

Regular Session, 2012

HOUSE BILL NO. 1014

BY REPRESENTATIVE HOFFMANN

REAL ESTATE/APPRAISERS: Provides relative to real estate appraisals

1 AN ACT

2 To amend and reenact R.S. 37:3397(B)(4), 3401(D), 3410, 3415.3(B)(10) and (11), 3415.13,
3 and 3415.21 and to enact R.S. 37:3415.2(11), (12), and (13), 3415.3(C) and (D), and
4 3415.15, relative to real estate appraisals; to repeal the maximum time an individual
5 may hold a real estate appraiser trainee license; to provide for reciprocity for real
6 estate appraiser licenses; to define certain terms; to require an appraiser's license to
7 perform appraisal reviews; to provide that administrative reviews of an appraisal do
8 not require an appraiser's license; to require a surety bond; to provide for the
9 competency of appraisers; to provide for customary and reasonable fees for
10 appraisers; to provide for disclosure of fees paid to appraisers by appraisal
11 management companies; to provide for the disclosure of administration fees charged
12 by appraisal management companies; to require that administrative rules receive
13 affirmative approval from the Louisiana Legislature; to repeal an outdated
14 grandfathering clause; to provide for applicability; to provide for an effective date;
15 and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 37:3397(B)(4), 3401(D), 3410, 3415.3(B)(10) and (11), 3415.13, and
18 3415.21 are hereby amended and reenacted and R.S. 37:3415.2(11), (12), and (13),
19 3415.3(C) and (D), and 3415.15 are hereby enacted to read as follows:

1 §3397. License classifications; criteria

2 * * *

3 B.

4 * * *

5 (4) ~~A real estate appraiser trainee may not be licensed in this category in~~
6 ~~excess of six years.~~ All trainees who have been licensed in excess of two years shall
7 be required to obtain continuing education that is equivalent to fifteen classroom
8 hours of instruction for each year.

9 * * *

10 §3401. Nonresident license; temporary registration; reciprocity

11 * * *

12 D. If the board determines that another jurisdiction has substantially
13 equivalent certification or license requirements to those of this state, the board may
14 ~~enter into a reciprocal agreement with the appropriate authority to allow any resident~~
15 applicant who is certified under the laws of that jurisdiction to obtain a reciprocal
16 license as a real estate appraiser in this state. ~~The terms and conditions shall be~~
17 ~~determined by written agreement between the jurisdictions.~~

18 * * *

19 §3410. Standards for the development and communication of real estate appraisals

20 A. A licensed real estate appraiser shall comply with generally accepted
21 standards of professional practice in the development and communication of
22 appraisals of real estate located in this state and with generally accepted ethical rules
23 of conduct as contained in the "Uniform Standards of Professional Appraisal
24 Practice", or its successor, as approved by the Appraisal Subcommittee of the
25 Federal Financial Institutions Examination Council, or its successor.

26 B. The licensed real estate appraiser shall include within the body of the
27 appraisal report the amount of the appraiser's fee for appraisal services.

28 * * *

1 §3415.2. Definitions

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

4 * * *

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

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

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

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

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

1 §3415.3. License required

2 * * *

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

5 * * *

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

8 (11) An irrevocable Uniform Consent to Service of Process, pursuant to this
9 Chapter.

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

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

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

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

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

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

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

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

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

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

- 1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.
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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)]

Hoffmann

HB No. 1014

Abstract: Provides for licensure of real estate appraisal trainees; provides for reciprocity; 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.

Present law provides that a real estate appraiser trainee may not be licensed in this category in excess of six years.

Proposed law repeals present law.

Present law requires all trainees who have been licensed in excess of two years to obtain continuing education that is equivalent to 15 classroom hours of instruction for each year.

Proposed law retains present law.

Present law provides that, if the La. Real Estate Appraisers Board determines that another jurisdiction has substantially equivalent real estate appraiser certification or license requirements to those of La., the board may enter into a reciprocal agreement with the appropriate authority to allow any resident applicant who is certified under the laws of that jurisdiction to obtain a reciprocal license as a real estate appraiser in this state. Proposed law requires the terms and conditions to be determined by written agreement between the jurisdictions.

Proposed law retains present law but removes the requirement that the board enter into a reciprocal agreement with another jurisdiction.

Present law requires a licensed real estate appraiser to comply with generally accepted standards of professional practice in the development and communication of appraisals of real estate located in this state and with generally accepted ethical rules of conduct as contained in the "Uniform Standards of Professional Appraisal Practice", or its successor, as approved by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, or its successor.

Proposed law retains present law.

Proposed law requires the licensed real estate appraiser to include within the body of the appraisal report the amount of the appraiser's fee for appraisal services.

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 45 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. 37:3397(B)(4), 3401(D), 3410, 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 changes.
2. Repealed the maximum time an individual may hold a real estate appraiser trainee license.
3. Removed the requirement that the Real Estate Appraisers Board enter into an agreement with another jurisdiction in order to grant reciprocity for licensing.
4. Required the licensed real estate appraiser to include within the body of the appraisal report the amount of the appraiser's fee for appraisal services.
5. Changed the definition of "appraisal review".
6. Deleted the proposed definition of "uniform settlement statement".

7. Amended the requirement that a person who performs an appraisal review for an appraisal management company be licensed or certified in La. by removing the requirement that the person have at least the same certification for the property type as the appraiser who completed the report being reviewed.
8. Required a surety bond as a condition for obtaining and maintaining an appraisal management company license.
9. Provided for the compensation of appraisers and the disclosure of the fees.
10. Provided that proposed administrative rules shall be deemed affirmatively approved if 45 days have elapsed from the date the proposed rules are received by the oversight committees and no hearing is held by either committee.
11. Provided for applicability of proposed law.
12. Made proposed law effective upon signature of governor or lapse of time for gubernatorial action.