

HOUSE BILL NO. 872

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LICENSING LAWS; CLARIFYING WHO IS PERMITTED TO PROVIDE AN OPINION OR ESTIMATE OF MARKET VALUE AS TO REAL PROPERTY TRANSACTIONS; PROVIDING DEFINITIONS; PROVIDING AN APPROPRIATION; AMENDING ~~SECTION~~ SECTIONS 37-54-102 AND 37-54-201, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-54-102, MCA, is amended to read:

"37-54-102. Definitions. Terms commonly used in appraisal practice and as used in this chapter must be defined according to the uniform standards of professional appraisal practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Appraisal" means the practice of developing an opinion of the value of real property in conformance with the uniform standards of professional appraisal practice as developed by the appraisal foundation.

(2) "Appraisal foundation" means the appraisal foundation incorporated as a not-for-profit corporation on November 30, 1987, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(3) "Appraisal management company" means, in connection with valuation of properties

collateralizing mortgage loans or mortgages incorporated into a securitization, an external third party, authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in this state or 25 or more nationally within a given year.

(4) "Appraisal management services" means the direct or indirect performance of any of the following functions on behalf of a lender, financial institution, client, or other person in conjunction with a consumer credit transaction that is secured by a consumer's principal dwelling:

- (a) administering an appraiser panel;
- (b) recruiting, retaining, or selecting appraisers to be part of an appraisal panel;
- (c) qualifying and verifying licensing or certification, negotiating fees, and verifying service level expectations with appraisers who are part of an appraiser panel;
- (d) contracting with appraisers from the appraiser panel to perform appraisal assignments;
- (e) receiving an order for an appraisal assignment from one person and delivering the order for the appraisal assignment to an appraiser who is part of an appraiser panel for completion;
- (f) managing the process of having an appraisal assignment performed, including performing administrative duties such as receiving appraisal assignment orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed;
- (g) tracking and determining the status of orders for appraisal assignments;
- (h) conducting quality control examinations of a completed appraisal assignment prior to the delivery of the appraisal report to a client who ordered the appraisal assignment; and
- (i) providing a completed appraisal report performed by an appraiser to one or more clients.

(5) (a) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment.

(b) The term does not include a quality control examination.

(6) "Appraiser" means an individual who holds a license or certification to complete an appraisal assignment in the state where the real property that is the subject of the appraisal assignment is located.

(7) "Appraiser panel" means a network of licensed or certified appraisers who are independent

contractors with respect to an appraisal management company and who have:

(a) responded to an invitation, request, or solicitation from an appraisal management company to:

(i) perform an appraisal assignment for a client that has ordered an appraisal assignment through the appraisal management company; or

(ii) perform appraisal assignments for the appraisal management company directly as requested and assigned by the appraisal management company; and

(b) been selected and approved by an appraisal management company to perform appraisal assignments for any client of the company that has ordered an appraisal assignment through the company or to perform appraisal assignments for the appraisal management company directly on a periodic basis as assigned by the appraisal management company.

(8) "Board" means the board of real estate appraisers provided for in 2-15-1758.

(9) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(10) "Controlling person" means:

(a) an owner, officer, or director of a corporation, partnership, or other business entity that offers appraisal management services in this state;

(b) an individual employed, appointed, or authorized by an appraisal management company to enter into a contractual relationship with other persons for the performance of appraisal management services and to enter into agreements with appraisers for the performance of appraisal assignments; or

(c) an individual who possesses directly or indirectly the power to direct or cause the direction of the management or policies of an appraisal management company.

(11) "Department" means the department of labor and industry provided for in 2-15-1701.

(12) "Evaluation" means an estimate of the market value of real property provided to a financial institution in accordance with the federal interagency appraisal and evaluation guidelines published by the federal financial institutions regulatory agencies for use in a real estate-related financial transaction for which an appraisal by a licensed or certified appraiser is not required by federal law.

(13) "Federal financial institutions regulatory agencies" means the board of governors of the federal reserve system, the federal deposit insurance corporation, and the office of the comptroller of the currency, the

office of thrift supervision, and the national credit union administration.

(14) "Financial institution" means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, or an insured credit union as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

~~(12)~~(15) "Licensed real estate appraisal trainee" means a person authorized only to assist a certified real estate appraiser in the performance of an appraisal assignment.

~~(13)~~(16) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201.

~~(14)~~(17) "Person" means an individual, firm, partnership, association, corporation, or other business entity.

~~(15)~~(18) "Quality control examination" means an examination of an appraisal report for completeness, including grammatical, mathematical, and typographical errors.

~~(16)~~(19) "Real estate appraiser mentor" means a certified real estate appraiser who meets the qualifications set by the board and is approved by the board to supervise licensed real estate appraisal trainees.

(20) "Real estate-related financial transaction" means any transaction involving:

(a) the sale, lease, purchase, or exchange of or investment in real property, including interests in real property, or the financing of real property;

(b) the refinancing of real property or interests in real property; or

(c) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities."

Section 2. Section 37-54-201, MCA, is amended to read:

"37-54-201. Real estate appraiser license -- scope and display of license. (1) ~~Upon~~On proof that an applicant meets the qualifications set out in 37-54-202, the board shall issue to the applicant a real estate appraiser license.

(2) The term "licensed real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual licensee. However, a licensed real estate appraiser may

engage in real estate appraisal as a professional corporation.

(3) This chapter does not preclude a person who is not a licensed or certified real estate appraiser from ~~appraising~~ providing an opinion or estimate of market value as to real property for transactions ~~not related to a federal agency or project for compensation~~ if the person does not purport to be a licensed or certified real estate appraiser, but it applies to an opinion or estimate of market value performed by a licensed or certified real estate appraiser. A person who purports that the person or the person's company is licensed under this section or certified under 37-54-302 and 37-54-303 without possessing the applicable license or certificate is guilty of a misdemeanor.

(4) This section does not:

(a) prohibit a person who is licensed to practice in this state under any law from engaging in the practice for which the person is licensed;

(b) apply to public officials in the conduct of their official duties that are not governed by the rules established by the federal financial institutions examination council agencies.

(5) A licensed or certified real estate appraiser is subject to restrictions on the scope of practice, depending on the value and complexity of the federally related transaction or transactions pursuant to rules established by the federal financial institutions examination council agencies, and the restrictions must remain current with any changes in those rules.

(6) A licensed real estate appraiser shall conspicuously display the license in the appraiser's principal place of business.

(7) A licensed or certified real estate appraiser may provide an evaluation. When providing an evaluation, a licensed or certified real estate appraiser:

(a) is not required to comply with 37-54-403(1);

(b) may not indicate in any way that the licensed or certified real estate appraiser is a licensed or certified real estate appraiser; and

(c) shall include the following disclaimer on the first page of the evaluation:

"This is an evaluation not subject to compliance with the Uniform Standards of Professional Appraisal Practice."-