S T A T E O F N E W Y O R K

5403

2011-2012 Regular Sessions

I N A S S E M B L Y

February 18, 2011

Introduced by M. of A. TOWNS -- read once and referred to the Committee on Judiciary

AN ACT to amend the executive law, in relation to ensuring the accuracy, independence, objectivity and impartiality of appraisers and appraisals of real estate that serve as collateral for loans on residential property

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "independent home valuation act".

S 2. The executive law is amended by adding a new section 160-aa-1 to read as follows:

S 160-AA-1. INDEPENDENT HOME VALUATION. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "APPRAISER" SHALL MEAN ANY STATE CERTIFIED REAL ESTATE APPRAISER, STATE LICENSED REAL ESTATE APPRAISER, STATE LICENSED REAL ESTATE APPRAISER ASSISTANT, APPRAISAL MANAGEMENT COMPANY OR EMPLOYEE OF AN APPRAISAL MANAGEMENT COMPANY.

(B) "APPRAISAL" SHALL MEAN ANY APPRAISAL, REAL ESTATE APPRAISAL, CERTIFIED APPRAISAL, CERTIFIED APPRAISAL REPORT, LICENSED APPRAISAL, LICENSED APPRAISAL REPORT OR APPRAISAL ASSIGNMENT WITH RESPECT TO THE VALUE OF REAL ESTATE THAT IS TO BE COVERED BY A RESIDENTIAL LOAN OR IS BEING OFFERED AS SECURITY ACCORDING TO AN APPLICATION FOR A RESIDENTIAL LOAN.

(C) "BORROWER" SHALL MEAN ANY INDIVIDUAL OBLIGATED TO REPAY A RESIDENTIAL LOAN, INCLUDING A COBORROWER, COSIGNER OR GUARANTOR.

(D) "RESIDENTIAL LOAN" SHALL MEAN A LOAN SECURED BY A MORTGAGE OR DEED OR TRUST ON REAL ESTATE USED FOR RESIDENTIAL PURPOSES.

(E) "PERSON" SHALL MEAN ANY PERSON, ENTITY, FIRM, CORPORATION, PARTNERSHIP OR ASSOCIATION OR AGENT OR EMPLOYEE THEREOF.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2. PROHIBITION AGAINST FALSE AND MISLEADING APPRAISALS. NO APPRAISER SHALL MAKE, DIRECTLY OR INDIRECTLY, ANY FALSE, DECEPTIVE OR MISLEADING STATEMENT OR REPRESENTATION IN CONNECTION WITH AN APPRAISAL.

3. PROHIBITION AGAINST IMPROPERLY INFLUENCING AN APPRAISAL. (A) NO PERSON SHALL INFLUENCE OR ATTEMPT TO INFLUENCE THE DEVELOPMENT, REPORTING, RESULT, OR REVIEW OF AN APPRAISAL THROUGH BRIBERY, COERCION, COLLUSION, COMPENSATION, EXTORTION, INDUCEMENT, INSTRUCTION, INTIMIDATION OR IN ANY OTHER MANNER, INCLUDING, BUT NOT LIMITED TO:

(I) WITHHOLDING OR THREATENING TO WITHHOLD TIMELY PAYMENT FOR AN APPRAISAL REPORT;

(II) WITHHOLDING OR THREATENING TO WITHHOLD FUTURE BUSINESS FOR AN APPRAISER, OR DEMOTING OR TERMINATING OR THREATENING TO DEMOTE OR TERMINATE AN APPRAISER;

(III) EXPRESSLY OR IMPLIEDLY PROMISING FUTURE BUSINESS, PROMOTIONS, OR INCREASED COMPENSATION FOR AN APPRAISER;

(IV) CONDITIONING THE ORDERING OF AN APPRAISAL REPORT OR THE PAYMENT OF AN APPRAISAL FEE OR SALARY OR BONUS ON THE OPINION, CONCLUSION, OR VALUATION TO BE REACHED, OR ON A PRELIMINARY ESTIMATE REQUESTED FROM AN APPRAISER;

(V) REQUESTING THAT AN APPRAISER PROVIDE AN ESTIMATED, PREDETERMINED, OR DESIRED VALUATION IN AN APPRAISAL REPORT, OR PROVIDE ESTIMATED VALUES OR COMPARABLE SALES AT ANY TIME PRIOR TO THE APPRAISER'S COMPLETION OF AN APPRAISAL REPORT;

(VI) PROVIDING TO AN APPRAISER AN ANTICIPATED, ESTIMATED, ENCOURAGED, OR DESIRED VALUE FOR A SUBJECT PROPERTY OR A PROPOSED OR TARGET AMOUNT TO BE LOANED TO THE BORROWER, EXCEPT THAT A COPY OF THE SALES CONTRACT FOR PURCHASE TRANSACTIONS MAY BE PROVIDED;

(VII) PROVIDING TO AN APPRAISER OR ANY PERSON RELATED TO THE APPRAISER, STOCK OR OTHER FINANCIAL OR NON-FINANCIAL BENEFITS;

(VIII) ALLOWING THE REMOVAL OF AN APPRAISER FROM A LIST OF QUALIFIED APPRAISERS USED BY ANY ENTITY, WITHOUT PRIOR WRITTEN NOTICE TO SUCH APPRAISER, WHICH NOTICE SHALL INCLUDE WRITTEN EVIDENCE OF THE APPRAISER'S ILLEGAL CONDUCT, A VIOLATION OF THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) OR STATE LICENSING STANDARDS, SUBSTANDARD PERFORMANCE, OR OTHERWISE IMPROPER OR UNPROFESSIONAL BEHAVIOR;

(IX) ORDERING, OBTAINING, USING, OR PAYING FOR A SECOND OR SUBSEQUENT APPRAISAL OR AUTOMATED VALUATION MODEL IN CONNECTION WITH A MORTGAGE FINANCING TRANSACTION UNLESS THERE IS A REASONABLE BASIS TO BELIEVE THAT THE INITIAL APPRAISAL WAS FLAWED OR TAINTED AND SUCH BASIS IS CLEARLY AND APPROPRIATELY NOTED IN THE LOAN FILE, OR UNLESS SUCH APPRAISAL OR AUTOMATED VALUATION MODEL IS DONE PURSUANT TO A BONA FIDE PRE-FUNDING OR POST-FUNDING APPRAISAL REVIEW OR QUALITY CONTROL PROCESS; OR

(X) ANY OTHER ACT OR PRACTICE THAT IMPAIRS OR ATTEMPTS TO IMPAIR AN APPRAISER'S INDEPENDENCE, OBJECTIVITY, OR IMPARTIALITY.

(B) THE REQUIREMENTS OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT BE CONSTRUED AS PROHIBITING A PERSON FROM ASKING AN APPRAISER TO DO ANY OF THE FOLLOWING:

(I) PROVIDE ADDITIONAL INFORMATION OR EXPLANATION ABOUT THE BASIS FOR AN APPRAISER'S VALUATION; AND

(II) CORRECT OBJECTIVE FACTUAL ERRORS IN AN APPRAISAL REPORT.

4. PROHIBITION AGAINST IMPROPER APPRAISAL. NO APPRAISER SHALL PERFORM OR PROVIDE AN APPRAISAL INFLUENCED BY CONDUCT PROHIBITED UNDER SUBDIVISION THREE OF THIS SECTION.

5. PROHIBITION ON CONFLICTS OF INTEREST. NO APPRAISER CONDUCTING AN APPRAISAL MAY HAVE A DIRECT OR INDIRECT INTEREST, FINANCIAL OR OTHERWISE, IN THE PROPERTY OR TRANSACTION INVOLVING AN APPRAISAL.

6. PROHIBITION AGAINST IMPROPER SELECTION OF APPRAISER. (A) NO PERSON COMPENSATED ON A COMMISSION BASIS UPON THE SUCCESSFUL COMPLETION OF A REAL ESTATE TRANSACTION INVOLVING A RESIDENTIAL LOAN SHALL SELECT, RETAIN, RECOMMEND OR INFLUENCE THE SELECTION OF AN APPRAISER FOR A PARTICULAR APPRAISAL ASSIGNMENT OR FOR INCLUSION ON A LIST OR PANEL OF APPRAISERS APPROVED TO PERFORM APPRAISALS.

(B) NO APPRAISER SHALL KNOWINGLY ALLOW THEMSELVES TO BE SELECTED, RETAINED OR RECOMMENDED FOR A PARTICULAR APPRAISAL ASSIGNMENT OR FOR INCLUSION ON A LIST OR PANEL OF APPRAISERS APPROVED TO PERFORM APPRAISALS BY A PERSON COMPENSATED ON A COMMISSION BASIS UPON THE SUCCESSFUL COMPLETION OF A REAL ESTATE TRANSACTION.

7. MANDATORY REPORTING. ANY PERSON HOLDING A LICENSE, CERTIFICATION OR THE LIKE ISSUED BY THE DEPARTMENT OF STATE OR THE BANKING DEPARTMENT, OR ANY OTHER PERSON WITH AN INTEREST IN A REAL ESTATE TRANSACTION INVOLVING AN APPRAISAL WHO HAS A REASONABLE BASIS TO BELIEVE AN APPRAISER IS VIOLATING APPLICABLE LAWS, OR IS OTHERWISE ENGAGING IN UNETHICAL CONDUCT, SHALL REPORT TO THE APPROPRIATE DEPARTMENT AND THE ATTORNEY GENERAL EVIDENCE OF ANY VIOLATION OF THIS SECTION.

8. SANCTIONS. (A) A VIOLATION OF THIS SECTION IS A GROUND FOR DISCIPLINE AGAINST ANY PERSON HOLDING A LICENSE, CERTIFICATION OR THE LIKE ISSUED BY A STATE AGENCY, IF THE PRACTICE OF THE PROFESSION, OCCUPATION OR BUSINESS REGULATED BY SUCH LICENSE, CERTIFICATION OR THE LIKE RELATES TO REAL ESTATE TRANSACTIONS.

(B) ANY PERSON OTHER THAN A BORROWER WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS OR BY IMPRISONMENT NOT TO EXCEED SIX MONTHS, OR BY BOTH SUCH FINE AND IMPRISONMENT. FOR ANY SECOND OR SUBSEQUENT VIOLATION, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT NOT EXCEEDING TWO YEARS, OR BY A FINE NOT EXCEEDING ONE HUNDRED THOUSAND DOLLARS, COMMUNITY SERVICE OF NOT MORE THAN ONE THOUSAND HOURS, OR ANY COMBINATION THEREOF. PROSECUTION UNDER THIS SUBDIVISION MAY BE CONDUCTED BY THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY.

(C) WHERE A VIOLATION OF THIS SECTION IS ALLEGED TO HAVE OCCURRED, THE ATTORNEY GENERAL OF THE STATE OF NEW YORK MAY APPLY IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO THE SUPREME COURT OF THE STATE OF NEW YORK WITHIN THE JUDICIAL DISTRICT IN WHICH SUCH VIOLATION IS ALLEGED TO HAVE OCCURRED, ON NOTICE OF FIVE DAYS, FOR AN ORDER OR INJUNCTION ENJOINING A PERSON FROM ENGAGING IN THE COMMISSION OR CONTINUANCE OF ANY CONDUCT IN VIOLATION OF THIS SECTION AND/OR IMPOSING ANY SUCH OTHER OR FURTHER RELIEF AS THE COURT MAY CONSIDER JUST AND EQUITABLE. IN ANY SUCH PROCEEDING, THE COURT SHALL IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED TEN THOUSAND DOLLARS OR TWICE THE AMOUNT OF POINTS, FEES AND COSTS PAID UPON CLOSING OF THE REAL ESTATE TRANSACTION AT ISSUE, WHICHEVER IS GREATER, AND, WHERE APPROPRIATE, RESTITUTION TO AGGRIEVED CONSUMERS OR OTHER VICTIMS OF A VIOLATION OF THIS SECTION.

9. NON-EXCLUSIVITY OF RIGHTS OR REMEDIES. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT, IN ANY MANNER, ANY RIGHTS OR REMEDIES OTHERWISE AVAILABLE UNDER LAW TO ANY PERSON OR ENTITY, INCLUDING, BUT NOT LIMITED TO, THE ATTORNEY GENERAL OF THE STATE OF NEW YORK.

S 3. This act shall take effect immediately.