

## Appraisers and Evaluations

*The Florida Legislature intended for appraisers to be able to  
provide evaluations pursuant to the IAEG;*

*FREAB must not restrict the ability of appraisers to provide evaluations*

- The intent of the Florida legislature when it enacted the changes to 475.612 in 2017 was to permit appraisers to perform evaluations outside of USPAP and in accordance only with the Interagency Appraisal and Evaluation Guidelines (IAEG).
- Enacting regulations that require appraisers to comply with USPAP when providing evaluations is contrary to the intent of the legislature and effectively prohibits appraisers from being able to provide evaluations as directed by the legislature.
- Federally regulated financial institutions are not able to utilize Restricted Appraisal Reports for underwriting purposes.
- Other states have taken steps to allow licensees to perform evaluations in accordance only with the IAEG.
- Florida brokers, sales associates, and broker associates are legally allowed to perform evaluations and appraisals and are not required to comply with USPAP. But, appraisers cannot.
- FREAB should adhere to the legislative intent and should NOT enact regulations that require licensees to comply with USPAP when providing evaluations.
- Allowing licensees to provide the same non-USPAP compliant valuation services as are being provided by non-appraisers enhances the public trust.
- FREAB should follow the lead of Tennessee and Illinois and issue a declaratory statement that clarifies that licensees may perform non-USPAP compliant evaluations in accordance only with the IAEG. A licensee may not be engaged as an appraiser when providing evaluations and is not subject to the jurisdiction of FREAB when providing those services. An evaluation must be clearly labeled that "This is not an appraisal". Evaluations may only be provided to federally regulated financial institutions for real estate related financial transactions.

### Background

Federally regulated financial institutions are permitted by federal law/policy to utilize non-USPAP compliant opinions of the value of real estate provided by non-appraisers in the form of evaluations in lieu of USPAP-compliant appraisals provided by state-licensed and state-certified appraisers for four categories of real estate related financial transactions.<sup>1</sup> The Interagency Appraisal and Evaluation Guidelines (IAEG)<sup>2</sup> dictate who can perform evaluation services for real estate related financial

---

<sup>1</sup> (1) Any transaction value is \$250,000 or less; (2) A Qualified Business Loan with a value of \$1 Million or less that is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment; (3) The transaction involves an existing extension of credit at the lending institution, provided that there has been no material change in market conditions or physical aspects of the property or there is no advancement of new monies; and (4) The transaction is a commercial real estate transaction that has a transaction value of \$500,000 or less.

<sup>2</sup> <https://www.fdic.gov/regulations/laws/rules/5000-4800.html>

transactions when an appraisal is not required, and what information an evaluation must contain. Anyone, including an appraiser, that meets certain minimum qualifications can provide evaluation services. In most states, a person who is a state-licensed or state-certified appraiser must comply with USPAP when providing any opinion of the market value of real estate.

An appraiser that performs an “evaluation” that contains a market value opinion for a financial institution is, in fact, performing an appraisal and must comply with USPAP, including the reporting requirements contained in Standard 2. However, the same requirements to comply with USPAP do not apply to non-appraiser evaluation service providers, even though they provide a product that contains a market value opinion.

Any attempt by a state to invoke the “mandatory licensing state” argument to impose appraiser licensing requirements upon non-appraisers providing evaluations will fail on the grounds of federal pre-emption.

To level the playing field between appraisers and non-appraisers, some states have adopted, and fully implemented, laws that clarify that appraisal licensees are permitted to perform non-USPAP compliant evaluations for federally regulated financial institutions.

#### Florida Law

The following two provisions were enacted by the Florida legislature in 2017 as part of HB 927:

##### 475.611(a)

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

##### 475.612(7)

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

#### Can’t Appraisers Just Produce USPAP-Compliant Restricted Appraisal Reports as Evaluations?

##### **NOT REALLY!**

It has been said that state-licensed or state-certified appraisers can fulfill requests received from federally regulated financial institutions for evaluations and remain compliant with state law requirements to adhere to USPAP that are imposed only on appraisers. It is argued that appraisers can provide evaluation

---

services by utilizing a limited Scope of Work and the Restricted Appraisal Report (RAR) option as specified in USPAP and Advisory Opinions 13 and 21.

That is a true statement.

There is one problem. Financial institutions have very little, if any, use for Restricted Appraisal Reports.

The Interagency Appraisal and Evaluation Guidelines (IAEG) state:

*Generally, a report option that is restricted to a single client and intended user will not be appropriate to support most federally related transactions. These reports lack sufficient supporting information and analysis for underwriting purposes. These less detailed reports may be appropriate for real estate portfolio monitoring purposes.*

A financial institution that engages an appraiser is only able to use a fully-documented Appraisal Report for underwriting purposes, even though a transaction may qualify for the use of a somewhat less-detailed evaluation.

Financial institutions do not need, or want to pay for, the amount of information and analysis that is required to be in an Appraisal Report when they are allowed by federal law to utilize a less-detailed, non-USPAP compliant evaluation.

Simply put, financial institutions do not engage appraisers to provide Restricted Appraisal Reports for underwriting purposes when permitted to utilize evaluations.

### **Sales Professionals Can Provide Evaluations; Why Shouldn't Appraisers Be Able to Do the Same?**

#### 475.612

*(2) This section does not preclude a Florida licensed real estate broker, sales associate, or broker associate who is not a Florida certified or licensed real estate appraiser from providing valuation services for compensation. Such persons may continue to provide valuation services for compensation so long as they do not represent themselves as certified, licensed, or registered under this part.*

Under this exemption from the provisions of the Florida appraiser licensing law, brokers, sales associates and broker associates can provide non-USPAP compliant evaluations (and appraisals) to financial institutions.

More importantly, a broker, sales associate, and broker associate can be engaged by a financial institution as an appraiser (so long as they do not imply that they are certified, licensed or registered), and is not required to comply with USPAP.

Brokers, sales associates, and broker associates are not subject to the jurisdiction of FREAB when providing evaluations or appraisals to financial institutions.

Unlike a broker, sales associate, or broker associate, a state certified, licensed or registered appraiser SHOULD be, and is, required to comply with USPAP when providing an appraisal. However, appraisers, even those that are state certified, licensed or registered should be able to provide evaluation services to financial institutions on the same terms as brokers, sales associates, or broker associates (i.e., in compliance only with the Interagency Appraisal and Evaluation Guidelines).

### How Do Other States Treat Appraisers and Evaluations?

#### Georgia

Classified appraisers in Georgia are permitted to provide “evaluation appraisals” and are not required to comply with USPAP when providing those services. An “evaluation appraisal” is defined as an opinion of value that is consistent with the IAEG. A classified appraiser performing an evaluation appraisal must comply with the “Standards for Developing and Reporting an Evaluation Appraisal” which are consistent with the requirements for evaluations in the IAEG.

See <http://rules.sos.ga.gov/gac/539-3?urlRedirected=yes&data=admin&lookingfor=539-3>

#### Illinois

The Illinois Real Estate Appraiser Licensing Act contains the following provision:

##### 458/5-5. Necessity of license; use of title; exemptions

g) This Act does not apply to an employee, officer, director, or member of a credit or loan committee of a financial institution or any other person engaged by a financial institution when performing an evaluation of real property for the sole use of the financial institution in a transaction for which the financial institution would not be required to use the services of a State licensed or State certified appraiser pursuant to federal regulations adopted under Title XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, nor does this Act apply to the procurement of an automated valuation model.

“Automated valuation model” means an automated system that is used to derive a property value through the use of publicly available property records and various analytic methodologies such as comparable sales prices, home characteristics, and historical home price appreciations.

Guidance issued by the Illinois Department of Financial and Professional Regulation (IDFPR) has issued guidance regarding “Evaluations in Illinois” (see attached) which clarifies that:

- 1) Evaluation are not regulated by IDFPR
- 2) An Illinois licensed, or certified, appraiser is not precluded from performing an evaluation
- 3) An evaluation **must not** comply with USPAP
- 4) IDFPR does not have guidelines of its own for evaluations.
- 5) Referencing a state appraiser license # on an evaluation is prohibited.
- 6) Appraisers performing evaluations are permitted to reference their appraiser qualifications when performing an appraisal and may reference appraisal-related professional designations.

### Indiana

Indiana law (25-34.1-3-2) states that no provision of the Indiana appraiser licensing law applies to:

*(13) the performance of an evaluation of real property by an employee, an officer, a director, or a member of a credit or loan committee of a financial institution, or by any other person engaged by a financial institution, in a transaction for which the financial institution would not be required to use the services of a state licensed appraiser under regulations adopted under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.).*

### Tennessee

Tennessee law states that:

*(d)(1) This chapter does not apply to any evaluation of the value of real estate serving as collateral for a loan made by a federally regulated financial institution or to any evaluation of the value of the assets of a trust held by the institution; provided, that:*

- (A) The applicable federal regulator does not require an appraisal by a state-licensed or state-certified appraiser for the loan or trust;*
- (B) The evaluation is used solely by the financial institutions in their records to document the collateral or asset value;*
- (C) The evaluation shall be labeled on its face "this is not an appraisal"; and*
- (D) Individuals performing these evaluations may be compensated for their services.*

*(2) Nothing in this chapter shall prevent a state-licensed or state-certified appraiser from performing the evaluation.*

A 2010 Attorney General Opinion (10-25) contains the following clarification of Tennessee law:

*"An evaluation of the value of real property...is not an "appraisal" or "appraisal report" because it is expressly exempted... so long as it is used for the limited purposes...and is labeled as "not an appraisal" .... If such an evaluation is not limited in its use ... then it would constitute an "opinion of value" and qualify as an "appraisal" and "appraisal report""*

*"When read together, these two sections clarify when the USPAP and other appraisal standards are applicable to work performed by an appraiser. The standards apply to all appraisals except for...evaluations."*

In April 2018, the Tennessee Real Estate Appraiser Commission published a Q & A focused on real estate evaluations performed by state-licensed and state-certified appraisers.

The publication clarifies that evaluations performed by licensed and certified appraisers are not required to comply with USPAP, and that an appraiser performing an evaluation is permitted to reference their

credentials, including a state appraiser license or certification number and appraisal-related professional designations.

The Q & A also states that evaluations performed by appraisers do not fall within the regulatory purview of the Real Estate Appraiser Commission and they must include a disclaimer stating, "This is not an appraisal."

Tennessee law allows state-licensed or state-certified appraisers to perform an evaluation for federally regulated financial institutions when a USPAP-compliant appraisal is not required by federal law.

Read the [Tennessee Department of Commerce & Insurance Q&A](#).

### Texas

The Texas Appraiser Licensing and Certification Board issued a Proposed Rule that would permit Texas licensed and certified appraisers to perform non-USPAP compliant evaluations for commercial real estate transactions with a value less than \$500,000.

The Proposed Rule is as follows:

#### §155.3. Work Relating to Commercial Real Estate Transactions.

(a) For purposes of this section "commercial real estate transaction" means a federally-related transaction that is not secured by a single 1-to-4 family residential property.

(b) The preparation of an evaluation for a commercial real estate transaction with a transaction value of \$500,000 or less by a person who is licensed under the Texas Appraiser Licensing and Certification Act, Chapter 1103, Texas Occupations Code, is considered an appraisal or appraisal practice for the purposes of §155.1 of this chapter and must conform with Uniform Standards of Professional Appraisal Practice (USPAP), unless the person preparing the evaluation includes the disclaimer set out in subsection (c) of this section.

(c) The USPAP disclaimer required under this section must:

- (1) be located directly above the preparer's signature;
- (2) be in at least 10-point boldface type; and
- (3) read as follows: USPAP DISCLAIMER: I AM LICENSED OR CERTIFIED AS A REAL PROPERTY APPRAISER. THIS EVALUATION WAS NOT PREPARED IN MY CAPACITY AS A REAL PROPERTY APPRAISER AND MAY NOT COMPLY WITH THE REQUIREMENTS FOR DEVELOPMENT OF A REAL PROPERTY APPRAISAL CONTAINED IN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) OF THE APPRAISAL STANDARDS BOARD OF THE APPRAISAL FOUNDATION.

## Virginia

Virginia state-licensed and certified appraisers are permitted to provide evaluations for financial institutions in accordance only with the IAEG. An evaluation prepared by an appraiser must contain a disclaimer.

Virginia law (§ 54.1-2010) states that no provision of the Virginia appraiser licensing law applies to:

*5. Any person, including (i) a licensed residential real estate appraiser, certified residential real estate appraiser, or certified general real estate appraiser or (ii) an employee of a financial institution or lender, who provides an evaluation of real estate or real property in connection with a real estate-related financial transaction where an appraisal by a state-certified or state-licensed appraiser is not required by the state or federal financial institution's regulatory agency engaging in, contracting for or regulating such real estate-related financial transaction or regulating the financial institution or lender engaged in or about to engage in such real estate-related financial transaction. The evaluations provided by such persons shall comply with any standards imposed by the state or federal financial institution's or lender's regulatory agencies for evaluations prepared by nonstate-certified or nonstate-licensed appraisers.*

An evaluation is defined in § 54.1-2009 as:

*"An opinion of the market value of real property or real estate that may be utilized in connection with a real estate-related financial transaction where an appraisal by a state-certified or state-licensed appraiser is not required by the state or federal financial institution's regulatory agency engaging in, contracting for, or regulating such real estate-related financial transaction or regulating the financial institution or lender engaged in or about to engage in such real estate-related financial transaction. An evaluation is limited in its scope and development to the requirements for evaluations as set forth in the Interagency Appraisal and Evaluation Guidelines promulgated by the Office of the Comptroller of the Currency et al. (75 F.R. 77450).*

Section 54.1-2017.1 requires that:

*A. Any evaluation, as defined in § 54.1-2009, shall contain the statement: "This is not an appraisal performed in accordance with the Uniform Standards of Professional Appraisal Practice."*

*B. The evaluation report may be prepared in any reporting format, provided that (i) the reporting format meets the requirements as set forth in the Interagency Appraisal and Evaluation Guidelines promulgated by the Office of the Comptroller of the Currency et al. (75 F.R. 77450) and (ii) the evaluation report contains sufficient information in clear and understandable language to allow a person to understand the opinion of the market value of real property or real estate.*

## Summary

**Any requirements imposed by the Florida Real Estate Appraisal Board that direct state-licensed and state-certified appraisers to comply with USPAP when providing evaluations as permitted in 475.612 is, in effect, a prohibition on appraisers providing evaluations in contradiction to the expressed intent of the Florida legislature.**

Enacting regulations that require Florida state-licensed and state-certified appraisers to comply with USPAP when providing evaluations is contrary to the intent of the Florida legislature – to allow appraisers to perform evaluations only in compliance with the Interagency Appraisal and Evaluation Guidelines (IAEG) - when it enacted changes to 475.611 and 475.612 in 2017.

Further, enacting these regulations would set Florida apart from how other state legislatures and state appraiser regulatory agencies have approached this same issue.

Allowing appraisers to provide the same non-USPAP compliant valuation services that are currently being provided perfectly legally by non-appraisers, including brokers, sales associates and associate brokers enhances the public trust and helps to ensure the safety and soundness of America's financial system.

## Declaratory Statement

The Florida Real Estate Appraisal Board (FREAB) should adhere to the intent of the legislature when it enacted HB 917 by issuing the following statement of policy:

*Pursuant to Florida law, a state-licensed or state-certified appraiser may perform an evaluation of real property in connection with a real estate-related financial transaction which is regulated by a federal financial institutions regulatory agency. An "evaluation" is a non-USPAP compliant valuation service provided to a federally regulated financial institution when the applicable federal regulator does not require an appraisal and the evaluation is used solely by the financial institution to document collateral or asset value. The guidelines for evaluations are set forth in the Interagency Appraisal and Evaluation Guidelines (IAEG). The Florida Real Estate Appraisal Board (FREAB) does not have jurisdiction over evaluations or over appraisers when providing evaluation services. An appraiser must not comply with USPAP when providing an evaluation as doing so would make the service an appraisal service and subject the appraiser to FREAB jurisdiction. An evaluation shall be labeled on its face that "This is not an appraisal".*



## Appraisers Providing Evaluations

Federally regulated financial institutions are permitted by federal law/policy to utilize non-USPAP compliant opinions of the value of real estate provided by non-appraisers in the form of evaluations in lieu of USPAP-compliant appraisals provided by state-licensed and state-certified appraisers for four categories of real estate related financial transactions.<sup>1</sup> The Interagency Appraisal and Evaluation Guidelines (IAEG)<sup>2</sup> dictate who can perform evaluation services for real estate related financial transactions when an appraisal is not required, and what information an evaluation must contain. Evaluations may be used solely by financial institutions to document collateral asset value.

The following table summarizes the requirements in those states that permit state licensed appraisers to perform evaluations:

	Statute/Regulation	State issued guidance on the performance of evaluations by state licensed appraisers	Does the state appraiser licensing law allow appraisers to perform evaluations?	Does an evaluation performed by an appraiser have to meet USPAP requirements?	Is a licensed or certified appraiser precluded from providing an evaluation?	Are evaluations performed by licensed appraisers regulated by the state?	Does the state have jurisdiction over appraisers when providing evaluations?	Are there specific evaluation guidelines set forth by the state?	Does placing an appraiser license number on an evaluation make it an appraisal?	Does using a professional designation on an evaluation make it an appraisal?	Does an evaluation require a disclaimer that it is not an appraisal?
Florida	<a href="#">F.S.A. 175.012(2)</a>		Yes	??	No	??	??	Yes, the IAEG	??	??	Yes
Alaska	<a href="#">AS 6.08.87.100</a>		Yes	No. The state only regulates FRTs.	No. The state only regulates FRTs.	No	No	No	Yes	Unknown	Unknown
Georgia	<a href="#">Rule 539-3-.04, Standards for Developing and Reporting an Evaluation Appraisal</a>		Yes. "Evaluation Appraisals"	No. There are specific guidelines for "Evaluation Appraisals"	No	Yes	Yes. "Evaluation Appraisals"	Yes	Unknown	Unknown	No
Illinois	<a href="#">225 ILCS 458/5-5(a)</a>	"Evaluations in Illinois"	Yes	No	No	No	No	No	Yes	No	No
Indiana	<a href="#">25-34-1-3-2 Transactions without license prohibition; exemption</a>		Yes	No. An appraiser is not subject to the appraiser licensing law when providing an evaluation	No	No	No	No	Unknown	Unknown	No
Oklahoma	<a href="#">5.858-702, Application of Act</a>		Yes. The state only regulates appraisals for FRTs	No	No	No	No	No	Unknown	Unknown	Unknown

<sup>1</sup> (1) Any transaction value is \$250,000 or less; (2) A Qualified Business Loan with a value of \$1 Million or less that is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment; (3) The transaction involves an existing extension of credit at the lending institution, provided that there has been no material change in market conditions or physical aspects of the property or there is no advancement of new monies; and (4) The transaction is a commercial real estate transaction that has a transaction value of \$500,000 or less.

<sup>2</sup> <https://www.fdic.gov/regulations/laws/rules/5000-4800.html>

Appraisers Providing Evaluations

	Statute/Regulation	State issued guidance on the performance of evaluations by state licensed appraisers	Does the state appraiser licensing law allow appraisers to perform evaluations?	Does an evaluation performed by an appraiser have to meet USPAP requirements?	Is a licensed or certified appraiser precluded from providing an evaluation?	Are evaluations performed by licensed appraisers regulated by the state?	Does the state have jurisdiction over appraisers when providing evaluations?	Are there specific evaluation guidelines set forth by the state?	Does placing an appraiser license number on an evaluation make it an appraisal?	Does using a professional designation on an evaluation make it an appraisal?	Does an evaluation require a disclaimer that it is not an appraisal?
Tennessee	<u>§ 62-39-104. Applicability</u>	<u>FAQs</u> <u>Attorney General's Opinion</u>	Yes	No	No	No	No	No	No	No	No
Texas (pending regulation)	<u>Proposed 22 TAC § 155.3 "Work Relating to Commercial Real Estate Transactions."</u>		Yes, for CRE transactions	No	No, for CRE transactions	No	No	No	Unknown	Unknown	Yes
Virginia	<u>§ 54.1-2010. Exemptions from licensure</u>		Yes	No	No	No	No	Yes, the IAEG	Unknown	Unknown	Yes
Wyoming	<u>§ 33-38-103. Exemptions</u>		Yes	No	No	No	No	No	Unknown	Unknown	Unknown

## Evaluations in Illinois

In Illinois: any USPAP-compliant document is an appraisal. All documents labeled as an appraisal, must be USPAP-compliant and completed by credentialed Illinois appraiser. Trainees receive experience credit for completing appraisals in Illinois.

*For purposes of these questions and answers, "evaluation" means an "evaluation of the value of real estate serving as collateral for a loan made by a federally regulated financial institution or to any evaluation of the value of the assets of a trust held by the institution; provided, that:*

*(A) The applicable federal regulator does not require an appraisal by a state-licensed or state-certified appraiser for the loan or trust;*

*(B) The evaluation is used solely by the financial institutions in their records to document the collateral or asset value;*

Are evaluations regulated by IDFPFR?

No.

Because I am an Illinois licensed or certified appraiser, am I excluded from performing an evaluation?

No.

Does an evaluation, performed by a licensed or certified appraiser, have to meet USPAP requirements?  
By definition, it can't be USPAP-compliant.

Are there specific guidelines set forth by IDFPFR, as to what must be included in an evaluation?

No, because evaluations are not regulated by IDFPFR. Evaluation guidelines are set forth by the Interagency Appraisal and Evaluation Guidelines.

Does placing an Illinois appraiser license or certification number on an evaluation make it an appraisal?  
Yes.

Does using a professional designation on an evaluation make it an appraisal?  
No.

Does attaching your qualifications to an evaluation make it an appraisal?  
No.

If an exhibit in an evaluation has the word "appraisal" on it and the balance of the report meets the evaluation requirements, does it become an appraisal?  
Yes.

Can an appraiser perform an evaluation for another use or user that is not a part of a Federal Related Transaction (FRT)?  
No.

Can I include a certification with an evaluation that is required by a professional organization of which I am a member?  
Yes. As long as the requirements are met for the report to be considered as an evaluation and a person not licensed as an appraiser does not represent themselves as so licensed.

# Evaluations in Tennessee

## ★ What is a real estate evaluation?

- For purposes of these questions and answers, “evaluation” means an “evaluation of the value of real estate serving as collateral for a loan made by a federally regulated financial institution or to any evaluation of the value of the assets of a trust held by the institution; provided, that:
- (A) The applicable federal regulator does not require an appraisal by a state-licensed or state-certified appraiser for the loan or trust;
- (B) The evaluation is used solely by the financial institutions in their records to document the collateral or asset value;
- (C) The evaluation shall be labeled on its face “this is not an appraisal”; and
- (D) Individuals performing these evaluations may be compensated for their services.”  
Tenn. Code Ann. § 62-39-104(d)
- **Interagency Appraisal and Evaluation Guidelines**  
- <https://www.fdic.gov/regulations/laws/rules/5000-4800.html>

## ★ Are evaluations regulated by the Tennessee Real Estate Appraiser Commission?

As long as the evaluation meets the requirements set forth in T.C.A. § 62-39-104(d), it is exempt from regulation. If it does not meet all requirements in T.C.A. § 62-39-104(d) and otherwise meets the definition of an appraisal, it is an appraisal and must follow all statutes and rules.

## ★ As a Tennessee licensed or certified appraiser, can I perform an evaluation?

Yes.

## ★ Does an evaluation, performed by a licensed or certified appraiser, have to meet USPAP requirements?

No, as long as the evaluation meets the requirements set forth in T.C.A. § 62-39-104(d). If the evaluation does not meet those requirements and otherwise meets the definition of an appraisal, it is an appraisal and must follow USPAP pursuant to Tenn. Comp. R. & Regs § 1255-05-.01(2).

## ★ Are there specific guidelines set forth by the Tennessee Real Estate Appraiser Commission, as to what must be included in an evaluation?

No, because evaluations are not regulated by the Commission there are no specific guidelines set forth or enforced by the Commission. Evaluation guidelines are set forth by the Interagency Appraisal and Evaluation Guidelines (IAEG). IAEG guidelines can be found at <https://www.fdic.gov/regulations/laws/rules/5000-4800.html>.

★ Does placing a Tennessee appraiser license number on an evaluation make it an appraisal (assuming the report meets the evaluation requirements set forth in T.C.A. § 62-39-104(d))?

No. An appraiser is permitted to place their license number on the evaluation.

★ Does using a professional designation on an evaluation make it an appraisal (assuming the report meets the evaluation requirements set forth in T.C.A. § 62-39-104(d))?

No. An appraiser is permitted to place their professional designation on the evaluation.

★ Does attaching your qualifications to an evaluation make it an appraisal (assuming the report meets the evaluation requirements set forth in T.C.A. § 62-39-104(d))?

No.

★ If an exhibit in an evaluation has the word "appraisal" on it and the balance of the report meets the evaluation requirements set forth in T.C.A. § 62-39-104(d), does it become an appraisal?

No.

★ Can an appraiser perform an evaluation for another use or user that is not a part of a Federal Related Transaction (FRT)?

No. The definition of an evaluation requires that the evaluation be of the value of real estate serving as collateral for a loan made by a federally regulated financial institution or to any evaluation of the value of the assets of a trust held by the institution.

★ Can I include a certification with an evaluation that is required by a professional organization of which I am a member?

Yes. As long as the requirements are met for the report to be considered as an evaluation and a person not registered as an appraiser does not represent themselves as so registered.

STATE OF TENNESSEE  
OFFICE OF THE  
ATTORNEY GENERAL  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

March 5, 2010

Opinion No. 10-25

Whether an "Evaluation" of Real Property Constitutes an "Appraisal" and an "Appraisal Report"

QUESTIONS

1. When a state-licensed or certified appraiser performs an evaluation of real property under Tenn. Code Ann. § 62-39-104(d) and develops an opinion of collateral or asset value, is such "evaluation" also an "appraisal" and an "appraisal report," as defined in Tenn. Code Ann. § 62-39-102(2) and (5)?

2. If the answer to question 1 is yes, then does Tenn. Code Ann. § 62-39-104(d)(1), which states that "this chapter does not apply to any evaluation," conflict with Tenn. Code Ann. § 62-39-329?

3. If the answer to question 2 is yes, which provision governs: Tenn. Code Ann. § 62-39-104(d)(1) or Tenn. Code Ann. § 62-39-329?

OPINIONS

1. No. An evaluation of the value of real property performed under Tenn. Code Ann. § 62-39-104(d) is not an "appraisal" or "appraisal report" under Tenn. Code Ann. § 62-39-102(2) and (5) because it is expressly exempted from the definitions and requirements of title 62, chapter 39 by section -104(d), so long as it is used for the limited purposes of that section and is labeled as "not an appraisal" pursuant to section -104(d)(1)(C). If such an evaluation is not limited in its use to the strict confines of section -104(d), then it would constitute an "opinion of value" and qualify as an "appraisal" and "appraisal report" within the meaning of section -102(2) and (5).

2. Tenn. Code Ann. §§ 62-39-104(d) and -329 do not conflict with each other. When read together, these two sections clarify when the USPAP and other appraisal standards are applicable to work performed by an appraiser. The standards apply to all appraisals except for section -104(d) evaluations.

3. As stated in response to the second question, Tenn. Code Ann. §§ 62-39-104(d) and -329 do not conflict with each other. Neither section "governs." Both should be read together to determine when appraisal standards are applicable.

## ANALYSIS

1. Tenn. Code Ann. §§ 62-39-101 *et seq.* is known as the “State Licensing and Certified Real Estate Appraisers Law” (the “Act”). Tenn. Code Ann. § 62-39-101 (2009). The Act requires real estate appraisers to obtain a state license or certification, Tenn. Code Ann. § 62-39-103 (2009), establishes a real estate appraiser commission, Tenn. Code Ann. §§ 62-39-201 *et seq.* (2009), and sets forth certain licensing, certification, and examination requirements for appraisers. Tenn. Code Ann. §§ 62-39-301 *et seq.* (2009).

As defined by the Act, an “appraisal” is “the act or process of developing an opinion of value of identified real estate.” Tenn. Code Ann. § 62-39-102(2) (2009). An “appraisal report” is defined as “any communication, written or oral, of an opinion of value of identified real estate.” Tenn. Code Ann. § 62-39-102(5) (2009). The Act requires that “appraisals be performed in accordance with generally accepted appraisal standards; therefore, state licensed and/or certified real estate appraisers must comply with the Uniform Standards of Professional Appraisal Practice” (the “USPAP”). Tenn. Code Ann. § 62-39-329 (2009). But Tenn. Code Ann. § 62-39-104(d) (2009) exempts certain “evaluations” from the requirements of the Act.

(1) This chapter does not apply to any evaluation of the value of real estate serving as collateral for a loan made by a federally regulated financial institution or to any evaluation of the value of the assets of a trust held by the institution; provided, that:

(A) The applicable federal regulator does not require an appraisal by a state-licensed or state-certified appraiser for the loan or trust;

(B) The evaluation is used solely by the financial institutions in their records to document the collateral or asset value;

(C) The evaluation shall be labeled on its face “this is not an appraisal”; and

(D) Individuals performing these evaluations may be compensated for their services.

(2) Nothing in this chapter shall prevent a state-licensed or state-certified appraiser from performing the evaluation.

The distinction between an appraisal and a section -104(d) evaluation of real estate is not the purpose of such appraisal or evaluation but, rather, the circumstances under which one is performed. In both instances an appraiser would attempt to determine the value of certain real property. However, an evaluation that is performed under section -104(d) and satisfies the requirements of that section, including labeling the evaluation as “not an appraisal” on its face, is not an “appraisal” or an “appraisal report” under section -102(2) and (5) because it is expressly exempted from the definitions and requirements of title 62, chapter 39. If an evaluation does not fall within the strict confines of section -104(d), then it would constitute an “opinion of value” and qualify as an “appraisal” and an “appraisal report” within the meaning of section -102(2) and (5).

2. The Act requires appraisals to comply with appraisal standards such as the USPAP.

It is the intent of this chapter that real estate appraisals be performed in accordance with generally accepted appraisal standards; therefore, state licensed and/or certified real estate appraisers must comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation and any other duly established standards of the commission.

Tenn. Code Ann. § 62-39-329 (2009). The explicit language of section -104(d) exempts evaluations performed thereunder from the provisions of the Act.

(1) *This chapter does not apply to any evaluation* of the value of real estate serving as collateral for a loan made by a federally regulated financial institution or to any evaluation of the value of the assets of a trust held by the institution. . . .

Tenn. Code Ann. § 62-39-104(d)(1) (2009) (emphasis added). As discussed in response to the first question, a section -104(d) real estate evaluation is not an appraisal and appraisal report. Sections -104(d) and -329 do not conflict with each other. When read together, these two sections clarify when the USPAP and other appraisal standards are applicable to work performed by an appraiser. The standards apply to all appraisals except for section -104(d) evaluations.

3. As stated in response to the second question, Tenn. Code Ann. §§ 62-39-104(d) and -329 do not conflict with each other. Neither section “governs.” Both should be read together to determine when appraisal standards are applicable.

ROBERT E. COOPER, JR.  
Attorney General and Reporter

MICHAEL E. MOORE  
Solicitor General



NICHOLAS G. BARCA  
Assistant Attorney General

Requested by:

Herbert E. Phillips  
Chairman, Tennessee Real Estate Appraiser Commission  
Department of Commerce and Insurance  
Office of Legal Counsel  
500 James Robertson Parkway  
5<sup>th</sup> Floor, Davy Crockett Tower  
Nashville, Tennessee 37243-0569