

Unlawful Practice of Appraisal

Presented by:
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It's The Law!

(225 ILCS 458/5-5)

Sec. 5-5. Necessity of license; use of title; exemptions.

(a) It is unlawful for a person to (i) act, offer services, or advertise services as a State certified general real estate appraiser, State certified residential real estate appraiser, or associate real estate trainee appraiser, (ii) develop a real estate appraisal, (iii) practice as a real estate appraiser, or (iv) advertise or hold himself or herself out to be a real estate appraiser without a license issued under this Act. A person who violates this subsection is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for any subsequent offense.

But What About...

- (c) This Act does not apply to a person who holds a valid license as a real estate broker or managing broker pursuant to the Real Estate License Act of 2000 who prepares or provides a broker price opinion or comparative market analysis in compliance with Section 10-45 of the Real Estate License Act of 2000.
- (e) This Act does not apply to a county assessor, township assessor, multi-township assessor, county supervisor of assessments, or any deputy or employee of any county assessor, township assessor, multi-township assessor, or county supervisor of assessments who is performing his or her respective duties in accordance with the provisions of the Property Tax Code.
- (f) A State real estate appraisal certification or license is not required under this Act for any of the following:
 - (1) A person, partnership, association, or corporation that performs appraisals of property owned by that person, partnership, association, or corporation for the sole use of that person, partnership, association, or corporation.
 - (2) A court-appointed commissioner who conducts an appraisal pursuant to a judicially ordered evaluation of property.

However, any person who is certified or licensed under this Act and who performs any of the activities set forth in this subsection (f) must comply with the provisions of this Act. A person who violates this subsection (f) is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for any subsequent offense.
- (g) This Act does not apply to an employee, officer, director, or member of a credit or loan committee of a financial institution or any other person engaged by a financial institution when performing an evaluation of real property for the sole use of the financial institution in a transaction for which the financial institution would not be required to use the services of a State licensed or State certified appraiser pursuant to federal regulations adopted under Title XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, nor does this Act apply to the procurement of an automated valuation model.

"Automated valuation model" means an automated system that is used to derive a property value through the use of publicly available property records and various analytic methodologies such as comparable sales prices, home characteristics, and historical home price appreciations.

Changes in the Law

- FRT Language (Section 1-5)

- An earlier version of what came to be section 1-5 of the Act declared:

Section 5. Legislative Purpose. The purpose of this Act is to repeal and replace Article 2 of the Real Estate License Act of 1983 and, in order to protect the public, to require real estate appraisers and federally related transactions to obtain a real estate appraiser license. It is the intent of the General Assembly that this Act be consistent with the provisions of Title XI of the federal Financing Institutions Reform Recovery and Enforcement Act of 1989 [12 USCA §3331 et seq.], Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), and the Illinois Human Rights Act.

(emphasis added) 225 ILCS 457/5 (P.A. 90-571, §5, eff. July 1, 1998).

- Beginning effective July 1, 2002, section 1-5 of the Act was passed, and stated:

Section 1-5. Legislative Intent. The intent of the General Assembly in enacting this Act is to evaluate the competency of persons engaged in the appraisal of real estate in connection with a federally related transaction and to license and regulate those persons for the protection of the public. Additionally, it is the intent of the General Assembly for this Act to be consistent with the provisions of Title XI of the [FIRREA].

(emphasis added) 225 ILCS 458/1-5, amended by P.A. 92-180, eff. July 1, 2002.

- Effective January 1, 2015, the current version of section 1-5 omits “federally-related transaction,” but still provides:

Section 1-5. Legislative Intent. The intent of the General Assembly in enacting this Act is to evaluate the competency of persons engaged in the appraisal of real estate and to license and regulate those persons for the protection of the public. Additionally, it is the intent of the General Assembly for this Act to be consistent with the provisions of Title XI of the [FIRREA].

(emphasis added) 225 ILCS 458/1-5, amended by P.A. 98-1109, eff. Jan. 1, 2015).

Changes in the Law

- FRT Language (Section 5-5)

- (a) Beginning July 1, 2002, it is unlawful for a person to act or assume to act as a real estate appraiser, to engage in the business of real estate appraisal, to develop a real estate appraisal, to practice as a real estate appraiser, or to advertise or hold himself or herself out to be a real estate appraiser in connection with a federally-related transaction without a real estate appraiser license issued under this Act. A person who violates this subsection is guilty of a Class A misdemeanor.

* * *

(c) The licensing requirements of this Act do not require a real estate broker or salesperson who holds a valid license pursuant to the Real Estate License Act of 2000, to be licensed as the real estate appraiser under this Act, unless the broker or salesperson is providing or attempting to provide an appraisal report, as defined in section 1-10 of this Act, **in connection with a federally-related transaction.** (emphasis added) (emphasis added) 225 ILCS 458/5-5(a)(c) (P.A. 92-180, eff. July 1, 2002).

- Section 5-5 was amended in 2009. 225 ILCS 458/5-5 (amended by P.A. 96-844, eff. Dec. 23, 2009). By that amendment, subsection (a) no longer contained the phrase, “federally-related transaction.” Subsection (c) did however retain that phrase.
- Likewise when section 5-5 was amended effective August 26, 2011, subsection (c) still retained the phrase, “in connection with a federally-related transaction.” 225 ILCS 458/5-5 (amended by P.A. 97-602, eff. Aug. 26, 2011). The same goes for the version of amended section 5-5 in effect from August 16, 2013, to December 31, 2014: subsection (c) still included the phrase, “in connection with a federally-related transaction.” 225 ILCS 458/5-5 (amended by P.A. 98-444, eff. August 16, 2013). By the 2015 version, though, “federally-related transaction” no longer appeared in subsection (c). 225 ILCS 458/5-5 (P.A. 98-1109, eff. Jan. 1, 2015, and P.A. 99-78, eff. July 20, 2015).

Enforcement Actions

- Non-Appraisers

- Chris Pheneger, Wheaton - cease and desist the unlicensed practice as a real estate appraiser and assessed a \$10,000 civil penalty for developing and preparing property valuations for tax appeal boards in the State of Illinois despite respondent not having a real estate appraiser license.
- Lee Neuschaefer, Wheaton - cease and desist the unlicensed practice as a real estate appraiser and assessed a \$10,000 civil penalty for developing and preparing property valuations for tax appeal boards in the State of Illinois despite respondent not having a real estate appraiser license.
- Barbara Hall, Glenview - cease and desist the unlicensed practice as a real estate appraiser and assessed a \$500 civil penalty for performing an appraisal review for a subject property despite respondent not having a real estate Appraiser license.
- KPMG LLP, Chicago – (unlicensed) KPMG LLP and its employees and partners shall desist from all unlicensed real estate appraisal activity. KPMG LLP shall pay \$15,000 pursuant to applicable law and shall tender to the Department a complete written copy of the policy changes and implementations of procedures regarding the use of licensed Real Estate Appraisers.

Enforcement Actions

- Non-Appraisers

- James Watson, Plano, TX – (unlicensed) ordered to cease and desist unlicensed practice of real estate appraisal and fined \$5,000 for creating an appraisal without a license.
- Rick Robin, Hawthorn Woods – (unlicensed) ordered to cease and desist unlicensed appraisal practice and assessed a \$30,000 civil penalty.

Civil Litigation

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

MARK POMYKACZ)
)
 Plaintiff,)
)
 v.)
)
 ILLINOIS DEPARTMENT OF)
 FINANCIAL AND PROFESSIONAL)
 REGULATION,)
)
 Defendant.)

Case No. 15 CH 10905
Hon. Sophia H. Hall

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT - CHANCERY DIVISION**

ILLINOIS STATE BAR ASSOCIATION,)
)
 Plaintiff,)
)
 v.) 17 CH 9418
)
 ILLINOIS DEPARTMENT OF FINANCIAL)
 AND PROFESSIONAL REGULATION et al.,)
)
 Defendants.)
)
 Judge Rodolfo Garcia

Civil Litigation (cont'd)

Conclusion

Accordingly, this Court grants plaintiff's Motion for Summary Judgment as to Count II finding that the Act, as it existed prior to the January 2015 amendment, did not apply to plaintiff's appraisal in connection with a state transaction. Accordingly, this Court finds that the administrative proceeding against plaintiff is null and void. The Court vacates the reprimand and fine.

- Pomykacz decision holds that license was not necessary pre-2015 for non-FRT work.
 - IDFPR did not appeal decision
 - Only applies to pre-2015
 - Is persuasive, not precedent

Civil Litigation (cont'd)

- ISBA filed lawsuit against IDFPR in July 2017.
 - Lawsuit seeks to enjoin enforcement actions against attorneys representing property owners.
 - Requests:
 - Declaratory Judgment
 - Injunctive Relief
 - Writ of Prohibition
 - Heavy focus on oversight authority for practice of law
 - IDFPR has filed a Motion to Dismiss the Complaint
 - Briefing and argument still to occur

Legislative Changes?

- Return to FRT only ?
- Modification of exemption language re: Tax Appeals?
 - *(h) This Act does not apply to an Illinois licensed attorney at law when performing an evaluation of real property or filing of documentation in conjunction with a real estate tax assessment challenge or appeal of real property under the Property Tax Code as the representative of the property owner/taxpayer. This amendatory act of 2017 shall be construed as declarative of existing law and not as a new enactment.*

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Bio-Contact Information

Craig Capilla is a trial lawyer, concentrating his practice in a wide range of civil litigation, including professional liability and commercial claims. He has successfully defended residential and commercial appraisers and appraisal firms accused of negligence or improper activity in their valuation services. Craig has also represented numerous licensed professionals in Illinois state licensing matters including real estate brokers, real estate appraisers, and medical doctors, process servers, mortgage loan originators and brokers. He has represented clients in both state and federal lawsuits and has appeared in various judicial circuits across Illinois and in Wisconsin. He has also assisted professionals with licensing proceedings in Wisconsin, Iowa, and Missouri.

Craig earned a B.A. from the University of Michigan in 2004, majoring in History and Political Science. He then earned a Juris Doctor from the DePaul University College of Law in 2007. Craig is authorized to practice law in Illinois, Wisconsin, and is a member of the trial bar of the United States District Court for the Northern District of Illinois.

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