclusions of law. Instead, the Respondent and the Board agree for the Board to impose a sanction without holding a hearing. The sanction may be the traditional reprimand, suspension, or revocation any other settlement to which the parties may agree; for example, requiring further education for the appraiser or a fine. Of course, in seeking a consent settlement, as at any other time in the process, the Respondent may present such compelling evidence of no violation that the Board might consent to a dismissal of the charges.

If the parties do not enter into a consent settlement, then the Board asks the Attorney General's Office to prepare a Notice of Hearing which sets forth the violations that the Board believes have occurred. That Notice of Hearing is sent to the Office of State Administrative Hearings (OSAH) to set a time for a formal hearing before an Administrative Law Judge (ALJ). OSAH delivers the Notice of Hearing to the Respondent. (Even after a Notice of Hearing is filed, the parties can still settle the case without a hearing.)

In some instances following the filing of a Notice of Hearing and prior to the date set for the hearing, either party may file a Motion for Summary Determination with ALJ scheduled to hold the hearing. The granting of 'Summary Determination' means that the ALJ has determined that there is no genuine dispute about the material facts in a case and imposes a decision without hearing witnesses and evidence. The party that does not make the Motion for Summary Determination has the opportunity to make a written response objecting to Summary Determination and calling for a hearing. After reviewing the positions of both parties on Summary Determination, the ALJ may to grant the Motion for Summary Determination and issue a preliminary decision without holding a formal hearing to hear the testimony of witnesses and receive evidence. Of course, the ALJ may also deny the Motion for Summary Determination and hold a formal hearing as scheduled. Regardless of which decision the ALJ makes, the Respondent may elect to appeal that decision to the full Commission.

After holding the hearing, the ALJ reports (to the Board and the Respondent) Findings of Fact and Conclusions of Law and makes an Initial Decision of sanction. If the Respondent disagrees with the Initial Decision, he or she may make a written request that the Board to review it. The Respondent then has the right to appear before the Board to make an oral presentation and to present a written brief. After hearing this presentation, the Board makes a Final Decision. If the Respondent does not ask the Board to review the decision within thirty days of the ALJ's rendering that decision, the decision becomes final.

Similarly, within thirty days of the ALJ's Decision, the Board may also request to review an Initial Decision when it disagrees with the ALJ's findings. If the Board alters the ALJ's Decision adversely to the Respondent, it must state precisely its reasons for doing so and afford the Respondent the opportunity to present objections to the Board's actions. If the Respondent disagrees with the Board's Final Decision, he or she may appeal that decision to the courts.

The full process can take several months, even years, to complete; but the Board disposes of most cases within a few months. The General Assembly established this process for all state regulatory agencies to follow to help insure due process rights for any individual against whom the state brings such an administrative action. When the hearing process ends, anyone may request to see copies of any public records in a case (e.g. the Notice of Hearing, the ALJ's Initial Decision, and the Final Order). These documents are available for review in the Board's office at no charge. Upon written request, the public may purchase copies of these public documents. Closed investigative files (that is, cases which did not result in the Board's bringing formal charges) remain confidential by law and are not available to the public.

GEORGIA REAL ESTATE APPRAISERS BOARD

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Real Estate Appraiser Licensing and Certification Act

INVESTIGATION PROCEDURES

If you request an investigation of what you believe are illegal actions by a real estate appraiser, by an appraisal management company, by an instructor, or by a coordinator or director of a school while offering a real estate appraiser course, the Board will:

1. investigate the matter only for issues related to the Real Estate Appraiser Licensing and Certification Act;
2. NOT settle monetary disputes regarding such matters as fees paid or to be paid for appraisals;
3. may elect NOT to investigate and appraisal report which varies from a sales, lease, or exchange price by ten percent or less;
4. may request that the party requesting an investigation of an appraisal report supply it with another appraisal report conducted by a state registered, licensed, or certified appraiser at the expense of the person requesting the investigation;
- 5.. usually begin its investigation within several months of receiving your Request for Investigation;
6. have its investigator gather appropriate physical evidence and interview any persons who can shed light on possible Real Estate Appraiser licensing and Certification Act violations;
7. take appropriate action if the investigation reveals sufficient evidence that a person violated the Real Estate Appraiser Licensing and Certification Act. Such actions may include holding a formal hearing at which the Board may subpoena you to testify under oath; and
6. notify you in writing of its final decision regarding the investigation.

You must complete the attached REQUEST FOR INVESTIGATION form if you wish the Board to initiate such an action. You **MUST** have the Request for Investigation form notarized before a Notary Public. **If the form is not notarized, it will be returned to you.**

Request for Investigation

Mail to: INVESTIGATIONS
Georgia Real Estate Commission
Georgia Appraisers Board
Suite 1000 – International Tower
229 Peachtree Street, N.E.
Atlanta, Georgia 30303 -1605

Date: _____

Person(s) requesting investigation

Person(s) to be investigated (check one)

Requestor's Name (print or type)

- Real Estate Agent or Firm Instructor
 Appraiser or School
Appraisal Management Co.

Address

Licensee's Name (print or type)

City State Zip Code

Company

Home Phone

Address

Cell (or other) Phone

City State Zip Code

Email address

Phone Number

INCLUDE COPIES OF ALL RELEVANT DOCUMENTS IN YOUR POSSESSION!

Failure to include relevant documents will result in significant delay in conducting the investigation!

Comes now the above-named person(s) requesting an investigation and alleging that the above-named while engaged in the business and acting in the capacity of a real estate licensee did: **(Give a brief statement of the facts, with dates. Use reverse side or attach additional sheets as necessary along with copies of relevant documents.)**

Wherefore, I ask that the Georgia Real Estate Commission/Georgia Real Estate Appraisers Board to conduct an investigation of said allegations and that it determine whether the Georgia Real Estate License Law or Georgia Appraisal Act may have been violated.

STATE OF _____, COUNTY OF _____

_____ Personally appeared before the undersigned authority the person requesting an investigation, who on oath says that the facts above stated, so far as they come within his or her own knowledge, are true; and so far as stated on information and belief, he or she believes them to be true.

Sworn and subscribed to me this _____ day of

_____, 20_____.

Person Requesting Investigation

Notary Public

My commission expires: _____

(A Notary Public may usually be found in banks, law offices, or government offices.)