

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT
DEPARTMENT OF SAFETY AND : ADOPTING RULES
PROFESSIONAL SERVICES : (CLEARINGHOUSE RULE 20-086)

PROPOSED ORDER

An order of the department of safety and professional services to amend SPS 85.230 (1) (intro.), (2), and (3), 85.240 (1) (intro.), and 85.500; and to create SPS 85.120 (15m), (21g), and (21r) and 85.230 (2m) and (4) (Note), relating to real estate appraisers.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 440.09, Stats.

Statutory authority:

Sections 440.09 (5) and 458.03 (1) (e), Stats.

Explanation of agency authority:

Section 440.09 (5), Stats., provides that “[t]he department or credentialing board, as appropriate, may promulgate rules necessary to implement this section.”

Section 458.03 (1) (e), Stats., requires the department to “[p]romulgate rules specifying the types of real estate that may be appraised by licensed appraisers.”

Related statutes or rules:

Section 440.09, Stats., specifies the requirements for issuing reciprocal credentials to service members, former service members, and the spouses of service members and former service members.

Plain language analysis:

The proposed rule creates s. SPS 85.230 (2m) to implement s. 440.09, Stats., as amended by 2019 Wisconsin Act 143. Section 440.09, Stats., specifies the requirements for issuing reciprocal credentials to service members, former service members, and the spouses of service members and former service members.

The proposed rule also revises the Licensed Appraiser classification under s. SPS 85.500 to reflect a May 15, 2020 change to the real property appraiser classifications within the Appraiser Qualifications Board’s *Real Property Appraiser Qualification Criteria*. Specifically, the Licensed Residential Real Property Appraiser classification in the Criteria was changed from applying to complex one-to-four residential units having a transaction value of less than \$250,000 to those having a transaction value of less than \$400,000.

Summary of, and comparison with, existing or proposed federal statutes and regulations:

The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), 12 U.S.C. 3331 et seq., (Title XI) was enacted in 1989. Under FIRREA, insured financial institutions and insured credit unions are required to obtain the services of a state certified or licensed appraiser for appraisals conducted in connection with “federally related transactions.”

Under FIRREA, all states that certify real estate appraisers for purposes of conducting appraisals in federally related transactions must assure compliance with the criteria established by the Appraiser Qualifications Board (AQB). The criteria established by the AQB are set forth in the *Real Property Appraiser Qualification Criteria and Interpretations of the Criteria* (Criteria). The AQB Criteria includes the minimum experience, examination, qualifying education, and continuing education requirements that must be satisfied by an individual in order to obtain and maintain a certified appraiser credential.

The regulations in the proposed rule will comply with the AQB Criteria. Specifically, the proposed rule will revise the Licensed Appraiser classification under s. SPS 85.500 to align with a recent change in the AQB Criteria related to real property appraiser classifications. In addition, the requirements for a reciprocal credential created by the proposed rule under s. SPS 85.230 (2m) are in compliance with the provision in the AQB Criteria related to background checks that specifies “[a]n applicant shall not be eligible for a real property appraiser credential if, during at least the five (5) year period immediately preceding the date of the application for licensing or certification, the applicant has been convicted of, or pled guilty or nolo contendere to a crime that would call into question the applicant’s fitness for licensure.”

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation address the practice of real estate appraisal in Illinois (68 Ill. Adm. Code 1455). The rules adopt the minimum qualifications for real property appraisers established May 1, 2018 by the Appraiser Qualifications Board of The Appraisal Foundation (68 Ill. Adm. Code 1455.10). Illinois has 3 classes of license for real estate appraisers, which do not include a Licensed Residential Real Property Appraiser or equivalent classification.

Iowa:

Rules of the Iowa Real Estate Appraiser Examining Board address the practice of real estate appraisal in Iowa (193F IAC 1 to 17). The rules adopt the minimum qualifications for real property appraisers established May 1, 2018 by the Appraiser Qualifications Board of The Appraisal Foundation (193F IAC 1.19). Iowa has 3 classes of license for real estate appraisers, which do not include a Licensed Residential Real Property Appraiser or equivalent classification.

Michigan:

Rules of the Michigan Department of Licensing and Regulatory Affairs address the practice of real estate appraisal in Michigan (Mich Admin Code, R 339.23101 to R 339.23405). The rules provide for 3 classes of license for real estate appraisers, including a State Licensed Real Estate Appraiser classification (Mich Admin Code, R 339.23403). This classification does not currently reflect the May 15, 2020, change by the AQB to the applicability of the Licensed Residential Real Property Appraiser classification.

Minnesota:

The Minnesota Statutes, Sections 82B.02 to 82B.24, address the practice of real estate appraisal in Minnesota. The statutes adopt the minimum education, examination, and experience requirements established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation and published in the most recent version of the *Real Property Appraiser Qualification Criteria* (2020 Minnesota Statutes, Section 82B.095, Subd. 3.). The statutes also provide for 5 classes of license for real estate appraisers, including a Licensed Residential Real Property Appraiser classification (2020 Minnesota Statutes, Section 82B.11, Subd. 3.). This classification does not currently reflect the May 15, 2020, change by the AQB to the applicability of the Licensed Residential Real Property Appraiser classification.

Summary of factual data and analytical methodologies:

The proposed rules were developed, in consultation with the Real Estate Appraisers Board, by reviewing the provisions of s. 440.09, Stats., as amended by 2019 Wisconsin Act 143, and the change made to the real property appraiser classifications within the Appraiser Qualifications Board's *Real Property Appraiser Qualification Criteria*.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 9:00 a.m. on February 9, 2021, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 85.120 (15m), (21g), and (21r) are created to read:

SPS 85.120 (15m) “Former service member” has the meaning given in s. 440.09 (1) (a), Stats.

(21g) “Service member” has the meaning given in s. 440.09 (1) (b), Stats.

(21r) “Spouse” has the meaning given in s. 440.09 (1) (c), Stats.

SECTION 2. SPS 85.230 (1) (intro.) and (2) are amended to read:

SPS 85.230 (1) (intro.) ~~As~~ Except as provided under sub. (2m), an individual applying for licensure or certification as an appraiser on the basis of a license or certification in another state or territory of the United States shall do all of the following:

(2) In determining whether to grant a reciprocal license or certification under sub. (1), the department shall consider whether the current requirements for a license or certification in the other state or territory meet or exceed the requirements for licensure or certification as an appraiser in this state.

SECTION 3. SPS 85.230 (2m) is created to read:

SPS 85.230 (2m) As provided under s. 440.09, Stats., the department shall grant a reciprocal license or certification as an appraiser to an individual who the department determines meets all of the following requirements:

(a) The individual applies for a reciprocal license or certification under this subsection on a form prescribed by the department.

(b) The individual is a service member, a former service member, or the spouse of a service member or former service member and resides in this state.

(c) The individual holds a license, certification, registration, or permit that was granted by a governmental authority in a jurisdiction outside this state that qualifies the individual to perform appraisals conducted in connection with federally related transactions.

(d) The individual pays the fee specified under s. 440.05 (2), Stats.

(e) The individual is in good standing with the governmental authorities in every jurisdiction outside this state that have granted the individual a license, certification, registration, or permit that qualifies the individual to perform appraisals conducted in connection with federally related transactions. An individual does not meet the

requirement under this paragraph if, during the 5-year period immediately preceding the date of application under par. (a), the individual has been convicted of, or plead guilty or nolo contendere to, a felony substantially related to the practice of real estate appraisal. A felony substantially related to the practice of real estate appraisal does not include a felony involving an act other than fraud, dishonesty, breach of trust, or money laundering.

SECTION 4. SPS 85.230 (3) is amended to read:

SPS 85.230 (3) ~~The~~ Subject to s. 440.09 (2m), Stats., the department may request additional information to determine if an applicant is qualified for reciprocal licensure or certification. Failure by an applicant to comply with a request for additional information within 120 days from the date of the request shall void the application and require the applicant to reapply for reciprocal licensure or registration.

SECTION 5. SPS 85.230 (4) (Note) is created to read:

SPS 85.230 (4) (Note) Applications for reciprocal licensure and certification may be obtained from the department of safety and professional services at (608) 266-2112 or from the department's website at <http://dsps.wi.gov>.

SECTION 6. SPS 85.240 (1) (intro.) is amended to read:

SPS 85.240 (1) (intro.) All Except for candidates for a reciprocal credential under s. SPS 85.230 (2m), all candidates for licensed or certified appraiser credentials shall undergo background screening in accordance with s. 440.03 (13) (c), Stats. The board may not issue a licensed or certified appraiser credential if any of the following applies:

SECTION 7. SPS 85.500 is amended to read:

SPS 85.500 Licensed appraiser. A licensed appraiser may conduct appraisals of complex 1-to-4 family residential property having a transaction value of not more than ~~\$250,000~~ \$400,000, non-complex 1-to-4 family residential property having a transaction value of not more than one million dollars, and commercial real estate having a transaction value of not more than \$500,000.

SECTION 8. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Department of Safety and Professional Services is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Secretary

Department of Safety and Professional Services