



House Bill 149, Amendments to Appraiser Statute

by Ted Boyer, Division Director

At the time of the writing of this article, House Bill 149 has been passed by the Utah State Legislature and is awaiting signature by the Governor.

The Utah Association of Appraisers (UAA) bore the laboring oar in bringing the amendments to the appraiser statute to this point, but the amendments are the result of a collaborative effort among professional appraisers, professional appraisal organizations, the Utah Appraiser Registration and Certification Board, the Division of Real Estate, employees of the Utah State Tax Commission and various tax assessor offices.

Since the appraisal profession was regulated, Utah's licensing statute has been out of conformity with the regulatory format of most of the other states. Most other states have at least three license classifications: licensed, certified residential and certified general. These classifications are all specified levels of licenses in Title XI and in the financial institution regulatory agencies' regulations. Our "registered" classification was not comparable to the "licensed" classification in most other states, and mortgage lenders were confused about our registered classification and what types of appraisals they were authorized to do. The situation also presented a problem in processing reciprocal license applications and applications for temporary practice permits. We simply did not have a classification comparable to the licensed classification in other states which requires experience and the passing of a competency examination.

Most of these problems have been solved with the amendments to the appraisal statute. In a nut shell, the amendments require the following:


1. Phasing out the registered appraiser classification over a period of two years from May 3, 1999. The Division will continue to renew the registered classification until May 3, 2001 but all registered appraiser licenses will expire on that date. Those "registered" appraisers who expect to continue working after May 3, 2001 will be required, before that date, to upgrade to the new "licensed" classification.

2. Creation of a new classification called the State-licensed appraiser. The qualifications for this classification of license will include 90 classroom hours of pre-licensing education approved by the Board, passing a licensing examination and the accumulation of a minimum number of hours of experience determined by the Board. These are the minimum requirements set by the Appraiser Qualifications Board of the Appraisal Foundation.

3. Upgrading by current registered appraisers to the licensed classification within the two year period.

4. Grandfathering of existing senior appraisers into the licensed classification.

5. Passage of rules by the Board to carry out the intent of the statutory amendments.

You will have noticed that the biggest change to the regulation of appraisers is that new appraisers will be required to receive education and experience as well as pass a competency examination prior to receiving a license. This will bring Utah into conformity with the majority of states and into compliance with the qualifications set by the Appraisal Qualifications Board of the Appraisal Foundation. 

"Democracy is the worst system ever invented -- except for all the rest."

--Sir Winston Churchill

The New USPAP Clarifies Rules for Review Appraisers

by Steven W. Vehmeier, MSA

The USPAP has changed and review appraisers need to understand the changes. If appraisers don't make significant revisions in their development and reporting of appraisals, they will not be in compliance with USPAP on the changeover date March 31, 1999.

The 1999 USPAP Review and Instructors Training Session in Orlando November 7th and 8th was attended by a distinguished group of appraisers, instructors, regulators, and governmental agency representatives. Standard 3 has changes to bring it into conformity with other revisions. There is an important clarification between appraising and reviewing. It also now addresses use and user, as well as scope.

It was verbally made quite clear that the Review function only investigates the report. If the Reviewer is asked to express his or her opinion of value, then that is an "appraisal." These are two totally separate functions. Clarifying the extent of the review process up front is essential. The "Review," according to USPAP, does not require "your opinion of value." You can find an appraisal acceptable without your opinion of value. When you state agreement with the value conclusion, you're saying "it is supported." When expressing your opinion of value, compliance with Standard 1 is mandatory.

Final wording has yet to be agreed upon by the ASB, but a detailed explanation of this is planned for upcoming release via their publication or by other distribution. It would be advisable to wait until then to make procedural changes to ensure compliance with final determination. In the interim, it would be prudent to specify when you are expressing your opinion of value and to ensure compliance with Standard 1 when doing so.

The first area of notable change begins in the Ethics "Rule" (all of the "Provisions" are now called "Rules") with wording changes for clarifications in conduct, management, confidentiality, and record keeping.

A significant change is the Departure Rule. The path to understanding departure is clearer, and two new terms "applicable" and "necessary" have been added to the

"market expectations" and "peers actions" criteria from Advisory Opinions 15, to make the departure decision easier to make.

There are new definitions while others are revised. Most are to support and clarify changes elsewhere. Great emphasis has been placed on the "Scope of Work" in multiple areas of USPAP. The term is in the Departure Rule, but it is most relevant to daily appraisal work. It is in a new item on each of the reporting options that requires a summary of the scope of the work used to develop the appraisal.

Standard 1 has Binding Requirements and Specific Requirements similar in principle to the previous structure, but new emphasis is placed on Extraordinary Assumptions and Hypothetical Conditions. Appraisers will need to understand both and how they are different. Many daily appraisal activities, such as drive-by's and plans and specs, will require special addressing.

The changes to Standard 2 include new items and reworking of the old to be in compliance with changes made elsewhere. Highest and Best Use will now require significantly more information and explanation. New information on sources, scope, and the inclusion of use and user from Statement 9 are now on the required twelve items in a report. There are also wording changes to the Certification which, unfortunately, will require software changes.

Standards 4 through 10 will be revised using a "working group concept." NAMA and other groups will study the standards and provide input to the ASB to aid in the revisions and possibly even some deletions.

Statements and Advisory Opinions remain. They contain changes to keep them in conformity with the rest of USPAP.

This article only skims the surface of the changes; there are many more, and those discussed herein have far greater depth. Schedule yourself for an update class soon.

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USPAP Q&A

Question #1 Client X asked me to identify the client and intended users in your report as Client X “and/or assigns.” Does including “and/or assigns” comply with Statement on Appraisal Standards No. 9?

Answer: Some clients request that “assigns” be included with them as intended users of the appraisal report for business and legal reasons. Including “assigns” as intended users is usually appropriate. A client’s assigns generally would have the same rights, obligations and responsibilities regarding the use of the appraisal report as the client, and the assign’s intended use of the appraisal report would typically be the same as the client’s. In effect, the assign becomes a substitute for the client. Further, to identify “assigns” as intended users is to identify a *type* of user. Statement No. 9 permits the identification of intended users by type, not just by name.

Question #2 Can an appraiser prepare a retrospective appraisal, with an effective date of value as of five years ago, if that appraiser wasn’t even an appraiser five years ago?

Answer: The appraiser must comply with the Competency Provision at the time the appraiser *develops* the appraisal, regardless of the effective date of value. If the appraiser is to develop a retrospective (or prospective) value opinion, the appraiser must be able – at the time he or she is performing the assignment – to deal with the nuances of such an assignment (e.g., to research data associated with the retrospective or prospective date and to analyze the data in light of market conditions as of that date). It is not necessary for the appraiser to be, or to have been, a competent appraiser as of the effective date of value.

An appraiser could develop a retrospective appraisal with an effective date of value that is prior to the appraiser’s own date of birth. Likewise, an appraiser could develop a prospective appraisal with an effective date of value that occurs after the date of his or her own death. These would be legitimate assignments that could be completed according to USPAP. Yet certainly in such cases the appraiser could not be considered to be a competent appraiser as of those effective dates of value.

Question #3 Does Standard 3 apply to business valuation or personal property appraisal reports?


Answer: Standard 3 of USPAP applies only to the review of real property appraisals. It does not apply to the review of business valua-

tion or personal property appraisal reports.

Question #4 There are two appraisers in my company. My partner appraised a certain property a year ago. Is it okay for me to now appraise the same property for a different client?

Answer: The requirements of USPAP are addressed to individuals, not firms. You may appraise the same property, just as a second appraiser who is not in your firm may do so. However, your partner must observe USPAP’s requirements regarding confidentiality; i.e., your partner must obtain permission from the first client to divulge data, information or analyses to you that is confidential. (See Statement No. 5 for more information.) Further,

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Utah Real Estate Appraiser Review

Purpose: To provide licensees with the information and education they need to be successful in competently serving the public

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USPAP Q&A

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Standards Rule 2-3 requires the disclosure of any significant professional assistance provided. If your partner's previous experience with the appraisal of the property amounted to such assistance, it must be disclosed.

Question #5 I've been asked to "reassign" an appraisal performed for a mortgage lender to another mortgage lender. How do I respond to this request?

Answer: This question is addressed in Advisory Opinion (AO)-10, *The Appraiser-Client Relationship*, in which it states:

"The appraiser has a personal obligation and a professional responsibility to avoid any action that could be considered misleading and to protect the confidential nature of the appraiser-client relationship. Simply changing the title page or transmittal letter of an appraisal report without full disclosure of the original appraiser-client relationship is misleading."

When a party other than the client requests an appraisal report that identifies that party as the client, a subsequent appraiser-client relationship is being established; a second assignment is begun. The appraiser must protect the confidential nature of his/her relationship with the first client, in accordance with the Confidentiality section of the Ethics Rule.

You should treat the request for a *reassignment* as a request for a *new* assignment. You should obtain permission (preferably in writing) from the first client to proceed, and it must be understood by all parties that a second assignment with a different appraiser-client relationship is being established.

Question #6 A client asked me not to perform a cost approach in an appraisal assignment, but he doesn't want me to provide a Limited Appraisal either. I have determined that the cost approach is relevant. Can I perform the cost approach and give it consideration in the reconciliation, but not include it in the report (which is a Summary Appraisal Report)?

Answer: If you have determined that the cost approach is *applicable* in this assignment, though *not necessary* in order to result in opinions or conclusions that are credible, then the appraisal would be a Limited Appraisal if you omit the cost ap-

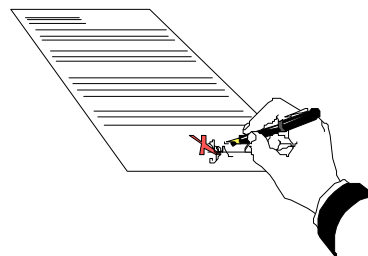
proach. To provide the client with a Limited Appraisal but allow him to believe that it is *not* a Limited Appraisal would be fraudulent and misleading—and clearly in violation of the Ethics Rule.

Further, Standards Rule 2-2(b)(ix) says the appraiser must, in a Summary Appraisal Report, "summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions and conclusions." This requirement would not be met if you performed appraisal procedures but did not summarize those procedures in the report. The client and intended users of the report might be misled or confused if discussion of an important part of the appraisal process was omitted from the report and yet that part of the process was relied upon.

You should discuss the assignment further with the client and find out if he wants you to omit the cost approach yet doesn't want a Limited Appraisal. Perhaps there is some misunderstanding on his part about the concept of departure.

The Appraisal Standards Board, *The Appraisal Foundation*, Vol. 1, No. 1

remember



**You Must Notify the Division
-- in Writing --
Within 10 Days of:**

- a change of personal address
- a change of business address
- a change of name
- a change of personal or business telephone number

FFIEC Announces New Internet-Based Service

An FDIC memo from Director Nicholas J. Ketcha Jr., dated August 14, 1998, addressed to CEOs of FDIC-supervised banks, announced a new service available from the Federal Financial Institutions Examination Council's (FFIEC) Appraisal Subcommittee. The new service is Internet-based and provides an up-to-date listing of state-certified or licensed real estate appraisers eligible to perform real estate appraisals for federally related transactions.

The advisory letter from the Appraisal Subcommittee about the new service, National Registry of State-Certified or Licensed Appraisers, is reprinted here.

Purpose: The purpose of this advisory letter is to inform you of an Internet-based service entitled the National Registry of State-Certified or Licensed Appraisers. The registry provides an up-to-date listing of state-certified or licensed real estate appraisers eligible to perform real estate appraisals for federally related transactions. The registry will be updated at least monthly, based on information provided by each state and territory. The registry is maintained by the Federal Financial Institutions Examination Council's (FFIEC) Appraisal Subcommittee (ASC).

Background: Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, and each of the federal financial institutions regula-

tory agencies' regulations require the use of state-certified or licensed real estate appraisers for federally related transactions. To be legally eligible to perform appraisals for federally related transactions, state-certified or licensed appraisers must be listed on the registry. The ASC, among other things, oversees state appraiser certification and licensing programs. The ASC now has an Internet Web site on the World Wide Web that contains important information and services for your use, including an online registry. The Internet address for the Web site is <http://www.asc.gov>.

Using the online registry will enable you to obtain appraiser-related information almost immediately. You will be able to determine whether an appraiser is listed on the ASC's registry and, therefore, is eligible to perform appraisals in connection with federally related financial transactions. You also will be able to determine, among other things, in which state(s) an appraiser is certified or licensed, types of credentials held, certification/license issuance and expiration dates, address and telephone information, and whether the appraiser's certificate or license has been revoked, surrendered in lieu of disciplinary action or is currently suspended. The registry is searchable on almost every registry data element.

The online registry also has a "listserv" feature. This feature provides an automated, daily, e-

mail notification to you, as a subscriber, whenever an appraiser's certification or license is revoked, suspended, voluntarily surrendered in lieu of discipline and when an appraiser's certification or license on the registry has expired. This service is free and can be obtained by subscribing.

If you would like more information about the ASC's Web site or the registry, contact Ben Henson, ASC's executive director, at (202) 634-6520, or e-mail benhl@asc.gov.

Used by permission from the American Society of Appraisers *ASA Newslines*, October 1998

APPRAISERS

We are inviting you to submit articles for consideration for publication in this newsletter. Articles should address issues of interest to the appraisal industry.

We will review the information submitted and, if appropriate, publish the article in a future edition of the *Appraiser Review*. All articles are subject to editing for length and content. Submitted articles cannot be returned. Submit your articles to:

Karen Post
Utah Division of Real Estate
P O Box 146711
Salt Lake City UT 84111

Appraiser Policy for “Third Renewal Period”

Appraisers in the state of Utah are having difficulty determining when their "third year renewal" is triggered and requires a USPAP course. Hopefully the following policy decision will help to explain that timing:

Every third time the **Certified General** or the **Certified Residential** appraiser renews, he needs to provide proof of having taken a USPAP course within the prior two years. The third renewal is measured from the very first time he licensed (even if he licensed first as a Registered Appraiser, the time is measured from that *first* license period).

If the **Registered Appraiser** has taken USPAP at any time between January 1, 1993 and January 1, 1999, that USPAP will trigger the third renewal. For example:

First licensed

1/91 to 1/93 = first renewal period
 1/93 to 1/95 = second renewal period—took a USPAP course
 1/95 to 1/97 = third renewal period, *but* first complete renewal since USPAP
 1/97 to 1/99 = second renewal since USPAP
 1/99 to 1/01 = third renewal since USPAP— needs USPAP

OR

3/94 to 3/96 = first renewal period
 3/96 to 3/98 = second renewal period
 3/98 to 3/00 = third renewal—needs USPAP

OR

4/91 to 4/93 = first renewal period
 4/93 to 4/95 = second renewal period
 4/95 to 4/97 = third renewal period—took a USPAP course
 4/97 to 4/99 = first renewal since USPAP

For the USPAP course to count for the third renewal, the appraiser must provide evidence of having taken *and passed* a final exam. However, for those **Registered Appraisers only**, who took USPAP before January 1999 (and since they didn't have previous knowledge that they needed to pass an exam), we will accept their USPAP course without the exam. Any USPAP course taken after January 1, 1999 needs to show evidence of having passed an exam.

The 1½ hours of Utah law is no longer a requirement of USPAP. That requirement was removed last year.

Complaints

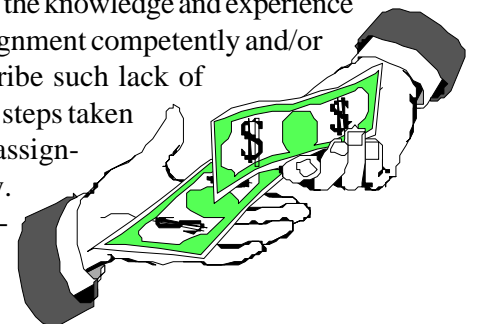
by Ted Boyer, Division Director

The Division of Real Estate is frequently asked what types of violations we receive complaints about most frequently.

Most recently we have received a number of complaints involving loan fraud. Typically the complaint will allege that there are at least two and sometimes three professionals involved with the principals in the fraudulent scheme: an appraiser, a mortgage broker and often, a real estate agent or broker. The appraiser's contribution to the enterprise is the production of an inflated appraisal.

Following are other examples of commonly found problems:

- A series of errors that, considered individually, may not significantly affect the results of an appraisal, but which, when considered in the aggregate, would be misleading. (Standards Rule 1-1)
- A certification that the appraiser has inspected a property when he has not. (Standards Rule 2-3)
- A Certified appraiser signs an appraisal report prepared by another for a fee without supervising the work, reviewing the report or inspecting the property.
 - Failure to collect, verify, analyze and reconcile available comparable data. (Standards Rule 1-4)
 - Failure to consider recent sales, listings or existing sales contracts. (Standards Rule 1-5)
 - Overstating size, condition and age of the subject property. (Standards Rules 1-2 & 1-4)
 - Failure to prominently state in an appraisal report which reporting option is being used. (Standards Rule 2-2)
 - Failure to describe or summarize the information considered, the appraisal procedures followed, and the reasoning that supports the analyses, opinions and conclusions. (Standards Rule 2-2)
 - Failure to possess the knowledge and experience to complete an assignment competently and/or the failure to describe such lack of knowledge and the steps taken to complete the assignment competently. (USPAP Competency Provision)



Providing Appraisals For Litigation

by Lee Hess, Ph.D.

“Attorneys desperately need appraisers to provide appraisals for litigation. Our course will show you how easy it is to get into this lucrative field. You will learn how to prepare an appraisal for court, how to prepare for deposition and court testimony, and how to become an expert and earn large fees.”

Have you ever seen an advertisement similar to the one above? It is becoming increasingly popular for course providers to advertise that they will teach the ins and outs of performing appraisals for litigation. High fees are mentioned as an incentive. Is this really an easy area for future business?

Legal appraisals present many challenges to the appraiser, as there is often something wrong with the properties being appraised. The appraiser needs to consider cracked slabs, soil subsidence, construction defects, properties not built to code and the like. This makes the appraiser use all of his or her research skills and creativity. Each appraisal presents its own challenges and the appraiser has to know how to coordinate his or her opinion with the opinions of other experts. For example, when was the last time you talked to a geologist about whether caissons and grade beams will correct a slab problem?

Often appraisers who are inexperienced in litigation are shocked to learn that their experience and opinion of value are attacked by opposing counsel in whatever manner possible. Jack Matson, in his book, *Effective Expert Witnessing*, states that one of the purposes of the book is to “get into the ‘head to head’ battles that characterize legal war in the courtroom.”

Besides the war-like qualities of the whole process, there is a fair amount of stress involved. Stress comes from the unknown factors in the deposition and trial processes. It is caused by attorneys who procrastinate hoping that they can settle the case without having to pay large expert fees. When this doesn’t work, they want everything finished “overnight.” In addition, the appraiser on the opposing side will use all of his or her guile and experience to show the inadequacies of the work the appraiser has performed.


It is true that an appraiser can generate ample fees

performing litigation appraisals, but they are often difficult to collect. If the appraiser works a case where the client is paying the appraisal fee and the case is lost, the appraiser is usually asked to cut his or her fee regardless of the terms of the retainer agreement. Insurance companies are usually involved in the larger cases and they are notorious for not paying experts for up to 120 days or more. After the wars in the courtroom come the wars of collecting all of the fees earned!

What is needed to perform litigation appraisals? Being licensed as a Certified General appraiser is recommended. Many attorneys think that professional designations are also important. The appraisal needs to be thorough and have dates of value which meet the legal requirements. It is surprising how often attorneys can’t easily answer the question, “What are the dates of value you want me to use?”

The expert appraiser needs to be self-confident and be an advocate for his or her own work. The appraiser is not to be an advocate for his or her employer or use the “made as instructed” approach to value. This latter point may seem obvious, but there is usually a lot of pressure exerted on expert appraisers to give the client what is needed to win the case in question. Sometimes the appraiser’s best decision is to tell his or her attorney that the data do not support the attorney’s theory and the case should be settled. Although this usually results in short-term anger, in the long run, telling the truth will win the loyalty and respect of the client.

It is my belief that litigation appraisers also need to have a competitive spirit. The attacks they face necessitate a certain toughness, self-confidence and willingness to compete. There are many appraisers that perform excellent work, who will not do appraisals for litigation because of the combative nature of the process. I have seen appraisers who have done a good job on a particular appraisal only to be discredited in court because they didn’t survive the attacks made on them by opposing attorneys.

If you haven’t been discouraged yet, then you may wish to consider the world of litigation appraisal work. No two days are ever alike. Your appraisal assignments will cause you to grow and gain confidence in your ability to handle the toughest assignments. 

Used by permission from *The California Appraiser*, Vol. 10, No. 2



Disciplinary Sanctions

BATH, J. ROBERT, State-Certified Residential Appraiser, Mesa, Arizona. Consented to a one-year probation of license, based on settlement of a prior disciplinary case. Mr. Bath was ordered by the Board to complete a 15-hour USPAP course in settlement of Case AP95-09-05, and failed to complete the course by the deadline required in the settlement agreement. #AP98-12-08

NITZEN, LOYD II, State-Certified Residential Appraiser, Orem. Application for renewal denied on February 9, 1999, based on misconduct, including failing to pay a \$2,000.00 fine ordered by the Board in a previous disciplinary action, failing to respond to investigations of him by the Division, violation of USPAP Standards 1 and 2, violation of the USPAP Ethics Provision, violation of the USPAP Competency provision, violation of the Certification and Limiting Conditions on appraisals. On March 2, 1999, Mr. Nitzen requested Reconsideration by the Board, which had the effect of reinstating his license pending Reconsideration. On March 22, 1999, the Appraiser Board declined to act on the notion for Reconsideration, resulting in Mr. Nitzen being unlicensed again as of March 22, 1999.

O'BRIEN SCHOOLS, Certified Appraiser School, Salt Lake City. Appraisal school certification renewed on probationary status based on the surrender of the certification of the O'Brien School of Real Estate due to rules violations and other misconduct. The terms of the probation require the school proprietor to submit written policies for assuring school attendance, testing and reprobationary hearing before the Board in six months, at which time the Board will examine the proprietor concerning his compliance with administrative rules and reconsider the application for renewal.

RICHEY, DAVID B., State-Certified Residential Appraiser, American Fork, Utah. Consented to a two-year license probation, 10 hours of additional continuing education, and a \$500.00 fine, based on preparing an appraisal report in which he incorrectly calculated the depreciation, inadvertently using the wrong property age to calculate the depreciation, and allowing another appraiser to complete the report and affix his signature stamp to the report while he was in Hawaii. Mr. Richey maintains that he stopped using the signature stamp and destroyed it when the administrative rule prohibiting signature stamps went into effect. #AP97-07-20

The 10 Principles of Success

1. Show up.
2. Pay attention.
3. Ask questions.
4. Get help before you really need it.
5. Willingly help others
6. "I can't" is not synonymous with "I don't want to."
7. You don't have to "like" a task to excel at it.
8. Curiosity always beats intelligence.
9. The problem isn't the problem. How you handle the problem—that's the problem.
10. Don't even think of quitting.

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Practicing appraisers need to possess the current Utah statute and rules, along with the most current edition of USPAP. The Division of Real Estate is in the process of obtaining permission to reprint and distribute the 1999 USPAP. At the time of printing, the 1998 USPAP was the most current edition available from the Division.

If you pick them up--

USPAP = \$6.50

Rules = \$3.00

If we mail them--

USPAP = \$8.50

Rules = \$5.00

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Division of Real Estate

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Salt Lake City, UT 84114

(801) 530-6747

In Memoriam

The Division of Real Estate expresses condolences to the family of Shane Bodell, a Certified General appraiser who passed away recently.

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Processing Delays—You Can Help

With approximately 2,000 appraisers and 15,000 real estate licensees currently in Utah, the Division of Real Estate processes huge amounts of paperwork every day. When we receive an incomplete or inaccurate application or renewal, our staff must spend additional time communicating with the applicant or licensee in order to resolve the situation. The extra time spent on inaccurate forms affects the processing times for all paperwork.

Before submitting forms to the Division, please check them for accuracy, completeness, and proper signatures. Just a few minutes spent reviewing your own paperwork could save a lot of time and your tax dollars.

If you have questions, please take the time to read the instructions that are included with all paperwork. If it is still unclear at that point, we'd be happy to answer your questions. Feel free to call us at (801) 530-6747.