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Appraisers, evaluations and risk in the state of Maine - by Mark Plourde

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On April 9th, 2018 the Federal Financial Institution Regulatory Agencies adopted a final rule regarding real estate appraisals that increased the loan threshold level from \$250,000 up to \$500,000, at or below which appraisals are not required for commercial real estate transactions. The agencies made this change after a period of study and public comment. It was determined that the increased threshold level posed no threat to the safety and soundness of financial institutions. Regulated institutions can now obtain an “evaluation” rather than an appraisal of the real property collateral below the \$500,000 loan level on commercial real estate. Ok, so you ask...“what is an evaluation and how does it differ from an appraisal?”

As defined in the Interagency Appraisal and Evaluation Guidelines, an “evaluation” is: “A valuation permitted by the agencies’ appraisal regulations that qualify for the appraisal threshold exemption, business loan exemption, or subsequent transaction exemption.” In short, an “evaluation” still provides a market value opinion of the real estate collateral, but the preparer need not be a state licensed or certified appraiser. Time and space in this brief article do not permit me to cover all the guidance as to who can prepare such “evaluations.” However, suffice it to say that the key difference is that such persons are not required to have an appraisal license or certification, nor therefore be held accountable to the professional appraisal standards set forth in the Uniform Standards of Professional Appraisal Practice (USPAP). On the surface, an “evaluation” looks and acts much like a limited appraisal and still results in someone rendering an opinion of value. But to be clear, an “evaluation” is not required to meet the more rigorous minimum professional valuation and analysis standards or report content that appraisers must comply with in rendering opinions of value. Simply put, an “evaluation” from a non-appraiser is not as reliable as an appraisal, and certainly compounds the risk to banks, borrowers, and taxpayers if relied upon as the basis of collateral value. However, this option is now available to financial institutions for most commercial real estate loans under \$500,000. The selection is often based upon perceived risk to the financial institution.

From an appraiser’s perspective here in Maine, this recent change raises concern as it represents a large increase in commercial real estate loan risk in the \$250,000 to \$500,000 range. In less

populated states like Maine, this range represents a significant portion of the volume of lending transactions and demand for services. What is also of concern is that laws and rules adopted by the Maine Board of Real Estate Appraisers (MBREA) do not legally permit licensed or certified appraisers in Maine to do “evaluations” at this time. In Maine, there is no legal definition of an “evaluation” or any related requirements. In Maine, an “appraisal” is legally defined to mean an analysis, opinion or conclusion prepared by a real estate appraiser related to the nature, quality, value or utility of specified interests in, or aspects of, identified real property. Per state statute, it is unlawful for a person to prepare, for a fee or other valuable consideration, an appraisal or appraisal report relating to real estate or real property without first obtaining a real estate appraisal license, other than a limited exemption for brokers. In Maine, a real estate appraiser must be licensed and shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules. Generally accepted standards of professional appraisal practice and ethics are currently USPAP at a minimum.

Thus, it is currently not legal for a licensed or certified appraiser in Maine to provide an “evaluation” that would not meet the minimum standards of USPAP. In other words, licensed appraisers are not allowed to provide anything less than a full USPAP compliant appraisal at this time, regardless of the federally accepted threshold level or guidance. At this writing, there are at least ten states that already have or are now in the process of changing their laws and rules to allow licensed appraisers to provide “evaluation” services when and where deemed appropriate. It is an understatement to say that Maine needs to resolve this issue sooner rather than later so as not to unfairly prevent licensed appraisers from being able to provide such “evaluation” services if requested.

In closing, if commercial real estate is to be taken as collateral for a loan in Maine, the qualified opinion of market value from an independent licensed appraiser should be sought to protect the public interest and taxpayers from finding themselves on the hook again for another financial mortgage market melt-down in the future.

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