



August 16, 2000

The Honorable Yvonne Davis
Chair, Local and Consent
Calendars Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Opinion No. JC-0271

Re: Authority of a state licensed or certified real estate appraiser to complete a Valuation Conditions Form for Federal Housing Administration mortgage insurance appraisals (RQ-0201-JC)

Dear Representative Davis:

On behalf of a state certified real estate appraiser, you request an opinion regarding Form HUD-92564-VC, Valuation Conditions ("VC form"), a form completed in connection with a real estate appraisal for Federal Housing Administration ("FHA") mortgage insurance. We understand you to ask whether a state certified or licensed real estate appraiser is authorized to make the observations and render the responses required by the VC form. We conclude in the affirmative.

We begin with a brief review of the federal and state law framework. The FHA requires appraisals to be performed by state licensed or certified appraisers. Title XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires that all real estate appraisals in connection with federally related transactions be performed only by individuals certified or licensed by a state in accordance with a uniform national appraisal standard. *See* 12 U.S.C. §§ 3331-3351(1994 & Supp. II 1996, Supp. III 1997, Supp. IV 1998). To assure the availability of state licensed or certified appraisers to perform appraisals for federally related transactions, the Act authorizes a state to establish a state appraiser certifying and licensing agency. *See id.* § 3346 (1994). The Act also authorizes a federal agency or instrumentality to require compliance with additional standards for performing real estate appraisals if necessary to carry out its statutory duties. *See id.* § 3339.

The VC form is required pursuant to United States Department of Housing and Urban Development ("HUD") prescribed standards for FHA mortgage insurance. The maximum mortgage amount that the FHA (an organizational unit of HUD) can insure is based on the appraised value of the property. *See id.* § 1709(b)(10) (Supp. IV 1998). The Secretary of HUD is specifically directed to prescribe standards for the appraisal of all property to be insured by the FHA. *See id.* § 1708(e) (1994); *see also* 24 C.F.R. § 203.5(e)(1) (1999) (FHA single family mortgage insurance regulation requiring mortgagee to have property appraised in accordance with standards and requirements prescribed by Secretary of HUD). These standards are prescribed in HUD *Handbook 4150.2*. *See* U. S. Dep't of Housing and Urban Dev., *Handbook 4150.2, Valuation Analysis for Home Mortgage*

Insurance for Single Family One-to-Four Unit Dwellings (July 1, 1999) <<http://www.hudclips.org>> [hereinafter "HUD Handbook"]. The HUD Handbook requires a "as repaired appraisal" valuation of property using the VC form, which addresses physical conditions of the property that may render the property uninhabitable or cause health and safety concerns.¹ See *id.* at pp. 5-2 to 5-4.

Two state statutes are also relevant to your query. The Texas Appraiser Licensing and Certification Act ("TALCA") was enacted to conform to the regulation of real estate appraisers under title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. See TEX. REV. CIV. STAT. ANN. art. 6573a.2, § 2 (Vernon Supp. 2000). Under TALCA, persons are licensed or certified to perform appraisals by the Texas Appraisal Licensing and Certification Board, ("TALCB") "an independent subdivision of the Texas Real Estate Commission." *Id.* art. 6573a.2, §§ 5, 6. An "appraisal," under this statute is "the act or process of estimating value or an estimate of value." See *id.* art. 6573a.2, § 3(1).

You are concerned about the extent to which FHA mortgage insurance appraisals require property inspections. Persons are licensed to perform "real estate inspections," by the Texas Real Estate Commission pursuant to section 23 of the Real Estate License Act ("RELA"). See *id.* art. 6573a. A "real estate inspection," under RELA is "a written or oral opinion as to the condition of the improvements to real property, including structural items, electrical items, mechanical systems, plumbing systems, or equipment." *Id.* art. 6573a, § 23(a)(10). A person commits an offense – a Class B misdemeanor – under RELA "if the person knowingly or intentionally engages in the business of real estate inspecting without a license." *Id.* art. 6573a, § 23(m)(1), (2).

You believe that the VC form conflicts with state law because it requires all real estate appraisers to perform "Real Estate Property Inspection[s]" that are outside the scope of a "real estate property valuation appraisal[]" that appraisers are licensed to perform under state law. See Pennebaker Letter at 1.² We disagree.

As a threshold matter, we note that a state licensed or certified real estate appraiser who does not wish to perform FHA mortgage insurance appraisals and complete the VC form is not required to do so. State licensed or certified appraisers have the choice whether to perform FHA mortgage insurance appraisals. If they elect to do so, they must make the requisite property condition observations and complete the VC form. Only those state licensed or certified appraisers who have applied to HUD to perform appraisals for FHA mortgage transactions, have certified that they have

¹The VC form includes questions that require "yes" and "no" responses based on "readily observable evidence" of "site hazards and nuisances," "soil contamination," "grading and drainage," "well and individual water supply and septic," "wood destroying insects," "private road access and maintenance," "structural defects," "foundation," "roofing," "mechanical systems," "other health and safety deficiencies," "lead based paint hazard," and "condominiums and planned unit developments." See U.S. Dep't of Housing and Urban Dev., Form HUD-92564-VC, Valuation Conditions (Sept. 1999) <<http://www.hudclips.org>>.

²Letter from Dotti J. Pennebaker, IFA, to Honorable Yvonne Davis, Texas State Representative, District 111 (Aug. 31, 1999) (on file with Opinion Committee).

read and understood the HUD Handbook, and have passed an examination on the FHA appraisal method and reporting requirements are eligible to perform FHA appraisals. *See* 64 Fed. Reg. 72868, 72869 (1999) (to be codified at 24 C.F.R. pt. 200, §§ 200.202, .206); HUD Handbook pp. 1-1 to 1-2; *see also* Hud Brief at 6.³ Thus, only appraisers who have voluntarily applied to and have been deemed qualified by HUD to perform FHA appraisals are required to complete the VC form.

Completion of the VC form as part of the FHA mortgage insurance appraisal by a state licensed or certified appraiser does not conflict with state law. An appraiser eligible to perform FHA appraisals is authorized to complete the VC form because it is part of the FHA appraisal process. The Texas Appraiser Licensing and Certification Act (“TALCA”), the state law under which real estate appraisers are licensed or certified, does not expressly prohibit the observations and responses required by the VC form, nor does it impliedly prohibit those observations and responses. While TALCA defines “appraisal” as “the act or process of estimating value or an estimate of value,” *see* TEX. REV. CIV. STAT. ANN. art. 6573a.2, § 3(1) (Vernon Supp. 2000), the statute does not exclusively set out the specific actions constituting the “act or process of estimating value or an estimate of value.” Nor does RELA, the state law under which real estate inspectors are licensed, preclude an appraiser from completing the VC form as part of a FHA appraisal. To the contrary, section 23(n) of the RELA specifically exempts from the licensing requirement of the act:

any . . . person who repairs, maintains, or inspects improvements to real property and who does not represent to the public through personal solicitation or public advertising that the person is in the business of inspecting such improvements. The provisions of this section shall not be construed so as to prevent any person from performing any and all acts which the person is authorized to perform pursuant to a license or registration issued by this state

Id. art. 6573a, § 23(n). To the extent completion of the VC form is part of the appraisal process for FHA mortgage insured properties, an appraiser licensed or certified under TALCA may complete the VC form without being licensed under RELA as a real estate inspector.

Our construction of section 23(n) is supported by its administrative construction. *See Dodd v. Meno*, 870 S.W.2d 4, 7 (Tex. 1994) (construction placed upon a statute by agency charged with its administration, while not binding, is entitled to substantial weight). The RELA is administered and enforced by the Real Estate Commission. *See* TEX. REV. CIV. STAT. ANN. art. 6573a, § 1 (Vernon Supp. 2000). The Commission construes section 23(n) to allow licensed or certified appraisers to complete the VC form as part of an appraisal: “[The Commission] considers appraisers licensed or certified by the [Texas Appraisal Licensing and Certification Board] to be exempt from the inspector licensing requirement when performing an appraisal. Thus, a licensed or certified appraiser may complete the new HUD Form 92564-VC as part of the appraisal process without being

³Brief of U.S. Department of Housing and Urban Development, in response to Attorney General Opinion Request No. 0201-JC (on file with Opinion Committee).

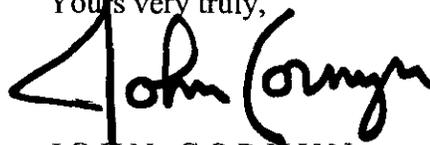
licensed as an inspector by [the Commission].” TALCB, *Appraiser Report* (August 1999) at 2 (emphasis omitted) (on file with Opinion Committee); *see also* Pennebaker Letter at 1. (“[The Commission] has issued a statement that Appraisers are exempt from being Licensed Real Estate Inspectors when performing an appraisal, thus may complete the HUD VC Sheet.”).

Furthermore, completion of the VC form as part of the FHA mortgage insurance appraisal is permitted under federal law. HUD construes the observations and responses required by the VC form to constitute an essential part of the appraisal of the property to be insured by the FHA to determine its market value; completion of the VC form, HUD asserts, does not require or constitute a real estate or home inspection. *See* HUD Brief at 10-12; *see also, e.g.*, HUD Handbook at p. 5-2 (“A home inspection is not required to complete the VC [form].”); 24 C.F.R. § 200.145 (1999) (“Any appraisals, inspections, environmental assessments, and technical or financial evaluations conducted by or for the [Federal Housing] Commissioner are performed to determine the maximum insurable mortgage, and to protect the Commissioner and the FHA insurance funds.”).

S U M M A R Y

Only state licensed or certified real estate appraisers who have voluntarily applied to and have been deemed qualified by the United States Department of Housing and Urban Development to perform FHA mortgage insurance appraisals are required to complete the Valuation Conditions Form on FHA mortgage insurance appraisals. A state licensed or certified real estate appraiser eligible to perform FHA appraisals is authorized to complete the Valuation Conditions Form. Completion of this form as required by federal law does not conflict with state licensing requirements for performing real estate appraisals and real estate inspections.

Yours very truly,

A handwritten signature in black ink that reads "John Cornyn". The signature is written in a cursive style with a large, stylized "J" and "C".

JOHN CORNYN

Attorney General of Texas

ANDY TAYLOR

First Assistant Attorney General

CLARK KENT ERVIN

Deputy Attorney General - General Counsel

SUSAN D. GUSKY

Chair, Opinion Committee

Sheela Rai

Assistant Attorney General - Opinion Committee