

Regular Session, 2009

HOUSE BILL NO. 381

BY REPRESENTATIVE HOFFMANN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact R.S. 37:3393(H)(5), (6), and (7) and to enact R.S. 37:3393(H)(8) and
3 Chapter 51-B of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised
4 of R.S. 37:3415.1 through 3415.21, relative to real estate appraisers; to provide for
5 exemptions to the licensing requirement; to provide for appraisal management
6 company licensing and regulation; to provide for effective dates; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 37:3393(H)(5), (6), and (7) are hereby amended and reenacted and
10 R.S. 37:3393(H)(8) and Chapter 51-B of Title 37 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 37:3415.1 through 3415.21 are enacted to read as follows:

12 §3393. License required; penalty for unlicensed real estate appraiser activity

13 * * *

14 H. The provisions of this Chapter shall not apply to the following:

15 * * *

16 (5) A person appointed by a sheriff to make an appraisal in accordance with
17 R.S. 13:4364 or ~~R.S. 13:4365~~.

18 (6) A person or firm contracted by a state, parish, or municipal tax authority
19 to perform mass appraisal assignments.

20 ~~(7)~~ (7) Employees of the Department of Transportation and Development;
21 however, the provisions of this Chapter shall apply to such employees after June 30,
22 2010.

23 ~~(7)~~ (8) A certified public accountant when engaged by a client to perform a
24 business valuation under both of the following conditions:

1 (a) The valuation of real property must rely on an appraisal report performed
2 by a licensed appraiser.

3 (b) Such public accountant is licensed pursuant to the Louisiana
4 Accountancy Act.

5 * * *

6 CHAPTER 51-B. APPRAISAL MANAGEMENT COMPANY LICENSING AND
7 REGULATION ACT

8 §3415.1. Short title

9 This Chapter shall be known and may be cited as the "Louisiana Appraisal
10 Management Company Licensing and Regulation Act".

11 §3415.2. Definitions

12 As used in this Chapter, the following words have the meaning ascribed to
13 them in this Section unless the context clearly indicates otherwise:

14 (1) "Appraisal" means the act or process of developing an opinion of value
15 of real property following the appraisal process defined by the Uniform Standards
16 for Professional Appraisal Practice.

17 (2) "Appraisal management company" means any corporation, partnership,
18 sole proprietorship, subsidiary, unit, or other business entity that engages in any of
19 the following activity:

20 (a) Administers a network of independent contract appraisers to perform real
21 estate appraisal services for lenders or other clients.

22 (b) Receives requests for residential appraisal services from clients and
23 enters into agreements, written or otherwise, with one or more independent
24 appraisers to perform the real estate appraisal services contained in the request.

25 (3) "Appraisal management services" means the process of receiving a
26 request for the performance of real estate appraisal services from a client, and for a
27 fee paid by the client, entering into an agreement with one or more independent
28 appraisers to perform the real estate appraisal services contained in the request.

29 (4) "Appraiser" is defined as one who is expected to perform valuation
30 services competently and in a manner that is independent, impartial, and objective.

1 (5) RESERVED.

2 (6) "Appraiser panel" means a group of appraisers that has been selected by
3 an appraisal management company to perform real estate appraisal services for the
4 appraisal management company on behalf of lenders or other clients.

5 (7) "Board" means the Louisiana Real Estate Appraisers Board.

6 (8) "Client" means any person or entity that contracts with or otherwise
7 enters into an agreement for the performance of residential real estate appraisal
8 services.

9 (9) "Controlling person" means any of the following:

10 (a) An owner, officer or director of a corporation, partnership or other
11 business entity seeking to offer appraisal management services in this state.

12 (b) An individual employed, appointed, or authorized by an appraisal
13 management company who has the authority to enter into a contractual relationship
14 with clients to contract for the performance of appraisal management services and
15 has the authority to enter into agreements with independent appraisers for the
16 performance of real estate appraisal services.

17 (c) An individual who possesses, directly or indirectly, the power to direct
18 or cause the direction of the management or policies of an appraisal management
19 company.

20 (10) "Real estate appraisal services" means residential valuation services
21 performed by an individual acting as an appraiser, including but not limited to
22 appraisal, appraisal review, or appraisal consulting, as these services are defined
23 under the Uniform Standards for Professional Appraisal Practice.

24 §3415.3. License required

25 A. It shall be unlawful for a person, corporation, partnership, sole
26 proprietorship, subsidiary, unit or any other business entity to directly or indirectly
27 engage or attempt to engage in business as an appraisal management company, to
28 directly or indirectly engage or attempt to perform appraisal management services,
29 or to advertise or hold itself out as engaging in or conducting business as an appraisal
30 management company without first obtaining a license issued by the board under the

1 provisions of this Chapter, regardless of the entity's use of the term "appraisal
2 management company", "national valuations solutions provider", "mortgage
3 technology company", or any other name.

4 B. The license required by Subsection A of this Section shall, at a minimum,
5 include the following information:

6 (1) The name of the entity seeking a license.

7 (2) The business address of the entity seeking a license.

8 (3) The phone contact information of the entity seeking a license.

9 (4) If the entity is not a corporation that is domiciled in this state, the name
10 and contact information for the company's agent for service of process in this state.

11 (5) The name, address, and contact information of any individual,
12 corporation, partnership, or other business entity that has any ownership interest in
13 the appraisal management company.

14 (6) The name, address, and contact information for a controlling person, as
15 defined in this Chapter.

16 (7) Certification that the entity has a system and process in place to verify
17 that a person being added to the appraiser panel of the appraisal management
18 company holds an appraisal license in good standing in this state pursuant to this
19 Chapter.

20 (8) Certification that the entity has a system in place to review the work on
21 a periodic basis of all independent appraisers that are performing real estate appraisal
22 services for the appraisal management company to ensure that the real estate
23 appraisal services are being conducted in accordance with Uniform Standards of
24 Professional Appraisal Practice, pursuant to this Chapter.

25 (9) Certification that the entity maintains a detailed record for five years of
26 each real estate appraisal service request that it receives and an itemized list of all
27 fees contracted with each appraiser who performs real estate appraisal services for
28 the appraisal management company, pursuant to this Chapter.

1 (10) An irrevocable Uniform Consent to Service of Process, pursuant to this
2 Chapter.

3 (11) Any other information required by the board.

4 §3415.4. Exemptions

5 A. This Chapter shall not be applicable to any of the following:

6 (1) Any corporation, partnership, sole proprietorship, subsidiary, unit, or
7 other business entity that exclusively employs persons on an employer/employee
8 basis for the performance of real estate appraisal services in the normal course of its
9 business and such entity is responsible for ensuring that the real estate appraisal
10 services being performed by its employees are being performed in accordance with
11 Uniform Standards of Professional Appraisal Practice.

12 (2) Any individual, corporation, partnership, sole proprietorship, subsidiary,
13 unit, or other business entity engaged in real estate appraisal services who, in the
14 normal course of business, enters into an agreement, whether written or otherwise,
15 with another independent appraiser for the performance of real estate appraisal
16 services that the hiring or contracting appraiser is unable to complete for any reason,
17 including but not limited to competency, work load, schedule, or geographic
18 location.

19 (3) Any individual, corporation, partnership, sole proprietorship, subsidiary,
20 unit, or other business entity engaged in real estate appraisal services who, in the
21 normal course of business, enters into an agreement, whether written or otherwise,
22 with an independent contractor appraiser for the performance of real estate appraisal
23 services and, upon the completion of the appraisal, the report of the appraiser
24 performing the real estate appraisal services is cosigned by the appraiser who
25 subcontracted with the independent appraiser for the performance of the real estate
26 appraisal services.

27 B. The Louisiana Real Estate Appraisers Board may issue special
28 exemptions, if deemed acceptable by the board, upon special application and review.

1 §3415.5. Forms

2 An applicant for a license as an appraisal management company in this state
3 shall submit to the board an application on a form prescribed by the board.

4 §3415.6. Expiration of license

5 A license granted by the board pursuant to this Chapter shall be valid for one
6 year from the date on which it is issued.

7 §3415.7. Consent to service of process

8 Each entity applying for a license as an appraisal management company in
9 this state shall complete an irrevocable Uniform Consent to Service of Process as
10 prescribed by the board.

11 §3415.8. Owner requirements

12 A. An appraisal management company applying for a license in this state
13 may not be owned by any person who has had a license or certificate to act as an
14 appraiser, real estate broker or agent, mortgage broker, or mortgage originator, which
15 combined are considered herein to be "real estate or lending-related licenses"
16 refused, denied, suspended, canceled, or revoked in the past in any state without
17 specific approval by the board.

18 B. Any licensed appraisal management company with an owner or employee
19 who is subsequently refused or denied a real estate or lending-related license in any
20 state, shall notify the board in writing within ten days of such action.

21 C. Any licensed appraisal management company with an owner or employee
22 whose real estate or lending-related license has been suspended, revoked, or
23 cancelled subsequent to being registered shall notify the board in writing within ten
24 days of such action.

25 D. Either refusal or revocation of any real estate or lending-related license
26 in any state shall be grounds for denying renewal of the appraisal management
27 company's license. However, failure to notify the board of refusal, suspension,
28 revocation or cancellation of the licenses within ten days of such action shall be
29 cause for revocation of an appraisal management company's license.

1 E. Each person that has any ownership interest in an appraisal management
2 company in this state shall comply with all of the following:

3 (1) Be of good moral character, as determined by the board.

4 (2) Submit to a background investigation, as determined by the board.

5 (3) Certify to the board that the person has never had a license to act as an
6 appraiser refused, denied, cancelled, suspended, or revoked in this state or in any
7 other state.

8 §3415.9. Controlling person; requirements

9 A. Each appraisal management company applying to the board for a license
10 in this state shall designate one controlling person that will be the main contact for
11 all communication between the board and the appraisal management company.

12 B. In order to serve as a controlling person of an appraisal management
13 company, a person shall comply with all of the following:

14 (1) Certify to the board that he has never had a certificate or license issued
15 by the board of this state, or the board of any other state, to act as an appraiser
16 refused, denied, canceled, suspended, or revoked.

17 (2) Be of good moral character, as determined by the board.

18 (3) Submit to a background investigation, as determined by the board.

19 §3415.10. RESERVED.

20 §3415.11. Limitations

21 An appraisal management company licensed in this state pursuant to this
22 Chapter shall not enter into contracts or agreements with an independent appraiser
23 for the performance of real estate appraisal services unless that person is licensed and
24 in good standing pursuant to the Louisiana Real Estate Appraisers Law, R.S. 51:3391
25 et seq.

26 §3415.12. Pre-engagement certification

27 Each appraisal management company seeking to be licensed in this state shall
28 certify to the board, on an annual basis, on a form prescribed by the board, that the
29 appraisal management company has a system and process in place to verify that a
30 person being added to the appraiser panel of the appraisal management company

1 holds a license in good standing in this state pursuant to the Louisiana Real Estate
 2 Appraisers Law, R.S. 51:3391 et seq.

3 §3415.13. Adherence to standards

4 Each appraisal management company seeking to be licensed in this state shall
 5 certify to the board on an annual basis that it has a system in place to review on a
 6 periodic basis the work of all appraisers that are performing real estate appraisal
 7 services for the appraisal management company to ensure that the real estate
 8 appraisal services are being conducted in accordance with Uniform Standards of
 9 Professional Appraisal Practice.

10 §3415.14. Record keeping

11 Each appraisal management company seeking to be licensed in this state shall
 12 certify to the board on an annual basis that it maintains a detailed record for five
 13 years of each real estate appraisal service request that it receives including the fee
 14 paid by the lenders to all appraisers for all real estate appraisal services and the
 15 names of all appraisers or entities that perform all real estate appraisal services for
 16 the appraisal management company.

17 §3415.15. RESERVED.

18 §3415.16. Appraiser independence; prohibitions

19 A. It shall be unlawful for any employee, director, officer, or agent of an
 20 appraisal management company licensed in this state pursuant to this Chapter to
 21 influence or attempt to influence the development, reporting, or review of an
 22 appraisal through coercion, extortion, collusion, compensation, instruction,
 23 inducement, intimidation, bribery, or in any other manner, including but not limited
 24 to the following:

25 (1) Withholding or threatening to withhold timely payment for an appraisal.

26 (2) Withholding or threatening to withhold future business for an
 27 independent appraiser, or demoting or terminating or threatening to demote or
 28 terminate an independent appraiser.

29 (3) Expressly or impliedly promising future business, promotions, or
 30 increased compensation for an independent appraiser.

1 (4) Conditioning the request for a real estate appraisal service or the payment
 2 of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be
 3 reached, or on a preliminary estimate or opinion requested from an independent
 4 appraiser.

5 (5) Requesting that an independent appraiser provide an estimated,
 6 predetermined, or desired valuation in an appraisal report, or provide estimated
 7 values or comparable sales at any time prior to the independent appraiser's
 8 completion of a real estate appraisal service.

9 (6) Providing to an independent appraiser an anticipated, estimated,
 10 encouraged, or desired value for a subject property or a proposed or target amount
 11 to be loaned to the borrower, except that a copy of the sales contract for purchase
 12 transactions may be provided.

13 (7) Providing to an independent appraiser, or any entity or person related to
 14 the appraiser, stock or other financial or nonfinancial benefits, allowing the removal
 15 of an independent appraiser from an appraiser panel, without prior written notice to
 16 such appraiser.

17 (8) Obtaining, using, or paying for a second or subsequent appraisal or
 18 ordering an automated valuation model in conjunction with a mortgage financing
 19 transaction unless there is a reasonable basis to believe that the initial appraisal was
 20 flawed or tainted and such basis is clearly and appropriately noted in the loan file,
 21 or unless such appraisal or automated valuation model is done pursuant to a bona
 22 fade pre- or post-funding appraisal review or quality control process or
 23 underwriting guidelines, and so long as the lender adheres to a policy of selecting
 24 the most reliable appraisal, rather than the appraisal that states the highest value.

25 (9) Forcing an appraiser to accept an assignment where the delivery times
 26 are so short that they force the appraiser to render a misleading report.

27 B. Nothing in Subsection A of this Section shall be construed as prohibiting
 28 the appraisal management company from requesting that an independent appraiser
 29 do either of the following:

1 (1) Provide additional information about the basis for a valuation.

2 (2) Correct objective factual errors in an appraisal report.

3 §3415.17. Alteration of appraisal reports

4 An appraisal management company shall not alter, modify, or otherwise
 5 change a completed real estate appraisal service report submitted by an appraiser.

6 §3415.18. Adjudication of disputes between an appraisal management company and
 7 an appraiser

8 A. Except within the first thirty days after an independent appraiser is first
 9 added to the appraiser panel of an appraisal management company, an appraisal
 10 management company may not remove an appraiser from its appraiser panel, or
 11 otherwise refuse to assign requests for real estate appraisal services to an
 12 independent appraiser without doing all of the following:

13 (1) Notifying the appraiser in writing of the reasons why the appraiser is
 14 being removed from the appraiser panel of the appraisal management company. If
 15 the appraiser is being removed from the panel for illegal conduct, violation of the
 16 Uniform Standards of Professional Appraisal Practice, or a violation of state
 17 licensing standards, the nature of the alleged conduct or violation shall be identified.

18 (2) Providing an opportunity for the appraiser to respond to the notification
 19 of the appraisal management company.

20 B. An appraiser that is removed from the appraiser panel of an appraisal
 21 management company for alleged illegal conduct, violation of the Uniform
 22 Standards of Professional Appraisal Practice, or violation of state licensing
 23 standards, may file a complaint with the board for a review of the decision of the
 24 appraisal management company, except that in no case shall the board make any
 25 determination regarding the nature of the business relationship between the appraiser
 26 and the appraisal management company which is unrelated to the actions specified
 27 in Subsection A of this Section.

28 C. If an appraiser files a complaint against an appraisal management
 29 company pursuant to Subsection B of this Section, the board shall adjudicate the
 30 complaint.

1 D. If, after opportunity for hearing and review, the board determines that an
 2 appraiser did not commit a violation of law, a violation of the Uniform Standards of
 3 Professional Appraisal Practice, or a violation of state licensing standards, the board
 4 shall order that an appraiser be reinstated to the appraiser panel of the appraisal
 5 management company that was the subject of the complaint without prejudice.

6 E. Following the adjudication of a complaint to the board by an appraiser
 7 against an appraisal management company, an appraisal management company may
 8 not refuse to make assignments for real estate appraisal services to an appraiser, or
 9 reduce the number of assignments, or otherwise penalize the appraiser, if the board
 10 has found that the appraisal management company acted improperly in removing the
 11 appraiser from the appraiser panel.

12 §3415.19. Enforcement

13 A. The board may censure an appraisal management company, conditionally
 14 or unconditionally suspend, or revoke any license issued under this Chapter, levy
 15 fines or impose civil penalties not to exceed fifty thousand dollars, if in the opinion
 16 of the board, an appraisal management company is attempting to perform, is
 17 performing, has performed, or has attempted to perform any of the following acts:

- 18 (1) Committing any act in violation of this Chapter.
- 19 (2) Violating any rule or regulation adopted by the board in the interest of
 20 the public and consistent with the provisions of this Chapter.
- 21 (3) Procuring a license by fraud, misrepresentation, or deceit.

22 B.(1) In addition to any other civil remedy or civil penalty provided for in
 23 this Chapter, the board may issue a subpoena to any person or persons who the board
 24 has probable cause to believe has engaged in real estate appraisal activity without a
 25 currently valid license.

26 (2) Subpoenas issued by the board shall comply with the notice requirements
 27 of R.S. 49:955. These subpoenas shall be served upon the unlicensed individual
 28 personally or by any type of mailing requiring a return receipt and shall include a
 29 statement of the manner in which the unlicensed person shall be required to respond
 30 to the commission.

1 C. The board may impose a civil penalty of no more than five thousand
2 dollars upon any unlicensed person who, after a hearing or informal resolution in
3 accordance with all provisions of this Chapter and the Administrative Procedure Act,
4 is found to have engaged in real estate appraisal activity without a currently valid
5 license having been issued by the board pursuant to the provisions of this Chapter.
6 In addition, the board may assess costs and attorney fees against the unlicensed
7 person found to have been engaged in real estate appraisal activity without a current
8 license.

9 D. No person engaged in real estate appraisal activity without a currently
10 valid license shall have the right to receive any compensation for services so
11 rendered. In addition to any other penalties imposed under this Chapter, the board
12 may require that any person engaged in real estate appraisal activity without a license
13 return any fees collected for engaging in real estate appraisal activity.

14 §3415.20. Disciplinary hearings

15 A. The conduct of adjudicatory proceedings in accordance with the
16 Administrative Procedure Act for violations of this Chapter is vested in the board,
17 subject to the following provisions:

18 (1) Before censuring, suspending, or revoking any registration, the board
19 shall notify the licensee in writing of any charges made, at least twenty days prior
20 to the date set for the hearing and shall afford the licensee an opportunity to be heard
21 in person or by counsel.

22 (2) The written notice shall be satisfied by personal service on the
23 controlling person of the licensee, or the licensee's agent for service of process in this
24 state, or by sending the notice by certified mail, return receipt requested to the
25 controlling person of the licensee to the licensee's address on file with the board, or
26 by board personnel hand delivering a copy of the charges to the licensee.

27 (3) The board shall have the power to subpoena and issue subpoenas duces
28 tecum and to bring before it any person in this state, or take testimony by deposition,
29 in the same manner prescribed by law in judicial proceedings in the courts of this
30 state, or to require production of any records relevant to an inquiry or hearing by the

1 board. Any final decision or determination of the board shall be reviewable by the
2 Nineteenth Judicial District Court in the Parish of East Baton Rouge.

3 (4) The hearing on the charges shall be at a time and place prescribed by the
4 board and in accordance with the provisions of Chapter 13 of Title 49 of the
5 Louisiana Revised Statutes of 1950.

6 (5) The board may make findings of fact and shall deliver or mail such
7 findings to the licensee charged with an offense under this Chapter. Any finding of
8 fact by the board pursuant to the provisions of this Section shall be conclusive.

9 B.(1) The Nineteenth Judicial District Court of the state may review
10 questions of law involved in any final decision of the board. Any application for
11 review made by an aggrieved party shall be filed within thirty days after the final
12 decision of the board.

13 (2) If the court finds that the Louisiana Real Estate Appraisers Board has
14 regularly pursued its authority and has not acted arbitrarily, it shall affirm the
15 decision, order, or ruling of the board. If a petition to review the final decision of the
16 board is filed, the case shall be specifically fixed for trial within thirty days from the
17 filing of an answer by the board.

18 C. Administrative proceedings under this Chapter before the board are not
19 exclusive remedies. Criminal action under the terms of this Chapter may be
20 simultaneously instituted and maintained against the accused for any violation of this
21 Chapter. The board may also separately or simultaneously bring and carry on an
22 action by injunction to restrain a licensed or unlicensed individual from further
23 violation of any of the provisions of this Chapter, during the pendency of the
24 criminal proceeding or proceedings before the board and against any unlawful
25 practice thereafter.

26 §3415.21. Rulemaking authority; effective date

27 A. The board shall have the power to adopt any rules and regulations in
28 accordance with the Administrative Procedure Act necessary for the enforcement of
29 this Chapter.

1 B. Notwithstanding any law to the contrary, these rules shall require the
2 affirmative approval by the House of Representatives Committee on Commerce and
3 the Senate Committee on Commerce, Consumer Protection and International Affairs.

4 C. Any appraisal management company doing business in this state at the
5 time of passage of this Act may continue to perform such services without a license
6 until the earlier of either such time that the rules and regulations pertaining to this
7 Chapter have been approved in accordance with Subsections A and B of this Section
8 or January 1, 2011.

9 Section 2. If any provision or item of this Act, or the application thereof, is held
10 invalid, such invalidity shall not affect other provisions, items, or applications of the act
11 which can be given effect without the invalid provision, item, or application and to this end
12 the provisions of this Act are hereby declared severable.

13 Section 3. This Act shall become effective January 1, 2010.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____