



Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

Paul Vornholt
Director of Intergovernmental Relations

Date: October 17, 2007

To: Members of the Common Council

From: Jennifer Gonda, Sr. Legislative Fiscal Manager

RE: State legislation to require licensure and certification of property appraisers.

We are providing this report as directed in Common Council File 070561, a substitute resolution supporting introduction and passage of state legislation to require licensure and certification of property appraisers. The intent of this communication is to update you on the status of this legislation and related efforts being undertaken by the Intergovernmental Relations Division.

My research indicates that at the city's request, this legislation was originally drafted by former State Senator Gwen Moore in 2001. It was never introduced although there were several public legislative and state agency discussions about the issue. It was redrafted by then State Representative Lena Taylor in 2003. Again, the draft legislation was never introduced and has not been pursued since that time.

Pursuant to the resolution, I have been working over the past two months to re-initiate this legislation. As you are aware, the primary focus of our state legislature at this time is the ongoing state budget stalemate. This has caused serious delays in the consideration of all other legislative initiatives and is a challenging environment for our office to obtain commitments on this and other legislative initiatives.

This week, I received a commitment from Senator Jeff Plale to redraft and pursue the legislation on the city's behalf. I have provided him with the necessary background materials for drafting purposes. Fortunately, we already have the previous bill draft (see attached) and many supporting materials to use as a starting point. This will save quite a bit of time, but the draft still needs considerable time and effort to ensure the legislation accomplishes the Common Council's intent. I am also working with Senator Plale to identify an appropriate co-author to spearhead the effort in the Assembly.

In the meantime, I will be working to build a wider basis of support for the proposed change. We will work to partner with numerous organizations, including members of HUD's Predatory Lending/Foreclosure Prevention Taskforce. This Task Force includes members from local community organizations, education institutions, our federal legislative delegation, city and state officials. The Wisconsin Association of Assessing Officers, the League of Wisconsin Municipalities and the Alliance of Cities are other natural allies.

The HUD Task Force's Legislative Subcommittee is also working to identify other areas of legislation that will address problems related to foreclosures. Specifically, the following two bills are being proposed by Senator Jim Sullivan and Representative Jon Richards:

1. Homeowner's Protection Act – legislation aimed at curbing foreclosure rescue fraud scams. The bill draft is circulating for co-sponsorship and a press conference announcing the proposed legislation was held on Tuesday, October 9th.
2. Mortgage Broker Legislation – legislation to strengthen regulations on mortgage brokers to safeguard consumers from high-risk loans. This detailed piece of legislation is modeled after an act passed by the Minnesota legislature and is currently in drafting.

Other legislative ideas under consideration by the subcommittee:

1. Limitations on Prepayment Penalties – legislation in the 2005-07 session changed WI law to allow for prepayment penalties. Since the penalties often make refinancing out of reach for consumers in ARM loans, we are looking at whether to repeal this provision.
2. Protections for Renters Living in Foreclosed Properties – in some cases, renters have been left in foreclosed homes no longer being maintained by the owner or bank. We are reviewing policies in other states where minimum exterior building maintenance standards are being required of whoever ends up holding the title to the property.
3. WHEDA Refinancing Product – We've recently been informed that WHEDA has decided not to pursue this product due to limited success in other states.

In addition to this specific legislation, Marty Collins and I are working with the HUD Task Force to ensure the city's efforts to curb predatory lending and its ripple effects are well coordinated with other efforts in the community. We have found that the more we dig into the causes and effects of foreclosures, the more complex the issue becomes. The problem is multi-faceted and needs to be tackled from many different directions, legislative and otherwise. Fortunately, there is a large and dedicated group of individuals working together to find solutions.

Some other related activities:

- Approached the League of WI Municipalities and the WI Alliance of Cities about coordinating an educational effort regarding the effects of residential property foreclosures with local officials statewide.
- Sent letter on behalf of Mayor Barrett to the Federal Reserve Board asking for stronger protections against abusive lending per their authority under the Home Ownership and Equity Protection Act (HOEPA). See attached.
- Requested that the Social Development Commission become involved in the critical community outreach/education efforts being spearheaded by FHC and WI UEDA as part of their financial literacy programs and Money Smart Week.
- Attended 10/9 press conference announcing the Homeowner Protection Act being introduced by Rep. Richards and Sen. Sullivan (Ald. Davis was also in attendance.)
- The Fair Housing Council is running a hotline for consumers facing foreclosure, which the City stuffed into its recent Water bills. The STOPP (Strategies to Overcome Predatory Practices) Hotline is (414) 278-9190.

Please feel free to contact me at Ext. 3492 with any questions or concerns about this or other legislative efforts the Intergovernmental Relations Division is pursuing on your behalf.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3347/2dn
MDK:kmg:jf

January 13, 2004

Rep. Taylor:

Please note the following about this version:

1. I made some changes to the language suggested for the definitions of "broker market analysis" and "appraisal report".
2. I assume that you want all appraisers to pay the annual federal registry fee, regardless of whether they perform appraisals in federally related transactions. Is that correct? Note the proposed amendment of s. 458.21, stats., makes this requirement more explicit than the suggested language.

Mark D. Kunkel
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E-mail: mark.kunkel@legis.state.wi.us

2003 ASSEMBLY BILL

1 AN ACT *to repeal* 458.02; *to renumber* 458.055; *to renumber and amend*
2 458.01 (3) and 458.09 (1); *to amend* 15.405 (10r) (a) 2., 458.03 (1) (f), 458.095
3 (title), 458.16 (1), 458.16 (2) and 458.21; and *to create* 458.01 (3) (a), 458.01
4 (5m), 458.055 (2m), 458.19 (4) and 458.19 (5) of the statutes; **relating to:**
5 certification and licensure of real estate appraisers and requirements for
6 appraisal reports.

Analysis by the Legislative Reference Bureau

This bill makes changes to the licensure and certification of real estate appraisers and the requirements for appraisal reports.

Licensure and certification

Under current law, the Department of Regulation and Licensing (DRL) issues licenses and certificates to real estate appraisers. To obtain a license or certificate, a person must satisfy specified requirements, including education, experience, and examination requirements established in rules promulgated by DRL. Current law prohibits a person who is not licensed or certified from using a title indicating that he or she is "Wisconsin licensed," "Wisconsin certified," or something similar. In addition, current law prohibits a person who is not licensed or certified from describing or referring to an appraisal of real estate in this state as "Wisconsin certified," "Wisconsin licensed," or something similar. However, current law allows

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a person who is not licensed or certified to appraise real estate or cosign an appraisal report, if the person does not violate the prohibitions described above.

This bill prohibits a person, for compensation, from performing a real estate appraisal or preparing or cosigning a real estate appraisal report, unless he or she is licensed or certified as a real estate appraiser by DRL. In addition, under the bill, a person who is not licensed or certified may not, for compensation, engage in the business or occupation of, or hold himself or herself out as, a real estate appraiser. As a result, a person who is not licensed or certified may not, for compensation, appraise real estate or cosign an appraisal report, even if he or she does not violate the prohibitions under current law. The bill does not affect the requirements that a person must satisfy to be licensed or certified.

There are three exceptions to the prohibitions created in the bill. First, the bill allows a person licensed by DRL under current law as a real estate salesperson or broker to prepare a broker market analysis without being licensed as a real estate appraiser under the bill. Under the bill, a "broker market analysis" is as an analysis used solely to establish a listing price for a property. Second, the bill does not apply to an "assessor," which is defined as a person who assesses real estate for property tax purposes for a town, village, city, or county or the Department of Revenue (DOR). Under current law, which this bill does not affect, assessors are regulated by DOR. Third, the bill's prohibitions do not apply to a person who satisfies the requirements for classification as an appraiser trainer by the Appraiser Qualifications Board of the Appraisal Foundation or its successor.

In addition, the bill requires each certified or licensed appraiser to pay to DRL the annual registry fee that is required by the Federal Financial Institutions Examination Council. Under current law, a certified or licensed appraiser must pay the fee to DRL only if he or she performs, or desires to perform, appraisals in certain transactions overseen by federal agencies.

Appraisal reports

Under current law, an appraisal report prepared by a real estate appraiser must comply with certain requirements, including stating whether the appraiser has conducted an on-site inspection of the real estate or buildings or dwellings on the real estate.

This bill requires an appraisal report prepared by a real estate appraiser to also include the assessed and equalized values of the real estate for the assessment as of January 1 of the year of the appraisal report or for the most recent assessment, whichever is available. In addition, if the appraisal report pertains to residential real estate or vacant land, the report must also include information about conveyances of the real estate or land within two years preceding the appraisal, including the sales prices or values of ownership interests transferred, the identities of the grantors and grantees, and the numbers assigned by the register of deeds for recording the conveyances.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 15.405 (10r) (a) 2. of the statutes is amended to read:

2 15.405 (**10r**) (a) 2. One assessor, as defined in s. 458.09-~~(1)~~ 458.01 (4m).

3 **SECTION 2.** 458.01 (3) of the statutes is renumbered 4581.01 (3) (intro.) and
4 amended to read:

5 4581.01 (**3**) (intro.) "Appraisal report" means a written communication of an
6 appraisal, but does not include any of the following:

7 (b) A broker market analysis.

8 **SECTION 3.** 458.01 (3) (a) of the statutes is created to read:

9 458.01 (**3**) (a) A report used to determine value for an assessment prepared by
10 an assessor under s. 70.32.

11 **SECTION 4.** 458.01 (5m) of the statutes is created to read:

12 458.01 (**5m**) "Broker market analysis" means an analysis made by a broker or
13 salesperson licensed under ch. 452 that is used solely to establish a listing price for
14 a property.

15 **SECTION 5.** 458.02 of the statutes is repealed.

16 **SECTION 6.** 458.03 (1) (f) of the statutes is amended to read:

17 458.03 (**1**) (f) Promulgate rules specifying the manner in which certified
18 appraisers and licensed appraisers shall place their titles, as described in s. 458.055
19 (1m) (a) and (c), and certificate numbers on appraisal reports and written appraisal
20 agreements.

21 **SECTION 7.** 458.055 of the statutes is renumbered 458.055 (1m).

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1 **SECTION 8.** 458.055 (2m) of the statutes is created to read:

2 458.055 (2m) (a) Except as provided in par. (b), no person may, for a fee, money,
3 or other thing of value, perform an appraisal, prepare or cosign an appraisal report,
4 or engage in the business or occupation of, or advertise or hold himself or herself out
5 as, or act temporarily or otherwise as an appraiser unless the person is a certified
6 appraiser or licensed appraiser.

7 (b) Paragraph (a) does not apply to any of the following:

- 8 1. An assessor.
- 9 2. A person who satisfies the requirements for appraiser trainee classification
10 by the Appraiser Qualifications Board of the Appraisal Foundation or its successor.

11 **SECTION 9.** 458.09 (1) of the statutes is renumbered 458.01 (4m) and amended
12 to read:

13 458.01 (4m) ~~In this section, "assessor"~~ "Assessor" means an individual who
14 assesses or has assessed the value of real estate for property tax purposes for a town,
15 village, city, or county or the department of revenue.

16 **SECTION 10.** 458.095 (title) of the statutes is amended to read:

17 **458.095 (title) Temporary practice and use of titles; appraisers certified**
18 **or licensed in other states.**

19 **SECTION 11.** 458.16 (1) of the statutes is amended to read:

20 458.16 (1) Each certified appraiser shall place his or her title, as described in
21 s. 458.055 (1m) (a) and (c), and certificate number on each appraisal report and each
22 written appraisal agreement used by the certified appraiser in conducting appraisal
23 activities. The title and certificate number shall be placed in a manner specified by
24 the department in the rules promulgated under s. 458.03 (1) (f). The title "Wisconsin
25 certified residential appraiser" or "WI certified residential appraiser" may be used

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1 only on an appraisal report or written appraisal agreement pertaining to commercial
2 real estate having a transaction value of not more than \$250,000 or to residential real
3 estate.

4 **SECTION 12.** 458.16 (2) of the statutes is amended to read:

5 458.16 (2) Each licensed appraiser shall place his or her title, as described in
6 s. 458.055 (1m) (a) and (c), and certificate number on each appraisal report and each
7 written appraisal agreement used by the licensed appraiser in conducting appraisal
8 activities. The title and certificate number shall be placed in a manner specified by
9 the department in the rules promulgated under s. 458.03 (1) (f). The title "Wisconsin
10 licensed appraiser" or "WI licensed appraiser" may be used only on an appraisal
11 report or written appraisal agreement pertaining to real estate described in the rules
12 promulgated under s. 458.03 (1) (e).

13 **SECTION 13.** 458.19 (4) of the statutes is created to read:

14 458.19 (4) If the appraisal report pertains to residential real estate or vacant
15 land, the full sales price, or the value of the ownership interest transferred, as
16 specified on a return submitted under s. 77.22 (1), for any conveyance of the real
17 estate or land that was recorded by the register of deeds of the county in which the
18 real estate or land is located within the 2 years preceding the date of the appraisal
19 report; the identities of the grantor and grantee as specified in the return; and any
20 number that the register of deeds assigned to the conveyance related to the recording
21 of the conveyance. In this subsection, "conveyance" has the meaning given s. 77.21
22 (1).

23 **SECTION 14.** 458.19 (5) of the statutes is created to read:

24 458.19 (5) The real estate's assessed value, as determined under s. 70.32, for
25 the assessment as of January 1 of the year of the appraisal report or, if such an

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1 assessment is unavailable, for the most recent assessment and the real estate's
2 equalized value, as determined under s. 70.57, for the assessment as of January 1
3 of the year of the appraisal report or, if such an assessment is unavailable, for the
4 most recent assessment.

5 **SECTION 15.** 458.21 of the statutes is amended to read:

6 **458.21 Appraisals in federally related transactions; annual Annual**
7 **registry fee required.** Each certified appraiser or licensed appraiser who,
8 regardless of whether he or she performs or desires to perform an appraisal in a
9 federally related transaction, shall pay to the department the annual registry fee
10 required by the federal financial institutions examination council or its successor
11 agency.

12 **SECTION 16. Initial applicability.**

13 (1) APPRAISAL REPORTS. The treatment of section 458.19 (4) and (5) of the
14 statutes first applies to appraisal reports prepared on the effective date of this
15 subsection.

16 **SECTION 17. Effective date.**

17 (1) This act takes effect on the first day of the 13th month beginning after
18 publication.

19 (END)



Tom Barrett
Mayor, City of Milwaukee

August 23, 2007

Ms. Jennifer J. Johnson, Secretary
Federal Reserve Board of Governors
20th and Constitution Ave, NW
Washington, DC 20551

Dear Ms. Johnson:

I am writing to urge you to swiftly implement strong protections against abusive lending per the Federal Reserve's authority under the Home Ownership and Equity Protection Act (HOEPA). Milwaukee, like much of our nation, is beginning to feel the surge of mortgage foreclosures as the effects of abusive lending practices surface in our community.

Many of our most vulnerable families face dire financial circumstances and/or foreclosure as the interest rates on their adjustable rate mortgages (ARMs) reset and climb higher this year and in 2008. In Wisconsin alone, nearly 11,000 residents already lost their home in the first seven months of 2007 – a 25% increase from last year.

In many cases, borrowers of exotic subprime and non-traditional ARM or stated-income loans could have qualified for less expensive and safer fixed-rate loans. The devastation wrought by predatory lending is particularly frustrating because stronger federal regulation and legislation would have prevented much of the abusive lending that occurred over the past few years.

It is incumbent upon the Federal Reserve Board to build upon and strengthen the protections contained in the recently adopted interagency statement on subprime mortgage lending (Federal Register, July 10, 2007). In response to the specific questions posed, the City of Milwaukee believes that the following strong limits and prohibitions must be applied to non-traditional and high-cost loans in order to prevent unfair and deceptive lending in violation of HOEPA:

- Limit Prepayment Penalties: Strict limits should be applied to prepayment penalties so that they do not apply after the expiration of teaser rates in ARM prime and subprime loans. We believe that at least a 90-day time period before the expiration of teaser rates is needed so that borrowers have sufficient time to shop for and receive another loan if necessary. For fixed-rate subprime loans, prepayment penalties must not extend beyond two years. Limiting prepayment penalties prevents borrowers being trapped in abusive and predatory loans.

- Require Escrows for Taxes and Insurance: The Federal Reserve should require escrows for all loans, prime and subprime, fixed and adjustable rate. Since escrows are not currently required, deceitful lending flourishes when unscrupulous brokers and lenders blind borrowers to the true cost of their loans by not discussing payments for insurance and taxes.
- Prohibit Stated Income or Low Doc Loans: These loans are prone to abuse when predatory lenders and brokers inflate borrowers' incomes to qualify them for unsustainable loans. This type of abuse is most prevalent on subprime loans and must be prohibited. At the very least, the Federal Reserve Board must establish clear protections and procedures for reduced documentation loans including the requirement that pay stubs, tax forms, and other acceptable verification of income must be received by the lender.
- Protect Against Unaffordable Loans: A core plague of predatory lending is lending beyond borrower payment ability. Abusive lenders are underwriting ARM loans at initial and low rates, leaving borrowers vulnerable to rapid rate increases. The recent guidance on subprime lending requires underwriting at the fully-indexed rate. While this is a step in the right direction, underwriting requirements at the maximum possible rate or rates above fully-indexed rates would be a better protection for mortgage consumers. There should also be a presumption that a loan is unaffordable if the borrower's debt-to-income ratio exceeds 50%.

I also urge the Federal Reserve to promulgate a rule that goes beyond the specific questions posed at the June 14, 2007 hearing. In order to effectively curb deceptive loans, the Federal Reserve should do the following:

- Prohibit Steering into Subprime Loans – Steering borrowers who are qualified for prime loans into subprime loans is an unfair and deceptive practice. Borrowers lose substantial amounts of wealth when they are steered into higher-cost loans.
- Hold Lenders Liable – Lenders should be held liable for deceptive and fraudulent practices committed by brokers with whom they do business. Since up to 70% of the loans originated start with brokers, lenders must be motivated to strictly monitor broker behavior. Likewise, lenders and brokers must face serious financial penalties if they intimidate or pressure appraisers to meet certain home values. Fraudulent appraisals have contributed significantly to the rise of delinquencies and defaults.

While quick adoption of these suggestions for Federal Reserve rulemaking under HOEPA would be a big step in the right direction, I also believe that the most effective response to predatory lending is comprehensive Congressional legislation. I strongly endorse Senator Schumer's Borrower's Protection Act of 2007 (S. 1299) and Representative Ellison's Fairness for Homeowners Act of 2007 (H.R. 3081). These bills would go a step further to stomp out predatory practices since they would directly impose good faith and fair dealing duties on appraisers, brokers, and other actors.

Homeownership is a proven way to build personal wealth and financial security. In cities like Milwaukee with high rates of poverty, wealth building is especially critical. The subprime lending industry has taken advantage of our residents and is poised to decimate the progress the Milwaukee community has made toward responsible homeownership. In response, the Federal Reserve must implement strong HOEPA reforms and Congress must pass a strong anti-predatory law as soon as possible to prevent any further damage.

Thank you for the opportunity to comment on this critical matter. If you have any questions, please contact Sharon Robinson, Department of Administration Director at (414) 286-3828.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Barrett". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Tom Barrett
Mayor

TB:JG:mo

