Cha-Cha Changes!

AI Connect
Nashville, TN
July 30, 2018
Overview

• 2018 has been very active and productive

• Federal
  • Several appraisal-related bills pending in Congress
  • Appraisal regulatory modernization discussions continue
  • Regulatory activity has been brisk – waiver requests and CRE threshold

• State legislative & regulatory activity
Federal Highlights

- Exemptions, waivers, and thresholds
- Hybrid appraisals
- FHA appraisals
- Appraisal regulatory system modernization
- Conservation easements
- Interior Appraisal and Valuation Services Office
- GSE modernization
- Agency rulemaking
S. 2155-Economic Growth, Regulatory Relief & Consumer Protection Act

• Bipartisan legislation aimed to reduce “regulatory burdens” for community banks.
• Sec 103 includes an allowance from appraisals in Rural Areas:

“(A) has contacted not fewer than 3 State certified appraisers or State licensed appraisers, as applicable; and
“(B) has documented that no State certified appraiser or State licensed appraiser, as applicable, was available within a reasonable amount of time, as determined by the Federal financial institutions regulatory agency with oversight of the mortgage originator, to perform the appraisal in connection with the federally related transaction;
S. 2155-Economic Growth, Regulatory Relief & Consumer Protection Act

- Bipartisan legislation aimed to reduce “regulatory burdens” for community banks.
- Sec 103 includes an allowance from appraisals in Rural Areas:

  “(A) has contacted not fewer than 3 State certified appraisers or State licensed appraisers, as applicable, on the mortgage originator’s approved appraiser list in the market area in accordance with part 226 of title 12, Code of Federal Regulations; and

  “(B) has documented that no State certified appraiser or State licensed appraiser, as applicable, was available within 5 business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments, as documented by the mortgage originator or its agent;

  “(3) the transaction value is less than $400,000; and
S. 2155—Economic Growth, Regulatory Relief & Consumer Protection Act

• High Volatility Commercial Real Estate Loans
• Allows contributed land to be valued at current appraised value
H.R. 299: VA Hybrid Appraisals

- Hearing complaints about long turn around time for VA appraisals in 2016, mostly in rural areas.

- Bill was introduced:

  "(3) The Secretary shall permit an appraiser on a list developed and maintained under subsection (a)(3) to make an appraisal for the purposes of this chapter based solely on information gathered by a person with whom the appraiser has entered into an agreement for such services."

- Problem has largely been resolved-higher VA fees, added more than 1,000 appraisers.
- Could be tightened by making it for rural areas only, and more importantly, for trainee appraisers over non appraiser property inspectors.

- Passed House of Representatives.
- Hearing in the Senate this week.
Federal Update

- **H. R. 3221: Securing Access to Affordable Mortgages Act.**
  - Bill allows for exemptions from Appraisals for HPMLs.
  - Mostly second appraisal/full interior inspection for high risk loans mandated by Dodd-Frank
  - Below $250,000
  - Has to be kept in portfolio for at least 3 years.
  - Very small amount of loans.
  - Also provides exemption for appraisers having to conduct evaluations in accordance to USPAP for loans under $250,000 that were held in a portfolio for three years.
H. R. 6347/6348: Appraisal Threshold Increase for SBA Programs.

- Bills link SBA appraisal threshold level to level established for CRE by fed agencies ($500K)
- Currently set by statute at $250K
- Currently also do not require an evaluation below threshold
- Extra risky for taxpayers b/c non-banks/non profits order SBA appraisals are likely not as robust as federal regulated institutions
- AI against raising threshold, especially w/out an evaluation requirement
- Given risks, SBA lenders should be able to utilize appraiser prepared evaluations where full appraisals not needed
- Passed House Small Business Committee on 7/18
- Senate Amendment and Consideration
FHA Appraisals

- Legislation in the works to allow licensed appraisers to perform appraisals for FHA loans
- Verifiable education requirement
- Currently, must be certified
- FHA currently ignoring competency requirement
Appraisal Reform Vision

- Modernize appraisal oversight
- Improve enforcement
- Improve appraisal Quality
Federal Update

• Syndicated Conservation Easements
  • Land conservation groups have been sounding the alarm on these tax shelters for a few years now
  • Appraisal needed for scheme to work
  • Tied to highest & best use
  • H.R. 4459/S. 2436

• Final Rules on “Qualified” Appraiser/Appraisal to be published
  • Designations recognized
  • Standards flexibility
Federal Update

• Appraisal and Valuation Services Office
  • Consolidation of Office of Valuation Services and Native American appraisal related functions
  • Funding cuts and service request increases
  • Inherently government function requiring adequate appropriations
• GSEs jointly updating forms
  • Mandated update by FHFA
  • AI wants focus more on appraiser analysis vs. rules
  • How to reduce appraiser/lender liabilities
• AI Chapters host listening sessions with Fannie/Freddie officials
• GSEs separately updating policies/procedures
• Several years to complete.
• CFPB Comment Request on Adopted/New Rules
  1. TILA/RESPA Integrated Disclosures Rule
     • Appraisal fee is charge homebuyer cannot shop for-no tolerance
     • Proposed fee can be much lower than typical for property type,
     • Ask that CFPB allows appraisers to quote/invoice based on complexity of property w/out penalties
  2. Regulation Z/Appraisal Independence
     • Two conflicting presumptions of compliance-inconsistent standards
     • AI requests CFPB reviews Reg Z and commence a rulemaking to establish a single consistent federal standard conducted by the agency
State Legislative / Regulatory Activity
State Activities

• Statutes of repose
• Evaluations
• Standards flexibility
• Broker price opinions
• AMC oversight
• AQB minimum criteria implementation
• NCDOT vs. Mission Battleground
• Illinois State Bar Association vs. IDFPR
State Activities

• Monitoring over 100 legislative & regulatory proposals, as well as judicial activities
• Actively working in 20+ states in coordination with chapters
  - Lobbying, drafting, comment letters, etc.
• Participated in three very successful appraiser Lobby Days – Florida, Minnesota & Illinois
• Attended several state appraiser board meetings
• Participated in several chapter/coalition GR meetings
**Objective:** Limit the amount of time after an appraisal is performed during which an appraiser can be civilly sued.

- Result of appraisers being sued for appraisals done 10-15 years ago
- Prior laws in KY, MN, NC, OR, SD, and TN
- Existing laws range anywhere from 1 year (KY) to 6 years (MN, OR)
- Idea is to match the state SoR to the USPAP Recordkeeping Rule
- Claims are for professional malpractice, negligence, gross negligence, negligent misrepresentation, conversion, etc.
- Negate the “Discovery Rule”
- Massachusetts
- 2019 – AR, AZ, TX, WA, et. al.
Statutes of Repose

• **Caution: “First, Do No Harm”**

• Case law may have established a favorable statute of repose for most cases against appraisers

• E.g., In Arkansas, only fraud can toll the 3-year statute of limitations.

“For a plaintiff to benefit from the discovery rule, which tolls the statute of limitations until the cause of action is discovered or should have been discovered by reasonable diligence, there must be some positive act of fraud, something so furtively planned and secretly executed as to keep the plaintiff’s cause of action concealed, or perpetrated in a way that it conceals itself. **Most Worshipful Grand Lodge of Free and Accepted Masons of the State of Arkansas v. DCG/UGOC Equity Fund, LLC, 2016, 217 F.Supp.3d 996.  Limitation of Actions**”
Statutes of Repose

• So, absent fraud, the 3 year SOL begins to run when the appraisal is performed.

• Don’t want to inadvertently change that to something less favorable

• Be sure to check what the situation is in a state before proceeding with legislation
**Objective:** Allow appraisers to perform evaluations without having to comply with USPAP when a USPAP-compliant appraisal is not required by federal law.

- Work in 2018 has been focused on implementation of newly enacted laws in Florida and Virginia
- Activity has increased since change in the CRE threshold
- Illinois allows appraisers to perform evaluations with caveats
- Tennessee FAQs
- Texas Proposed Rules
- Colorado waiver valuation law
- Web resources: [https://www.appraisalinstitute.org/advocacy/evaluations/](https://www.appraisalinstitute.org/advocacy/evaluations/)
Objective: Allow appraisers to utilize standards of valuation practice other than USPAP when performing appraisal assignments for purposes other than mortgage lending (i.e., VFR, tax, litigation, condemnation, etc.)

- California SB 70 – Restricted Appraisal Reports
- AL, FL, KS, TN, TX, et. al.
Objective: Resist legislative and regulatory proposals that expand the ability of RE sales professionals to perform valuation work for any purpose other than as part of a listing or purchase.

- Pennsylvania HB 863 – Signed in late June
- Incrementally expands BPO authorizations: REO, modifications, short sales and portfolio evaluation
- Contains explicit prohibitions: origination, eminent domain, tax, bankruptcy, equitable distribution, litigation, and estate.
- QE, CE, content, and operational requirements
- Result of multi-year negotiations between all stakeholders
- Missouri Advisory Letter
Objective: Reasonable state regulation and oversight of appraisal management companies in accordance with the federal minimum requirements

• 48 states now have comprehensive AMC oversight laws in place – AK and OH enacted in 2018
  • MS and NY are still considering legislation
  • DC may opt-out of AMC regulation
• Most new laws are consistent with the federal minimum requirements
AMC Oversight

Many states are taking a 2nd look at their AMC laws and updating to comply with federal minimum requirements.

For the most part these laws are having their intended effects – reasonable regulation & oversight.

2018 Laws – CA, CO, GA, IL, IN, MD, MS, SC, UT, VA
FTC vs. LREAB: Status Update

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of
Louisiana Real Estate Appraisers Board,
Respondent

DOCKET NO. 9374

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission (the "Commission"), having reason to believe that the Louisiana Real Estate Appraisers Board has violated Section 5 of the Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:
AQB Minimum Criteria

• AQB modified the Real Property Appraiser Minimum Qualifications Criteria effective on May 1, 2018

• Some states have cherry-picked

• Will create some challenges for reciprocity

• Will require legislation in some states
North Carolina Supreme Court allows brokers to testify as to FMV in condemnation cases

• North Carolina Department of Transportation (NCDOT) vs. Mission Battleground Leasco, LLC
  • “Any person who can qualify as an expert under that standard, which is articulated in State v. McGrady, 368 N.C. 880, 787 S.E.2d 1, Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), and other pertinent caselaw, can testify without having to invoke any other source of authority. Meeting that standard is both necessary and sufficient.”
  • “An intelligent lay person, without any license, could potentially testify about fair market value.”
“No position” on whether the broker in this case was qualified under the Rules of Evidence to offer expert witness testimony as to fair market value, only that the broker was legally allowed to offer that testimony.

Likely broad applicability

May result in legislation to codify or correct this decision
2016 – IDFPR files unlicensed practice complaint against 2 attorneys in relation to tax appeals filed in DuPage and McHenry County

July, 2017 – ISBA files suit in Cook County against IDFPR requesting declaratory judgment, injunction, & writ of prohibition

June, 2018 – Order granting Summary Judgment for ISBA

Against this backdrop, there is nothing in the text and structure of the Appraisal Act that suggests that the General Assembly intended its prohibition on unlicensed appraisers to extend to what is the traditional practice of law in the property tax context. Indeed, the Supreme Court has recognized that in light of its own extensive regulation of the legal profession, it expects that if the legislature intends a statute to apply to the legal profession, the legislature “would have stated that intention with specificity.” Cripe v. Leiter, 184 Ill. 2d 185, 197 (1998). In short, an attorney’s reference to comparable valuations in a property tax proceeding constitutes the practice of law, which is regulated exclusively by the Illinois Supreme Court. This activity falls outside of the Appraisal Act and is plainly beyond the reach of the IDFPR.
Contact Information

Bill Garber, Director Government & External Relations
202-298-5586, bgarber@appraisalinstitute.org

Scott DiBiasio, Manager of State & Industry Affairs
202-298-5593, sdibiasio@appraisalinstitute.org

Brian Rodgers, Manager of Federal Affairs
202-298-5597, brodgers@appraisalinstitute.org
Can appraisers impact our profession on a state & national level?
Grassroots – Lobbying 101

The Answer
Topics

• Citizen Lobbyist
• Legislative Successes
• Why Lobby?
• Lobbying Process
• Funding Options
Minnesota Legislative Updates

State Legislative Recap

- Minnesota
Minnesota 2016 Session

I. HF3901/SF3556
   1. Corrects loophole in existing AMC law.
   2. Amends C&R provision to AMC law.
   3. No fees for no findings of appraiser violations.
State Legislative Recap

Minnesota 2017 Session

I. HF593/SF366

1. Modified background check requirements to bring in line with AQB.
2. Allegation Language – Created initial step for dealing with appraiser complaints.
3. Created statue of limitations for appraiser litigation.
State Legislative Recap

Minnesota 2018 Session

I. HF2829/SF2991
   1. Advisory Council – Creation of Real Estate Appraisal Advisory Board REAAB.
Definition:

Lobby – *To promote or secure the passage of legislation by influencing public officials.*
Three Major Activities:

• Team/Committee Selection
• Identify your Legislative Agenda
• Pounding the Pavement – Get it Done!
The Necessary Evil

• Chapter Funding Options
• Individual Funding Options
Quiz Time!

What is the appraisal profession’s mandate?

A. Protect The Appraisal Foundation (TAF)
B. Protect the bottom-line
C. Protect the public trust
D. Protect Client’s Investments
Quiz Time!
What is the appraisal profession’s mandate?
A. Protect The Appraisal Foundation (TAF)
B. Protect the bottom-line
C. Protect the public trust
D. Protect Client’s Investments
Remember,
You can make a difference!
Questions?
Grassroots – Lobbying 101

Thank you!
Byron Miller, SRA, AI-RRS, RAA, MSSE
612.822.5985, bmappraisals@isd.net