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Florida Real Estate Appraisal Board
400 West Robinson Street, N801
Orlando, FL 32801

Dear Members of the Florida Real Estate Appraisal Board:

As a result of Florida House Bill 927, the Florida Real Estate Appraisal Board will be considering rule-making to implement amendments to Chapter 475, Part II, F.S. In your deliberations, please consider the following:

The legislation added a definition of “evaluation” to the statute:

475.611(1)(q) “Evaluation” means a valuation permitted by any federal financial institutions regulatory agency appraisal regulations for transactions that do not require an appraisal, as such valuations qualify for an applicable exemption under federal law. The board shall adopt rules, as necessary, to define the term “evaluation” and the applicable exemptions under federal law.

Two additional sections were inserted as a result of the legislation; a section declaring the right of an appraiser to perform an evaluation, and one clarifying the board’s ability to adopt standards of professional practice:

475.612(7) Notwithstanding any other provision of law, an appraiser may perform an evaluation of real property in connection with a real estate-related financial transaction, as defined by rule of the board, which is regulated by a federal financial institutions regulatory agency. The appraiser shall comply with the standards for evaluations imposed by the federal financial institutions regulatory agency and other standards as prescribed by the board. However, an evaluation may not be referred to or construed as an appraisal.

475.628 Professional standards for appraisers registered, licensed, or certified under this part.—

(1) The board **shall** adopt rules establishing standards of professional practice which meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation. Each appraiser registered, licensed, or certified under this part must comply with the rules. Statements on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation, or elaboration through the Appraisal Foundation are binding on any appraiser registered, licensed, or certified under this part, upon adoption by rule of the board.¹

(2) The board **may** adopt rules establishing standards of professional practice other than standards adopted by the Appraisal Standards Board of the Appraisal Foundation for nonfederally related transactions. The board shall require that when performing an appraisal or appraisal service for any purpose other than a federally related transaction, an appraiser must comply with the Ethics and Competency Rules of the standards adopted by the Appraisal Standards Board of the Appraisal Foundation, and other requirements as determined by rule of the board. An assignment completed using alternate standards does not satisfy the experience requirements under s. 475.617 unless the assignment complies with the standards adopted by the Appraisal Standards Board of the Appraisal Foundation.²

¹ 475.628(1) existed prior to House Bill 927 becoming law. Emphasis added.

² 475.628(2) is the new clarifying language from House Bill 927. Emphasis added.

Evaluations

The addition of a definition of “evaluation” appears to be straightforward. Because the term is defined, it appears the board’s options here are limited. A rule more specifically defining the term may be appropriate. However, existing definitions in the statute might limit the board’s actions. “Applicable exemptions” are determined in federal law. It’s not clear how any action by the Florida Real Estate Appraisal Board can alter or change that reality.

The language added in 475.612(7) states “an appraiser may perform an evaluation...”. Interestingly, this adds nothing to the range of services Florida appraisers are authorized to offer. Prior to House Bill 927 becoming law, nothing in Chapter 475 Part II prohibited appraisers from providing the evaluations. Clarifying that the appraisers shall comply with the “standards for evaluations” imposed by the federal financial institutions regulatory agency is a nice touch, however there are no such standards or document.³ The Interagency Appraisal and Evaluation Guidelines are guidelines for regulated banking institutions and impose no standards or requirements for persons who perform evaluations.

The Interagency Appraisal and Evaluation Guidelines do include some guidance and suggestions for evaluation preparation and reporting:

An evaluation should contain sufficient information detailing the analysis, assumptions, and conclusions to support the credit decision. An evaluation’s content should be documented in the credit file or reproducible. The evaluation should, at a minimum:

- Identify the location of the property.
- Provide a description of the property and its current and projected use.
- Provide an estimate of the property’s market value in its actual physical condition, use and zoning designation as of the effective date of the evaluation (that is, the date that the analysis was completed), with any limiting conditions.
- Describe the method(s) the institution used to confirm the property’s actual physical condition and the extent to which an inspection was performed.
- Describe the analysis that was performed and the supporting information that was used in valuing the property.
- Describe the supplemental information that was considered when using an analytical method or technological tool.
- Indicate all source(s) of information used in the analysis, as applicable, to value the property, including:
 - External data sources (such as market sales databases and public tax and land records);
 - Property-specific data (such as previous sales data for the subject property, tax assessment data, and comparable sales information);
 - Evidence of a property inspection;
 - Photos of the property;
 - Description of the neighborhood; or
 - Local market conditions.
- Include information on the preparer when an evaluation is performed by a person, such as the name and contact information, and signature (electronic or other legally permissible signature) of the preparer.⁴

The wording is clearly directed to ensure compliance by institutions, not individuals. The use of the term “should” rather than “must” suggests this is advisory rather than compulsory. How does the Florida Real Estate Appraisal Board enforce advice directed to banking institutions, not for persons who prepare evaluations? Fortunately, the amended language in 475.612(7) allows for requiring compliance with “other standards prescribed by the board.” It’s clear the existing standards, the *Uniform Standards of Professional Appraisal Practice* (USPAP) are appropriate for Florida appraisers choosing to provide evaluations for their clients.

Additional reasons exist for adopting the USPAP as other standards prescribed by the board. Among them are existing definitions in Chapter 475 Part II, apparent conflicting language between new and existing sections of Chapter 475 Part II, statements made in the Interagency Appraisal and Evaluation Guidelines, USPAP Definitions, USPAP Ethics Rule, and advice from the Appraisal Standards Board (ASB) in Advisory Opinion 13 (AO-13).

³ See Interagency Appraisal and Evaluation Guidelines (December 2, 2010) pages 5, 12 – 14 and Financial Institution Letter FIL-16-2016, Supervisory Expectations for Evaluations, March 4, 2016

⁴ Interagency Appraisal and Evaluation Guidelines (December 2, 2010) pages 12 – 14

For instance:

475.611(1)(a) “Appraisal” or “appraisal services” means the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:

1. “Appraisal assignment” denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, **as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating** to the nature, quality, **value**, or utility of specified interests in, or aspects of, **identified real property**.

475.611(1) (e) “Appraisal report” means **any communication**, written or oral, of an appraisal, appraisal review, appraisal consulting service, analysis, **opinion, or conclusion relating** to the nature, quality, **value**, or utility of a specified interest in, or aspect of, **identified real property**, and includes any report communicating an appraisal analysis, opinion, or conclusion of value, **regardless of title**. However, in order to be recognized in a federally related transaction, an appraisal report must be written.

475.612(7) Notwithstanding any other provision of law, an appraiser may perform an evaluation of real property in connection with a real estate-related financial transaction, as defined by rule of the board, which is regulated by a federal financial institutions regulatory agency. The appraiser shall comply with the standards for evaluations imposed by the federal financial institutions regulatory agency and other standards as prescribed by the board. **However, an evaluation may not be referred to or construed as an appraisal.**

Are the statutory definitions correct, or does the statement expressed in the last sentence of 475.612(7) prevail? Consulting other sources provides some guidance. The Interagency Appraisal and Evaluation Guidelines (Guidelines) provide advice for Selection of Appraisers or Persons Who Perform Evaluations. In addition to other advice the Guidelines state the criteria should ensure that:

- The person selected is capable of rendering an **unbiased opinion**.
- The person selected is independent and has no direct, indirect, or prospective interest, financial or otherwise, in the property or the transaction.
- The appraiser selected to perform an appraisal holds the appropriate state certification or license at the time of the assignment. Persons who perform evaluations should possess the appropriate appraisal or collateral valuation education, expertise, and experience relevant to the type of property being valued. **Such persons may include appraisers**, real estate lending professionals, agricultural extension agents, or foresters.

This section of the Guidelines includes a footnote:

- Although not required, an institution may use state certified or licensed appraisers to perform evaluations. **Institutions should refer to USPAP Advisory Opinion 13 for guidance on appraisers performing evaluations of real property collateral.**⁵

USPAP defines the term “Appraisal”

- **APPRAISAL:** (noun) the act or process of developing an opinion of value; an opinion of value. (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.⁶

The USPAP ETHICS RULE clearly states an appraiser’s obligations when he or she is performing a service as an appraiser.

- An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with the client or intended users. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.⁷

⁵ Interagency Appraisal and Evaluation Guidelines (December 2, 2010) page 5

⁶ 2018 – 2019 USPAP, DEFINITIONS, at 3, lines 59 - 60

⁷ 2018 – 2019 USPAP, ETHICS RULE, at 7, lines 179 - 181

In recognition of the reality many appraisers choose to include Evaluations in their menu of valuation services, the ASB has provided advice on the topic in Advisory Opinion 13, Performing Evaluations of Real Property Collateral to Conform with USPAP. The advisory is written clearly, provides the relevant references to applicable Standards and Rules, and ends with this statement:

- Conclusion – An evaluation, when performed by an individual acting as an appraiser, is an appraisal. In addition to complying with USPAP, the appraiser must be aware of and comply with any additional assignment conditions and reporting requirements imposed on the assignment.⁸

Should the FREAB decide to enact a rule similar to those proposed by the Appraisal Institute as 61J1-12.001 – Evaluations, or the Georgia Real Estate Appraisers Board, Chapter 539-3-.04 Standards for Developing and Reporting an Evaluation Appraisal, there are no means by which the FREAB has to evaluate the adequacy, credibility, or compliance of an evaluation. Florida statutory definitions include “appraisal”, “appraisal services”, “appraisal assignment”, “analysis assignment”, “appraisal review assignment”, “appraisal report”, “appraisal review”, and “evaluation”. Nearly all the language in the current statute and FREAB rules deals with defined and well-established terms and procedures. In the event an evaluation is not an appraisal, and is developed and reported in conformance with a standard other than USPAP, by what standard, and under what authority will the FREAB assess the adequacy, credibility, or compliance of the work product? No standard or procedure exists for the review of an evaluation. Very little, if anything, in 475.624 Discipline of Appraisers applies to non-appraisal products or services. In fact, the statute lacks even the minimal requirement for reasonable diligence in the preparation or reporting of an evaluation. How does that protect the public? In what manner is that fair to the thousands of practitioners striving to adhere to well known, well established standards of professional practice?

The preponderance of evidence indicates an evaluation is an appraisal. The preponderance of evidence indicates the public is best served and protected by adopting the current edition of the *Uniform Standards of Professional Appraisal Practice* as applicable for appraisers providing evaluations for their clients when acting as an appraiser. The imposition of an additional inferior set of standards would be confusing not only to the public, but to licensees dependent on the Florida Real Estate Appraisal Board for clear and definitive guidance to ensure their business practice is compliant with law and rules.

Fortunately, since 2006, the Florida Real Estate Appraisal Board has demonstrated their good judgment and wisdom by promulgating rule 61J1-9.001. The rule, typically updated every two years, requires all registered, licensed or certified appraisers to comply with the *Uniform Standards of Professional Appraisal Practice*. There is no compelling argument to weaken this rule. No enhancement of consumer protection or benefit will accrue to the public by softening the standards of compliance specified in the rule below.

61J1-9.001 Standards of Appraisal Practice.

All registered, licensed, or certified appraisers shall comply with the 2018-2019 Uniform Standards of Professional Appraisal Practice (USPAP), effective January 1, 2018, which is incorporated by reference. The copyrighted material may be viewed at the Division of Real Estate, 400 West Robinson Street, Hurston Building, North Tower, Suite N801, Orlando, Florida 32801. The incorporated material will be available for public inspection and examination at the Department of State, Administrative Code and Register Section, Room 701, The Capitol, Tallahassee, Florida 32399-0250.

Rulemaking Authority 475.614 FS. Law Implemented 475.613(2), 475.628 FS. History–New 8-29-06, Amended 3-24-09, 1-30-12, 4-10-14, 12-10-15, 12-31-17.

Alternate Standards

The creation of Section 475.628(2) permits the board to adopt rules establishing standards of professional practice other than standards adopted by the Appraisal Standards Board of the Appraisal Foundation for nonfederally related transactions. This section also states that an appraiser must comply with the Ethics and Competency Rules of the standards adopted by the Appraisal Standards Board of the Appraisal Foundation. This section, however, is preceded by Section 475.628(1), stating that “The board shall adopt rules establishing standards of professional practice which meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation.”

⁸ 2018 – 2019 USPAP ADVISORY OPINIONS, ADVISORY OPINION 13 (AO-13) at 91, lines 127-130

The new language appears to provide the board with the latitude to adopt a set of standards of professional practice, presumably with fewer or more lenient requirements, as an alternative to USPAP. The wording of the new section and the prior section negate the promulgation of standards not meeting or exceeding those adopted by the Appraisal Standards Board.

First, as noted above in the discussion of evaluations, the USPAP Ethics Rule states an individual should comply with USPAP any time that individual represents that he or she is performing the service as an appraiser.⁹

Second, Section 475.628(2) is permissive; Section 475.628(1) is mandatory.

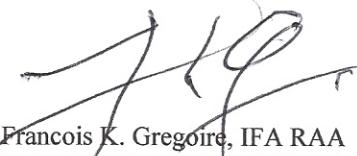
The purpose of the *Uniform Standards of Professional Appraisal Practice* is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. Compliance is not onerous. Real Property Appraisers in Florida must comply with the thirty-three (33) pages that include the PREAMBLE, DEFINITIONS, ETHICS RULE, RECORD KEEPING RULE, COMPETENCY RULE, SCOPE OF WORK RULE, JURISDICTIONAL EXCEPTION RULE, STANDARD 1: REAL PROPERTY APPRAISAL DEVELOPMENT, STANDARD 2: REAL PROPERTY APPRAISAL REPORTING, STANDARD 3: APPRAISAL REVIEW, DEVELOPMENT, AND STANDARD 4: APPRAISAL REVIEW, REPORTING.

Much of the Chapter 475 Part II was promulgated with USPAP in mind and as a guide. Much of Chapter 61J1, Florida Administrative Code was created with USPAP in mind. The Florida Real Estate Appraisal Board judges the activities and work product of licensees by one standard; USPAP. Investigators for the Department of Business and Professional Regulation are trained to apply the standards and interpret reports according to USPAP. The Department of Business and Professional Regulation legal team prosecutes complaints by one standard; USPAP. When a case is referred to the Division of Administrative Hearings, Administrative Law Judges expect cases involving work product will be determined by nationally recognized standards of appraisal practice; USPAP.

The world, our state, the process of regulation, and the appraisal profession is changing. Going rogue has an appeal, but not at the expense of protecting the public. Adoption of an alternative set of standards of professional practice will be cumbersome, expensive, and consume time the board could spend on efforts more closely aligned with their mission to protect the public. Alternate standards will needlessly stress the limited resources of the Department of Business of Professional Regulation and Division of Real Estate.

Not one person is claiming the standards are perfect. The evolution of regulation and profession may necessitate change to nationally recognized standards of appraisal practice. To assure a high level of public trust in appraisal practice, modification must not be fragmentary, but common to all jurisdictions. To assure wide adoption and acceptance of alternatives and improvements, the proper venue is the Appraisal Standards Board. They have a long history of inviting observations about perceived shortcomings in the standards, suggestions for improvements, and comments about proposed changes to USPAP. A wide range of work product and reporting options exist within the current standards of professional appraisal practice. If changes to the market and the profession demand modifications to USPAP, the time to communicate the need to the Appraisal Standards Board is now. The changes will come as a result of making a compelling argument to the ASB, rather than a challenge.

Respectfully,



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⁹ 2018 – 2019 USPAP, ETHICS RULE, at 7, lines 179 - 181