

Exhibit Number: 3

The following exhibit is several assorted documents that exceeds the 10-page limit therefore it cannot be scanned. A small portion has been scanned to aid in your research for information. The exhibit is on file at the Montana Historical Society and can be viewed there.

true, but irrelevant. As with Licensed and Certified Appraisers, provisional licensees will not be eligible to conduct FHA or VA loans, such loans require additional federal certification. Provisional licensees, as with Licensed Residential Appraisers, will be eligible to conduct appraisals that are not FHA or VA related and under \$250,000.

II. Experience requirements:

It has been asserted that SB 5 will not comply with the experience requirements established by the Appraisal Foundation. The experience requirements referred relate only to Trainee Appraisers. Appraiser Qualifications Board Qualification Criteria, p. 2, Jan 1, 1998, Criteria Revisions effective Jan. 1, 2003. www.appraisalfoundation.org With the exception of the Trainee Appraiser status, no license or certification class requires direct supervision or mentoring. Thus, the Provisional Licensed Appraiser, as submitted in SB 5, will be in full compliance with federal law and the criteria recommended by the Appraisal Foundation.

In passing the provisional license provision, Montana will be following the lead of Texas, a state with many similarities to Montana. Texas adopted the Provisional License status to address a need in the market for appraisers and to open the doors to this profession for those able to meet the education and testing requirements but unable to find a mentor. Montana is faced with very similar circumstances.

As demonstrated by the signed and sworn statements attached hereto, the few willing mentors in Montana are generally training relatives and are unwilling to take new trainees. The scarcity of willing mentors is compounded by an irrational mileage restriction on trainee experience. A.R.M. 24.207.503 provides, inter alia, that "[a] trainee shall perform qualifying experience within 100 miles of the mentor's business address." Montana's rural geography and dispersed population do not merit such regulation. Given the required training period of 2,500 hours and a minimum of 100 appraisals, see A.R.M. 24.207.517-18, it is not surprising that mentors are only willing to train relatives. These requirements are likely invalid as exceeding legislative guidelines and they are not rationally related to the regulation of the profession. See, e.g., *Bell v. Dept. of Professional and Occupational Licensing*, 594 P.2d 331 (1979); *Board of Barbers v. Big Sky College*, 626 P.2d 1269 (1981).

Senate Bill 5 will provide those individuals that have met the educational and testing requirements an opportunity to acquire their Licensed Appraiser Certification. The Board will still regulate and provide oversight of these individuals. In addition, market forces will sort the wheat from the chaff. The concerns being raised regarding SB 5 are not supported by the federal or state law. The nearly identical Texas statutes have been in effect since June of 2003 with no reported case involving a provisionally licensed appraiser and no challenge to the statute.

Please feel free to contact me to address any questions or concerns that may arise.

Sincerely,

James F. Gardner



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March 1, 2005

Re: Senate Bill 5, 2005

Dear MT House Business and Labor Committee Members:

I am writing to address concerns regarding Senate Bill 5, 2005 (SB 5). For the past year I have been in close contact with several individuals attempting to enter the real estate appraisal profession. Each of these individuals has met the education requirements and passed both the state board exam and the Uniform Standard of Professional Appraisal Practices exam. However, due to the strict direct supervision and mentoring requirements under the Administrative Rules of Montana, these individuals are barred from the profession. Simply stated, licensed appraisers are not willing to train their competition, relatives excepted. Senate Bill 5 will open the door to those individuals that have met the education and testing requirements but are unable to secure a mentor. This will promote competition within the profession and result in better service to the people of Montana and the banking industry.

After reviewing the SB 5 and comparing it with federal and state law, I have concluded that SB 5 is in full compliance with state and federal law. This is confirmed by a comparison of SB 5 with a very similar statute in Texas. See Vernon Texas Statutes, V.T.C. § 1103.208, attached hereto. Each specific concern raised is addressed below.

I. Compliance with Federal Law.

An assertion has been made that SB 5 will violate federal law, specifically 12 U.S.C. § 3349. The United States Code provides, in pertinent part:

- (a) Violations - Except as authorized by the Appraisal Subcommittee in exercising its waiver authority pursuant to section 3348(b) of this title, it shall be a violation of this section -
 - (1) for a financial institution to seek, obtain, or give money or an other thing of value in exchange for the performance of an appraisal by a person who the institution knows is not a **State certified or licensed appraiser** in connection with a federally related transaction

12 U.S.C. § 3349(2004)(emphasis added, attached hereto) Here, with the passage and executive signing of SB 5, a provisional licensee appraiser will be a licensed appraiser under state law subject to the Board of Real Estate Appraiser's regulations and oversight. Therefore, as in Texas, Montana will be in full compliance with federal law. V.T.C. § 1103.208, attached hereto. The assertion being made that provisional licensees will not be able to do FHA and VA loans is

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TITLE 22

EXAMINING BOARDS

PART 8

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153

RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

RULE §153.8

Scope of Practice

(a) Certified General Real Estate Appraisers:

- (1) may appraise of all types of real property without regard to transaction value or complexity; and
- (2) are bound by the Competency Rule and all other provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.

(b) Certified Residential Real Estate Appraisers:

- (1) may appraise one-to-four residential units without regard to transaction value or complexity;
- (2) may appraise vacant or unimproved land for which the highest and best use is for one-to-four family purposes;
- (3) may not appraise subdivisions;
- (4) may associate with a state certified general real estate appraiser, who shall sign the appraisal report, to appraise non-residential properties; and
- (5) are bound by the Competency Rule and all other provisions of the USPAP in effect at the time of the appraisal.

(c) State Licensed Real Estate Appraisers:

- (1) may appraise non-complex one-to-four residential units having a transaction value less than \$1 million and complex one-to-four residential units having a transaction value less than \$250,000;
- (2) may appraise vacant or unimproved land for which the highest and best use is for one to four family purposes;
- (3) may not appraise subdivisions;
- (4) may associate with a state certified general real estate appraiser, who shall sign the appraisal report, to appraise non-residential properties; and
- (5) are bound by the Competency Rule and all other provisions of the USPAP in effect at the time of the appraisal.

(d) Provisional Licensed Real Estate Appraisers:

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TITLE 22**EXAMINING BOARDS****PART 8****TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD****CHAPTER 153****RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT****RULE §153.16****Provisional License**

(a) An applicant for appraiser trainee classification who can demonstrate to the board that the applicant has, after completing the appropriate educational requirements for a state licensed real estate appraiser under §153.13 of this title (relating to Educational Requirements), after making a diligent and good faith search, failed to secure sponsorship from at least two certified appraisers to obtain the 2,000 hours of acceptable experience required for licensing, the applicant may apply to the board to take the examination under the Act, §10.

(b) An applicant under this section must file an application for a provisional license using forms prescribed by the board and pay the same fees as required for a state licensed real estate appraiser under §153.5 of this title (relating to Fees).

(c) An applicant under this section must be a citizen of the United States or a lawfully admitted alien; be at least 18 years of age; be a legal resident of the state for at least 60 days immediately prior to filing an application; and satisfy the board as to the prospective provisional licensee's honesty, trustworthiness and integrity.

(d) An applicant under this section who passes the state licensed real estate appraiser examination required under the Act, §10, and who meets all other requirements for licensing, except for the actual real estate appraisal experience requirement, shall be provisionally licensed by the board.

(e) An applicant receiving a provisional license under subsection (d) of this section must complete the actual real estate appraisal experience requirement not later than the 60th month after the date the license was issued. Failure to complete the appropriate real estate appraisal experience requirement by that date or failure to report completion of a portion of the person's real estate appraisal experience requirement each renewal period constitutes grounds for the automatic revocation of the provisional license.

(f) Persons practicing under this section must keep and maintain a current log of appraisal activities performed on a form prescribed by the board.

Source Note: The provisions of this §153.16 adopted to be effective September 1, 1995, 20 TexReg 6202; amended to be effective November 17, 1999, 24 TexReg 10090; amended to be effective April 1, 2001, 26 TexReg 2163



(1) may appraise the same types of properties as a State Licensed Real Estate Appraiser; and

(2) are bound by the Competency Rule and all other provisions of the USPAP in effect at the time of the appraisal.

(e) Appraiser Trainees:

(1) may appraise those properties, under the active, personal and diligent supervision of their sponsoring certified appraiser, which the supervising certified appraiser sponsor is permitted to appraise; and

(2) shall be subject to the USPAP in effect at the time of the appraisal.

Source Note: The provisions of this §153.8 adopted to be effective January 1, 1999, 23 TexReg 6443; amended to be effective April 1, 2001, 26 TexReg 2163

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