

**COMMITTEE ON WAYS AND MEANS
COMMITTEE REPORT ON**

BILL NO. 240

AN ACT RELATING TO REAL ESTATE; ESTABLISHING PROCEDURES FOR DETERMINING MARKET VALUE; ENACTING REAL ESTATE APPRAISER REGISTRATION AND CERTIFICATION ACT; PROVIDING FOR ADMINISTRATION OF THE ACT; DEFINING UNLAWFUL ACTS; CREATING A BOARD; PROVIDING REGISTRATION AND CERTIFICATION STANDARDS AND PROCEDURES FOR RENEWAL, REISSUANCE AND REINSTATEMENT OF REGISTRATION AND CERTIFICATION TO MEET THE MINIMUM REQUIREMENTS OF THE FINANCIAL INSTITUTIONS REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989; ENUMERATING GROUNDS AND PROCEDURES FOR DISCIPLINARY ACTION.

The Committee on Ways and Means conducted a public hearing on Thursday, April 25, 1991 beginning at 8:30 a.m. in the Legislative Public Hearing Room to gather testimony on Bill No. 240. Senator Carl T.C. Gutierrez, Chairman of the Committee conducted the hearing, being joined by Senators Anthony C. Blaz, Michael J. Reidy, Doris F. Brooks, Elizabeth P. Arriola, Martha C. Ruth, and David L.G. Shimizu.

BACKGROUND AND PURPOSE

This bill establishes real estate appraiser licensing and certification requirements and is required under federal law to be enacted by July 1, 1991 or not later than December 31, 1991 if an extension is granted to Guam. The Financial Institution Reform, Recovery, Enforcement Act (FIRREA), a federal law which became effective August 9, 1989, requires states and territories to enact legislation which would establish guidelines and regulations for the practice of real estate appraisals. These guidelines and regulations must be in accordance with requirements of Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("Appraisal Subcommittee" of the FFIEC).

TESTIMONY

Written testimony was submitted at the public hearing by the Guam Bankers Association, by Director Joaquin J. Blaz of the Department of Revenue and Taxation, by Mr. Elmore Cotton of the Guam Board of Realtors, Mr. Rodney I. Kimura, Vice President and Manager of the Guam Retail Banking Center of the Bank of Hawaii, Mr. Thomas D. Schoen, Vice President and Manager of Bancorp Finance of Hawaii-Guam, and Mr. Joaquin C. Concepcion of J.C. Concepcion and Associates. All written testimony submitted was generally favorable, with some modifications requested.

The Guam Bankers Association submitted a statement analyzing the bill, giving background and indicating what guidelines are required from the appraisal subcommittee and commenting on the contents of the bill as they are related to these guidelines. The bill is in conformance with the guidelines, as far as can be initially determined.

Director Joaquin G. Blaz of the Department of Revenue and Taxation indicates that he is a real estate commissioner on Guam and indicates that the Act under which this bill is mandated (FIRREA) was brought about in large measure by the failure of the thrift industry in the United States. He feels that the administration of the act resulting from a law enacting Bill No. 240 should be placed under the real estate commissioner.

Mr. Cotton of the Guam Board of Realtors indicated his support for the bill as he felt it would provide a professional standard of appraisal work.

Mr. Kimura of the Bank of Hawaii expressed general support for the bill.

Mr. Schoen of Bancorp Finance of Hawaii-Guam expressed that by establishing standards that all who are operating in the field would benefit from having quality work done. He also pointed out that in the U.S. Mainland various banks, savings and loans, and mortgage institution using "unqualified appraisers" has caused grievous harm to the economy.

Mr. Concepcion of J.C. Concepcion and Associates indicated that there are problems meeting with the requirements of the bill in the sense

that there is not easily available educational resources on island for the local appraiser to receive the required certification. He felt that many years of experience in the field on Guam should qualify as the basis of certification for appraiser under the bill.

At the public hearing, Senator A.C. Blaz, main sponsor of the bill, spoke in favor of the bill and indicated that a change would need to be added in order to provide for a transitional licensing of persons working in the appraisal field until such time as they may be able to obtain the required education to obtain a certification under the bill. Mr. Elmore Cotton indicated his written testimony and presented orally.

Mr. Francis Taitano of the Department of Public Works testified and expressed his concern that employees of various agencies of the government of Guam, particularly the Department of Land Management and the Department of Public Works, may be interpreted to be acting as appraisers under the bill because they evaluate appraisals submitted by other appraisers in the course of their government work. Generally, he was in favor of the bill, but felt that some adjustment needed to be made for government employees doing this kind of work.

Mr. John Collins, Regulatory Examiner submitted oral testimony. He felt that government employees doing work for the government such as Mr. Taitano had presented, would not be required to have certification under the bill. The bill was designed for appraisals having to do with banks, savings and loans, and these types of institutions.

Mr. John Camacho presented the testimony of Director Joaquin G. Blaz orally at the public hearing.

Chairman Gutierrez inquired of Mr. Camacho whether a two year grace period was adequate for individuals in the appraisal business on Guam to obtain their certification under this bill. Mr. Camacho replied that he felt that two years was an adequate time.

Ms. Dale Hodgson testified orally as a small real estate appraiser. She indicated that the educational requirements could be easily met as teachers from Hawaii would be willing to come out and offer classes to local appraisers. Chairman Gutierrez inquired concerning the time period it would be necessary to obtain the educational requirements and Ms. Hodgsons indicated that a two week course would satisfy the

requirements and that the bill should be implemented as soon as possible. Chairman Gutierrez inquired concerning how appraisal fees are set.

Mr. Ed Cochran from Cochran Realty offered oral testimony. He explained the general nature of appraisal fees as being a set amount based on the amount of time required and not on the value of the land involved. Mr. Cochran supports the bill with a provision for transitional license. He felt that two years would be an adequate time.

Senator Brooks inquired concerning the manner of approval of the courses offered. General discussions took place concerning this certification of courses.

Chairman Gutierrez inquired what would happen if this law was not enacted. Ms. Hodgsons indicated that the local banks would have to send appraisal work to off island appraisers.

Mr. Mark LaMantia offered oral testimony. He represents WESTCO/PAC International and American Society of Appraisers. He felt the bill was in line with the guidelines and that a two year time period was needed to have local appraisers meet the educational requirements.

Mr. Cliff Sterns offered oral testimony in favor of the bill.

Mr. Joaquin Concepcion offered oral testimony in favor of the bill.

Mr. Jim LaMantia offered oral testimony in favor of the bill. He represents WESTCO/PAC International. He also felt a transitional period was needed.

Mr. Roque Mendiola, representing himself, testified in favor of the bill.

RECOMMENDATION

The Committee on Ways and Means, after examination of the issues contained in this bill, recommended that a transition period be added to the bill providing for a two year period during which persons who are presently appraisers on Guam can continue their profession until they

receive the required educational courses necessary for certification under this new bill. The Committee on Ways and Means recommends Bill No. 240 be reported out to the full Legislature with the recommendation to do Pass, as Substituted by the Author.

STATEMENT OF GUAM BANKER'S ASSOCIATION

Re: Bill Number 240 (COR)

The Guam Banker's Association (the "GBA") makes the following comments with regard to Bill Number 240 (COR).

1. Background.

The Guam Legislature is considering legislation that would establish real estate appraiser licensing and certification requirements. FIRREA requires that all appraisals in federally related real estate transactions* be performed by individuals certified or licensed under State requirements that are approved by the Appraisal Subcommittee of the Federal Financial Institutions' Examination Council (the "Appraisal Subcommittee" of the "FFIEC"). For purposes of this requirement, Guam is within the definition of a "State."

The FIRREA requirements take effect on July 1, 1991. The FFIEC has the authority to extend that date until December 31, 1991 for any State or territory that has made "substantial progress" in establishing a certification and licensing system which meets the requirements of FIRREA. The FFIEC is expected to act any day now on recommendations from the Appraisal Subcommittee as to whether the effective date should be extended for Guam and the other fifty six jurisdictions subject to these requirements.

The FFIEC, not the Subcommittee, determines whether any such extensions should be granted and those determinations have not yet been made. Moreover, the determinations must be made on a State-by-State (or territory-by-territory) basis, not across the board for all jurisdictions. The Subcommittee has made its recommendations to the FFIEC for each of the fifty seven jurisdictions, however, we were unable to ascertain what those recommendations may be.

If the FFIEC does extend the effective date for Guam until December 31, 1991, it does not appear to have the authority to further extend that date. Under FIRREA, however,

*FIRREA defines a "federally related real estate transaction to mean "any real estate-related transaction which (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and (B) requires the services of an appraiser." Section 1121(4).

the FFIEC could waive certification or licensing requirements if there is a scarcity of qualified appraisers in a State leading to "inordinate delays in the performance" of real estate appraisals.

The Appraisal Subcommittee is actively giving advice to all States and territories that submit legislation or other aspects of their appraisal licensing and certification programs. The Subcommittee has not yet approved any State or territorial appraisal legislation or programs and does not intend to do so in the near future. Apparently, the Appraisal Subcommittee has determined that it has neither the authority nor the inclination to issue such a formal approval. Instead, the Subcommittee intends to consider all State and territorial certification and licensing appraisal systems to be valid, unless and until the Subcommittee makes a determination that such a system is invalid, in which case the Subcommittee also intends to indicate in what manner the system would need to be changed.**

Notwithstanding this "negative option" feature of the Appraisal Subcommittee's approach to reviewing State real estate appraisal systems, it is extremely important that Guam move quickly to enact a real estate appraiser certification and licensing system that will not be disapproved by the Appraisal Subcommittee. After the law's effective date, civil penalties may apply to a financial institution that uses an appraiser who is not a State certified or licensed appraiser in a federally related real estate transaction. Moreover, Freddie Mac and Fannie Mae will not be allowed to purchase federally related mortgages unless they include appraisal by an appraiser who has been certified or licensed by approved State requirements. There is an exception for mortgage loans under \$50,000, unless the financial institution is a state-chartered member of the Federal Reserve Board, in which case the exception applies to all mortgage loans under \$100,000. Mortgage loans that come within the applicable exception do not require a certified or licensed appraiser.

**The Subcommittee's interpretation is consistent with Section 1118(c) of FIRREA, which directs the Subcommittee to monitor State appraiser certifying and licensing systems for the purpose of determining whether they are consistent with the Act. That Section also provides for the procedures to be followed when the Appraisal Subcommittee disapproves a State's system and rejects the State's appraiser certifications or licenses. Those procedures include written notice from the Appraisal Subcommittee and the State's opportunity to be heard or correct the conditions.

Even if Guam is given an extra six months to come into compliance, it will take a substantial amount of time to establish a system of certified and licensed appraisers. Once the legislation is enacted, in order to meet the Appraisal Subcommittee requirements discussed below, the appraiser certification and licensing system will need time to come into effect. For example, the system will have to provide for an independent real estate appraisal board whose members will have to be appointed and confirmed, the board will need time to examine and decide whether to certify or license the appraisers, etc.

If a financial institution needs an appraiser in a jurisdiction that does not have a system in place to certify or license real estate appraisers by the law's effective date, it may bring in an appraiser from another jurisdiction that either has such a system or has been granted an extension because the Appraisal Subcommittee has determined that it has made "substantial progress" in establishing such a system.

2. Bill No. 240-COR (the "Bill").

The Bill introduced in the Guam Legislature on April 3, 1991, reflects consideration of the Appraisal Subcommittee Guidelines. If this is indeed the same bill that has been sent to the Appraisal Subcommittee, there should be some direct input coming back from the Appraisal Subcommittee. The following comments address how the Bill appears to stack up against the major areas discussed in the Appraisal Subcommittee's Guidelines.

(a) Location of the Appraisal Agency or Board

The Guidelines state that it is preferable for the certification and licensing function to be established as a totally independent regulatory agency answerable only to the governor or a cabinet level officer who has no regulatory responsibility for realty related matters. The reason for this preference is to provide "maximum insulation for the agency from influences of an industry or organization whose members have a direct or indirect financial interest in the outcome of the agency's decisions." If fiscal or other constraints would preclude this degree of independence, the appraisal and licensing function "should be located within a State regulatory body which is structured to adequately eliminate the influences of an affected industry over the appraisal function."

The Bill provides for a Real Estate Appraisal Board consisting of five members who will be appointed by the governor. The Board is apparently an independent body, answerable only to the governor and should, therefore, meet the

Subcommittee's Guidelines for location that would provide for maximum independence from industry influence.

(b) Appointment of the Agency Head and Members

The Appraisal Subcommittee Guidelines provide that the appointment of the members of the appraisal board should be made by an individual or committee not associated or affiliated with an affected industry. An example of "proper appointment" would be appointment by the governor subject to confirmation by the legislature.

The Bill provides that the Board shall consist of at least five members who shall be appointed by the Governor. The bill does not specifically provide for confirmation by the legislature. If such confirmation is not required, the members' appointment may be more political than it might otherwise have been. The Appraisal Subcommittee may comment on that difference and may recommend a requirement of confirmation. However, assuming that the Guam legislature would not insist on such confirmation, its omission would not appear to be a fatal flaw. The Subcommittee Guidelines indicate concern that the members be independent from an affected industry; that concern does not include how political their selection process might be.

(c) Independence from Affected Industries

When the Appraisal Subcommittee Guidelines were first published, they stated that the members should "represent the broad public interest" and that a majority of the members should not come from or be dominated by any one industry or profession. However, the Subcommittee soon recognized that "a significant representation on the appraisal boards by members of the appraisal industry can help to ensure that the Boards have adequate expertise and knowledge to carry out their critical function." The Subcommittee, therefore, determined that "an appraisal board that is comprised of a majority of individuals from the appraisal industry would not likely result in disapproval or rejection of a State's appraisal regulatory system based solely on that fact. Rather, the Subcommittee has indicated that it intends to evaluate a State's system for certifying and licensing appraisers in its entirety, including the adequacy of safeguards to prevent conflicts of interest, before considering any adverse action against a particular State's appraisal regulatory system." Thus, the Subcommittee will allow a majority of members of the Board to come from the appraisal industry, as long as other aspects of the system will avoid conflicts of interest and similar problems.

The Bill provides that at least three of the five members of the Real Estate Appraisal Board shall be qualified

real estate appraisers who have engaged in the general practice of real estate appraising for not less than five years. The bill also provides that after the initial appointments, all appraisers on the Board should be certified.

The fact that a majority of the Board members will be real estate appraisers should not automatically disqualify the Guam system according to the Appraisal Subcommittee Guidelines. The Guidelines do not explain what the Subcommittee would consider to be adequate "safeguards to prevent conflicts of interest," and it is difficult to assess what those might be. The Bill provides for compensation of the Board members and their removal by the Governor for cause after notice and a hearing. These provisions would not appear to place the members in a position to be indebted to or dependent on an affected industry for their initial appointment, their compensation or removal for cause. In this way, the Bill appears to avoid provisions that could create conflicts of interest, but it does not affirmatively provide for "safeguards to prevent conflicts of interest." Perhaps the Appraisal Subcommittee will specifically address that issue in its comments on the Bill.

The Bill apparently intends that a majority of the members be experienced, and in time, certified appraisers. However, the language of the Bill may result in that not always being the case. That is because the Bill provides that the Board shall consist of "at least" five members, "at least" three of whom shall be qualified real estate appraisers. Under that language, the Governor could appoint more than five members; in fact there is no limit on the number of members that could serve. In addition to the possibility that a majority of members of a more than five person Board might not be appraisers, there is at least a theoretical risk that a majority could come from a realty related or other affected industry and therefore result in a loss of independence. Both eventualities can be avoided by simply removing the words "at least" before "five members."

(d) Independence of Decision Making

The Appraisal Subcommittee Guidelines provide for independence of the licensing and certification process in two ways. First, the State officials making licensing and certification decisions should not be the same officials whose responsibilities include realty related activities. Second, the Board's decisions as to whether to license or certify, to discipline or to de-license or de-certify appraisers should be final administrative action subject only to appropriate judicial review.

The Bill appears to satisfy the first criterion for independence of decision-making in that the majority of the Board would apparently be appraisers (appraisers' responsibilities are not apparently deemed to include "realty related activities;" those activities apparently include real estate sales/brokerage, promotion, development, or financing).

With respect to the second criterion for independence, that the Board's decisions be subject only to appropriate judicial review, the Bill is silent. Under Guam administrative law, it may be that the decisions of the Board, as an agency appointed by the Governor, would be considered final agency action, subject to the same kind of judicial review of other similar administrative bodies. If the finality of the Board's decisions and the criteria for review are not evident from the nature of the Board, the Bill should provide for both.

(e) Qualification Criteria

The Appraisal Subcommittee Guidelines address the qualification criteria for certified and licensed appraisers. The Guidelines provide that the acceptable criteria will be those based on criteria established by the Appraiser Qualifications Board ("AQB") of the Appraisal Foundation.

The Appraisal Subcommittee Guidelines distinguishes between "certified" and "licensed" appraisers. The distinctions between these classifications reflect FIRREA's requirements. FIRREA also requires that only a "State certified appraiser" be used in certain transactions. Those transactions are all federally related real estate transactions having a value of \$1,000,000 or more. The Act permits State licenced appraisers to be used for 1 to 4 unit single family residential appraisals "unless the size and complexity requires a State certified appraiser." Section 1113 of FIRREA.

Although the Bill reflects some attention to the AQB criteria, it fails to make the appropriate distinctions in the appraiser classifications and uses confusing terminology. Section 7 of the Bill establishes "two classes of certification for certified real estate appraisers: (1) certified residential appraiser; and (2) certified general appraisers." These terms create ambiguity in several ways. First, they do use the terms "certified" and "licensed" appraisers, as found in FIRREA and as recommended in the Appraisal Subcommittee Guidelines. Moreover, the use of the Bill's terminology will be especially confusing because the AQB has just adopted (on March 27, 1991) new Appraiser Qualification Criteria which create two new classifications of "certified" real estate appraisers. In the past, there had only been one such category. Under the new classifications, there are

criteria for "Certified Residential Real Property Appraisers" and "Certified General Real Property Appraisers". The distinction between these two new classifications of certified appraisers is explained below. They are significant here because in its classification of real estate appraisers, the Bill uses two terms which now relate to the AQB's two categories of certified appraisers.

There is another significant problem in the Bill's provisions for appraiser qualification criteria. As noted above, the Bill classifies appraisers into the two categories of "certified residential appraiser" and "certified general appraiser." The Bill also establishes two sets of qualification criteria. However, it is unclear which criteria go with which appraiser classification. Section 9 describes the qualification criteria for a "General Real Property Appraiser Classification," which might correspond to the "certified general appraiser" category. However, the other qualification criteria, in Section 8, are for a "Residential Real Property Appraiser Classification." Those criteria probably relate to the Bill's "certified residential appraiser" category, but that is unclear.

In addition to the problem of terminology and the relation between the appraiser classifications and the qualification criteria, the Bill fails to reflect FIRREA's requirements as to when a certified, rather than a licensed, appraiser should be used. Section 8 states that the "Residential Real Property Appraiser Classification applies to the appraisal of one to four residential units," and Section 9 provides that the "General Real Property Appraiser Classification" applies to all types of real property." Those provisions should be stated more in terms of requirements, and they probably should be somewhere other than in the sections relating to qualification criteria for appraisers. Finally, as noted above, the provisions do not fully reflect FIRREA's requirements, particularly as they relate to the use of certified appraisers in transactions over \$1,000,000. Thus, the Bill should more adequately provide for when a certified appraiser must be used.

The Bill's provisions for the qualification criteria for the Residential Real Property Appraiser Classification and the General Real Property Appraiser Classification would appear to meet the Appraisal Subcommittee Guidelines. The criteria in Section 8 for the Residential Real Property Appraiser Classification are based on the AQB criteria for Residential Real Property Appraisers, which the Appraisal Subcommittee Guidelines state would create a safe harbor for criteria for licensed appraisers. There are some minor respects in which the Bill differs from the AQB criteria. These are mentioned below for reference but should not present a problem in terms

of the Appraisal Subcommittee approval. However, there is one area where the Appraisal Subcommittee may insist that the Bill be modified. The AQB criteria list the topics to be included in the education requirement. Section 8(b)(4) of the Bill does not include such a list, but refers to Section 8(c)(2) pertaining to the areas of experience that appraisers should have. The description of that experience is different from and less precise than the AQB criteria for education topics.

As indicated, there are some apparently minor ways in which the Bill's qualification criteria differ from the AQB criteria. The provisions pertaining to Education (Sections 8 and 9), the Bill omits language which awards credit for classroom hours to teachers of appraisal courses. Moreover, the Bill does not include a provision in the AQB criteria that there is no time limit as to when qualifying education credit must have been obtained. The Bill also omits discussion of granting credit for licensed appraisers who prior to July 1, 1990, passed challenge examinations without attending the required course. These provisions are included for certified appraisers. Although this language would probably not be required for licensed appraisers, it might provide for greater flexibility in licensing appraisers in Guam if such a procedure existed here.

The above differences between the Bill and the AQB criteria are mentioned in case they were omitted through oversight. With the possible exception of the list of subjects for the education requirement, it appears the Bill will meet the Subcommittee Guidelines for licensed appraiser qualification criteria. Thus, these criteria should satisfy the Guidelines if they are intended to be used for the classification of appraisers that correspond to licensed appraisers.

The qualification criteria in Section 9 for the General Real Property Appraiser Classification are also based on the AQB qualification criteria. The differences between the two are those described above, with the exception that Section 9 does not omit the list of topics to be included in the education requirement. The Bill's qualification criteria for certified appraisers would, therefore, probably meet with the Appraisal Subcommittee's approval.

As noted above the AQB has recently adopted new appraiser qualification criteria that create two new classifications of certified appraisers. Anticipating these two new classifications in January, 1991, the Appraisal Subcommittee issued Guidelines Regarding Two Classes of Certification. As explained in those Guidelines, the Subcommittee has become aware that "in a few States with a significant quantity of very high priced single family homes," the FIRREA requirement "that a State certified appraiser be

used to perform all real estate transactions having a value in excess of \$1,000,000 and for all complex 1-4 unit properties would disqualify a number of residential appraisers from performing appraisals for which they are uniquely qualified." For this reason, the AQB has adopted two classifications of appraisers: "certified general property appraiser" and "certified residential real property appraiser." The latter classification would be qualified to appraise residential real property valued in excess of \$1,000,000.

In the January 1991 Guidelines, the Subcommittee expressed "its continuing preference for a single class of certification," but stated that it would be willing to accept two classifications as long as the AQB developed qualification criteria for the two classifications and the Subcommittee did not disapprove the new qualification standard. As of this time, the Subcommittee has not yet ruled on the new AQB standards. It is unclear whether the Guam legislature would want to consider this alternative. If the Legislature does not do so, it should be aware of the issue and of the terminology. It should be emphasized, however, that the new AQB classification for Certified Residential Real Property Appraisers is an alternative to the Certified General Property Appraiser classification and need not be adopted in Guam.

(f) Exemptions and Grandfathering

The Bill does not contain provisions for grandfathering appraisers who had been qualified in Guam before a certain date and it does not exempt any such appraisers or other individuals from meeting the licensing or certification criteria. Thus, the Bill does not contain provisions that could result in the Subcommittee disqualifying the appraiser certification and licensing system.

The Bill does contain a "Non-Resident Certification" section, which provides for reciprocity in certifying a non-resident whose home State's certification program has been approved by the Appraisal Subcommittee. The Subcommittee's Guidelines state that its prohibitions against exempting individuals or groups of individuals are "not meant to preclude States from recognizing existing licenses or certification designations of individuals who currently meet State licensing or certification requirements, provided those requirements are fully consistent with the provisions of [FIRREA]." Thus, the Bill's provisions for non-resident certification would not appear to raise problems under the Subcommittee Guidelines.

(g) Mandatory Dual Licensing

The Appraisal Subcommittee Guidelines prohibit State laws from requiring any applicant for appraisal certification

or licensing to hold other occupational licenses as a condition of obtaining a licence or certification designation as a real estate appraiser. The Bill does not contain any such requirements.

(h) Code of Professional Responsibility

The Subcommittee Guidelines recommend that an appropriate code of professional responsibility be incorporated into a State's certification and licensing requirements. It is difficult to determine whether the Bill reflects such a code.

The Bill contains provisions which may reflect to some degree a code of professional responsibility for appraisers. Section 15 provides that willful and knowing violation of certain "standards of conduct" may result in disciplinary action by the Real Estate Appraisal Board. That section lists thirteen such standards of conduct. In addition, two other sections may incorporate some aspects of a code of professional responsibility. Those are Section 11, concerning appraisal report requirements, especially Section 11(c) regarding the content of the appraiser's certification, and Section 14 (Complaints and Investigations), which specifies some of the offenses that might result in denial, censure, suspension or revocation of an appraiser's certification.

(i) Other

The Bill contains a number of other provisions which do not directly involve issues addressed in the Appraisal Subcommittee Guidelines but which the Subcommittee may consider in its review of the legislation. These provisions include Section 4 (relating to the duties and powers of the Real Estate Appraisal Board), Section 11 (Appraisal Report Requirements), Section 13 (Renewal of Certification), Section 20 (Penalties) and Section 21 (Recordkeeping Requirements).

Inasmuch as the Appraisal Subcommittee has not indicated in its Guidelines how it will review those and other provisions of a State's appraiser certification and licensing bill and because the Subcommittee will review all aspects of the Bill to determine whether it should be disapproved, this memorandum does not comment on those provisions which are not addressed in the Subcommittee Guidelines. It should be emphasized, however, that the Appraisal Subcommittee has made clear that it will look at the State's overall regulatory scheme to determine compliance with FIRREA. This oversight and review will continue even after appraiser certification and licensing legislation has been enacted.

This statement represents the position of a majority (but not necessarily all) of the member Banks of the GBA.

Certain individual member Banks may not concur with the position of the majority of the GBA members and to that extent this statement may not reflect the views of specific individual Banks.

Respectfully submitted,

A handwritten signature in black ink, appearing to be a stylized name, possibly "John" or "John D.", written over a vertical line that extends from the text below.

GUAM BANKERS ASSOCIATION



JOSEPH F. ADA
Governor

FRANK F. BLAS
Lieutenant Governor

DEPARTMENT OF

REVENUE & TAXATION

GOVERNMENT OF GUAM

JOAQUIN G. BLAZ, Director • V.M. CONCEPCION, Deputy Director

APR 16 1991

Dear Mr. Chairman and Members of the Committee:

My name is **JOAQUIN G. BLAZ**, I am the Real Estate Commissioner and would like to take this opportunity to submit my comments regarding Bill No. 240,

AN ACT TO REGULATE THE PRACTICE OF REAL ESTATE APPRAISERS.

The so-called "Savings and Loan Bailout Bill" more properly known as the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989, signed into law by President Bush on August 9, 1989 includes provisions that dramatically alter the appraisal profession and establish a new framework for its oversight.

The passage of the Financial Institutions Reform, Recovery and Enforcement Act was brought about in large measure, by the failure of the Thrift Industry. It was felt by the Federal Government and its various regulatory agencies that the use of fraudulent or poorly documented appraisals to substantiate the fair market value of various types of security properties for loans resulted in substantial losses being sustained throughout the industry as a whole.

Title XI of FIRREA was established to protect federal financial and public policy interests in real estate related transactions requiring the services of an appraiser. Title XI requires that real estate appraisals utilized in connection with "Federally related transactions" must be performed in writing in accordance with uniform standards by competent and responsible appraisers whose professional conduct will be subject to effective supervision.

"Federally related transactions" are considered to be any involving federal depository insurance or public policy interests, and includes all savings associations, banks, and credit unions. This legislation affects virtually all lending institutions and appraisal reports used in both the primary and secondary market.

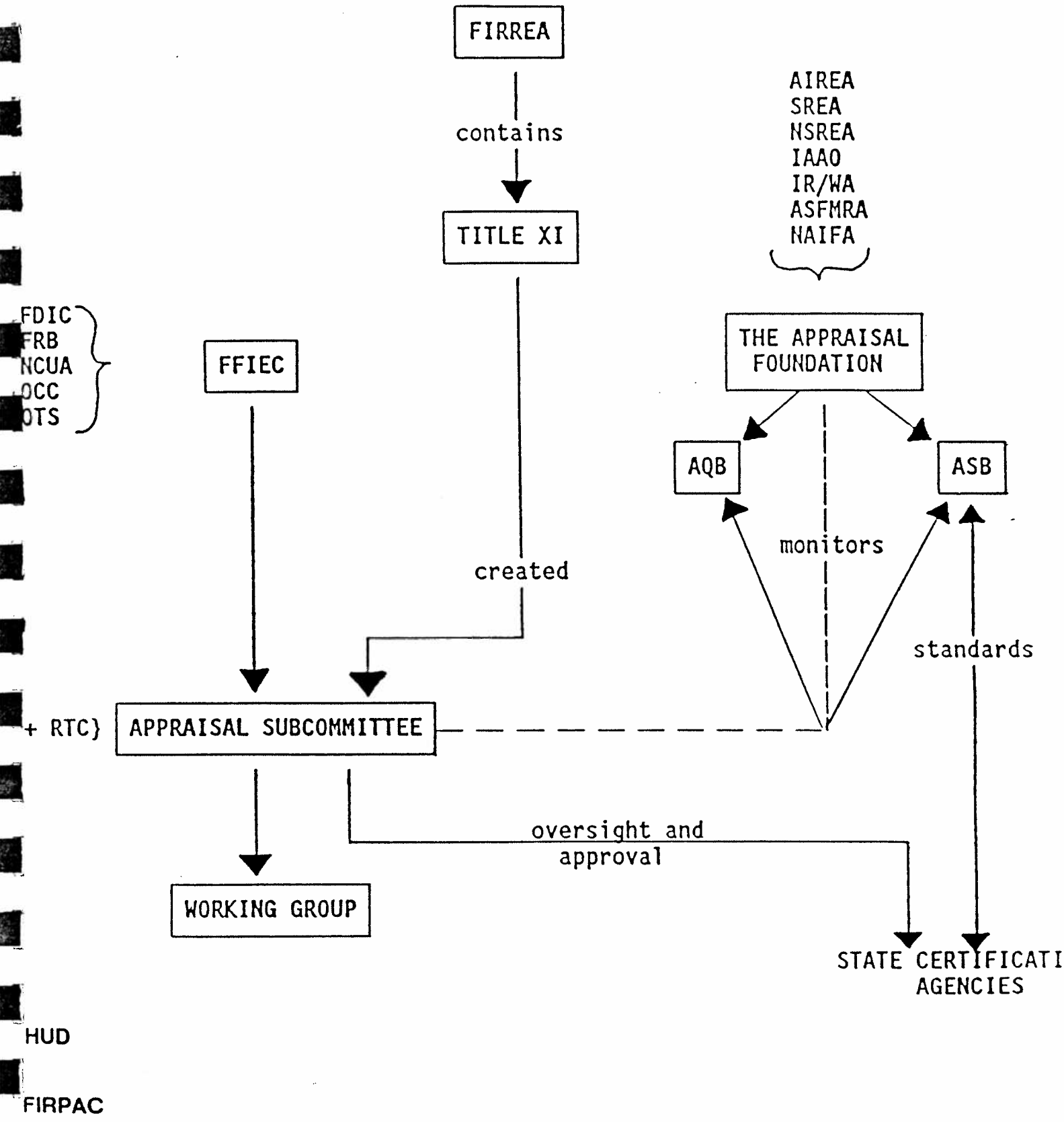
Of greater significance is the authorization given by Congress to states to establish appraiser certifying and licensing agencies, consistent with the requirements of this Title. This legislation paves the way for national appraiser qualifications. Where previously only a handful of States had enacted their own appraiser legislation, Congress has mandated that nationwide appraiser qualifications will be established and required no later than July 1, 1991.

After July 1, 1991, all appraisals in connection with Federally related transactions must be performed by state certified or licensed appraisers.

We feel that the administration of this Act should fall under the purview of the Real Estate Commissioner.



JOAQUIN G. BLAZ
Real Estate Commissioner



FIRREA

contains

TITLE XI

AIREA
SREA
NSREA
IAAO
IR/WA
ASFMRA
NAIFA

FFIEC

THE APPRAISAL
FOUNDATION

AQB

ASB

created

monitors

standards

FDIC
FRB
NCUA
OCC
OTS

+ RTC)

APPRAISAL SUBCOMMITTEE

oversight and
approval

WORKING GROUP

STATE CERTIFICATION
AGENCIES

HUD

FIRPAC

TITLE XI of FIRREA

- Intended to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser.
- Intended to ensure that appraisals are performed in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct is subject to effective supervision.
- Puts in place procedures to identify which transactions require an appraiser, set forth minimum standards for performing appraisals, and distinguish those appraisals requiring the services of a state certified appraiser from those requiring a state licensed appraiser.

REGULATORY AGENCIES

- o **FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)**
Regulates: state-chartered, insured banks that are not members of the Federal Reserve System

- o **FEDERAL RESERVE BOARD (FRB)**
Regulates: state-chartered, insured banks that are members of the Federal Reserve System

- o **NATIONAL CREDIT UNION ADMINISTRATION (NCUA)**
Regulates: federally insured and federally chartered credit unions

- o **OFFICE OF THE COMPTROLLER OF THE CURRENCY (OCC)**
Regulates: national banks

- o **OFFICE OF THRIFT SUPERVISION (OTS)**
Regulates: savings associations and savings and loan holding companies

These agencies, plus the Resolution Trust Corporation (RTC), will issue virtually identical regulations to provide uniformity in the requirements for appraisals among the agencies and the institutions they regulate.

STATE RESPONSIBILITIES

Each state has the responsibility to develop certification and licensing criteria for real estate appraisers, in conformance with the standards set by the Appraiser Qualifications Board of The Appraisal Foundation.



GUAM BOARD OF REALTORS®
The Voice for Real Estate on Guam



REALTOR®
Tony Artero, President
Elmore Cotton, V. President

P. O. Box GV Agana, GU 96910 Ph (671) 477-1985

Vera Hogan, Secretary
Cathy Mateo, Treasurer

April 24, 1991

:

Senator Carl T.C. Guterrez
Chairman
Committee on Ways & Means
Twenty-First Guam Legislature
155 Hesler Street
Pacific Arcade
Agana, Guam 96910

Dear Senator Guterrez:

On behalf of the Guam Board of REALTORS®, I would like to express our strong support for both Bill No. 240 and Bill No. 320 which would establish guidelines and regulations for the practice of Real Estate Appraisal in the Territory of Guam.

The Guam Board of REALTORS® feels that these bills would serve the best interests of the people of Guam by providing them with a professional standard of appraisal work. Also, in light of new federal regulations concerning the practice of Real Estate Appraisal, it is imperative that a local law be established.

Thank you for allowing us this opportunity to express our support for these bills and we anticipate a positive result in the very near future.

Sincerely,

Elmore Cotton
President, Guam Board of REALTORS®



April 24, 1991

The Honorable Carl T.C. Gutierrez
Senator
Chairman, Committee on Ways & Means
Twenty First Guam Legislature
155 Hesler Street
Pacific Arcade
Agana, Guam 96910

RE: Bill No. 240

Dear Senator Gutierrez:

The Bank of Hawaii has no objections pertaining to Bill No. 240. We fully support the passage of Bill No. 240 into a public law.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rodney I. Kimura', with a long horizontal flourish extending to the right.

Rodney I. Kimura
Vice President & Manager
Guam Retail Banking Center

h Bancorp Finance of Hawaii-Guam

April 25, 1991

Senator Carl T. C. Gutierrez
Chairman, Committee on Ways
& Means
Twenty First Guam Legislature

Dear Senator Gutierrez,

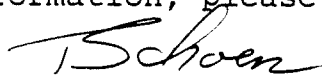
Thank you for your letter of April 12, 1991 regarding Bill #240. I do appreciate the opportunity to present comments on this Bill as it is important to our community.

I have reviewed the Bill and would like to advise that Bancorp Finance Hawaii-Guam, Inc. is in general support of the bill. The Guam Banker's Association, of which Bancorp Finance Hawaii-Guam, Inc is not a member, is also submitting testimony concerning the Bill which points out some minor technical corrections and concerns. Overall, however, we believe there is a need for passage of a bill to license and certify real estate appraisers.

The concept of the Territory of Guam establishing standards for "professional" work is long established and has only worked for the betterment of the community. The men and women working within the appraisal community take pride in their work and hate to see the industry's reputation tarnished by poor and sloppy work of untrained, unschooled, and unsupervised amateurs.

By establishing standards, we all benefit from having quality work done. The experience on the U.S. mainland of banks, savings & loans, mortgage companies, etc. using appraisals from "unqualified" appraisers has caused grievous harm to the economy, something we do not want to happen here.

We support the passage of the bill. If you have any questions or need additional information, please feel free to call me.



Thomas D. Schoen
VP/Manager

Joaquin C. Concepcion
J.C. Concepcion & Associates
Suite B-3, Yu-Han Building
690 West Marine Drive
Agana, Guam

TESTIMONY

The context of Bill 240 was prompted by the much publicized Savings and Loan fiasco that resulted in the still escalating losses that will consequently be absorbed by the American taxpayer. The bill in itself is an attempt to prevent reoccurrence as such.

Therefore, the intent of the bill, fashioned and administered by the concerned Federal Government, seems rather obvious. Overall, as a real estate appraiser, my opinion is that this bill, if modified and presented in a manner that addresses the situation of the local appraiser, should pave the way for better and perhaps renewed standards in the real estate appraisal profession.

Conversely, Bill 240, if enacted as written, could essentially ignore the livelihood of the average real estate appraiser on the island. The required qualifications of an appraiser just to TAKE the test as shown beginning on Line 2, page 5 of the bill, is 75 hours of classroom hours at minimum for an individual seeking a residential certification and 165 classroom hours for an individual seeking the general appraiser certification. This is stringent.

The educational needs for the local appraiser has never been acknowledged by the so called authorities and organizations that have nurtured on the economic boom that the

island of Guam so richly deserved over the past years. It is not uncommon for a designated appraiser from a state to enter the island, perform an appraisal for an attractive fee and leave the island upon completion of his or her project. Except for small scale offers by these experts on seminars or flash, technical courses on appraisals, their organizational interests have never been more than monetary. These are the pros that the local appraisers strive to have represent their organizations in perhaps showing an interest in our initiatives to learn more about this intriguing profession. The enthusiasm for education is here, the resources for the profession enhancement is not. We are not afforded with the ease of these educational needs that are made available in the mainland or Hawaii. Ergo, without the on-island educational resources, the alternative is but a costly endeavor. That is having to go off-island for these requirements. Everyone knows the expenses that this could incurred. A rough estimate for these courses could run as high as \$800 each or beyond. The airfare, round-trip would certainly be well over \$1,200, cost for a room in a typical hotel should go beyond \$2,000 and food of course, could be conservatively estimated at \$500. This would be on a 2 week course. If my mathematics serves me correctly, this would amount to \$4,500. Further to this would be the loss of business that is easily incurred by closing my doors for this amount of time.

My office employs three licensed appraisers, I am training three others in the professional, I have a full time data man, I have two runners and two report preparers and statisticians. Except for the three licensed appraisers, everyone in the office (a total of 5), everyone is on a payroll that exceeds \$4,000 every month. The passage of this bill, without consideration for an amendment that could still adhere to the federal requirements, could conceivably close the doors for furtherance by these people of this unique and important profession. Ultimately, there could be 8 local people seeking employment elsewhere in the job industry.

Testimony - Bill 240
J.C. Concepcion & Associates
April 25, 1991

I have appraised more than 10,000 properties over my 19 years as an appraiser. My performance and the performance of my people in my office have been accepted and utilized as basis for real estate mortgage loans, probate proceedings, tax payment determination, purchase, selling and a variety of other reasons where a valuation could be contingent to important decision making. These reports have been accepted by virtually all the lenders and financial institutions on the island of Guam, the Government of Guam, the Federal Government, stateside and foreign banks and the local courts. I have testified and have been certified as an expert witness. I have trained and guided more than a dozen local men and women that have enjoyed the benefits of the real estate appraisal profession to this day. I have appraised land, houses, condominiums, apartments, warehouses, hotels/motels, industrial parks, theaters and special purpose properties.

"Tooting my horn" is not my style because my work speaks for itself. But Bill 240 would certainly ignore these qualifications if I have not the credentials of 75 or 165 hours of "classroom" training.

I have not yet heard of any lending institute on the island of Guam that have "folded" because of bad loans where an appraisal was directly responsible. But of course education being the best prevention seems more than a cliché in this case. Would my experience count as education?

The federal guidelines would still have to be satisfied and perhaps rightfully so. But the perennial "Guam is unique" stance could also justifiably apply in this case.

Testimony - Bill 240
J.C. Concepcion & Associates
April 25, 1991

The attached copy of and highlighted section of Title XI, for your information, addresses this uniqueness. Perhaps, this is the avenue that you, as our leaders, could nourish and bring to light in the eyes of the Federal people. A waiver could temporarily be granted until such time that the require educational requirements could be accomplished.

There is but a handful of real estate appraisers on the island but the impact of this bill, as is, could diminish this number to almost a faded few. The ramifications could force our local lenders to seek "certified" appraisers off-island whose fees would eventually be absorbed by our local consumers.

Don't deny us the opportunity for a sound and indeed a most fulfilling career.

J. C. Concepcion

APR 03 '91

TWENTY-ONE GUAM LEGISLATURE
1991 (FIRST) Regular Session

Bill No. 240 (Cor)

Introduced by:

- A. C. Blaz *Blaz*
- A. R. Unpingco *Unpingco*
- T. Tanaka *Tanaka*
- J. G. Bamba
- M. Manibusan *Manibusan*
- M. Reidy *Reidy*
- E. Duenas *Duenas*
- M. Ruth *Ruth*
- E. Espaldon *Espaldon*
- D. Brooks *Brooks*

AN ACT RELATING TO REAL ESTATE;
 ESTABLISHING PROCEDURES FOR
 DETERMINING MARKET VALUE; ENACTING
 REAL ESTATE APPRAISER REGISTRATION
 AND CERTIFICATION ACT; PROVIDING FOR
 ADMINISTRATION OF THE ACT; DEFINING
 UNLAWFUL ACTS; CREATING A BOARD;
 PROVIDING REGISTRATION AND
 CERTIFICATION STANDARDS AND
 PROCEDURES FOR RENEWAL, REISSUANCE
 AND REINSTATEMENT OF REGISTRATION
 AND CERTIFICATION TO MEET THE MINIMUM
 REQUIREMENTS OF THE FINANCIAL
 INSTITUTIONS REFORM, RECOVERY AND
 ENFORCEMENT ACT OF 1989; ENUMERATING
 GROUNDS AND PROCEDURES FOR
 DISCIPLINARY ACTIONS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
 2 Section 1. Definitions.
 3 (a) "Real Estate Appraiser" means a person who engages in the
 4 practice of real estate appraising such as defined under "Real Estate
 5 Appraisal".
 6 (b) "Board" means the Real Estate Appraisal Board under this Act.
 7 (c) "Real Estate Appraisal" means the act or process of estimating
 8 values, or the giving of opinions concerning the valuation or evaluation of
 9 real estate or any interest therein, for a fee or other valuable
 10 compensation; including any of the following valuation or evaluation
 11 performed or offered to be performed for another for compensation, or with
 12 the expectation of receiving compensation, by a person who: advises,
 13 consults or prepares analyses with respect to real estate values, uses, sales
 14 developments or disposition, including dispositions through eminent domain,
 15 or renders opinions relevant to the marketability of real estate.

1 (d) "Class Room Hour" is defined as fifty (50) minutes out of each
2 sixty (60) minute segment.

3 Section 2. It shall be unlawful for anyone to engage in appraisal
4 activity without first obtaining a real estate appraiser certification as
5 provided in this Act.

6 This Act shall not apply to a real estate broker or salesperson licensed
7 by the Territory, who in the ordinary course of his or her business, gives
8 an opinion of the prices of real estate for the purpose of a prospective
9 sale. However, in no event may this opinion be referred to or construed
10 as an appraisal, nor can any compensation fee, or consideration be charged
11 for the opinion other than the normal commission or fee for services
12 rendered in the sale of the real property involved.

13 Section 3. Real Estate Appraisal Board.

14 (a) There is hereby created a Real Estate Appraisal Board whose
15 duty will be to administer and enforce the provisions of this Act. Said
16 Board shall consist of at least five (5) members appointed by the Governor
17 who said be residents of this Territory at least three (3) shall be qualified
18 real estate appraisers who have engaged in the general practice of real
19 estate appraising for not less than five (5) years.

20 (b) Initially, one member of the Board shall be appointed for one year
21 (1), two members for two (2) years and two members for three (3) year
22 terms. All terms shall commence thirty (30) days after the appointment, if
23 confirmed, and all members shall serve until their successors have been
24 appointed and qualified. Vacancies occurring in the membership of the
25 Commission for any cause shall be filled by appointment for the unexpired
26 term. Each member of the Board, before entering upon his duties, shall
27 take and file with the Board an oath to discharge faithfully the duties of
28 his office.

29 (c) The member of the Board shall receive per diem compensation,
30 plus reimbursement for such actual and necessary expenses incurred in
31 carrying out the provisions of this Act. The Governor, after reasonable
32 notice and hearing, may remove any member of the Board for misconduct,
33 incompetency, or neglect of duty. After the initial appointments, all
34 appraisers on the Board should be certified. The members of the Board

1 shall not be held civilly liable for any action taken in good faith by the
2 Board in its official capacity pursuant to the law unless such action is
3 arbitrary and capricious.

4 Section 4. Powers and Duties. The Board shall:

- 5 (a) Receive applications for certification;
6 (b) Establish the procedure for processing applications made under
7 this Act;
8 (c) Retain all applications and other records submitted to it;
9 (d) Maintain a registry of the names and addresses of persons
10 certified under this Act;
11 (e) Adopt, amend and repeal rules and regulations to implement and
12 administer the provisions of this Act;
13 (f) Establish and collect fees commensurate with the costs of
14 certification;
15 (g) Establish requirements for education, experience, and examination
16 commensurate with certification requirements;
17 (h) Prescribe and administer examinations to qualified applicants and
18 determine the acceptable level of performance on examinations;
19 (i) Approve/disapprove applications for certification and issue same;
20 (j) Review periodically the standards for developments and
21 communication of appraisals and adopt rules explaining and interpreting the
22 standards;
23 (k) Establish disciplinary procedures of reprimand, suspension, or
24 revocation of certification;
25 (l) Reprimand, suspend, revoke, or refuse to renew the certification
26 of one who has violated the standards established for certified real estate
27 appraisers;
28 (m) Establish continuing education requirements that are conditions of
29 certification renewal; and
30 (n) Perform the other duties necessary to implement this Act.

31 Section 5. Legal Opinions.

- 32 (a) The Attorney General shall render to the Board opinions on all
33 questions of law or arising in the administration thereof, and shall act as

1 attorney for the Board in all actions and proceedings brought by or against
2 it under or pursuant to any of the provisions of Act.

3 (b) The Attorney General shall have the power to compel the
4 attendance of witnesses and the production of books, documents, records
5 and other papers; to administer oaths and to take testimony and receive
6 evidence concerning all matters within its jurisdiction.

7 Section 6. Application for Certification. An individual who desires to
8 engage in real estate appraisal activity in this Territory shall make
9 application for certification, in writing, in such form as the Board may
10 prescribe.

11 Section 7. Certified Appraisers - Classifications.

12 (a) There are two classes of certification for certified real estate
13 appraisers:

- 14 1) Certified residential appraiser; and
- 15 2) Certified general appraisers.

16 (b) Each application for original certification or for the renewal of
17 certification shall specify the classification of certification being applied for
18 and, if applicable, the certification previously granted.

19 (c) Each applicant for original certification shall provide to the Board
20 evidence of:

21 (1) Completion of the certification examination with a satisfactory
22 score. The minimum acceptable score is seventy percent (70%).

23 (2) Satisfactory completion of the education required under this
24 Chapter.

25 Section 8. Residential Real Property Appraiser Classification:
26 Qualification Criteria.

27 The Residential Real Property Appraiser Classification applies to the
28 appraisal of one to four residential units. Applicants must meet the
29 following examination, education, and experience requirements. Subsequent
30 to being certified, individuals must meet the continuing education
31 requirement:

32 (a) Examination. Successful completion of the Appraiser Qualifications
33 Board of the Appraisal Foundation's endorsed Uniform Certification
34 Examination or its equivalent.

1 (b) Education.

2 (1) Prerequisites to the examination: Seventy-five (75)
3 classroom hours of courses in subjects related to real estate appraisal
4 which shall include coverage of the Uniform Standards of Professional
5 Appraisal Practice.

6 (2) Credit toward the classroom hour requirement may only be
7 granted where the length of the educational offering is at least fifteen
8 (15) hours, and the individual successfully completes an examination
9 pertinent to that educational offering.

10 (3) Credit for the classroom hour requirement may be obtained
11 from the following:

12 (A) Colleges or Universities;

13 (B) Community or Junior Colleges;

14 (C) Real Estate Appraisal or Real Estate Related
15 Organizations;

16 (D) State or Federal Agencies or Commissions;

17 (E) Proprietary Schools.

18 (4) Various appraisal courses may be credited toward the
19 seventy-five (75) classroom hour education requirement. Applicants
20 must demonstrate that their education involved coverage of all topics
21 listed below in subsection (c)(2) with particular emphasis on the
22 appraisal of one to four unit residential properties.

23 (c) Experience.

24 Equivalent of two (2) years appraisal experience. If requested,
25 experience documentation in the form of reports or file memoranda should be
26 available to support the claim for experience.

27 (1) A year is defined in terms of hours within a calendar year.
28 One thousand (1,000) hours constitutes a year of appraisal experience.
29 A minimum of two calendar years is required. Hours may be treated
30 as cumulative in order to achieve the necessary two thousand (2,000)
31 hours of appraisal experience.

32 (2) Acceptable appraisal experience includes, but is not limited
33 to the following:

1 Fee and staff appraisal, ad valorem tax appraisal, review
2 appraisal, appraisal analysis, real estate counseling, highest
3 and best use analysis, feasibility analysis/study and teaching
4 of appraisal courses. This should not be construed as
5 limiting experience credit to only those individuals who are
6 state certified or state licensed.

7 (3) The verification for experience credit claimed by an applicant
8 shall be in the form of affidavit prescribed by the Board.

9 (d) Continuing Education.

10 (1) The equivalent of ten (10) classroom hours of instruction in
11 courses or seminars for each year during the period preceding the
12 renewal is required. (For example, a two-year certification term would
13 require twenty (20) hours. These hours may be obtained any time
14 during the two-year term.)

15 (2) Credit toward the classroom hour requirement may be
16 granted only where the length of the educational offering is at least
17 two (2) hours.

18 (3) Credit for the classroom hour requirement may be obtained
19 from the following:

- 20 (A) Colleges or Universities;
- 21 (B) Community or Junior Colleges;
- 22 (C) Real Estate Appraisal or Real Estate Related
23 Organization
- 24 (D) State or Federal Agencies or Commissions;
- 25 (E) Proprietary Schools;
- 26 (F) Other providers approved by the state certification/
27 licensing agency.

28 (4) Credit may be granted for educational offerings which cover
29 residential real estate related appraisal topics such as those listed
30 below and which are consistent with the purpose of continuing
31 education as stated in subsection (6) below.

- 32 (A) Ad Valorem Taxation;
- 33 (B) Arbitrations;

- 1 (C) Business courses related to practice of real estate
- 2 appraisal;
- 3 (D) Construction estimating;
- 4 (E) Ethics and standards of professional practices;
- 5 (F) Land use planning, zoning and taxation;
- 6 (G) Litigation;
- 7 (H) Management, leasing, brokerage, timesharing;
- 8 (I) Property development;
- 9 (J) Real estate appraisal (valuations/evaluations);
- 10 (K) Real estate law;
- 11 (L) Real estate financing and investment;
- 12 (M) Real estate appraisal related computer applications;
- 13 (N) Real estate securities and syndication;
- 14 (O) Real property exchange.

15 (5) Continuing education credit may also be granted for
16 participation, other than as a student, in appraisal educational
17 processes and programs. Examples of activities for which credit may
18 be granted are teaching, program development, authorship of
19 textbooks, or similar activities which are determined to be equivalent
20 to obtaining continuing education.

21 (6) The purpose of continuing education is to ensure that the
22 appraiser participates in a program that maintains and increases his or
23 her skill, knowledge and competency in real estate appraising.

24 Section 9. General Real Property Appraiser Classification:
25 Qualification Criteria. The General Real Property Appraiser Classification
26 applies to the appraisal of all types of real property. Applicants must meet
27 the following examination, education, and experience requirements.
28 Subsequent to being licensed or certified, an individual must meet the
29 continuing education requirement.

30 (a) Examination. Successful completion of the Appraiser Qualifications
31 Board of the Appraisal Foundation's endorsed Uniform Certification
32 Examination or its equivalent.

33 (b) Education.

1 (1) Prerequisites to the examination: One hundred sixty-five
2 (165) classroom hours, which may include the seventy-five classroom
3 hours required for the Residential Classification, of courses in subjects
4 related to real estate appraisal which shall include coverage of the
5 Uniform Standards of Professional Appraisal Practice.

6 (2) Credit toward the classroom hour requirement may only be
7 granted where the length of the educational offering is at least fifteen
8 (15) hours, and the individual successfully completes an examination
9 pertinent to that educational offering.

10 (3) Credit for the classroom hour requirement may be obtained
11 from the following:

12 (A) Colleges or Universities;

13 (B) Community or Junior Colleges;

14 (C) Real Estate Appraisal or Real Estate Related
15 Organizations;

16 (D) State or Federal Agencies or Commissions;

17 (E) Proprietary Schools;

18 (F) Other providers approved by the territorial certification
19 agency.

20 (4) There is no time limit regarding when qualifying education
21 credit must have been obtained.

22 (5) The Board may grant credit for courses where the applicant
23 obtained credit from the course provider by challenge examination
24 without attending the courses; provided that such credit was granted
25 by the course provider prior to July 1, 1990, and provided further
26 that the Board is satisfied with the quality of the challenge
27 examination that was administered by the course provider.

28 (6) Various appraisal courses may be credited toward the one
29 hundred sixty-five (165) classroom hour education requirement.
30 Applicants must demonstrate that their education included coverage of
31 all the topics listed below with particular emphasis on the appraisal of
32 non-residential properties. Residential is defined as one to four
33 residential units.

- 1 (A) Influences on Real Estate Value;
- 2 (B) Legal Considerations in Appraisal;
- 3 (C) Type of Value;
- 4 (D) Economic Principles;
- 5 (E) Real Estate Markets and Analysis;
- 6 (F) Valuation Process;
- 7 (G) Property Description;
- 8 (H) Highest and Best Use Analysis;
- 9 (I) Appraisal Math and Statistics;
- 10 (J) Sales Comparison Approach;
- 11 (K) Site Value;
- 12 (L) Cost Approach;
- 13 (M) Income Approach;
- 14 (N) Valuation of Partial Interests;
- 15 (O) Appraisal Standards and Ethics.

16 (c) Experience. Two years appraisal experience is the required
17 minimum. If requested, experience documentation in the form of reports or
18 file memoranda should be available to support the claim for experience.

19 (1) A year is defined in terms of hours within a calendar year.
20 One thousand hours constitutes a year of appraisal experience.
21 A minimum of two calendar years is required. Hours may be treated
22 as cumulative in order to achieve the necessary two thousand (2,000)
23 hours of appraisal experience.

24 (2) The applicant, for two years experience credit must have
25 accumulated a total of two thousand hours of appraisal experience of
26 which at least fifty percent (50%) (one thousand hours) must be in
27 non-residential appraisal work. Residential is defined as one to four
28 residential units.

29 (3) Acceptable appraisal experience includes but is not limited to
30 the following:

- 31 Fee and staff appraisal, ad valorem tax
- 32 appraisal, review appraisal, appraisal
- 33 analysis, real estate counseling, highest and

1 best use analysis, feasibility analysis/study,
2 and teaching of appraisal courses.

3 This should not be construed as limiting credit to only those
4 individuals who are state certified or state licensed.

5 (4) The verification for experience credit claimed by an applicant
6 shall be in the form of affidavit prescribed by the Board.

7 (d) Continuing Education.

8 (1) The equivalent of ten (10) classroom hours of instruction in
9 courses or seminars for each year during the period preceding the
10 renewal is required. (For example, a two-year certification term would
11 require twenty hours. These hours may be obtained anytime during
12 the two-year term.)

13 (A) Credit for the classroom hour requirement may be
14 obtained from the following:

- 15 (i) Colleges or Universities;
- 16 (ii) Community or Junior Colleges;
- 17 (iii) Real Estate Appraisal or Real Estate Related
18 Organizations;
- 19 (iv) State or Federal Agencies or Commissions;
- 20 (v) Proprietary Schools;
- 21 (vi) Other providers approved by the state
22 certification/licensing agency.

23 (B) Credit may be granted for educational offerings which
24 cover real estate appraisal related topics such as those listed
25 below and which are consistent with the purposes of continuing
26 education stated in subsection (3) below.

- 27 (i) Ad Valorem Taxation
- 28 (ii) Arbitrations
- 29 (iii) Business courses related to real estate
30 appraisal
- 31 (iv) Construction estimating
- 32 (v) Ethics and standards of professional practice
- 33 (vi) Land use planning, zoning and taxation
- 34 (vii) Litigation

- 1 (viii) Management, leasing, brokerage, timesharing
- 2 (ix) Property development
- 3 (x) Real estate appraisal (valuations/evaluations)
- 4 (xi) Real estate financing and investment
- 5 (xii) Real estate law
- 6 (xiii) Real estate litigation
- 7 (xiv) Real estate appraisal related computer
- 8 applications
- 9 (xv) Real estate securities and syndication
- 10 (xvi) Real property exchange

11 (2) Continuing education credit may also be granted for
12 participation, other than as a student, in appraisal educational
13 processes and programs. Examples of activities for which credit may
14 be granted are teaching, program development, authorship of
15 textbooks, or similar activities which are determined to be equivalent
16 to obtained continuing education.

17 (3) The purpose of continuing education is to ensure that the
18 appraiser participates in a program that maintains and increases his or
19 her skill, knowledge and competency in real estate appraising.

20 Section 10. Designation of Classification. An appraiser in appraisal
21 reports shall designate his or her appraisal classification as herein
22 provided.

23 Section 11. Appraisal Reports Requirements.

24 (a) At a minimum, an appraisal must conform to Uniform Standards of
25 Professional Appraisal practice (USPAP-1990 revision) and must be in
26 writing. Future revisions become effective immediately.

27 (b) An appraisal, reporting an estimated value, shall be supported
28 with written documentation or written memoranda, which shall include, but
29 is not limited to the following:

30 (1) An adequate and definite description of the property being
31 appraised, including a legal description.

32 (2) The purpose of the appraisal and a definition of the value
33 estimated.

- 1 (3) Highest and best use analysis conclusion.
- 2 (4) All facts, assumptions and conditions upon which the
- 3 appraisal is based, stated clearly and unequivocally.
- 4 (5) The effective date of the appraisal.
- 5 (6) The data and reasoning supporting the value conclusion,
- 6 which may include the direct sales comparison approach, the income
- 7 approach and the cost approach. The exclusion of any of the usual
- 8 three approaches must be explained and supported.
- 9 (7) The final estate of value.
- 10 (8) Special and limiting conditions, if any.

11 (c) Certification. Each appraisal report must contain a certification
12 by the appraiser charged with rendering the valuation which, at the
13 minimum, must certify that:

- 14 (1) The Appraiser has no present or contemplated future
15 interest in the real estate that is the subject of the appraisal report.
- 16 (2) The appraiser has no personal interest or bias with respect
17 to the subject matter of the appraisal report or the parties involved.
18 (However, if a statement, as required herein and in item 1 above,
19 cannot be made, then such appraisal report must contain a clear
20 statement disclosing all such personal interest or bias.)
- 21 (3) To the best of the appraiser's knowledge and belief, the
22 statements of fact contained in the appraisal report, upon which the
23 analysis, opinions and conclusions expressed therein are based, are
24 true and correct.
- 25 (4) The appraiser has set forth in the appraisal report all of the
26 limiting conditions (imposed by the terms of the appraiser's assignment
27 or by the appraiser) affecting the analysis, opinions and conclusions
28 contained in the report.
- 29 (5) The appraiser has prepared the appraisal report in
30 conformity with the requirements set by the Appraisal Qualifications
31 Board of the Appraisal Foundation.
- 32 (6) The appraiser personally inspected or did not inspect the
33 subject property.

1 (7) No person other than the undersigned therein, except as
2 otherwise acknowledged, prepared the analysis, opinions and
3 conclusions concerning the subject real property described in the
4 appraisal report.

5 (8) If a client requests that something less than a full and
6 complete written appraisal report be prepared by the appraiser, the
7 appraiser may accept such limited assignment, provided that he or she
8 complies with the following requirements:

9 (A) Prior to accepting such limited assignments, the
10 appraiser must advise the client in writing that the assignment
11 calls for something less than a full and complete appraisal report
12 and that the appraisal report will be qualified to reflect the
13 limited scope of the assignment.

14 (B) The limited scope of the appraisal report must be set
15 forth and described in the report in a clear and precise manner.

16 (C) The contents of the appraisal report must not be so
17 limited that the report cannot possibly be meaningful, or so
18 limited that the effect would be to mislead the client or the
19 public.

20 (9) A copy of each appraisal or the data and reasoning
21 supporting the value conclusion of each appraisal shall be retained by
22 the appraiser for not less than five (5) years. In the case of
23 litigation, appraisals must be retained until the case is finally
24 adjudicated and all means of appeal exhausted.

25 (10) It is a violation of this Act for a person subject hereto to
26 omit, without good cause, any of the above minimum requirements from
27 any appraisal report transmitted to the client. If, with good cause,
28 any of the above minimum requirements are not included in the
29 appraisal report transmitted to the client, the appraiser shall clearly
30 set forth within the appraisal report a statement to the effect that the
31 portion excluded or assumptions made are included in the appraiser's
32 written appraisal or memoranda which has been prepared and retained
33 in the appraiser's file for said assignment, and that said retained

1 written appraisal or memoranda is incorporated thereon by reference
2 and is an integral part thereof.

3 Section 12. Non-Resident Certification.

4 (a) Based upon the promise that the appraiser's home state's
5 certification program has been approved by the Appraisal Subcommittee of
6 the Federal Financial Institutions Examination Council (FFIEC), a
7 non-resident may be certified as a real estate appraiser upon complying
8 with all the provisions and conditions of this Act. Any person who is
9 certified to practice real estate appraising in another state, territory of the
10 United States or the District of Columbia, who, in the opinion of the Board,
11 meets the qualifications and requirements for certification in this Territory,
12 shall be entitled to receive a certificate hereunder, upon submission of a
13 duly certified copy of their certification from such other state, territory of
14 the United States or the District of Columbia, and any other information the
15 Board may require, and the payment of the appropriate fee; provided,
16 however, that the laws of such state, territory or the District of Columbia
17 accords equal reciprocal rights to a certified real estate appraiser in good
18 standing in this Territory who desires to practice his or her profession in
19 such state, territory or the District of Columbia, provided that no
20 proceeding is pending against such appraiser under this Act or is
21 unresolved. In any such application for a certificate, all questions of the
22 academic and experience requirements of other states, territories or the
23 District of Columbia shall be determined by the Board and at the discretion
24 of the Board, the reciprocal or non-resident appraisal applicant must comply
25 with additional requirements specified by the Board in its regulations.

26 (b) A non-resident appraiser shall not be required to maintain a place
27 of business in this Territory if he or she maintains an active place of
28 business in the state of domicile. Every non-resident appraiser shall file
29 an irrevocable consent agreeing that in regard to suits and actions arising
30 out of any appraisal work performed in this Territory, the service of legal
31 process on the chairman of the Board shall be valid and binding in all
32 courts as if due service of process had been made directly upon the
33 non-resident appraiser of this Territory. In case any process herein
34 mentioned is served upon the Chairman, it shall be his duty to forward a

1 copy of the process by registered mail to the main office of the licensee
2 against which the process is directed.

3 (c) The Board shall issue to any certified real estate appraiser of
4 this Territory who is in good standing in this Territory in accordance with
5 Regulations issued by the Board, a Certificate of Good Standing upon
6 payment of a fee in an amount provided in the Regulations.

7 Section 13. Renewal of Certification.

8 (a) Each application for a real estate appraiser certification or for the
9 renewal therefore shall be accompanied by the appropriate fee which shall
10 be prescribed by the Board by rule or regulation, but shall not be more
11 than One Hundred Dollars (\$100.00).

12 (b) If the Board determines that an applicant meets the qualifications
13 and requirements of this Act and is otherwise qualified for certification, it
14 shall issue a certificate to the applicant. Any certificate or renewal thereof
15 shall remain in effect for two years following the date of issuance unless
16 revoked or suspended prior thereto.

17 (c) Every two years each applicant for renewal of appraisal
18 certification must demonstrate a minimum of twenty (20) hours of education
19 related to appraising, such education to be approved by the Board.

20 (d) Any practicing appraiser who fails or refuses, after thirty (30)
21 days' written notice from the Board, to apply for the renewal and pay the
22 fee and all penalties imposed, shall be deemed to be practicing without a
23 certificate and shall be subject to the penalties provided in this Act and
24 any civil penalties.

25 (e) Any appraiser under this Act who fails to apply for the renewal
26 of his or her certification and pay the fee therefore on or before the date
27 of its expiration and who continues to perform or offers to perform the
28 services of a certified real estate appraiser shall pay in addition to the
29 renewal fee, the sum of Five Hundred Dollars (\$500.00) for each month or a
30 fractional part thereof after the expiration of his or her certification and
31 before his or her certification shall be reinstated.

32 Section 14. Complaints and Investigators.

33 The Board may, upon its own motion, and shall, upon the written
34 complaint of any aggrieved person, investigate the activities of any person

1 engaged in the practice of real estate appraising, and shall have the power
2 to deny, censure, suspend or revoke certification at any time, after a
3 hearing in accordance with the provisions of the Territory of Guam statutes
4 applicable to administrative proceedings if it finds an applicant has:

5 (a) Willfully made a material misrepresentation in an application filed,
6 or obtained certification through fraud or misrepresentation;

7 (b) Failed to meet the minimum qualifications and requirements of this
8 Act;

9 (c) Performed any act in the practice of real estate appraising which
10 constitutes dishonest, fraudulent or improper conduct;

11 (d) Paid money to any person to secure certification other than the
12 fees provided for in this Act;

13 (e) Engaged in the business of real estate appraiser under an
14 assumed or fictitious name not properly registered in the state where he or
15 she received certification; or

16 (f) Been convicted of a felony or a crime involving moral turpitude.

17 Section 15. Willful and knowing violation by an appraiser of the
18 following standards of conduct may be considered grounds for disciplinary
19 action by the Board:

20 (a) Permitted his or her signature to be affixed to any appraisal
21 report if such report was not prepared by applicant or licensee or under
22 the licensee's direct supervision, unless acknowledgment of this is clearly
23 stated in the report;

24 (b) Accepted an engagement to appraise a property where employment
25 or fee is contingent upon reporting a predetermined or specified value, or
26 is otherwise contingent upon a particular finding to be reported;

27 (c) Made the fee or compensation in any case where the amount of an
28 award or recovery would be affected by the appraisal, contingent upon the
29 award or recovery; or establish a fee arrangement based on a percentage of
30 the final estimate of value;

31 (d) Violated any provision of this Act or any rule or regulation
32 promulgated hereunder;

1 (e) Made a false or misleading statement in that portion of a written
2 appraisal report that deals with professional qualification, or in any
3 testimony concerning professional qualifications;

4 (f) Did not disclose the use of professional assistance that deviates
5 from the normal data research procedure, in arriving at the analysis,
6 opinions or conclusions concerning real estate contained in an appraisal
7 report signed by the appraiser, unless such party specifically requests that
8 the party's name not be used;

9 (g) Signed or co-signed an appraisal report without accepting
10 responsibility for the contents of the entire report;

11 (h) Rendered professional real estate appraisal services when the
12 applicant or licensee knew, or when a reasonable person with the same
13 experience would have known, that his or her professional experience with
14 respect to the subject matter of the assignment was insufficient to permit
15 completion of the assignment: (1) without associating with another
16 appraiser who has had such previous experience; or (2) unless applicant or
17 licensee discloses such lack of experience to the client prior to accepting
18 the assignment.

19 (i) Contracted for accepted compensation for appraisal services in the
20 form of commission, rebate, division of brokerage commissions or any other
21 similar forms;

22 (j) Received or paid finder's or referral fees;

23 (k) Made any use of advertising media in connection with the real
24 estate appraisal practice except in the manner expressly permitted by the
25 rules of the Board.

26 (l) Failed to comply with the minimum requirements for an appraisal
27 as set forth in this Act, except as expressly provided for herein;

28 (m) Disclosed an appraisal report in its entirety or those portions of a
29 report that contain analyses, opinions or conclusions concerning the tract
30 or parcel of real estate which is the subject of the report, to anyone other
31 than:

32 (1) Those persons specifically authorized by the client to
33 received such information.

1 (2) Third parties, when and to the extent that the appraiser is
2 legally required to do so by order of the court.

3 (n) Disclosed confidential factual data which came into the
4 appraiser's possession in the course of an appraisal assignment when such
5 confidential factual data is used in the appraisal report, to anyone other
6 than those persons specifically authorized by the client to receive such
7 information, or to third parties, when and to the extent that an individual
8 is legally required to do so by order of the court; or

9 (o) Was grossly negligent or incompetent in the practice of real estate
10 appraising. The types of error that affect an appraiser's competence and
11 may place the appraiser in violation of this provision may be classified as
12 follows:

13 A willful error of omission or commission of an act which
14 substantially and materially affects the results of individual appraisal
15 assignments but, nevertheless, evidence the fact that an appraiser is
16 repeatedly rendering professional services in a careless and negligent
17 manner.

18 Section 16. Nothing contained in this Act shall be deemed to prohibit
19 any licensee from engaging in the practice of real estate appraising as a
20 professional corporation in accordance with the provisions of the
21 Professional Service Corporation Act of this Territory.

22 Section 17. Every resident licensee shall maintain a place of business
23 in this Territory and shall conspicuously display his or her license therein.
24 Notice in writing shall be given to the Board by early licensee of any
25 change of principal business location, whereupon the Board shall issue a
26 new license for the unexpired term.

27 Section 18. (a) No person shall testify as an appraiser before any
28 court, tribunal, judge, referee or judicial committee without being certified
29 under the provisions of this Act.

30 (b) No person engaged in the business or acting in the capacity of a
31 real estate appraiser may bring or maintain any action in any court of this
32 Territory for the collection of compensation for the performance of any act
33 or contract for which certification is required by this Act without alleging

1 and proving that the appraiser at all times during the performance of the
2 act or contract was certified in this Territory as an appraiser.

3 Section 19. Any person required to be certified by this Act, who
4 engages in the practice of real estate appraising without obtaining a
5 license, shall be liable for a penalty as prescribed by the Board. The
6 appraiser shall be ineligible to obtain certification for such period of time as
7 may be fixed by the Board from date of conviction of such offense, unless
8 the Board, at its discretion, waives such period of ineligibility.

9 Section 20. Penalty. Any person required by this Act to be certified
10 who engages in the profession of real estate appraising without obtaining
11 certification therefor, or who violates any provision of the Act, shall be
12 guilty of a misdemeanor and shall be ineligible to obtain a license for one
13 year from the date of conviction of such offense, except that the Board, at
14 its discretion, may grant certification to such person within such one-year
15 period upon application and after a hearing thereon.

16 Section 21. Recordingkeeping Requirement.

17 (a) All persons registered or certified under this Chapter shall retain
18 for a period of five (5) years the original or true copy of:

19 (1) Each written contract engaging his services for real estate
20 or real property appraisal work;

21 (2) Each appraisal report prepared or co-signed by him; and

22 (3) All supporting data assembled and formulated by the
23 appraiser in preparing each appraisal report.

24 (b) The five-year period for retention of records is applicable to each
25 engagement of the services of the appraiser and begins upon the date of
26 the delivery of each appraisal report to the client unless, within the
27 five-year (5) period, the appraiser is notified that the appraisal or the
28 appraisal report is involved in litigation, in which event the five-year (5)
29 of the retention of records begins upon the date of the final disposition of
30 the litigation.

31 (c) Upon reasonable notice, all persons registered or certified under
32 this Act shall make all records required to be maintained under this Act
33 available to the Board for inspection and copying.

1 Section 22. Severability Clause. If any provision of this Act, or the
2 application of any provision to any person or circumstance, is held invalid
3 or determined to be contrary to federal laws governing the certification or
4 licensure of real estate appraisers, the remainder of this Act is given effect
5 without the invalid provision or application.