

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB931

Hearing Date: Tuesday February 09, 2010
Committee On: Banking, Commerce and Insurance
Introducer: Sullivan
One Liner: Change the Real Property Appraiser Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	5	Senators Gloor, McCoy, Pankonin, Pirsch, Utter
Nay:	1	Senator Langemeier
Absent:	2	Senators Christensen, Pahls
Present Not Voting:		

Proponents:
Senator Chris Langemeier
Leslie Sellers

Gregg Mitchell
Rick Lifferth
John Childears
Katherine Policky

Opponents:
Robert Hallstrom

Neutral:
Korby Gilbertson

Representing:
Introducer
Appraisal Institute, American Society of Farm Manager & Rural Appraisers, American Society of Appraisers, National Association of Independent Fee Appraisers
NE Real Property Appraisal Board
Appraisal Institute
Self
Real Property Appraisal Board

Representing:
NE Bankers Association

Representing:
NE Realtors Association

Summary of purpose and/or changes:

LB 931 would make various changes in the Real Property Appraiser Act. The bill would update provisions; repeal obsolete provisions; harmonize terminology; add and update definitions; require courses of study to be at "degree-awarding" universities, colleges, community colleges, and junior colleges; establish requirements to upgrade credentials, and provide for regulation of appraisal management companies.

The bill would provide, section by section, as follows:

Section 1 would amend section 76-2201 of the Real Property Appraiser Act to provide that sections 4, 6 to 8, 10 to 12, 15 to 17, and 36 to 44 of the bill shall be assigned within the act.

Section 2 would amend section 76-2202 of the Real Property Appraiser Act to provide legislative findings that Nebraska's laws governing real property appraisers require restructuring in order to comply with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989. This section would provide that compliance with the federal act is necessary to ensure an adequate number of appraisers in Nebraska to conduct appraisals of real estate

involved in federally related transactions.

Section 3 would amend section 76-2203 of the Real Property Appraiser Act to provide technical amendments regarding new definition sections.

Section 4 would enact a new section in the Real Property Appraiser Act to provide a definition of "appraisal management services."

Section 5 would amend section 76-2206 of the Real Property Appraiser Act to provide that an "appraisal report" shall be defined to include, among other things, a communication by "electronic means."

Section 6 would enact a new section in the Real Property Appraiser Act to provide a definition of "appraisal services": the act or process of developing an opinion of value, an opinion of value pertaining to the act of appraising, or an appraisal.

Section 7 would enact a new section in the Real Property Appraiser Act to provide a definition of "appraiser fee schedule."

Section 8 would enact a new section in the Real Property Appraiser Act to provide a definition of "appraiser panel": a network of licensed or certified appraisers who are independent contractors of an appraisal management company.

Section 9 would amend section 76-2211.01 of the Real Property Appraiser Act to harmonize terminology.

Section 10 would enact a new section in the Real Property Appraiser Act to provide for a definition of "controlling person."

Section 11 would amend section 76-2211.02 of the Real Property Appraiser Act to provide for the section to be reassigned within the act.

Section 12 would enact a new section in the Real Property Appraiser Act to provide a definition of "licensed appraisal management company": a person or entity that (a) administers a network of appraisers to perform appraisal services for one or more clients, receives a request for appraisal services from a client, or enters into an agreement with one or more appraisers to perform the appraisal services for such request, or (b) serves as a third-party broker of an appraisal management service between a client and an appraiser and performs appraisal management services.

Section 13 would amend section 76-2213 of the Real Property Appraiser Act to provide that the defined term "licensed real property appraisal" shall be changed to "licensed residential real property appraiser."

Section 14 would amend section 76-2216 of the Real Property Appraiser Act to provide that a "real property appraiser" shall not be defined a person who, among other things, performs real property appraisal activity "with the intention or upon the promise of receiving valuable consideration."

Section 15 would enact a new section in the Real Property Appraiser Act of provide a definition of "relocation management company."

Section 16 would amend section 76-2217.02 of the Real Property Appraiser Act to provide for the section to be reassigned within the act.

Section 17 would amend section 76-2213.01 of the Real Property Appraiser Act to provide that the definition of "Uniform Standards of Professional Appraisal Practice" means standards as adopted and promulgated by the Real Property Appraiser Board as well as the standards promulgated by the Appraisal Foundation, and to provide for the section to be reassigned within the act.

Section 18 would amend section 76-2220 of the Real Property Appraiser Act to harmonize terminology and to provide that a person who performs real property appraisal services without a valid credential shall be subject to disciplinary action by the Real Property Appraiser Board.

Section 19 would amend section 76-2223 of the Real Property Appraiser Act to provide that the Real Property Appraiser Board may administer or contract for the administration of examinations "approved by the Appraiser Qualifications Board;" review the procedures and criteria of a contracted testing service to ensure that the testing meets with the approval of the Appraiser Qualifications Board; and establish and adopt minimum standards for appraisals rather than establish and "annually" adopt minimum standards for appraisals.

Section 20 would amend section 76-2225 of the Real Property Appraiser Act to provide that employees of the Real Property Appraiser Board and persons under contract with the board, as well as members of the board, shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of or any disciplinary proceeding concerning a credential holder if such action is taken without malicious intent and in reasonable belief that it was taken pursuant to the powers vested in such persons.

Section 21 would amend section 76-2228 of the Real Property Appraiser Act to provide that a licensed real property appraiser shall be known as a licensed "residential" real property appraiser.

Section 22 would amend section 76-2228.01 of the Real Property Appraiser Act to provide that an applicant for a credential as a trainee real property appraiser shall complete seventy-five class hours in board approved courses which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section would provide that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, community college, or junior college. This section would provide that a supervising appraiser of a trainee real property appraiser shall personally inspect each appraised property with the trainee "as is consistent with his or her scope of practice." This section would provide for requirements for a trainee real property appraiser to qualify for an upgraded credential as a licensed residential real property appraiser, certified residential real property appraiser, or certified general real property appraiser. This section would provide that if a trainee real property appraiser remains in the classification in excess of two years, the trainee shall, among courses of study, complete the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course "as the course existed on January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section would provide that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, community college, or junior college. This section would repeal obsolete provisions.

Section 23 would amend section 76-2229 of the Real Property Appraiser Act to harmonize terminology.

Section 24 would amend section 76-2229.01 of the Real Property Appraiser Act to provide that an applicant for a credential as a registered real property appraiser shall complete ninety class hours in board-approved courses which include the fifteen-hour National Uniform Standards of Professional Appraiser Practice Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section would provide that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, community college, or junior college. This section would also provide that an applicant for a credential as a registered real property appraiser shall "within the twelve months following approval of the applicant by the Real Property Appraiser Board, pass" an examination "approved by the Appraiser Qualifications Board as of January 1, 2010, and" administered by "a contracted testing service" rather than by the Real Property Appraiser Board. This section would provide requirements for a registered real property appraiser to qualify for an upgraded credential as a licensed residential real property appraiser, certified residential real property appraiser, or certified general real property appraiser. This section would harmonize terminology and repeal obsolete provisions.

Section 25 would amend section 76-2230 of the Real Property Appraiser Act to provide that an applicant for a credential as a licensed residential real property appraiser shall complete one hundred fifty class hours in board-approved courses which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the

Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section would provide that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, community college, or junior college. This section would also provide that an applicant for a credential as a licensed residential real property appraiser shall within the "twelve" months following approval of the applicant by the Real Property Appraiser Board, pass an examination "approved by the Appraiser Qualifications Board as of January 1, 2010, and" administered by "a contracted testing service" rather than shall within the "twenty-four" months following approval of the applicant by the Real Property Appraiser Board, pass "a closed-book" examination administered by the Real Property Appraiser Board. This section would provide requirements for a licensed residential real property appraiser to qualify for an upgraded credential as a certified residential real property appraiser or certified general real property appraiser. This section would provide that if an applicant is applying for renewal of a credential as a licensed residential real property appraiser, the applicant shall complete, among other things, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section would harmonize terminology and repeal obsolete provisions.

Section 26 would amend section 76-2231.01 of the Real Property Appraiser Act to provide that an applicant for a credential as a certified residential real property appraiser shall complete two hundred class hours in board-approved courses which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section would provide that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, community college, or junior college. This section would repeal provisions which provide that credit toward the class hour requirement may be awarded to teachers of appraisal courses. This section would also provide that an applicant for a credential as a certified residential real property appraiser shall within the "twelve" months following approval of the applicant by the Real Property Appraiser Board, pass an examination "approved by the Appraiser Qualifications Board as of January 1, 2010, and" administered by "a contracted testing service" rather than shall within the "twenty-four" months following approval of the applicant by the Real Property Appraiser Board, pass "a closed-book" examination administered by the Real Property Appraiser Board. This section would provide requirements for a certified residential real property appraiser to qualify for an upgraded credential as a certified general real property appraiser. This section would provide that if an applicant is applying for renewal of a credential as a certified residential real property appraiser, the applicant shall complete, among other things, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section would harmonize terminology and repeal obsolete provisions.

Section 27 would amend section 76-2232 of the Real Property Appraiser Act to provide that an applicant for a credential as a certified general real property appraiser shall complete three hundred class hours in board-approved courses which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section would provide that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, community college, or junior college. This section would also provide that an applicant for a credential as certified general real property appraiser shall within the "twelve" months following approval of the applicant by the Real Property Appraiser Board, pass an examination "approved by the Appraiser Qualifications Board as of January 1, 2010, and" administered by "a contracted testing service" rather than shall within the "twenty-four" months following approval of the applicant by the Real Property Appraiser Board, pass "a closed-book" examination administered by the Real Property Appraiser Board. This section would provide that if an applicant is applying for renewal of a credential as a certified general real property appraiser, the applicant shall complete, among other things, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section would harmonize terminology and repeal obsolete provisions.

Section 28 would amend section 76-2233 of the Real Property Appraiser Act to update terminology.

Section 29 would amend section 76-2233.01 of the Real Property Appraiser Act to update terminology.

Section 30 would amend section 76-2233.02 of the Real Property Appraiser Act to provide that a credential issued under the act shall remain in effect until December 31 "of the designated year" rather than until December 31 "following the date of credentialing."

Section 31 would amend section 76-2236 of the Real Property Appraiser Act to repeal provisions which provide that the Real Property Appraiser Board may extend or waive the continuing education requirements by rule or regulation. This section would provide that at least once every two years, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board," shall be included in the continuing education requirement of each credential holder. This section would require that at least once every four years, a seven-hour report writing update course shall be included in the continuing education requirement of each credential holder. This section would provide that a person who holds a "reciprocal" as well as a temporary credential shall not have to meet any continuing education requirements.

Section 32 would amend section 76-2237 of the Real Property Appraiser Act to provide that rules and regulations of the Real Property Appraiser Board shall be "transmitted electronically" to each credential holder rather than "mailed to the business address of" each credential holder "and shall be made available on the board's website."

Section 33 would amend section 77-2238 of the Real Property Appraiser Act to provide that the following acts and omissions are grounds for disciplinary action or denial of an application by the Real Property Appraiser Board: failure or refusal to exercise reasonable diligence in performing an appraisal review or performing appraisal consulting; and failure of an educational provider to produce records, documents, reports, or other materials to the board.

Section 34 would amend section 76-2240 of the Real Property Appraiser Act to provide that administrative hearings on disciplinary actions shall be conducted by a hearing officer rather than the Real Property Appraiser Board.

Section 35 would amend section 76-2241 of the Real Property Appraiser Act to harmonize terminology and update provisions.

Section 36 would enact a new section in the Real Property Appraiser Act to provide requirements for a licensed appraisal management company to possess a credential issued by the real property appraiser board.

Section 37 would enact a new section in the Real Property Appraiser Act to provide restrictions and requirements on persons that own an appraisal management company and to provide requirements that an applicant for licensure as an appraisal management company shall designate a controlling person as the primary contact between the company and the real property appraiser board.

Section 38 would enact a new section in the Real Property Appraiser Act to provide restrictions and requirements on employees and independent contractors of an appraisal management company.

Section 39 would enact a new section in the Real Property Appraiser Act to provide requirements for licensed appraisal management companies to report to the real property appraiser board on persons performing appraisal services for them.

Section 40 would enact a new section in the Real Property Appraiser Act to provide requirements for licensed appraisal management companies with regard to appraiser fees.

Section 41 would enact a new section in the Real Property Appraiser Act to provide that it is unlawful for any employee, director, officer, or agent of a licensed appraisal management company to influence or attempt to influence the development, reporting, or review of an appraisal.

Section 42 would enact a new section in the Real Property Appraiser Act to provide that a licensed appraisal management company shall pay an appraiser within sixty days after the date on which the appraiser submits the

completed appraisal report to the licensed appraisal management company.

Section 43 would enact a new section in the Real Property Appraiser Act to provide that a licensed appraisal management company shall not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser.

Section 44 would enact a new section in the Real Property Appraiser Act to provide that the real property appraiser board may censure a licensed appraisal management company, suspend or revoke a credential, and levy fines or impose civil penalties if a licensed appraisal management company violates the act or rules and regulations with respect to credentialing of licensed appraisal management companies or procures a credential for any other person by fraud, misrepresentation, or deceit.

Section 45 would amend section 76-2249 of the Real Property Appraiser Act to update provisions.

Section 46 would amend section 77-5004 of the Tax Equalization and Review Commission Act to harmonize terminology.

Section 47 would provide for repealers of amendatory sections.

Section 48 would provide for the outright repeal of section 76-2205.01 (definition of "appraisal practice") and section 76-2207 (definition of "appraisal trainee").

Section 49 provides for the emergency clause.

Explanation of amendments:

The committee amendments (AM2047) would strike all sections and become the bill.

LB 931-Related Provisions

The committee amendments would remove from the bill as introduced all provisions regarding licensed appraisal management companies (strike sections 4, 6 to 12, 16, 18, and 36 to 44 from the bill as introduced and omit provisions regarding licensed appraisal management companies from sections 1, 2, 3, 33, and 48 of the bill as introduced which become sections 1, 2, 3, 27, and 34 of the committee amendments).

Section 10 of the committee amendments would amend section 76-2213.01 of the Real Property Appraiser Act (section 17 of the bill as introduced) to provide that the definition of "Uniform Standards of Professional Appraisal Practice" means the standards promulgated by the Appraiser Foundation as the standards existed on January 1, "2010" rather than "2008." This section in the bill as introduced would amend this definition to mean the standards promulgated by the Appraisal Foundation "and as adopted and promulgated by the board in rules and regulations pursuant to section 76-2237."

LB 818-Related Provisions

Sections 1, 3, 5 to 8, 12, and 32 of the committee amendments would insert a modified version of LB 818 (Sullivan, Utter) to provide that a broker's price opinion or a comparative market analysis prepared by a real estate licensee may be used for the purpose of "obtaining, extending, or modifying financing in a transaction other than a federally-related transaction." These sections would provide as follows:

Section 1 of the committee amendments would amend section 76-2201 of the Real Property Appraiser Act to provide that sections 5 and 6 of the committee amendments shall be assigned within the act.

Section 3 of the committee amendments would amend section 76-2203 of the Real Property Appraiser Act to provide technical amendments regarding the new definition sections in the committee amendments.

Section 5 of the committee amendments would enact a new section in the Real Property Appraiser Act to provide a definition of "federal financial institution regulatory agency."

Section 6 of the committee amendments would amend the Real Property Appraiser Act to provide a definition of "federally-related transaction": a real estate-related transaction that: requires the services of an appraiser; and is engaged in, contracted for, or regulated by a federal financial institution regulatory agency.

Section 7 of the committee amendments would amend section 76-2209 of the Real Property Appraiser Act to provide that the definition of "broker's price opinion" includes an analysis, opinion, or conclusion prepared by a real estate licensee relating to the price of real estate or real property for the purpose of "obtaining, extending, or modifying financing in a transaction other than a federally-related transaction" in addition to for the purpose of listing, purchase, or sale.

Section 8 of the committee amendments would amend section 76-2211 of the Real Property Appraiser Act to provide that the definition of "comparative market analysis" includes an analysis, opinion, or conclusion prepared by a real estate licensee relating to the price of real estate or real property by comparison to other real property currently or recently in the marketplace for the purpose of "obtaining, extending, or modifying financing in a transaction other than a federally-related transaction" in addition to for the purpose of listing, purchase, or sale.

Section 12 of the committee amendments would amend section 76-2221 of the Real Property Appraiser Act to provide that a broker's price opinion or comparative market analysis prepared for an existing or potential lienholder obtaining, extending, or modifying financing in a transaction other than a federally-related transaction may not be used as the sole basis to determine the value of the real estate for the purpose of originating a loan secured by such real estate, and the person giving the opinion or analysis must be engaged directly by the lienholder or its agent.

Section 32 of the committee amendments would amend section 81-885.01 of the Nebraska Real Estate License Act to amend the definitions of "broker's price opinion" and "comparative market analysis" in the same manner as the same definitions in the Real Property Appraiser Act would be amended by sections 7 and 8 of the committee amendments.

Rich Pahls, Chairperson