

State of Arizona Office of the Auditor General

PERFORMANCE AUDIT

ARIZONA BOARD OF APPRAISAL

**Report to the Arizona Legislature
By Douglas R. Norton
Auditor General
March 1998
Report No. 98-6**



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OFFICE OF THE
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March 19, 1998

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Ms. Shirley L. Berry, Executive Director
Arizona Board of Appraisal

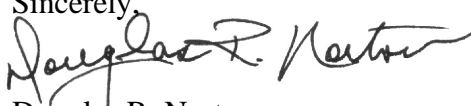
Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona Board of Appraisal. This performance audit was conducted pursuant to the provisions of A.R.S. §41-1279.03, and in response to a May 27, 1997, resolution of the Joint Legislative Audit Committee.

The report addresses problems with the Board's complaint resolution timeliness, finding the Board had a backlog of 100 complaints, which is equivalent to about one year's worth of complaints. The Board also needs to separate its complaint investigation and adjudication functions to help ensure appropriate due process. Further, to assist consumers in making informed decisions when selecting appraisers, the Board needs to improve public access to appraiser licensing and complaint information. Moreover, the Board needs to reduce license and other fees to decrease its \$1.1 million fund balance. Finally, the audit also addressed several legislative concerns regarding the Board's complaint resolution practices.

As outlined in its response, the Board disagrees with the first three findings but has begun implementation of the audit recommendations. The Board agrees with the fourth finding and has implemented a fee reduction.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on March 20, 1998.

Sincerely,

Douglas R. Norton
Auditor General

Enclosure

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Arizona Board of Appraisal pursuant to the provisions of A.R.S. §41-1279.03, and in response to a May 27, 1997, resolution of the Joint Legislative Audit Committee.

The Arizona Board of Appraisal was established in 1990 in response to a federal law requiring states to regulate real estate appraisers who perform appraisals used in connection with federally related transactions. The Board is responsible for licensing and certifying real estate appraisers and for ensuring that they complete appraisals in accordance with federal standards. The Board also oversees a program that registers approximately 400 property tax agents. Property tax agents act on behalf of property owners who are involved in property tax disputes. The nine-member board, composed of four appraisers, four public members, and one property tax agent, carries out these duties with the assistance of four staff, including an executive director. The Board is primarily funded by license and certification application and renewal fees.

Complaints Not Resolved in a Timely Manner (See pages 7 through 10)

The Board's complaint resolution process is inefficient. Consequently, the Board has developed a backlog of approximately 100 complaints, which is equal to approximately one year's worth of complaints. An analysis of 96 of these complaints revealed that they remained unresolved for a median of 305 days, with 36 of the files being open for more than one year. Based on recommendations the Auditor General has made to other regulatory boards, complaints should be resolved within approximately 180 days, on average.

The backlog can be attributed to the Board's failure to ensure that complaint investigations are completed in a timely manner. When investigations are warranted, the Board relies on volunteer appraisers to perform them. However, the Board is slow to send complaints to volunteers, and then does not adequately monitor the volunteers to ensure investigation reports are complete and timely. In fiscal year 1997, it took the Board and its staff an average of 107 days to determine whether investigation was needed and to forward these cases to volunteers. Although the Board requested that the volunteers complete their investigations within 30 days, volunteers took an average of 122 days to return their reports. The Board could improve the efficiency of its investigation process by monitoring the progress of investigations. Alternatively, the Board should consider hiring appraisers to perform investigations, which could be accomplished without raising fees.

Board Should Further Separate Its Investigation and Adjudication Functions (See pages 11 through 13)

The Board's investigation and adjudication processes are not adequately separated. Five of the Board's nine members sit on the Board's Disciplinary Committee, which reviews complaints and determines whether a formal hearing is warranted. These same Committee members help to judge any formal hearings that are held. The Attorney General's *Arizona Agency Handbook* recommends that board members responsible for making final decisions not participate in the complaint investigations process.

Lack of separation between the Board's investigation and adjudication activities has raised concerns from members of the profession regarding the fairness of the Board's decisions. The Board could minimize these concerns by further separating investigations and adjudications through a complaint resolution process similar to that used by the Board of Medical Examiners (BOMEX) and other regulatory boards. BOMEX assigns a lead board member to work with investigators and to make recommendations to the board. This board member reports to the board but is recused from making any decisions regarding the outcome of the case.

In addition, the Board should begin relying on the Office of Administrative Hearings (OAH) to conduct all formal hearings. The Board has traditionally conducted its own hearings, but does have an agreement with OAH to perform this service. Using OAH would enable the Board to further minimize the perception that its decisions are biased. Using OAH could also help improve the Board's formal hearing procedures and may also reduce the Board's formal hearing costs.

The Board Needs to Improve Public Access to Information (See pages 15 through 17)

The Board should improve the public's access to information about real estate appraisers. The Board needs to establish and implement a written policy to detail the information staff should make available over the telephone. Auditor General staff phoned the Board and found that the Board does not provide complete and accurate information regarding appraisers' disciplinary histories. For those who want to review cases in person, the Board also needs to remove administrative barriers, such as the requirement to review files under supervision, to make obtaining information less intimidating. In addition, the Board needs to ensure that its complaint files adequately document the Board's actions.

Board Should Consider Modifying Its Fee Schedule (See pages 19 through 21)

The Board should consider reducing appraiser license and certificate renewal fees to minimize its large fund balance. At the end of fiscal year 1997, the Board's fund balance was approximately \$1.1 million, compared to an annual budget of approximately \$289,000. At existing fee and expenditure levels, this fund balance is expected to reach \$1.26 million by fiscal year 2000. The Board should consider reducing its renewal fees to benefit those appraisers who have contributed to this balance. For example, the Board could reduce renewal fees from \$425 to \$200 for the next three biennial renewal periods, and reduce its fund balance to approximately one year's operating expenses by fiscal year 2003. During the course of this audit, the Board did vote to lower the initial appraiser application fee from \$400 to \$300 and to lower the renewal fee from \$425 to \$225 for one biennial renewal period.

Answers to Legislators' Concerns (See pages 23 through 28)

Members of the profession have brought a number of concerns to legislators' attention regarding the Board's resolution of complaints. These concerns include allegations that the Board has violated open meeting laws and that the Board has afforded its members preferential treatment. This review found that prior to 1995, the Board did violate open meeting laws by meeting with appraisers in executive sessions to resolve complaints. The Board stopped this practice in 1995. However, the former practice, and the fact that no records of these executive sessions were kept, raised concerns about the manner in which a complaint against one Board member was dismissed in 1994. This concern was reviewed by the federal Appraisal Subcommittee, which is responsible for monitoring all state appraisal boards. The Subcommittee admonished the Board to use caution and diligence in processing complaints against its members to avoid the appearance of preferential treatment.

Members of the public also alleged that other Board members who were the subject of complaints had received preferential treatment. Neither this audit nor the review by the federal Appraisal Subcommittee identified any instances of apparent preferential treatment after the Board changed its disciplinary process in 1995. Prior to that time, however, it appears the Board may have been inconsistent in its use of volunteer investigative reports when resolving a 1993 complaint against a Board member.

Other issues raised included, among others, concerns that two of the Board's members may not be legally serving on the Board and that the Board's policy of accepting anonymous complaints may be inappropriate. This review found that the Board members' service did not violate statutes as alleged. In addition, the fact that the Board accepts anonymous complaints is not inappropriate, but there is the potential that the policy of accepting these complaints could be abused.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Arizona Board of Appraisal pursuant to the provisions of A.R.S. §41-1279.03, and in response to a May 27, 1997, resolution of the Joint Legislative Audit Committee.

Board History and Responsibilities

Laws 1990, Ch. 313, §2, established the Arizona Board of Appraisal in response to federal changes in banking regulations. Following the savings and loan crisis in the late 1980s, the federal government passed the Financial Institutions Reform, Recovery and Enforcement Act. Title XI of this act requires that real estate appraisals used in connection with federally related transactions be completed by regulated professionals.¹ Consequently, Arizona established a board to regulate real estate appraisers. The Board's mission is:

To promote quality real estate appraisal in Arizona through a licensing, certification and regulatory system, as well as a property tax registration system that protects the health, safety, and welfare of the public.

The Board accomplishes this purpose by performing a variety of functions, including ensuring that appraisers who desire licensure or certification possess minimum qualifications, as required by federal guidelines; issuing licenses and certificates to qualified applicants; conducting investigations and hearings to determine whether appraisals meet minimum standards; and taking disciplinary action where necessary. Currently, the Board regulates approximately 1,500 appraisers.

The Board is also responsible for overseeing a program that registers approximately 400 property tax agents. Property tax agents act on behalf of property owners who are involved in disputes relating to property taxes. There are no licensing requirements for tax agents; however, they must be listed with the State and pay a \$50 registration fee to represent property owners.

¹ Federally related transactions include any transactions that a federal financial institution's regulatory agency or the Resolution Trust Corporation (RTC) engages in, contracts for, or regulates. Federal regulatory agencies include the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency.

Appraiser Licensure and Certification Requirements

The Board issues three types of appraiser credentials that vary in terms of education and experience requirements, and scope of practice. As shown in Table 1, these credentials include licensed residential appraiser, certified residential appraiser, and certified general appraiser. The Board also issues temporary licenses and certificates to approximately 75 out-of-state appraisers who have temporary appraisal assignments within Arizona. Federal Title XI allows licensed appraisers to appraise small residences with a value of less than \$1 million. Certified residential appraisers may perform appraisals of large and complex residences, such as custom homes, and residences with a value of \$1 million or more. Certified general appraisers are allowed to appraise any type of real estate, including commercial properties.

Table 1

**Board of Appraisal
Type of Appraiser Credential, Requirements, Scope of Practice, and
Number of Active License and Certificate Holders
As of September 1997**

Type	Credentialing Requirements and Scope of Practice	Number of Active Credentials
Licensed Residential	Complete 75 hours of appraisal-related coursework and 2,000 hours of appraisal work; pass an approved examination. May appraise residences with up to four units if value is less than \$1 million.	251
Certified Residential	Complete 120 hours of appraisal-related coursework and 2,000 hours of appraisal work; pass an approved examination. May appraise residences with up to four units regardless of complexity or value.	651
Certified General	Complete 165 hours of appraisal-related coursework and 2,000 hours of appraisal work; pass an approved examination. May appraise both residential and commercial real estate property regardless of complexity or value.	588
Temporary	Provide a copy of license or certificate from the state where the appraiser is licensed or certified and a letter stating that the appraiser is in good standing.	74

Source: Information provided by the Arizona Board of Appraisal.

Organization and Staffing

The Board is comprised of nine members who are appointed by the Governor and approved by the Senate. Each member is eligible to serve two consecutive three-year terms. A.R.S. §32-3604 requires the Board to consist of four public members; one property tax agent; one licensed residential appraiser; one certified residential appraiser; one certified general appraiser; and one appraiser who is either certified or licensed. Currently this fourth appraiser position is filled by a certified general appraiser.

The Board is authorized four FTEs who provide assistance and support to the Board. An executive director oversees the staff, which is responsible for collecting application, renewal, and other fees; accepting and preparing application files for Board review; investigating complaints; and providing information to the public.

Budget

The Legislature appropriates monies to the Board from the Board of Appraisal Fund. This fund contains revenues derived principally from the collection of licensure and certification application and renewal fees. The Board deposits 90 percent of its revenues into the Board of Appraisal Fund, and the remaining 10 percent of revenues into the General Fund. Table 2 (see page 4) illustrates the Board's actual and estimated revenues and expenditures for fiscal years 1996 through 1998. Also shown in the table is the Board's fund balance, which is much greater than the amount required to maintain Board operations. The fund balance has grown because revenues generated from fees have historically exceeded the Board's actual expenditures. This report addresses ways to reduce the fund balance in Finding IV (see pages 19 through 21).

Audit Scope and Methodology

Audit work focused on the Board's licensure and certification, enforcement, and administrative policies and procedures. This performance audit reports findings and recommendations in four areas:

- The need for the Board to improve its complaint investigation process to ensure complaints are resolved in a timely manner;
- The need for the Board to better separate its investigation and adjudication duties;
- The need for the Board to establish and implement policies to ensure appropriate information is released to the public; and,
- The need for the Board to consider modifying its fee schedule to minimize its fund bal-

ance and reduce the burden on the regulated community.

Table 2

**Board of Appraisal
Statement of Revenues, Expenditures,
and Changes in Fund Balances
Years Ended or Ending June 30, 1996 through 1998
(Unaudited)**

	1996 (Actual)	1997 (Actual)	1998 (Estimated)
Revenues (90% of gross revenues) ¹	<u>\$164,127</u>	<u>\$ 494,660</u>	<u>\$ 168,000</u>
Expenditures:			
Personal services	122,510	142,779	152,400
Employee related	23,095	25,718	29,100
Professional and outside services	13,424	47,675	44,600
Travel, in-state	2,730	1,550	14,000
Travel, out-of-state	4,298	3,916	3,000
Other operating	<u>48,914</u>	<u>55,501</u>	<u>45,700</u>
Total expenditures	<u>214,971</u>	<u>277,139</u>	<u>288,800</u>
Excess of revenues over (under) expenditures	(50,844)	217,521	(120,800)
Fund balance, beginning of year	<u>910,954</u>	<u>860,110</u>	<u>1,077,631</u>
Fund balance, end of year	<u><u>\$860,110</u></u>	<u><u>\$1,077,631</u></u>	<u><u>\$ 956,831</u></u>

¹ As a 90/10 agency, the Board remits 10 percent of its gross revenues to the General Fund. This amounted to \$17,975 in fiscal year 1996 and \$52,865 in fiscal year 1997. Revenue amounts fluctuate yearly because most appraisers renew their licenses in odd-numbered fiscal years.

Source: The Uniform Statewide Accounting System *Revenues and Expenditures by Fund, Program, Organization, and Object* and *Trial Balance by Fund* reports for the years ended June 30, 1996 and 1997. The estimated revenues and expenditures for the year ending June 30, 1998, were obtained from the Board's proposed budget submitted to the Governor's Office.

This report also includes other pertinent information (see pages 23 through 28) that addresses additional concerns raised by legislators and members of the regulated profession, including whether the Board appropriately processes complaints against its members.

This audit also assessed whether the Board issues licenses and certificates in a timely manner and found that the Board was performing efficiently. A random sample of 51 licensure and certification applications received in fiscal year 1997 was reviewed. The Board processed these applications in an average of 53 days, which included the time spent waiting for

the appraiser to pass the qualifying examination. In addition, auditors reviewed a random sample of 24 applications from out-of-state appraisers seeking temporary licensure. The Board issued these licenses within approximately 3 days.

To determine whether complaints are processed in a timely manner, and whether the Board adequately documents its disciplinary actions, audit methodology included a review of both closed and pending complaint files. The review included 96 complaint files that were unresolved as of August 1997, and the 75 complaint files resolved in fiscal year 1997.

To evaluate compliance with state and federal statutory requirements, information was obtained from a variety of sources, including interviews with Board members, the Executive Director, staff, appraisers, and other interested parties. Professional associations and the federal Appraisal Subcommittee,¹ which is responsible for monitoring all state appraisal regulatory boards, were also contacted. In addition, Board and committee meetings were attended, and Board meeting minutes and associated documentation were reviewed from fiscal year 1995 through fiscal year 1997. To determine whether current fees should be reduced, budget analysts at the Joint Legislative Budget Committee (JLBC) and the Governor's Office of Strategic Planning and Budgeting (OSPB) were contacted. In addition, to determine whether recommended changes to the disciplinary process would impact fee levels, the Office of Administrative Hearings, appraisers, and commercial lenders were contacted. Finally, to determine whether the Board releases appropriate information to the public, four telephone calls were made to request information about licensed and certified appraisers.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to members of the Board of Appraisal, its Executive Director, and staff for their cooperation and assistance throughout this audit.

¹ The Appraisal Subcommittee is a subcommittee of the Federal Financial Institutions Examination Council and consists of individuals designated by the heads of the federal financial institutions' regulatory agencies. These regulatory agencies include the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the Federal Reserve System, and the National Credit Union Administration.

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FINDING I

COMPLAINTS NOT RESOLVED IN A TIMELY MANNER

The Arizona Board of Appraisal needs to ensure that complaints are resolved in a timely manner. Untimely resolution has created a large backlog of unresolved complaints. The Board needs to reduce its backlog by acting more quickly to refer cases to investigators. In addition, the Board needs to modify its method of investigating complaints to encourage complete and timely investigations.

The Board receives approximately 100 complaints per year, which it resolves with the assistance of a five-member Disciplinary Committee, Board staff, and volunteer appraisers who provide assistance as needed. Complaints are received from a variety of sources, including homeowners and buyers, banks, federal agencies, such as Housing and Urban Development (HUD), and other appraisers. When a complaint is received, the Board's staff requests a response and any other pertinent information from the appraiser. This information is forwarded to the Board's Disciplinary Committee, which determines whether the complaint appears valid, whether additional information may be needed, and whether the complaint requires additional investigation by a volunteer appraiser. Since the Board does not have an appraiser on staff, the Board sends those complaints that require additional investigation to volunteers with relevant appraisal experience. The Board recruits these volunteer appraisers through its newsletter, and currently has a list of approximately 260 potential volunteers.

Large Backlog Result of Slow Complaint Resolution

The Board of Appraisal has amassed a large complaint backlog consisting of approximately 100 complaints. This backlog is caused by the Board's inability to resolve complaints in a timely manner.

The Board has a large complaint backlog—The Board has a backlog of approximately 100 complaints, which is equivalent to about one year's worth of complaints. During fiscal year 1997, the Board received 98 complaints, and resolved 75. A review of the Board's open complaint files revealed that 96 complaints had been open a median of 305 days.¹ Of these files, 36 have been open for more than one year. Additionally, four have been pending for four years or more. For example:

¹ As of August 6, 1997, the Board had 101 unresolved complaints, but only 96 of the complaint files contained sufficient information for this analysis.

- The oldest unresolved complaint has remained open for five years. Although the Board received two completed investigative reports regarding this complaint by May 1994, the Board still has not acted to resolve it. In December 1994, it came to the Board's attention that the case was still open and thus, additional information was requested from the appraiser. The appraiser has yet to respond and there is no evidence the Board has made any other attempts to resolve the case.

The Board does not resolve some complaints in a timely manner—The Board's backlog is a result of its slow complaint resolution process. In fiscal year 1997, the Board took an average of 224 days to resolve each of 75 cases. Timeliness problems appear to stem from the 21 complaints that required the use of volunteer investigators. Cases that are sent to volunteers typically contain allegations that the appraiser violated appraisal standards. These complaints averaged 489 days to close. Cases that do not require outside investigation are resolved more quickly. Specifically, 29 of the 75 complaints were administrative complaints, which consist of such acts as failure to pay fees or failure to notify the Board of address changes. The Board resolved these administrative complaints in an average of 79 days, which included time spent attempting to locate the appraisers. The Board also averaged 169 days to resolve an additional 25 complaints that did not require the assistance of volunteer investigators.

When addressing timeliness issues in reviews of other regulatory boards, the Office of the Auditor General has recommended reducing complaint resolution times to ensure problems are quickly addressed and to minimize public exposure to substandard practice. For example, a review of the Board of Technical Registration, which oversees architects, engineers, and other professionals, recommended that the Board resolve cases within approximately 175 days (Report No. 95-4). Health regulatory boards such as the Board of Medical Examiners are also expected to resolve complaints within approximately 180 days (Report No. 94-10).

The Board Takes Too Long to Refer Cases to Volunteer Investigators

The Board and its staff delay complaint resolution by taking too long to send cases to volunteer appraisers for investigation. The Board could reduce its complaint resolution time frame by shortening the time cases are awaiting Disciplinary Committee approval for further investigation. The Disciplinary Committee meets monthly; however, the Committee has taken as long as 10 months to determine whether complaints require further investigation and to send these cases to volunteers. Staff have also contributed to this delay by being slow to carry out Committee decisions. For instance, in fiscal year 1997, it took the Committee and

staff an average of 107 days to determine that 21 of 75 files required additional investigation and to send these cases to volunteers. As suggested in Finding II (see pages 11 through 13), changes to the Board's disciplinary process could improve timeliness by allowing investigations to proceed without requiring a Disciplinary Committee to meet and determine a course of action.

Prolonged Investigations Contribute to Delays

Untimely investigations further contribute to complaint resolution delays. The Board relies on volunteers to perform complaint investigations, but these volunteers take considerable time to complete their reviews. The Board needs to either better direct and monitor volunteers to ensure timely complaint investigations, or it needs to hire and train appraisers to perform investigations.

Investigations by volunteers are not completed in a timely manner—Volunteer investigators do not complete reports in a timely manner. In fiscal year 1997, the Board determined that investigations were required for 21 of the 75 cases it resolved. The Board requests that volunteers complete investigation reports within 30 days. However, volunteers who initially received the complaint files took an average of 122 days to complete investigative reports for these 21 cases. Four of these reports had to be sent to more than one volunteer before a complete investigation report was returned to the Board, which further prolonged the complaint resolution process. Furthermore, the Board also requested volunteers to investigate 16 of the 101 complaints that were still open as of August 1997. It has received 7 of the requested reports, which were completed in an average of 128 days.¹ However, as of August 1997, the Board had been waiting an average of 440 days for volunteers to submit 7 other investigative reports.

Volunteers are not monitored—The Board does not adequately monitor volunteers' progress during investigations. Adequate monitoring and follow-up is necessary since the Board has no power to require volunteers to complete investigations within specified time frames. Although the Board requests that volunteers complete investigative reports within 30 days, most investigations take far longer than that, and some are never completed at all. The following case example illustrates the Board's failure to adequately direct and monitor investigation progress:

- In February 1995 a complaint was filed against an appraiser and the file was sent to a volunteer investigator in May 1995. Three weeks later, the volunteer returned a report that did not address the complaint allegations. The file was sent to a second investigator

¹ Investigators returned two additional cases without investigating them because the appraisals were involved in litigation.

during July 1995. However, the Board did not follow up to request the completed investigation report until almost two years later. A completed report was never received from this second volunteer. Instead, the file was sent to yet a third volunteer in September 1997, more than two years after the complaint had been filed. The complaint remains unresolved.

The Board needs to monitor the investigation progress and follow up as needed to ensure investigations are completed in a timely manner. Specifically, staff need to better utilize the Board's relatively new computer tracking system to review complaint progress and to identify and minimize delays.

The Board should consider hiring appraisers to perform investigations—Instead of relying on volunteers, the Board could hire and train appraisers to perform its investigations. Four of seven states contacted hire staff investigators who are experienced appraisers. One of the states contacted hires appraisers to investigate complaints on a contract basis. Hiring appraisers to investigate complaints would provide the Board with a number of benefits, and could be done without raising fees (see Finding IV, pages 19 through 21). For example, hiring appraisers to investigate would afford the Board greater control over complaint resolution timeliness since the appraisers would be contractually obligated to provide timely reports. In addition, hiring appraisers to investigate complaints could enable the Board to provide training to help ensure investigative reports are complete and consistent. In April 1997, the Disciplinary Committee recommended that the Board provide training to investigators about Arizona rules and statutes and serving as an expert witness. One volunteer who has investigated complaints for the Board agreed that training would be useful. The volunteer indicated that it would have been helpful to have received some additional direction about the type of report the Board expected.

To hire investigators, the Board could establish a staff appraiser position or it could work with the State Procurement Office to enable it to contract with appraisers on an as-needed basis. If the Board chooses to contract with appraisers, it would need to develop a request for proposal that would detail the requirements for investigative reports, the experience level expected of investigators, and the time limits for investigations.

Recommendation

The Arizona Board of Appraisal needs to improve its complaint investigation process by ensuring that the progress of volunteer investigators is adequately monitored; or by hiring and training appraisers to perform investigations.

FINDING II

BOARD SHOULD FURTHER SEPARATE ITS INVESTIGATION AND ADJUDICATION FUNCTIONS

The Board's disciplinary process should be changed to better ensure that appraisers receive impartial treatment. The current process does not adequately separate the Board's investigation and adjudication functions, which has raised questions concerning the Board's ability to act impartially. To reduce this perception of bias, the Board should take steps to limit its involvement in investigations. Additionally, it should begin relying on the Office of Administrative Hearings (OAH) to further ensure that fair and impartial adjudication occurs.

The Board Needs to Separate Its Investigation and Adjudication Process

To avoid the perception that the Board acts inappropriately, the Board's current investigation and adjudication processes should be separated. Five of the Board's nine members make up the Board's Disciplinary Committee and are involved in both the investigation of a complaint and its final resolution. This lack of separation, although not illegal, can result in an appearance of unfair practice. Therefore, the Board should separate its investigation and adjudication process to promote fair and unbiased decision-making.

A majority of Board members participate in both the investigation and adjudication of complaints—Currently a quorum of Board members is involved in both the investigation of a complaint and its final resolution. A majority of Board members, five of the Board's nine, sit on the Disciplinary Committee. This Committee may direct investigations, participate in settlement negotiations, and recommend final Board actions, including whether a formal hearing is warranted. If a formal hearing is required, these same five committee members participate in judging the case.

Lack of separation results in an appearance of unfairness—The lack of separation between the investigation and adjudication process can give the appearance that the Board is not resolving complaints fairly. To prevent the appearance of unfairness, the Attorney General's *Arizona Agency Handbook*, members of the Board of Appraisal, and other regulatory boards agree that separation between investigation and adjudication is important.

Separation promotes objective decision-making—Several other states’ appraisal boards separate the investigation and adjudication processes to shield board members from information that may impact their objectivity. Furthermore, other Arizona regulatory boards, such as the Board of Behavioral Health Examiners (BHE) and the Board of Medical Examiners (BOMEX), have separated the investigation and adjudication processes. The Arizona Board of Appraisal needs to do the same. Specifically, the Board should:

- **First**, eliminate the Disciplinary Committee;
- **Second**, establish a complaint investigation process whereby one Board member would work in conjunction with an investigator to explore allegations and develop recommendations to be presented to the full Board; and
- **Third**, receive a summary of the complaint and disciplinary recommendations from the lead Board member and then recuse this member from all other discussions and decisions regarding the complaint.

This approach is consistent with the advice provided in the *Arizona Agency Handbook*, which states: “*decision-makers should not actively participate in the investigative process unless they will be recusing themselves from the decision-making process.*”

The Board Should Consider Relying on OAH to Adjudicate Complaints

In addition to separating the investigation and adjudication functions, the Board should also utilize the Office of Administrative Hearings (OAH) when a formal hearing is warranted. The Board signed an agreement with OAH in June 1997; however, it has not yet used the Office to conduct a formal hearing. Using independent hearing officers would benefit the Board by minimizing perceptions of unfairness, by strengthening formal hearing procedures, and by possibly reducing costs. Specifically, relying on OAH could:

- **Minimize the appearance of bias**—Relying on OAH would diminish the appearance of bias in complaint adjudications. Appraisal boards in four of seven states contacted report that they use independent hearing officers for all formal hearings to avoid the perception that their disciplinary decisions are biased or unfair. Additionally, the Attorney General’s *Arizona Agency Handbook* also recommends the use of independent hearing officers to minimize the appearance of bias.

Relying on OAH would also prevent the perception that the Board inappropriately considers pre-hearing settlement negotiations in determining sanctions following a formal hearing. For example, following a July 1997 formal hearing, the Board relied upon a proposed pre-hearing settlement agreement to establish sanctions. While there may be no legal impediment to using such a proposed agreement as a basis for formal sanctions, it can give the appearance of bias. Using OAH would minimize the appearance of bias since hearing officers are not involved in any informal settlement negotiations. In fact, OAH's statutes specifically prohibit admissibility of settlement negotiations in any board disciplinary action.

- **Improve adjudications**—Additionally, relying on OAH would help separate the dual roles of the Board's attorney general representative. For instance, when the Board is involved in the investigations process or negotiating settlements, the Assistant Attorney General acts as its advisor. However, during formal hearings, this same Assistant Attorney General now becomes the state prosecutor responsible for convincing the Board to find violations. If the Board confuses these roles even slightly, it is possible that the Assistant Attorney General could inadvertently exert undue influence upon the outcome of these hearings. However, using independent hearing officers for all formal hearings would eliminate role confusion since the Assistant Attorney General would no longer be prosecuting cases before the Board.
- **Reduce costs**—Finally, relying on OAH could be more cost-effective than the Board conducting hearings internally. In fiscal year 1997, OAH performed 224 hearings for 19 agencies, including BHE, BOMEX, the Accountancy Board, and the Board of Technical Registration. The cost of these hearings ranged from \$52 to \$2,535, with the average per-hearing cost being \$152. In comparison, in fiscal year 1997, the Board of Appraisal conducted its own formal hearings and paid an estimated average of \$925 to hear complaints against each of 3 appraisers. The estimated average cost of the Board's hearings is much higher than OAH's because the Board takes longer to hear cases.

Recommendations

1. The Board of Appraisal needs to separate its investigation and adjudication duties by:
 - a. Eliminating the Disciplinary Committee;
 - b. Assigning cases to one Board member to work in conjunction with an investigator to explore allegations and develop recommendations to the full Board; and
 - c. Recusing the investigating Board member from further Board action.
2. The Board of Appraisal needs to begin using OAH for all formal hearings.

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FINDING III

THE BOARD NEEDS TO IMPROVE PUBLIC ACCESS TO INFORMATION

The Board of Appraisal needs to improve the public's access to information about real estate appraisers. The Board's staff does not consistently provide the public with complete and accurate information by telephone. Moreover, it can also be difficult for those who visit the Board's offices to obtain information about appraisers' complaint histories.

Providing unimpeded access to public information is an important component of regulatory boards' responsibilities. Public records laws were developed to make government agencies, such as regulatory boards, accountable to the public for their activities. In addition to providing for accountability, these laws also help to ensure that boards meet their statutory mandates to protect the public. For instance, by informing the public of the disciplinary actions taken against licensees, boards assist consumers to select competent and ethical professional services.

Public Not Provided Complete Information by Telephone

The Board does not provide sufficient information by telephone to assist consumers in making informed decisions regarding appraisal services. As recommended in the Auditor General's *Special Study of The Health Regulatory System* (Report No. 95-13), the information that regulatory boards should make available to the public includes the number and nature of dismissed and pending complaints, and disciplinary actions taken.

However, the Board of Appraisal does not always provide complete and accurate information about appraisers' complaint histories by telephone. Auditor General staff made four telephone calls to the Board office requesting information that was available from the Board's computerized complaint tracking system. In each case Board staff did not provide complete information regarding the nature of complaints. Moreover, in three of the four cases, callers were not informed of the correct number and status of complaints.

- One call was placed requesting information about an appraiser who had received a total of ten complaints. Four of these complaints were classified as pending. The caller, however, was informed that there was only one pending complaint, and the nature of the complaint was not disclosed. The caller was not informed of the other nine complaints.

- During another call, information was requested regarding an appraiser who had received three complaints—two pending and one dismissed. Initially, the caller was informed that the appraiser had received some complaints but the staff member did not remember what the complaints were about. After prodding, the staff member looked up the appraiser’s complaint history and informed the caller of the number, but not the nature, of the complaints.
- During a third call, a Board staff member correctly informed the caller that one complaint against an appraiser resulted in sanctions, and the appraiser had fulfilled his obligations. However, the staff member disclosed neither the nature of the complaint nor the disciplinary action. The caller was also not informed of a second complaint against this appraiser.
- Finally, a fourth call was placed requesting information about an appraiser with one pending complaint. The caller was informed that the appraiser had never had any complaints filed against him.

To help ensure consumers have access to all public information by telephone, other boards have developed written policies that specify the information that should be made available. For instance, the Veterinary Medical Examining Board has a policy requiring staff to inform callers of the status of a veterinarian’s license; disciplinary actions taken; and the number and nature of complaints.

Complaint Files Are Often Disorganized or Incomplete

Consumers who do make the effort to review complaint files still may not obtain all of the information they are seeking. According to an informal Attorney General Opinion, regulatory boards must maintain records of their official activities through documents such as dismissal letters, consent agreements, and board orders. However, the Board of Appraisal’s complaint files often do not sufficiently document the Board’s actions. For example, at least 22 of the Board’s several hundred closed complaint files were empty or contained only a 1-page cover sheet. Although other closed complaint files contain some additional information, the documentation often does not adequately record the Board’s actions. For example:

- A computerized status report showed that the Board’s Disciplinary Committee had recommended dismissing a complaint in April 1997. However, the complaint file did not contain any information, such as a letter of dismissal, documenting any action by the full Board. Consequently, the Board’s Executive Director sent the complaint to a volunteer

for investigation in September 1997. When the discrepancy was pointed out, the Executive Director reviewed her notes, found that the Board had dismissed the complaint, and called to request that the file be returned.

Recommendations

1. The Board should establish and implement a written policy to detail the information that will be made available to the public by telephone.
2. The Board should improve its file management to ensure complaint files contain appropriate and adequate documentation of the Board's actions.

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FINDING IV

BOARD SHOULD CONSIDER MODIFYING ITS FEE SCHEDULE

The Arizona Board of Appraisal should consider modifying its fee schedule to reduce its large fund balance and to reduce the burden on the regulated community. At the end of fiscal year 1997, the Board of Appraisal Fund contained a balance of nearly \$1.1 million, or nearly four times the Board's annual budget. To reduce the fund's balance, the Board should temporarily reduce its license and certification renewal fees.

Large Fund Balance Exists

The Board has a large and growing fund balance. At the end of fiscal year 1997, the Board's fund had a balance of nearly \$1.1 million compared to an annual budget of approximately \$289,000. With this ratio of expenditures to fund balance, the Board could continue operating for nearly four years even if no additional revenues were received. The Board added approximately \$167,000 to its fund balance in fiscal years 1996 and 1997 combined. During these two fiscal years, the Board deposited a total of \$658,787 in its fund and expended \$492,110.¹ At existing fee and expenditure levels, the fund balance is estimated to reach \$1.26 million by fiscal year 2000.

The Board of Appraisal has the highest fund balance-to-budget ratio of the State's 27 occupational and licensing boards. The Board of Appraisal's fund balance equals approximately 3.73 times its approved fiscal year 1998 budget. In comparison, Auditor General staff analysis of information prepared by the Joint Legislative Budget Committee (JLBC) staff shows 13 of the 27 boards have fund balances of less than their fiscal year 1998 approved budgets. Further, 8 of the 27 have fund balances of less than 1.5 times their 1998 approved budgets. Only two boards, the Board of Appraisal and the Board of Physical Therapy Examiners, have fund balances greater than three times their fiscal year 1998 budgets.

Board Should Consider Reducing Fees

The Board should consider decreasing fees to reduce the burden on the regulated community. Specifically, the Board should consider a temporary fee reduction until its fund balance

¹ The Board collected a total of \$729,627 during these two fiscal years, and deposited \$70,840 in the General Fund and \$658,787 in the Board of Appraisal Fund.

is minimized. In determining a new fee schedule, the Board needs to consider possible increases in operating costs to enable the Board to pay appraisers to investigate complaints.

The Board should consider a temporary fee reduction—The Board should consider temporarily reducing renewal fees to minimize its fund balance to benefit appraisers who have contributed to this balance. During fiscal years 1996 and 1997, the Board collected a combined total of \$729,627; approximately two-thirds of the total, or \$497,025, was generated from appraiser license and certificate renewal fees. Based on fiscal year 1996 and 1997 data, these biennial renewal fees could be reduced from \$425 to \$267 without impacting the Board's fund balance.¹ To actually decrease the fund balance, additional fee reductions would be necessary. For example, reducing renewal fees over the next 3 biennial renewal periods from \$425 to approximately \$200 would trim the fund balance to equal approximately one year's operating expenses.

Reductions are possible even if the Board's investigative costs increase—The Board's operating costs will increase if the Board begins hiring appraisers to investigate complaints as recommended in Finding I (see pages 7 through 10); however, the Board could still temporarily effect substantial reductions in its renewal fees. In fiscal year 1997, the Board resolved 21 complaints that required volunteer assistance; 13 of these involved commercial properties and 8 involved residential properties. Based on estimates by managers of lending institution appraisal departments and professional board members, paying appraisers to investigate these complaints could have cost the Board as much as \$23,500. Taking this increase into consideration, the Board could still reduce its renewal fees for the next 3 biennial renewal periods to \$200 and reduce its fund balance to an estimated \$340,000 by fiscal year 2003.² Once a minimum balance is reached, the Board should establish a permanent fee schedule that accurately reflects the costs of regulating appraisers.

In December 1997, the Board did vote to reduce its fees for one biennial renewal period beginning July 1, 1998. The fee reductions are to include a reduction of initial application fees from \$400 to \$300, and a reduction of renewal fees from \$425 to \$225. These reductions would reduce the fund balance to an estimated \$730,700 at the end of fiscal year 2000, or to about 2.23 times the estimated annual budget for that year. This estimate considers increased costs to hire appraisers to investigate complaints as recommended in Finding I (see pages 7 through 10).

¹ The Board's total expenditures for fiscal years 1996 and 1997 were \$492,110. During this time the Board deposited \$211,465 into its Fund from sources other than renewal fees. Based on this, the Board would have needed to collect a total of \$280,645, or \$267 from each of the 1,169 renewing appraisers, to meet its expenditure needs. The Board deposits 10 percent of its revenues into the General Fund, and this is factored into the \$267 renewal fee calculation.

² Estimate is based on fiscal year 1998 beginning fund balance; budgeted expenditures for fiscal years 1998 and 1999; and estimated expenditures for fiscal years 2000 through 2003 using a 3 percent annual rate of increase; and estimated increased investigative costs of \$23,500 in fiscal year 1998 plus 3 percent per year. The estimate assumes revenues and the number of renewing appraisers remain at fiscal year 1996 and 1997 levels.

Recommendation

The Board should consider temporarily reducing fees for licensing and certification renewal until its fund balance is minimized. At that time, fees should be revisited and should be set to reflect the actual costs of regulation.

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ANSWERS TO LEGISLATORS' CONCERNS

In addition to the four finding areas, the audit addressed questions and concerns that were brought to the attention of legislators by members of the public and the regulated community. Most of these concerns were related to whether the Board appropriately resolved complaints. This review found that the Board has improved its complaint resolution process; however, a number of its practices in the past were inappropriate. For instance, prior to 1995, the Board's disciplinary committee violated open meeting laws by meeting with appraisers in executive sessions to resolve complaints. In addition, some of the Board's other complaint resolution practices have led to the perception that Board members receive preferential treatment. Other concerns that were addressed pertain to the Board's membership and staffing levels.

1. Does the Board resolve complaints appropriately?

Although the Board has improved its complaint resolution process, many of its former practices were inappropriate. Specifically, certain practices did not fully comply with open meeting laws and with recommendations in the *Arizona Agency Handbook*. These practices lead to the public perception that the Board afforded its members preferential treatment. Consequently, over the past two years the Board has revised many of its practices to help minimize future concerns.

The Board's former complaint resolution practices were inappropriate—Some of the Board's past complaint resolution practices did not fully conform either to statutes or to recommendations in the *Arizona Agency Handbook*. Most important, prior to March 1995, the Board's complaint resolution process did not comply with open meeting laws. A.R.S. §38-431.03 limits the use of executive sessions and does not permit discussions or deliberations among a majority of board members that may foreseeably require final action by the full board. The Board of Appraisal, however, allowed its Disciplinary Committee, which is comprised of five of the Board's nine members, to conduct informal conferences with appraisers in executive session and to make recommendations to dismiss or otherwise resolve complaints based on these conferences. The Board used these recommendations to make its final decisions, but it did not ensure that the Committee's decisions were adequately documented.

Statutes do not require that minutes of committee meetings be recorded; however, the Board's failure to comply with open meeting laws and its failure to fully document informal complaint resolutions contributed to the public's concerns that the Board was inappropriately resolving complaints. The *Arizona Agency Handbook*

strongly cautions boards to exercise extreme care and maintain good records when resolving complaints informally to minimize perceptions of impropriety.

Also, the Board has not always recorded recusals demonstrating that Board members have announced conflicts of interest and removed themselves from discussions when necessary. A.R.S. §38-503 requires any public officer who has a conflict of interest in any board decision to disclose the possible conflict. Statute also requires boards to maintain these statements in a conflict-of-interest file. Although the Board's Executive Director indicates that Board members recused themselves when necessary, the Board did not begin requiring its members to disclose conflicts of interest in writing until February 1997.

Former practices created the perception of impropriety—The lack of written records and public access to meetings caused legislators and members of the public to question whether the Board afforded at least one of its members preferential treatment. As part of the 1996 review, the federal Appraisal Subcommittee investigated this concern and reviewed the following case:

- In December 1994, a complaint was filed against a Board member who was also a practicing appraiser. The complaint alleged that the appraiser lacked the necessary expertise to perform a particular appraisal, and consequently did not accurately estimate the property's value. A volunteer appraiser investigated the complaint and determined that there were 12 potential violations of federal appraisal standards. However, the disciplinary committee met with the appraiser in executive session and subsequently recommended that the complaint be dismissed. The Board sent the appraiser a letter stating that the complaint had been dismissed with no significant violations found.

The Subcommittee reviewed the Board's operations and sought to determine whether the Board member was afforded preferential treatment. The Subcommittee found that the Board generally handled complaints fairly and equitably. However, because the Board did not maintain documentation of its decision-making process, the Subcommittee could not determine to its satisfaction whether the Board had acted appropriately in this case. The Subcommittee admonished the Board to use caution and diligence when processing complaints against Board members in the future to avoid even the appearance of preferential treatment.

Auditor General staff also reviewed the complaint file to determine whether members of the public were correct in alleging that the Board member's initials appeared on documents recommending that the complaint be dismissed. Our review found that the Board member did not initial the recommendation to dismiss the complaint.

The Board has corrected problems—To help minimize future problems, the Board has corrected practices that led to public concern. Specifically, the Board's Disciplinary Committee no longer uses executive sessions as a forum for resolving complaints. This practice was discontinued in early 1995 when the Board's Assistant Attorney General representative informed the Board that such a use of executive session violated open meeting laws. Currently, all committee and Board meetings, including those where complaints are discussed, are open to the public. The decisions made in these meetings are also a matter of public record.

2. Did other Board members receive preferential treatment during the disciplinary process?

Members of the public also alleged that other Board members who were the subject of complaints received preferential treatment. Neither this audit nor the review by the federal Appraisal Subcommittee identified any instances of preferential treatment after the Board changed its disciplinary process in 1995. Prior to that time, however, it appears that the Board may have been inconsistent in its use of volunteer investigative reports in a case involving one Board member in 1993.

The Board may have dismissed a complaint against a Board member without adequately investigating the case. A complaint filed in 1993 alleged, among other things, that the Board member artificially inflated the value of an appraisal by including property improvements in his analysis that were not actually located on the subject property. The Board submitted the complaint to a volunteer appraiser for investigation; however, the volunteer did not determine whether the improvements were actually located on the subject property and also did not answer other allegations. Instead the volunteer returned the report stating that although he did not determine the location of the improvements, he determined that the report did not violate federal appraisal standards. There is no evidence in the complaint file that the Board sought additional information before dismissing the complaint. The file does contain a letter from the complainant, dated after the dismissal, requesting that the Board investigate further, but there is no evidence that the Board responded.

In contrast, that same year the Board determined that a volunteer's investigative report of another case did not adequately address complaint allegations, and the Board submitted the complaint to a second volunteer for clarification. Although there is no evidence that the Board acted inappropriately in either case, it appears that the Board may have been inconsistent in its use of volunteer investigation reports.

3. Has the Board acted overzealously or vindictively in carrying out its disciplinary duties?

Members of the public have alleged that the Board is vindictive and targets particular appraisers for disciplinary action. Auditors identified past actions that may have given rise to this concern. Specifically, in 1994, the Board inappropriately ordered a licensee not to use a Board-approved school. The Board reviews and approves appraisal courses that appraisers can attend to fulfill education requirements. However, the Board issued a disciplinary order requiring an appraiser to obtain additional education, but inappropriately restricted him from taking courses at a particular school. At the time of the order, the school was owned and operated by one of the Board's chief critics. Although it does not appear that this was a common practice, the fact that it occurred even one time may contribute to the concern that the Board is vindictive.

In addition, during 1996, one Board member submitted at least six appraisal reports to the Board for investigation. The Board member had acted as a review appraiser for two of these reports and had found them to be substandard. The remaining appraisals had been given to the Board member by another review appraiser for submission to the Board. The Board has closed two of these complaints and the Board member did not participate in resolving them. However, the fact that a Board member is responsible for submitting the reports for review can contribute to the perception that the Board is vindictive. To minimize this perception, Board members should not personally accept complaints, but should direct all individuals interested in filing a complaint to contact the Board office.

4. Are Board members serving in accordance with statutory requirements?

Legislators and members of the profession have expressed concerns that two of the Board's members may not be legally serving on the Board. Although both of these members have been replaced, their serving on the Board was in accordance with statute. One Board member's April 1996 reappointment to a second term was not confirmed by the Senate. However, according to legal counsel at the Governor's Office and the Attorney General's Office, A.R.S. §38-295(B) allows Board members with expired terms to retain their positions until a qualified replacement is appointed. This Board member continued to serve until the Governor's Office appointed a replacement on November 17, 1997.

The Board requested that another member not be reappointed to a second term at the beginning of 1997 because of the Board member's previous poor attendance record. According to A.R.S. §38-291, board appointments are deemed vacant if board members do not perform board duties for three consecutive months. During 1996, this Board member attended only 7 of the Board's 16 meetings. The Board member was,

however, reappointed but not confirmed to a second term in 1997. Since reappointment, this Board member did not miss 3 consecutive months' worth of Board meetings, which enabled the member to lawfully remain on the Board. However, a replacement for this Board member was appointed on January 5, 1998.

5. Do Board members announce conflicts of interest and remove themselves from discussions when necessary?

Although Board minutes note recusals, the Board did not begin requiring its members to sign written conflict-of-interest statements until February 1997. The Board now maintains a file of these statements as required by A.R.S. §38-503.

6. Have Board meetings complied with the Open Meetings Law?

As noted earlier, the Board has corrected practices and has been in compliance with the Open Meetings Law since early 1995.

7. Does the Board have adequate staff to investigate complaints?

The Board should consider hiring appraisers, either as staff or on an as-needed basis, to ensure timely and complete complaint investigations. Currently, the Board relies on volunteer appraisers to investigate complaints when it determines that expert assistance is needed. Although it appears that there may be a sufficient number of volunteer appraisers to investigate complaints, the Board's reliance on volunteers has resulted in delayed complaint investigations. This report further discusses the Board's investigative process and its use of volunteer appraisers to investigate complaints in Finding I (see pages 7 through 10).

8. Has the Board adopted rules detailing the disciplinary process and, if so, are these rules appropriate/adequate?

The Board has rules that provide a basic outline of the disciplinary process. The Board has also proposed additional rules, which are expected to be finalized in April 1998, that should improve the process by allowing the Board to attempt to resolve complaints informally prior to instituting formal disciplinary proceedings.

9. What is the Board's policy for handling complaints filed anonymously?

The Board accepts anonymous complaints. Board members indicate that accepting anonymous complaints is necessary to protect appraisers who review real estate ap-

praisals for a living. These review appraisers check the accuracy of many other appraisers' work and sometimes submit poorly done appraisals to the Board for investigation. While the Board's policy of accepting anonymous complaints may protect reviewers from reprisals, there are concerns that the policy may be abused. Specifically, appraisers, Board members, and staff indicate that some appraisers may use the complaint process to harass or retaliate against other appraisers. In other instances, it is alleged that appraisers have filed complaints against competitors in an effort to gain a larger share of the appraisal market. However, since the complaints are anonymous, such allegations are difficult if not impossible to prove.

Agency Response

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ARIZONA BOARD OF APPRAISAL

1400 West Washington, Suite 360
Phoenix, Arizona 85007
(602) 542-1539 FAX (602) 542-1598

March 13, 1998

Hand-Delivered

Douglas R. Norton
Auditor General
Office of the Auditor General
2910 N. 44th Street, Suite 410
Phoenix, Arizona 85018



RE: Audit of the Arizona State Board of Appraisal

Dear Mr. Norton:

We have received a final draft of your audit of the Arizona State Board of Appraisal ("Board"), dated March 6, 1998 ("report"). The report is identified as a performance audit completed in accordance with the May 27, 1997 resolution of the Joint Legislative Audit Committee. Our understanding is that the Joint Legislative Audit Committee initially approved a special audit, "an audit of limited scope" intended to address specific concerns raised by members of the Legislature.

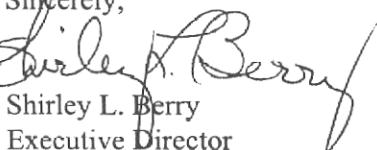
The combination of the performance audit with the Legislative concerns is confusing and misleading. If this is a performance audit, we ask you to revise the report and restrict the discussion to the Board's current practices and procedures and how they may be improved. If you must address legislative concerns we ask that you do so under separate cover. If you wish to address the legislative concerns in this report, we ask you to clearly separate the matters and eliminate all redundant information.

Because we believe the Report should be separate from the Answers to Legislative Committee, our draft response is divided into two parts. Copies of our responses are attached. We reserve the right to supplement and modify our responses in the future, as we deem necessary. We understand our final draft response will become public. Our response includes exhibits which have been incorporated by reference. Any dissemination, by any means, including electronic transmission, of the Audit report and response should include all exhibits.

The Board and its staff express appreciation to the Auditing staff for performing the audit with as little disruption of Board's business, as possible.

If your understanding of the above differs in any way please contact me. If you, the members of the Joint Legislative Audit Committee or Legislature have any questions regarding the enclosures they may contact me at 542-1539.

Sincerely,


Shirley L. Berry
Executive Director

INTRODUCTORY STATEMENTS

The Arizona Board of Appraisal began operations on August 15, 1991. Since its inception, the Board has faced considerable opposition from parties opposed to regulation. Although the vast majority of appraisal organizations and appraisers see the Board as a valuable regulatory agency, a few detractors remain.

One of the groups, self-titled the Independent Oversight Committee (“IOC”) has combined its efforts with a few members of the Phoenix Chapter of the Appraisal Institute to undermine the Board’s operations. As an example, in 1995, members of the groups complained that the Board did not provide sufficient information regarding newly adopted rules and standards. To thwart further criticism and ensure appraisers were aware of the changes, in January, 1996, the Board purchased and mailed copies of newly adopted rules and standards. The Board also hired a speaker to provide a standards course for free to appraisers on a first come first serve basis. The Board prepared a video of the presentation for anyone unable to attend the course.

The Board’s detractors filed a complaint with the Private Enterprise Review Board complaining that the Board unfairly competed with private enterprise. The Board demonstrated the speaker selected was a member of private enterprise and that procurement of his services complied with government procurement regulations. PERB dismissed the complaint. Although the Board prevailed, the litigation took six (6) months to resolve and involved a considerable amount of the Board’s time and resources.

In 1996 and 1997, the Board’s detractors appeared before the Legislature arguing against certain nominees. The Board’s interests do not generally extend to the nomination process because it views the issue as a matter for the Governor and Senate to resolve. However, at these particular sessions several issues were raised regarding the propriety of appointments which reflect upon the unreliability and vindictiveness of the Board’s detractors. In 1997, they alleged the Board’s public member was ineligible because his son is an appraiser. The allegation is patently false. The public member’s only son is a patent/trademark lawyer in Kentucky. They have alleged the Board’s Certified General appraiser was a member of an organization already represented on the Board. The allegation was false. They have asserted that the licensed member should not be appointed because he is “only licensed and too inexperienced.” The allegation ignores the statutory mandate to include a member who is licensed. The licensed residential appraiser is the lowest licensing level, and by its definition will include less experienced appraisers. Accordingly, the detractors’ position that he should not serve is completely ludicrous. The nature of these complaints, reveals the unreliability and vindictiveness of the source.

The detractors’ unreliability and vindictiveness is further demonstrated by the “anonymously” drafted newsletter circulated by the IOC to legislators, appraisers and professional groups. In the newsletter, the group has alleged that the Board fails to properly notice its meetings. The statement is patently false. The detractors have alleged the Board paid its investigator twice his allowable salary and gave him a state vehicle. Again, the statements are false. The detractors also attributed false statements to the Appraisal Subcommittee. The statements were retracted by the IOC, after repeated requests by the Subcommittee. See letters dated March 28, 1997 and June 11, 1997 attached as Exhibit “A” and “B.”

The Auditor investigated these matters. His staff has verbally admitted many of the allegations were untrue and the primary source was unreliable, yet the written report makes no mention of the [same](#).* The Board respectfully asserts the auditing function extends beyond repeating the perceptions of a few detractors as “fact.” First, if an allegation is unfounded, it should be reported as such. Second, if the source of the

allegation proves to be unreliable, it should be disclosed. The Auditor's restatement of the existence of the allegations, without answering the underlying question raised does nothing to resolve legislative concerns. Further, it places the agency in the position of making policy and procedural changes without clearly identifying the need for doing so. The Board acknowledges that the Auditor has identified some legitimate concerns and has implemented many of the Auditor's recommendations. However, the Board notes the Auditor's concerns deal primarily with the Board's practices during its first three years of operation.

If after reviewing the Board's responses, the Auditor, Joint Legislative Audit Committee and Legislators have any questions, they may contact Shirley L. Berry, Executive Director or Melvin Young, Chairperson at 542-1539.

RESPONSE TO FINDING I **The Board Has Taken Steps to Improve its** **Investigative Time Frames and Reduce Its Existing Backlog**

The Board asserts, and the Auditor acknowledges, 78% of the Board's caseload is resolved in (224) days or less. The Board asserts (224) days is reasonable resolution.¹ The Board agrees 21% of its caseload is not resolved as promptly. The cases required the use of independent investigators. To address the delay in these cases the Board has made the following changes:

1. The Board replaced an ineffective staff investigator with a certified paralegal on September 2, 1997. Between September 2, 1997 and February 3, 1998, the paralegal, at the request of the Disciplinary Committee, sent (34) files to volunteer investigators. Twenty (20) of the reports have been completed and returned with an average turnaround time of (38) days. Eleven (11) files have not yet been returned. Of those, (4) files have been with investigators for less than (29) days and are not yet due in the office. Two(2) of the pending files are with a panel of three investigators and are not due for an additional (30) days because of the complexity of the cases. The remaining (3) cases have been returned due to investigators' conflicts of interest and must be reassigned. The Board has significantly improved its investigative time frames by replacement of the investigator.

2. The Board has drafted a Request for Proposal to establish a panel of contract investigators who can serve on an as needed basis. A copy of the draft RFP is attached as Exhibit "C." The RFP requires investigators to meet specific qualification criteria, contractually imposes performance time frames and provides specific directions for completion of investigative reports.

Although the Board concurs with much of the Auditor's analysis and has implemented many of the requested changes, the Board asserts that the Auditor has not fairly evaluated all of the causes for delay. The Auditor does not acknowledge or analyze any of the following factors which significantly expanded the Board's investigative time frames:

¹The Auditor asserts the Board should comply with 175-180 day time frames recommended to other agencies. Although the Board has requested the data upon which the Auditor bases the recommended time frames, we have not received any written information to support the figures. Further, we have contacted the Boards mentioned and learned that they have not been able to fully comply with the recommendations in disputed matters. The Board respectfully asserts the Auditor's recommendations should be reasonably feasible and based on verifiable and accurate data..

1. Delays which occur when investigators were conflicted out of an investigation. For instance, the Board has complaints against two appraisers regarding the same appraisal of property. Land adjoining a residential development was sold by the State, over protest of the homeowners, to industrial developers. The case is so politically charged that the Board has encountered difficulty securing investigative services.

2. Delays resulting from extensions granted for the benefit of Respondents.

3. Delays resulting from the Board's prior policy of deferring administrative action on cases involved in pending civil litigation. (Note: Because deferral of administrative cases has resulted in significant delays and hampered Board investigations, the Board has ceased the practice.)

The Audit report should either evaluate the influence of these factors or disclose their existence, acknowledge their potential impact and qualify the reported data, accordingly. The Board respectfully asserts that the Auditor's failure to discuss these influences on investigative time frames results in unfair slanting of the objective data. Because these factors were not considered, the Board is unable to agree with the Auditor's finding in whole. Nonetheless, we have implemented the recommendations to improve our investigative time frames.

RESPONSE TO FINDING II

The Board's Adjudicative and Investigative Functions are Appropriately Separated

The Board asserts, and the Auditor acknowledges, the current Board procedures are legally permissible. Nonetheless, the Auditor recommends the Board further separate its investigative and adjudicative functions to avoid the "perception" of impropriety. Purportedly quoting from the [Arizona*](#) Agency Handbook, (the "Handbook") the Auditor states: "decision-makers should not actively participate in the investigative process unless they will be recusing themselves from the decision-making process." The Board has located no such statement. The Handbook specifically addresses the interplay of adjudicative and investigative processes at pages 10-36 and 10-37. The Handbook states in pertinent part:

An agency, a board or a commission may make an initial decision that later becomes an issue in an administrative hearing. Making the original decision, without more does not preclude the . . . board, . . . from adjudication of the matter . . . To minimize problems in this area, the agency should consider implementing the following practice:

1. Do not permit the hearing officer or decision-maker to participate **directly** in the investigation of a charge. Normally the investigation can be accomplished by the agency's staff. Once the investigation is completed, the decision-maker may decide . . . whether the results of the investigation warrant a formal hearing.

Id at 10-36, attached as Exhibit "D." Members of the Disciplinary Committee ("Committee") do not participate directly in investigations of cases. The Committee coordinates the assignments of volunteer investigators with staff. All investigations are independently prepared by volunteer investigators or staff. The Committee does not negotiate settlement agreements. If a case results in violations, the Committee may recommend the Board consider a settlement agreement, but all agreements are negotiated by the Board, its staff or counsel. The Committee may recommend the Board consider a formal hearing, but all decisions regarding issuance of a complaint are decided by the full Board. The current use of the Committee is legally appropriate and complies in all respects with the recommendations set forth in the Handbook.

The Auditor recommends the Board further separate its investigative and adjudicative functions consistent with the operation procedures of other boards. The Auditor references the procedures of the Board of Behavioral Health Examiners and the Board of Medical Examiners. The boards have no more separation in their functions than the Board of Appraisal. We are confused by the references. The Auditor asserts the other boards use lead board members, who coordinate investigations, summarize cases and then recuse themselves when the same matters are considered by the full board. We have contacted both boards. Although both boards utilized lead board members to coordinate investigations with staff consultants or investigators, the boards' members do not recuse themselves from voting on matters in which they serve as lead members. The Auditor's characterizations of the BHE and BOMEX procedures seem inconsistent with the actual practices.

Although the Board is confused by the factual inconsistencies in the Auditor's report, we do appreciate the underlying interest of avoiding "appearances of impropriety." Accordingly, as the Auditor knows, we have the Board previously redrafted its disciplinary rules and procedures in December, 1996, to include informal hearing processes. Copies of the proposed rules are attached as Exhibit "E." We anticipate GRRC will review the rules in May, 1998. Under the revised rules the Committee will be eliminated. As the Auditor acknowledges, in May, 1997, before the Auditor General began its audit, the Board considered using OAH to improve the efficiency and effectiveness of its adjudicative processes. In June, 1997, the Board entered into an agreement with OAH. A copy of the agreement is attached as Exhibit "F." To date, the Board has voted to send eleven (11) cases to OAH. We are working with OAH to schedule the hearings as soon as possible. Because the Board already decided to use OAH in June, 1997, it does not disagree with the Auditor General's January, 1998 recommendations to do so. However, the Board disagrees with the Auditor General's finding supporting the recommendation.

Finding II asserts the use of OAH could be more cost-effective than the Board conducting hearings internally. The Board is without sufficient information to agree or disagree with the Auditor's assertion. The Board will use OAH and reserve its determination of whether OAH is cost-effective. The Board respectfully asserts many of the issues addressed in Finding II, were resolved prior to the audit being completed. Although the Board does not agree to the Auditor General's Finding II, it has implemented procedures consistent with the recommendation.

RESPONSE TO FINDING III

The Board Has Adopted a Public Records Maintenance and Distribution Policy

Finding III of the Report concludes that the Board should improve public access to information and recommends the Board establish and implement a written policy detailing information which will be made available to the public by telephone. The Board is without sufficient information to agree or disagree with the data cited to support the finding, and therefore denies the same. However, the Board concurs with the recommendations in major part and has implemented the same. Please find a copy of the Board's public records policy attached as Exhibit "G."

Finding III also concludes the Board must provide public access by ensuring all files contain accurate records. The Auditor contends twenty-two of the Board's 600+ files are deficient. Without sufficient information to identify those files, the Board cannot agree with the facts cited and therefore denies the same. The Board agrees accurate information regarding complaints, Board actions, licensing and certification status and the nature and number of dismissed and pending complaints should be in the files. As the Auditor knows, we completed installation of a computerized tracking system, in July, 1997. On August 18, 1997,

the Board hired temporary staff to input data and review complaint records to ensure adequate documentation of Board action existed in each file. Further, the Board's public records policy includes a section on file maintenance. See Exhibit G.

Due to the lack of specific information, the Board is unable to agree to the Auditor General's Finding III. Nonetheless, because the Auditor's recommendations mirror many of the changes previously implemented, the Board does not disagree with the Auditor's recommendations and will continue to follow the same.

RESPONSE FINDING IV
The Board Previously Implemented
Changes to Reduce its Reserve Fund Balances

In Finding No. IV, the Auditor recommends the Board consider modifying its fee schedule. The Board previously voted on December 8, 1997 to reduce its fees for a two-year period beginning July 1, 1998 and amend its rules, accordingly. The fees will be reduced from \$400.00 to \$300.00 for initial applicants and from \$425.00 to \$225.00 for renewal applicants. A copy of the Board's December 8, 1997 minutes and revised rule are attached as Exhibits "H" and "I" for your review. The Board will continue to periodically review the reserve fund and make additional reductions in fees, as necessary. Because the Board previously modified its fee schedule, it has no objection to the Auditor's recommendation.

Draft Answers to Legislative Concerns

In his answers to legislative concerns, the Auditor identified few issues. Those issues deal primarily with Board practices between 1991 and 1994, during the Board's first three years of operation. Although the Auditor also investigated concerns related to the Board's current practices, the Auditor found nothing of concern other than a technical deficiency which was previously corrected. See Board's Response to Legislative Concern No. 5.

1. The Board resolves complaints appropriately.

In investigating this issue, the Auditor expressed concern about prior Board procedures which violated open meeting laws. The Answers do not fully address the underlying causes or the steps the Board has taken on its own initiative to resolve the issue. The deficiencies in Appraisal Board procedures began with the enabling legislation. When created in 1990, the Board's enabling act failed to include informal investigation or resolution processes. Although the Legislature provided informal resolution processes for several other regulatory agencies,² they failed to enact similar provision for this Board.

The Board began receiving disciplinary complaints against licensed appraisers in January, 1992. Until 1993, they resolved pending matters through the formal hearing process or settlement. The practice resulted in complaints of undue harshness by regulated parties. In response to the complaints, during the time period between 1993 and March, 1995, the Board adopted a less formal disciplinary process which included investigative meetings with appraisers to discuss and resolve disciplinary problems. Because the Committee mistakenly believed all aspects of an investigation were confidential, they met in an executive session. The Committee did not realize the process violated open meeting laws. After receiving advice from counsel, the Board immediately eliminated the practice in March, 1995. Additionally, in December, 1996, the Board revised its disciplinary rules to include informal hearing processes. See Exhibit E. The proposed rules adequately resolve the issues raised in the audit report dated January, 1998. In summary, the Board has made every attempt to successfully overcome the legislative deficiencies and Auditor's response to the legislative concern No. 1 unfairly excludes a discussion of the true causes of this problem and the Board's attempts to resolve the issue.

The Auditor implies the Board used the above-referenced practice to provide preferential treatment for Board members who had complaints filed against them. The implication is completely and totally without support. The Auditor's assessment was purportedly based on the Subcommittee's audit. In completing its audit, the Subcommittee made no findings, but merely indicated a concern. The Subcommittee audited the Board as a part of its regular audit schedule of all state agencies.³ The Subcommittee's auditing team consisted of two staff members, neither of whom were appraisers. The Subcommittee's entire on-site audit

²Physical Therapy, A.R.S. § 32-2042(C); Board of Barbers, A.R.S. § 32-354(C); Cosmetology Board, A.R.S. § 32-573(C); Podiatry Board, A.R.S. § 32-852.01(C); Dental Board, A.R.S. § 32-1263.02(C); Funeral Board, A.R.S. § 32-1364(A); BOMEX, A.R.S. § 32-1451(G); Naturopathic Board, A.R.S. § 32-1551(B); Dispensing Opticians, A.R.S. § 32-1691.01(C); Optometry Board, A.R.S. § 32-1744(B); Osteopathic Physicians & Surgeons, A.R.S. § 32-1855(E); Psychologists Board, A.R.S. § 32-2081(F); PA's, A.R.S. § 32-2551(E); Homeopathic Physicians, A.R.S. § 32-2934(F); Occupational Therapy, A.R.S. § 32-3442(C); Respiratory Care, A.R.S. § 32-3553(G).

³The Appraisal Subcommittee was created to oversee the operations of state appraisal regulatory agencies. As part of their duties, the Subcommittee audits each state agency approximately every three years. The Subcommittee audited the Board in November, 1993 and again in November, 1996. The audit of the Board was not prompted by special concerns as implied by Answer 1.

consisted of 1 ½ days reviewing the Board's application and disciplinary files and ½ day attending a Board meeting. Again, the Subcommittee made no findings. It would be difficult to make any conclusions after such a limited review. Although the Board invited the Subcommittee to return to the agency to address any unresolved concerns, the Subcommittee chose instead to close the audit without making findings in August, 1997.

In his response, the Auditor completely ignores his staff's independent investigation and review of the Board's hearing transcripts, interviews with prior Board members and other supporting information. The response is also inconsistent with his staff's verbal conclusions disagreeing with the Subcommittee's concerns. Relying on the Subcommittee's audit and ignoring the independent investigation by the Auditor General's staff is inconsistent with government accounting standards.

2. The Board does not give preferential treatment to Board members in disciplinary cases.

The Auditor acknowledges "neither [his] audit nor the review by the federal Appraisal Subcommittee identified any instances of preferential treatment after the Board changed its disciplinary process in 1995. The Auditor identified no other evidence of preferential treatment of board members other than a purported inconsistent use of investigative reports. The Board respectfully asserts the use of the investigative reports was consistent. In the first report mentioned by the Auditor, the volunteer investigator analyzed the pertinent issues and answered the Board's concerns. See Case Summary attached as Exhibit "J." The second report discussed by the Auditor had no analysis of the facts or issues and did not answer the Board's concerns, accordingly it was referred to a panel for further investigation. The Board's treatment of the issues was consistent or improper. The Auditor acknowledges "there is no evidence the Board acted inappropriately in either instance . . ." We concur.

3. The Board is not overzealous or vindictive in disciplinary matters.

The Auditor asserts there is a perception the Board is vindictive or overzealous because the Board entered an order in 1994 precluding a Respondent from using a Board-approved school for remedial education. The Board's "order" in that case was rescinded by an order granting a rehearing. The matter to be reheard was ultimately resolved by a consent agreement. See Consent Agreement dated February 15, 1995. Attached as Exhibit "K." In the consent agreement, the parties stipulated to exclusion of the same school because its owner, who is also its instructor, was involved in the litigation. The Board has not been compelled to include such a provision in any other agreement nor has the Board entered an order directing the same. The stipulated term was dictated by the particular facts of the case, not vindictiveness or overzealousness by the Board.

The Auditor asserts Board members create a perception of vindictiveness when they deliver complaints received from others. Although it is not improper or illegal for Board members to receive complaints as agents of the Board, Board members have repeatedly been advised not to personally accept the complaints and we will continue to give that direction. The Board fully concurs that all individuals interested in filing a complaint should contact the Board staff directly. The Board supports the policy to avoid inadvertent ex parte communications or other issues which would result in a Board member having to recuse himself from the matter.

4. Board members are serving in accordance with statutory requirements.

The Board agrees with the Auditor's assessment that Board members are serving in accordance with statutes. Although the issue of whether Board members were properly appointed is an appropriate topic for

an audit of the Governor's Office of Appointments, it is not necessarily relevant to an audit of this Board. The only relevance, if any, is to give the Legislature a clear picture of the Board's detractors. Please see our Introductory Statements, pp. 1-2, for a full discussion of this issue. If the issue of appointments is going to be addressed, the discussion should be limited to a statement that the complaints were unfounded and that the lack of support reflects upon the complainants' unreliability.

5. Board members announce conflicts of interest and recuse themselves.

Board members have recused themselves appropriately. The written records of recusals have been maintained in minutes, whenever minutes were required. Although Board has fastidiously maintained its records of recusals in its minutes, the minutes were not kept in a separate conflict-of-interest file as required by statute. The failure to maintain a separate file is a technical violation, only. To overcome the problem, in February, 1997 before the audit was instituted, the Board adopted a policy requiring Board members to sign separate written conflict of interest statements and the statements are maintained in a separate file.

6. Board Meetings comply with Open Meeting Laws

We concur with the Auditor's response to this Legislative Concern.

7. The Board investigative staffing is adequately met.

As we have discussed in detail in our Response to Finding I, the Board has drafted a RFP to establish a panel of contract investigators and replaced an unproductive staff investigator. The Board expects these changes will resolve staffing deficiencies, if any.

8. The Board has worked diligently to promulgate appropriate disciplinary rules.

To deal with deficient legislation, the Board adopted rules to establish informal hearing processes. These processes have been reviewed and approved by the Auditors. GRRC staff conducted a courtesy review of the Board's proposed rules and all requested changes have been incorporated in the final version submitted to the Secretary of the State with the notice of proposed rule-making. The public hearing is scheduled for March 16, 1998 and GRRC's review is expected sometime in May, 1998.

9. The Board, in compliance with its statutory mandate, processes all complaints equally regardless of whether or not they are signed.

Answer 9 addresses the Board's processing of anonymous complaints. The Board must accept and process anonymous complaints. The Board has no statutory basis for excluding an unsigned complaint from consideration. In 1997, the Board received several anonymous complaints which were of such a serious nature, they resulted in discipline of the appraisers' licenses and certificates. The Auditor asserts parties may abuse policy. We know of no evidence of abuse of the process. The Auditor acknowledges "since the complaints are anonymous, such allegations are difficult if not impossible to prove."

List of Exhibits

The Board also submitted several exhibits in addition to their response. Due to the length of the exhibits, they are not included in this report. They are available through the Board's office. The following exhibits were submitted:

1. Exhibit A: Letter from Appraisal Subcommittee dated March 28, 1997.
2. Exhibit B: Letter from Appraisal Subcommittee dated June 11, 1997.
3. Exhibit C: State of Arizona Notice of Request for Proposal A8-0072.
4. Exhibit D: Excerpt from the Attorney General's *Arizona Agency Handbook*.
5. Exhibit E: Proposed Rules Changes regarding Investigations.
6. Exhibit F: Letter from Office of Administrative Hearings dated June 18, 1997.
7. Exhibit G: Proposed Policies and Procedures regarding Release of Public Records.
8. Exhibit H: Minutes from Telephonic Board Meeting, December 8, 1997.
8. Exhibit I: Proposed Rules Changes regarding Fees.
9. Exhibit J: Case Summary-0171.
10. Exhibit K: Findings of Fact, Conclusions of Law and Order by Consent In re: Patrick Walker, Certified General Appraiser No. 30053.