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## **Should Mass. require all real estate appraisers to have a state license in order to perform any real estate appraisal? - by Roger Durkin**

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The U.S. Tax Court, U.S. Bankruptcy court, Probate & Family court, land court and superior court also hold that a state real estate appraisal license is not required for appraisal reports or testimony involving non FIRREA matters.

In Utilicorp v. Commissioner Internal Revenue, the United States Federal District Court decided not to exclude a real estate appraisal and expert testimony. Plaintiff's argued that the appraisers were not licensed in Maine or anywhere else and that by preparing an appraisal of Maine real property without a state appraisal license, the appraisers committed a Class E Crime and that their proposed testimony would also constitute a criminal act under Maine law, therefore the U.S. Tax Court should not condone this crime and should exclude the appraisers' report and testimony. The appraisers' report stated, "the appraisal was prepared for use by the IRS for income tax purposes. No other use is intended or should be inferred." The appraisal determined the fair market value of a 50% interest in the real estate assets to be \$32 million.

Maine claims that it is unlawful under Maine Law for any person not licensed as a real estate appraiser or trainee to appraise for a fee real property located in the State. Maine has an exception which permits real estate brokers to prepare appraisals or opinions of market value "rendered for purposes other than for federally related transactions as defined in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). In the preauthorization of the real estate license law, Maine's Joint Standing Committee on Business Legislation said, "Billions of dollars in loans that are secured by real estate are advanced every year to Maine consumers for which there are no uniform guidelines on how the appraised values or the qualifications of the individual conducting the appraisal are established; Consumers are occasionally swept up with enthusiasm over what may be an unrealistically inflated real estate market only to find that the resale value of their property is substantially lower in some future period; Title XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, requires that, after July 1, 1991, all real estate appraisals in connection with federally related transactions must be performed

by appraisers licensed by the State; and Maine must establish a process for licensing real estate appraisers in order to assure that uniform competent guidelines are established for the rendering of real estate appraisals and to fulfill the federal mandate.”

“Petitioner argued that the report was issued in violation of Maine Law, but made no claim that the appraisers are unqualified as expert witnesses within the meaning of Fed. R. Evidence 702. The long and the short of it is that we are not being asked to consider whether the appraisers violated Maine Real Estate Appraisal License Law to prevent admissibility of the appraisal report testimony as evidence in this case. Determining the admissibility of evidence is part of the normal power of any trial court and is essential to the proper discharge of its duties. Indeed, this Court would be derelict in its duties if it refused to entertain questions regarding the admissibility of evidence solely on the ground that such an inquiry is not a proper function of this Court. It is therefore clear that this Court has jurisdictional authority to entertain the admissibility of evidence in proceedings pending before it, as a necessary incident to its statutory power to redetermine proposed income tax deficiencies. We conclude that we have jurisdiction to determine the admissibility of the report and any testimony by the appraisers. We will not exclude either the appraisal report or appraiser’s testimony because we believe that the appraisers have not violated and, by testifying, will not violate Maine Law.”

The appraisal report contains specific values for, and conclusions regarding the values of, both improved and unimproved real property.” The purposes of the Maine Real Estate Appraisal License Law are manifest in the legislation enacting it. Those purposes are to protect consumers and to meet certain requirements imposed by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101-73, 103 Stat. 511, 12 U.S.C. secs. 3310-3351 (Supp. 1994). The relevant requirement of FIRREA is that, after July 1, 1991, all appraisals performed in connection with “federally related transactions” are to be performed only by individuals certified or licensed in accordance with the requirements of FIRREA. 12 U.S.C. § 3348. Indeed, all States have appraiser licensing or certification laws that refer to the FIRREA requirement. The Judge said, the term “federally related transaction” relates to certain lending transactions and has no relevance in this case.

We have no information that the report was prepared for a consumer, in the sense we infer the Maine legislature intended for that word, or in connection with a federally related transaction. That is also true regarding any testimony by the appraisers. We ascertain State law as if we were sitting as the highest court of the State. See *Commissioner v. Estate of Bosch*, 387 U.S. 456, 465 (1967). We are convinced that the Supreme Judicial Court of Maine would not apply its real estate appraisal license law to the appraisers solely for preparing the report or testifying in this case. We conclude that the Maine Real Estate License Law is inapplicable to these appraisers in connection with this case. Accordingly, we will not exclude the appraisal report or the testimony from evidence in this case. Judge Philip M. Halpern U.S. District for the Southern District of New York.

The push for mandatory licensing has been driven for the benefit of those who sell mandatory continuing education.

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1 Utilicorp United, Inc. & Subsidiaries v. Commissioner Internal Revenue 104 T.C. No. 32, 104 T.C. 670, Tax Ct. Rep. (CCH) 50,677, Tax Ct. Rep. Dec. (RIA) 104.32

2 Me. Rev. Stat. Ann. tit. 32, sec. 13964 (West Supp. 1994) § 13964.

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