



# nerej

## **Who benefits from extending real estate appraisal license requirements under Senate Bill 2246? - by Roger Durkin**

March 30, 2018 - Spotlights

Roger Durkin,  
Durkin Law PC

Bud Clarke wrote an opposition to my article, "Appraisers as Intellectual Idiots." At the very least I captured someone's attention. Susan Mitchell, president of MBREA, praised mandatory licensing in her recent article. She compares having a license to eliminating consumer risk. Not having a license, she says, "exposes consumers to significant risk because such unlicensed people operate outside of any regulatory oversight and lack accountability to any standards or authority. Any person - without having to meet any standards for licensing, education, and experience - is able to offer valuations for estate settlements, divorces, litigation, etc." Her statement regarding consumers being exposed to significant risk is an incredible effrontery to me. Her assertions are emotionally-charged *Ipsi Dixit*. I held a Massachusetts GC license for 21 years, taught USPAP for 20 years all over the U.S., a multi-disciplined appraiser for 43 years, have a master's degree in Valuation Sciences, hold five ASA designations, chair of ASA's Appraisal Review Committee, taught 56-hour review courses throughout the U.S., and authored five appraisal texts. Mitchell is saying that I and many like me are not competent to perform real estate appraisals. Her assertions edge toward libel in her use of unsubstantiated misleading statements.

Clarke said the Appraisal Institute intends to study the matter to determine if it will support the legislation. However, he and AI decided long ago to push licensing in order to capture the appraisal education business. Mitchell is impulsively convinced. Mitchell's assertion that unlicensed appraisers are operating outside regulatory oversight is uninformed misrepresentation. Bankruptcy court, land court, and family court do not require an appraisal license, nor does the IRS in non-cash charitable donation or decedent estate appraisals. Judges decide whether the appraiser is competent and credible. There is plenty of serious oversight in the courtroom.

We members of the appraisal profession have a duty to improve the profession. In doing so, I and others have faced strong opposition from those who are steeped in antiquated appraisal dogma and witchcraft methodology. Licensing has not changed that mindset.

I cannot easily persuade you to vote no on Senate Bill 2246. I can only point out that your advocacy work is misplaced and should be aimed at fixing the Mass. Board's appraiser sanctioning process,

raise the statute of limitations, change the board's burden of proof to clear and convincing evidence, not the current 51% more likely true burden of proof. Fix the systemically flawed Fannie Mae appraisal system. Clarify ambiguous portions of USPAP rules and work to prevent the destruction of the appraisal profession. And yes, there are some among the appraisal community—many with advanced academic degrees and professional designations—who are acting like intellectual idiots in that they are smart enough to have passed a technical exam but continue to produce less than competent appraisals.

Almost all appraisals that involve emotionally charged feuding parties in a judicial matter can result in the losing side seeking revenge against the appraiser. This is particularly true in divorce appraisals, shareholder disputes, IRS non-cash charitable donations, decedent estates disputes, bankruptcy, probate will contests, environmental damages, easements, and assessment challenges.

Many complaints filed with the state license board include emotionally-charged complainants. It may first appear that these complainants will gain nothing but vengeful retribution. The board has subject matter jurisdiction over appraisers who prepare lender-related appraisals. The board does not have subject matter jurisdiction in bankruptcy court, land court, family law court, or superior court-related legal matters. This lack of subject matter jurisdiction has not stopped the licensing board from charging the respondent-appraiser, in a divorce-related appraisal, with 20+ alleged USPAP violations. When the license board finds that the respondent-appraiser violated USPAP, they find a violation of a statute. A statutory violation is admissible and relevant evidence of negligence in a civil trial. The emotionally-charged divorce complainant also knows the appraiser carries \$500,000 to \$2 million E&O insurance. Hence, the appraiser could be in for a long and costly legal battle.

Licensing requirements is a creative tool to minimize competition. Licensing trades makes it harder and very expensive for people—especially low income people—to enter the appraisal profession. Lobbyists justify licenses by claiming consumers need protection from unqualified providers. In many cases, this is obviously a charade. The original Massachusetts licensing law was implemented to meet the federal requirements created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The federal statute was created to protect federal financial institutions. The 1992 licensing law had nothing to do with consumer protection. Federal statute, Dodd Frank amended FIRREA enhancing the power of the Appraisal Subcommittee not to protect consumers, but to oversee the state license boards' compliance with FIRREA. The ASC also regulates, the Appraisal Foundation, Standards Board and Qualifications Board. ASC receives \$50 for every state license. ASC subsidizes the Foundation with millions of dollars. All of this is to ensure compliance with FIRREA and not to protect consumers.

Occupational licensing blunts competition and boosts inequality. Real estate appraisers and real estate appraisal associations are trying to lock their competitors out of the market. Certain appraisal associations dominate the market for state approved primary and continuing education courses.

Occupational licensing, i.e. regulating who can do what jobs, has been on the rise for decades. The growth is being driven by a growing number of professions successfully lobbying state government

to make it more difficult to enter their professions. It is often practitioners themselves who define and expand the boundaries of the regulated profession. For example, the North Carolina's Board of Dentistry, run by dentists tried to prohibit hygienists and beauticians from whitening teeth. The Federal Trade Commission put a stop to the regulation by ruling that the board was not exempt from competition law.

American policymakers should be aware of licensing's potential to chill competition. In 2017, the Federal Trade Commission launched a task force on "economic liberty" to campaign against unnecessary licensing. There is no state license requirement for business appraisals, jewelry, machinery, firearms, coins, wine, stamps, books, sports memorabilia, art, or antique appraisals. In litigation-related cases, the judge decides whether the appraiser is competent and credible.

Roger Durkin, JD, MS, FASFA is an attorney and appraiser with Durkin Law PC, Boston, Mass.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540