

1 HB304
2 198273-1
3 By Representative Coleman
4 RFD: Boards, Agencies and Commissions
5 First Read: 02-APR-19

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8 SYNOPSIS: Under existing law, the Alabama Real Estate
9 Appraisers Board licenses and regulates real estate
10 appraisers providing real estate appraisals.

11 This bill would define and provide for
12 licensed real estate appraisers to perform
13 evaluations of property authorized by federal
14 financial institution regulatory agencies for
15 federal financial institutions for transactions
16 that do not require an appraisal. The evaluations
17 would not be subject to regulation by the Alabama
18 Real Estate Appraisers Board.

19 The bill would also authorize an
20 investigator employed by the board to be a licensee
21 of the board.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
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1 Relating to the Alabama Real Estate Appraisers Board
2 and the licensing and regulation of real estate appraisers; to
3 amend Sections 34-27A-2, 34-27A-3, 34-27A-5, and 34-27A-23 of
4 the Code of Alabama 1975, to define the term "evaluation" and
5 to provide that evaluations performed by licensed appraisers
6 for financial institutions would not be governed by Chapter
7 27A and to further provide for the employment of investigators
8 by the board who are licensees of the board.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 34-27A-2, 34-27A-3, 34-27A-5,
11 and 34-27A-23 of the Code of Alabama 1975, are amended to read
12 as follows:

13 "§34-27A-2.

14 "The following terms as used in this chapter shall
15 have the following meanings:

16 "(1) APPRAISAL. The act or process of developing an
17 opinion of value of real property; an opinion of the value of
18 real property; of or pertaining to appraising real property
19 and related functions such as appraisal practice or appraisal
20 services.

21 "(2) APPRAISAL FOUNDATION. The Appraisal Foundation
22 incorporated as an Illinois not-for-profit corporation on
23 November 30, 1987.

24 "(3) APPRAISAL MANAGEMENT COMPANY. An external third
25 party including, but not limited to, a corporation,
26 partnership, sole proprietorship, subsidiary, or limited
27 liability company, authorized either by a creditor of a

1 consumer credit transaction secured by the principal dwelling
2 of a consumer or by an underwriter of or other principal in
3 the secondary mortgage markets, that oversees a network or
4 panel of more than four certified or licensed appraisers in a
5 state or 25 or more nationally in a given year, that perform
6 appraisal management services.

7 "(4) APPRAISAL MANAGEMENT SERVICES. To directly or
8 indirectly perform any of the following functions for a fee on
9 behalf of a lender, financial institution, or any other
10 entity:

11 "a. Recruit, select, and retain appraisers.

12 "b. Contract with licensed and certified appraisers
13 to perform appraisal assignments.

14 "c. Manage the process of having an appraisal
15 performed, including providing administrative duties such as
16 receiving appraisal orders and appraisal reports, submitting
17 completed appraisal reports to creditors and underwriters,
18 collecting fees from creditors and underwriters for services
19 provided, and reimbursing appraisers for services performed.

20 "d. Review and verify the work of appraisers.

21 "(5) APPRAISAL REPORT. Any communication, written or
22 oral, of an appraisal.

23 "(6) APPRAISAL REVIEW. The act of developing and
24 communicating an opinion about the quality of the work of
25 another appraiser that was performed as part of an appraisal
26 assignment, except that an examination of an appraisal for
27 grammatical, typographical, or other similar errors that do

1 not make a substantive valuation change is not an appraisal
2 review.

3 "(7) APPRAISAL SUBCOMMITTEE. The appraisal
4 subcommittee of the Federal Financial Institutions Examination
5 Council.

6 "(8) APPRAISER. A person who holds a license or
7 certification to complete a real estate appraisal in the state
8 where real property that is the subject of the appraisal is
9 located.

10 "(9) APPRAISER INDEPENDENCE. The ability of an
11 appraiser to provide an appraisal or appraisal review services
12 in exchange for a customary and reasonable fee without
13 coercion, extortion, collusion, inducement, intimidation,
14 bribery, or any other action by a regulated party intended to
15 influence the opinion rendered by an appraiser.

16 "(10) APPRAISER PANEL. A network of licensed or
17 certified appraisers who are independent contractors of an
18 appraisal management company.

19 "(11) BOARD. The State of Alabama Real Estate
20 Appraisers Board established pursuant to this chapter.

21 "(12) CERTIFIED APPRAISAL or CERTIFIED APPRAISAL
22 REPORT. An appraisal or appraisal report given or signed and
23 certified as such by a licensed real property appraiser other
24 than a trainee or registered real property appraiser. When
25 identifying an appraisal or appraisal report as "certified,"
26 the real property appraiser shall indicate which type of
27 license is held. A certified appraisal or appraisal report

1 represents to the public that it meets the appraisal standards
2 defined in this chapter.

3 "(13) EVALUATION. A valuation of real property for a
4 lending institution which is permitted by rules of any federal
5 financial institution regulatory agency for transactions that
6 do not require an appraisal.

7 "(13)(14) EXECUTIVE DIRECTOR. The chief
8 administrative employee of the board.

9 "(14)(15) EXPERIENCE POINTS. The allowable credit
10 for appraisal of particular types of properties.

11 "(15)(16) FEDERAL FINANCIAL INSTITUTIONS REGULATORY
12 AGENCIES. The Board of Governors of the Federal Reserve
13 System, the Federal Deposit Insurance Corporation, the Office
14 of the Comptroller of the Currency, the Office of Thrift
15 Supervision, and the National Credit Union Administration.

16 "(16)(17) FEDERALLY RELATED TRANSACTION. Any real
17 estate-related financial transaction which:

18 "a. A federal financial institutions regulatory
19 agency or the resolution trust corporation engages in,
20 contracts for, or regulates; and

21 "b. Requires the services of an appraiser.

22 "(17)(18) FINANCIAL INSTITUTION. An insured
23 depository institution as defined in Section 3 of the Federal
24 Deposit Insurance Act or an insured credit union as defined in
25 Section 101 of the Federal Credit Union Act.

26 "(18)(19) GEOGRAPHIC COMPETENCY. The familiarity of
27 an appraiser with a market or a geographic area applicable to

1 the problem to be addressed in an appraisal or an appraisal
2 review assignment.

3 "~~(19)~~ (20) PRINCIPAL CONTACT. An individual employed,
4 appointed, or authorized by an appraisal management company to
5 serve as the principal contact for the board.

6 "~~(20)~~ (21) REAL ESTATE. An identified parcel or tract
7 of land, including improvements, if any.

8 "~~(21)~~ (22) REAL ESTATE APPRAISAL SERVICES. The
9 practice of accepting an assignment to develop and report an
10 opinion on the value of real property in conformance with the
11 Uniform Standards of Professional Appraisal Practice published
12 by the Appraisal Foundation.

13 "~~(22)~~ (23) REAL ESTATE-RELATED FINANCIAL TRANSACTION.
14 Any transaction involving any of the following:

15 "a. The sale, lease, purchase, investment in, or
16 exchange of real property, including interests in property, or
17 the financing thereof.

18 "b. The refinancing of real property or interests in
19 real property.

20 "c. The use of real property or interests in
21 property as security for a loan or investment, including
22 mortgage-backed securities.

23 "~~(23)~~ (24) REAL PROPERTY. One or more defined
24 interests, benefits, and rights inherent in the ownership of
25 real estate.

26 "~~(24)~~ (25) UNIFORM STANDARDS OF PROFESSIONAL
27 APPRAISAL PRACTICE (USPAP). Standards promulgated by the

1 Appraisal Foundation and adopted by rule pursuant to this
2 chapter.

3 "§34-27A-3.

4 "(a) It shall be unlawful for any person,
5 partnership, or corporation, for a fee or other valuable
6 consideration, or with the intention or expectation of
7 receiving or collecting a fee or valuable consideration from
8 another, to do any of the following unless he or she is
9 licensed under this chapter:

10 "(1) To be employed to perform or to perform an
11 appraisal as defined in this chapter where the subject
12 property of the assignment lies within the borders of the
13 State of Alabama.

14 "(2) Present himself or herself, or allow himself or
15 herself to be presented, as being able to perform an appraisal
16 for which a license is required under this chapter.

17 "(b) It shall be unlawful for a person, other than a
18 licensed real estate appraiser, to assume or use that title or
19 any title, designation, or abbreviation likely to create the
20 impression of licensure as a real estate appraiser by this
21 state. It shall be unlawful for a person licensed as a real
22 estate appraiser to assume or use a title, designation, or
23 abbreviation likely to create the impression of licensure at a
24 higher classification of real estate appraiser other than the
25 classification at which the person is licensed. It shall be
26 unlawful for a trainee real property appraiser or a registered
27 real property appraiser pursuant to this chapter to describe

1 or refer to any appraisal or other evaluation of real estate
2 located in this state by the term "certified." Except where
3 required by, or where necessary to fully comply with the
4 provisions of the Financial Institutions Reform, Recovery and
5 Enforcement Act of 1989, Pub.L. No. 101-73, as amended, and
6 regulations issued pursuant thereto, an employee of the State
7 of Alabama or any county who has been commissioned by the
8 Alabama Department of Revenue as an Alabama Certified
9 Appraiser, for the purposes of classification only, who is
10 engaged in the performance of official duties as an employee,
11 shall not be subject to this chapter.

12 "(1) A trainee real property appraiser or a state
13 registered real property appraiser under this chapter, shall
14 include the following statement in the "certifications of the
15 appraiser" section of each appraisal or specialized service
16 report: "This assignment was made subject to regulations of
17 the State of Alabama Real Estate Appraisers Board."

18 "(2) A licensed real estate appraiser licensed other
19 than as a trainee real property appraiser or a registered real
20 property appraiser shall include the following statement in
21 the "Certifications of the Appraiser" section of each
22 appraisal or specialized service report: "This assignment was
23 made subject to regulations of the State of Alabama Real
24 Estate Appraisers Board. The undersigned state licensed real
25 estate appraiser has met the requirements of the board that
26 allow this report to be regarded as a 'certified appraisal'."

1 "(c) Except where required by, or where necessary to
2 fully comply with the provisions of the Financial Institutions
3 Reform, Recovery and Enforcement Act of 1989, Pub.L. No.
4 101-73, as amended, and regulations issued pursuant thereto,
5 this chapter shall not apply to, or preclude, a person who is
6 not a licensed real estate appraiser from performing real
7 estate market analysis, in that person's capacity as a
8 licensed real estate broker or salesperson under this title~~7~~.
9 This chapter also does not apply to a licensed real estate
10 appraiser when preparing an evaluation for a mortgage loan
11 transaction when a financial institution has determined that
12 an appraisal is not required or ~~and this chapter shall not~~
13 ~~apply~~ to a licensed real estate broker or salesperson, who in
14 the ordinary course of business, gives an opinion to a
15 potential seller or third party as to the recommended listing
16 price of real estate, or an opinion to a potential purchaser
17 or third party as to the recommended purchase price of real
18 estate. ~~and this~~ This chapter ~~shall~~ also does not apply to any
19 employee, officer, director, partner, or similar person making
20 a valuation, analysis, market study, or other appraisal for
21 his or her employer or principal, including those related to
22 any real estate related financial transactions for or on
23 behalf of a financial institution. The words "employer or
24 principal" as used in this subsection shall include any
25 subsidiary, parent, affiliate, or partner of the direct
26 employer or principal. This chapter shall not require now or

1 in the future any person who lists or otherwise offers
2 property for sale to have an appraisal of that property.

3 "(d) Any person violating any of the provisions of
4 subsections (a) through (c) shall, upon conviction thereof, be
5 guilty of a Class A misdemeanor and shall be punished as
6 prescribed by law.

7 "(e) Notwithstanding anything to the contrary in
8 this section, an individual who is not a licensed appraiser
9 may assist in the preparation of an appraisal if the following
10 conditions are met:

11 "(1) The assistant is under the direct supervision
12 of a licensed individual.

13 "(2) The final appraisal document is approved and
14 signed by an individual who is licensed to perform that type
15 of appraisal.

16 "(f) (1) Notwithstanding anything to the contrary in
17 this chapter, a person licensed pursuant to this chapter may
18 perform an evaluation for a financial institution as
19 authorized by federal law.

20 "(2) When performing an evaluation, a person
21 licensed pursuant to this chapter shall not be subject to any
22 provision of this chapter except as provided in this
23 subsection.

24 "(3) The evaluation shall contain a statement that
25 "This is not an appraisal."

26 "(4) This chapter does not otherwise apply to an
27 evaluation.

1 "(5) Evaluations shall be governed by federal law
2 and rules of federal financial institution regulatory agencies
3 and not the board.

4 "§34-27A-5.

5 "(a) The board shall act by a majority vote of its
6 members to adopt administrative rules and regulations
7 necessary, from time to time, to carry out this chapter. Rules
8 and regulations of the board shall be adopted in compliance
9 with the Alabama Administrative Procedure Act, Chapter 22 of
10 Title 41.

11 "(b) The board shall have the following powers and
12 duties:

13 "(1) To receive and process applications for
14 licensure for all classifications of real estate appraisers,
15 including, but not limited to, "trainee real property
16 appraiser," "state registered real property appraiser,"
17 "licensed real property appraiser," "certified residential
18 real property appraiser," and "certified general real property
19 appraiser" and any subsequent classifications necessary to
20 conform with the Financial Institutions Reform, Recovery and
21 Enforcement Act of 1989, Pub. L. No. 101-73, and any
22 subsequent regulations issued pursuant thereto.

23 "(2) To establish the administrative procedures for
24 processing applications for licensure for all classifications
25 of real estate appraisers.

26 "(3) To maintain a registry of the names and
27 addresses of people licensed under this chapter, and to

1 furnish the list annually to the federal agency designated by
2 Congress to receive it.

3 "(4) To retain records and all application materials
4 submitted to it.

5 "(5) To establish the examination specifications
6 when an examination is required by administrative rule for
7 each category of licensed real estate appraiser, to provide or
8 procure appropriate examination questions and answers, and to
9 establish procedures for grading examinations.

10 "(6) To approve or disapprove applications for
11 licensure and issue licenses.

12 "(7) To further define by regulation and with
13 respect to each category of licensed real estate appraiser the
14 continuing education requirements for the renewal of a license
15 that will meet the statutory requirements provided in this
16 chapter. No examinations shall be required on the continuing
17 education except to comply with subsection (c) of Section
18 34-27A-19.

19 "(8) To review and adopt the standards for the
20 development and communication of real estate appraisals
21 provided in this chapter, that are generally accepted within
22 the appraisal profession, and to adopt regulations explaining
23 and interpreting the standards.

24 "(9) To establish administrative procedures for
25 disciplinary proceedings conducted pursuant to this chapter.

1 "(10) To censure, suspend, and revoke licenses
2 pursuant to the disciplinary proceedings provided for in
3 Section 34-27A-21.

4 "(11)a. To hire the executive director of the board
5 and an executive assistant if needed to fulfill the
6 requirements of this chapter. The executive director shall
7 administer this chapter, and may employ, subject to the
8 approval of the board, other staff members, consultants, or
9 service contractors as are necessary to discharge the board's
10 duties and administer this chapter.

11 "b. Notwithstanding any other contrary provision of
12 law, an investigator who contracts with the board may be a
13 practicing licensee of the board.

14 "(12) To perform other functions and duties as may
15 be necessary in carrying out this chapter, and to promulgate
16 necessary and appropriate regulations which comply in all
17 respects with requirements of Pub. L. No. 101-73 and any
18 subsequent amendments thereto. Regulations shall be
19 promulgated within 90 days following completion of the
20 schedule for prescription and adoption of regulations by the
21 federal financial institutions regulatory agencies and the
22 resolution trust corporation. Regulations shall be promulgated
23 and take effect by (i) July 1, 1991, unless an extension is
24 granted by the appraisal subcommittee until December 31, 1991,
25 based on written findings as specified by Section 1119(a)(2)
26 of Pub. L. No. 101-73; or (ii) any other date specified by
27 subsequent act of Congress. All regulations issued by the

1 board that govern real estate appraiser licensure and
2 certification shall conform in all respects with the
3 requirements of Pub. L. No. 101-73 and any subsequent
4 amendments thereto and are subject to administrative review
5 under the Administrative Procedure Act and to judicial review
6 by application to the Circuit Court for Montgomery County.

7 "(13) To include in its regulations educational
8 requirements for all classes of licensure of real estate
9 appraisers that comply with this chapter and in all respects
10 comply with the requirements of Pub. L. No. 101-73 and any
11 subsequent amendments thereto or regulations issued
12 thereunder.

13 "(c) The members of the board shall be immune from
14 any civil action or criminal prosecution for initiating or
15 assisting in any lawful investigation of the actions of, or
16 any disciplinary proceeding concerning, a licensed real estate
17 appraiser pursuant to this chapter, or alleged appraisals
18 being made without a license, provided that the action is
19 taken in good faith and in the reasonable belief that the
20 action taken was pursuant to the powers and duties vested in
21 the members of the board under this chapter.

22 "§34-27A-23.

23 "A licensed real estate appraiser shall comply with
24 the current Uniform Standards of Professional Appraisal
25 Practice approved by the board except when performing an
26 evaluation as defined in this chapter and in the Interagency
27 Appraisal and Evaluation Guidelines published by the federal

1 financial institution regulatory agencies on December 2, 2010,
2 for lending transactions where the amount of the transaction
3 is de minimus and the lending institution has determined that
4 an appraisal is not required, as these guidelines may be
5 amended from time to time or as otherwise provide by federal
6 law."

7 Section 2. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.