

STATE OF TENNESSEE
OFFICE OF THE
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March 5, 2010

Opinion No. 10-25

Whether an “Evaluation” of Real Property Constitutes an “Appraisal” and an “Appraisal Report”

QUESTIONS

1. When a state-licensed or certified appraiser performs an evaluation of real property under Tenn. Code Ann. § 62-39-104(d) and develops an opinion of collateral or asset value, is such “evaluation” also an “appraisal” and an “appraisal report,” as defined in Tenn. Code Ann. § 62-39-102(2) and (5)?

2. If the answer to question 1 is yes, then does Tenn. Code Ann. § 62-39-104(d)(1), which states that “this chapter does not apply to any evaluation,” conflict with Tenn. Code Ann. § 62-39-329?

3. If the answer to question 2 is yes, which provision governs: Tenn. Code Ann. § 62-39-104(d)(1) or Tenn. Code Ann. § 62-39-329?

OPINIONS

1. No. An evaluation of the value of real property performed under Tenn. Code Ann. § 62-39-104(d) is not an “appraisal” or “appraisal report” under Tenn. Code Ann. § 62-39-102(2) and (5) because it is expressly exempted from the definitions and requirements of title 62, chapter 39 by section -104(d), so long as it is used for the limited purposes of that section and is labeled as “not an appraisal” pursuant to section -104(d)(1)(C). If such an evaluation is not limited in its use to the strict confines of section -104(d), then it would constitute an “opinion of value” and qualify as an “appraisal” and “appraisal report” within the meaning of section -102(2) and (5).

2. Tenn. Code Ann. §§ 62-39-104(d) and -329 do not conflict with each other. When read together, these two sections clarify when the USPAP and other appraisal standards are applicable to work performed by an appraiser. The standards apply to all appraisals except for section -104(d) evaluations.

3. As stated in response to the second question, Tenn. Code Ann. §§ 62-39-104(d) and -329 do not conflict with each other. Neither section “governs.” Both should be read together to determine when appraisal standards are applicable.

ANALYSIS

1. Tenn. Code Ann. §§ 62-39-101 *et seq.* is known as the “State Licensing and Certified Real Estate Appraisers Law” (the “Act”). Tenn. Code Ann. § 62-39-101 (2009). The Act requires real estate appraisers to obtain a state license or certification, Tenn. Code Ann. § 62-39-103 (2009), establishes a real estate appraiser commission, Tenn. Code Ann. §§ 62-39-201 *et seq.* (2009), and sets forth certain licensing, certification, and examination requirements for appraisers. Tenn. Code Ann. §§ 62-39-301 *et seq.* (2009).

As defined by the Act, an “appraisal” is “the act or process of developing an opinion of value of identified real estate.” Tenn. Code Ann. § 62-39-102(2) (2009). An “appraisal report” is defined as “any communication, written or oral, of an opinion of value of identified real estate.” Tenn. Code Ann. § 62-39-102(5) (2009). The Act requires that “appraisals be performed in accordance with generally accepted appraisal standards; therefore, state licensed and/or certified real estate appraisers must comply with the Uniform Standards of Professional Appraisal Practice” (the “USPAP”). Tenn. Code Ann. § 62-39-329 (2009). But Tenn. Code Ann. § 62-39-104(d) (2009) exempts certain “evaluations” from the requirements of the Act.

(1) This chapter does not apply to any evaluation of the value of real estate serving as collateral for a loan made by a federally regulated financial institution or to any evaluation of the value of the assets of a trust held by the institution; provided, that:

(A) The applicable federal regulator does not require an appraisal by a state-licensed or state-certified appraiser for the loan or trust;

(B) The evaluation is used solely by the financial institutions in their records to document the collateral or asset value;

(C) The evaluation shall be labeled on its face “this is not an appraisal”; and

(D) Individuals performing these evaluations may be compensated for their services.

(2) Nothing in this chapter shall prevent a state-licensed or state-certified appraiser from performing the evaluation.

The distinction between an appraisal and a section -104(d) evaluation of real estate is not the purpose of such appraisal or evaluation but, rather, the circumstances under which one is performed. In both instances an appraiser would attempt to determine the value of certain real property. However, an evaluation that is performed under section -104(d) and satisfies the requirements of that section, including labeling the evaluation as “not an appraisal” on its face, is not an “appraisal” or an “appraisal report” under section -102(2) and (5) because it is expressly exempted from the definitions and requirements of title 62, chapter 39. If an evaluation does not fall within the strict confines of section -104(d), then it would constitute an “opinion of value” and qualify as an “appraisal” and an “appraisal report” within the meaning of section -102(2) and (5).

2. The Act requires appraisals to comply with appraisal standards such as the USPAP.

It is the intent of this chapter that real estate appraisals be performed in accordance with generally accepted appraisal standards; therefore, state licensed and/or certified real estate appraisers must comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation and any other duly established standards of the commission.

Tenn. Code Ann. § 62-39-329 (2009). The explicit language of section -104(d) exempts evaluations performed thereunder from the provisions of the Act.

(1) *This chapter does not apply to any evaluation* of the value of real estate serving as collateral for a loan made by a federally regulated financial institution or to any evaluation of the value of the assets of a trust held by the institution. . . .

Tenn. Code Ann. § 62-39-104(d)(1) (2009) (emphasis added). As discussed in response to the first question, a section -104(d) real estate evaluation is not an appraisal and appraisal report. Sections -104(d) and -329 do not conflict with each other. When read together, these two sections clarify when the USPAP and other appraisal standards are applicable to work performed by an appraiser. The standards apply to all appraisals except for section -104(d) evaluations.

3. As stated in response to the second question, Tenn. Code Ann. §§ 62-39-104(d) and -329 do not conflict with each other. Neither section “governs.” Both should be read together to determine when appraisal standards are applicable.

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