

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 1309
Economic Matters

(Delegate Holmes, *et al.*)

Real Estate Appraisers - Valuation Appraisals - Requirements

This bill establishes standards that real estate appraisers licensed with or certified by the Commission of Real Estate Appraisers and Home Inspectors must follow when conducting a valuation appraisal on a residential property.

Fiscal Summary

State Effect: Potential increase in general fund expenditures due to increased enforcement costs for the commission. Potential increase in general fund revenues due to civil penalties. Any such increase could be offset by a reduction in licensing fee revenue, which is directed to the general fund.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: Potential meaningful. Adherence to the bill's provisions may violate the Uniform Standards of Professional Appraisal Practice (USPAP).

Analysis

Bill Summary: A licensed or certified real estate appraiser must follow the rules, regulations, and professional standards required for a traditional valuation appraisal when using a nontraditional valuation method such as an "automated valuation model," which is defined as a valuation approach that uses mathematical modeling combined with a database.

In appraising a residential property, a licensed or certified real estate appraiser must use comparable sales only for arms-length transactions in which the buyer and seller are not

related in any way and are not entering into the transaction under duress or unusual circumstances, such as a foreclosure or short sale. A “short-sale” is defined as one in which the negotiated price is less than the mortgage balance owed on the property and that results in the removal of the lien by the lender.

In a case of duress or unusual circumstances, the real estate appraiser must consider (1) the property’s history or disposition before the sale; (2) the physical condition of the property; and (3) the motivation of the seller.

In considering the property’s history, the real estate appraiser must consider whether the property was (1) real estate owned at auction; (2) real estate owned by a broker who represents a bank after the auction process; or (3) a short sale by the property owner.

In considering the physical condition of the property, the real estate appraiser must consider whether the property (1) is damaged and being sold “as is;” (2) is damaged and repaired; or (3) has been remodeled.

In considering the motivation of the seller, the appraiser must consider whether (1) the bank as trustee is motivated to obtain the true market value for the property or liquidate the property and remove it from the bank’s financial holdings; or (2) the homeowner as seller is motivated to avoid foreclosure proceedings.

A real estate appraiser may not change an appraisal solely because the appraisal does not support a proposed loan amount for the property as determined by an underwriter or an automated valuation model. A person may not ask a real estate appraiser to change an appraisal solely on the basis that the appraisal of the property does not support a proposed loan amount for the property as determined by an underwriter or an automated valuation model.

Current Law/Background:

Maryland Commission of Real Estate Appraisers and Home Inspectors

The State Commission of Real Estate Appraisers and Home Inspectors within the Department of Labor, Licensing, and Regulation (DLLR) regulates real estate appraisers pursuant to the federal Financial Institutions Reform, Recovery, and Enforcement (FIRREA) Act of 1989. FIRREA recognizes USPAP as the generally accepted appraisal standards and requires USPAP compliance for appraisers in federally related real estate transactions. State appraiser certification and licensing boards; federal, State, and local agencies; appraisal services; and appraisal trade associations all require compliance with USPAP.

As of June 2010, there were about 3,600 licensed or certified real estate appraisers in the State.

Applicable Requirements Under the Uniform Standards of Professional Appraisal Practice

USPAP Standard Rule 1-2 states that an appraiser must identify the type and definition of value of a property, and – if the value opinion to be developed is market value – the appraiser must ascertain whether the value is to be the most probable price (1) in terms of cash; (2) in terms of financial arrangements equivalent to cash; or (3) in other precisely defined terms. If the opinion of value is to be based on nonmarket financing or financing with unusual conditions or incentives, the terms of such financing must be clearly identified and the appraiser’s opinion of their contributions to or negative influence on the value must be developed by analysis of relevant market data.

Under Standard Rule 1-2, the appraiser must also identify the characteristics of the property that are relevant to the type, definition of value, and intended use of the appraisal, including (1) its location and physical, legal, and economic attributes; (2) the real property interest to be valued; (3) any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal; (4) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature; and (5) whether the subject property is a fractional interest, physical segment, or partial holding.

USPAP Standard Rule 1-4 requires appraisers to collect, verify, and analyze all information necessary for credible assignment results when developing a real property appraisal. USPAP Standard Rule 1-4 specifies the actions that an appraiser must take when using various appraisal approaches, such as the sales comparison approach, cost approach, or income approach. USPAP Standard Rule 1-4 specifies that, when a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

When information indicating the market value of a property is available “in the normal course of business,” USPAP Standard Rule 1-5 requires appraisers to analyze all agreements of sale, options, and listings of the property as of the date of the appraisal. Appraisers must also analyze all sales of the property that occurred within three years of the effective date of the appraisal.

Penalties Under Current Law

State law establishes civil and criminal penalties for violations of the Maryland Real Estate Appraisers and Home Inspectors Act. Persons who violate any provision of the Act are guilty of a misdemeanor and are subject to imprisonment for up to one year and/or a fine of up to \$5,000. The commission also may issue a civil penalty of up to \$5,000 for a violation of the Act.

State Fiscal Effect: The commission may incur costs in investigating consumer complaints and pursuing criminal charges as a result of the bill. To the extent that a high volume of consumer complaints is received, the fiscal and operational impact on the commission may be significant.

Given the number of real estate appraisers in the State and the fact that their standards of professional conduct compel them, in some cases, to violate the bill's provisions, the commission may receive an elevated volume of complaints. If so and civil penalties are assessed, general fund revenues increase as a result of the bill. Thus, some of the increased enforcement costs resulting from the bill may be offset by fine revenue. Alternatively, general fund revenues may decrease if the number of licensed and certified appraisers drops because they do not want to risk violating State law or professional standards. Because the number of violations reported as a result of the bill cannot be projected, the fiscal impact on the commission cannot be reliably estimated.

Additional Comments: DLLR advises that the bill's requirements appear to conflict with USPAP standards regarding appraiser practice. State agencies that license or certify real estate appraisers are required to adopt USPAP as the standard code of conduct. DLLR advises that the federal government may decertify a state's regulatory agency if the state has standards for the practice of real estate appraisal that conflict with USPAP.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; The Appraisal Foundation; Department of Legislative Services

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