

Date of Hearing: June 27, 2011

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

SB 6 (Calderon & Vargas) – As Amended: June 15, 2011

SENATE VOTE: 39-0

SUBJECT: Real estate: appraisal and valuation

SUMMARY: Updates California's Real Estate Law, Appraisal Law, and Civil Code to reflect recent changes enacted at the federal level pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Specifically, this bill:

- 1) Amends the Real Estate Law to provide that:
 - a) No real estate licensee shall knowingly or intentionally misrepresent the value of real property; and,
 - b) No real estate licensee that offers or provides an opinion of value of real property that is used as the basis for an origination of a mortgage loan shall have an interest in that property, within the meaning of federal regulations implementing Dodd-Frank.
- 2) Amends the Appraisal Law to clarify that:
 - a) No person or entity acting in the capacity of an appraisal management company (AMC) shall improperly influence or attempt to improperly influence the development, reporting, result, or review of any appraisal through coercion, extortion, inducement, collusion, bribery, intimidation, compensation, or instruction (including a list of prohibited and allowable acts); and,
 - b) No person or entity preparing an appraisal or performing appraisal management functions in connection with the origination, modification, or refinancing of a mortgage loan shall have a direct or indirect interest, financial or otherwise, in the property or the transaction for which the appraisal or appraisal management functions are performed.
- 3) Amends the Civil Code to clarify that:
 - a) No person with an interest in a real estate transaction involving a valuation shall improperly influence or attempt to improperly influence the development, reporting, result, or review of that valuation through coercion, extortion, bribery, intimidation, compensation, or instruction (including a list of prohibited and allowable acts); and,
 - b) "Valuation" means an estimate of the value of real property in written or electronic form, other than one produced solely by an automated valuation model or system. This definition includes both appraisals and broker price opinions (BPOs).

EXISTING LAW

- 1) Defines an appraisal as a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion in a federally related transaction as to the market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information (Business and Professions Code Section 11302).
- 2) Provides that the term "appraisal" does not include an opinion given by a real estate licensee or engineer or land surveyor in the ordinary course of his or her business in connection with a function for which they are licensed, and states that any opinion returned by a real estate licensee, engineer, or land surveyor may not be referred to as an appraiser (Business and Professions Code Section 11302). Although the real estate law does not expressly authorize real estate licensees to provide opinions of real value of real property, Section 11302 is commonly understood to authorize real estate brokers to perform so-called broker price opinions, or BPOs.
- 3) Provides that it is a violation of the Real Estate Law for a real estate licensee to provide an opinion of the value of residential real property in connection with a short sale, in order to manipulate the lienholder (i.e., the lender) into rejecting the proposed short sale or to acquire a financial or business advantage, including a listing agreement, which directly results from the inaccurate opinion of value (Business and Professions Code Section 10177(m))
- 4) Specifies that a violation of the federal Real Estate Settlement Procedures Act (12 U.S.C. Sec. 2601 et seq.), the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.), the Federal Home Ownership Equity Protection Act (15 U.S.C. Sec. 1639) or any regulation promulgated under any of the federal acts cited is also a violation of the Real Estate Law. (Business and Profession Code Section 10177(q))
- 5) Provides for the licensure and regulation of real estate appraisers, and for the registration and regulation of appraisal management companies (AMCs) by the California Office of Real Estate Appraisers (OREA; Business and Professions Code Section 11300 et seq.). Licensed appraisers are required to comply with the federal Uniform Standards for Professional Appraisal Practice and with the Appraisal Law. Registered AMCs are required to comply with the portions of the Appraisal Law, which were added by SB 237 (Calderon), Chapter 173, Statutes of 2009. Among these rules is a requirement that AMCs adhere to appraisal independence standards patterned on the federal Home Valuation Code of Conduct (HVCC; Business and Professions Code Section 11345.4)
- 6) Provides that no person with an interest in a real estate transaction involving an appraisal shall improperly influence or attempt to improperly influence, through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan (Civil Code Section 1090.5). Civil Code Section 1090.5 includes a list of several acts that are prohibited, and several acts that are allowable, pursuant to the section.

FISCAL EFFECT: None

COMMENTS:

According to the author's office, "In recent years, California enacted two bills intended to ensure the integrity of the real property appraisal process. SB 223 (Machado), Chapter 291, Statutes of 2007 prohibited any person with an interest in a real estate transaction from inappropriately influencing, or attempting to inappropriately influence, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. SB 237 (Calderon), Chapter 173, Statutes of 2009, plugged a hole in California's appraisal regulatory scheme, by defining the term "appraisal management company," requiring appraisal management companies doing business in California to register with California's Office of Real Estate Appraisers, and enacting a set of allowable and prohibited actions by appraisal management companies and the appraisers who work for them.

"At the same time California was changing its laws to ensure the integrity of the real property appraisal process; federal agencies were promulgating regulations with similar intent. Until enactment of the Dodd-Frank in July 2010, California's laws were more comprehensive, and more protective of consumers, than the federal rules. Since enactment of Dodd-Frank, however, California's rules have fallen behind some of those recently promulgated by federal regulators. Portions of state law are also now inconsistent with federal regulations in certain cases."

Background. Dodd-Frank, signed into law by President Obama in July 2010, was a response to the mortgage crisis in the middle of the last decade. Dodd-Frank made significant changes to the American financial regulatory environment and affects all federal financial regulatory agencies and almost every aspect of the nation's financial services industry.

The Federal Reserve Board (FRB) has recently promulgated regulations implementing Dodd-Frank. This bill updates state law to conform to the following provisions of Dodd-Frank that reform the mortgage business:

Defines real property valuations and protects those who perform them from inappropriate influence. In its recently-promulgated regulations implementing Dodd-Frank, FRB recognized that many types of real property valuations, including, but not limited to, appraisals, are being utilized in the current housing environment. To address this observation, the FRB defined the term "real property valuation" and enacted a series of rules designed to ensure that no entity that prepares a real property valuation is inappropriately influenced in connection with their value conclusion.

This measure adopts the FRB's definition of a real property valuation. In doing so, it broadens California's existing prohibition against inappropriate influence of appraisers to cover all types of real property valuations and those who prepare them. This change will have the effect of protecting real estate brokers that perform BPOs from inappropriate influence, by covering them under the same rules that are currently intended to protect appraisers from inappropriate influence.

Revises and replaces the HVCC. The HVCC was an agreement reached between Fannie Mae, Freddie Mac, and then- New York State Attorney General Anthony Cuomo in 2008. One of the core elements of the HVCC was the concept of appraiser independence. In its recent regulations, the FRB enacted rules intended to replace the HVCC. These rules have a similar intent as the

HVCC, but are written differently and accompanied by extensive commentary never published in connection with the HVCC.

In its recent regulations, the FRB also enacted a provision intended to ensure that no entity that prepares a real property valuation in connection with the origination of a residential mortgage loan has a direct or indirect interest, as defined, in the property or the transaction for which the valuation is sought. The FRB included extensive commentary to describe acceptable and prohibited interests.

This measure amends California's Appraisal Law to prohibit appraisers and AMCs from providing opinions of value of real property in connection with the origination, of a mortgage loan if they have a direct or indirect interest, financial or otherwise, in the property or transaction for which the opinion of value was sought.

Previous legislation.

SB 237 (Machado) Chapter 173, Statutes of 2009, closes a loophole in California's appraisal regulatory scheme by defining the term "appraisal management company" and requiring management companies doing business in California to register with OREA, and enacting a set of allowable and prohibited actions for AMCs and the appraisers who work for them.

SB 223 (Machado) Chapter 291, Statutes of 2007, prohibits any person with an interest in a real estate transaction from inappropriately influencing, or attempting to inappropriately influence, a real property appraiser with the aim of convincing the appraiser to alter his or her value conclusion.

REGISTERED SUPPORT / OPPOSITION:

Support

American Society of Appraisers
Appraisal Institute

Opposition

None on file.

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