
DIGEST

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HB 882 Original

2018 Regular Session

Carmody

Abstract: Requires the division of administrative law to actively supervise relative to the La. Real Estate Appraisers Board's implementations ensuring the payment of customary and reasonable appraisal fees.

Present law requires an appraisal management company (hereinafter "AMC") to compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the provisions of federal law.

Proposed law retains present law.

For the purpose of determining whether appraisal fees paid by AMCs are customary and reasonable, proposed law requires an AMC to consider and ensure application of each of the following:

- (1) The geographic market area of the property being appraised must be identified by zip code, parish, or metropolitan area.
- (2) The evidence for customary and reasonable fees which may be established by the study of objective third-party information such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies and surveys exclude assignments ordered by AMCs.

Proposed law requires an AMC electing to compensate fee appraisers on any basis other than an established fee study, schedule, or survey to review certain factors on each assignment made and make appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.

Proposed law requires an AMC to maintain written documentation describing or substantiating all methods, factors, variations, and differences used to determine the customary and reasonable fee for appraisal services conducted in the geographic market of the appraisal assignment. Further requires the documentation to include, at a minimum, all of the following:

- (1) Type of property for each appraisal performed.
- (2) Scope of work for each appraisal performed.
- (3) Time in which the appraisal services are required to be performed.

- (4) Fee appraiser's qualifications.
- (5) Fee appraiser's experience and professional record.
- (6) Fee appraiser's work quality.

Proposed law requires an AMC to maintain records of all methods, factors, variations, and differences used to determine the customary and reasonable rate of compensation paid for each appraisal assignment in the geographic market of the property being appraised.

Present law provides for certain enforcement and requires an AMC to separately state certain fee information to clients.

Proposed law retains present law.

Present law provides that an AMC cannot prohibit an appraiser, who is part of an appraiser panel, from recording the fee paid to the appraiser by the AMC for the performance of the appraisal within the appraisal report that is submitted by the appraiser to the AMC. Prohibits an AMC from including any fees for appraisal management services performed by the company in the amount the company reports as charges for the actual completion of an appraisal by the appraiser.

Proposed law retains present law.

If the La. Real Estate Appraisers Board (hereinafter "board") has the opinion that an AMC is attempting to perform, is performing, has performed, or attempted to perform certain violative actions, present law authorizes the board to censure the AMC or conditionally or unconditionally suspend or revoke any license issued pursuant to present law, levy fines, or impose civil penalties not to exceed \$50,000.

Proposed law retains present law.

Prior to the initiation of a formal or informal investigation or a proposed enforcement action relative to a potential violation by an AMC, proposed law requires the board to refer the proposed enforcement action to the division of administrative law (hereinafter "division").

Proposed law requires the division to determine each of the following:

- (1) Whether the evidence presented is sufficient to show a likelihood that the AMC has not complied with the customary and reasonable fee requirements of present law and proposed law.
- (2) Whether the proposed enforcement action serves the state's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs for such appraisals are customary and reasonable in accordance with present law and proposed law.

Proposed law authorizes the division to approve, reject, or modify the proposed enforcement action or return it to the board with a request for further information.

Prior to dismissing or informally resolving a formal or informal investigation, and prior to accepting or proposing a settlement agreement arising out of an approved enforcement action, proposed law requires the board to refer a proposed settlement agreement to the division for its determination as to whether the proposed agreement serves the state's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs are customary and reasonable in accordance with present law and proposed law.

Proposed law authorizes the division to approve, reject, or modify the proposed settlement agreement or return it to the board with a request for further information.

Proposed law requires the board and the division to enter into a contract to carry out the division's responsibilities described in proposed law.

Present law authorizes the board to conduct disciplinary hearings in conformity with provisions of the Administrative Procedure Act (APA). Proposed law retains present law.

Present law authorizes the board to make findings of fact and requires the board to deliver or mail such findings to the licensee charged with an offense. Requires the board's findings of fact to be conclusive.

Proposed law deletes the required conclusiveness relative to the board's findings of fact. Otherwise retains present law.

Prior to the entry of any order finding liability, imposing costs or fines, or requiring or approving remedial action, proposed law requires the board to refer to the division the board's order and administrative record. Requires the division to determine whether such order meets the requirements of proposed law. Requires the division's written determination to approve, reject, or modify the board's order, and authorizes the division to remand the order to the board with instructions or to obtain additional evidence for the record on review.

Proposed law requires the division to review the order to determine whether the order will serve the state's policy of protecting the integrity of residential mortgage appraisals relative to the required payment of customary and reasonable appraisal fees paid by AMCs. Requires the division to conduct the review according to standards set forth in present law (R.S. 49:964(G)). Further specifically requires the division's review to comply with the following:

(1) All questions of law and statutory and regulatory interpretations must be determined in accordance with present law (R.S. 49:964(G)(1)-(4)) without deference to the board's determinations.

(2) The proposed remedy must be reviewed in accordance with present law (R.S. 49:964(G)(5)) in light of the underlying policies of the state of La. and the determination by the division of the findings of fact.

(3) All findings of fact must be determined by a preponderance of the evidence in accordance with present law (R.S. 49:964(G)(6)).

Present law authorizes the 19th Judicial District Court to review questions of law involved in any final decision of the board. Requires any application for review made by an aggrieved party to be filed within 30 days after the final decision of the board. Requires the court to affirm the decision, order, or ruling of the board, if the court finds the board regularly pursued its authority and has not acted arbitrarily. Further requires the case to be specifically fixed for trial within 30 days from the filing of an answer by the board, if a petition to review the final decision of the board is filed.

Proposed law amends present law to authorize the 19th JDC to review any final decision of the board in accordance with present law. Requires any application for review made by an aggrieved party to be filed within 30 days after the final decision of the board. Further requires the case to be specifically fixed for trial within 30 days from the filing of an answer by the board, if a petition to review the final decision of the board is filed.

Present law authorizes the board to adopt rules and regulations in accordance with the APA. Proposed law retains present law.

Proposed law requires the board to submit for review to a person designated by the governor any proposed administrative regulation concerning AMC compliance with customary and reasonable fee requirements, along with the administrative record, to ensure that such proposed regulation serves the state's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs are customary and reasonable in accordance with present law and proposed law.

Proposed law requires the designated person to do each of the following:

- (1) Review and make a determination to approve, reject, or modify the proposed administrative regulation.
- (2) Provide to the board written documentation of the determination within 60 days of the designated person's receipt of such administrative regulation.

Proposed law requires the review and determination to occur prior to the board's submission of the proposed administrative regulation to the legislature.

(Amends R.S. 37:3415.15(B) and (C), 3415.19(B)-(D), and 3415.20(A)(5) and (B); Adds R.S. 37:3415.15(D)-(F), 3415.19(E), 3415.20(A)(6) and (7), and 3415.21(B))