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Government Relations Update

President's Council

Chicago, IL

September 20, 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



- Appraisal Threshold Levels
- Temporary Waiver Requests
- Interior Appraisal and Valuation Services Office
- GSE modernization
- Treasury Report on “Fintech”
- SBA Appraisal Threshold Level
- Appraisal regulatory system modernization
- Syndicated conservation easements

Federal Update



- Appraisal Threshold Level
 - CRE to \$500,000
 - Evaluation requirement
 - Residential and Business left unchanged

Federal Update

- Temporary Waiver Requests
 - Oklahoma Bank & Trust
 - Withdrawn
 - TriStar Bank – Nashville TN.
 - ASC rejected
 - State of North Dakota (Governor, FI Department, ND Bankers Association)
 - Request has not satisfied ASC criteria for “received” request
 - Appraisal exemption vs. credentialing exemption

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

GSE Modernization

- 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
- Multifamily considerations

- Department of Treasury FinTech Report
 - Makes recommendations on integration of “FinTech” in financial services
 - Appraisal included
 - FIRREA should be amended
 - AVMs and big data emphasized
 - AQB experience alternatives
 - National Multistate Licensing System highlighted

- **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

Congressional

- Appraisal Regulatory Modernization
 - One-stop shopping for appraisal license applications and renewals
 - Modernize appraisal oversight
 - Improve enforcement
 - Improve appraisal quality

- 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



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State Legislative / Regulatory Activity

State Activities

- Statutes of repose
- Evaluations
- 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

Statutes of Repose

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

Evaluations

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/>

Broker Price/Value Opinions



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

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.”*

Litigation

“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

ISBA vs. IDFPR

- 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.

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