

Senate Bill 77

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Excludes certain activity of certified or licensed appraiser performed under contract with public body that has condemnation authority from real estate appraisal activity otherwise regulated under certification or licensure.

A BILL FOR AN ACT

1
2 Relating to appraisal waiver for the Department of Transportation; creating new provisions; and
3 amending ORS 35.500, 674.010 and 674.100.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 674.010 is amended to read:

6 674.010. For purposes of this chapter:

7 (1) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987,
8 as a not-for-profit corporation under the laws of Illinois.

9 (2) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial In-
10 stitutions Examination Council established pursuant to the federal Act.

11 (3) **"Appraisal waiver" means an administrative procedure established by the Department**
12 **of Transportation in compliance with provisions of the Uniform Relocation Assistance and**
13 **Real Property Acquisition Policies Act of 1970 (P.L. 91-646, 42 U.S.C. 4601 et seq.), 49 C.F.R.**
14 **24.102(c)(2) and 49 C.F.R. 24.7, as in effect on the effective date of this 2005 Act, for deter-**
15 **mining just compensation for the acquisition of real property with a fair market value of less**
16 **than \$20,000.**

17 [(3)] (4) "Appraiser assistant" means an individual who has been registered as an appraiser as-
18 sistant under ORS 674.310.

19 [(4)] (5) "Board" means the Appraiser Certification and Licensure Board established under ORS
20 674.305.

21 [(5)] (6) "Department" means the Department of Consumer and Business Services.

22 [(6)] (7) "Director" means the Director of the Department of Consumer and Business Services.

23 [(7)] (8) "Federal Act" means Title XI of the Federal Financial Institutions Reform, Recovery
24 and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

25 [(8)] (9) "Federal financial institution regulatory agency" means:

26 (a) The Board of Governors of the Federal Reserve System;

27 (b) The Federal Deposit Insurance Corporation;

28 (c) The Office of the Comptroller of the Currency;

29 (d) The Office of Thrift Supervision; or

30 (e) The National Credit Union Administration.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 [(9)] (10) “Federally related transaction” means any real estate-related financial transaction
2 that:

3 (a) A federal financial institution regulatory agency or the Resolution Trust Corporation en-
4 gages in, contracts for or regulates; and

5 (b) Requires the services of an appraiser.

6 [(10)] (11) “Financial institution” means an insured depository institution as defined in section
7 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the
8 Federal Credit Union Act.

9 [(11)] (12) “Mortgage banker” has the meaning given that term in ORS 59.840.

10 [(12)] (13) “Professional real estate activity” has the meaning given that term in ORS 696.010.

11 [(13)] (14) “Real estate appraisal activity” means the activity described in ORS 674.100.

12 [(14)] (15) “Real estate-related financial transaction” means any transaction involving:

13 (a) The sale, lease, purchase, investment in or exchange of real property, including interests in
14 real property, or the financing thereof;

15 (b) The refinancing of real property or interests in real property; and

16 (c) The use of real property or interests in real property as security for a loan or investment,
17 including mortgage-backed securities.

18 [(15)] (16) “State certified appraiser” means an individual who has been certified as a state
19 certified appraiser under ORS 674.310.

20 [(16)] (17) “State licensed appraiser” means an individual who has been licensed as a state li-
21 censed appraiser under ORS 674.310.

22 [(17)] (18) “State certified residential appraiser” means an individual who has been certified as
23 a state certified residential appraiser under ORS 674.310.

24 **SECTION 2.** ORS 674.100 is amended to read:

25 674.100. (1)(a) [*No person shall*] **A person may not** engage in, carry on, advertise or purport to
26 engage in or carry on real estate appraisal activity within this state without first obtaining certif-
27 ication or licensure as provided for in ORS 674.310.

28 (b) Real estate appraisal activity is the preparation, completion and issuance of an opinion as
29 to the value on a given date or at a given time of real property or any interest in real property,
30 whether such activity is performed in connection with a federally related transaction or is not per-
31 formed in connection with a federally related transaction. Notwithstanding any other provision of
32 law, a state certified appraiser or a state licensed appraiser:

33 (A) Is not required to be licensed under ORS 696.022 to perform any real estate appraisal ac-
34 tivity or any other activity that constitutes the giving of an opinion as to the value of real property
35 or any interest in real property; and

36 (B) Is not subject to regulation under ORS 696.010 to 696.495 and 696.600 to 696.995 in con-
37 nection with the performance of any real estate appraisal activity or the performance of any activity
38 which constitutes the giving of an opinion as to the value of real estate or any interest in real es-
39 tate.

40 (2) Real estate appraisal activity excludes [*any*] activity that is:

41 (a) Not performed in connection with a federally related transaction and that:

42 [(a)] (A) Is performed by a nonlicensed regular full-time employee of a single owner of real es-
43 tate, if the activity involves the real estate of the employer and is incidental to the employee’s
44 normal, nonreal estate activities;

45 [(b)] (B) Is performed by a nonlicensed regular full-time employee whose activity involves the

1 real estate of the employer, when such activity is the employee's principal activity, but the em-
 2 ployer's principal activity or business is not the appraisal of real estate;

3 [(c)] (C) Is performed by any attorney at law rendering services in the performance of duties as
 4 an attorney at law;

5 [(d)] (D) Is performed by any registered geologist, registered professional engineer or architect
 6 rendering services as a registered geologist, registered professional engineer or architect;

7 [(e)] (E) Is performed by a certified public accountant rendering services as a certified public
 8 accountant;

9 [(f)] (F) Is performed by a mortgage banker rendering services as a mortgage banker;

10 [(g)] (G) Constitutes a letter opinion or a competitive market analysis as those terms are defined
 11 in ORS 696.010 that, by administrative or judicial order or subpoena, is compelled from a person li-
 12 censed to engage in real estate activity under ORS 696.022;

13 [(h)] (H) Is performed by any salaried employee of the State of Oregon or any of its political
 14 subdivisions while engaged in the performance of the duties of such employee;

15 [(i)] (I) Is limited to analyzing or advising of permissible land use alternatives, environmental
 16 impact, building and use permit procedures or demographic market studies, if the performance of
 17 such activities does not involve the rendering of an opinion as to the value of the real estate in
 18 question;

19 [(j)] (J) Is performed by a professional forester appraising or valuing timber, timberland or both
 20 as part of services performed as a private consultant in forest management, but only if, in the case
 21 of timberland, the appraisal or valuation is limited to the use of the land as forestland;

22 [(k)] (K) Is limited to the giving of an opinion in any administrative or judicial proceeding re-
 23 garding the value of real estate for taxation;

24 (L) Is limited to [*a person not licensed under ORS chapter 696 who is*] **the giving of an opinion**
 25 regarding the value of real estate **by a person who is not licensed under ORS chapter 696** if the
 26 person's business is not the appraisal, selling or listing of real estate, and such activity is performed
 27 without compensation. This [*paragraph*] **subparagraph** does not apply to a person conducting
 28 transactional negotiations on behalf of another person for transfer of an interest in real property;

29 [(m)] (M) Is limited to [*a person not licensed under ORS chapter 696 who is*] transferring or ac-
 30 quiring an interest in real estate **by a person not licensed under ORS chapter 696**; or

31 [(n)] (N) Is performed by a home inspector acting within the scope of a certificate or license
 32 issued under ORS chapter 701.

33 **(b) Performed by a state certified appraiser or state licensed appraiser who is acting:**

34 **(A) Under contract with a public body, as defined in ORS 174.109, that has condemnation**
 35 **authority; and**

36 **(B) In compliance with an appraisal waiver.**

37 (3)(a) "Real estate appraisal activity" does not include an analysis, evaluation, opinion, conclu-
 38 sion, notation or compilation of data prepared by a financial institution or affiliate, a consumer fi-
 39 nance company licensed under ORS chapter 725, or by an insurance company or affiliate, made for
 40 internal use only by the financial institution or affiliate, consumer finance company or by the in-
 41 surance company or affiliate, concerning an interest in real estate for ownership or collateral pur-
 42 poses by the financial institution or affiliate, by the consumer finance company licensed under ORS
 43 chapter 725, or by the insurance company or affiliate. Nothing in this subsection shall be construed
 44 to excuse a financial institution or affiliate from complying with the provisions of Title XI of the
 45 federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

1 (b) As used in this section, “evaluation” means a study of the nature, quality or utility of a
 2 parcel of real estate or interests in, or aspects of, real property in which a value estimate is not
 3 necessarily required.

4 (4)(a) As used in this section, “purport to engage in or carry on real estate appraisal activity”
 5 means the display of a card, sign, advertisement or other printed, engraved or written instrument
 6 bearing the person’s name in conjunction with the term “appraiser,” “licensed appraiser,” “certified
 7 appraiser” or “appraisal” or any oral statement or representation of certification or licensure by the
 8 Appraiser Certification and Licensure Board made by a person.

9 (b) Each display or statement described in paragraph (a) of this subsection by a person not li-
 10 censed or certified by the board is a separate violation under ORS 674.990.

11 (c) In any proceeding under ORS 674.990, a display or statement described in paragraph (a) of
 12 this subsection shall be considered prima facie evidence that the person named in the display or
 13 making the statement purports to engage in or carry on real estate appraisal activity.

14 **SECTION 3.** ORS 35.500 is amended to read:

15 35.500. As used in ORS 35.500 to 35.530:

16 (1) “Displaced person” means any person who moves, or is required to move the person’s resi-
 17 dence and personal property incident thereto, or the person’s business or farm operation as a result
 18 of:

19 (a) Acquisition of the real property, in whole or in part, by a public entity; or

20 (b) Receipt of a written order by such person from a public entity to vacate the property for
 21 public use.

22 (2) “Federal Act” means the Uniform Relocation Assistance and Real Property Acquisition Pol-
 23 icies Act of 1970 (P.L. 91-646, 42 U.S.C. 4601 et seq.) as in effect on [January 1, 2003] **the effective**
 24 **date of this 2005 Act.**

25 (3) “Public entity” includes the state, a county, a city, a consolidated city-county as defined in
 26 ORS 199.705 (1), a district, public authority, public agency and any other political subdivision or
 27 public corporation in the state when acquiring real property or any interest therein for public use.
 28 “Public entity” also includes a private corporation that has the power to exercise the right of emi-
 29 nent domain.

30 (4) “Public use” means a use for which real property may be acquired by a public entity as
 31 provided by law.

32 (5) “Real property” or any interest therein includes tenements and hereditaments, and includes
 33 every interest, freehold and chattel, legal and equitable, present and future, vested and contingent,
 34 in such tenements and hereditaments.

35 **SECTION 4. The amendments to ORS 35.500, 674.010 and 674.100 by sections 1, 2 and 3**
 36 **of this 2005 Act apply to activity of a certified or licensed appraiser performed on or after**
 37 **the effective date of this 2005 Act under contract with a public body, as defined in ORS**
 38 **174.109, with condemnation authority.**