

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

Editor's Note: The following Notice of Emergency Rulemaking was exempt from Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1323.)

[R12-91]

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R4-46-401 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific)**
Authorizing statute: A.R.S. § 32-3605(A)
Implementing statutes: A.R.S. §§ 32-3605(B)(1) and 32-3635(A)
- 3. The effective date of the rule:**
- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5)**
May 18, 2012
The Board is requesting an immediate effective date to avoid violation of federal law (Title XI of the Financial Institution Reform, Recovery, and Enforcement Act of 1989, and rules promulgated under that Act), which requires that each state's appraiser licensing and certification regulatory program recognize and enforce the *Uniform Standards of Professional Appraisal Practice* (USPAP) prescribed by Title XI. Because the 2012-2013 edition of the *Uniform Standards of Professional Appraisal Practice* (USPAP) is effective on January 1, 2012, the rule must be effective immediately upon filing with the Secretary of State to ensure the Board remains in compliance.
- b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
Not applicable
- 4. Citations to all related emergency rulemaking notices published in the Register as specified in R1-1-409(A) that pertain to the record of this emergency rulemaking:**
None
- 5. The agency's contact person who can answer questions about the rulemaking:**
- | | |
|------------|--|
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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The change in the rule is to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires state licensing boards to recognize and enforce the *Uniform Standards of Professional Appraisal Practice* (USPAP); and A.R.S. § 32-3605(B)(1), which requires the Board to adopt standards for professional appraisal practice that are at least equal to USPAP. The amended rule incorporates by reference the 2012-2013 edition of USPAP.

The goal of the *Uniform Standards of Professional Appraisal Practice* is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. All potential changes and additions to USPAP are evaluated in light of this goal. The adopted changes are intended to improve the clarity, understanding and enforcement of USPAP, thereby furthering the goal of promoting and maintaining public trust in appraisal practice.

In reviewing comment letters received on the exposure drafts, the ASB's primary focus is the reasoning and insight presented in the letters, rather than the source or authorship. The ASB is guided by the quality, relevancy, and accuracy of the points made, and not their frequency.

On April 8, 2011, the Appraisal Standards Board (ASB) approved and adopted modifications to the *Uniform Standards of Professional Appraisal Practice* (USPAP). The changes to USPAP that were adopted by the ASB were the result of five exposure drafts, which were issued on January 5, 2010, May 27, 2010, September 29, 2010, December 10, 2010, and February 11, 2011. The following changes were adopted by the ASB on April 8, 2011, and will be incorporated in the 2012-13 edition of USPAP and associated guidance material with an effective date of January 1, 2012:

- Revisions to DEFINITIONS of "Client," "Extraordinary Assumption," "Hypothetical Condition," and a new definition, "Exposure Time"
- Revisions Relating to Development and Disclosure of Exposure Time Opinion
- Revisions to Standards Rules 2-3, 3-6, 5-3, 6-9, 8-3 and 10-3
- Creation of a new RECORD KEEPING RULE and Related Edits to the Conduct Section of the ETHICS RULE
- Revisions to Advisory Opinion 21, *USPAP Compliance*
- Revisions to STANDARDS 7 and 8: PERSONAL PROPERTY APPRAISAL, DEVELOPMENT and REPORTING

In a separate action, on May 10, 2011 the Board adopted an additional revision related to Advisory opinion 13 (AO-13), *Performing Evaluations of Real Property Collateral to Conform with USPAP**

The key features of the 2012-2013 edition are:

(1) The definition of Client was changed to: CLIENT: the party or parties who engage, by employment or contract, an appraiser in a specific assignment. Comment: The client may be an individual, group, or entity, and may engage and communicate with the appraiser directly or through an agent. The definition was revised to further clarify the proper application of the term client and to facilitate in the proper identification of the client in assignments. NOTE: Corresponding edits regarding the definition of Client will be made to STATEMENT ON APPRAISAL STANDARDS NO. 9 (SMT-9).

(2) A new definition of Exposure Time was developed from STATEMENT ON APPRAISAL STANDARDS NO. 6 (SMT-6): EXPOSURE TIME: estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal. Comment: Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market. The new definition is substantially the same as the definition currently in SMT-6, but it has been somewhat reformatted to be consistent with the rest of the DEFINITIONS. With the adoption of this definition, minor edits to SMT-6 will be made. The extent of those edits will be replacing the current paragraph that includes the definition with a copy of the new definition and a reference to its location in the DEFINITIONS. Moving this definition to the DEFINITIONS will enhance the usability of USPAP.

(3) The definition of Extraordinary Assumption was changed to: EXTRAORDINARY ASSUMPTION: an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions. Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. The current definition of extraordinary assumption is often misunderstood by appraisers, clients and other intended users. This misunderstanding can result in misapplication by appraisers, increasing the probability of misleading assignment results. The ASB believes that adding the concept of the effective date of the assignment results to the definition will reduce misunderstanding and misapplication of this term.

(4) The definition of Hypothetical Condition was changed to: HYPOTHETICAL CONDITION: a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of

the assignment results, but is used for the purpose of analysis. Comment: Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. The current definition of hypothetical condition is often misunderstood by appraisers, clients and other intended users. This misunderstanding can result in misapplication by appraisers, increasing the probability of misleading assignment results. The ASB believes that adding the concept of the effective date of the assignment results to the definition will reduce misunderstanding and misapplication of this term.

(5) The Board adopted the revisions proposed in the Fifth Exposure Draft related to the Comment to Standards Rules 1-2(c)(iv), 2-2(a)(v), 2-2(b)(v), 2-2(c)(v), 8-2(a)(v), 8-2(b)(v), and 8-2(c)(v). In addition, the Board updated STATEMENT ON APPRAISAL STANDARDS NO. 6 (SMT-6) to reflect that *exposure time* is now included in the DEFINITIONS section of USPAP.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business and consumer impact:

The rule is being amended to adopt the latest standards of practice in the profession, as required by federal and state law. The primary groups that will be affected are the Board, licensed or certified appraisers, trainees and the public. The Board adopts the latest standards for professional appraisal practice as they are adopted by the ASB and there should be no appreciable changes in the economic impact. However, USPAP prior to the 2006 edition was revised annually, the 2006 edition was effective for 18 months, and the 2012-2013 edition is effective for two years, which results in USPAP having to be purchased less often. The cost for the new edition, which now includes Frequently Asked Questions, is \$55. Not all appraisers will find it necessary to own a copy. Some offices share copies. The cost is a deductible business expense.

10. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

11. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

The *Uniform Standards of Professional Appraisal Practice* (USPAP), 2012-2013 Edition, published by The Appraisal Foundation, 1155 15th St., NW, Suite 1111, Washington, DC 20005, telephone (202) 347-7722, fax (202) 347-7727, or web site www.appraisalfoundation.org and effective nationally January 1, 2012. The location in the rules is R4-46-401.

12. An agency explanation about the situation justifying the rulemaking as an emergency rule:

To avoid violation of federal law, (Title XI of the Financial Institution Reform, Recovery, and Enforcement Act of 1989, and rules promulgated under that Act), which requires that each state's appraiser licensing and certification regulatory program recognize and enforce the *Uniform Standards of Professional Appraisal Practice* (USPAP) prescribed by Title XI, and A.R.S. § 32-3605(B)(1), which requires the Board to adopt standards for professional appraisal practice that are at least equal to USPAP. Because the 2012-2013 edition of the *Uniform Standards of Professional Appraisal Practice* (USPAP) is effective on January 1, 2012, the rule must be effective immediately upon filing with the Secretary of State to ensure the Board remains in compliance.

13. The date the Attorney General approved the rule:

May 18, 2012

14. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 4. STANDARDS OF PRACTICE

Section
R4-46-401. Standards of Appraisal Practice

ARTICLE 4. STANDARDS OF PRACTICE

R4-46-401. Standards of Appraisal Practice

Every appraiser, in performing the acts and services of an appraiser, shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP), ~~2010-2011~~ 2012-2013 edition, published by The Appraisal Foundation, which is incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments. A copy of the USPAP ~~2010-2011~~ 2012-2013 edition may be obtained from The Appraisal Foundation, 1155 15th St., NW, Suite 1111, Washington, DC 20005; (202) 347-7722; fax (202) 347-7727; or web site www.appraisalfoundation.org.