

2013 HOUSE JUDICIARY

HB 1216

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1216

Job 17594

DATE January 23, 2013

Conference Committee

Calvin Hinkle

Explanation or reason for introduction of bill/resolution:

Relating to the regulation of real estate appraisers

Minutes:

Testimony 1,2,3

Chairman Kim Koppelman: Opened the committee meeting on HB 1216

Rep. Streyle: Introduced the bill. He handed out a proposed amendment #1 and handout #2. Bullet point one reads now more clearly than it did before. An appraiser must inform a customer the amount they receive for performing the appraisal. A customer goes into a bank to apply for a loan, the appraisal is ordered either through a broker or if the banks do their own in house, goes through an appraisal management company, that's a federal law which is broken. Appraisers are randomly selected from a pool and they are granted a contract to do the appraisal. The appraisers put in a price and it's selected, what is not known to the customer is what the appraisal management fee is taking. It might be an \$800 appraisal and the appraiser is getting \$500 or \$600. Bullet point one points this out. This provides transparency what the appraiser is getting paid. Bullet point two says if the appraisal isn't completed by the agreed upon date there is \$150 reduction to that appraisal. What's happening in a lot of cases where they are accepting these contracts through management companies saying they can complete the work and blowing pass it but there is no penalty or no recourse. Which is pushing the loan closings back and actually some builders are charging a daily rate passed that. If you accept a contract and don't abide by that date and don't contact that you won't be making that date, there has to be a penalty or don't accept the contract if you can't do the work. Bullet point three in the amendment includes within seven days of accepting that appraisal you must contact the customer to set up the date and time. Number four says this only applies to residential because the problem isn't on commercial. If a bank wants a commercial appraisal they simply call them to get it done. With the residential on the secondary market, the banks nor the broker can talk to the appraiser. It's federal law again and that is where the issues lie. The main point is if you accept it and say you are going to have it done and you don't there should be a penalty. It would streamline the mortgage process and it's a consumer friendly bill.

Rep. Lois Delmore: Do you think there are any cases when there are things out of the appraisers control that this might end up being pretty harsh? The bank fails to do something or whatever, can you help us with that if it really isn't the appraiser holding it up?

Rep. Streyle: If I as the customer didn't answer my phone or they just couldn't get a hold of them for some reason, that is potentially an issue for the seven day contact time period. Most of the time if you make contact within seven days, they only have to confirm a date and time so that date could be moved.

Rep. Ben Hanson: I have received concerns about liquidated damages in section 2 are we going to be able a more exact definition out of fear if there is an instance when they are taken to court liquidated damages could be a) excessive and b) different per which court you are in or which district you are in and not as uniform as it could be?

Rep. Streyle: That's where the amendment tries to address some of those issues. The original bill says a full refund but this says \$150 reduction.

Rep. Ben Hanson: The reduction of \$150 applies specifically to the liquidated damages and is the extent of the liquidated damages?

Rep. Streyle: Yes, if the appraisal was \$450 and you were ten days late on getting the contract date you get \$300.

Rep. Gary Paur: In the process who is the appraisal turned into?

Rep. Streyle: Depends on if you are going through a broker or a bank. Some banks originate and do all the loans in house. Some are sent to a mortgage broker. Then it's sent back to the AMC and typically you will get a copy of the appraisal too through your broker.

Rep. Gary Paur: So this would be basically between the bank or the mortgage broker and the appraising agency? Actually the consumer would have no input or even a realization of this.

Rep. Streyle: They will know that because the loan got delayed in closing. When the broker sends out the request they put a timeline in there and the broker will be able to tell the bank and then the customer we didn't get the appraisal on the agreed upon date you are due a reduction of \$150.

Rep. Nathan Toman: Looking at the penalty of \$150 that appears to be on the appraiser's shoulders and relieving the AMC or other agency from that penalty. Why the appraiser and not the company?

Rep. Streyle: The reason is the AMC or the management company is simply the intermediary, they are just pushing the work down to the appraiser so it's not their fault that the appraisal didn't get done on time. So the penalty should lie with the person who didn't abide by the terms of the contract.

Vice Chairman Larry Klemin: In the typical situation is the cost of the appraisal part of the closing cost of the loan that the customer is informed of?

Rep. Streyle: Yes, it would be a single line \$600 engrossed that would be the appraiser fee and if there is a management fee. In most cases nobody knows what that break out is.

Vice Chairman Larry Klemin: In the situation that customer is told the appraisal fee is say \$600 what difference does it make to the customer whether the person doing the appraisal only gets part of it and the company he works for gets part of it.

Rep. Streyle: I think it is transparency and there has been some push back of what these appraisals cost now as far they used to be \$350 or \$300 now they're \$400, \$500, \$600 and \$1000 if you want them quickly.

Vice Chairman Larry Klemin: When I take my car in for repairs and they charge me \$600, they don't need to tell me how much they paid the mechanic wouldn't that be the same thing?

Rep. Streyle: I guess in comparing the two, most of the time it's a detailed bill and all this is doing is just providing transparency on the fee that the AMC and the appraisers and the break out of the fee.

Vice Chairman Larry Klemin: the purpose of this is to just provide transparency is that it?

Rep. Streyle: As far as the appraiser fee that is how I look at it as more of transparency. I think it is pro appraiser on that piece because they are not going to get pushed back on why some of these appraisals are so expensive in that they are not taking all the fee that is on your settlement statement.

Rep. Vicky Steiner: In Dickinson we have this problem because there is a shortage of appraisers and there is a lot of frustration in my community with that. It takes a long time for things to get appraised but in a perfect world wouldn't you just not hire the person who does not complete the work on time? The person who does not complete the work on time would not be hired, but there could be other forces that give you such a short supply that all of a sudden you have to interfere and start penalizing to get the work done.

Rep. Streyle: I agree but with the setup of the appraisal management companies and some of the federal laws this is needed because when you get an appraisal it is rotating pool so you can't pick your appraiser. Before as a bank we would work with only the ones who we know are good and are efficient and we would pick and choose our appraiser. We have no say nor does the broker have zero input on what that appraiser is, it is simply a revolving pool. Which is the problem because if the pool includes 20 appraisers and 5 of them aren't ones that are good at their job you could get one of those and you wouldn't have any say. You can file a complaint but after that you have already paid the money and then you have to start over and request another one and someone is going to have to pay for that. So either the bank eats it or the customer eats it. We have had that occasion happen numerous times when there has been a sub-par appraisal and there is no recourse.

Rep. Gary Paur: Couldn't these penalties be placed in the contract?

Rep. Streyle: I would be fine if they were in the contract. But between the AMC and the appraiser is the problem the AMC is moving business to an entity. I don't know the structure of their contracts there and there is no recourse for the consumer. If it's late there is no recourse at all and deal with it and move the closing back.

Rep. Roger Brabandt: Who says it has to be a revolving pool?

Rep. Streyle: The federal government.

Rep. Ben Hanson: In the amendment you limit this to residential real-estate obviously with that dollar amount that makes sense. But as this is intended consumer protection would you be open to doing something with commercial appraisals? There has been the exact same problem on the commercial side.

Rep. Streyle: The reason I did the residential was that is where most of the problem is. If a bank is doing a commercial they don't need to go through an AMC unless it is going on the secondary market. We can hire whoever we want for commercial because that is not included in the secondary market restrictions.

Chairman Kim Koppelman: Could you in those circumstances stipulate in the contract terms like this if you are free to choose whatever appraiser you wish in a commercial transaction?

Rep. Streyle: With a commercial transaction all you do is call appraiser directly and they come out and do it whatever time you can agree as they are extremely hard to get.

Rep. Diane Larson: The federal government regulation came about after the huge collapse with Dodd Frank and what was happening was appraisers and bankers were in many parts of the country in collusion so the appraiser would appraise a property too high. So this was in an effort to remove the appraiser from the bank and so now there is no communication allowed between the appraiser and the bank to have an effort to have some stabilization?

Rep. Streyle: The first part of that is absolutely correct and I would agree with the assessment on the second part of your statement too.

Chairman Kim Koppelman: The way the bill is currently written is there anything that would prevent the refund being kept by the bank and not passed on to the mortgagee?

Rep. Streyle: I cannot answer that from a legal standpoint although there would be no reason that it would be kept by the bank. I am sure there is some regulation as there are hundreds and thousands of them.

Chairman Kim Koppelman: The bill says you should have to do a refund under certain conditions but it doesn't specify where the refund goes.

Rep. Streyle: That is a very good point; I don't have a problem with that.

Claus Lembke, Represent ND Association of Realtors: We support part of this bill we are fine with section 1. On section 2 we have trouble with liquidated damages. We dealt 20 years ago with breach of contract and liquidated damages in some of the contracts and its interpreted completely differently here and there. Also the language is quite clear here saying that liquid damages are a reduction of \$150. If you remove the word liquidated the bill would stay the same thing. We didn't take a position on the last two things but we didn't have a chance to review that but they appear to be in order. An example of the first section why that should be delineated, we know of cases where they put in a rush order and said we need to have this quicker and then they paid \$200 extra and the appraiser did not end with that. Who is doing the rush the AMC or the appraiser? This will help as you can see who gets what. That is so defined through the Real Estate Settlement Procedures Act that you have to disclose every penny that is being spent. It has to be disclosed in very accurate details and without this they would hide something, the customer would not know how much the appraiser gets and how much the appraisal management company gets.

Chairman Kim Koppelman: Could you explain to the committee what an AMC is?

Claus Lembke: An AMC is a company that contracts with a number of appraisers to get on their list. Then that AMC assigns these appraisals, the bank contracts the AMC for the appraisal and the AMC gives it out. Then the AMC receives the appraisal back and reviews it for proper design and proper applications. Section 2 if the AMC has a contract that deviates from section 2 this section 2 would not even apply. It says unless the terms of the contract provides otherwise. So if the AMC has a contract with no penalty this is worthless.

Rep. Bill Kretschmar: Are you looking at the original as we have it in our book or the proposed amendments that Rep. Streyle presented?

Claus Lembke: We took only a position on the original bill.

Rep. Randy Boehning: Once the appraisal is done it goes to the AMC for review. When the appraiser gets the appraisal done how long does it take for AMC to get the review done and then to the bank? Or is that where the hang up is?

Claus Lembke: I don't know that.

Chairman Kim Koppelman: Is your concern the terms liquidated damage, or do you not like that part of the bill at all?

Claus Lembke: Liquidated damages are scary.

Chairman Kim Koppelman: Just that term?

Claus Lembke: yes.

Doreen Redman, Executive Officer of the North Dakota Association of Builders: Time on tape 28:29 -30:50. We are in support of this bill in its original form. A concern from her group was Section 2 line 13 that the full refund might be harsh. We hope this makes the appraisal process smoother in our state. It's been a rocky road and it's held up and has kept a lot of deals from happening across the state over the years. We are looking for any kind of solution that we can to make this situation better.

Rep. Lois Delmore: Do you think the appraisal is the big hold up in most of those instances?

Doreen Redman: Yes, the appraisal process has been the major hold up. There are a lot of steps but the appraisal process has been the number one challenge in our state among builders for the last three years. There is lack of them, it's too hard to become an appraiser, the appraisers aren't training the new appraisers and the apprenticing them like we wish they would. We have given ideas of let's get colleges involved in offering the curriculum.

Chairman Kim Koppelman: We have dealt with this issue in the interim as well.

Joe Ibach, Chairman of the North Dakota Real Estate Appraiser Qualifications and Ethics Board: Time on tape 31:31 - 44:03. Handout #3. He stated he had not seen the proposed amendments until now so his testimony was for the initial bill. The Dodd Frank bill is requiring every state legislate now AMC's. If we don't legislate Appraisal Management Companies by January 1, 2015 that our state will be held in noncompliant. The Dodd Frank bill is very specific that the AMC legislation has to be run by the appraiser boards in every state. We can address the fee issue in that legislation. He stated he does not know how much an AMC charges. He talked about the timeliness, he said we do give them a date but has a problem with is in the proposed amendment it says with sever days following the entering of the contract. He does not feel it is specific enough. It also wants to limit the scope to residential real estate, residential is a broad term.

Chairman Kim Koppelman: Did you say there is a designation now among appraisers for residential licensure?

Joe Ibach: Yes there is. In our state we have three license which means you can do primarily residential one to four family, we have certified residential is one to four family but you have to have a high level of education and certification, the third is certified general and you can do anything in the state.

Chairman Kim Koppelman: Since you have licensure that uses the term residential don't you think that term in this bill would suffice what we are talking about? Or do you think more definition is needed?

Joe Ibach: Most people would imply that it means one to four family. If someone has a problem with timeliness they should direct a report to the ND Appraiser Board. We have statutory authority to discipline appraisers who have been late in meeting deadlines. After receiving numerous phone calls about this the appraiser board took two actions, we sent an article to all appraisers and we said conduct

of this nature is unacceptable and unprofessional. We gave staff authority that if they receive a complaint to call them. We have taken action in two separate incidents who were disciplined both had to pay a monetary fine. The language that has been inserted refund of \$150 and someone mentioned who is that going to paid to? So the appraiser is late by 2 days and who is going to contact him and say you are late and need to pay \$150? Is it the consumer, is it AMC, or is it the lender? Who is the \$150 going to go to because at that point the appraiser has not received a dime? We don't get paid normally for 30 to 60 days after the appraisal is completed. As a board we oppose this bill as it is written.

Rep. Roger Brabandt: Who determines the fees that you charge for your appraisals?

Joe Ibach: The way it is handled in AMC's is they will send you an email or call you and ask your fee. It is just set at that point, so it is between and the AMC or me and the bank. It is done in a personal venue or some type.

Rep. Roger Brabandt: So you don't set your own?

Joe Ibach: Yes, I set my own. Every appraiser sets their own fee.

Rep. Randy Boehning: How many AMC's are in North Dakota?

Joe Ibach: I don't know, we don't have the law in place so they don't have to register. Personally I work with 15 or 20 of them.

Rep. Randy Boehning: Of those you work with how many are in North Dakota?

Joe Ibach: None are based out of North Dakota. I will use Gate City as an example; they have an arm that is separate from the lending part of the business. They order the appraisal and I deal with them directly, I don't deal with the lending. They are not an AMC because they are owned by the financial institution themselves. But a standalone AMC there are none in the state.

Rep. Randy Boehning: When you work with those do you know when they get the contract from the bank? Do you know the time frame from when the bank contacts the AMC, then the AMC contacts you?

Joe Ibach: I just had one this week, I was contracted by an AMC the due date was set and I got it in one or two days late, two or three weeks later I get a call from the AMC they are going over my report, I am thinking who is going back to the consumer and saying that the appraisal was sent in on this date? The consumer called me the day before the AMC called and asked where the appraisal was? He said he had sent it in two weeks ago. The AMC had received the appraisal until two weeks later and I get a call from the AMC and had forgotten to mark whether it was urban or suburban. If we have this legislation when was the report delivered because the consumer does not know because it is a contract between me and the AMC. The consumer only gets to see the appraisal once the AMC is done and they send it to the originating lender, then some originating lenders look at the appraisal and do another review. So it could be a month after I do the report that the consumer finally gets the appraisal and it's blamed on the appraiser.

Rep. Randy Boehning: When you are done with the appraisal can you contact the bank and say I have completed the appraisal? Is there a way to track it so maybe it's not your problem maybe it's the AMC's we have to boot. Are there time frames set for AMC's that once they get it they have to be done in a certain amount of time?

Joe Ibach: Unfortunately the answer is no. because a lot of these AMC's are dealing with banks that aren't based in North Dakota. So I the appraisal and see the appraisal has to be made out to Chase,

we have no contact information for Chase. I can't hold of the initial lender because we have no conduit of communication.

Rep. Randy Boehning: Can the appraisal board themselves set up their own AMC?

Joe Ibach: I personally never want to get involved running an AMC. I don't know of an appraiser that wants to run an AMC because you are dealing in a profession that I don't have the expertise in, I don't have the manpower, I don't have the computer software it would take its massive undertaking and very expensive to get into because it is so computer driven. The appraisal board is not interested but I can bring it to some people's attention.

Rep. Randy Boehning: What's the difference when the appraiser is out doing the appraisal and they are reviewing the appraisal to make sure it is accurate?

Joe Ibach: Once I send the appraisal in to the appraisal management company, they have a review process. Some AMC's want to make sure that when the neighbor is defined that the boundaries are set and if you forget to put in a word it is kicked back. One was kicked and they hired me to do the second appraisal, I found out the first appraiser under appraised the property by \$100,000.00. So there is different levels that can transpire depending what they find in the review process.

Rep. Kathy Hogan: Do you have contracts with any AMC's?

Joe Ibach: Yes, some we do and some we don't.

Rep. Kathy Hogan: Section 2 says unless you have a contract.

Joe Ibach: what typically happens when you get on their panel you sign a master contract? That master contract is very specific as to when they will pay you, how they will pay you, if you are not getting paid what you can do. The way this language reads is that the contract would supersede anything we have here.

Rep. Kathy Hogan: That was my question because of you have a contract then section 2 wouldn't apply?

Joe Ibach: That is correct.

Chairman Kim Koppelman: You mentioned a bank that operates in North Dakota that sort of has an arm that performs this function and yet they are not an AMC. My understating of what was testified to in regards to Dodd Frank is that AMC is required in sort of a buffer in these transactions, how does that work?

Joe Ibach: Gate City has set up their own AMC, however they don't fall under Dodd Frank because they are exempted. Any AMC that is owned as a subsidiary of a financial institution is exempt from the legislation. So they don't fall within the definition of an AMC.

Chairman Kim Koppelman: If the purpose is to avoid a bank having a favorite appraiser they use all the time and that represents an over charge to a consumer how is that purpose carried out if the bank itself is forming a subsidiary or another entity to perform that function?

Joe Ibach: That subsidiary is not labeled within statute law that's an AMC however they operate almost like an AMC. They are completely separated from the lending arm of the bank, but they have a pool of appraisers and it's done on a rotation basis.

Chairman Kim Koppelman: But if that exempts them from the requirement of working with an AMC isn't that circumventing the intent of the law?

Joe Ibach: But the intent of the law, I don't know because it was written by Congress.

Rep. Diane Larson: You said the appraisers set their fee and there is a revolving pool of appraisers chosen. Does the person trying to get their appraisal done have any say or they just get the appraiser and fee that is assigned to them?

Joe Ibach: Typically the borrower has not input what so ever as to selecting the appraiser. Legislation has taken that away because of the collusion problems we had. The only time something can change is if there is a problem once the appraisal comes back and they can request a second appraisal sometimes. The consumer has no input as to what fee they can pay or what appraiser they can select.

Chairman Kim Koppelman: What are you doing to try to address the problems with getting appraisals getting done in North Dakota, with new appraisers being trained and etc.?

Joe Ibach: We are ND appraisal board we do not represent the appraisal industry. We as the board we don't have the ability to recruit appraisers; we don't have the time or the resources. From 2011 to 2012 we added about 60 new licenses to the state of ND and we only lost three or four. The number of the appraisers coming to the state is increasing. There is a downside; an appraiser that just moved in didn't know what Highland Acres means. The appraisal came in low because he didn't recognize the location so just because you bring in new appraisers doesn't mean you will get good appraisals. I get phone calls from people who want to come to the state, our process of licensing an appraiser is basically if you are a licensed or certified appraiser in California and are in good standing and your education is up and you apply for a reciprocal license in North Dakota you can get that in a day. There is no barrier to get to the state to be an appraiser if you are licensed anywhere else. We have reciprocity with every state that has a similar qualifications and experiences that we do.

Rep. Nathan Toman: you mentioned you may not have an objection to putting your fee on your appraisal so if this bill would require the appraisal and the date submitted to be reported to the borrower. Would that be an objection because that passes the transparency along and also they know whose fault is it after that?

Joe Ibach: I personally would have no objection to putting the appraisal fee on my appraisal. Every appraisal has a completion date right on the report. So if they get the report they will see when it was completed. The only information they don't know typically is the fee.

Rep. Diane Larson: How long have you been an appraiser?

Joe Ibach: 37 years.

Rep. Diane Larson: In North Dakota we didn't have a problem with collusion. We didn't have a huge collapse in the housing market because of collusion between bankers and appraisers because we did have appraisers with integrity and bankers with integrity that would talk to each other and be able to say this is when I can do it. It's like building a house and not being able to talk with your plumber, how is that going to hold things up when you can't even have that communication. I am disappointed in our federal government that they have a created a solution to a problem that we didn't have here.

Rep. Lois Delmore: I just think this is an issue that is important to be put on notice. I appreciate your comments and from where you are coming from. But you talk about other people coming in and getting licenses in no length of time. What are you doing as a group and organization either to promote rules that make sure the appraiser come in live up to the high expectation that I think we have had for

Appraisers in North Dakota? Do you have any legislation that you are putting through? Are there some things your group can do or we can put in to get a handle of these people that you think are responsible for part of the problems. We do have constituents in our districts that are very angry about what's been going on.

Joe Ibach: The appraisal group, unfortunately the appraisal board does not represent the appraisers. We only license and monitor the appraisal profession. There is no organized group of all the appraisers in the state that can get together and say why don't we promote the state and say we need more help? I wish that would happen but it's not happening. Relative to the rules you asked about, our rules and regulations in the state of ND to become an appraiser and maintain the certification and licensure, mere federal regulations. Our appraisal board has consistently adopted the minimum standards. Unfortunately the minimum standards are all set by the feds so whatever they come out with we have to adopt and we only adopt the minimum standards. We don't put up any greater barrier than what's required by the feds.

Rep. Lois Delmore: If however it is a problem rather than blaming the government shouldn't we set our standards higher? We do in school and in other areas, as this gets to be a bigger problem I would certainly think you would want to get together as a group and try and take control of the situation.

Joe Ibach: I assume you are talking about the bad appraisals being done? Essentially you are saying if we had higher standards we could get rid of some of the appraisers? I don't think as a rule we have that kind of problem in North Dakota. 99% of the time it is a good experience except for timing. Raising the standards I don't think is the way to go. If we have any barrier higher than South Dakota what would be the reason to come to North Dakota? It's hard enough when you talk with an appraiser from California or Florida and say do you want to come to work in North Dakota?

Rep. Lois Delmore: Maybe if we don't raise standards than we discipline those people because it gives you a red eye too. You need to take control of that, I don't you want us to make up legislation to cover everybody either but if there is no consequence for something why wouldn't I come in and do it?

Joe Ibach: As a board we are surprised we don't get more complaints because if you are having a problem with timeliness as a lender unfortunately they don't want to turn that appraiser in because that appraiser won't do any work for them and they are even farther behind. But until the situation is addressed it's going to stay where it's at.

Rep. Randy Boehning: You used an example about the appraiser that did an appraisal in Highland do you or the realtors try and educate the new appraisers coming in?

Joe Ibach: What should happen is the appraiser needs to become competent. I could be appraising in ND for 37 and go to Ohio and not be a competent appraiser because I have no idea what residential areas there are good or what's bad. What he needs to do is align himself with another appraiser or talk to realtors. It's not the realtor's responsibility it's the appraiser's responsibility. Unfortunately he hasn't taken it upon himself, somebody should turn him in.

Rep. Randy Boehning: Can you give them a mentor? Would there be a way to set them up with another appraiser to mentor and show them the different areas? Would that be something the board could help with?

Joe Ibach: The board does not have that power to do that. We can't make an appraiser do that because they don't have enough time to go on vacation now they have to take a new guy around town, that's not going to happen.

Chairman Kim Koppelman: I know your members are busy, one of the things we discussed briefly in the interim before the Administrative Rules Committee the problem we have is a shortage of appraisers which leads to your people being overburdened and timeliness becomes an issue. The catch is under the licensure requirements the appraisers are required to have a certain amount of time as an apprentices appraisers, but I'm told, they don't necessarily want to train their competition. Many professions have ethical requirements to be a part of that profession, have you considered to have an ethical requirement for appraisal licensure that says you are expected to devote so many hours per year to training apprentices in the profession?

Joe Ibach: I have not thought about that but I have made myself a note because it is a great idea. There was some talk earlier that the appraiser can't talk to anybody; you need to realize that is a fallacy. Everyone can talk to the appraiser, the only they can't talk to you about is the value. If you originate the loan and you want to talk with the appraiser you can. Some leaders say internally that you as the loan officer cannot talk to the appraiser regardless. Some of this is done in statute and law and some of this done internally in banks. The problem is that it gets mixed in the pool and everyone gets confused about what's going on. The borrower can call me; the seller can call me, except we can't talk about the value.

Chairman Kim Koppelman: Closes the hearing on 1216.

Minutes of the
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(HOUSE) (SENATE) BILL NO. 1389 SUBCOMMITTEE OF THE
sub-Judiciary **STANDING COMMITTEE**

Meeting location: Prairie Room

Date of meeting: 2/12/13

Time meeting called to order: 9:55 AM CT Chair

Members present: Rep. Hagan, Rep. Steiner,
Rep. Balkning

Others present (may attach attendance sheet):

Chairman Kim Koppelman
Rep. Hanson

Topics discussed:

fence building with apprentice requirements
time of appraisals long length in Williston
get realtors, builders to give input
short of appraisers, make ethical standard for
mentoring, study penalty fines
Done Done

Motion and vote:

none taken

Time of adjournment: 10:40 PM

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

Minutes of the
1214
(HOUSE) (SENATE) BILL NO. 1389 SUBCOMMITTEE OF THE
Judiciary sub-**STANDING COMMITTEE**

Meeting location: Legislator's Study

Date of meeting: 2/12/13

Time meeting called to order: 3 PM

Members present: Rep. Steiner (chair), Rep. Hogan,
Rep. Boehning

Others present (may attach attendance sheet):

Dave Campbell, Klaus Jombke, Scott Jansen, Jodie
Campbell, Edward Erickson

Topics discussed:

Appraisal board has had 3 formal complaints
AME could be forced to tell bankers the appraisal fee
46 apprentices, appraisers can talk to realtors
but not on price topic We could use Bank of ND
to increase apprenticeship Lynn Heider is teaching
effective classes in Nebraska

Motion and vote:

None taken

Time of adjournment: 4 PM

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

Minutes of the

(HOUSE) (SENATE) BILL NO. ____ SUBCOMMITTEE OF THE

Sub - Judiciary STANDING COMMITTEE 1214, 1389

Meeting location: Legislators Study

Date of meeting: 2/13/13

Time meeting called to order: 3:45 PM

Members present: Rep. Steiner, Rep. Bohning, Rep. Hogan

Others present (may attach attendance sheet):

Jennifer Lueb, Scott Lusser, Doreen Riedman, Claus Lemke
Joe Fbach, Edward Erickson, Jenni Campbell

Topics discussed:

Which amendments would work - study the \$150 fine
put appraiser fee on appraisal closing document
- only new applicants get criminal background
check

Motion and vote:

Rep. Kathy Hogan moved, Rep. Bohning moved amendments
1214 passed

Rep. Bohning, Rep. Hogan moved amendments 1389
passed

Time of adjournment: 4:20 PM

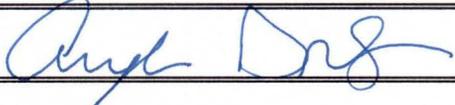
Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1216
February 18, 2013
Job 19806

Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to the regulation of real estate appraisers.

Minutes:

Attachment 1, 2

Rep Steiner reviewed the amendment.

Rep Klemin: How would you define "noncomplex"?

Rep Steiner: That wasn't the wording we gave the legislative management. This is the amendment that we came up with: The appraiser's fee, paid to the appraiser, shall be reported on the first page of the appraisal form for the 1-4 family properties.

Chairman: I like that better. I would suggest changing: remove the word "the" in front of the 1-4; instead of "The" beginning the sentence, start with "An"; change "shall" to "must". Then it would read: An appraiser's fee, paid to the appraiser, must be recorded on the first page of the appraisal form for 1-4 family residential properties.

Rep Delmore moved for the amendment as revised by the committee.

Rep Boehning seconded.

Voice Vote: Motion carried.

Rep Delmore moved a Do Pass as Amended.

Rep Larson seconded.

Roll Call Vote:

Yes: 11 No: 0 Absent: 3

Carried by **Rep Steiner**.

VK
2/18/13

February 18, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1216

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 43-23.3 of the North Dakota Century Code, relating to regulation of real estate appraisers; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-23.3 of the North Dakota Century Code is created and enacted as follows:

Appraisal fee reporting.

An appraiser's fee, paid to the appraiser, must be recorded on the first page of the appraisal form for one-family to four-family residential properties.

SECTION 2. APPRAISER CONTRACTS - LEGISLATIVE MANAGEMENT STUDY. During the 2013-14 interim, the legislative management shall consider studying whether implementation of a penalty or other financial consequence would improve appraiser compliance with timelines under appraiser contracts. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Date: 2-18-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1216

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Delmore Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Notice Vote-Carried

Date: 2-18-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. #B1216**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Larson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson		
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls					
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur					
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Steiner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1216: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1216 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 43-23.3 of the North Dakota Century Code, relating to regulation of real estate appraisers; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-23.3 of the North Dakota Century Code is created and enacted as follows:

Appraisal fee reporting.

An appraiser's fee, paid to the appraiser, must be recorded on the first page of the appraisal form for one-family to four-family residential properties.

SECTION 2. APPRAISER CONTRACTS - LEGISLATIVE MANAGEMENT STUDY. During the 2013-14 interim, the legislative management shall consider studying whether implementation of a penalty or other financial consequence would improve appraiser compliance with timelines under appraiser contracts. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1216

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1216
March 11, 2013
Job Number 19701

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to regulation of real estate appraisers; and to provide for a legislative management study

Minutes:

Representative Streyle: Introduced the bill. The bill looks drastically different from when I first introduced it. The second part is a study on the appraisals in the state of North Dakota. We do have issues with the lack of appraisers in the state and timeliness of getting the appraisals and numerous things. (:12-2:15)

Chairman Klein: Asked where the problems lie, is it with the financial institution or is just with the public?

Representative Streyle: Said it is with the federal government.

Chairman Klein: Asked about the disclosure of the money and where that issue is at.

Representative Streyle: Said it was quite a bit different when he introduced it but what he was trying to do here is shed light on what the fee is that the appraisal management companies are taking. The appraisers get heat from the consumers, from the banks, the mortgage companies because the fees went up quite exorbitantly in the last five years. With the appraisal management companies we don't have any regulations in the state. There was a bill that passed the house to create some and there is really no recourse. With the federal regulations the banks or mortgage companies cannot make contact with the appraisers whatsoever. It has to be through the appraisal management company. The problem lies in the timeliness of getting the appraisals back therefore pushing the closing dates back which cost the consumers money. This doesn't address the timeliness but the study could help analyze what we could do to help speed the process of some of these appraisals.

Discussion (3:50-10:37)

Opposed

Kathy Maier: Appraiser from Bismarck and has been licensed since 1993. Said she doesn't think believe the state government shouldn't manage how a business takes care of business. (11:25-14:45)

Senator Laffen: Asked what an AMC, (Appraisal Management Company), fee was.

Kathy Maier: Said they are companies from another state that would contact an appraiser but are working with the lender.

Discussion and questions continued about the AMC and the fees that are charged by these companies and also the appraisers (15:38-28:40)

Shawn Weishaar, Certified General Appraiser in North and South Dakota and President of the North Dakota Chapter of Farm Managers and Rural Appraisers: Said his comments are on section two. Most of the work he does, the contracts already have penalty clauses in them. There are always things that will come up especially in the state of North Dakota. Winter conditions can set them back and they are dealing with much more complex properties than they were ten years ago. (29:10-33:00)

Discussion and questions (33:00-40:00)

Ron Day: Said he is a new appraiser to the state. He talked about the appraisal job and the problems in gathering data. (41:25-43:00)

Dean Rylander: Certified residential appraiser from Minot. Said he urges a do not pass on the bill in its entirety because it is not accomplishing anything. (46:35-53:12)

Dave Campbell: Said he has no problem with transparency just doesn't know where they would put it. His concern with putting it into state law is if this would cause repercussions on an appraiser who forgets to put there fee on a report. (53:55-56:00)

Discussion and questions (56:07-63)

Chairman Klein: Commented that they don't necessarily like the way the study is written and would like to see them put something more comprehensive together, even if it includes the appraisal fee as part of the study or where it should be placed, that could be part of it. I think there are a lot of questions that center on appraisals in North Dakota. We need to get to what we can do for all of North Dakota. The hearing was closed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1216
March 19, 2013
Job Number 20165

Conference Committee

Committee Clerk Signature <i>Erin Lubell</i>
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Explanation or reason for introduction of bill/resolution:

Relating to regulation of real estate appraisers; and to provide for a legislative management study

Minutes:

Discussion and Vote

Chairman Klein: Discussion on the appraisers and their fees.

Sorvaag: Said he doesn't know what putting the fee on the front has to do with getting the appraisals done. When it's on their settlement form, for most people that is all they care about.

Senator Sorvaag: Moved a do not pass.

Senator Murphy: Seconded the vote.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Sorvaag

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1216**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Sorvaag Seconded By Senator Murphy

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sorvaag

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1216, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1216 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1216

13.0303.01001
Title.

1-23-13
Prepared by the Legislative Council staff for
Representative Streyle
January 21, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1216

Page 1, line 8, remove "an invoice for an appraisal must itemize"

Page 1, remove line 9

Page 1, line 10, replace "designated for the third party" with "the appraiser shall inform the customer of the amount of payment the appraiser receives from the third party for performing the appraisal"

Page 1, line 13, replace "full refund" with "reduction of one hundred fifty dollars"

Page 1, after line 13, insert:

- "3. Within seven days following entering a contract to provide an appraisal, the appraiser shall contact the customer to confirm the date by which the appraisal will be completed.
4. Application of this section is limited in scope to residential real estate appraisals."

Re-number accordingly

Rep STreyke 2
HB 1216

1-23-13

1 A BILL for an Act to create and enact a new section to chapter 43-23.3 of the North Dakota
2 Century Code, relating to the regulation of real estate appraisers.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 43-23.3 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Billing practices - Breach of contract.**

7 1. If an appraiser contracts with or is employed by a third party, such as an appraisal
8 management company, to provide appraisals, ~~an invoice for an appraisal must itemize~~
9 ~~the portion of the fee designated for the appraiser and the portion of the fee~~
10 ~~designated for the third party.~~ **the appraiser shall inform the customer of the**
amount of payment the appraiser receives from the third party for performing the
appraisal.

11 2. Unless the terms of a contract for an appraisal provide otherwise, the liquidated
12 damages for failure of the appraiser to provide the appraisal report by the agreed - upon
13 date is a ~~full refund~~ **reduction of one hundred fifty dollars** of the appraisal fee.

14 3. **Within seven days following entering a contract to provide an appraisal, the**
15 **appraiser shall contact the customer to confirm the date by which the appraisal**
16 **will be completed.**

17 4. **Application of this section is limited in scope to residential real estate**
appraisals.

**Testimony of Joe Ibach, Chairman of the
North Dakota Real Estate Appraiser Qualifications and Ethics Board**

January 23, 2013

Good morning. My name is Joe Ibach, Chairman of the North Dakota Real Estate Appraiser Qualifications and Ethics Board. I will refer to this Board throughout my testimony as either the ND Appraiser Board or the Appraiser Board.

The ND Appraiser Board met via a conference call on January 15, 2013 and voted unanimously to oppose HB 1216.

Item 1 in the Bill would require the appraiser to "*itemize the portion of the fee designated for the appraiser and the portion of the fee designated for the third party*". It is my understanding that this issue arose from consumers complaining that appraisal fees. Many residential lenders are using a third party, generally known as appraisal management companies (AMC), to manage the appraisal process. The AMC contracts with a lender and then retains the appraiser. The appraiser and AMC agree to a set fee but the AMC then adds their cost to the appraiser's fee with the consumer paying the entire fee. This legislation would require the appraiser to itemize the fee showing the amount paid to the appraiser and the amount paid to the AMC when, in reality, the appraiser is never privy to what the third party (AMC) charges. This legislation would not be enforceable unless it is required that the third party discloses their fee.

HB 1389 bill has been introduced to register, administer, and enforce Appraisal Management Companies (AMC). Section 43-23.5-16 of the bill may address the concerns. Specifically, it states:

43 - 23.5 - 16. Fee disclosure system requirement.

1. An appraisal management company registered in this state shall be required to have a system in place to disclose to its clients the fees paid for appraisal management services and the fees paid to the independent appraiser for the completion of an appraisal assignment.

2. An appraisal management company registered in this state shall not prohibit an independent appraiser that is part of an appraiser panel from recording the fee that the

appraiser was paid by the appraisal management company for the performance of the appraisal within the communication of the appraisal.

An appraiser will have the ability to specifically record the fee on the appraisal. It will then provide the consumer the ability to ascertain the composition of the entire fee.

Item 2 in the Bill relates to timeliness. Instead of creating new laws, if someone has an issue with an appraiser relating to timeliness, the individual should direct a complaint to the North Dakota Appraiser Board. The Board already (1) has the statutory authority and (2) has exercised its authority to discipline appraisers who have been egregiously late in meeting deadlines.

Chapter 43-23.3-22(1)(g)(h) states:

“The Board may deny an application for, refuse to renew, suspend, or revoke a permit, impose a monetary fine, or issue a letter of reprimand, when the applicant or permittee has:

(g) Failed or refused without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.”

(h) Acted with gross negligence or incompetence in developing an appraisal, in preparing an appraisal report, or communicating an appraisal.”

After receiving a number of telephone calls relative to various appraisers not meeting “agreed upon” deadlines, the ND Appraiser Board took the following actions:

1) Sent an article to the ND appraisers informing them of the Board's opinion on egregious timeliness that being - *“conduct of this nature is unacceptable and unprofessional.”* The article further alerted the appraisers to the fact that an appraiser exhibiting this type of conduct could be found in violation of ND Rules (Title 101) and ND Century Code Chapter 43-23.3. A copy of this article is included as part of my testimony,

2) Gave staff the authority to contact the appraiser and relay the concern of the client, urging the appraiser to communicate with the client. The appraiser is further informed of the consequences should this concern of timeliness develop into a written complaint. In most instances, the end result has been communication between the client and the appraiser and no further action has been requested of the Appraiser Board.

In two separate instances, written complaints were filed. The two appraisers were disciplined through the Appraiser Board's complaint process and each appraiser was required to pay a monetary fine. In addition, one appraiser was required to complete further education and pay the client the difference between the costs of a second appraisal incurred by the client as a result of egregious timeliness.

The Appraiser Board has taken this issue to heart. In December of 2012, the Appraiser Board sponsored a related seminar in three locations around the state. The course was open to real estate agents, lenders, homebuilders, and appraisers. The Board's goal in providing this seminar was to address some of the specific issues common to these various groups. Timeliness and communication were two of the concerns. The seminar was extremely well received by all professions. The intent is to again offer a similar seminar in 2013.

Lastly, the proposed legislation stipulates that the liquidated damages (define "liquidated damages"?) would be ...*"a full refund of the appraisal fee."* However, the appraisal fee is almost never pre-paid. It would require the appraiser to refund a fee that has not been received. Many users of appraisals, especially lenders, have specific language for monetary penalties for late delivery, meaning that the agreed-to fee is reduced by the penalty before the final fee is paid.

The Appraiser Board already has a mechanism in place to address this timeliness issue. However, a complaint needs to be filed before the Appraiser Board can address the problem. Understandably, filing a complaint and awaiting the outcome is time consuming and it will not address the specific delayed appraisal. Even so, legislating "contracts" is not the correct method. The users of appraisals must simply be more diligent in creating legitimate contracts and enforcing the terms.

Enclosed with my testimony are several emails the Appraiser Board has received from a number of ND licensed and certified appraisers in opposition to HB 1216.

The North Dakota Appraiser Board then recommends a "Do Not Pass" of House Bill 1216.

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

PO BOX 1336 - BISMARCK, NORTH DAKOTA 58502-1336

TELEPHONE & FAX: (701) 222-1051

E-mail: jcampbell@bis.midco.net - Website: www.ndreab.org

Noteworthy Issues: October 2012

Timeliness of Appraisals:

Appraiser Board Staff recently received the following email:

"I wonder if I have a basis for a complaint or not. An appraiser agreed to perform two appraisals for my company in October for an agreed upon fee, to be turned in within a certain timeframe. Since that time I have been strung along with promises to get the report turned in to no avail. It's now December. Believe me when I say I have tried to reassign this report. I have called AMC's who have contacted this appraiser to do the work and he tells them he'll have the assignment turned in within the next few days, so I wait some more....and wait some more.

I believe the actions of this appraiser are completely unprofessional What are your thoughts?"

Unfortunately, this scenario of frustration is becoming a more frequent complaint being relayed to the Appraiser Board office by homeowners, lenders, AMC's, etc. After receiving numerous calls complaining of appraisers not meeting deadlines by **months** (not just days or weeks...months), Staff turned to the Appraiser Board and Legal Counsel for guidance.

The Board, with the assistance of legal counsel, determined that conduct of this nature is unacceptable and unprofessional. Furthermore, an appraiser exhibiting unprofessional conduct of this nature may be found to be in violation of Title 101, ND Appraiser Rules and Regulations, as well as ND Century Code Chapter 43-23 .3.

Title 101-03.1-01-01. Unprofessional conduct states:

Any of the following acts and omissions constitutes a violation of the standards of professional appraisal practice and are grounds for disciplinary action:

- 1. Violation or attempted violation of North Dakota Century Code Chapter 43-23.3 or the rules adopted by the board.....**
- 9. Negligence, refusal, or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.**

NDCC Chapter 43-23.3-2 further states:

- 1. The board may deny an application for, refuse to renew, suspend, or revoke a permit, impose a monetary fine, or issue a letter of reprimand, when the applicant or permittee has.....**
 - g. Failed or refused without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.**
 - h. Acted with gross negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.**

The Appraiser Board has interpreted the "refusal" identified in #9 above as being at a time after you have decided to accept an assignment. In instances where you have decided to accept the assignment, you are required to develop and provide the appraisal report in the agreed-to time frame.

The Appraiser Board is of the opinion that you are not required to accept an assignment if your present work load is such that you are unable to meet the completion/delivery requirements of a potential client. However, if you have decided to accept the assignment and certain deadlines have been included as part of the conditions and/or expectations of the assignment, you are required to meet the terms of the assignment contract (written or verbal).

If you are having unforeseen problems in meeting the agreed deadline, you should then communicate with the client to explain your situation and perhaps modify the assignment delivery conditions contained

in the original contract. It is best to COMMUNICATE WITH THE CLIENT rather than avoid such communications by ignoring the client's inquiries.

With this in mind, be aware that you can be disciplined for this type of unprofessional conduct. Furthermore, if disciplined by the Board, you run the risk of being removed from an AMC or lender roster for "prior history of disciplinary action".

Pay attention to client expectations as they relate to delivery of your appraisal report...follow through.....develop a communications procedure.....do not take the risk of a complaint being filed on you.

Communicating with an Appraiser

Author: Nikole M. Avers, Executive Director Tennessee Real Estate Commission

The economy and the related mortgage lending crisis have led to many changes in the lending and real estate appraisal industry.

As the director of the TN Real Estate Appraiser Commission, I take a lot of calls from appraisers and users of appraiser services pertaining to these changes. Questions pertaining to changes resulting from the Home Valuation Code of Conduct (HVCC) which developed into the Appraiser Independence Requirements (AIR), federal changes with the Dodd-Frank Wall Street Reform and Consumer Protection Act, Title XIV – Mortgage Reform and Anti-Predatory Lending Act, the Fed's Regulation Z (the regulation used to implement various sections of the Truth in Lending Act), regulation of Appraisal Management Companies, and changes in the FHA requirements.

Whew!

After all that it is easy to be confused and feel the need to catch your breath. One issue keeps rising to the surface again and again - how to communicate with an appraiser in the aftermath of all the changes we have gone through in the past two years.

Appraisal independence has been at the heart of almost every substantive change that affects users of appraiser services. Federal law, State law, and secondary market requirements have long had requirements pertaining to appraisal independence. The mortgage crisis and the difficult economic climate have caused the market participants to establish additional safeguard requirements to preserve this independence. From these requirements many myths were born.

Do the changes mean you can't talk to an appraiser?

No. Communication is critical to the appraisal process-entire appraisal standards are devoted to it – and communication is not a one way street.

USPAP requires that an appraiser protect the confidential nature of the appraiser-client relationship. The appraiser must not disclose confidential information or assignment results to anyone other than the client, persons authorized by the client to receive this information; state appraiser regulatory agencies, third parties authorized by due process of the law, or authorized peer review committees. See USPAP ETHICS RULE-Confidentiality Section, and the DEFINITIONS section for Assignment Results and Confidential Information for more detail. This requirement pertains to what an appraiser may communicate to others, not what information users of appraisal services may transmit to the appraiser.

Many have misinterpreted the HVCC requirements to have banned mortgage loan officers and real estate agents from speaking with a real estate appraiser. Some have indicated that FHA prohibits communication with real estate appraisers. Still others believe there is a prohibition in federal law, but there isn't. There are requirements to preserve appraiser independence and protect the public.

There is no prohibition for communicating with a real estate appraiser. FHA specifically requires that the lender and the appraiser "avoid even the appearance of a conflict of interest, which would include providing the appraiser anything of value in consideration of returning the appraisal at a given value," and "that (the lender) may not condition continued selection of an appraiser on inflating values or disregarding repair requirements." For a more detailed list of prohibited activities by FHA concerning appraiser

independence, please visit their website and read mortgage letter 09-26:
<http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-28ml.pdf>

The HVCC did not prohibit communication with a real estate appraiser, it required the loan production staff not have "substantive communications with an appraiser or appraisal management company relating to or having an impact on valuation, including ordering or managing an appraisal assignment."

The loan production staff and the staff of an appraisal management company may communicate with the appraiser to correct factual errors on the appraisal report.

The HVCC did not prohibit real estate agents or brokers from communicating with an appraiser. They are allowed to communicate with an appraiser as long as the communication was not done in a way intended to influence the outcome of the appraisal. Appraisers may receive information from others on information pertaining to the subject and market data information such as; relevant property information such as condition, improvements, deferred maintenance and amenities; income and cost data; conditions of sale and seller concession information; and builder or inspection information.

The HVCC pertained only to 1-4 family loans that lenders sold to Fannie Mae or Freddie Mac. The Federal Housing Finance Agency (FHFA), Fannie Mae, Freddie Mac and others developed the Appraiser Independence Requirements (AIR) which replaced the HVCC on October 15, 2010. Fannie Mae issued a FAQ on these changes in November of 2010, a link to that FAQ can be found at:
<https://www.fffanniemae.com/sf/guides/ssg/relatedsellinginfo/appcode/pdf/airfags.pdf>

Recommendations for communicating with an appraiser:

- 1) Communicate by e-mail or written correspondence whenever possible. Written communication has the benefit of documenting the exchange between an appraiser and a user of appraisal services. You may wish to indicate you are communicating by letter or e-mail to preserve the appraiser's independence. It is not a violation to place a phone call to an appraiser, but in my experience you will have more success of the communication is in writing, especially if you do not have an established professional relationship with the appraiser.
- 2) Determine your objective before you begin writing. Take your time with the correspondence to ensure only the specific and necessary information is communicated. Be brief and to the point.
- 3) Be professional. Whenever possible, use appropriated terminology to the lending and real estate industry. This will set the tone for a professional response. No one expects you to be 100% knowledgeable of appraisal methodology or techniques but if you can specifically identify the areas of concern, the appraiser will be able to respond to your specific concerns. Avoid sending off emails or letters before proof-reading for spelling accuracy and tone.
- 4) Don't send an angry e-mail or letter to an appraiser. It won't likely help the situation if the appraiser finds the communication offensive or disrespectful. Sending an e-mail in all capital letters can set the tone that you are yelling at them. If you wish to dispute information contained in an appraisal report, be specific and professional. Mistakes can happen and my experience is that a professional will want to correct an error.
- 5) Avoid opining on the value of the property. Rendering an opinion of value is the reason the appraiser was engaged. Telling an appraiser what you think the value of a property should be will be the fastest way to have them close the communication door. Do not communicate in a manner that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.
- 6) Just the facts. If you have information you want the appraiser to consider, present it as information. Acknowledge in your correspondence that it is the appraiser's decision to determine if the information is relevant to the appraisal assignment.
- 7) If an appraiser is hesitant to respond to communication, reference the specific independence requirements pertaining to the transaction. For example, if the appraisal is an FHA appraisal, provide them with the link to the above mortgage letter on appraisal independence. If the appraisal is for Fannie Mae or Freddie Mac reference the link to the above Fannie Mae frequently asked question link on appraisal independence. Many appraisers have fallen victims to the myths created pertaining to appraiser communication; they may not know their specific allowances for communication.

8) Be patient. If you want a well thought out response or reconsideration, it may take time. If you are concerned about them not receiving your information, you may want to indicate in your communication, "Please let me know you have received this inquiry/information and, if possible, a time frame for your response."

As an appraiser, a lender's review appraiser and as a regulatory official, I have been privy to both sides of the conversation. Appraisers communicate for a living; the tricky part is knowing how to start the conversation. I hope these tips help in beginning that conversation.

The ND Appraiser Board received the following emails

from ND licensed and certified appraisers

in opposition to HB 1216

From: joe hirschfeld [mailto:hirschjj@gmail.com]

Sent: Tuesday, January 15, 2013 12:20 PM

Subject: Re: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

Hi Jodie and everyone reading this:

I don't have a lot of concerns about the first part, asking for transparency with the fees is reasonable to me.

I do have HUGE issues with the second part. Most of our residential fee work is submitted prior to collection of a fee, so there is nothing to reimburse. Secondly, if we submit it late and they go ahead and utilize the report, rather than reassigning and waiting another 6-8 weeks for it, we should be paid.

I agree, though that something should be done about the appraisers that drag assignments on for weeks and months, however to write legislative code that effects all of us?

What are the unintended consequences of this legislation? If a lender client asks for an assignment to be pushed back in order to assist them with moving a loan from construction to the secondary market, should we be punished?

Even the most conscientious of appraisers, if working our small communities, is going to have times when they have difficulty verifying information either from the Tax Directors, who are unavailable due to increased workloads, lack parcel information; or from the parties involved in sales that are not included in any MLS, which might extend turn-around times.

Kind of piggy backing off of Kathy's comment below, not that I disagree, but taking one assignment at a time could send quite a shock into our lending community.

What are lenders and Realtors going to tell borrowers if we as appraisers refuse to place assignments on a work list and in some sort of order? Not knowing if in 6-8 weeks whether anybody is going to pick up the assignment. That leaves a lot of uncertainty in the marketplace.

I know that this legislation is in response to those assignments that drag on for weeks and months, as Jodie warned us against last year. That the day late or even occasional week late appraisal assignment isn't the one in question here, but the legislation, as drafted, does not differentiate.

I would like to see us discipline our own, through the Appraisal Board, if that is possible. The flip side is, if the lenders are having trouble with habitual offenders, why don't they just remove them from their panels? I think we all know the answer to that one.

Thanks for listening,

Joe Hirschfeld

Hirschfeld Appraisal Service

P.O. Box 1922

Dickinson, ND

Midcontinent

Webmail



Date: Tue, 22 Jan 2013 19:27:13 -0600 [19:27:13 CST]

From: Jodie Campbell <jcampbell@bis.midco.net>

To: jcampbell@bis.midco.net

Subject: FW: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

From: Kathy [mailto:kberry@hussappraisals.com]
Sent: Tuesday, January 15, 2013 1:10 PM
To: 'joe hirschfeld'; marc101@cox.net
Subject: RE: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

I agree with Joe 100%.

I know there were many problems and still are with some appraiser's lack of responsibility in communication and timeliness. I know Jodie spoke of appraisers missing deadlines by MONTHS all the while evading the client and leaving them hanging in limbo. This can not be tolerated.

HOWEVER, the way this bill is written is not the answer. There are times when the appraiser misses a deadline by hours or a day or two because of illness, complications in an assignment or just running out of time and pushing the time limits. The way this reads if we miss a deadline, they don't have to pay. Even slight delays. The bill is way too broad and there will be dire unintended consequences that will surely leave appraisers powerless.

I have missed deadlines. By short amounts of time because of the overwhelming workload at times or due to being out for illness, etc. But my work gets done. It gets done right. I communicate with my clients. They can count on me and I take pride in getting the job done. I WORK HARD.

But the way this is written, there is no protection for the appraiser. If the due date states 12:02 pm on Thursday January 22, and I get held up in the field, get sick, run into complications or am backlogged and don't get the report in until 12:03 pm or until the next day - legally they don't have to pay me? Anything? At all? Period? They have the appraisal, but are not obligated to pay me because I was missed the due date? Point blank?

I see a need for something if the appraiser is not corresponding with the client and SERIOUSLY late and negligent. Yes, then there needs to be something addressed but this bill encompasses too much.

Secondly - I agree with the transparency of fees. However this should not be directed at the appraiser. It is being addressed in the proposed AMC legislation we are working on.

I rarely touch work for AMC's.

But in general, we - the appraiser- does not know what the AMC collects up front. We are forbidden to discuss fees. Many AMC's do not accept the report if an invoice is attached because it would raise questions to the homeowner/lender/client.

I believe that we should NOT BE prohibited from discussing our fees and that we should disclose fees.

Currently the AMC collect \$650+- (example) from the homeowner. They bid out for the bottom dollar appraiser (who is willing to accept the cheapest fee) and pocket the remaining amount. Quality of work, experience or geographical competence means nothing. Just how cheap and how fast can they get the work done? My office routinely turns down around 10 calls a week from companies who don't know anything about me or my qualifications. The only thing they ask is how cheap can I bid and how fast is my turn time.

As a homeowner, I would want to know that the company I am working with pocketed 2/3 of the fee and hired the cheapest person for the job. As it is now, they think they hired someone to perform quality work at, often times, a higher than standard fee. Then when they call the appraiser and want to know why their neighbor got an appraisal for \$500 and they were charged so much more.... We are prohibited from discussing the fact that we didn't make \$650.

We need somebody standing up for the appraiser. We need to have a say.

Kathy

THANK YOU!

Kathryn J. Berry

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Certified Residential Real Estate Appraiser in MN and ND

FHA/HUD Certified

Huss Appraisals Inc.

P.O. Box 966

Moorhead, MN 56561-0966

Phone: 218-236-5063

Fax: 218-233-0247

Cellular: 701-261-0337

From: Brent Voegelé [mailto:Brent@voegeleappraisal.com]
Sent: Tuesday, January 15, 2013 5:35 PM
To: Jodie Campbell
Subject: Re: I.LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

HB 1216

If my attorney cant get a judgement from a court of law in a time frame I expected or in a time frame he may have ?estimated? would be expected....does he have to pay me back all the fees I've paid for his time and effort? If my mechanic cant get my car fixed in a time frame he ?estimated? or told me cause I was going out of town on vacation on a certain date because the parts he/she ordered for the repair are stuck on a truck on the side of the road due to a blizzard in some other part of the State or out of state....does he have to repay me all the costs associated with the repair? This proposed legislation solves nothing and is ill conceived. In my opinion, turn times are simply our best and reasonable estimates for the completion of assignments at the time of engagement and our clients need to realize (and I believe they already do) that there are many many circumstances which can affect the actual time it takes for us to complete and deliver an assignment to them. Do I try to meet closing dates on contracted sale appraisals?....yes...to the best of my ability...because I know there may be consequences to my report being delivered after the closing date indicated on the contract...but does it happen, do we sometimes miss these closing dates due to a variety of reasons??...absolutely...every day in our profession I would say. Do I try to meet due dates for refinance appraisals so the borrower doesn't lose his rate lock...YEP...but if the lender locks him in for 30 days and I'm 6 weeks out in workload am I going to meet that deadline....NO WAY....and I'm not going to payback my fee for unrealistic expectations placed on me by a lender or third party.....If the Realtor writes a contract and expects to close in 14 days in our market which is about 6 weeks backlogged in turn times I believe....the lender can ask all day long to get the report back in 10 days and put on the appraisal order a due date 10 days from now...but when I accept the assignment and tell them I'm 6 weeks out ?estimated? as a condition of my acceptance is that a possible issue? Delays are possible, regardless of legislation enacted for a variety of reasons. If this legislation is intended to disclose fees paid by lenders to AMC?s then leave the appraisers out of the equation...and legislate transparency in AMC regulation and banking regulation for disclosure..we don?t control what banks pay for third party management firms nor do we have any idea what they charge....aren?t fees associated with federal loans already disclosed in the HUD 1???? Add a line to it.....Appraisal direct Fee.....Third Party Lender AMC order Fee.....somewhere.....why are appraiser?s always the ?fall guy? in the lending process or in our state in the Legislative process???? We?re suppose to be honest, be accountable to USPAP and confidentiality rules and follow federal rules and regulations and meet GSE guidelines.....I think there?s enough regulation surrounding our profession already. Frankly, I?m tired of being picked on as an appraiser. I do my job as quickly as I can and as professionally as I can and I charge a fee for my services....just like every other profession in our state!!! If an appraiser is not meeting his/her clients expectations for what ever reason...timeliness....communications...quality of work...honesty....then clients will find someone who does meet their expectations. We don?t need legislation for that!!

Sincerely,

Brent Voegelé, CREA
President/CEO
Voegelé Appraisal Service, Inc.
314 East Thayer Avenue, Suite 24
Bismarck, ND 58501
Ph:701.258.0924
Fax:701-258-0727
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www.voegeleappraisal.com

Midcontinent

Webmail

Date: Tue, 15 Jan 2013 09:04:08 -0600 [01/15/13 09:04:08 CST]

From: Nancy Schmidt <ncstoddco@bis.midco.net>

To: kkoppelman@nd.gov

Cc: 'Jodie R. Campbell' <jcampbell@bis.midco.net>

Subject: HB1216

As an appraiser, I can understand why this bill is being proposed. However, I have the following concerns:

Item 1. When there is an AMC involved in the process, I do not know how the fees are divided. I only know what I receive. I typically have an invoice attached to the appraisal stating my fee.

Item 2. – Requiring a full refund of the appraisal fee for a delayed report without any mitigating circumstances is unreasonable. Reports are delayed for a number of reasons which are not of the appraiser's creation, such as: waiting for information from the lender/client, realtor, county assessor, etc; borrower not setting or delaying an appointment; or unexpected events such as illness, death in the family, weather events, etc. I know there are some appraisers who are habitually late in turning in reports; however, I think most appraisers are diligently working to complete and turn in reports on time.

Nancy Schmidt

Nancy Schmidt

LifeScape Appraisals

3333 E Broadway Ave #1204

Bismarck, ND 58501

Office: 701-258-7542

Fax: 701-323-0332

Midcontinent

Webmail



Date: Tue, 22 Jan 2013 20:09:16 -0600 [20:09:16 CST]

From: Jodie Campbell <jcampbell@bis.midco.net>

To: jcampbell@bis.midco.net

Subject: FW: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

From: philip mckenzie [mailto:pmidwest@hotmail.com]

Sent: Tuesday, January 15, 2013 1:06 PM

To: Jodie Campbell

Subject: RE: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

If they pass this bill it should be applied to all general contractors. When I hire some one to do work for me they do not break down how much each one of their subcontractors are being paid or what each one charges for there services. If we contract with an AMC Company we do not now what they are charging the borrower and it not are business what they charge. Our contract is with them. If they want to regulate some one make it the AMC's not use. I have gotten grieve for the bill that the borrower sees,from AMCs even thought that is not what I am receiving, but I still don't think we need another bill.

I guess there are a few appraisers that can't manager there business, but I think for the most part most appraisers try hard to meet their due dates, and when they don't it is not always their fault. There can be a lot of reasons.

I know for every appraisal I turn down, it puts more presser on another appraiser. Guess if we all turned down enough appraisals and only took one at a time , they would make a bill that would say we have to take all orders! You just can't win

Midcontinent

Webmail



Date: Tue, 15 Jan 2013 09:06:09 -0600 [01/15/13 09:06:09 CST]

From: Julie Schwartz <lakestate@comcast.net>

To: 'Jodie Campbell' <jcampbell@bis.midco.net>

Subject: RE: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

Hi Jodie and Appraisal Board,

I respectfully request that the Appraiser Board consider my input. I have reviewed this legislation. I am troubled by this section:

Unless the terms of a contract for an appraisal provide otherwise, the liquidated damages for failure of the appraiser to provide the appraisal report by the agreed – upon date is a full refund of the appraisal fee.

I have been an appraiser for over 28 years, performing a wide variety of appraisals for government and private-sector clients. Although I have always strived, and usually made a due date, in some instances I did not, and usually resulting from a lack of information needed by the owner/client, or waiting confirmation of critical data (such as comparable data confirmations). I think it is unfair to have the appraisal fee fully refunded. If so, then there is no reason to finish an appraisal if you know it may be late. Why do the work and know you are not getting paid? I have had several government clients and contracts, and all have a financial penalty if you do not meet your due date, but typically the late fee is either \$100/day or 10% of the fee for each day late. As a review appraiser, I am concerned that an appraisal will not be as thorough or even perhaps reliable, if an appraiser is literally forced financially to get it done.

Thank you for consideration of my input. It is much appreciated. And thank you Jodie for doing an awesome job keeping us informed. I am licensed in 5 states, and by far, the North Dakota Appraisal Board is much more active and informative than in other states. This is yet another reason why "my" home state of North Dakota is so awesome. Keep up the good work!

Julie

p.s. I will promise to not let too many people know how awesome a state North Dakota is so that they do not immediately move.....

Julie Jeffrey-Schwartz, Certified General Appraiser

President, Lake State Realty Services, Inc.

2140 Otter Lake Drive

White Bear Lake, MN 55110

651-653-0788 direct

Midcontinent

Webmail



Date: Tue, 22 Jan 2013 20:10:42 -0600 [20:10:42 CST]

From: Jodie Campbell <jcampbell@bis.midco.net>

To: jcampbell@bis.midco.net

Subject: FW: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

From: Marc Barlow [mailto:marc101@cox.net]

Sent: Tuesday, January 15, 2013 11:27 AM

Subject: RE: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

Good comment from Kathy.

In most cases, we stopped accepting appraisal assignments from AMC's.

The AMC's here in Phoenix metro make completion dates virtually impossible to make for commercial appraisals.

There is often a loss of appraisal quality due to the inadequate amount of time given to the appraiser by the AMC.

Maybe AMC's are better to deal with in ND.

Marc Barlow, MAI, CCIM

Philip M. Barlow & Asso. LLC

343 North Gilbert Road

Gilbert, AZ 85234

480-926-9355 (Office)

480-296-5355 (Cell)

480-756-0965 (Fax)

From: Kathy Maier [mailto:maierappraisal@bis.midco.net]

Sent: Tuesday, January 15, 2013 9:50 AM

Subject: RE: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

Hi Jodie,

I still hear complaints from this summer about appraisers that struggled with deadlines. We all know that it was unbelievably busy, but communication with our clients is just a basic responsibility. It is unfortunate that there are few that cast such a broad light on all of us.

Midcontinent

Webmail



Date: Tue, 22 Jan 2013 19:28:08 -0600 [19:28:08 CST]

From: Jodie Campbell <jcampbell@bis.midco.net>

To: jcampbell@bis.midco.net

Subject: FW: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

From: John H Urubek [mailto:jurubek@aol.com]

Subject: RE: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

Why is delivery of an appraisal report a legislative issue? If an appraiser frequently delivers a report late, the client simply should not engage that firm again. Lenders, and their agents, should consider increasing the fees they are willing to pay. Then, basic principles of supply and demand indicate some provider will render the service as agreed. Isn't this a basic economic concept; that is, higher price breeds more supply?

The above comments about time delivery assumes the appraiser is enabled to view the subject in a timely fashion and is provided the necessary background information in a timely manner. In many cases, lenders say they will get the necessary background info to the appraiser but not actual delivery until a day or two before the report is targeted for delivery. This illustrated the need by appraisers to have a clear scope of work agreement.

When a lender believes an appraiser has breached a contract, let them seek remedy in a court or law. Why are more laws needed?

John H. Urubek, MAI, CCIM

Realty Value Consultants, Inc.

and

Appraisers Paradise, Inc.

6915 W. Cermak Rd, Suite 2

Berwyn, IL 60402

RVC 708-788-7272

AP 630-427-9090

Cell 708-557-3662

In God We Trust

From: Tinjum Appraisal [mailto:ctinjum@lakesnet.net]
Sent: Tuesday, January 15, 2013 2:32 PM
To: 'Jodie Campbell'; Joe Ibach; David Lanpher; Timothy R. Timian
Subject: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

RE: HOUSE BILL NO. 1216
Billing practices – Breach of Contract relating to the regulation of real estate appraisers.

Appraisal billings sent to the client/AMC reflect the appraiser's charges; we do not know what the third party/AMC's are charging over and above as it is not disclosed to the appraiser. The appraiser rarely (if ever) knows what a third party such as an AMC is charging their client. This is something that should be stated with the Truth in Lending disclosure practices and on the closing statement. Most clients get some form of billing and/or the confirmation receipt that the work was completed for \$XX, not \$YY (as indicated on the closing statement).

This proposed bill is over reaching. There are multiple problems that can occur which can delay a report which the appraiser has no control of and would result in extended delivery time and potentially not meeting the due date. Uncertainties would then require a detailed contract in each assignment creating extended time and increase costs. The appraiser and client need to work together, if due dates can't be met due to uncertainties; the client (AMC or bank, etc) should be contacted. Saying the appraiser will receive no fee or needs to refund the fee if the date is not met is rather harsh.

Laws and rules are enacted to protect the citizens from bad actors and should not create problems for the provider. We think this bill is unnecessary.

Rodger K. Tinjum, ARA
Certified General Real Property Appraiser
ND License # CG-1147

Clarissa M. Tinjum
Certified Residential Real Property Appraiser
ND License # CR-21256

Midcontinent

Webmail



Date: Tue, 22 Jan 2013 19:29:41 -0600 [19:29:41 CST]

From: Jodie Campbell <jcampbell@bis.midco.net>

To: jcampbell@bis.midco.net

Subject: FW: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

From: Marv Siebrecht [mailto:marv@cendak.com]

Sent: Tuesday, January 15, 2013 3:41 PM

To: 'Jodie Campbell'

Subject: RE: LEGISLATIVE ALERT : HB 1216 - Billing Practices-Breach of Contract

This bill has no merit.

It should not even be considered. The fee transparency should be part of the proposed AMC regulation. If the AMC'S know they have to provide this information in order to do business in North Dakota, they may decide against entering the state rather than provide the itemized fee structure. Making the fee transparency part of the appraiser regulations will do no good as the AMC'S will not provide the itemized fee structure as there is no law forcing them to do so. So now we will punish the appraiser because he/she can't get the itemized bill.

As for the penalty for late delivered appraisals, let the lenders work this out. The legislature should not have to be involved in the lenders problem. If the lenders are not smart enough to figure out a cure for the problem then they should have to suffer with the problem. They don't have to hire the appraiser that is chronically late. They can also file a complained with appraisal board. Most national lenders that I work with have a penalty clause in their contract which states that the fee will be reduced by a certain amount for each day that the appraisal is late. There is also a provision that grants an extension, if the request is reasonable, provided the lender was contacted before the due date.

Marvin E. Siebrecht

State Certified Appraiser

Aberdeen, South Dakota

Re: that provision of HB 1216 stated as follows: "Unless the terms of a contract for an appraisal provide otherwise, the liquidated damages for failure of the appraiser to provide the appraisal report by the agreed - upon date is a full refund of the appraisal fee."

Jodie R. Campbell
NDREAB
701-222-1051
jcampbell@bis.midco.net

For commercial appraisals which often are contracted with a target date of four weeks or more, I see a few possible scenarios playing out if this bill becomes law. Since the appraiser is typically asked for a delivery date four or more weeks in advance, the appraiser is basically using an "educated guess" as to when active assignments which predated the letter of engagement for a particular assignment will be completed and the assignment results in question will be delivered. The first potential problem is that to be held to that target date to the extent that the appraiser will forfeit the appraisal fee which ostensibly could represent twenty or more hours of work by the appraiser and perhaps an equal amount by staff will likely lead to contracts which "provide otherwise" but not just in terms of a stated portion of the bill to be subject to forfeiture. This could mean extended durations from letter of engagement to report delivery written into the proposal (bid) by the appraiser in order to "hedge his bet" that the appraiser is allowing himself sufficient time to fulfill his pre-existing contractual obligations.

The second possible outcome is that appraisal assignments will be declined by the appraiser if language in the contract states "pursuant to North Dakota law", which compels the appraiser to deliver the report by an "agreed-upon date" or he has broken the law. This arguably will mean that such a law does not serve the public since access to financing for commercial ventures will be diminished to some degree because the pool of appraisers for a particular client or assignment may be diminished.

A third and undeniably unwanted potential result of such a law could be that an appraiser chooses to cut short his analysis because he fears that if he attempts to extend the timetable to insure that the scope of work provision of the contract is fulfilled, the client will invoke the use of the law as leverage for pre-mature delivery of the report when circumstances affecting the timing have changed over the four week assignment term. All blame for such an occurrence lies with the appraiser and not the client, even though "timing" of report delivery may supersede "credible assignment results" as demonstrated by the words or actions of the client. Additionally, why would an appraiser even deliver a report a day late if he knows he isn't going to get paid because he couldn't fulfill his scope of work obligation within the originally prescribed timing. Will the law actually compel late delivery of the report?

I see little benefit to such a law and no mandate inherent in it which will promote more thoughtful professional valuations. In my opinion such a law at best promotes haste over substance and at worst could result in ethics violations in instances where the appraiser acts under duress created by the fear of monetary loss.

Daryl J. Matthew
Fergus Falls, MN
Minnesota License #4002450
North Dakota License #CG-21259

2-18-13

1

13.0303.01003
Title.

Prepared by the Legislative Council staff for
Representative Steiner
February 14, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1216

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 43-23.3 of the North Dakota Century Code, relating to regulation of real estate appraisers; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-23.3 of the North Dakota Century Code is created and enacted as follows:

Appraisal form. *see Reporting.*

If an appraiser appraises a noncomplex, one-family to four-family residential property, on the first page of that appraisal form the appraiser shall report the appraisal fee paid to the appraiser.

SECTION 2. APPRAISER CONTRACTS - LEGISLATIVE MANAGEMENT STUDY. During the 2013-14 interim, the legislative management shall consider studying whether implementation of a penalty or other financial consequence would improve appraiser compliance with timelines under appraiser contracts. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1216

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 43-23.3 of the North Dakota Century Code, relating to regulation of real estate appraisers; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-23.3 of the North Dakota Century Code is created and enacted as follows:

Appraisal fee reporting.

An appraiser's fee, paid to the appraiser, must be recorded on the first page of the appraisal form for one-family to four-family residential properties.

SECTION 2. APPRAISER CONTRACTS - LEGISLATIVE MANAGEMENT STUDY. During the 2013-14 interim, the legislative management shall consider studying whether implementation of a penalty or other financial consequence would improve appraiser compliance with timelines under appraiser contracts. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly