



Appraisal Industry Gets Shaken Up

By the Demco Law Firm, P.S.

Recent changes to federal regulations that took effect on May 1, 2009 are drastically changing the role of appraisers in real estate transactions. These regulations are the result of concerns that appraisers were influenced by the mortgage brokers and borrowers who selected them. As a result, the right to select the appraiser has been taken away from the borrower, mortgage broker or real estate agent and given exclusively to the lender. The lender must comply with a number of regulations to ensure that the appraiser is both qualified and independent, as defined by the regulation.

The overall result will be more staff appraisals and fewer independent appraisers. This could mean that the appraiser will have less knowledge of the neighborhood and unique property characteristics. Borrowers, mortgage brokers and agents will no longer have the opportunity to suggest other comparable properties or correct misunderstandings.

The ability to shop for a loan will also become more cumbersome and expensive. A lender may use an appraisal ordered by another lender, but only if the appraisal complies with the regulation. Many lenders will be reluctant to use another lender's appraisal because it would be difficult to verify that the appraisal satisfies all of the regulations. Many buyers may be required to pay for more than one appraisal.

The new regulation also means that buyers will likely learn if they can get financing later than before. Under prior practices, a mortgage broker often would order an appraisal immediately to verify that value would not be a problem. If the property did not appraise for value, the buyer would not need to incur additional expenses, and the property would not be off the market needlessly. Since lenders must order the appraisal under the new regulation, they control when an appraisal is ordered, making it more likely that completion of the appraisal will not occur until later in the transaction. To avoid lengthy delays buyers should ask about the timing of the appraisal when selecting a lender and applying for a loan. Windermere Mortgage typically orders the appraisal within 24 to 48 hours after notice of mutual acceptance or removal of any inspection contingency.

These changes may also result in more appraisals below the purchase price. Under the Financing Contingency (NWMLS Form 22A), the buyer has specific rights if the appraisal is less than the sales price. The buyer may serve a notice of termination unless the seller either reduces the purchase price to the amount of the appraisal or procures an acceptable appraisal for the purchase price. Under the new regulation, a seller could not order a new appraisal, but could pay for one that is ordered by the lender. It is expected that NWMLS will revise Form 22A to address the new regulations.

This legal bulletin is provided for informational purposes only, and to assist you in identifying potential legal problems. It should not be used as a substitute for obtaining the advice of an attorney when problems arise, and is not intended to constitute legal advice. A lawyer cannot give legal advice without a detailed factual background of the client's particular situation, as the same legal question may have different answers under different circumstances. Do not base any important decisions on these materials without first consulting an attorney.