

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 633

Introduced by Senator Wright

February 27, 2009

~~An act to amend Section 11302 of, and to add Section 11324.5 to, the Business and Professions Code, and to amend Section 1090.5 of the Civil~~ *An act to amend Section 11423 of the Business and Professions Code, relating to real estate appraisers.*

LEGISLATIVE COUNSEL'S DIGEST

SB 633, as amended, Wright. Real estate appraisers.

Existing law, the Real Estate Appraisers' Licensing and Certification Law, provides for the licensure and regulation of real estate appraisers and vests the duties of enforcing and administering that law in the Office of Real Estate Appraisers. *Existing law requires a lender in a loan transaction secured by real property to provide notice, as specified, to a loan applicant that, upon request, the applicant is entitled to receive a copy of the appraisal report, provided he or she has paid for the appraisal. Existing law requires that an applicant's written request for a copy of an appraisal be received by the lender no later than 90 days after the lender has provided notice of the action taken on the application, or the application has been withdrawn. Existing law also requires the lender to mail or deliver a copy of an appraisal within 15 days after receiving a written request from the applicant or within 15 days after receiving the appraisal, whichever occurs later.*

This bill would delete these requirements, and instead require that the lender mail or deliver a copy of the appraisal report to the loan applicant within 15 days of receiving the appraisal, provided the applicant has paid for the appraisal.

~~Existing law prohibits a person with an interest in a real estate transaction involving an appraisal to improperly influence or attempt to improperly influence, through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.~~

~~This bill would require that a person making an appraisal in connection with a mortgage loan shall make at least one personal visit to the property that he or she is appraising. The bill would specify that this duty may not be assigned or delegated to any other person or employee of the appraiser. As applied to a licensed appraiser, as defined, a violation of these provisions would be deemed a violation of the Real Estate Appraisers' Licensing and Certification Law.~~

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 11423 of the Business and Professions*

2 *Code is amended to read:*

3 11423. (a) For purposes of this section:

4 (1) "Applicant" means a person who has made a written request
5 for an extension of credit which is proposed to be secured by real
6 property. The term does not include a guarantor, surety, or other
7 person who will not be directly liable on the loan.

8 (2) "Appraisal" shall have the same meaning as set forth in
9 subdivision (b) of Section 11302.

10 (3) "Residential real property" means real property located in
11 the State of California containing only a one-to-four family
12 residence.

13 (b) A lender in a loan transaction secured by real property shall
14 ~~provide notice as described in this section~~ *mail or deliver a copy*
15 ~~of an appraisal to a loan applicant of the applicant's right to receive~~
16 ~~a copy of within 15 days of receiving the appraisal, provided he~~
17 ~~or she the applicant~~ has paid for the appraisal.

18 ~~An applicant's written request for a copy of an appraisal must~~
19 ~~be received by the lender no later than 90 days after (1) the lender~~
20 ~~has provided notice of the action taken on the application, including~~
21 ~~a notice of incompleteness, or (2) the application has been~~
22 ~~withdrawn.~~

1 ~~(e) The lender shall mail or deliver a copy of an appraisal within~~
2 ~~15 days after receiving a written request from the applicant, or~~
3 ~~within 15 days after receiving the appraisal, whichever occurs~~
4 ~~later.~~

5 ~~(d) Where the loan is proposed to be secured by residential real~~
6 ~~property, the notice of the applicant's right to a copy of the~~
7 ~~appraisal as provided in subdivision (b) shall be given in at least~~
8 ~~10-point boldface type, as a separate document in a form that the~~
9 ~~applicant may retain, and no later than 15 days after the lender~~
10 ~~receives the written application. The notice shall specify that the~~
11 ~~applicant's request for the appraisal must be in writing and must~~
12 ~~be received by the lender no later than 90 days after the lender~~
13 ~~provides notice of the action taken on the application or a notice~~
14 ~~of incompleteness, or in the case of a withdrawn application, 90~~
15 ~~days after the withdrawal. An address to which the request should~~
16 ~~be sent shall be specified in the notice. Release of the appraisal to~~
17 ~~the applicant may be conditioned upon payment of the cost of the~~
18 ~~appraisal.~~

19 ~~(e) Where the loan is proposed to be secured by nonresidential~~
20 ~~real property, the notice of the applicant's right to a copy of the~~
21 ~~appraisal shall be given within 15 days of receiving the appraisal.~~
22 ~~The notice shall specify that the applicant's request for a copy of~~
23 ~~the appraisal must be in writing and that the request must be made~~
24 ~~within the time specified in subdivision (b) and that the applicant~~
25 ~~is only entitled to receive the appraisal or appraisals obtained by~~
26 ~~the lender for the purpose of evaluating the applicant's pending~~
27 ~~request for an extension of credit. Release of the appraisal to the~~
28 ~~applicant may be conditioned upon payment of the cost of the~~
29 ~~appraisal and the cost of duplicating the appraisal.~~

30 ~~(f)~~

31 ~~(c) Nothing in this section is intended to effect a change in~~
32 ~~current law in any manner with respect to reliance on an appraisal~~
33 ~~by anyone other than the lender who released the appraisal.~~

34 ~~(g)~~

35 ~~(d) This section does not apply to appraisals obtained by lenders~~
36 ~~on property owned by the lender, nor to appraisals obtained by the~~
37 ~~lender in anticipation of modifying any existing loan agreement~~
38 ~~if the lender has not charged for the appraisal.~~

39 ~~(h)~~

1 (e) In the case of loans secured by residential real property,
2 compliance with Regulation B (12-CFR C.F.R. Part 202 et seq.)
3 of the Federal Reserve Board is deemed to be compliance with the
4 provisions of this section and Section 10241.3.

5 (i)
6 (f) This section is in addition to any right of access to appraisals
7 that exists under any other provision of state or federal law.

8 SECTION 1. ~~Section 11302 of the Business and Professions~~
9 ~~Code is amended to read:~~

10 11302. ~~For the purpose of applying this part, the following~~
11 ~~terms, unless otherwise expressly indicated, shall mean and have~~
12 ~~the following definitions:~~

13 (a) ~~“Agency” means the Business, Transportation and Housing~~
14 ~~Agency.~~

15 (b) ~~“Appraisal” means a written statement independently and~~
16 ~~impartially prepared by a qualified appraiser setting forth an~~
17 ~~opinion in a federally related transaction as to the market value of~~
18 ~~an adequately described property as of a specific date, supported~~
19 ~~by the presentation and analysis of relevant market information,~~
20 ~~and as valuated pursuant to at least one personal visit by the~~
21 ~~appraiser.~~

22 The term “appraisal” does not include an opinion given by a real
23 estate licensee or engineer or land surveyor in the ordinary course
24 of his or her business in connection with a function for which a
25 license is required under Chapter 7 (commencing with Section
26 6700) or Chapter 15 (commencing with Section 8700) of Division
27 3, or Chapter 3 (commencing with Section 10130) or Chapter 7
28 (commencing with Section 10500) and the opinion shall not be
29 referred to as an appraisal. This part does not apply to a probate
30 referee acting pursuant to Sections 400 to 408, inclusive, of the
31 Probate Code unless the appraised transaction is federally related.

32 (c) ~~“Appraisal Foundation” means the Appraisal Foundation~~
33 ~~that was incorporated as an Illinois not-for-profit corporation on~~
34 ~~November 30, 1987.~~

35 (d) ~~“Appraisal Subcommittee” means the Appraisal~~
36 ~~Subcommittee of the Federal Financial Institutions Examination~~
37 ~~Council.~~

38 (e) ~~“Director” means the Director of the Office of Real Estate~~
39 ~~Appraisers.~~

1 (f) ~~“Federal financial institutions regulatory agency” means the~~
2 ~~Federal Reserve Board, Federal Deposit Insurance Corporation,~~
3 ~~Office of the Comptroller of the Currency, Office of Thrift~~
4 ~~Supervision, Federal Home Loan Bank System, National Credit~~
5 ~~Union Administration, the Resolution Trust Corporation, and any~~
6 ~~other agency determined by the director to have jurisdiction over~~
7 ~~transactions subject to this part.~~

8 (g) ~~“Federally related real estate appraisal activity” means the~~
9 ~~act or process of making or performing an appraisal on real estate~~
10 ~~or real property in a federally related transaction and preparing an~~
11 ~~appraisal as a result of that activity.~~

12 (h) ~~“Federally related transaction” means any real estate-related~~
13 ~~financial transaction which a federal financial institutions~~
14 ~~regulatory agency engages in, contracts for or regulates and which~~
15 ~~requires the services of a state licensed real estate appraiser~~
16 ~~regulated by this part. This term also includes any transaction~~
17 ~~identified as such by a federal financial institutions regulatory~~
18 ~~agency.~~

19 (i) ~~“License” means any license, certificate, permit, registration,~~
20 ~~or other means issued by the office authorizing the person to whom~~
21 ~~it is issued to act pursuant to this part within this state.~~

22 (j) ~~“Licensure” means the procedures and requirements a person~~
23 ~~shall comply with in order to qualify for issuance of a license and~~
24 ~~includes the issuance of the license.~~

25 (k) ~~“Office” means the Office of Real Estate Appraisers.~~

26 (l) ~~“Secretary” means the Secretary of the Business,~~
27 ~~Transportation and Housing Agency.~~

28 (m) ~~“State licensed real estate appraiser” is a person who is~~
29 ~~issued and holds a current valid license under this part.~~

30 (n) ~~“Uniform Standards of Professional Appraisal Practice” are~~
31 ~~the standards of professional appraisal practice established by the~~
32 ~~Appraisal Foundation.~~

33 (o) ~~“Course provider” means a person or entity that provides~~
34 ~~educational courses related to professional appraisal practice.~~

35 ~~SEC. 2. Section 11324.5 is added to the Business and~~
36 ~~Professions Code, to read:~~

37 ~~11324.5. Notwithstanding Section 11324, the individual who~~
38 ~~is the licensed appraiser shall make at least one personal visit to~~
39 ~~the property that he or she is appraising. This duty may not be~~

1 assigned or delegated to any other person or employee of the
2 appraiser.

3 SEC. 3. Section 1090.5 of the Civil Code is amended to read:

4 1090.5. (a) No person with an interest in a real estate
5 transaction involving an appraisal shall improperly influence or
6 attempt to improperly influence, through coercion, extortion, or
7 bribery, the development, reporting, result, or review of a real
8 estate appraisal sought in connection with a mortgage loan.

9 (b) Subdivision (a) does not prohibit a person with an interest
10 in a real estate transaction from asking an appraiser to do any of
11 the following:

12 (1) Consider additional, appropriate property information.

13 (2) Provide further detail, substantiation, or explanation for the
14 appraiser's value conclusion.

15 (3) Correct errors in the appraisal report.

16 (c) (1) A person who prepares an appraisal in connection with
17 the making of any mortgage loan shall make at least one personal
18 visit to the property that he or she is appraising. This duty may not
19 be assigned or delegated to any other person or employee of the
20 appraiser.

21 (2) This subdivision shall apply to any person making an
22 appraisal sought in connection with any type of mortgage loan.

23 (d) If a person who violates this section is licensed under any
24 state licensing law and the violation occurs within the course and
25 scope of the person's duties as a licensee, the violation shall be
26 deemed a violation of that state licensing law.

27 (e) Nothing in this section shall be construed to authorize
28 communications that are otherwise prohibited under existing law.