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Regarding: Mandatory Appraisal Rules and Evaluations in the State of Utah

It is appropriate that I remark on mandatory appraisal rules under the threshold and on evaluations. I am not a lawyer and I cannot express a legal opinion, but I am one of the key players in the development of the Utah Appraisal Law as we know it today and I have first hand knowledge of what is meant by the wording in the law. Other people who can be given credit in the original development of the 1991 version are Rick Lifferith, Zane Bergeson, and Bill Lange. Al Mansell, Jerry Adair, Ted Boyer, and myself can be given credit in the 1999 revision. Both the original bill and the revision of the bill were made with the encouragement and concurrence of the UAA Board as well as the entire real estate industry including banks and lenders..

In the 1990 negotiations, it was determined that Utah would be a mandatory state, meaning that all appraisers and appraisals, no matter what the use or value, would be regulated by the State. This was done for the protection of the public.

I recognize that the federal rule for banking does not require an appraisal if it is under the threshold level; but, in Utah and other mandatory states, if an appraisal is done, even under the threshold level, it has to be done by a licensed or certified appraiser. Only certified appraisers can appraise over \$250,000 for a federally related transaction. This situation did not change with the revision of 1999.

Evaluations, as long as they do not include a value opinion, do not fall under the enforcement of appraisal law. However, if an evaluation has an opinion of value, or location, or utility, etc., it falls under the definition of an appraisal. Limited scope appraisals, in restricted use reports, as defined by USPAP, are also, by definition, appraisals whether they are called evaluations or not. These fall under the regulation authority of the states.

The big question is, can a non appraiser do an evaluation and/or do a valuation appraisal? When answering this question note that there are specific exceptions in the law for owners, employees of owners, governments, lawyers, CPA's, and Realtors. I believe that if the evaluation involves selecting a large number of comparables and then giving



them to the client saying, “You analyze the data and decide what it’s worth,” or, if the evaluation includes driving by and saying, “There’s a two-story house on that lot,” those evaluations do not require an appraiser at all. But, if the comparables are paired down to what the person thinks are the three best for the property, technically that is an appraisal. If the evaluation includes, saying, “ I think the value should be in this range,” that is definitely an appraisal, not an evaluation and needs to be done by an appraiser.

Can a non-appraiser do an appraisal? The answer is NO (Subject to the exceptions above) because Utah is a mandatory state. Even properties or loans under the \$250,000 threshold limit are covered in the law.

Can a Realtor do an appraisal? This answer requires explanation.

1. A Realtor could be dually licensed as an agent and an appraiser and, therefore, be able to do appraisals.
2. A Realtor who is not licensed as an appraiser can still do appraisals if it is, “in the normal course of his or her business.” The business of a licensed sales agent or real estate broker is defined as “listing and selling property.” If we have a Realtor who is suggesting a list price as part of listing a property, it is within a Realtor’s prerogative. But, if a Realtor is not listing or selling a property and says, “I think that property is worth this much,” it is an appraisal and is outside the realm of his or her normal work. It is not the normal work of a Realtor to offer opinions of value for any reason other than listing and selling. He or she cannot offer an opinion of value for a tax appeal. He or she cannot offer an opinion of value for a fee to anybody who just asks them what their property is worth. They cannot offer an appraisal to a lender for a fee because that is outside the normal course of a Realtor’s business practice. Offering opinions of value is, by definition, the practice of an appraiser.

Limited scope appraisals are perfectly acceptable. As an extreme example, You, could order a limited scope appraisal and ask an appraiser to drive by a property at 60 miles per hour, looking briefly at it to see if it is a two-story house that would probably be valued in the range of \$150,000 to \$200,000 and call you with the a report. The appraiser who does that for you would have performed a credible appraisal within the scope of the assignment. This complies with USPAP and therefore Utah law. However, in Utah or any mandatory state, it is an appraisal and requires a licensed or certified appraiser. If the value is over \$250,000 it requires a certified appraiser.

To take this discussion one step farther; suppose a Realtor sold a house and the buyer applied for a loan. The lender needs an appraisal and asks the listing agent to do an appraisal because the agent knows the market. The agent does a creditable appraisal. Did the real estate agent do the appraisal in the ordinary course of their business; that being listing or selling a property? Or, did the agent do an appraisal in violation of appraiser licencing laws? After all, the loan had to be approved in order for the sale to close and getting the sale closed is part of the agent’s job. The agent may not even have charged for the value opinion. However, the appraisal was required by the lending guidelines;

therefore, the appraisal is part of the lending process, not the sales process and the one performing the appraisal, by whatever name, must be a licensed or certified appraiser in this State.

There is one more point that needs clarification concerning the threshold level. As I understand it, the threshold level of \$250,000 applies to the sale price in the case of a sale or just the loan in the case of a refinance, It applies to whichever is greater, the loan or the sale price. Here the definition uses the words “transaction value” meaning sales transaction. Some have argued that it means lending transaction but in the case of a sale the sale has precedence.

This is the way the law is, but, of course, it is always involves interpretation. Who is authorized to interpret the Appraisal Law? The State Appraiser License and Certification Board. There are seven members of the Board, of which four are appraisers. They are the only ones authorized to interpret USPAP or Utah Appraisal Law. I am pretty sure they understand the law as I have explained it.

If I can be of any further assistance in explaining this, or in referring you to others who can explain it, I would be glad to do so.

Respectfully,

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