

## **UNDUE INFLUENCE**

Q & A about 543D.18A

### **1. Why does 543D.18A prohibit pressure to inflate appraisals? Why should Iowans care if inflated appraisals help people get loans?**

Inflated appraisals falsely elevate property values. False values lead to loans that are not supported by a property's true market value. Lenders or investors relying on false values to make or purchase loans can suffer dramatic losses upon a borrower's default. Home buyers and home owners caught in predatory financing schemes fueled by bogus high appraisals are likely to be upside down on their mortgages, owing far more than their homes are worth – a situation which can lead to foreclosures.

Entire neighborhoods suffer when real estate loans are infected with fraud. Overstated values drive property assessments higher, increasing property tax bills, but shortfalls on loans upon default can result in foreclosed, abandoned or neglected homes, and a rapid decline in the true value of property. Mortgage fraud annually causes billions of dollars of losses nationwide, threatening our economic security. All Iowans have a stake in the integrity of the appraisal process to assure independent, unbiased property valuation.

### **2. What ethical standards apply to an appraiser under 543D.18A?**

A certified appraiser is an impartial third party who provides an unbiased, reliable opinion of value to help lenders, investors, and consumers make sound investment and lending decisions. Certified and registered appraisers are obligated to follow appraisal standards and to perform all appraisal assignments in an honest, disinterested and impartial manner, with objectivity and independence, and without accommodation to the personal interests or objectives of the appraiser, the client, or a third person.

Appraisers must be free from pressure to inflate or otherwise falsify an appraisal. Because real estate or lending decisions based on fabricated, unreliable or biased appraisals harm all citizens, appraisers are accountable to their clients and to the public more generally. The ethical standards set by 543D.18(1) are not new. Repeating in state law key provisions from the Ethics Rule of the Uniform Standards of Professional Appraisal Practice (USPAP), provides better notice to appraisers, mortgage brokers, lenders and others why appraiser independence is so important – and why appraiser pressure is outlawed.

Iowa Code section 543D.18(1) imposes these obligations on appraisers:

A certified real estate appraiser shall comply with the uniform appraisal standards adopted under this chapter. The reliance of the public in general and of the financial business community in particular on sound, reliable real estate appraisal practices imposes on persons engaged in the practice of real estate appraising as certified real estate appraisers or as registered associate real estate appraisers certain obligations both to their clients and to the public. These obligations include the obligation to maintain independence in thought and action, to adhere to the uniform appraisal standards adopted under this chapter, and to maintain high standards of personal conduct in all matters impacting one's fitness to practice real estate appraising. A certified real estate appraiser and a registered associate real estate appraiser acting under the direct supervision

of a certified real estate appraiser shall perform all appraisal assignments in an honest, disinterested and impartial manner, with objectivity and independence, and without accommodation to the personal interests or objectives of the appraiser, the client, or any third person.

### **3. What types of appraiser pressure are prohibited by 543D.18A?**

543D.18A(1) prohibits acts or practices that impair or attempt to impair an appraiser's independence, objectivity, and impartiality. Raising concerns about an appraiser's performance is acceptable, but the line is crossed when through coercion, threats, intimidation, extortion, bribery, collusion, or any other act or practice a predetermined value is required of the appraiser, future work is contingent upon an appraiser meeting a predetermined value, or payment is withheld because an appraiser declined to falsely inflate or deflate a value.

Bargaining with an appraiser to predetermine the result of an appraisal is like bargaining with a CPA to predetermine the outcome of an audit. Both are wrong for the same reason – clients and the general public are entitled to rely on the independence of a certified appraiser or certified public accountant to assure financial decisions are made based on the opinions of an impartial, disinterested third party. Persons with a vested interest in the results of an appraisal are prohibited from taking steps to orchestrate a desired outcome to accommodate personal interests.

Examples of prohibited practices:

"I need \$225,000 or this deal's dead. If you can get me that value, I'll hire you."

"You only came in at \$80,000. Unless you can find a way to bump that up to \$125,000, you and I are not getting paid. Get \$125,000 or I'll find someone who can."

"If you can get me \$560,000, I'll cut you in on my commission when this deal closes."

"Here are the comps I need you to use. If you don't use them, I'm taking your name off our approved list and I'll tell the underwriters to blackball you."

"I don't want to make this loan, so you need to come in under \$200,000 or I'll never hire you again."

"I'll pay you \$300 for the appraisal, but if you can get the value over \$300,000, I'll pay you an extra \$1,000 when this deal closes."

"I've called 6 appraisers and none of them will cooperate. You want my work, I need you to get me value. I can promise at least 5 appraisals a week if you get the values I need."

### **4. Who is prohibited from improperly pressuring an appraiser?**

All persons with an interest in a real estate transaction or the financing of a loan secured by real estate are covered by the prohibitions against improper appraiser pressure in 543D.18A, including mortgage lenders, mortgage brokers or originators, real estate brokers or salespersons, clients, parties to the transaction, or other appraisers.

## **5. Are the appraiser pressure prohibitions in 543D.18A new?**

No. It has never been lawful to participate in a scheme to falsify an appraisal or bargain for a predetermined valuation opinion. Artificially inflating property values to enable real estate deals or loans to go through under false pretenses violates national and state appraisal standards, is an unlawful practice under the Iowa Consumer Fraud Act, constitutes fraud or breach of fiduciary duty in a private civil action, and, under some circumstances, is a state and federal crime. The prohibition is not new, but 543D.18A leaves no doubt about legislative intent that these practices cease and adds important new penalties for violators.

## **6. What if I believe an appraiser made an error or I disagree with an appraiser's analysis? Can I question an appraiser without violating the law?**

543D.18A is **not intended** to shield an appraiser from valid scrutiny. As outlined in Iowa Code section 543D.18A(4), a person does not violate the law by asking an appraiser to correct an error, asking an appraiser to consider additional facts about a property, or requesting that an appraiser explain how an opinion was reached. Persons can always raise legitimate disputes about an appraiser's compliance with appraisal standards.

Examples of lawful requests of an appraiser:

"You need to fix an error in the zoning classification."

"Why did you pick comparable properties from across town when so many homes sold in the surrounding neighborhood in the past year?"

"How did you arrive at the site value for the property?"

"Are your adjustments based on market data? What data did you rely on to make adjustments?"

"Did you consider how the used car dealership next door impacted the value?"

## **7. Am I required to retain appraisers on a rotating basis from panels or lists of appraisers?**

No. 543D.18A does not require that appraisers are selected on a rotating basis from panels or lists. Some lenders routinely use panels or lists, such as the Veterans Home Administration. Retaining appraisers on a rotating basis from panels or lists does not itself violate 543D.18A, and can provide a mechanism to reduce the potential for bias. Only placing "cooperative" appraisers on an "approved list" who will "get value," however, would be a violation.

543D.18A does not mandate any particular business practice; to assure compliance those with a direct monetary stake in a deal should be insulated from the decision on which appraiser to retain or the valuation opinion. Indeed, it is wise to create an ethical wall between those who sell or market (especially on a commission basis) and those who retain appraisers or play any role in reviewing the quality of an appraiser's work product. Certain transactions may also be covered by federal laws that guide the manner in which appraisers are shielded from those who make decisions on loans.

## **8. Can I tell an appraiser the sales price?**

Yes. When an appraiser is retained in connection with the purchase or sale of property, it is always acceptable to tell the appraiser the sales price and to provide the appraiser copies of documents reflecting the terms of sale, including any financial concessions that may have impacted the sales price. Appraisers are generally required by appraisal standards to analyze all agreements of sale, options, or listings of the property to be valued as of the effective date of the appraisal, and all sales of such property that occurred within three years prior to the effective date of the appraisal. See, Uniform Standards of Professional Appraisal Practice (USPAP), 2014-2015 Edition, Standard Rules 1-5, and the comments to 2-2(a)(viii), 2-2(b)(viii).

## **9. Can I tell an appraiser the value I want the appraiser to reach? Can an appraiser accept an assignment if the prospective client discloses what the lender or property owner wants the value to be?**

Telling an appraiser the value a person wants the appraiser to reach raises serious red flags. Real estate lending and sales professionals should avoid even the appearance of impropriety by not disclosing a desired value, even when the request is not overtly tied to a threat, bribe or promise of a benefit for reaching the desired value.

Appraisers should use common sense when faced with a request by a prospective client who may not fully understand an appraiser's role, such as, "I need you to value my home over \$150,000 so I can refinance my mortgage." It is appropriate for an appraiser to educate a prospective client to correct any misconceptions they express. The mere fact that a prospective client makes an improper statement would not preclude an appraiser from performing the appraisal if the appraiser takes steps to educate the client and the appraiser is comfortable that the educated client now understands that the appraiser must be impartial. Iowa law does not require written engagement letters, but wise appraisers have long used engagement letters to document the absence of improper conditions on the opinions to be reached or on the terms of payment.

An educational approach is appropriate in some circumstances, but appraisers should always decline assignments that would violate the law and should file complaints against those who violate the improper pressure prohibitions in 543D.18A.

## **10. What are the penalties for violating the improper pressure prohibitions in 543D.18A?**

*Consumer Fraud.* Improper appraiser pressure has long violated the Iowa Consumer Fraud Act and is now expressly identified in 543D.18A as an unlawful practice under that Act. The Iowa Consumer Fraud Act is enforced by the Iowa Attorney General. Remedies include injunctive relief, civil penalties up to \$40,000 per violation, additional civil penalties up to \$5,000 per violation for unlawful practices directed toward older citizens, consumer restitution, investigative costs, and attorney fees. See Iowa Code sections 714.16 and 714.16A.

*Appraiser Board.* The Iowa Real Estate Appraiser Examining Board may seek an injunction in district court to stop prohibited practices. The Board may also impose civil penalties up to \$1,000 per violation in proceedings before the Board. When a certified or registered appraiser commits a violation, the Board can take disciplinary action against the appraiser's certificate or registration.

*Disciplinary Action.* Violators who are licensed in a profession, occupation or business relating to real estate transactions or the financing of loans secured by real estate are subject to disciplinary or regulatory action by the board or agency that regulates the license. For example, state banks, mortgage brokers, mortgage bankers, and mortgage originators are subject to discipline or regulatory action by the Iowa Banking Division. State credit unions are subject to regulatory action by the Iowa Credit Union Division. Real estate brokers and salespersons are subject to discipline by the Iowa Real Estate Commission. Penalties against individual licensees can range from a reprimand, civil penalty, probation, or license suspension, to license revocation.

*Criminal prosecution, private law suits.* Violations of the appraiser pressure prohibitions in 543D.18A may also be federal crimes prosecuted by the United State's Attorney, state crimes prosecuted by an Iowa county attorney, or grounds to support a private law suit based on fraud or breach of fiduciary duty.

## **11. Where should I complain if I believe a lender is seeking to improperly influence an appraisal?**

It will depend on the type of lender you wish to complain about:

If the lender is an Iowa state-chartered bank, a licensed mortgage banker or mortgage broker, or an employee or agent of one of those types of entities, including a mortgage originator:

Iowa Division of Banking  
200 East Grand Avenue, Suite 300  
Des Moines, IA 50309-1827  
Telephone: (515) 281-4014  
[www.idob.state.ia.us](http://www.idob.state.ia.us)

If the lender is an Iowa state-chartered credit union:

Iowa Credit Union Division  
200 East Grand Avenue, Suite 370  
Des Moines, IA 50309-1827  
Telephone: (515) 281-6516  
[www.iacudiv.state.ia.us](http://www.iacudiv.state.ia.us)

If the lender is a national bank or an operating subsidiary of a national bank:

Comptroller of the Currency  
Customer Assistance Group  
1301 McKinney Street, Suite 3710  
Houston, TX 77010  
Phone: 800-613-6743

If the lender is a federal savings association or operating subsidiary of a federal savings association:

Office of Thrift Supervision  
Consumer Affairs  
P.O. Box 619027  
Dallas/Ft. Worth, TX 75261-9027  
Phone: 800-842-6929

If the lender is a federal credit union:

National Credit Union Administration  
Attn: Regional Director, Region 4 – Austin  
4807 Spicewood Springs Road, Suite 5200  
Austin, Texas 78759-8490  
Phone: 512-342-5600

The Appraiser Board and the Consumer Protection Division of the Iowa Attorney General's Office also have enforcement authority over this law, so you can also contact either of those offices:

Iowa Real Estate Appraiser Examining Board  
Professional Licensing Bureau  
200 East Grand Avenue, Suite 350  
Des Moines, IA 50309-1827  
Phone: (515) 725-9025  
E-mail: [realestateappraiserboard@iowa.gov](mailto:realestateappraiserboard@iowa.gov)  
[www.plb.iowa.gov](http://www.plb.iowa.gov)

Iowa Attorney General  
Consumer Protection Division  
Hoover Building, 2nd Fl.  
1305 E. Walnut Street  
Des Moines, IA 50319  
Phone: 515-281-5926  
[www.iowaattorneygeneral.org](http://www.iowaattorneygeneral.org)

**12. Where should I complain if I believe a real estate broker or salesperson, or a certified or registered appraiser is seeking to improperly influence an appraisal? Where should I complain about violators who are not licensed or regulated by a board or other governmental agency?**

Complaints against real estate brokers or salespersons can be filed with the Appraiser Board using the contact information provided in the answer to Question 11 and may also be filed with the Iowa Real Estate Commission:

Iowa Real Estate Commission  
Professional Licensing Bureau  
200 East Grand Avenue, Suite 350  
Des Moines, IA 50309-1827  
Phone: (515) 725-9026  
[www.plb.iowa.gov](http://www.plb.iowa.gov)

Complaints against certified or registered appraisers should be filed with the Appraiser Board.

The Iowa Attorney General and the Appraiser Board have enforcement authority over those who violate 543D.18A whether or not the violator is licensed or regulated by a board or other governmental agency.

**13. Are all appraisals required to be performed by appraisers who are certified by the Appraiser Board?**

No. 543D.18A does not expand the categories of appraisals that are required by state or federal law, rule or policy to be performed by a certified appraiser. Appraisers employed by the Iowa Department of Transportation are required by state law to be certified by or registered with the Appraiser Board. Appraisals completed for federally-related transactions are required by federal law to be prepared by a certified appraiser. Additionally, Fannie Mae, FHA, VA and many other lenders or investors routinely require that appraisals be performed by certified appraisers even if below the dollar levels in which federal law mandates a certified appraisal. A citizen, however, can still retain an appraiser who is not

certified to help value real estate for purposes like protesting a property assessment or splitting property between family members as long as the appraiser does not falsely pretend to be certified.

**14. Does Iowa law restrict who can work on a certified appraisal?**

Yes. Iowa Code section 543D.20(1) restricts who can assist a certified appraiser in the development or reporting of an appraisal that is required by state or federal law, rule or policy to be performed by a certified appraiser to include only the following:

- a. another certified appraiser;
- b. an appraiser who is registered with the Appraiser Board as an associate appraiser and who is performing appraisal services under the direct supervision of a certified appraiser;
- c. a lay person who solely provides administrative services, such as taking photographs, preparing charts, or typing reports, and who does not provide real estate appraisal assistance in developing the analysis, valuation, opinions, or conclusions associated with the appraisal assignment; and,
- d. a person providing professional consultation in a field other than real property appraising, such as a professional engineer or certified public accountant.

**15. Why does 543D.20(1) restrict who can work on a certified appraisal?**

Prior to the effective date of 543D.20(1), certified appraisers could use unlicensed appraisers to assist them with appraisals that are required by state or federal law, rule, or policy to be performed by a certified appraiser. By restricting who can work on a certified appraisal, 543D.18A closes a dangerous regulatory gap.

For example, under prior law if the Appraiser Board revoked a certified appraiser's certificate, the revoked appraiser could lawfully continue working on certified appraisals simply by working under the supervisory umbrella of a certified appraiser. If the certified appraiser failed to properly supervise unlicensed trainees, the Board could take action against the supervising appraiser, but the unlicensed trainees - who were also responsible for shoddy or fraudulent work product -- simply scattered to find other certified appraisers willing to sign their appraisals.

**16. Can a certified appraiser use an unlicensed appraiser to help develop or report a certified appraisal and simply not tell anyone?**

No. Certified appraisers must disclose the identity of all persons who provide significant real property appraisal assistance in the development or reporting of an appraisal assignment. See, Uniform Standards of Professional Appraisal Practice ("USPAP"), 2014-2015 Edition, Standard Rule 2-3. Certified appraisers who fail to disclose professional assistance in accordance with appraisal standards are subject to discipline by the Appraiser Board.

**17. Are there penalties if an unlicensed appraiser completes a certified appraisal for a certified appraiser's signature?**

Yes. Certified appraisers who allow unlicensed persons to perform appraisal services in violation of 543D.20(1) are subject to disciplinary action by the Appraiser Board. The Board may also impose civil penalties on the unlicensed appraiser and may seek injunctive relief if needed to stop the practice into the future.

**18. If I want to be a certified appraiser do I need to register as an associate appraiser?**

Yes. Iowa Code section 543D.9 provides that appraisal experience attained on or after July 1, 2007, will not count toward the experience required to be a certified appraiser unless the experience was attained as a registered associate appraiser under the direct supervision of a certified appraiser. The Appraiser Board may make exceptions by administrative rule. The Board has adopted rules that address special circumstances such as persons who attain mass appraisal experience while employed by an assessor's office or experience attained in another jurisdiction that did not, at the time the experience was attained, provide for an associate or trainee category of licensure.

**19. How can I register with the Appraiser Board as an associate appraiser?**

Persons who wish to register with the Appraiser Board as an associate appraiser must satisfy 75 hours of approved classes on basic appraisal topic and methodology and also an associate/supervisor course. Applicants applying for certification will be required to have a bachelor's degree or higher, in addition to the mandatory appraiser education. The remaining education required to become either a certified residential or certified general real property appraiser may be attained after registration as an associate appraiser. Education is one of four prerequisites (education, experience, examination, and work product review) for certification as more fully outlined in Board rules (193F Iowa Administrative Code chapters 4-6).