



THE APPRAISAL FOUNDATION

Authorized by Congress as the Source of Appraisal
Standards and Appraiser Qualifications

APPRAISAL STANDARDS BOARD

March 25, 2011

Jim Park
Executive Director
Appraisal Subcommittee
1401 H Street N.W. Suite 760
Washington, D.C. 20005

Via Electronic Mail: jim@asc.gov

Dear Mr. Park:

There are many appraisal assignments where, in order to achieve credible results, it is necessary to use “distress” (e.g. REO or Short Sales) properties as comparable sales. However, foreclosure sales, defined by Black’s Law Dictionary as “the sale of mortgaged property, authorized by a court decree or a power-of-sale clause, to satisfy the debt” are seldom based on market expectations. When there is a glut of distress sales in the marketplace, and those properties are truly comparable to the subject, it would be misleading not to use them as part (or in some cases all) of the basis for a value conclusion.

Standards Rule 1-4(a) of the Uniform Standards of Professional Appraisal Practice (USPAP) requires, when necessary for credible results, that the appraiser “analyze such comparable sales data as are available to indicate a value conclusion.” To overlook a relevant segment of that data would be contrary to what is required by USPAP.

Furthermore, appraisal theory provides that the principle of substitution dictates that buyers will not pay more for a property than the price of an equivalent substitute property. Therefore, the value of a property is limited by its competition. If the pool of competitive properties includes enough distress properties, those properties will, in effect, establish a value ceiling.

It is our opinion that the proposed legislation could conflict with USPAP. If an appraiser were to perform as required by the proposed legislation, there would likely be many cases where the appraiser’s results were not credible.

Lastly, we believe that the proposed legislation clearly would *not* establish a jurisdictional exception under USPAP for any appraisals performed for federally related financial transactions. Lines 436-437 in the Comment to the JURISDICTIONAL EXCEPTION RULE state:

When compliance with USPAP is required by federal law or regulation, no part of USPAP can be voided by a law or regulation of a state or local jurisdiction.

Mr. Jim Park
March 25, 2011
Page 2 of 2

Although the language quoted above does not necessarily apply to appraisals for non-federally related financial transactions, it would be inconsistent with the spirit and intent of USPAP to prohibit such practices for one type of transaction but allow them for another.

We hope you find this helpful. If you have any questions or need additional clarification, please feel free to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Carl Schultz, Jr.", written in a cursive style.

J. Carl Schultz, Jr.
Chair
Appraisal Standards Board

Attachment

cc: Denise Graves, Deputy Executive Director, ASC
Alice Ritter, General Counsel, ASC

HOUSE BILL 1309

C2, N1

11r2843

By: **Delegates Holmes, Anderson, Braveboy, Davis, Guzzone, Niemann, Ross, Stein, V. Turner, Vaughn, Walker, Washington, and Wilson**

Introduced and read first time: March 1, 2011

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Real Estate Appraisers – Valuation Appraisals – Requirements**

3 FOR the purpose of requiring a licensed or certified real estate appraiser, in a
4 residential real estate valuation appraisal, to use certain standards required for
5 a traditional valuation appraisal when using a nontraditional appraisal method;
6 requiring a licensed or certified real estate appraiser to use a certain method
7 only in a certain arms-length real estate transaction; requiring a licensed or
8 certified real estate appraiser to consider certain other factors when a
9 transaction involves duress or unusual circumstances such as a foreclosure sale
10 or a short sale; describing certain factors a licensed or certified real estate
11 appraiser must consider concerning a property's status, the physical condition of
12 the property, and the circumstances of the motivation of the seller in a
13 foreclosure or short sale; prohibiting a licensed or certified real estate appraiser
14 from changing an appraisal for certain reasons; prohibiting any person from
15 asking a licensed or certified real estate appraiser to change an appraisal for
16 certain reasons; establishing that a certain change in an appraisal is considered
17 unprofessional conduct; defining certain terms; providing for the scope of this
18 Act; and generally relating to valuation appraisals of residential real property
19 by real estate appraisers.

20 BY repealing and reenacting, without amendments,
21 Article – Business Occupations and Professions
22 Section 16–101(a) and (b)
23 Annotated Code of Maryland
24 (2010 Replacement Volume)

25 BY adding to
26 Article – Business Occupations and Professions
27 Section 16–403
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2010 Replacement Volume)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article – Business Occupations and Professions**

5 16–101.

6 (a) In this title the following words have the meanings indicated.

7 (b) (1) “Appraisal” means an analysis, conclusion, or opinion about the
8 nature, quality, utility, or value of interests in or aspects of identified real estate.

9 (2) “Appraisal” includes:

10 (i) a valuation appraisal;

11 (ii) an analysis assignment; and

12 (iii) a review assignment.

13 (3) “Appraisal” does not include an opinion to a potential seller or
14 third party by a person licensed under Title 17 of this article about the recommended
15 listing price or recommended purchase price of real estate, provided that the opinion is
16 not referred to as an appraisal.

17 **16–403.**

18 **(A) (1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE**
19 **MEANINGS INDICATED.**

20 **(2) “AUTOMATED VALUATION MODEL” MEANS A SERVICE THAT**
21 **PROVIDES PROPERTY VALUATIONS USING MATHEMATICAL MODELING**
22 **COMBINED WITH A DATABASE.**

23 **(3) “COMPARABLE SALES” MEANS ESTIMATIONS OF THE VALUE**
24 **OF A PROPERTY AND THE PRICE AT WHICH THE PROPERTY MIGHT SELL BY**
25 **EXAMINING THE SELLING PRICE AND TERMS UNDER WHICH SIMILAR**
26 **PROPERTIES HAVE SOLD IN THE SAME AREA IN THE RECENT PAST.**

27 **(4) “REAL ESTATE OWNED” MEANS A PROPERTY THAT HAS BEEN**
28 **TAKEN BACK BY A MORTGAGE LENDER TO SELL SEPARATELY AS A RESULT OF**
29 **AN UNSUCCESSFUL FORECLOSURE SALE ON THE PROPERTY.**

1 **(5) “SHORT SALE” MEANS THE SALE OF PROPERTY FOR A**
2 **NEGOTIATED PRICE THAT:**

3 **(I) IS LESS THAN THE MORTGAGE BALANCE OWED ON THE**
4 **PROPERTY; AND**

5 **(II) RESULTS IN THE REMOVAL OF THE LIEN ON THE TITLE**
6 **BY THE LENDER.**

7 **(B) THIS SECTION APPLIES TO VALUATION APPRAISALS OF**
8 **RESIDENTIAL REAL PROPERTY.**

9 **(C) A LICENSED REAL ESTATE APPRAISER OR CERTIFIED REAL ESTATE**
10 **APPRAISER SHALL FOLLOW THE RULES, REGULATIONS, AND PROFESSIONAL**
11 **STANDARDS REQUIRED FOR A TRADITIONAL VALUATION APPRAISAL WHEN**
12 **USING A NONTRADITIONAL VALUATION METHOD SUCH AS AN AUTOMATED**
13 **VALUATION MODEL.**

14 **(D) IN APPRAISING A RESIDENTIAL PROPERTY, THE LICENSED REAL**
15 **ESTATE APPRAISER OR CERTIFIED REAL ESTATE APPRAISER SHALL USE**
16 **COMPARABLE SALES ONLY FOR AN ARMS-LENGTH TRANSACTION IN WHICH THE**
17 **BUYER AND SELLER ARE NOT RELATED IN ANY WAY AND ARE NOT ENTERING**
18 **INTO THE TRANSACTION UNDER DURESS OR UNUSUAL CIRCUMSTANCES, SUCH**
19 **AS A FORECLOSURE SALE OR SHORT SALE.**

20 **(E) (1) IN A CASE OF DURESS OR UNUSUAL CIRCUMSTANCES, A**
21 **LICENSED REAL ESTATE APPRAISER OR CERTIFIED REAL ESTATE APPRAISER**
22 **SHALL CONSIDER:**

23 **(I) THE PROPERTY’S HISTORY OR DISPOSITION BEFORE**
24 **THE SALE;**

25 **(II) THE PHYSICAL CONDITION OF THE PROPERTY; AND**

26 **(III) THE MOTIVATION OF THE SELLER.**

27 **(2) IN CONSIDERING THE PROPERTY’S HISTORY UNDER**
28 **PARAGRAPH (1)(I) OF THIS SUBSECTION, THE LICENSED REAL ESTATE**
29 **APPRAISER OR CERTIFIED REAL ESTATE APPRAISER SHALL CONSIDER**
30 **WHETHER THE PROPERTY WAS:**

31 **(I) REAL ESTATE OWNED AT AN AUCTION;**

1 **(II) REAL ESTATE OWNED BY A REAL ESTATE BROKER WHO**
2 **REPRESENTS A BANK AFTER THE AUCTION PROCESS; OR**

3 **(III) A SHORT SALE BY THE PROPERTY OWNER.**

4 **(3) IN CONSIDERING THE PHYSICAL CONDITION OF THE**
5 **PROPERTY UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION, THE LICENSED**
6 **REAL ESTATE APPRAISER OR CERTIFIED REAL ESTATE APPRAISER SHALL**
7 **CONSIDER WHETHER THE PROPERTY:**

8 **(I) IS DAMAGED AND BEING SOLD AS IS;**

9 **(II) IS DAMAGED AND REPAIRED; OR**

10 **(III) HAS BEEN REMODELED.**

11 **(4) IN CONSIDERING THE MOTIVATION OF THE SELLER UNDER**
12 **PARAGRAPH (1)(III) OF THIS SUBSECTION, THE LICENSED REAL ESTATE**
13 **APPRAISER OR CERTIFIED REAL ESTATE APPRAISER SHALL CONSIDER**
14 **WHETHER:**

15 **(I) THE BANK AS TRUSTEE IS MOTIVATED TO:**

16 **1. OBTAIN THE TRUE MARKET VALUE FOR THE**
17 **PROPERTY; OR**

18 **2. LIQUIDATE THE PROPERTY AND REMOVE IT FROM**
19 **THE BANK'S FINANCIAL HOLDINGS; OR**

20 **(II) THE HOMEOWNER AS SELLER IS MOTIVATED TO AVOID**
21 **FORECLOSURE PROCEEDINGS.**

22 **(F) (1) A LICENSED REAL ESTATE APPRAISER OR CERTIFIED REAL**
23 **ESTATE APPRAISER MAY NOT CHANGE AN APPRAISAL SOLELY ON THE BASIS**
24 **THAT THE APPRAISAL OF THE PROPERTY DOES NOT SUPPORT A PROPOSED**
25 **LOAN AMOUNT FOR THE PROPERTY AS DETERMINED BY AN UNDERWRITER OR**
26 **AN AUTOMATED VALUATION MODEL.**

27 **(2) A PERSON MAY NOT ASK A LICENSED REAL ESTATE**
28 **APPRAISER OR CERTIFIED REAL ESTATE APPRAISER TO CHANGE AN APPRAISAL**
29 **SOLELY ON THE BASIS THAT THE APPRAISAL OF THE PROPERTY DOES NOT**
30 **SUPPORT A PROPOSED LOAN AMOUNT FOR THE PROPERTY AS DETERMINED BY**
31 **AN UNDERWRITER OR AN AUTOMATED VALUATION MODEL.**

1 **(3) ANY CHANGE IN AN APPRAISAL MADE FOR THE REASONS**
2 **DESCRIBED IN THIS SUBSECTION IS CONSIDERED UNPROFESSIONAL CONDUCT.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2011.