

PROPOSED RULEMAKING

STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

General Provisions/Standards of Professional Conduct

The State Board of Certified Real Estate Appraisers (Board) proposes to amend Chapter 36, Subchapter C (relating to certified Pennsylvania evaluators) as set forth in Annex A. The purpose of the proposed amendments is to prescribe standards of professional conduct for certified Pennsylvania evaluators practicing in this Commonwealth. The proposed standards of conduct are modeled after the Code of Ethics and Standards of Professional Conduct of the International Association of Assessing Offices, and are intended to guide certified Pennsylvania evaluators in their relations with assessment offices, public officials and the general public.

Following is a description of the proposed amendments:

§ 36.201. *Definitions.*

Definitions are proposed to be added to § 36.201 to define the terms "act," "business with which a certified Pennsylvania evaluator is associated," "conflict of interest" and "immediate family." Within the context of Subchapter C, the term "act" would mean "The Assessors Certification Act (63 P. S. §§ 458.1—458.16)." This term is currently defined in Subchapter A within the context of certified real estate appraisers to mean "The Real Estate Appraisers Certification Act (63 P. S. §§ 457.1—457.19)." Since certified Pennsylvania evaluators are not governed by the Real Estate Appraisers Certification Act, it is important that the term "act" be defined in Subchapter C to refer to the act which governs certified Pennsylvania evaluators.

The phrase "conflict of interest" appears in Standards 7 and 9 (Limitations on activities; and Advertising). Within the context of these standards, this phrase would be defined to mean "a situation in which a certified Pennsylvania evaluator uses the certified Pennsylvania evaluator's employment or any confidential information received through the course of the employment for the private pecuniary benefit of the certified Pennsylvania evaluator, a member of the certified Pennsylvania evaluator's immediate family or a business with which the certified Pennsylvania evaluator or a member of the certified Pennsylvania evaluator's immediate family is associated."

The phrase, "business with which a certified Pennsylvania evaluator is associated" is proposed to mean "any business in which the certified Pennsylvania evaluator or a member of the certified Pennsylvania evaluator's immediate family is a director, officer, owner, employe or has a financial interest."

Finally, the term "immediate family" within the context of these definitions would mean "A parent, spouse, child, brother or sister."

§ 36.281. *Standards of Professional Conduct.*

Proposed § 36.281 announces the standards of professional conduct to which certified Pennsylvania evaluators

are expected to conform. As proposed, the Preamble to the standards of professional conduct would explain that some of the standards of professional conduct are imperatives, cast in the terms "shall" or "may not." Certified Pennsylvania evaluators are advised that those who fail to adhere to these standards will be subject to disciplinary action under section 7(a)(6) of the act (63 P. S. § 458.7(a)(6)). By contrast, other standards, cast in the terms "may" or "should" are intended as aspirational goals and, therefore, announce areas under which the certified Pennsylvania evaluator has professional discretion. No disciplinary action will be taken when a certified Pennsylvania evaluator acts within the bounds of discretionary standards.

The proposed standards of professional conduct would consist of ten standards. Standard 1 (Duties) would require certified Pennsylvania evaluators to perform their respective duties in accordance with general or specific county assessment laws and generally accepted assessment standards. Certified Pennsylvania evaluators would also be encouraged to perform all assessment and appraisal related assignments to the best of their ability with the ultimate goal of adhering to the Uniform Standards of Professional Appraisal Practice as promulgated and adopted by the Appraisal Standards Board of the Appraisal Foundation.

Standard 2 (Availability of information and records) would require certified Pennsylvania evaluators to make available for public review all records in their custody unless the records are deemed confidential by the county or the property owner or are prohibited or otherwise protected from disclosure by law.

Standards 3 and 4 (Relationship with the public; and Relationship with public officials), respectively, would announce standards to which certified Pennsylvania evaluators should aspire when dealing with the public and public officials.

Proposed Standard 5 (Conduct). Under this standard, certified Pennsylvania evaluators would be expected to conduct their duties in a forthright manner which avoids the appearance of impropriety. Certified Pennsylvania evaluators would also be expected to inform the public of appropriate procedures under the law and local administrative regulations.

Proposed Standard 6 (Professional qualifications) would encourage certified Pennsylvania evaluators to increase their knowledge and enhance their professional skills beyond the minimum continuing education requirements announced in § 36.261 (relating to continuing education). Standard 6 also proposes to advise certified Pennsylvania evaluators of the prohibition against claiming qualifications or using professional designations that are false or misleading.

Standards 7 and 8 (Limitations on activities; and Contingent fees), respectively, announce mandatory rules of conduct. Standard 7 would prohibit a certified Pennsylvania evaluator from performing an appraisal or assessment assignment if the assignment could reasonably create a conflict of interest with the certified Pennsylvania evaluator's client or employer. Standard 7 also announces disclosure requirements for certified Pennsylvania evaluators who are not properly qualified to perform an assignment. As proposed, Standard 8 would prohibit a certified Pennsylvania evaluator from performing an appraisal or assessment assignment when the employment

is contingent upon the reporting of a predetermined analysis or opinion, or where the fee to be paid is contingent upon the opinion, conclusion or value reached, or upon the consequences resulting from the appraisal or assessment assignment.

Proposed Standard 9 addresses the issue of advertising. As proposed, advertising is permissible as long as it is not false, deceptive or misleading and as long as the advertisement does not solicit assignments which would create the appearance of a conflict of interest. Finally, proposed Standard 10 (Unethical practices notification) would encourage certified Pennsylvania evaluators to report unethical or other similar actions which reflect discredit upon the appraisal or assessment profession to the Complaints Office of the Bureau of Professional and Occupational Affairs.

Statutory Authority

This proposal is made under the authority of sections 3 and 7(a)(6) of the act (63 P. S. §§ 458.3 and 7(a)(6)). Section 3 of the act empowers the Board to promulgate rules and regulations consistent with the statutes of the Commonwealth to administer and enforce the provisions of the act. Section 7(a)(6) of the act empowers the Board to impose disciplinary and corrective measures against a certificateholder who violates any of the standards of professional conduct for real property assessment as adopted by the Board by regulation.

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no fiscal impact and will require no additional paperwork by the Commonwealth, its political subdivisions or the private sector.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed amendments on January 19, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has any objections to any portion of the proposed amendments, it will notify the agency within 30 days from the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Agency, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Jackie Wiest Lutz, Counsel, State Board of Certified Real Estate Appraisers, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

(Editor's Note: A proposal to amend § 36.201 (relating to definitions), which is proposed to be amended in this document, remains outstanding at 25 Pa.B. 5613 (December 9, 1995).)

DAVID J. KING,
Chairperson

Fiscal Note: 16A-704. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

Subchapter C. CERTIFIED PENNSYLVANIA EVALUATORS

GENERAL PROVISIONS

§ 36.201. Definitions.

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

Act—The Assessors Certification Act (63 P. S. §§ 458.1—458.16).

* * * * *

Business with which a certified Pennsylvania evaluator is associated—A business in which the certified Pennsylvania evaluator or a member of the certified Pennsylvania evaluator's immediate family is a director, officer, owner, employe or has a financial interest.

* * * * *

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

Immediate family—A parent, spouse, child, brother or sister.

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STANDARDS OF PROFESSIONAL CONDUCT

§ 36.281. Standards of Professional Conduct.

Preamble

Certified Pennsylvania evaluators shall comply with the act and this subchapter and conform to the standards of professional conduct in this section. Some of the standards of professional conduct are imperatives, cast in the terms, "shall" or "may not." Certified Pennsylvania evaluators who fail to adhere to these standards will be subject to professional discipline under section 7(a)(6) of the act (63 P. S. § 458.7(a)(6)). Other standards, generally cast in the terms "may" or "should," are intended as aspirational goals and define areas under which the certified Pennsylvania evaluator has professional discretion. Disciplinary action will not be taken when a certified Pennsylvania evaluator acts within the bounds of discretionary standards.

Standard 1. Duties.

Certified Pennsylvania evaluators shall perform their respective duties in accordance with general or specific county assessment laws and generally accepted assessment standards. Certified Pennsylvania evaluators should perform all assessments and appraisal related assignments to the best of their ability and with the ultimate goal of adhering to the standards announced in the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated and adopted by the Appraisal Standards Board (ASB) of the Appraisal Foundation. The USPAP will be amended by the ASB and published annually in separate yearly bound editions. A copy of the USPAP may be obtained from the Appraisal Foundation, 1029 Vermont Avenue, N. W., Suite 900, Washington, D. C. 20005, (202) 347-7722.

Standard 2. Availability of information and records.

Certified Pennsylvania evaluators shall make available for public review the records in their custody unless the records are deemed confidential by the county or the property owner or are prohibited or otherwise protected from disclosure by law.

Standard 3. Relationship with the public.

In dealing with the public, certified Pennsylvania evaluators should act in a courteous, candid and respectful way. Certified Pennsylvania evaluators who hold supervisory positions should require this same level of professionalism from staff personnel under their jurisdiction.

Standard 4. Relationship with public officials.

Certified Pennsylvania evaluators should cooperate with public officials to improve the effectiveness of real estate tax procedures and to coordinate with other administrative functions of government.

Standard 5. Conduct.

Certified Pennsylvania evaluators should conduct their duties in a forthright manner which avoids the appearance of impropriety. Certified Pennsylvania evaluators should make every effort to inform the public of appropriate procedures under the law and local administrative regulations.

Standard 6. Professional qualifications.

Certified Pennsylvania evaluators should strive to increase their knowledge and enhance their professional skills beyond the minimum mandatory continuing education requirements announced in § 36.261 (relating to continuing education). Certified Pennsylvania evaluators shall use a professional designation only when they are properly authorized to do so. Certified Pennsylvania evaluators may not claim qualifications that are false or misleading.

Standard 7. Limitations on activities.

Certified Pennsylvania evaluators who are licensed to perform appraisals under the Real Estate Licensing and Registration Act (63 P. S. §§ 455.101—455.902) may not perform appraisal or assessment related assignments that could reasonably be construed as creating a conflict of interest with their respective client or employer. Certified Pennsylvania evaluators who are not properly qualified to perform an assignment shall do the following:

(1) Disclose the lack of knowledge or experience, or both, to their respective employer before performing the assignment.

(2) Take the steps necessary or appropriate to complete the assignment competently.

(3) Describe the lack of knowledge or experience, or both, and the steps taken to complete the assignment competently in the report.

Standard 8. Contingent fees.

Certified Pennsylvania evaluators may not perform an appraisal or assessment assignment when the employment itself is contingent upon the certified Pennsylvania evaluator reporting a predetermined analysis or opinion, or if the fee to be paid for the performance of the appraisal or assessment assignment is contingent upon the opinion, conclusion or valuation reached, or upon the consequences resulting from the appraisal or assessment assignment.

Standard 9. Advertising.

Advertising by certified Pennsylvania evaluators is permissible when it does not include false, deceptive or misleading statements or claims. False, deceptive or misleading advertising is prohibited. Certified Pennsylvania evaluators who are employees of a governmental agency should not solicit any type of assessment assignments which could create the appearance of a conflict of interest.

Standard 10. Unethical practices notification.

Certified Pennsylvania evaluators should report unethical practices or other similar actions which reflect discredit upon the appraisal or assessment profession to the Complaints Office of the Bureau of Professional and Occupational Affairs by telephoning the Complaint's Office at (800) 822-2113 or by submitting a written complaint to the Complaint's Officer of the Bureau of Professional and Occupational Affairs, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649.

[Pa.B. Doc. No. 96-140. Filed for public inspection February 2, 1996, 9:00 a.m.]

UNDERGROUND STORAGE TANK INDEMNIFICATION BOARD

[25 PA. CODE CH. 971]

Fees of the Underground Storage Tank Indemnification Fund

The Underground Storage Tank Indemnification Board (Board) proposes to amend § 971.2 (relating to fees) as set forth in Annex A. This revision is proposed under the authority of the Storage Tank and Spill Prevention Act (act) (36 P. S. §§ 6021.101—6021.2104), as amended by the act of December 18, 1992 (P. L. 1660, No. 184) (Act 184) and by the act of June 26, 1995 (P. L. 79, No. 16) (Act 16).

The purpose of this proposal is to amend § 971.2 which governs the fees of the Underground Storage Tank Indem-

nification Fund (Fund). The proposed amendment comports with the recent changes made to the act. Specifically, the Board seeks to amend the existing fee structure and to change the administration of those underground storage tanks (USTs) that store regulated substances as defined by the act and regulations promulgated thereunder.

Background

The Board has studied carefully the numerous amendments to the act to determine the effect new provisions will have on Fund liabilities and the resulting Fund fees. The most significant amendment eliminates commercial heating oil tanks (CHOTs), defined as USTs that equal or exceed 3,000 gallons in capacity storing heating oil for consumptive use on the premises where stored, from the definition of regulated USTs. However, the amendments to the act allow owners or operators of CHOTs to participate in the Fund voluntarily. CHOTs represent approximately 20% of all USTs registered with the Department of Environmental Protection (Department). However, the Fund estimates that CHOT liabilities will constitute approximately 60% of the Fund's total liabilities for the period January 1995, to December 2004.

A second provision requires the Board to assess the per-gallon and per-tank fee on diesel fuel USTs located at farms in lieu of the current capacity fee assessment.

On February 15, 1992, the Board promulgated a dual-component fee structure consisting of a 2¢ per gallon fee on regulated substances entering USTs and an annual \$100 per tank per year fee. On December 18, 1992, Act 184 required the Board to establish a capacity fee on USTs that store heating oil and diesel fuel products. The Board amended its fee section to comport with Act 184 mandates. The amendment was published in final form on December 17, 1993.

On June 26, 1995, the Legislature passed Act 16, which once again amended the fee structure. Consequently, the revisions contained herein are being promulgated to ensure that the Board's fee structure complies with the mandates of Act 16. Under the Board's proposed rulemaking, the per gallon and per tank fees will be changed as indicated in Annex A. The capacity fee will also be changed as indicated in Annex A.

Summary of the Proposed Amendment

Section 971.2(1) and (3)

The Board is adding language to these paragraphs to clarify the product types upon which the tank fee, gallon/fee and capacity fee will be assessed. The additional language is provided to address concerns raised by Fund participants during routine telephone and written correspondence with the Fund. The Department registers regulated USTs based on information supplied by the UST owners or operators and provides this information to the Fund. The proposed clarifying language provides UST owners and operators with the link between the registration information they provide to the Department and the type of fee assessed on their UST by the Fund.

Section 971.2(1)(i) and (ii)

Section 705 of the act, as amended, authorizes the Board to set fees to be assessed on regulated USTs within this Commonwealth. These fees shall then be established by regulation. A statutory requirement imposed upon the Board at section 705(d) of the act ensures that the fees are set on an actuarially sound basis.

To ensure that the fees proposed under this amendment are established on an actuarially sound basis, the Board

contracted with William M. Mercer, Inc. (Mercer), an actuarial consulting firm, to provide revenue projections and recommended fees. Mercer estimated the liability of the regulated USTs under the recently-amended act and estimated the liability associated with voluntary participation of owners or operators of CHOTs at various levels of participation in 25% increments ranging from 0% to 100% participation. Mercer also studied the revenue impact of diesel fuel tanks located at farms which will revert to the per tank and per gallon fee from the currently-assessed capacity fee.

The Board estimated that 25% of CHOTs would eventually participate in the Fund through the voluntary Opt-In program. At this level of participation, required revenue for the Fund for the period January 1995, through December 2004, is estimated to be \$700.08 million. This level represents a 35.5% reduction from the Board's previous analysis dated December 1994.

The overriding cause for the reduction in required revenue is the expected decrease in the number of CHOTs that elect to participate in the Fund.

At a special meeting of the Board on July 18, 1995, the Board eliminated the current \$100 per tank per year fee and decreased the gallon fee to 1¢ from its current level of 2¢ per gallon. Moreover, the Board increased the capacity fee from 15¢ to 24¢ per gallon of tank capacity. These proposed amended fees are set forth in Annex A.

Section 971.2(3)

Section 705(d)(2) of the act, as amended, provides the Board with a formula to use in determining the capacity fee. The Board must "determine the total revenue a uniform per tank, per gallon insurance fee for all underground storage tanks would generate if it were applied to heating oil and diesel fuel tanks and divide that number by the total tank storage capacity of heating oil and diesel fuel tanks registered with the Department at the beginning of the policy period." The recommended change in fee structure is revenue neutral in that the same gross amount will be collected from all diesel fuel and heating oil product UST owners or operators under the new capacity fee schedule as would have been collected under the proposed per gallon fee schedule.

Mercer recommended that a capacity fee of 24¢ per gallon of capacity be adopted. Mercer based this recommendation on an actuarial analysis of heating oil and diesel fuel product UST capacity information maintained by the Department as part of their tank registration program. Mercer's analysis indicated that a 24¢ per gallon of capacity fee would generate the same total revenues from diesel fuel and heating oil product UST owners or operators as would have been collected under the proposed gallon fee schedule.

The Board, at a public meeting on July 18, 1995, discussed its findings and voted to adopt formally the fee schedule shown at § 971.2(3) in Annex A.

Fiscal Impact

State Government

The Commonwealth will not experience a direct fiscal impact because the expenses of the Fund will come from the fees paid by the UST owner or operator. However, the Commonwealth may bear the cost of defending legal actions initiated against the Fund.

General Public

Costs to the general public may decrease due to the likelihood that the costs of goods and services supplied by

the UST owners or operators to the general public will decrease. However, heating oil and diesel fuel UST fees will increase based on the capacity of the UST.

Political Subdivisions

Costs to political subdivisions may decrease based on the number of USTs owned, and the amount of regulated substances entering the USTs. However, heating oil and diesel fuel UST fees will increase based on the capacity of the UST.

Paperwork

The adoption of this amendment will not immediately require additional paperwork by the regulated community. In fact, the elimination of the tank fee as proposed may reduce paperwork requirements for owners and operators to which the tank fee applies.

Contact Person

Questions or comments concerning this proposal should be addressed in writing to Ronald A. Gallagher, Jr., P.E., Executive Director, Underground Storage Tank Indemnification Fund, 901 North 7th Street, Harrisburg, PA 17102, within 30 days of the publication of this proposal in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)) , the Board submitted a copy of this proposed amendment on January 18, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Environmental Resources and Energy Committee and the House Environmental Resources and Energy Committee. In addition to submitting the proposed amendment, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has any objections to any portion of the proposed amendment, it will notify the Board within 30 days after the close of the public comment period, specifying the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the regulation by the Board, the General Assembly and the Governor of objections raised.

RONALD A. GALLAGHER, Jr., P.E.,
Executive Director

Fiscal Note: 11-129. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART VIII. UNDERGROUND STORAGE TANK
INDEMNIFICATION BOARD**

**CHAPTER 971. FEES OF THE UNDERGROUND
STORAGE TANK INDEMNIFICATION FUND**

§ 971.2. Fees.

The fees in this section are assessed to finance the Fund by tank category as follows:

(1) USTs **[which] that** store regulated substances other than heating oil and diesel fuel products. **For purposes of this section, "regulated substances other than heating oil and diesel fuel products" include, but are not limited to, gasoline, gasohol, aviation fuel, hazardous substances, new motor oil and other products registered with the Department of Environmental Protection under the substance codes "other" and "mixture." In addition, USTs storing diesel fuel and located at farms shall be assessed fees under this section.**

[(i) A per tank fee on USTs set at \$100 per regulated UST per year.

(ii)] A per gallon fee imposed on all gallons of regulated substances entering regulated USTs set at [2¢] 1¢ per gallon.

(2) USTs **[which] that** are used for nonretail bulk storage or wholesale distribution of gasoline. Total fees paid by owners or operators of nonretail bulk storage or wholesale distribution USTs storing gasoline are calculated using the method described in paragraph (1) and are capped at \$5,000 per UST per year in accordance with section 705(d)(3) of the act (35 P. S. § 6021.705(d)(3)).

(3) USTs **[which] that** store regulated substances limited to heating oil products and diesel fuel products. A per-gallon-of-capacity fee on regulated USTs storing heating oil or diesel fuel products set at **[15¢] 24¢** per gallon of capacity, which amount is calculated in accordance with section 705(d)(2) of the act.

[Pa.B. Doc. No. 96-141. Filed for public inspection February 2, 1996, 9:00 a.m.]