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Can I Talk to the Real Estate Appraiser?

APPRAISER INDEPENDENCE IS THE LAW UNDER DODD-FRANK (WALL STREET REFORM AND CONSUMER PROTECTION ACT), AND THERE ARE CERTAIN CIRCUMSTANCES WHERE A BROKER CAN CONTACT & TALK TO THE APPRAISER.

NAR conducted a survey in September 2012 and found that 11% of REALTORS® had a contract canceled because the appraised value was lower than the contract sales price, 9% reported a delay in the scheduled closing and 15% indicated the purchase price was renegotiated at closing due to the appraised value being lower than the original contract sales price.

Although showings are rising, contracts are being written, and purchase prices appear to be increasing, appraised values sometimes do not match the contract price. You have a good offer on your listing and believe you have provided the seller with competent information from your CMA, which properly prices the property to sell at the most probable sales price for the subject property in the current market. Then, the appraisal comes back lower than the original contract price.

You have been told that you cannot talk to the appraiser under any circumstances because it is against the law. Well, that is simply not true. There is no prohibition against real estate brokers contacting appraisers about a mortgage loan appraisal when they have questions or concerns.

Brokers are allowed to contact appraisers and provide additional property information, including a copy of the sales contract for purchase transactions. Brokers may not intimidate or bribe an appraiser and an appraiser may not disclose confidential information about the appraisal or the appraisal assignment at any time. The language of Dodd-Frank is specifically as follows:

“The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake 1 or more of the following:

- (1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.
- (2) Provide further detail, substantiation, or explanation for the appraiser’s value conclusion.
- (3) Correct errors in the appraisal report.”

Although this language does address the issues that brokers can ask an appraiser to consider, note that it does not allow a full blown “conversation” or “discussion” with the appraiser. The implication is that the flow of information is essentially one-way, from the broker to the appraiser. A broker can NOT anticipate there will be any substantial “conversation” or “discussion” about the appraisal or its conclusions.

Dodd-Frank does not provide for any other form of communication between the broker and the appraiser.

Appraisers Are Subject to Increased Regulation

The housing market is certainly complex and so is the appraisal process. The national housing market downturn brought numerous regulatory changes to the real estate industry, including the entire appraisal process and those who provide appraisal services. The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law



by President Obama in 2010. Dodd-Frank “sunsetting” the Home Valuation Code of Conduct (HVCC) and required the Federal Reserve to amend the appraisal independence rules. The interim final rule became effective April 1, 2011 and applies to all consumer credit transactions secured by a consumer’s principal dwelling. Fannie Mae and Freddie Mac servicing guidelines now reflect this rule. In addition, state laws and regulations require appraisers to comply with the Uniform Standards of Professional Appraisal Practice (USPAP).

Dodd-Frank contains provisions about the function and regulation of appraisal management companies (AMCs). AMCs remove the administrative processes of appraisal management from the lender’s control. For a fee, the AMC recruits appraisers, contracts with them to perform appraisals, manages the appraisal process, pays the appraisers and reviews their work. The regulations prevent mortgage brokers or real estate agents from selecting or paying an appraiser if the appraiser’s report will be used for lending purposes. Based on Dodd-Frank, AMCs have sometimes instructed appraisers to significantly limit their interaction with interested parties to the transaction. This has caused much of the confusion on what type of contact and talk can be held with appraisers.

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10 Tips Brokers Can Utilize to Help the Appraisal Process:

- ▷ Don’t put restrictions on the appraiser in making an appointment to inspect the property. If your MLS utilizes an appointment system, use it. You will be notified of the appraiser’s site inspection.
- ▷ If an appraiser calls, be responsive and provide as much information as needed. Return the call promptly even if your listing has closed. You are the expert source of info on your listing, and the appraiser may not be aware of the hidden features or upgrades.
- ▷ Be as descriptive as possible in MLS about your listing. Include ample photos and documents.
- ▷ Don’t use or reference tax records as your “source” of information. Do the proper leg-work on your listing; it builds significant long-term credibility among your peers and local appraisers.
- ▷ Distinguish “Above-Grade” Living Area from “Below-Grade” Living Area in your MLS, particularly the quality of finish in “Below-Grade” Living Area, Attics, Bonus Rooms, Decks, Porches, etc.
- ▷ Provide an “Appraisers Package” in advance and have it available at the property when the appraiser is inspecting the property, or meet the appraiser at the property so you can answer any questions, inform them of the unique features of the property or neighborhood, and allow the appraiser the space and time to complete their inspection (Appraisers Package could include: Plats, Surveys, Deeds, Covenants, HOA Documents, Floor Plans, Specifications, Inspection Reports, neighborhood details, recent similar quality comparables, detailed list & dates of upgrades and remodels, photos, etc).
- ▷ Provide a fully executed copy of the purchase contract, including all addenda.
- ▷ Explain to the seller or buyer that the role of the appraiser is not to confirm the sales price but to provide the lender an independent opinion of the value of the underlying collateral. Provide the seller or buyer a copy of the brochure developed by The Appraisal Foundation entitled “A Guide to Understanding a Residential Appraisal,” available for download at www.realtor.org/appraisal/a-guide-to-understanding-a-residential-appraisal - 2013-03-28.
- ▷ REALTORS® and consumers can be present during the appraisal inspection. Make sure all parties allow the appraiser the space and time to complete their appraisal inspection.
- ▷ Make sure the property condition (inside and outside) is the best possible for the appraisal inspection, and inform the seller that interior and exterior photos will be taken by the appraiser.

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For many years the National Association of REALTORS® has spoken out for an “independent appraisal process” for licensed and certified appraisal professionals. In 2012 NAR adopted the “Responsible Valuation Policy” outlining NAR’s position on valuing and pricing property. This NAR Policy can be found at www.realtor.org/appraisal/responsible-valuation-policy.

What Can Appraisers Discuss After the Report Has Been Sent to the Lender/Client?

Once an appraisal assignment is completed and sent to the client, the Uniform Standards of Professional Appraisal Practice (USPAP) prohibit an appraiser from discussing the results of the report with anyone other than the client who ordered the appraisal, or parties designated by the client. In order to ask an appraiser to correct errors in the appraisal report, a broker must use the client, typically the lender, as an intermediary. The client may choose to provide additional data to the appraiser for consideration. The language from USPAP’s Ethics Rule is as follows:

“An appraiser must not disclose 1) confidential information; or 2) assignment [appraisal] results to anyone other than:

- ▷ *the client;*
- ▷ *persons specifically authorized by the client;*
- ▷ *state appraiser regulatory agencies;*
- ▷ *third parties as may be authorized by due process of law; or*
- ▷ *a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation.*

What Can Brokers Do to Help the Process?

First, recognize that the appraiser’s function is to develop an independent and impartial opinion of the value of the property for the lender (the appraiser’s client) to determine what the value of the underlying collateral is for the lender to base their financial lending decision on.

There are many things brokers and sellers can do to put the property that is the subject of the appraisal in the best position possible for the most favorable appraised value outcome. The most important is providing as much accurate, current and detailed information on the subject property as possible. Most of that information can easily be provided through the local MLS, which is not only beneficial to the appraiser of the subject property, but equally beneficial when the appraiser uses that same information as a future comparable. Potential

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homebuyers also benefit from the information during their search process. This is the first opportunity for the listing broker to provide accurate, current and detailed information about the subject property as well as the broker’s unique knowledge of the local real estate market through supporting information and documentation on the subject property.

An example would be when the subject property has extensive “energy efficiency” amenities, “green” or other similar “high-performance” characteristics. It would be appropriate that the lender is informed, in advance, that a properly qualified appraiser who is proficient in appraising “green” properties should be selected. Some MLS systems provide for energy efficiency details and certifications that can be incorporated directly into the listing information as an integral part of the listing data. Take advantage of this feature.

Another thing brokers can do easily to help the overall appraisal process is to incorporate as many photographs as the local MLS system will allow. Include not only a front photo, but also a rear photo and possibly a street or other neighborhood amenity photo, in addition to photos of all the major rooms and all the special features of the property. According to NAR, those listings with more detailed photos of the property sell much more quickly than those which have few or no photographs. An accurate, detailed MLS listing is vital to all interested parties, including the appraiser. The more details the better.

NOTE: As of March 1, 2013 there were 3,498 licensed and certified appraisers in North Carolina.

NOTE: The Appraisal Subcommittee (ASC) of Congress has been charged with implementing the Consumer Financial Protection Bureau (CFPB), which gives consumers an information resource to help complainants determine the appropriate legal authority to receive their complaint involving allegations of non-compliance with USPAP or appraisal independence requirements. Access the Hotline at <http://refermyappraisal-complaint.asc.gov/> or by calling toll free (877) 739-0096. ❖