

## **Idaho Enacts New Appraiser Independence Law**

Earlier this week, Idaho Gov. Butch Otter signed into law legislation that will prohibit the inappropriate influencing of an appraiser. The Idaho Residential Mortgage Practices Act (H.B. 169) is intended to bring Idaho into compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

The bill prohibits mortgage brokers and lenders from making any payment to an in-house or independent fee appraiser for the purpose of influencing the independent judgment of the appraiser. Furthermore, the bill prohibits any person from making any payment, threat or promise to an appraiser to influence the outcome of an appraisal report.

Violators of either provision are subject to a civil penalty from the Department of Finance of up to \$25,000. Individuals that hold mortgage loan originator licenses may also have their suspended, revoked, conditioned or non-renewed. These new provisions take effect on July 1, 2009.

**1. Comparison of existing law (Idaho Code § 26-3114) to new law per HB 169 (Idaho Code § 26-31-211):**

**EXISTING LAW:**

**26-3114. PROHIBITED PRACTICES OF MORTGAGE BROKERS AND MORTGAGE LENDERS.** No mortgage broker or mortgage lender licensee or person required under this chapter to have such license shall:

\* \* \*

(6) Make payment, whether directly or indirectly, of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by a residential mortgage loan;

**NEW LAW**

**26-31-211. PROHIBITED PRACTICES OF MORTGAGE BROKERS AND MORTGAGE LENDERS.** No mortgage broker or mortgage lender licensee under this part or person required under this part to have such license shall:

\* \* \*

(6) Make payment, whether directly or indirectly, of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any residential real property which is to be covered by a residential mortgage loan;

**2. Comparison of existing law (Idaho Code § 26-4114A) to new law per HB 169 (Idaho Code § 26-31-317)**

**EXISTING LAW:**

**26-3114A. PROHIBITED PRACTICES OF LOAN ORIGINATORS.** No loan originator licensee or person required under this chapter to have such license shall:

\* \* \*

(8) Make payment, whether directly or indirectly, of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by a residential mortgage loan;

**NEW LAW**

**26-31-317. PROHIBITED ACTS AND PRACTICES.** It is a violation of this part for a person or individual subject to this part, in connection with mortgage loan origination activity in this state, to:

\* \* \*

(11) Make any payment, threat or promise, directly or indirectly, to any person for the purpose of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat or promise, directly or indirectly, to any appraiser of a property, for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property;

In conclusion, the concept of prohibiting mortgage brokers, mortgage lenders, and mortgage loan originators from trying to improperly influence the independent judgment of appraisers is nothing new in Idaho law regulating the mortgage industry. House Bill 169 did include a new prohibition against mortgage loan originators from making any “threat” or “promise” for the purpose of influencing the independent judgment of an appraiser. However, the real story about House Bill 169 is that it incorporated the provisions of the federal S.A.F.E. Act – which Congress required of all states as a part of the Housing and Economic Recovery Act of 2008. My response to how House Bill 169 applies to appraisers – would have to be that it essentially maintains the status quo in Idaho law as to the expected conduct of mortgage brokers, lenders, and originators relating to their professional interactions with real estate appraisers. The prohibitions continue to apply only to mortgage brokers, lenders, and originators subject to the provisions of the Idaho Residential Mortgage Practices Act.