

**EXPLANATION OF
Proposed OBA Amendments
to Senate Bill 109
and
Hand-engrossed SB 109
(Straight incorporation of HB 3079 Provisions)**

Senate Bill 109 was introduced at the request of the Oregon Bankers Association to address a technical problem with ORS 674.100 which calls into question whether “real estate appraisal activity” includes an evaluation prepared for a financial institution, affiliate, consumer finance company or an insurance company or affiliate (collectively “financial institutions”). The current statute (ORS 674.100 (3)(a)) provides that “real estate appraisal activity” “does not include an... evaluation... prepared by ... a financial institution ...” Senate Bill 109 would insert “or for” in this sentence, to clarify that both evaluations prepared by financial institutions themselves and evaluations prepared by a third party at the request of a financial institution would be excluded from the definition of “real estate appraisal activity.”

The importance of this change is that under current law, financial institutions are not required to get appraisals in making certain real property loans. Those laws permit the institutions to use evaluations in place of full appraisals for those loans. Many smaller financial institutions, and many rural branches of larger institutions, do not have the in-house capacity to prepare evaluations. The proposed amendment to ORS 674.100(3)(a) will permit financial institutions to use evaluations prepared by outside third parties.

The OBA amendments to SB 109 are intended to address a related problem. Even where financial institutions are allowed to use an evaluation rather than a full appraisal, they will in many cases wish to have the evaluation prepared by a licensed or certified appraiser. Appraisers are permitted to prepare evaluations, but under the current law, when an appraiser prepares an evaluation, they must comply with the *Uniform Standards of Professional Appraisal Practice* (USPAP). Such compliance effectively turns an evaluation into a full appraisal, which negates the exception provided in ORS 674.100(3)(a).

Several states, such as Florida, Indiana and Tennessee, have recently amended their state laws to clarify that licensed and certified appraisers may prepare and furnish evaluations and in doing so need not comply with USPAP.

House Bill 3079 would accomplish this same result, but as written would not clarify that financial institutions can obtain evaluations from outside third parties as well as performing them in-house.

The OBA amendments incorporate the substantive provisions of HB 3079 into SB 109, thereby allowing financial institutions to obtain evaluations from outside sources and allowing appraisers to prepare evaluations without complying with USPAP.

Senate Bill 109

A BILL FOR AN ACT

1
2 Relating to real estate appraisals; amending ORS 674.100.

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

4 **SECTION 1.** ORS 674.100 is amended to read:

5 674.100. (1)(a) A person may not engage in, carry on, advertise or purport to engage in or carry
6 on real estate appraisal activity within this state without first obtaining certification, licensure or
7 registration as provided for in ORS 674.310.

8 (b) Real estate appraisal activity is the preparation, completion and issuance of an opinion
9 as to the value on a given date or at a given time of real property or an interest in real property,
10 whether the activity is performed in connection with a federally related transaction or is not
11 performed in connection with a federally related transaction. Notwithstanding any other
12 provision of law, a state certified appraiser or a state licensed appraiser:

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

16 (B) Is not subject to regulation under ORS 696.010 to 696.495 and 696.600 to 696.995 in
17 connection with the performance of real estate appraisal activity or the performance of any other
18 activity that constitutes the giving of an opinion as to the value of real estate or an interest in real
19 estate.

20 (2) Real estate appraisal activity excludes activity that is not performed in connection

1 with a federally related transaction and that:

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

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

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

10 (d) Is performed by a registered geologist, registered professional engineer or architect
11 rendering services as a registered geologist, registered professional engineer or architect;

12 (e) Is performed by a certified public accountant rendering services as a certified public
13 accountant;

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

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

18 (h) Is performed by a salaried employee of the federal government, the State of Oregon or
19 a political subdivision of the federal government or the State of Oregon while engaged in the
20 performance of the duties of the employee;

21 (i) Is limited to analyzing or advising of permissible land use alternatives, environmental
22 impact, building and use permit procedures or demographic market studies, if the performance of

1 the activities does not involve the rendering of an opinion as to the value of the real estate in
2 question;

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

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

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

13 (m) Is limited to transferring or acquiring an interest in real estate by a person who is not
14 licensed under ORS chapter 696; or

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

17 (3)(a) Real estate appraisal activity does not include an analysis, evaluation, opinion,
18 conclusion, notation or compilation of data prepared by **or for** a financial institution or affiliate, a
19 consumer finance company licensed under ORS chapter 725 or an insurance company or
20 affiliate, made for internal use only by the financial institution or affiliate, consumer finance
21 company or the insurance company or affiliate, concerning an interest in real estate for ownership
22 or collateral purposes by the financial institution or affiliate, the consumer finance company

1 licensed under ORS chapter 725 or the insurance company or affiliate. Nothing in this subsection
2 shall be construed to excuse a financial institution or affiliate from complying with the provisions
3 of Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989
4 (12 U.S.C. 3310 et seq.).

5 (b) As used in this subsection **and in subsection (4) of this section**, “evaluation” means:

6 (A) A study of the nature, quality or utility of a parcel of real estate or interests in, or
7 aspects of, real property in which a value estimate is not necessarily required; or

8 (B) **An opinion of the market value of real property or real estate provided to a**
9 **financial institution in conformance with the Interagency Appraisal and Evaluation**
10 **Guidelines adopted jointly by the federal financial institutions regulatory agencies for use**
11 **in real estate-related financial transactions that do not require an appraisal.**

12 (4) **A state licensed appraiser or state certified appraiser engaged to perform an**
13 **evaluation is not engaged in real estate appraisal activity if the evaluation includes a**
14 **disclaimer that:**

15 (a) **Is located immediately above the appraiser’s signature; and**

16 (b) **Includes the following language in at least 10 point boldfaced type:**

17 _____
18 **I am a state licensed appraiser or a state certified appraiser. This evaluation was**
19 **not prepared in my capacity as a real estate appraiser and might not comply with the**
20 **uniform standards of professional appraisal practice.**
21 _____
22

1 [(4)(a)] (5) As used in this section, “purport to engage in or carry on real estate appraisal
2 activity” means the display of a card, sign, advertisement or other printed, engraved or written
3 instrument bearing the person’s name in conjunction with the term “appraiser,” “licensed
4 appraiser,” “certified appraiser,” “appraiser assistant,” “registered appraiser assistant” or
5 “appraisal” or an oral statement or representation of certification, licensure or registration by the
6 Appraiser Certification and Licensure Board made by a person.

7 [(b)] (6) Each display or statement described in [*paragraph (a) of this subsection*]
8 **subsection (5) of this section** by a person not licensed, certified or registered by the board is a
9 separate violation under ORS 674.850 or 674.990.

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

**PROPOSED AMENDMENTS
TO
SENATE BILL 109**

**Offered by:
OREGON BANKERS ASSOCIATION**

March 4, 2019

1 On page 2 of the printed bill, in line 37, after “means”, insert: “: (a).

2 In line 39, after “required”, insert: “; or”

3 After line 39, insert:

4 **“(b) An opinion of the market value of real property or real estate provided to a**
5 **financial institution in conformance with the Interagency Appraisal and Evaluation**
6 **Guidelines adopted jointly by the federal financial institutions regulatory agencies for use**
7 **in real estate-related financial transactions that do not require an appraisal.”**

8 **“(4) A state licensed appraiser or state certified appraiser engaged to perform an**
9 **evaluation is not engaged in real estate appraisal activity if the evaluation includes a**
10 **disclaimer that:**

11 **“(a) Is located immediately above the appraiser’s signature; and**

12 **“(b) Includes the following language in at least 10 point boldfaced type:**

13 _____
14 **“I am a state licensed appraiser or a state certified appraiser. This evaluation was**
15 **not prepared in my capacity as a real estate appraiser and might not comply with the**
16 **uniform standards of professional appraisal practice.**

17 _____

1 In line 40, delete “(4)(a)” and insert “(5)”.

2 On page 3, in line 1, delete “(b)” and insert “(6)”;

3 and after “described in”, delete
“paragraph (a) of this subsection” and insert “**subsection (5) of this section**”.

4 In line 3, delete “(c)” and insert “(7)”;

5 and delete “paragraph” and insert “**subsection (5)**
of this section”.

6 In line 4, delete “(a) of this subsection”.