

What is Going on in Appraising Today?

The changes in the landscape for appraising have been fast coming. The latest discussion is about Broker Price Opinions. Are they or are they not regulated by appraisal law? We have just been through the HVAC and the Dodd Frank Financial Reform Act and Appraisal Management Companies and it doesn't stop.

When I was the Chapter President, in 1980, we asked the current Director of the Real Estate Division about the possibility of licensing appraisers. His response was that appraisers were doing a pretty good job of regulating themselves and it is probably better to keep the government out as long as we can. All of the appraisers concurred with that response.

By 1990, we had been through the Savings and Loan debacle and appraisers had accepted a portion of the blame, even though lenders and brokers were equally responsible. The result was that the federal government required states to license or certify appraisers in order to protect the Federal Reserve from another debacle. They created an appraisal subcommittee, which was a branch of Congress. The subcommittee was to supervise licensing. They, in turn accepted the Appraisal Foundation who had written the Uniform Standards of Professional Appraisal Practice. The subcommittee was to supervise the development of and modifications to the appraisal practice and to supervise the states' enforcement of USPAP and also the supervision of licensing procedures. The states could have their own statutes and

rules, but, if these statutes and rules were not satisfactory to the subcommittee, the subcommittee could request that they be upgraded. That has been done in the State of Utah and the changes we had in 1999 are the direct result of a subcommittee letter.

We revised the appraisal statute in Utah. It goes beyond the federal mandate. It requires all appraisers in the State to be licensed or certified. This was justified because so many of the properties in the State fell under the \$250,000 threshold, above which congress required State Certified Appraisers for federally related transactions.

We now find ourselves in another cyclical financial crisis and lenders are now hiring real estate brokers and agents to do broker price opinions as opposed to appraisals for what is considered to be in-house decisions, such as loan modifications and trouble loan analysis, in order to save money.

One, the appraisal license law could not avoid the last two financial crises since the appraisers have been licensed and certified, and two, there always seems to be a way to get around a regulation. This has caused the financial crises and has the possibility of causing other crises in the future.

As an example, When the 1991 license law went into effect, there was a provision for registered appraisers which was the equivalent of a "trainee", but the State required a small

fee to become registered and assigned a number to that person's name. Later, that number, and the fact that there had been fees charged, was interpreted by lawyers as a "license". Those registered appraisers had no experience, no testing, no education, and yet they were doing appraisals for lenders. The effect was, that there were so many bad appraisals, that even Realtors were complaining that the appraisals meant nothing and the price was always coming in at 100% of the sales price. There was no confidence in the appraisal and there was a call for a change.

In the 1999 revision of the Appraisal Statute, there was inserted a category for an "appraisal trainee," and those trainees were not allowed to sign any of their work. In that revision, there was also a provision excepting some people from the appraisal law. For example, brokers could make opinions of value during the ordinary course of work. This was then interpreted as listing and selling of properties. However, since that time, the ordinary course of work for brokers has been expanded. It includes offering BPO's for a fee to lenders who use those opinions in making financial decisions, some of which are included in the federally related transaction definition.

In the State of Nebraska, the banker's lobby got their legislature to pass a law specifically allowing brokers to do Broker Price Opinions (BPO's) for lenders. Then the question was asked, what would the appraisal subcommittee think in their next audit of Nebraska? Will they issue a letter similar to the one they issued to Utah, suggesting strongly that their law and

their administration come into compliance with the original FIRREA Law? The answer, from someone who should know, was that the appraisal subcommittee is controlled by bankers, so it is doubtful that the subcommittee will chastise the State of Nebraska.

In concert with this is the recent rejection of the Appraisal Institute by the Foundation and the Appraisal Institute's withdrawal from the Foundation. Remember, the Appraisal Institute was one of the original founders of the Appraisal Foundation and it was partly due to their clout that the Foundation received its designation from the subcommittee to develop standards. Now, it seems that the Foundation is run by other parties and special interest groups, rather than just appraisal organizations. These are Affiliate and International Sponsors. It is quite possible that, in the future, they could make more rules and regulations through USPAP and license standards that may benefit lenders, Realtors, or other parties. Remember, the reason for the formation of the Foundation and the subcommittee in the first place was to protect the public interest and the public trust in appraisal and to protect the U.S. Federal Reserve from financial crises, not the interest of industry groups.

Appraisers were inserted into the mix as unbiased, 3rd party, independents who could make an objective opinion of value; thus, providing some reasonable thinking to financial activities that the Federal Government insures.

Now, in our State, appraisers are being asked, in one way or another, to allow BPO's. The new financial reform bill specifically requires that appraisals be used in valuation of new and original loans (both residential and commercial). However, it does not say anything about loan modifications or workouts, so it is presumed that present practices are acceptable. Appraisers appreciate the enforcement of the use of certified appraisals on new loans in federally related transactions. However, in states where licensed or certified appraisers are mandatory on all valuation issues, the federal and state laws may be in conflict.

One proposed answer has been to make clear the definition between value and price. If a Realtor offers a Broker Price Opinion, it should clearly be defined as price as opposed to value. Thus, the public would be aware of what they were dealing with and this public education would be helpful. It seems like government regulations will be taken to an extreme if the government were to restrict the use of broker price opinions in all cases; but, simply educating the public seems too little in mandatory states.

This discussion leads me to think that mandatory licensing is the question. One, Do appraisers really want to insist on and manage mandatory licensing and regulate all appraisals done in the State? Two, Should we be satisfied with regulating only those appraisals that fall under FIRREA and which are above the threshold level set by the Federal Government? Three, Should there be any licensing or regulation of appraisers and appraisals at all since we have made relatively no progress and no improvement over the pre-licensing era and debacles

and financial bail-outs by the Federal Government continue to plague our economy with disaster after disaster?

I can see that lenders and politicians clearly want appraisers on board as a check on lending procedures and as a scapegoat for lending mistakes. I can see that the states would like to be better regulators of the turf they are assigned; but, the task is sometimes daunting.

Postscript #1:

In 1991, when the appraisal statute was first implemented, attorneys advised the board that they could not just enforce USPAP, they had to approve USPAP each time. If it were revised, it had to be approved again to be enforced by their board; otherwise, they would be abdicating their responsibility from the State to the Federal Government or from the appointed board to some bureaucratic, administrative department to decide what would and wouldn't be enforced. Now, in 2010, it has been proposed that the statute be amended to automatically accept USPAP because it has become so standardized. That would include and automatically accept any changes to USPAP. The grounds for this is that acceptance of USPAP has to be automatically accepted because, if you don't accept the responsibility to enforce USPAP, then the appraisal subcommittee, under FIRREA, would have the option to cut off federal insurance of funding to federally related transactions in our State. Therefore, the Federal Government has, it seems, a noose around the neck of the states and the states have no authority except to

administer the federal laws. That appears to be a violation of the State's rights. This point deserves further discussion.

Postscript #2:

There is a clear difference between the definition of price and the definition of value. I support any effort to make the delineation between the two clear, to educate the public, and to educate users of appraisal services and the real estate industry of the difference between price and value. Correcting those terms in the statute is a good step. If the users of Appraisals and BPO's understand that, clearly they will be better prepared to make decisions regarding reliability or credibility of those opinions. But, it will not solve the appraiser's woes or the appraisal regulators' ability to enforce the law. This may be an appropriate time to discuss becoming a voluntary certification state.

Postscript #3:

I read that fraud investigators have reported that appraisers have replied to them that, "It is just my opinion of value." Why would any appraiser think so low of their work? Your appraisal should be a trustworthy, credible, believable, and reliable opinion of value. Lenders, homeowners, tax payers, executives, and the government trust and rely on appraisers' opinions. It is time for us, as appraisers, to step up to the task of being independent and credible and promoting the public trust in appraisals. Laws and regulations should encourage just that.