May 7, 2017

Senator Lee Beyer, Chair
District: 6
Sen.LeeBeyer@oregonlegislature.gov

RE: Strong Support for HB 2189

Dear Senator Beyer:

I am a commercial real estate appraiser and business owner in Salem, Oregon. My partner and I have a staff of 13 people. We produce well researched and credible valuation related work, primarily real estate appraisal reports for a variety of commercial property types. As an Oregon certified real estate appraiser and business owner, I am writing to urge you to support HB 2189 relating to civil actions arising out of real estate appraisal activity.

Over the last several years, real estate appraisers in Oregon have been faced with frivolous lawsuits alleging defects in appraisals performed for mortgage lending transactions originated during the 2001- 2008 "real estate bubble" that have now gone into default.

HB 2189 would establish a maximum five-year statute of limitations on civil law suits against appraisers that is consistent with the record keeping requirements of our national standard - the Uniform Standards of Professional Appraisal Practice (USPAP).

Under current law, the "Discovery Rule" results in an almost infinite statute of limitations for claims against appraisers. The time for filing a suit for claims of professional negligence, unjust enrichment, breach of fiduciary duty, breach of contract, etc. does not begin to accrue until the party making the allegation discovers, or should have discovered, the alleged defect that forms the basis for the complaint.

However, alleged defects in appraisals for mortgage lending purposes are usually not "discovered" by the plaintiffs until the loan has gone into default, and a post-default review of the appraisal is performed by the mortgage holder or entity that has purchased the rights to sue the appraiser – often many years after the appraisal was performed. This is true even though the originator of the mortgage should have had an appraisal review program in place to address any problems with an appraisal at the time the mortgage was being originated.

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In most cases, the reason for the default has nothing to do with the appraisal or any alleged defects in the appraisal. Rather, the default is usually due to a change in market conditions or a change in circumstances involving the borrower (i.e., job loss, reduction in income, divorce, etc.). But, often the appraiser is the "last one standing" with any connection to a defaulted loan, with the original lender, underwriter, and servicer having gone out of business at some time after the loan was originated. In some cases, appraisers have been forced to settle these suits and agree to monetary damages to limit their defense costs and liability, even though a review of the appraisal performed by the Defendant's third-party appraiser determines that there were no defects in the appraisal.

USPAP requires that an appraiser retain a work file for each appraisal for a period of **five years** after the appraisal was prepared or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last. Many appraisers purge their files of all information related to an appraisal after five years. Thus, it is difficult for an appraiser to defend themselves against a lawsuit that is in relation to an appraisal that may have been done 15 or more years ago. It is not realistic to expect that an appraiser retain his or her work file for every appraisal ad infinitum in the highly unlikely event that a loan goes into default and a civil action against him or her is commenced.

HB 2189 would establish that the time period for filing a civil claim against an appraiser is the applicable statute of limitations for the type of claim being pursued, but in no case more than 5 years after the date that the appraisal or appraisal service was performed.

Importantly, the statute of limitations established in HB 2189 would not apply to cases of fraud and misrepresentation, for which the 2-year discovery rule established in ORS 12.110 would continue to apply.

Most appraisers are small businesses and a lawsuit, or the threat of a lawsuit, can be devastating. I believe the provisions of HB 2189 will bring certainty to appraisers regarding how long after performing an appraisal they may be sued, and will allow appraisers to adequately manage the risks associated with providing those services.

I strongly urge you to support HB 2189 and thank you in advance for your consideration of this request.

Respectfully,
POWELL BANZ VALUATION, LLC

Katherine Powell Banz, MAI
Principal

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