

Regular Session, 2012

HOUSE BILL NO. 823

BY REPRESENTATIVE GREENE

REAL ESTATE/APPRAISERS: Provides with respect to licensure requirements for appraisal management companies

1 AN ACT

2 To amend and reenact R.S. 37:3415.3(B)(10) and (11), 3415.13, and 3415.21 and to enact
3 R.S. 37:3415.2(11), (12), and (13), 3415.3(C) and (D), and 3415.15, relative to real
4 estate appraisals; to define certain terms; to require an appraiser's license to perform
5 appraisal reviews; to provide that administrative reviews of an appraisal do not
6 require an appraiser's license; to require a surety bond; to provide for the competency
7 of appraisers; to provide for customary and reasonable fees for appraisers; to provide
8 for disclosure of fees paid to appraisers by appraisal management companies; to
9 provide for the disclosure of administration fees charged by appraisal management
10 companies; to require that administrative rules receive affirmative approval from the
11 Louisiana Legislature; to repeal an outdated grandfathering clause; to provide for
12 applicability; to provide for an effective date; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 37:3415.3(B)(10) and (11), 3415.13, and 3415.21 are hereby
15 amended and reenacted and R.S. 37:3415.2(11), (12), and (13), 3415.3(C) and (D), and
16 3415.15 are hereby enacted to read as follows:

17 §3415.2. Definitions

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

20 * * *

(11) "Administrative review", "compliance review", "quality check", or "QC" means a process that checks an appraisal report for compliance with the Uniform Standards of Professional Appraisal Practice or other stipulated requirements.

(12) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term shall not include an examination of an appraisal for grammatical, typographical, mathematical, or other similar administrative errors that do not involve the appraiser's professional judgment, including compliance with the elements of the client's statement of work.

(13) "Fee appraiser" means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is one of the following:

(a) A state-licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice.

(b) A company not subject to the requirements of §1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3331 et seq., that utilizes the services of state-licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.

§3415.3. License required; bond required

* * *

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

* * *

(10) Proof that the entity has obtained and maintains a surety bond that meets
the requirements of Subsection D of this Section.

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

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

4 C.(1) A person who performs an appraisal review for an appraisal
5 management company shall be licensed or certified in Louisiana.

6 (2) An administrative review may be performed by any individual, including
7 a certified appraiser.

8 D.(1) Every applicant for a license or the renewal of a license shall obtain
9 and maintain a surety bond in the amount of twenty thousand dollars. The surety
10 bond shall:

11 (a) Be in the form prescribed by the board pursuant to regulations duly
12 promulgated by it.

13 (b) Accrue to the state for the benefit of a claimant against the registrant to
14 secure the faithful performance of the licensee obligations under this Chapter.

15 (2) The aggregate liability of the surety shall not exceed the principal sum
16 of the bond.

17 (3) A party having a claim against the licensee may bring suit directly on the
18 surety bond, or the board may bring suit on behalf of the party having a claim against
19 the licensee.

20 (4) Consumer claims shall be given priority in recovering from the bond.

21 (5) A deposit of cash or security may be accepted in lieu of the surety bond.

22 (6) If a claim reduces the face amount of the bond, the bond shall be
23 annually restored upon renewal of the licensee's registration.

24 * * *

25 §3415.13. Adherence to standards; competency

26 A. Each appraisal management company seeking to be licensed in this state
27 shall certify to the board on an annual basis that it has a system in place to review on
28 a periodic basis the work of all appraisers that are performing real estate appraisal
29 services for the appraisal management company to ensure that the real estate

1 appraisal services are being conducted in accordance with Uniform Standards of
2 Professional Appraisal Practice.

3 B. Before or at the time of making an assignment to an appraiser, an
4 appraisal management company shall verify that the appraiser receiving the
5 assignment satisfies each provision of the competency rule of the Uniform Standards
6 of Professional Appraisal Practice for the appraisal being assigned.

7 * * *

8 §3415.15. Fees; customary and reasonable; disclosure

9 A. An appraisal management company shall compensate appraisers at a rate
10 that is customary and reasonable for appraisals being performed in the market area
11 of the property being appraised, consistent with the presumptions of compliance
12 under federal law.

13 B. An appraisal management company shall separately state to the client all
14 of the following:

15 (1) The fees paid to an appraiser for appraisal services.

16 (2) The fees charged by the appraisal management company for services
17 associated with the management of the appraisal process, including procurement of
18 the appraiser's services.

19 C.(1) An appraisal management company shall not prohibit any appraiser
20 who is part of an appraiser panel from recording the fee that the appraiser was paid
21 by the appraisal management company for the performance of the appraisal within
22 the appraisal report that is submitted by the appraiser to the appraisal management
23 company.

24 (2) An appraisal management company shall not include any fees for
25 appraisal management services performed by the company in the amount the
26 company reports as charges for the actual completion of an appraisal by the
27 appraiser.

28 * * *

1 §3415.21. Rulemaking authority; ~~effective date~~

2 A. The board ~~shall have the power to~~ may adopt any rules and regulations
3 in accordance with the Administrative Procedure Act necessary for the enforcement
4 of this Chapter.

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

8 If the board submits its proposed rules for affirmative approval and the legislature
9 is not in session, the proposed rules shall be deemed affirmatively approved if sixty
10 days have elapsed from the date the proposed rules are received by the oversight
11 committees and no hearing is held by either committee.

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

17 Section 2. The provisions of R.S. 37:3415.3(B)(10) and (C) shall apply to any new
18 or renewed license after December 31, 2011, and only upon promulgation of rules by the
19 board concerning the provisions of R.S. 37:3415.3(B)(10) and (C).

20 Section 3. This Act shall become effective upon signature by the governor or, if not
21 signed by the governor, upon expiration of the time for bills to become law without signature
22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
23 vetoed by the governor and subsequently approved by the legislature, this Act shall become
24 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Greene

HB No. 823

Abstract: Requires a surety bond as a condition of licensure as an appraisal management company; provides for appraisal reviews by licensed appraisers; establishes guidelines for fees to be paid to appraisers; and requires an appraisal management company to confirm the competency level of an appraiser prior to assignment.

Proposed law defines "administrative review", "compliance review", "quality check", or "QC" as a process that checks an appraisal report for compliance with the Uniform Standards of Professional Appraisal Practice or other stipulated requirements.

Proposed law defines "appraisal review" as the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term shall not include an examination of an appraisal for grammatical, typographical, mathematical, or other similar administrative errors that do not involve the appraiser's professional judgment, including compliance with the elements of the client's statement of work.

Proposed law defines "fee appraiser" as a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is one of the following:

- (1) A state-licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice.
- (2) A company not subject to the requirements of §1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 that utilizes the services of state-licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.

Proposed law requires a person who performs an appraisal review for an appraisal management company to be licensed or certified in La.

Proposed law provides that an administrative review may be performed by any individual, including a certified appraiser.

Present law prohibits an entity from directly or indirectly engaging or attempting to engage in business as an appraisal management company, directly or indirectly engaging or attempting to perform appraisal management services, or advertising or holding itself out as engaging in or conducting business as an appraisal management company without first obtaining a license issued by the La. Real Estate Appraisers Board.

Present law requires the license to, at a minimum, include the following information:

- (1) The name of the entity seeking a license.
- (2) The business address of the entity seeking a license.
- (3) The phone contact information of the entity seeking a license.

- (4) If the entity is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state.
- (5) The name, address, and contact information of any individual, corporation, partnership, or other business entity that has any ownership interest in the appraisal management company.
- (6) The name, address, and contact information for a controlling person.
- (7) Certification that the entity has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds an appraisal license in good standing.
- (8) Certification that the entity has a system in place to review the work on a periodic basis of all independent appraisers that are performing real estate appraisal services for the appraisal management company to ensure that the real estate appraisal services are being conducted in accordance with Uniform Standards of Professional Appraisal Practice.
- (9) Certification that the entity maintains a detailed record for five years of each real estate appraisal service request that it receives and an itemized list of all fees contracted with each appraiser who performs real estate appraisal services for the appraisal management company.
- (10) An irrevocable Uniform Consent to Service of Process.
- (11) Any other information required by the board.

Proposed law retains present law but repeals the board's authority to request other information and adds a requirement of proof that the entity has obtained and maintains a surety bond that meets the requirements of proposed law.

Proposed law requires every applicant for a license or the renewal of a license to obtain and maintain a surety bond in the amount of \$20,000.

Proposed law requires the surety bond to:

- (1) Be in the form prescribed by the board pursuant to regulations duly promulgated by it.
- (2) Accrue to the state for the benefit of a claimant against the registrant to secure the faithful performance of the licensee obligations under proposed law.

Proposed law provides that the aggregate liability of the surety shall not exceed the principal sum of the bond.

Proposed law authorizes a party having a claim against the licensee to bring suit directly on the surety bond, or the board to bring suit on behalf of the party having a claim against the licensee.

Proposed law provides that consumer claims shall be given priority in recovering from the bond.

Proposed law provides that a deposit of cash or security may be accepted in lieu of the surety bond.

Proposed law requires that, if a claim reduces the face amount of the bond, the bond shall be annually restored upon renewal of the licensee's registration.

Proposed law requires an appraisal management company, before or at the time of making an assignment to an appraiser, to verify that the appraiser receiving the assignment satisfies each provision of the competency rule of the Uniform Standards of Professional Appraisal Practice for the appraisal being assigned.

Proposed law requires an appraisal management company 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 presumptions of compliance under federal law.

Proposed law requires an appraisal management company to separately state to the client all of the following:

- (1) The fees paid to an appraiser for appraisal services.
- (2) The fees charged by the appraisal management company for services associated with the management of the appraisal process, including procurement of the appraiser's services.

Proposed law prohibits an appraisal management company from prohibiting any appraiser who is part of an appraiser panel from recording the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal within the appraisal report that is submitted by the appraiser to the appraisal management company.

Proposed law prohibits an appraisal management company 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.

Present law authorizes the board to adopt any rules and regulations necessary for the enforcement of present law.

Proposed law retains present law but makes technical changes.

Present law requires the rules to obtain the affirmative approval of the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

Proposed law retains present law and further provides that if the board submits its proposed rules for affirmative approval and the legislature is not in session, the proposed rules shall be deemed affirmatively approved if 60 days have elapsed from the date the proposed rules are received by the oversight committees and no hearing is held by either committee.

Present law provides that any appraisal management company doing business in this state at the time of passage of present law, may continue to perform such services without a license until the earlier of either such time that the rules and regulations pertaining to present law have been approved in accordance with present law or Jan. 1, 2011.

Proposed law repeals present law.

Proposed law provides that the surety bond requirement shall apply to any new or renewed license after Dec. 31, 2011, and only upon promulgation of rules by the board concerning proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 37:3415.3(B)(10) and (11), 3415.13, and 3415.21; Adds R.S. 37:3415.2(11), (12), and (13), 3415.3(C) and (D), and 3415.15)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Made technical corrections.
2. Added the definitions of "administrative review", "appraisal review", and "fee appraiser".
3. Required a person who performs an appraisal review for an appraisal management company to be licensed or certified in La.
4. Authorized an administrative review to be performed by any individual, including a certified appraiser.
5. Required an appraisal management company, before or at the time of making an assignment to an appraiser, to verify that the appraiser receiving the assignment satisfies each provision of the competency rule of the Uniform Standards of Professional Appraisal Practice for the appraisal being assigned.
6. Provided for the compensation of appraisers and the disclosure of the fees.
7. Provided that proposed administrative rules shall be deemed affirmatively approved if 60 days have elapsed from the date the proposed rules are received by the oversight committees and no hearing is held by either committee.
8. Repealed an outdated grandfathering clause.