

# RULES AND REGULATIONS

## Title 31—INSURANCE

### INSURANCE DEPARTMENT

[31 PA. CODE CH. 73]

#### Corrective Amendment to 31 Pa. Code § 73.140(d)

The Insurance Department has discovered a discrepancy between the agency text of 31 Pa. Code § 73.140(d) (relating to credit insurance on closed end variable interest loans), as deposited with the Legislative Reference Bureau and the official text published at 28 Pa.B. 1401 (March 21, 1998) and as scheduled to be published in the May, 1998 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 282). The words "outstanding balance" were inadvertently included in the published version.

Therefore, under 45 Pa.C.S. § 901: The Insurance Department has deposited with the Legislative Reference Bureau a corrective amendment to 31 Pa. Code § 73.140(d). The corrective amendment to 31 Pa. Code § 73.140(d) is effective as of June 19, 1998.

The correct version of 31 Pa. Code § 73.140(d) appears in Annex A, with ellipses referring to the existing text of the regulation.

#### Annex A

### TITLE 31. INSURANCE

#### PART III. CREDIT INSURANCE

#### CHAPTER 73. CREDIT LIFE INSURANCE, CREDIT ACCIDENT AND HEALTH INSURANCE AND CREDIT UNEMPLOYMENT INSURANCE

#### § 73.140. Credit insurance on closed end variable interest loans.

\* \* \* \* \*

(d) *Benefit amount.* Subject to any policy limitations, if premiums are payable on a single premium basis, the monthly A and H insurance benefit and the involuntary unemployment insurance benefit shall equal the amount of the original monthly installment payment. Subject to any policy limitations, if premiums are payable on a monthly basis, the monthly A and H and involuntary unemployment insurance benefits shall equal the amount of the monthly installment payment amount on the day disability or unemployment began.

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## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

#### Standards of Professional Conduct

The State Board of Certified Real Estate Appraisers (Board), by this order amends § 36.201 (relating to

definitions) and adds § 36.281 (relating to standards of professional conduct) to read as set forth in Annex A.

Section 36.281 establishes standards of professional conduct for certified Pennsylvania evaluators (CPEs). The standards are modeled after the Code of Ethics and Standards of Professional Conduct of the International Association of Assessing Officers (IAAO). Section 36.201 defines terms used in the standards.

#### *Summary of Comments and Responses to Proposed Rule-making*

The Board published a notice of proposed rulemaking at 26 Pa.B. 489 (February 3, 1996) following which the Board entertained public comments for 30 days. The Board did not receive public comments.

The Board received comments from the House Professional Licensure Committee (House Committee) on March 19, 1996, and the Independent Regulatory Review Commission (IRRC) on April 3, 1996, under their review of the amendments under the Regulatory Review Act (71 P. S. §§ 745.1—745.15). On March 20, 1996, the Board received comments from Rep. William R. Lloyd, Jr., who was then a member of the House Committee. The Board did not receive comments from the Senate Committee on Consumer Protection and Professional Licensure (Senate Committee), which also reviewed the amendments during proposed rulemaking.

On December 10, 1997, the Board received comments from Rep. Lawrence Roberts. Because the comments were received after proposed rulemaking and involve some matters outside the scope of proposed rulemaking, and to give the widest possible effect to Executive Order 1996-1 (relating to regulatory review and promulgation), the Board intends to consider Rep. Roberts's recommendations as a separate regulatory initiative.

The following is a summary of the comments that the Board received during proposed rulemaking and the changes the Board has made in response to the comments.

#### *§ 36.281. Standards of Professional Practice*

The preamble to the proposed § 36.281 announced that some standards of professional conduct are mandatory and others are aspirational. CPEs who fail to comply with mandatory standards would be subject to Board disciplinary action under the Assessors Certification Act (ACA) (63 P. S. §§ 458.1—458.16), while CPEs who fail to comply with aspirational standards would not be subject to Board disciplinary action.

IRRC raised a general objection to aspirational standards on the ground that their unenforceability could undermine public confidence in the assessing profession and suggested that nonbinding standards are more appropriate as statements of policy rather than as regulations. IRRC, together with the House Committee and Rep. Lloyd, also commented that some of the standards proposed as aspirational are so important to ensuring the competence and integrity of CPEs that they should be recast as mandatory standards. The Board finds these observations compelling and, as more fully described as follows, has converted those significant aspirational standards to mandatory standards and deleted those aspirational standards of lesser importance.

*General Duties*

Standard 1 mandates that CPEs perform their duties in accordance with the general and specific county assessment laws and generally accepted assessment standards. The proposed version of Standard 1 also encouraged CPEs to perform their assignments "to the best of their ability and with the ultimate goal of adhering to the Uniform Standards of Professional Appraisal Practice (USPAP)," which embody Nationally recognized standards relating to the appraising and assessing professions. In response to recommendations by IRRC and Rep. Lloyd, the Board has made compliance with the USPAP mandatory rather than aspirational. The Board's initial concern that not all CPEs may have sufficient background and training to fully comply with the USPAP has been allayed by assurances of the Assessors Association of Pennsylvania, which supports mandatory compliance with the USPAP. The Board also has made editorial changes to Standard 1 and changed its title from "Duties" to "General duties."

*Public Review of Assessments and Records*

The proposed Standard 2 required CPEs to make all records in their custody available for public review unless the records "are deemed confidential by the county or the property owner or are prohibited or otherwise protected from disclosure by law." Both IRRC and Rep. Lloyd expressed concern that the proposed language could contravene public disclosure laws by giving county officials and property owners the arbitrary right to determine what records maintained by CPEs may be withheld from public review. In response to IRRC's and Rep. Lloyd's concern, the Board has revised Standard 2 to clarify that, consistent with the disclosure provisions of the assessment laws, CPEs shall always make property assessments available for public review and to provide that CPEs 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 such information to be treated confidentially." As recommended by IRRC, the language setting forth the exception to public disclosure of records is identical to the language used in the IAAO's comparable standard. The Board also has changed the title of Standard 2 from "Availability of information and records" to "Public review of assessments and records."

*Relationship with Public; Relationship with Public Officials; Conduct*

Proposed Standards 3—5 encouraged CPEs to treat the public in a courteous and respectful manner (Standard 3); to conduct their affairs forthrightly to avoid the appearance of impropriety (Standard 5); to inform the public of appropriate procedures under the law and regulations (Standard 5); and to cooperate with public officials in improving real estate tax procedures and in coordinating the administrative functions of government (Standard 4).

Consistent with the suggestions of IRRC and the House Committee, the Board has deleted these standards from the final-form regulations because they are aspirational rather than mandatory and because, even if made mandatory, they would do no more than codify the ordinary norms of behavior that the public has a right to expect from any public servant, let alone those, like CPEs, with important public responsibilities.

*Professional Qualifications*

Proposed Standard 6 required CPEs to use professional designations only when they are authorized to do so and prohibited CPEs from claiming qualifications that are false or misleading. Proposed Standard 6 also encouraged CPEs to increase their knowledge and skills beyond the continuing education requirement in § 36.261, which currently requires CPEs to complete 20 hours of continuing education during each license biennium. The Board has deleted this aspirational goal from the final regulation and intends to submit proposed rulemaking that would raise the biennial continuing education requirement for CPEs to 28 hours. The Board also has added a proscription against claiming deceptive qualifications, made editorial changes and renumbered Standard 6 as Standard 3.

*Limitations on Activities*

Proposed Standard 7 prohibited CPEs from performing assignments that could "reasonably be construed as creating a conflict of interest" with their employers and clients. Proposed Standard 7 also permitted CPEs to undertake assignments for which they are not "properly qualified" so long as they make a full and timely disclosure of their lack of qualifications and take steps to ensure that the assignments are performed competently.

IRRC and the House Committee strongly objected to a standard of professional conduct that permits CPEs to undertake assignments for which they are not at all times fully qualified to perform. The Board agrees with this concern and, at the suggestion of IRRC, has revised the entire standard by borrowing the broadly restrictive language from the IAAO's comparable requirement; the revised standard, renumbered as Standard 4, provides that CPEs may not perform 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." The Board does not believe that it is also necessary for the revised standard to provide, as recommended by IRRC, that CPEs must disclose their lack of qualifications to their employers; the new Standard 3 prevents CPEs from misrepresenting their qualifications. The Board also notes that although the revised standard does not refer to conflict of interest, which is accorded a specific meaning in § 36.201, the subject is adequately covered by the new Standard 7.

*Contingent Fees*

Proposed Standard 8 set forth several limitations on CPEs' receiving contingent fees. The Board has renumbered Standard 8 and Standard 5 and made editorial changes.

*Advertising and Promotion; Conflict of Interest*

Proposed Standard 9 provided that CPEs are permitted to engage in advertising if it is not false, misleading or deceptive and encouraged CPEs who are employees of government agencies not to solicit assignments that could create the appearance of conflicts of interest.

At the suggestion of IRRC, the Board has revised the prohibition against false, misleading or deceptive advertising to include, as well, promotional activities that are false, misleading or deceptive; promotional activities are included in the IAAO's comparable standard. The Board also has redrafted the prohibition for clarity.

Consistent with the views of IRRC and the House Committee, the Board has established as a binding

requirement the admonition against government-employed CPEs soliciting assignments that could create the appearance of conflicts of interest. As defined in § 36.201, a conflict of interest involves the use of one's public position to secure improper pecuniary benefits. The Board has further strengthened the prohibition by making it applicable to the performance of conflict-of-interest assignments as well as their solicitation and, at IRRC's recommendation, to actual conflicts of interest as well as the appearance of conflicts of interest. At the further recommendation of IRRC, the Board has underscored the prohibition's importance by designating it as a separate standard.

The Board has renumbered the revised Standard 9 as Standard 6 and changed its title from "Advertising" to "Advertising and promotion"; the Board has numbered the new standard on conflict of interest as Standard 7 and titled it "Conflict of interest."

*Reporting of Unethical Practices*

Proposed Standard 10 encouraged CPEs to report unethical practices in the appraising and assessing professions to the Complaints Office of the Bureau of Professional and Occupational Affairs (Bureau). Both IRRC and the House Committee opined that this reporting standard should be mandatory rather than voluntary. The Board agrees that the case for a binding standard is compelling because of the unique role that CPEs play in helping to maintain the public's confidence in the integrity of the system of real estate taxation and because the effectiveness of the Board's ability to police the appraising and assessing professions is dependent on the willingness of the regulated community as well as the general public to report misconduct by practitioners. At the request of the House Committee, the Board will consider imposing a similar reporting standard on certified appraisers and certified broker/appraisers.

The Board also has renumbered Standard 10 as Standard 8, changed its title from "Unethical practices notification" to "Reporting of unethical practices" and made editorial improvements recommended by IRRC and the House Committee.

*§ 36.201. Definitions*

Section 36.201 defines "conflict of interest," which is used in § 36.281, as "a situation in which a CPE uses the CPE's employment or confidential information received through the course of the employment of the private pecuniary benefit of the CPE, a member of the CPE's immediate family or a business with which the CPE or a member of the CPE's immediate family is associated." As proposed, § 36.201 also defined "immediate family" as "a parent, spouse, child, brother or sister," and defined "business with which a CPE is associated" as "a business in which the CPE or a member of the CPE's immediate family is a director, officer, owner, employe, or has a financial interest." At the suggestion of IRRC and House Committee, the Board has expanded the definition of "immediate family" to include grandparents and grandchildren as well as any other individuals related to the CPE by blood or marriage when the individuals are living in the family household (or under a common roof). The Board also has made editorial changes to the definitions of "conflict of interest" and "business with which a CPE is associated."

At the recommendation of IRRC, the Board has defined "financial interest," as that term is used in the definition of "business with which a CPE is associated," to mean "any 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." This definition is identical to the definition of "financial interest" in the act of June 26, 1989 (P. L. 26, No. 9) (65 P. S. §§ 401—413), known as the Public Official and Employee Ethics Law, from which the Board's definitions of "conflict of interest" and "business with which a [CPE] is associated" are also derived.

*Statutory Authority*

Section 3 of the ACA (63 P. S. § 458.3) empowers the Board to promulgate regulations, consistent with other laws of the Commonwealth, to enforce the ACA's provisions. Section 7(a)(6) of the ACA (63 P. S. § 458.7(a)(6)) empowers the Board to impose disciplinary or corrective measures against CPEs who violate standards of professional conduct adopted by the Board by regulation.

*Fiscal Impact and Paperwork Requirements*

The amendments will neither impose new paperwork requirements nor have an adverse fiscal impact upon the Commonwealth, its political subdivisions or the private sector, except that CPEs will be required to complete additional paperwork if they elect to make written, rather than oral, mandatory reports of unethical practices to the Bureau's Complaints Office.

*Compliance with Executive Order 1996-1*

Publication of proposed rulemaking predated Executive Order 1996-1. The Board solicited input from the Assessors Association of Pennsylvania, an organization representing CPEs, regarding the changes recommended by IRRC, the House Committee and Rep. Lloyd during proposed rulemaking.

*Regulatory Review*

On January 19, 1996, as required by section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 489, to IRRC and to the House and Senate Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In adopting final-form regulations, the Board considered comments from IRRC and the House Committee. The Board did not receive comments from the Senate Committee or the general public.

On March 2, 1998, the Board submitted the final-form regulations to IRRC and the House and Senate Committees. Under authority of section 5(c) of the Regulatory Review Act, the final-form regulations were approved by the House Committee on March 18, 1998, were deemed approved by the Senate Committee on March 23, 1998. The final-form regulations were approved by IRRC on March 26, 1998.

*Additional Information*

Individuals who desire additional information about the final-form regulations are invited to submit inquiries to Cheryl Lyne, Administrator, State Board of Certified Real Estate Appraisers, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4866.

*Findings*

The Board finds that:

- (1) Public notice of the Board's intention to amend 49 Pa. Code Chapter 36, by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769,

No. 240) (45 P. S. §§ 1201 and 1202), and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form regulations adopted by this order are necessary and appropriate for the administration of the ACA.

*Order*

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 36, are amended by amending § 36.201 and adding § 36.281 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The amendments shall take effect upon publication in the *Pennsylvania Bulletin*.

DAVID J. KING,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 1806 (April 11, 1998).)*

**Fiscal Note:** Fiscal Note 16A-704 remains valid for the final adoption of the subject regulations.

**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).

*Ad valorem taxation purposes*—The establishment of the value of real property as determined by a government employe 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 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 or employe, or has a financial interest.

*Certified Pennsylvania evaluator*—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 Commonwealth.

*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.

*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.

*Real estate appraisal*—A written analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real property, for or in expectation of compensation.

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

**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. 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)).

*Standard 1. General duties.*

Certified Pennsylvania evaluators shall perform their duties in accordance with the general and specific county assessment laws and generally accepted assessment standards. Certified Pennsylvania evaluators shall perform all assessments and appraisal-related assignments in accordance with 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. Public review of assessments and records.*

Certified Pennsylvania evaluators 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.

*Standard 3. Professional qualifications.*

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

*Standard 4. Limitations on activities.*

Certified Pennsylvania evaluators may not perform assessment and 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.

*Standard 5. Contingent fees.*

Certified Pennsylvania evaluators 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.

*Standard 6. Advertising and promotion.*

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

*Standard 7. Conflict of interest.*

Certified Pennsylvania evaluators who are government employes may not solicit or perform assessment and appraisal-related assignments that could create conflicts of interest or the appearance of conflicts of interest.

*Standard 8. Reporting of unethical practices.*

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

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