Evaluations by Non-Appraiser Bank Employees

Appraiser Bank Employees - USPAP Compliance

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Out of State Appraisers Performing Reviews

The Division occasionally receives inquiries regarding bank employees performing evaluations by unlicensed appraisers. We also receive questions regarding bank employee appraisers and whether their appraisals or evaluations for the bank must be USPAP compliant. Recently the Division has also been asked about what, if any, expectations the Division has for the work these appraisers provide for their bank employers. Finally, the Division also receives inquiries from appraisers from outside of Utah wanting to know under what circumstances they can perform an appraisal review on a property located in Utah.

The Division would like to help clarify these situations to help both banks, non-appraiser bank evaluation employees, and appraisers (who are employed by banks) to better understand these requirements, obligations, and limitations. In addition, it is important for everyone to function under a common understanding about the appraisal statutes and Administrative Rules as they are being enforced by the Division.

Let’s begin by reviewing two relevant statutory exemptions from the appraisal licensing requirements (61-2g-301 (2)):

1. Licensed real estate brokers and agents who in the ordinary course of their business give an opinion regarding the value of real estate.
2. An employee of a company (often a bank) who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property solely for the company’s use**.**

Under the circumstances described above, licensed real estate brokers and agents can render opinions regarding the value of real estate as well as bank employees who state a value or prepare a report containing value conclusions relating to real estate or real property solely for the company’s use. However only certified appraisers can prepare and sign an appraisal report (61-2g-401(3)(a)).

The company employee appraisal licensing exemption is offered to any company that hires an employee who in their work for their company offers opinions of value solely for the company’s internal use. Therefore they can render their opinions for internal bank purposes but not for lending purposes where their opinions may form the basis for making a lending decision where the loan may potentially be sold on the secondary market.

Guidance on appraiser compliance with USPAP can be found in Advisory Opinion 21. The Preamble states that “...compliance with USPAP is required when either the service or the appraiser is obligated to comply by law or regulation.” The ETHICS RULE states that “...an individual should comply any time that individual represents that he or she is performing the service as an appraiser.” This opinion also says that “[i]n summary, expectation is the basis for determining when an individual providing a valuation service is acting as an appraiser. Because of the need to preserve public trust and confidence in appraisal practice, the expectations of the client and other intended users for ethical and competent performance create an obligation to comply with USPAP.”

AO-21 further states that “[a]n individual who sometimes provides services as an appraiser, but who is currently acting in another role, must ensure that intended users are not misled as to the individual's role in providing that valuation service. This can be accomplished through such means as disclosure, notification, or careful distinction when providing the valuation service as to the individual's role".

Although the appraisal statute has an exemption to licensing when "an employee of a company who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property solely for the company's use,” this is a licensing exemption. Once an individual makes the decision to become an appraiser, they no longer fall under the licensing provisions of the statute; rather, they fall under the statutory requirements imposed upon appraisers.

The Attorney General's office rendered a legal opinion to the Division in January 2011 that covers this matter. The Attorney General's office was asked to research whether a licensed or certified appraiser could give a price opinion regarding real estate, and in the course of doing so, not comply with USPAP. Although the Attorney General's office opinion dealt with BPOs, performing other "evaluations" would fall under the same answer. They indicated that “It is likely that a ‘price opinion’ (you should also insert the term ‘evaluation’) ...would qualify as an appraisal if given by a licensed or certified appraiser and would require compliance with USPAP.”

As you are probably aware, the statute was modified following the AG office's opinion on this issue. The statute was amended to allow appraisers who also hold a real estate license to render a BPO. Note: If the appraiser/real estate licensee properly discloses that they are acting as a real estate licensee (and not as an appraiser).

Based on the opinion from the Attorney General's office that our statute requires an appraiser to comply with USPAP and, even though the statute allows an employer to hire an unlicensed individual to state an opinion of value or prepare a report containing value conclusions, the Division's position on this matter is that an appraiser in Utah is held to a higher standard and thus requires appraisers to comply with USPAP when acting in a similar capacity.

In summary, the only way that a bank employed appraiser could legally render non-USPAP compliant evaluations in Utah, would be for the appraiser to also become a real estate licensee and have appropriate disclosure/notification language included in their scope of work and evaluations that clearly notifies all parties that in their evaluation process they are acting as a real estate licensee and NOT as an appraiser.

Question: May appraisers who are licensed outside of Utah perform appraisal reviews on Utah real property appraisals?

Answer: No. Although other states may take a different position regarding this question, Utah requires an appraisal review of property located in this state (regardless of which state the reviewer is from) to be performed by someone holding an appraisal license issued by Utah. This rule applies regardless of whether a value conclusion was rendered as part of the appraisal review.