

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Statutory Authority: 24 Delaware Code, Section 10113(b)(4) (24 **Del.C.** §10113(b)(4))
24 **DE Admin. Code** 2930

PROPOSED

PUBLIC NOTICE

2930 Council on Real Estate Appraisers

The Delaware Council on Real Estate Appraisers, pursuant to 24 **Del.C.** §4006(a)(1), proposes to revise its rules and regulations. The majority of the proposed revisions to the rules are changes required to come into compliance with the new AQB criteria, additional changes remove the requirement of pre-certification examination for assessors, lower the acceptable late renewal time period from twelve months to sixty days for all licensees and certificate holders.

The Board will hold a public hearing on the proposed rule change on April 22, 2013 at 2:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Council on Real Estate Appraisers, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 7, 2013.

The proposed rule changes are as follows, additions shown underline, deletions in strike-through:

1.0 Application for Appraiser License or Certificate

1.1 Application

A person who wishes to file an application for a real property appraiser license or certificate may obtain the required form upon request to the Council. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, places of residence and employment, experience, education, and other information as may be necessary to identify the applicant and review the applicant's qualifications for licensure or certification.

1.2 Filing and Fees

1.2.1 Properly completed applications together with the appropriate fee(s) must be received in the Council's office prior to scheduling the examination.

1.2.2 A processing fee set by the Division of Professional Regulation will be charged for the following:

1.2.2.1 Initial application and licensure for appraiser trainee license

1.2.2.2 Initial application and licensure for licensed real property appraiser license

1.2.2.3 Initial application and certification for certified residential real property appraiser certificate

1.2.2.4 Initial application and certification for certified general real property appraiser certificate

1.2.2.5 Renewal

1.2.2.6 Duplicate license and certificate

1.2.2.7 Roster

1.2.2.8 Federal Appraiser Registry

1.2.2.9 Letter of Good Standing

1.2.3 Fees shall be made payable to the "State of Delaware," and mailed to the Delaware Council on Real Estate Appraisers, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. For further information, please contact the Administrative Assistant to the Council at (302) 744-4500.

4 DE Reg. 1504 (03/01/01)

9 DE Reg. 1377 (03/01/06)

2.0 Appraiser Licensing and Certification

2.1 Qualifications for Appraiser Licensure and Certification

2.1.1 The qualifications for licensure or certification shall be the criteria established by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation for:

2.1.1.1 certified general real property appraiser;

2.1.1.2 certified residential real property appraiser;

2.1.1.3 licensed real property appraiser; and

2.1.1.4 trainee real property appraiser.

- 2.1.2 A summary of the criteria set by the AQB is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from The Appraisal Foundation, 1155 15th Street, NW, Suite 1111, Washington, DC 20005.
- 2.1.3 The 2008 qualification criteria established by the AQB will be phased in using the segmented approach. The three AQB components that must be satisfied to obtaining licensure are: education, experience and examination. An applicant must meet the criteria in effect at the time he or she completes one of these components. Therefore, all applicants for certification or licensure must meet the 2008 qualifications criteria established by the AQB for any component completed on or after January 1, 2008. This regulation will become null and void on December 31, 2014.
- 2.2 License and Certificate Renewal
 - 2.2.1 In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensees and certificate holders. Certificates and licenses will expire on October 31st of each odd numbered year.
 - 2.2.2 As a condition of renewal, all licensees and certificate holders, either resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.3 of this Section.
 - 2.2.3 A licensee or certificate holder shall not perform appraisals after a license has expired. A licensee or certificate holder may renew a certificate or license within ~~12 months~~ 60 days of its expiration. After ~~12 months~~ 60 days, the individual must reapply as a new applicant.
 - 2.2.4 A licensee or certificate holder may apply for inactive status for an indefinite time period if he or she is not performing appraisals in Delaware.
 - 2.2.4.1 Persons with in an inactive license or certificate must complete the same continuing education requirement as active licensees or certificate holders. Evidence of completion is due at renewal as provided in Rule 2.3.
 - 2.2.4.2 An inactive license or certificate can be reactivated by notifying the Council in writing.
- 2.3 Continuing Education
 - 2.3.1 All licensees and certificate holders are required to attest to the completion of continuing education according to the following schedule:
 - 2.3.1.1 No continuing education is required for fewer than 6 months of licensure;
 - 2.3.1.2 ~~Effective with the licensure period beginning November 1, 2007, f~~Fourteen (14) hours of continuing education are required after at least 6months but fewer than ~~24~~ 12 months of licensure; and
 - 2.3.1.3 twenty-eight (28) hours of continuing education are required after ~~24~~ 12 months of licensure by the end of the first renewal cycle.
- 2.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 2.0.
 - 2.4.1 Attestation may be completed electronically if the renewal is accomplished online. ~~In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~
 - 2.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 2.5.
- 2.5 Random audits will be performed by the Council to ensure compliance with the CEU requirements. At least 25% of the licensees shall be audited at each renewal. The Council shall have the discretion to increase the percentage of licensees to be audited. Every licensee renewing during the permissible late period after the expiration of the license or certificate will be included in the audit.
 - 2.5.1 The Council will notify licensees within sixty (60) days after ~~January 31~~ renewal that they have been selected for audit.
 - 2.5.2 Licensees selected for random audit shall be required to submit verification within ~~ten (10)~~ thirty days of ~~receipt~~ the date of notification of selection for audit.
 - 2.5.3 Verification shall include such information necessary for the Council to assess whether the course or other activity meets the CE requirements in Section 2.0, which may include, but is not limited to, the following information:
 - 2.5.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance;
 - 2.5.3.2 Date of CE course;
 - 2.5.3.3 Instructor of CE course;
 - 2.5.3.4 Sponsor of CE course;

- 2.5.3.5 Title of CE course; and
- 2.5.3.6 Number of hours of CE course.
- 2.5.4 The Council shall review all documentation submitted by licensees pursuant to the continuing education audit. If the Council determines that the licensee has met the continuing education requirements, his or her license shall remain in effect. If the Council determines that the licensee has not met the continuing education requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. ~~The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the continuing education requirements.~~ Unjustified noncompliance with the continuing education requirements set forth in these rules and regulations shall constitute a violation of 24 **Del.C.** §4014(a)(5) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §4016.
- 2.5.5 All licensees and certificate holders, except as provided in 2.3.1.1, must complete as a condition of each renewal:
- 2.5.5.1 The seven (7) hour National USPAP Update Course or its equivalent as determined through the AQB Course Approval Program or by an alternate method established by the AQB and
- 2.5.5.2 Beginning November 1, 2009, and thereafter three (3) hours of education on Delaware Law, Rules and Regulations
- 2.5.6 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:
- Influences on real estate value
 - Legal consideration of appraisal
 - Types of value
 - Real estate markets and analysis
 - Valuation process
 - Property description
 - Highest and best use
 - Appraisal math & statistics
 - Sales comparison approach
 - Site value
 - Cost approach
 - Income approach
 - Estimation of income and expenses
 - Operating statement ratios
 - Direct capitalization
 - Cash flow estimates
 - Measures of cash flow
 - Discounted cash flow analysis
 - Gross rent multiplier analysis
 - Valuation of partial interests
 - Appraisal standards and ethics
 - Narrative report writing
 - Appraisal Statistical concepts
 - Ad valorem taxation
 - Arbitration
 - ~~Business courses related to real estate appraisal~~
 - Development cost estimating
 - Ethics and standards of professional practice
 - Land use planning, zoning and taxation
 - Management, leasing, brokerage, timesharing
 - Property development
 - Real estate appraisal (valuations/evaluations)
 - Real estate financing and investment
 - Real estate law
 - Real estate litigation
 - Real estate appraisal related computer applications
 - Real estate securities and syndication
 - Real property exchange
 - Delaware law and regulations

2.5.7 Continuing education credit, up to 14 hours per licensure cycle, may also be granted for participation, other than as a student, in:

2.5.7.1 Teaching, ~~not including preparation time up to the number of hours spent teaching, for example, a 3-hour class can be submitted for 6 hours if the preparation time was at least 3 hours.~~

2.5.7.2 Program development

2.5.7.3 Authorship of textbooks

2.5.8 Continuing education credit may be awarded for participation in field trips, conferences, and trade association meetings, excluding travel time, if those activities specifically relate to real estate appraisal education, but for no more than eight (8) hours per licensure period.

2.5.9 A creditable hour is defined as fifty minutes out of each sixty minute segment. The educational offering must be at least two hours.

2.5.10 The Delaware Council on Real Estate Appraisers may approve the content of a distance education course after approval of the delivery mechanism is approved from one of the following sources:

2.5.10.1 AQB approved organizations providing approval of course design and delivery, such as the International Distance Education Certification Center (IDECC);

2.5.10.2 A college that qualifies for content approval and awards academic credit for the distance education course; or

2.5.10.3 A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity;

2.5.11 Beginning November 1, 2009, and thereafter, at least 14 hours per licensure period must be taken in a traditional classroom setting, with an instructor.

2.5.12 Courses must be approved by the Council to qualify as continuing education. Either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.

~~2.5.13 Hardship. An applicant for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. Hardship may include, but is not limited to, disability, illness, extended absence from the country and exceptional family responsibilities. The Council may grant an extension, not to exceed two years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Council reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Council prior to the expiration of the license.~~

2.6 Duplicate License or Certificate Fee

2.6.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. A certified copy of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.

2.7 Federal Appraiser Registry

Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid biennially by the license or certificate holder to the State of Delaware.

4 DE Reg. 1504 (03/01/01)

6 DE Reg. 1668 (06/01/03)

9 DE Reg. 1377 (03/01/06)

11 DE Reg. 813 (12/01/07)

11 DE Reg. 1499 (05/01/08)

13 DE Reg. 123 (07/01/09)

16 DE Reg. 221 (08/01/12)

3.0 Examination

3.1 Examination

3.1.1 The Council shall review each application to determine whether the applicant is qualified under 24 Del.C. §4008 to sit for the examination.

- 3.1.2 Applicants for licensure as a state licensed real property appraiser and for certification as a state certified residential or general real property appraiser shall successfully complete the examination as endorsed by the AQB and approved by the Council on Real Estate Appraisers.
- 3.1.3 The passing scores on the examinations shall be the scores recommended as passing by Assessment Systems, Inc., the successor agency or company then contracted by the Division of Professional Regulation for administering the examination as endorsed by the Council on Real Estate Appraisers.

4 DE Reg. 1504 (03/01/01)

9 DE Reg. 1377 (03/01/06)

4.0 General Appraisal Practice

4.1 Administrative Responsibilities

- 4.1.1 A State licensed real property appraiser shall utilize the term "State licensed real property appraiser"; a State certified residential real property appraiser shall utilize the term "State certified residential real property appraiser"; and a State certified general real property appraiser shall utilize the term "State certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A State licensed appraiser trainee shall use the term "State licensed appraiser trainee" or "appraiser trainee" and shall only co-sign appraisals along with a State licensed or State certified real property appraiser. Approved abbreviations are as follows:
 - DE Cert Gen followed by the certification number,
 - DE Cert Res followed by the certification number,
 - DE Lic Appr followed by the license number,
 - DE Appr Trainee followed by the license number.
- 4.1.2 The real property appraiser license or certificate of a State licensed or State certified real property appraiser shall be prominently displayed at the appraiser's place of business. The license of a State licensed appraiser trainee shall be prominently displayed at his or her supervisor's place of business.
- 4.1.3 The biennial license or certificate renewal pocket card issued by the Council to each State licensed or State certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification. When performing appraisals, the licensee or certificate holder shall carry on his/her person the pocket card issued by the Council.
- 4.1.4 When advertising or otherwise holding himself/herself out as a real property appraiser, a State licensed real property appraiser shall identify himself/herself as a "State licensed real property appraiser." A State certified residential real property appraiser shall identify himself/herself as a "State certified residential real property appraiser". A State certified general real property appraiser shall identify himself/herself as a "State certified general real property appraiser." A State licensed real estate appraisal trainee shall identify himself/herself as a "State licensed real estate appraiser trainee."
- 4.1.5 Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity.
- 4.1.6 All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, e-mail address, business telephone number or trade name within ten (10) days of said change. The information provided shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder. All licensees and certificate holders shall notify the Council in writing of each change of supervisor or employer, and shall provide the Council with the new supervisor's or employer's name, business address, and business telephone number.
- 4.1.7 Each written appraisal report prepared by or under the direction of a State licensed or State certified real property appraiser shall bear the signature of the State licensed or State certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the appropriate title such as "appraiser trainee" (as co-signer only), "State licensed real property appraiser," "State certified residential real property appraiser," or the designation "State certified general real property appraiser," or the approved abbreviations as specified in Rule 4.1.1. Said certified or licensed appraiser shall be fully responsible for the content of the report prepared under his or her direction. Where applicable, each appraisal report shall also indicate whether or not the State licensed or State certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.
- 4.1.8 Each State certified or State licensed appraiser shall be responsible for the proper maintenance and retention of the appraisal records.

4.2 Responsibilities of Supervisors of State Licensed Trainees

4.2.1 A state licensed appraiser trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that he/she is actively and personally supervised by a state certified real property appraiser, provided that the appraisal report is reviewed and signed by the state certified real property appraiser, and provided that the certified appraiser accepts total responsibility for the appraisal report. An appraiser trainee is permitted to have more than one supervising appraiser. Notwithstanding any language in Rule 4.2 to the contrary, as of January 1, 2008 and in accord with the AQB qualification criteria in effect as of that date, only certified appraisers in good standing may supervise trainees.

4.2.2 A state certified real property appraiser may employ a person(s) as a state licensed appraiser trainee(s) to assist in the performance of real estate appraisals, provided that the state certified real property appraiser:

4.2.2.1 Provides direct supervision of the state licensed appraiser trainee as defined in the Uniform Standards of Professional Appraisal Practice (USPAP); "Direct Supervision" means to:

4.2.2.1.1 personally inspect with the trainee the interior and exterior of each property appraised;

4.2.2.1.2 personally review each appraisal report prepared by the trainee;

4.2.2.1.3 accept full responsibility for the report;

4.2.2.1.4 assign work to the trainee only if the trainee is competent to perform such work; and

4.2.2.1.5 approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements;

4.2.2.2 Reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a state licensed appraiser trainee is utilized;

4.2.2.3 Complies with all provisions of 4.1.7 regarding appraisal reports;

4.2.2.4 Reviews and approves a trainee's experience log maintained pursuant to 4.3.2.2. The supervisor shall make available to the trainee a copy of any appraisal report that the trainee assisted in preparing that is requested for review by the Council;

4.2.2.5 Supervises no more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.2.3. Beginning January 1, 2008, a supervising appraiser shall not supervise more than three trainees at one time regardless of their status concerning exemption;

4.2.2.6 Signs an affidavit affirming that he/she is a State certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers; and

4.2.2.7 Immediately advises the Council in writing when the certified appraiser is no longer supervising the trainee. The writing shall include the last known address of the appraiser trainee along with a copy of the letter from the supervisor to the trainee advising the trainee that his/her employment has been terminated or the letter of resignation from the trainee to the supervisor, whichever is applicable.

4.2.3 After the trainee has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule 4.2.2.1.1, provided the trainee is competent to perform the inspection.

4.2.4 Effective July 1, 2009, any certified ~~or licensed~~ appraiser who has been sanctioned by the Council within the preceding three years shall not be eligible to supervise trainees for three years after the date of completion of the sanction. Where the sanction is a letter of reprimand, the date of completion is the date that the letter is signed and mailed. Where the sanction is a fine, the date of completion is the date that the fine is paid. Where the sanction is probation or suspension, the date of completion is the date when the license is reinstated in full with no restrictions or limitations. State certified ~~or licensed~~ appraisers who were sanctioned by the Council prior to July 1, 2009 are exempt from this provision.

4.3 Responsibilities of State Licensed Appraiser Trainees

4.3.1 All appraiser trainees must be licensed as required under 24 **Del.C.** Ch. 40.

4.3.2 A State licensed trainee may assist in the performance of real estate appraisals provided that:

4.3.2.1 The trainee shall only work under the direct supervision of one or more State certified real property appraiser(s); an individual who is no longer supervised shall not engage in the act of appraising until a new license is issued showing a new supervisor;

4.3.2.2 The trainee shall maintain an appraisal experience log on a form provided by the Council and certified by the supervising appraiser;

- 4.3.2.3 The trainee shall inspect the property and participate in the appraisal process in order to receive experience credit for the hours spent. In order for the trainee to receive experience log credit, either the contribution of the trainee shall be identified in the report, with the trainee identified by name, state and license number, or the trainee shall sign the report. The appraisal shall be signed by the trainee as follows:

The trainee shall place on the "other" line in the signature section of the appraisal forms, his or her license # and the title "appraiser Trainee" in the appropriate places. For example:

"or other (describe) Appraiser Trainee State# X4-xxx"

- 4.3.2.4 The trainee shall ensure that the log is available at all times for inspection by the Council; and
- 4.3.2.5 When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.

4 DE Reg. 1504 (03/01/01)

9 DE Reg. 1377 (03/01/06)

11 DE Reg. 813 (12/01/07)

11 DE Reg. 1499 (05/01/08)

12 DE Reg. 123 (07/01/09)

5.0 Temporary Practice & Reciprocity

5.1 Temporary Practice

The Division of Professional Regulation may grant temporary licensing or certification privileges to an appraiser licensed or certified in another state in accordance with 24 **Del.C.** §4010.

5.2 Reciprocity

The Council may grant a reciprocal license in accordance with 24 **Del.C.** §4011 to applicants certified or licensed in another state whose requirements for certification or licensure are substantially similar to the State of Delaware.

9 DE Reg. 1377 (03/01/06)

6.0 Guidelines for Qualifying Mass Appraisal Experience

6.1 Qualifying Mass Appraisal Experience

- 6.1.1 Qualifying mass appraisal experience must conform to USPAP Standard 6. Credit will be given for experience that demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.
- 6.1.2 Components of the mass appraisal process that should be given credit are highest and best use analysis, model specification (developing the model), and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, shall not be eligible for experience credit.
- 6.1.3 In order to evaluate the experience qualifications of ad valorem tax assessors with mass appraisal experience, the Council will review such applications considering the above - mentioned criteria, and shall review work samples for compliance with USPAP Standard 6. It is important to note that any individual appraisal reports prepared in conformity with USPAP Standards 1 and 2 are fully creditable as appraisal experience. Such reports are often prepared by ad valorem appraisers for defense of value work. Ad valorem appraisers are encouraged to apply for experience credit for full appraisals as well as for mass appraisal experience. An hour of experience is defined as actual verifiable time spent performing tasks in accordance with the Council Rules and Regulations. USPAP Standard 6 sets forth in detail the required work and the reporting of that work for ad valorem tax purposes. Unlike the fee appraiser who prepares and signs a report for each value estimate, the ad valorem appraiser typically prepares analyses and reports that support the appraisals for groups of properties. These efforts are focused on the specification and calibration of models (validation schedules) for these groups of properties.
- 6.1.4 Applicants seeking mass appraisal experience credit must demonstrate their experience using one of the following options:
- 6.1.4.1 Develop the mass appraisal system (model specification and calibration that includes highest and best use analysis) or;
- 6.1.4.2 Adjust an existing mass appraisal system to local market conditions (model calibration that includes highest and best use analysis).

- 6.1.5 Data collection for purposes of mass appraisal, defined as the on-site collection of property characteristics, is not by itself creditable as appraisal experience. However, as part of mass appraisal model specification and/or calibration, the applicant accepts responsibility for the accuracy of market (sales) data used to develop and/or calibrate the models. Therefore, it is important that the applicant have a working familiarity with the range of properties in the sales sample and thus creditable experience is allowed for sales verification work in conjunction with the mass appraisal model specification/calibration process.
- 6.1.6 The applicant must have a documented data collection manual that specifies how each property characteristic was measured. For each property characteristic that influences the final value for any property, a complete specification of the variable must be available in the mass appraisal model (schedule) documentation. This documentation must detail how each property characteristic influences value and it must provide a basis in terms of market evidence for using these characteristics.
- 6.1.7 If the applicant is using an existing mass appraisal system, either mass appraisal vendor supplied or a commercial cost service, documentation must exist which supports how the valuation system was calibrated to local market conditions. If the cost approach is used, documentation must exist which illustrates the extraction of depreciation schedules from local market analysis.
- 6.1.8 If the applicant develops the mass appraisal model (schedule) specification, evidence derived directly from the local market must be available that supports the use of each property characteristic. For property characteristics included in the model that have a marginal influence on value (items generally included for public relations purposes), such items should be specifically identified and their contribution to value detailed.

6.2 Mass Appraisal Experience Log

- 6.2.1 Applicants seeking mass appraisal experience credit must complete the Mass Appraisal Experience Log on a form approved by the Council.

4 DE Reg. 1504 (03/01/01)

9 DE Reg. 1377 (03/01/06)

7.0 Standards of Appraisal Practice

7.1 Appraisal Standards

- 7.1.1 In performing the acts and services of a state licensed or state certified real property appraiser, every appraiser trainee, state licensed and state certified real property appraiser shall comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" (USPAP) and any subsequent amendments thereto, promulgated by the Appraisal Standards Board of the Appraisal Foundation or its successor organization, which standards are hereby adopted by reference.
- 7.1.2 Copies of the "Uniform Standards of Professional Appraisal Practice" are available from The Appraisal Foundation, Distribution Center, P.O. Box 381, Annapolis Junction, MD 20701-09381. An electronic version is available from the Foundation Store at the website of The Appraisal Foundation at www.Appraisalfoundation.org.

9 DE Reg. 1377 (03/01/06)

8.0 Complaints and Hearing Procedures

- 8.1 Complaints. The Council incorporates by reference the procedures for investigation of complaints by the Division of Professional Regulation as set forth in 29 **Del.C.** §8807.
- 8.2 Hearing Procedures. All hearings shall be in accordance with the Administrative Procedures Act, 29 **Del.C.** §§10121-10129.

4 DE Reg. 1504 (3/1/01)

9.0 Public Disclosure

9.1 Public Notice

- 9.1.1 All meetings shall be convened in compliance with the Freedom of Information Act (FOIA) in 29 **Del.C.** Ch. 100.

9.2 Meeting Minutes

Minutes shall be kept of all meetings in accordance with the Freedom of Information Act.

- 9.2.1 Said minutes shall include a record of those present.
- 9.2.2 The minutes shall also include a record by individual members, on each vote taken, as well as any action agreed upon.

- 9.2.3 It shall be the responsibility of the Council's Administrative Assistant to prepare said minutes and keep a copy on file with the Division of Professional Regulation.

9.3 Council Records

- 9.3.1 It shall be the responsibility of the Division of Professional Regulation to maintain the Council's records and to make them accessible to the general public.
- 9.3.2 No person shall be denied reasonable access to the public records of the Council. Copies of records may be obtained from the Administrative Assistant at a cost per page as established by the Division.
- 9.3.3 Records will be open to the public as provided in the Freedom of Information Act.

4 DE Reg. 1504 (3/1/01)

10.0 Assessors

10.1 Definitions

The following words and terms, when used in this regulation, have the following meanings, unless the context clearly indicates otherwise:

"Ad valorem taxation purposes" The establishment of the value of real property as determined by a government employee or revaluation company personnel on contract with a governmental entity for real estate tax assessment.

"Appraisal assessing profession" The body of individuals who are deemed to be qualified to perform ad valorem tax appraisals.

"Assessor" A person responsible for the valuation of real property for ad valorem taxation purposes.

"Business with which a licensed assessor is associated" A business in which the licensed assessor or a member of the licensed assessor's immediate family is a director, officer, owner or employee, or has a financial interest.

"Conflict of interest" A situation in which a licensed assessor uses the licensed assessor's employment or confidential information received through the course of the employment for the private pecuniary benefit of the licensed assessor, a member of the licensed assessor's immediate family, or a business with which the licensed assessor or a member of the licensed assessor's immediate family is associated.

"Financial interest" A financial interest in a legal entity engaged in business for profit which comprises more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness.

"Immediate family" A parent, spouse, child, brother, sister, grandparent or grandchild and, when living in the family household (or under a common roof), all other individuals related by blood or marriage.

"Licensed assessor" An individual who has completed a minimum of 90 hours of basic courses of study covering the appraisal assessing profession and has ~~successfully completed a comprehensive examination covering all phases of the appraisal process and the assessment function established by the assessment statutes of the State~~ obtained a certification from the Board.

"Real estate tax assessment" A valuation placed on real property for governmental purposes by a government employee or revaluation company personnel on contract with a government.

- 10.2 Certification requirements. An assessor employed on or before June 30, 2011, who does not hold the title of "licensed assessor," and an assessor employed after June 30, 2011, shall obtain certification as a assessor within 3 years from the effective date of these regulations.

10.3 Application process.

- 10.3.1 *Application forms.* Application forms for certification as a licensed assessor may be obtained from the Division of Professional Regulations.

- 10.3.2 *Application fee.* The application form shall be accompanied by the fee for certification as an assessor. The application fee is nonrefundable. Payment shall be in the form of a personal check or money order.

- 10.3.3 ~~*Approved applications.* An approved application will be valid for 1 year from the date of approval. If an applicant does not pass the certification examination within this 1-year period, the applicant's application will be considered to have been abandoned. If the applicant wishes to take the examination after 1 year from the date of approval, a new application, along with the required fee, shall be reviewed on the basis of statutes and regulations in effect at the time the new application is received by the Board.~~

- 10.3.4 *Disapproved applications.* An applicant whose application has been disapproved by the Board will be notified in writing of the reasons for the disapproval and will have 1 year from the date of disapproval to correct the deficiencies or to file a request for reconsideration. A request for reconsideration shall give the reason for the applicant's request, shall be accompanied by documentary materials not previously submitted which the applicant wishes the Board to consider and may include a request for an informal interview with the Board. If a request for reconsideration is denied or an applicant is unable to correct the

deficiencies which resulted in disapproval of the application within 1 year from the date of disapproval, a new application, along with the required fee, shall be submitted to the Board. An applicant's new application will be reviewed on the basis of statutes and regulations in effect at the time that the new application is received by the Board.

10.4 Scope of practice. Assessors and revaluation company personnel who receive certification as an assessor may perform appraisals of real property only in limited circumstances, that is, for tax assessment/governmental purposes.

10.5 Qualifications for certification as an assessor.

10.5.1 To be considered for certification as an assessor, an assessor shall meet the following requirements. The assessor shall:

10.5.1.1 Have a high school diploma or its equivalent, or 2 years of assessing experience; and

10.5.1.2 Be 18 years of age or older; and

10.5.1.3 Have successfully completed a minimum of 90 classroom hours of courses of study in subjects covering the appraisal assessing profession, including coverage of the topics in Rule 10.6 (relating to required courses of study); and

~~10.5.1.4 Have successfully completed a comprehensive examination covering all phases of the appraisal process and the assessment function.~~

10.5.2 An applicant for certification as an assessor who has demonstrated compliance with the requirements of Rule 10.5.1 and Rule 10.6 will be granted a certificate by the Board.

10.5.3 Each certificate holder will be issued a wall certificate indicating initial certification and a registration packet, including a biennial renewal certificate and a wallet-size certification card, both of which show the expiration date of the certificate.

10.5.4 Applicants who hold a certified residential or certified general appraiser license from the Board do not need a certification as an assessor, but may practice assessing in this state.

10.6 Required courses of study.

10.6.1 *Courses of study.* The applicant for certification as an assessor shall submit evidence to the Board of having completed 90 classroom/on-line hours of courses in subjects covering the appraisal assessing profession. The following topics are appropriate, but not exclusive:

10.6.1.1 Influence in real estate value.

10.6.1.2 Legal considerations influencing value.

10.6.1.3 Types of values.

10.6.1.4 Economic principles.

10.6.1.5 Real estate markets and analysis.

10.6.1.6 Valuation process.

10.6.1.7 Property description.

10.6.1.8 Highest and best use analysis.

10.6.1.9 Appraisal statistical concepts.

10.6.1.10 Sales comparison approach.

10.6.1.11 Site value.

10.6.1.12 Cost approach.

10.6.1.13 Income approach, including direct and yield capitalization techniques.

10.6.1.14 Valuation of partial interests.

10.6.1.15 Uniform Standards of Professional Appraisal Practice.

10.6.1.16 Narrative report writing.

10.6.1.17 Assessment law and practice.

10.6.1.18 Mass appraisal systems.

10.6.1.19 Mapping.

10.6.2 Courses must be approved by the Council to qualify as meeting the requirements of these rules. Either the provider or the assessor must apply to the Council for approval using a form approved by the Council.

10.7 Continuing education requirement.

10.7.1 Except as provided in 10.7.2, a licensed assessor shall complete 14 classroom hours of continuing education—including at least 7 hours on USPAP and at least 3 hours on the law, rules, and regulations of the Council—during each biennial renewal period as a condition of renewal of certification for the next

biennial renewal period. Fourteen hours may be completed via on-line, video or remote instruction; and fourteen hours must be completed in class during every biennial renewal period.

10.7.2 A licensed assessor whose initial certification becomes effective between January 1 and June 30 of a biennial renewal year will not be required to furnish proof of continuing education as a condition of biennial renewal of certification in that biennial renewal year.

10.7.3 Proof of continuing education is satisfied with an attestation by the licensed assessor that he or she has satisfied the requirements of these rules.

10.7.3.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.

10.7.3.2 Licensed assessors selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 10.7.4.

10.7.4 Random audits will be performed by the Council to ensure compliance with the CE requirements. At least 25% of the licensed assessors shall be audited at each renewal. The Council shall have the discretion to increase the percentage of licensed assessors to be audited.

10.7.4.1 The Council will notify licensed assessors within sixty (60) days after January 31 that they have been selected for audit.

10.7.4.2 Licensed assessors selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.

10.7.4.3 Verification shall include such information necessary for the Council to assess whether the course or other activity meets the CE requirements, which may include, but is not limited to, the following information:

10.7.4.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance;

10.7.4.3.2 Date of CE course;

10.7.4.3.3 Instructor of CE course;

10.7.4.3.4 Sponsor of CE course;

10.7.4.3.5 Title of CE course; and

10.7.4.3.6 Number of hours of CE course.

10.7.5 The Council shall review all documentation submitted by assessors pursuant to the continuing education audit. If the Council determines that the assessor has met the continuing education requirements, his or her license shall remain in effect. If the Council determines that the assessor has not met the continuing education requirements, the assessor shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the continuing education requirements. Unjustified noncompliance with the continuing education requirements set forth in these rules and regulations shall constitute a violation of 24 **Del.C.** §4014(a)(5) and the assessor may be subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §4016.

10.8 Continuing education subject matter.

10.8.1 Continuing education subject matter shall relate to assessment and appraisal practices. The following subjects are acceptable for continuing education:

10.8.1.1 Ad valorem taxation.

10.8.1.2 Arbitration.

10.8.1.3 Business courses related to the practice of real estate appraisal.

10.8.1.4 Development cost-estimating.

10.8.1.5 Ethics and standards of professional practice.

10.8.1.6 Land use planning, zoning and taxation.

10.8.1.7 Management, leasing, brokerage and time sharing.

10.8.1.8 Property development.

10.8.1.9 Real estate appraisal.

10.8.1.10 Real estate financing and investment.

10.8.1.11 Real estate law.

10.8.1.12 Real estate litigation.

10.8.1.13 Real estate appraisal related computer applications.

10.8.1.14 Real estate securities and syndication.

- 10.8.1.15 Real property exchange.
- 10.8.1.16 Mass appraisal model building.
- 10.8.1.17 Mass appraisal model calibration.
- 10.8.1.18 Assessment administration.
- 10.8.1.19 Mapping.
- 10.8.2 Continuing education credit, up to 14 hours per licensure cycle (non in-class hours), may also be granted for participation in:
 - 10.8.2.1 Teaching, including preparation time up to the number of hours spent teaching, for example, a 3 hour class can be submitted for 6 hours if the preparation time was at least 3 hours.
 - 10.8.2.2 Program development
 - 10.8.2.3 Authorship of textbooks
- 10.8.3 Continuing education credit may be awarded for participation in field trips, conferences, and trade association meetings, excluding travel time, if those activities specifically relate to assessor education, but for no more than eight (8) hours per licensure period.
- 10.8.4 A creditable hour is defined as fifty minutes out of each sixty minute segment. The educational offering must be at least two hours.
- 10.8.5 The Delaware Council on Real Estate Appraisers may approve the content of a distance education course after approval of the delivery mechanism is approved from one of the following sources:
 - 10.8.5.1 AQB approved organizations providing approval of course design and delivery, such as the International Distance Education Certification Center (IDECC);
 - 10.8.5.2 A college that qualifies for content approval and awards academic credit for the distance education course; or
 - 10.8.5.3 A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity;
- 10.8.6 Courses must be approved by the Council to qualify as continuing education. Either the provider or the assessor must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.
- 10.8.7 Hardship. An applicant for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. Hardship may include, but is not limited to, disability, illness, extended absence from the country and exceptional family responsibilities. The Council may grant an extension, not to exceed two years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Council reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Council prior to the expiration of the license.
- 10.9 Administrative Responsibilities
 - 10.9.1 The assessor license or certificate of a State licensed assessor shall be prominently displayed at the assessor's place of business.
 - 10.9.2 The biennial license or certificate renewal pocket card issued by the Council to each State licensed assessor shall be retained by the licensee as evidence of licensure. When performing assessments, the licensee shall carry on his/her person the pocket card issued by the Council.
 - 10.9.3 When advertising or otherwise holding himself/herself out as an assessor, a State licensed real assessor shall identify himself/herself as a "State licensed assessor."
 - 10.9.4 Licensure as an assessor is granted only to persons and does not extend to a business entity.
 - 10.9.5 All licensees shall notify the Division in writing of each change of contact information, including but not limited to business address, residence address, e-mail address, business telephone number or trade name within ten (10) days of said change. The information provided shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee. All licensees shall notify the Council in writing of each change of supervisor or employer, and shall provide the Council with the new supervisor's or employer's name, business address, and business telephone number.
 - 10.9.6 Each written assessment prepared by or under the direction of a State licensed assessor shall bear the signature of the State licensed assessor, the license number of the licensee in whose name the assessment report is issued, and the appropriate title such as "State licensed assessor."
 - 10.9.7 Each State licensed assessor shall be responsible for the proper maintenance and retention of the assessment records.
- 10.10 Standards of Professional Conduct.

10.10.1 *Preamble*

Licensed assessors shall comply with the act and this subchapter and conform to the standards of professional conduct in this section. Licensed assessors who fail to adhere to these standards will be subject to professional discipline under 24 **Del.C.** §4016.

10.10.2 *Standard 1. General duties.*

Licensed assessors shall perform their duties in accordance with the general and specific county assessment laws and generally accepted assessment standards. Licensed assessors shall perform all assessments in accordance with USPAP. Licensed assessors may obtain a copy of the current edition of USPAP by writing, telephoning or e-mailing the Appraisal Foundation at 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, (202) 347-7722 or info@appraisalfoundation.org, respectively.

10.10.3 *Standard 2. Public review of assessments and records.*

Licensed assessors shall make property assessments available for public review and shall make all other records in their custody available for public review unless access to the records is specifically limited or prohibited by law or the information has been obtained on a confidential basis and the law permits the information to be treated confidentially.

10.10.4 *Standard 3. Professional qualifications.*

Licensed assessors shall use professional designations only when they are properly authorized to do so. Licensed assessors may not claim qualifications that are false, misleading or deceptive.

10.10.5 *Standard 4. Limitations on activities.*

Licensed assessors may not perform assessments or appraisal-related assignments that could reasonably be construed as being in conflict with their responsibilities to their jurisdictions, employers or clients, in which they have unrevealed personal interests or biases, or that they are not qualified to perform.

10.10.6 *Standard 5. Contingent fees.*

Licensed assessors may not perform an assessment or appraisal-related assignment if the employment itself is contingent upon the reporting of a predetermined analysis or opinion, or if the fee to be paid for the performance of the assignment is contingent upon the opinion, conclusion or valuation reached, or upon the consequences resulting from the assignment.

10.10.7 *Standard 6. Advertising and promotion.*

Licensed assessors may not make false, misleading or deceptive statements or claims in advertising or promotions to solicit assessment and appraisal-related assignments.

10.10.8 *Standard 7. Conflict of interest.*

Licensed assessors who are government employees may not solicit or perform assessment and appraisal-related assignments that could create conflicts of interest or the appearance of conflicts of interest.

4 DE Reg. 1504 (3/1/01)

15 DE Reg. 888 (12/01/11)

11.0 Crimes Substantially Related to the Practice of Real Estate Appraisal.

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of real estate appraisal in the State of Delaware without regard to the place of conviction:

11.1.1 Murder by abuse or neglect in the second degree; class B felony. 11 **Del.C.** §533

11.1.2 Murder by abuse or neglect in the first degree; class A felony. 11 **Del.C.** §634

11.1.3 Murder in the second degree; class A felony. 11 **Del.C.** §635

11.1.4 Murder in the first degree; class A felony. 11 **Del.C.** §636

11.1.5 Unlawful sexual contact in the third degree; class A misdemeanor. 11 **Del.C.** §767

11.1.6 Unlawful sexual contact in the second degree; class G felony. 11 **Del.C.** §768

11.1.7 Unlawful sexual contact in the first degree; class F Felony. 11 **Del.C.** §769

11.1.8 Rape in the fourth degree; class C felony. 11 **Del.C.** §770

11.1.9 Rape in the third degree; class B felony. 11 **Del.C.** §771

11.1.10 Rape in the second degree; class B felony. 11 **Del.C.** §772

11.1.11 Rape in the first degree; class A felony. 11 **Del.C.** §773

11.1.12 Continuous sexual abuse of a child; class B felony. 11 **Del.C.** §778

11.1.13 Dangerous crimes against a child. 11 **Del.C.** §779

11.1.14 Kidnapping in the second degree; class C felony. 11 **Del.C.** §783

11.1.15 Kidnapping in the first degree; class B felony. 11 **Del.C.** §783A

11.1.16 Arson in the third degree; class G felony. 11 **Del.C.** §801

11.1.17 Arson in the second degree; class D felony. 11 **Del.C.** §802

11.1.18 Arson in the first degree; class C felony. 11 **Del.C.** §803

11.1.19 Burglary in the third degree; class F felony. 11 **Del.C.** §824

11.1.20 Burglary in the second degree; class D felony. 11 **Del.C.** §825

11.1.21 Burglary in the first degree; class C felony. 11 **Del.C.** §826

11.1.22 Robbery in the second degree; class E felony. 11 **Del.C.** §831

11.1.23 Robbery in the first degree. 11 **Del.C.** §832

11.1.24 Carjacking in the first degree; class C felony; class B felony. 11 **Del.C.** §836

11.1.25 Extortion; class E felony. 11 **Del.C.** §846

11.1.26 Misapplication of property; class G felony. 11 **Del.C.** §848

11.1.27 Theft of rented property; class G felony. 11 **Del.C.** §849

11.1.28 Theft; class G felony; class A misdemeanor. 11 **Del.C.** §841

11.1.29 Theft; lost or mislaid property; mistaken delivery. 11 **Del.C.** §842

11.1.30 Theft; false pretense. 11 **Del.C.** §843

11.1.31 Theft; false promise. 11 **Del.C.** §844

11.1.32 Theft of services. 11 **Del.C.** §845

11.1.33 Identity theft; class E felony; class D felony. 11 **Del.C.** §854

11.1.34 Forgery; class F felony; class G felony. 11 **Del.C.** §861

11.1.35 Possession of forgery devices; class G felony. 11 **Del.C.** §862

11.1.36 Tampering with public records in the first degree; class E felony. 11 **Del.C.** §876

11.1.37 Issuing a false certificate; class G felony. 11 **Del.C.** §878

11.1.38 Fraudulent conveyance of public lands; class G felony. 11 **Del.C.** §911

11.1.39 Fraudulent receipt of public lands; class G felony. 11 **Del.C.** §912

11.1.40 Insurance fraud; class G felony. 11 **Del.C.** §913

11.1.41 Home improvement fraud; class G felony. 11 **Del.C.** §916

11.1.42 New home construction fraud; class C felony, class F felony, class G felony. 11 **Del.C.** §917

11.1.43 Dealing in children; class E felony. 11 **Del.C.** §1100

11.1.44 Endangering the welfare of a child; class E or G felony. 11 **Del.C.** §1102

11.1.45 Sexual exploitation of a child; class B felony. 11 **Del.C.** §1108

11.1.46 Unlawfully dealing in child pornography; class D felony. 11 **Del.C.** §1109

11.1.47 Possession of child pornography; class F felony. 11 **Del.C.** §1111

11.1.48 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112

11.1.49 Sexual solicitation of a child; class C felony. 11 **Del.C.** §1112A

11.1.50 Bribery; class E felony. 11 **Del.C.** §1201

11.1.51 Receiving a bribe; class E felony. 11 **Del.C.** §1203

11.1.52 Perjury in the second degree; class F felony. 11 **Del.C.** §1222

11.1.53 Perjury in the first degree; class D felony. 11 **Del.C.** §1223

11.1.54 Making a false written statement; class A misdemeanor. 11 **Del.C.** §1233

11.1.55 Tampering with physical evidence; class G felony. 11 **Del.C.** §1269

11.1.56 Hate crimes; class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony. 11 **Del.C.** §1304

11.1.57 Possession of a deadly weapon during commission of a felony; class B felony. 11 **Del.C.** §1447

11.1.58 Possession of a firearm during commission of a felony; class B felony. 11 **Del.C.** §1447A

11.1.59 Removing a firearm from the possession of a law enforcement officer; class C felony. 11 **Del.C.** §1458

11.1.60 Organized crime and racketeering, class B felony. 11 **Del.C.** §1504

11.1.61 Abuse of patient or resident in nursing home; class D felony; class G felony, class A felony. 16 **Del.C.** §1136(a)

11.1.62 Prohibited acts A; class B felony. 16 **Del.C.** §4751

11.1.63 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, lysergic acid diethylamide (LSD), designer drugs, or 3, 4-methylenedioxymethamphetamine (MDMA); class B felony. 16 **Del.C.** §4753A

11.1.64 Knowing or reckless abuse of an infirm adult; class D felony; class E felony; class G felony; class A felony.
31 Del.C. §3913

- 11.2 Crimes substantially related to the practice of appraisal shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

4 DE Reg. 1504 (03/01/01)

9 DE Reg. 1377 (03/01/06)

11 DE Reg. 1499 (05/01/08)

12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 12.1 If the report is received by the chairperson of the regulatory Council, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Council, or that chairperson's designate or designates.
- 12.2 The chairperson of the regulatory Council or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 12.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Council chairperson or that chairperson's designate(s).
- 12.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Council or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Council.
- 12.5 Failure to cooperate fully with the participating Council chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Council chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 12.8 of this section.
- 12.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 12.6.1 Entry of the regulated professional into a treatment program approved by the participating Council. Council approval shall not require that the regulated professional be identified to the Council. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- 12.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Council or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Council or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
- 12.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 12.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating

Council, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Council in addition to the administrative costs associated with the Voluntary Treatment Option.

- 12.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Council's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- 12.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 12.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Council may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 12.8 The participating Council's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 12.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 12.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Council shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 12.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 12.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Council's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

4 DE Reg. 1504 (03/01/01)

9 DE Reg. 1377 (03/01/06)

15 DE Reg. 888 (12/01/11)

15 DE Reg. 1708 (06/01/12)

16 DE Reg. 949 (03/01/13) (Prop.)