

**SB 2407 SD1 HD1
House Judiciary Hearing
March 28, 2008**

LATE TESTIMONY

From: Joe Huffman

To Whom It May Concern:

I applauded the actions taken by Senator Hooser and his committee, however in my humble opinion there is a flaw within the bill as stated. The following is an except from the bill.

"§454- **Improper influence of real estate appraisers.** (a) No mortgage broker or solicitor shall improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal if the mortgage broker's or solicitor's compensation is dependent on or affected by the value conclusion generated by the appraisal.

(b) Subsection (a) shall not preclude a mortgage broker or solicitor from asking a real estate appraiser to do any of the following:

- (1) Consider additional, appropriate information relating to the real property;
- (2) Provide further detail, substantiation, or explanation for the real estate appraiser's value conclusion; or
- (3) Correct errors in the appraisal report.

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

The section (b) and (c) is putting the appraiser at odds with established federal laws that are on the books and the Uniformed Standards Professional Appraisal Practice (USPAP). First let me address the USPAP issue. USPAP clearly states that the appraiser once engaged by a client cannot discuss the appraisal assignment with anyone other than the client, your proposed law is mute on this point as you only identify the mortgage broker or solicitor from asking these questions, what happens if they are not the client, then there is a problem for the appraiser.

The following is from the 2008/9 USPAP definition section:

CLIENT: the party or parties who engage an appraiser (by employment or contract) in a specific assignment.

Comment: The client identified by the appraiser in an appraisal, appraisal review, or appraisal consulting assignment (or in the assignment workfile) is the party or parties with whom the appraiser has an appraiser-client relationship in the related assignment, and may be an individual, group, or entity.

CONFIDENTIAL INFORMATION: information that is either:

- identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or
- classified as confidential or private by applicable law or regulation*.

*NOTICE: For example, pursuant to the passage of the Gramm-Leach-Bliley Act in November 1999, some public agencies have adopted privacy regulations that affect appraisers. As a result, the Federal Trade Commission issued a rule focused on the protection of "non-public personal information" provided by consumers to those involved in financial activities "found to be closely related to banking or usual in connection with the transaction of banking." These activities have been deemed to include "appraising real or personal property." (Quotations are from the Federal Trade Commission, Privacy of Consumer Financial Information; Final Rule, 16 CFR Part 313.)

The definitions are part of USPAP and can not be deviated from. From reading the Gramm-Leach-Bliley Act of 1999 you can see where your proposed law in the above

mentioned section will put the appraisers in a position of no win. They will either follow or break your proposed law or do the same with the Federal law, I would suggest to you that is not a position either you or I would want to me in. A no win for the appraiser, of which protection is for whom you seek.

I would encourage you to either amend the bill as written, table or other actions as you deem appropriate, but do not pass it in its current state as written.

Joe Huffman

Fee Appraiser