

Clearinghouse Rule 13-053

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STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF
DEPARTMENT OF SAFETY AND : SAFETY AND PROFESSIONAL
PROFESSIONAL SERVICES : SERVICES
: ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal s. SPS 81.04 (1) (c) 3. and 4., and to amend s. SPS 81.04 (2), relating to reciprocity.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

s. 440.03 (1), Stats.

Statutory authority:

ss. 227.11 (2) (a), 440.03 (1), 458.12, Stats.

Explanation of agency authority:

The Department is empowered to promulgate rules interpreting the provision of any statute it enforces or administers pursuant to s. 227.11 (2) (a), Stats. Under the authority of s. 440.3 (1), Stats., the department may promulgate rules defining uniform procedures to be used by the Real Estate Appraisers Board. Under s. 458.12, Stats., the Real Estate Appraisers Board is allowed to enter into reciprocal agreements. The subject of these proposed rules deals with the procedure for entering into reciprocity agreements with other states. Therefore, the Board is authorized to draft these proposed rules

Related statute or rule:

ch. SPS 81.04

Plain language analysis:

A procedure for reciprocity for real estate appraisers is the topic of these proposed rules. Presently applicants seeking reciprocity in Wisconsin must hold a current credential from another state, which has not been subject to discipline, and was granted in compliance with the Financial Institutions Reform Recovery Act of 1989, (FIRREA) 12 USC 3331 et. seq. Applicants must also pass a Wisconsin statutes and rules examination, have no arrests or convictions and have satisfied the required experience. As a result of federal legislation, namely FIRREA Title XI as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), less strenuous procedures for reciprocity must be put into place on or before July 1, 2013.

The Dodd-Frank Act directs states to refrain from imposing additional barriers on the issuance of reciprocity credentials to appraisers from other states. Under the federal legislation, an applicant seeking reciprocity in Wisconsin must be from a state that is in compliance with FIRREA Title XI. Also, the applicant must hold a valid credential from that state. Furthermore, the credentialing requirements of that state, as they currently exist, must meet or exceed the credentialing requirement in Wisconsin, as they currently exist.

Summary of, and comparison with, existing or proposed federal regulation:

FIRREA Title XI regulates real estate appraisers on the federal level. The purpose of FIRREA Title XI “is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.” 12 U.S.C. 3331. This federal mandate is accomplished via the Appraisal Subcommittee (ASC). The ASC monitors state regulation of licensed appraisers and reviews each state’s compliance with the federal legislation. The ASC also monitors appraisal standards for federally-related transactions and determines whether state licensed appraisers will be required for these real estate transactions.

The Dodd-Frank Act amended the reciprocity requirement of FIRREA XI. Instead of merely encouraging states to develop reciprocity agreements, the Act requires that states may not impose additional impediments when issuing reciprocity credentials. However, states may be more lenient in issuing reciprocity credentials and advance a more open door policy.

Comparison with rules in adjacent states:

Illinois: Illinois does not grant licensure by reciprocity for real estate appraisers but allows licensure by endorsement for non-resident applicants. Endorsement applicants must submit an application, the required fee, and a certification of good standing from the jurisdiction of the applicant’s place of residence. ILL. ADMIN. CODE tit. 68 §1455.100.

Iowa: Iowa grants non-resident applicants licensure by reciprocity. Applicants seeking reciprocity must submit the appropriate form, pay the required fee and demonstrate good standing in another state. The good standing requirement may be demonstrated by being listed as an appraiser in good standing on the National Registry of the Appraisal Subcommittee. IOWA ADMIN. CODE r. 193F-10.01 (2).

Michigan: Michigan provides for licensing without examination. MCL 339.2623. The state will issue a certified general real estate appraiser, or state licensed real estate appraiser licensure without examination as long as that applicant is licensed, registered, certified, or otherwise regulated by another state and if the requirements of that state are at least equal to Michigan's requirements.

Minnesota: Minnesota requires non-resident applicants to comply with the same application requirements as in-state applicants. MINN. STAT. §82B.071 SUBD.7.

Summary of factual data and analytical methodologies:

The rules were developed primarily by reviewing and comparing federal legislation with Wisconsin's rules regulating real estate appraisers in an effort to bring the Wisconsin Administrative Code language in line with the federal statutes. No other analytical methodologies were used.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

These proposed rules do not have an economic impact on small businesses as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@wisconsin.gov. or by calling (608) 266-8608.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Shawn Leatherwood, Rules Coordinator Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.Leatherwood@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Shawn Leatherwood, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to Shancethea.Leachwood@wisconsin.gov. Comments must be received on or before August 12, 2013 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 81.04 (1) (c) 3. and 4. are repealed.

SECTION 2. SPS 81.04 (2) is amended to read:

SPS 81.04 (2) In determining whether to grant a reciprocal license or certification, the department shall consider whether the current requirements for a license or certification in the other state or territory are substantially equivalent to meet or exceed the requirements for licensure or certification as an appraiser in this state. ~~For purposes of reciprocity, the department shall consider the requirements for a license or certification in effect in the other state or territory at the time a credential was granted by the other state or territory rather than at the time of filing of an application in this state.~~

SECTION 3. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Secretary Dave Ross
Department of Safety and Professional
Services