

House Bill 2501

Sponsored by Representative GOMBERG, Senator JOHNSON, Representative ESQUIVEL; Representatives BARKER, LININGER, LIVELY, MEEK, NOSSE, WHISNANT (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies laws related to real estate appraisers and appraisal management companies.

Specifies that certain documents prepared by or for internal use of financial institutions are not real estate appraisal activity requiring preparer of document to carry real estate appraiser certification, license or registration.

A BILL FOR AN ACT

1
2 Relating to real estate appraisals; creating new provisions; and amending ORS 674.100, 674.220 and
3 674.225.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 674.225 is amended to read:

6 674.225. (1) Except in the case of breach of contract or substandard performance of real estate
7 appraisal activity, an appraisal management company shall make payment to an independent con-
8 tractor appraiser for the completion of an appraisal or appraisal review assignment:

9 *[(1) Within 45 days after the appraiser provides the completed appraisal report to the appraisal*
10 *management company; or]*

11 *[(2) In accordance with another payment schedule agreed to by the appraiser and the appraisal*
12 *management company.]*

13 **(a) In accordance with a payment schedule agreed to by the appraiser and the appraisal**
14 **management company; or**

15 **(b) Within 31 days after the appraiser provides the completed appraisal report to the**
16 **appraisal management company as follows:**

17 **(A) If payment is made by electronic means, the appraisal management company shall**
18 **deposit the payment into the appraiser's account not later than 31 days following the date**
19 **the company receives the completed appraisal report.**

20 **(B) If payment is made by check, the envelope containing the check must be postmarked**
21 **not later than 30 days following the date the company receives the completed appraisal re-**
22 **port.**

23 **(2) An appraisal management company shall compensate independent contractor ap-**
24 **praisers at the rates established by Appraiser Certification and Licensure Board under sec-**
25 **tion 3 of this 2017 Act.**

26 **SECTION 2.** Sections 3 and 4 of this 2017 Act are added to and made a part of ORS 674.200
27 to 674.250.

28 **SECTION 3.** (1) The Appraiser Certification and Licensure Board shall adopt rules es-
29 **tablishing the payment rates for independent contractor appraisers.**

30 **(2) The board shall establish the payment rates based on the customary and reasonable**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **rates of pay for independent contractor appraisers in this state. In calculating the rates, the**
 2 **board shall take into consideration academic studies, independent private sector surveys and**
 3 **any other factor affecting compensation rates.**

4 **SECTION 4. (1) If an appraisal management company decides the company will not make**
 5 **a payment to an independent contractor appraiser under ORS 674.225, the company shall**
 6 **provide notice in writing of the decision to the appraiser.**

7 **(2) The appraisal management company shall provide the written notice within 30 days**
 8 **following the date the company receives the completed appraisal report. This notice shall be**
 9 **sent to the last-known address for the independent contractor appraiser with a return re-**
 10 **ceipt requested.**

11 **(3) A written notification provided under this section must:**

12 **(a) State the address of the subject property of the completed appraisal report;**

13 **(b) State the reason why the company is not making the payment; and**

14 **(c) Specify the appraisal management company's dispute resolution process, if any.**

15 **SECTION 5.** ORS 674.220 is amended to read:

16 674.220. (1) An appraisal management company or an employee, controlling person or agent of
 17 an appraisal management company may not:

18 (a) Attempt to influence the development or reporting of an appraisal or appraisal review
 19 through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or any other
 20 manner, including but not limited to:

21 (A) Withholding or threatening to withhold timely payment for an appraisal;

22 (B) Withholding or threatening to withhold future business for an appraiser;

23 (C) Expressly or impliedly promising future business, promotions or increased compensation for
 24 an appraiser;

25 (D) Conditioning the ordering of an appraisal report or any payment on the opinion, conclusion
 26 or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;

27 (E) Requesting that an appraiser provide an estimated, predetermined or desired valuation in
 28 an appraisal report, or provide estimated values or comparable sales at any time prior to the
 29 appraiser's completion of real estate appraisal activity;

30 (F) Providing to an appraiser an anticipated, estimated, encouraged or desired value for a sub-
 31 ject property or a proposed or target amount to be loaned to the borrower, except that a copy of
 32 the sales contract for a purchase transaction may be provided; or

33 (G) Providing to an appraiser, or any entity or individual related to the appraiser, stock or other
 34 financial or nonfinancial benefits;

35 (b) Require an appraiser to accept an appraisal assignment if the appraiser has notified the
 36 company that the appraiser declines the assignment because the assignment must be completed
 37 within a time frame that the appraiser, in the appraiser's professional judgment, believes does not
 38 afford the appraiser the ability to meet the appraiser's legal and professional obligations;

39 (c) Require an appraiser to accept an appraisal assignment if the appraiser has notified the
 40 company that the appraiser declines the assignment because, in the appraiser's professional judg-
 41 ment, the appraiser does not have the necessary expertise for the assignment;

42 (d) Prohibit lawful communications between the appraiser and any other person who the ap-
 43 praiser, in the appraiser's professional judgment, believes possesses information that would be rele-
 44 vant;

45 (e) Knowingly require an appraiser to take any action that does not comply with the provisions

1 of ORS chapter 674, the rules of the Appraiser Certification and Licensure Board or any assignment
 2 conditions and certifications required by the client for whom an appraisal is being performed;

3 (f) Require an appraiser to indemnify the appraisal management company or any other party
 4 against liability, damages, losses or claims that arise out of any act or conduct of the appraisal
 5 management company or that do not arise out of the services performed by the appraiser;

6 (g) Prohibit an appraiser from reporting the fee paid to the appraiser in the appraisal report;

7 (h) Allow a person to perform an appraisal review relating to a property located in this state
 8 if the person is not an appraiser with the licensure required to perform the appraisal review;

9 (i) Substantively alter in any way a completed appraisal report submitted by an appraiser; [or]

10 (j) Except within the first 90 days after an appraiser is added to the company's appraiser panel,
 11 remove the appraiser from the appraiser panel without prior written notice to the appraiser, in-
 12 cluding notice of evidence of the reason for removal[.];

13 **(k) Prohibit an appraiser from stating on an appraisal report the appraiser's primary**
 14 **business address; or**

15 **(L) Prohibit an appraiser from informing a property owner, lender or any other person**
 16 **the appraiser's primary business address.**

17 (2) An appraisal management company may request, on behalf of and with the approval of a fi-
 18 nancial institution at the request of a consumer, that an appraiser:

19 (a) Provide additional information about the basis for the valuation;

20 (b) Correct objective factual errors in a completed appraisal report; or

21 (c) Consider the prices of other comparable properties.

22 **SECTION 6.** ORS 674.100 is amended to read:

23 674.100. (1)(a) A person may not engage in, carry on, advertise or purport to engage in or carry
 24 on real estate appraisal activity within this state without first obtaining certification, licensure or
 25 registration as provided for in ORS 674.310.

26 (b) Real estate appraisal activity is the preparation, completion and issuance of an opinion as
 27 to the value on a given date or at a given time of real property or an interest in real property,
 28 whether the activity is performed in connection with a federally related transaction or is not per-
 29 formed in connection with a federally related transaction. Notwithstanding any other provision of
 30 law, a state certified appraiser or a state licensed appraiser:

31 (A) Is not required to be licensed under ORS 696.022 to perform real estate appraisal activity
 32 or any other activity that constitutes the giving of an opinion as to the value of real property or
 33 an interest in real property; and

34 (B) Is not subject to regulation under ORS 696.010 to 696.495 and 696.600 to 696.995 in con-
 35 nection with the performance of real estate appraisal activity or the performance of any other ac-
 36 tivity that constitutes the giving of an opinion as to the value of real estate or an interest in real
 37 estate.

38 (2) Real estate appraisal activity excludes activity that is not performed in connection with a
 39 federally related transaction and that:

40 (a) Is performed by a nonlicensed regular full-time employee of a single owner of real estate, if
 41 the activity involves the real estate of the employer and is incidental to the employee's normal,
 42 nonreal estate activities;

43 (b) Is performed by a nonlicensed regular full-time employee whose activity involves the real
 44 estate of the employer, when the activity is the employee's principal activity, but the employer's
 45 principal activity or business is not the appraisal of real estate;

1 (c) Is performed by an attorney at law rendering services in the performance of duties as an
 2 attorney at law;

3 (d) Is performed by a registered geologist, registered professional engineer or architect render-
 4 ing services as a registered geologist, registered professional engineer or architect;

5 (e) Is performed by a certified public accountant rendering services as a certified public ac-
 6 countant;

7 (f) Is performed by a mortgage banker rendering services as a mortgage banker;

8 (g) Constitutes a letter opinion or a competitive market analysis as those terms are defined in
 9 ORS 696.010 that, by administrative or judicial order or subpoena, is compelled from an individual
 10 licensed to engage in professional real estate activity under ORS 696.022;

11 (h) Is performed by a salaried employee of the federal government, the State of Oregon or a
 12 political subdivision of the federal government or the State of Oregon while engaged in the per-
 13 formance of the duties of the employee;

14 (i) Is limited to analyzing or advising of permissible land use alternatives, environmental impact,
 15 building and use permit procedures or demographic market studies, if the performance of the activ-
 16 ities does not involve the rendering of an opinion as to the value of the real estate in question;

17 (j) Is performed by a professional forester appraising or valuing timber, timberland or both as
 18 part of services performed as a private consultant in forest management, but only if, in the case of
 19 timberland, the appraisal or valuation is limited to the use of the land as forestland;

20 (k) Is limited to giving an opinion in an administrative or judicial proceeding regarding the
 21 value of real estate for taxation;

22 (L) Is limited to giving an opinion regarding the value of real estate by a person who is not li-
 23 censed under ORS chapter 696, if the person's business is not the appraisal, selling or listing of real
 24 estate and the activity is performed without compensation. This paragraph does not apply to a
 25 person conducting transactional negotiations on behalf of another person for transfer of an interest
 26 in real property;

27 (m) Is limited to transferring or acquiring an interest in real estate by a person who is not li-
 28 censed under ORS chapter 696; or

29 (n) Is performed by a home inspector acting within the scope of a certificate or license issued
 30 under ORS chapter 701.

31 (3)(a) Real estate appraisal activity does not include an analysis, evaluation, opinion, conclusion,
 32 notation or compilation of data prepared by **or for** a financial institution or affiliate, a consumer
 33 finance company licensed under ORS chapter 725 or an insurance company or affiliate, made for
 34 internal use only by the financial institution or affiliate, consumer finance company or the insurance
 35 company or affiliate, concerning an interest in real estate for ownership or collateral purposes by
 36 the financial institution or affiliate, the consumer finance company licensed under ORS chapter 725
 37 or the insurance company or affiliate. Nothing in this subsection shall be construed to excuse a
 38 financial institution or affiliate from complying with the provisions of Title XI of the federal Finan-
 39 cial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

40 (b) As used in this subsection, "evaluation" means a study of the nature, quality or utility of a
 41 parcel of real estate or interests in, or aspects of, real property in which a value estimate is not
 42 necessarily required.

43 (4)(a) As used in this section, "purport to engage in or carry on real estate appraisal activity"
 44 means the display of a card, sign, advertisement or other printed, engraved or written instrument
 45 bearing the person's name in conjunction with the term "appraiser," "licensed appraiser," "certified

1 appraiser,” “appraiser assistant,” “registered appraiser assistant” or “appraisal” or an oral state-
2 ment or representation of certification, licensure or registration by the Appraiser Certification and
3 Licensure Board made by a person.

4 (b) Each display or statement described in paragraph (a) of this subsection by a person not li-
5 censed, certified or registered by the board is a separate violation under ORS 674.850 or 674.990.

6 (c) In a proceeding under ORS 674.850 or 674.990, a display or statement described in paragraph
7 (a) of this subsection shall be considered prima facie evidence that the person named in the display
8 or making the statement purports to engage in or carry on real estate appraisal activity.

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