



Ohio Legislative Service Commission

Bill Analysis

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Rep. Slesnick

BILL SUMMARY

- Prohibits a person from performing appraisal management services, or otherwise engaging in business as an appraisal management company, without an appraisal management company license.
- Authorizes, and establishes procedures and criteria relating to, an appraisal management company license.
- Prohibits certain acts relating to the appraisal management business.
- Changes the circumstances under which a lender can be excused from the general requirement that a person performing a real estate appraisal for a mortgage loan be licensed or certified as an appraiser.

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CONTENT AND OPERATION

The Appraisal Management Company Law

Licensure of appraisal management companies

The bill prohibits a person from doing any of the following without an appraisal management license: (1) directly or indirectly engaging or attempting to engage in business as an appraisal management company, (2) directly or indirectly engaging in or attempting to perform appraisal management services, (3) advertising or holding the person's self out as engaging in or conducting business as an appraisal management company (R.C. 4768.02(A)). An appraisal management company is defined under the bill as any person who, directly or indirectly, performs appraisal management services, regardless of the use of the term "appraisal management company," "lender processing services," "lender services," "loan processor," "mortgage services," "mortgage technology provider," "real estate closing services provider," "settlement services provider," "vendor management company," or any other term (R.C. 4768.01(C)). The bill defines appraisal management services as any of the following when done on behalf of a lender, financial institution, client, or any other person:

- (1) Administering an appraiser panel;
- (2) Recruiting, qualifying, verifying licensure or certification, and negotiating fees and service level expectations with persons who are part of an appraiser panel;
- (3) Receiving an order for an appraisal from one person and delivering that order to an appraiser who is part of an appraiser panel for completion;
- (4) Tracking and determining the status of orders for appraisals;
- (5) Conducting quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal;
- (6) Providing a completed appraisal performed by an appraiser to one or more persons that have ordered an appraisal (R.C. 4768.01(D)).

The bill permits the Superintendent of Real Estate and Professional Licensing to investigate any alleged violation of this licensing requirement and permits the Real Estate Appraiser Board to assess a civil penalty if it finds that a violation has occurred (see "**Sanctions against unlicensed activity**" below).

Persons not subject to the bill

The bill does not require licensure of, and does not apply in any aspect to, any of the following:

- (1) Lending institutions that have "in-house" appraisal offices, business units, or departments;
- (2) Appraisers who contract with other appraisers for the performance of individual appraisals on a limited basis;
- (3) Appraisers who contract with other appraisers for the performance of individual appraisals and who co-sign the appraisal report at the completion of the appraisal;
- (4) An appraisal management company that orders not more than ten appraisals in Ohio within one calendar year;
- (5) Any federal, state, county, or municipal agency (R.C. 4768.02(B)).

Duties of the Real Estate Appraiser Board

The bill requires the Real Estate Appraiser Board to do all of the following:

- (1) Adopt rules, in accordance with the Administrative Procedure Act, in furtherance of the Appraisal Management Company Law (proposed R.C. Chapter 4768.), including rules that (a) establish procedures for the criminal records checks that are required for initial licensure, (b) nonrefundable fees for the initial appraisal management company license (which cannot exceed \$500), the annual renewal of that license (which also cannot exceed \$500), and late filing (which cannot exceed \$250), and (c) requirements for settlement agreements that the Superintendent of Real Estate and Professional Licensing and an appraisal management company or other person can enter into under the bill;
- (2) Determine the appropriate disciplinary actions to be taken against a person for certain acts (see "**Sanctions against prohibited acts**" below);
- (3) Hear appeals from decisions and orders that the Superintendent issues under the bill;
- (4) Request that the Superintendent initiate an investigation of a violation of the Appraisal Management Company Law or the rules adopted under it. (R.C. 4768.03.)



Additionally, the bill permits the Board to subpoena witnesses and to compel the production of any book, paper, or document pertaining to any matter over which the Board has jurisdiction (R.C. 4768.05).

Duties of the Superintendent of Real Estate and Professional Licensing

The bill requires the Superintendent of Real Estate and Professional Licensing to do all of the following:

- (1) Prescribe the form and content of all applications required under the bill;
- (2) Receive applications for appraisal management company licenses and license renewals and establish procedures for processing, approving, and disapproving those applications;
- (3) Retain records and all application materials submitted to the Superintendent;
- (4) Issue licenses and maintain a register of the names and addresses of all appraisal management companies issued an appraisal management company license;
- (5) Perform any other functions and duties, including the employment of staff, necessary to administer the Appraisal Management Company Law;
- (6) Administer the Appraisal Management Company Law;
- (7) Issue all orders necessary to implement the Appraisal Management Company Law;
- (8) Investigate complaints concerning any violation of the Appraisal Management Company Law or the conduct of any person holding an appraisal management company license;
- (9) Establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries as, in the judgment of the Superintendent, are appropriate to enforce the Appraisal Management Company Law;
- (10) Appoint a hearing examiner for any proceeding involving prohibited acts or unlicensed activity (R.C. 4768.04(A)).

Additionally, the bill permits the Superintendent to subpoena witnesses in accordance with its investigatory powers under the bill; to compel the production of any book, paper, or document pertaining to any matter over which the Superintendent has jurisdiction; and to apply to the appropriate court to enjoin any violation of a subpoena

issued by the Real Estate Appraiser Board or the Superintendent or the Appraisal Management Company Law (R.C. 4768.04(B) and 4768.05).¹

Application for licensure

To obtain a license to operate as an appraisal management company, an applicant must submit all of the following to the Superintendent of Real Estate and Professional Licensing:

- (1) A completed application on a form provided by the Superintendent;
- (2) The name of a controlling person who will be the main contact between the appraisal management company and the Division of Real Estate and Professional Licensing and the Real Estate Appraiser Board;
- (3) Payment of the required fee for initial licensure;²
- (4) A list of all owners and controlling persons of the appraisal management company;
- (5) Proof that each owner and controlling person of the appraisal management company is at least 18 years of age and has graduated the twelfth grade or received a certificate of high school equivalence;
- (6) A completed consent to service of process in Ohio;
- (7) A letter of good standing from each state in which the appraisal management company holds an appraisal management company license, certificate, or registration;
- (8) Statements that (a) the applicant understands the grounds for any disciplinary action that can be initiated under the Appraisal Management Company Law, (b) that the applicant acknowledges that a system or process must be in place to verify that any appraiser added to the appraisal management company's appraiser panel is licensed or certified under the Real Estate Appraisers Law and is in good standing with the state, (c) that the applicant acknowledges that a system or process must be in place to periodically review the work of appraisers that are performing real estate appraisal services for compliance with the uniform standards of professional appraisal practice, and (d) that the applicant acknowledges that each controlling person of the appraisal management company has successfully completed 14 hours of uniform

¹ The bill provides that, upon a showing by the Superintendent that any person has violated or is about to violate the Appraisal Management Company Law, the court must grant appropriate relief.

² The Superintendent sets the fee by rule, but the fee set may not exceed \$500 (R.C. 4768.03).

standards of professional appraisal practice and thereafter must complete seven hours of instruction in uniform standards of professional appraisal practice at least once every two years (R.C. 4768.06(A)).

Additionally, the bill requires that each owner and controlling person of an appraisal management company satisfy all of the following criteria:

(1) Be honest, truthful, and of good reputation;

(2) Submit to a criminal records check;

(3) Have not had a license, certificate, or registration to act as an appraiser that has been refused, denied, canceled, surrendered, or revoked in Ohio or in any other state (R.C. 4768.06(B)).

The bill requires that when the Superintendent of Real Estate and Professional Licensing receives an application for licensure, the Superintendent must request the Superintendent of the Bureau of Criminal Identification and Investigation, or a vendor approved by the Bureau, to conduct a criminal records check based on the fingerprint impressions of each owner and controlling person of the applicant. The Superintendent of Real Estate and Professional Licensing must additionally request that information from the Federal Bureau of Investigation be obtained as part of the criminal records check. Upon that request, the Superintendent of the Bureau of Criminal Identification and Investigation must conduct a criminal records check to determine whether any information exists indicating that the person who is the subject of the request has been convicted of or pleaded guilty to a felony in Ohio or in any other state. The bill requires the applicant to pay for any fee required for the criminal records check. (R.C. 109.572(A)(15) and 4768.06(C).)

Issuing a license

The bill requires the Superintendent of Real Estate and Professional Licensing to issue an appraisal management company license to an applicant if the applicant and each owner or controlling person of the applicant satisfies the requirements for licensure (see "**Application for licensure**" above) and no grounds for refusal exist (see "**Grounds for refusal to issue or renew a license**" below). However, the bill prohibits the Superintendent from issuing a license to an applicant if any owner or controlling person of the applicant has been convicted of or pleaded guilty to a felony unless the person has proven to the Superintendent, by a preponderance of the evidence, that the person's activities and employment record since the conviction or plea show that the person is honest, truthful, and of good reputation, and there is no basis in fact for believing that the person will commit a felony again. An appraisal

management company license issued under the bill is valid for one year after the date of issue (R.C. 4768.06(D) and (E)).

License renewal

An appraisal management company license issued or renewed under the bill expires one year from the date of issue. To obtain a renewal license, the bill requires an appraisal management company to file a renewal application with the Superintendent of Real Estate and Professional Licensing and to pay the required renewal fee.³ The renewal application must include a statement, signed by the licensee's controlling person, that states all of the following:

(1) The licensee has a system or process in place to verify that any appraiser added to the appraisal management company's appraiser panel is a licensed or certified appraiser who is in good standing with the state.

(2) The licensee has a system or process in place to periodically review the work of appraisers who are performing real estate appraisal services for compliance with the uniform standards of professional appraisal practice.

(3) Each controlling person of the licensee has successfully completed an initial 14 hours of uniform standards of professional appraisal practice and thereafter completes seven hours of instruction in uniform standards of professional appraisal practice at least once every two years.

(4) Each owner and controlling person of the licensee continues to satisfy the requirements for initial licensure. (R.C. 4768.07(A).)

The bill requires that the renewal application be filed at least 30 days, but not earlier than 120 days, prior to expiration of the license. If a licensee fails to renew its license prior to its expiration, the licensee is ineligible to obtain a renewal license and must instead go through the process for initial licensure to regain licensure (see "**Application for licensure**" above). However, a licensee can, within three months after the expiration of the license, renew the license without having to comply with the requirements for initial licensure if the licensee pays the requisite renewal fees and late filing fee.⁴ The bill provides that a licensee who applies for late renewal of the licensee's license cannot engage in any activities permitted by the license during the three-month period following the license's normal expiration date until all renewal fees and the late filing fee are paid. (R.C. 4768.07(B) and (C).)

³ The Superintendent sets the fee by rule, but the fee set may not exceed \$500 (R.C. 4768.03).

⁴ The Superintendent sets the fee by rule, but the fee set may not exceed \$250 (R.C. 4768.03).

The bill requires the Superintendent to renew the license if the applicant satisfies the above requirements and there exist no grounds for the Superintendent to refuse renewal (see "**Grounds for refusal to issue or renew a license**" below) (R.C. 4788.07(D)).

Grounds for refusal to issue or renew a license

The bill permits the Superintendent of Real Estate and Professional Licensing to refuse to issue to an applicant an appraisal management company license based upon any prohibited act for which a person, including a licensee, can be disciplined (see "**Prohibited acts**" below). Also, the bill permits the Superintendent to refuse to renew a license if the licensee has failed to comply with the Appraisal Management Company Law. If the Superintendent refuses to issue or renew a license, the bill requires that the Superintendent notify the applicant or the licensee of the basis for the refusal, by certified mail, return receipt requested, and the bill states that the hearing must be conducted in accordance with the Administrative Procedure Act.

The bill allows an applicant or licensee to appeal the Superintendent's decision to the Real Estate Appraiser Board, which must provide the applicant or licensee with the opportunity to be heard in person or by counsel, or both. The decision and order of the Board is final, subject to review in the manner provided in the Administrative Procedure Act and appeal to the court of common pleas of Franklin County. (R.C. 4768.08.)

Prohibited acts

The bill prohibits any person, including licensed and unlicensed appraisal management companies, from doing any of the following:

(1) Procuring or attempting to procure an appraisal management company license by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for licensure, or by any means of fraud or misrepresentation;

(2) Paying, or attempting to pay, anything of value, other than the required fees or assessments, to any member or employee of the Real Estate Appraiser Board for the purpose of procuring an appraisal management company license;

(3) Failing to provide copies of records to the Superintendent of Real Estate and Professional Licensing as required under the bill;

(4) Failing to assist the Superintendent in the Superintendent's investigation of complaints, including failure to comply with a subpoena issued in connection with the Superintendent's audits or investigations. (R.C. 4768.12(K)(1), (2), (5), and (8).)

The bill prohibits any appraisal management company, regardless of whether the appraisal management company is licensed or unlicensed, from doing any of the following:

(1) Removing an independent appraiser from the appraisal management company's appraiser panel, or otherwise refusing to assign requests for real estate appraisal services to the independent appraiser, without first notifying the appraiser in writing, by certified mail, return receipt requested, of the reasons the appraiser is being removed from the appraiser panel and providing the appraiser with an opportunity to respond to that notification, in writing, within 30 days after the appraisal management company mails the removal notification, if the removal occurs after the appraiser has been on the panel for at least 30 days (R.C. 4768.12(K)(3) and 4768.09);

(2) Altering, modifying, or otherwise changing a completed appraisal report submitted by an independent appraiser (R.C. 4768.12(K)(4) and 4768.11(C));⁵

(3) Having a license, certificate, or registration that was issued by another state revoked or surrendered (R.C. 4768.12(K)(9));

(4) Having an owner or controlling person that is convicted of or pleaded guilty to a felony (R.C. 4768.12(K)(14)).

The bill prohibits only those appraisal management companies that are licensed under the bill from doing any of the following:

(1) Failing to maintain the original or true copy of every request relating to the report that the appraisal management company receives from a client; the original or true copy of each request sent to an appraiser who is considered for the assignment; and copies of the appraisal report and all versions of that report, for a period of at least five years from the date the appraisal report is submitted to the client (R.C. 4768.12(K)(5) and 4768.10(A));⁶

⁵ Under the bill, a person who violates this prohibition also is guilty of a first degree misdemeanor (R.C. 4768.99(A)).

⁶ The failure of a person to comply with a subpoena related to these records is prima facie evidence of a violation (R.C. 4768.12(L)).

(2) Failing to include in each appraisal work file the name and contact information of both the appraisal management company and the individual from the appraisal management company involved in ordering the appraisal; the amount of any fee paid to the appraiser for each assignment included in the work file and the time and method of payment; and details of all communications between the appraisal management company, the appraiser, and the client for each appraisal assignment included in the work file (R.C. 4768.12(K)(5) and 4768.10(B));

(3) Having entered against the licensee a final judgment on the grounds of fraud, deceit, misrepresentation, or coercion in the making of any real estate appraisal (R.C. 4768.12(K)(6));

(4) Failing to notify the Board within 15 days of any state agency's issuance of an order revoking or permanently surrendering any professional appraisal management company license, certificate, or registration issued by any public entity other than the Division of Real Estate and Professional Licensing (R.C. 4768.12(K)(7) and (M));

(5) Failing to provide written notice to the Division within 15 days of changing the controlling person who was designated in the application for licensure as the appraisal management company's main contact (R.C. 4768.12(K)(10));

(6) Entering into contracts or agreements with an independent appraiser who is not licensed or certified under the Real Estate Appraisers Law for the performance of real estate appraisal services (R.C. 4768.12(K)(11));

(7) Failing to utilize surveys, methodologies, techniques, or reliable data sources, including representative samples of independent fee appraisers, in establishing appraiser fee schedules (R.C. 4768.12(K)(12));

(8) Failing to pay an independent appraiser for the completion of an appraisal within 60 days of the date on which the independent appraiser transmits or otherwise provides the completed appraisal to the appraisal management company or its assignees, except in cases of breach of contract or substandard performance of services (R.C. 4768.12(K)(13)).

The bill specifically prohibits an employee, director, officer, or agent of a licensed appraisal management company from influencing or attempting to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or in any other manner, including the following:

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

(2) Withholding or threatening to withhold future business for an independent appraiser, or demoting or terminating, or threatening to demote or terminate, an independent appraiser;

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

(4) Conditioning the assignment of an appraisal or the payment of an appraisal fee, salary, or bonus, on the opinion, conclusion, or valuation to be reached by, or on a preliminary estimate or opinion requested from, an independent appraiser;

(5) Requesting that an independent appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the independent appraiser's completion of an appraisal;

(6) Providing to an independent appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that the employee, director, officer, or agent of an appraisal management company can provide the independent appraiser with a copy of the sales contract for purchase transactions;

(7) Providing stock or other financial or nonfinancial benefits to an independent appraiser or any person related to the appraiser;

(8) Any other act or practice that impairs, or attempts to impair, an appraiser's independence, objectivity, or impartiality;

(9) Obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction, unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file and the appraisal or automated valuation model is done pursuant to a bona fide pre- or post-funding appraisal review or quality control process;

(10) Allowing the removal of an independent appraiser from the appraisal management company's appraiser panel, after the first 30 days of being added to the panel, without prior written notice and an opportunity to respond as required under the bill.

In addition to the sanctions to which an employee, director, officer, or agent of a licensed appraisal management company may be subject under the bill for influencing or attempting to influence the development, reporting, or review of an appraisal

through coercion, extortion, or similar tactics (see "**Sanctions against prohibited acts**" below), such a person who engages in the acts specified in items (1) through (9) above is guilty of a fifth degree felony and such a person who engages in the act specified in (10) is guilty of a first degree misdemeanor.

The bill specifies that this prohibition against coercive and intimidating acts does not prohibit an appraisal management company from requesting that an independent appraiser provide additional information about the basis for a valuation or correct objective factual errors in an appraisal report (R.C. 4768.11(A) and (B), 4768.12(K)(4), and 4768.99).

Sanctions against prohibited acts

The bill states that within ten business days after a person files with the Division of Real Estate and Professional Licensing a written complaint against a person licensed under the Appraisal Management Company Law or any other person, the Superintendent of Real Estate and Professional Licensing must acknowledge receipt of the complaint by sending notice to the person against whom the complaint is filed that includes a copy of the complaint. That notice and the acknowledgment to the complainant can additionally state that an informal mediation meeting will be held with the complainant, the person against whom the complaint is filed, and an investigator from the investigation and audit section of the Division, if the complainant and person both file a request for such a meeting within 20 calendar days after the acknowledgment and notice are mailed. (R.C. 4768.12(A).)

If the complainant and the person against whom the complaint is filed both file requests for an informal mediation meeting, the bill requires the Superintendent to notify the complainant and the person of the date, time, and place of the meeting by regular mail. If the complainant and the person reach an accommodation at an informal mediation meeting, the investigator must report the accommodation to the Superintendent, the complainant, and the person against whom the complaint is filed and the file must be closed upon the Superintendent receiving satisfactory notice that the accommodation agreement has been fulfilled. (R.C. 4768.12(B).)

If the complainant and the person against whom the complaint is filed fail to agree to an informal mediation meeting, fail to reach an accommodation agreement, or fail to fulfill an accommodation agreement, the Superintendent must assign the complaint to an investigator for an investigation into the conduct of the person against whom the complaint is filed. During these investigations, and at any time that the Superintendent feels it is necessary to enforce the Appraisal Management Company Law, the investigators and auditors employed by the Division of Real Estate and Professional Licensing can review and audit the business records of licensees during

normal business hours. Under the bill, any information that is obtained during these investigations and audits, and all reports, documents, and other work products that arise from that information and that are prepared by personnel of the Department of Commerce, is confidential and is not a public record under the Public Records Law. However, the bill allows the Division to release information relating to licensees to other governmental agencies for certain specified purposes. (R.C. 4768.04(A)(9) and (C) and 4768.12(C).)

At the end of the investigation, the bill requires the investigator to file a written report of the results of the investigation with the Superintendent. The Superintendent must review the report and determine whether there exists reasonable and substantial evidence to justify disciplinary action against the person for committing a prohibited act (see "**Prohibited acts**" above). Regardless of the Superintendent's determination, the bill requires the Superintendent to notify the complainant and the person against whom the complaint was made of that determination. If the Superintendent determines that the necessary level of evidence does not exist, the Superintendent must also inform the parties of the basis for the determination. (R.C. 4768.12(D), (E), and (F).)

If the Superintendent finds the evidence to justify disciplinary action does not exist, the complainant has 15 days after notification from the Superintendent of the Superintendent's decision to file with the Division a request for review by the Real Estate Appraiser Board. That review must be conducted at the next regularly scheduled meeting held at least 15 business days after the request is filed but not longer than six months after the request is filed. If the Board affirms the determination of the Superintendent, the bill requires the Superintendent to notify the complainant and the person against whom the complaint is filed within ten business days. If the Board reverses the Superintendent's determination, a hearing before a hearing examiner must be held, and the complainant and the person against whom the complaint is filed must be notified.⁷ (R.C. 4768.12(E).)

If the Superintendent finds that reasonable and substantial evidence to justify disciplinary action against the person does exist, the bill allows the person against whom the complaint was filed to request a hearing before a hearing examiner pursuant to the Administrative Procedure Act. The bill also allows the person to apply to the

⁷ Under the bill, except as otherwise provided, all notices, written reports, and determinations relating to sanctions for prohibited acts must be mailed via certified mail, return receipt requested. If the notice, written report, or determination is returned because of failure of delivery or was unclaimed, the notice, written report, or determination must be deemed served if the Superintendent sends the notice, written report, or determination via regular mail and obtains a certificate of mailing of the notice, written report, or determination. Refusal of delivery by personal service or by mail is not failure of delivery and service is deemed to be complete.

Superintendent to enter into a settlement agreement regarding the alleged violation. If this is done, any hearing before a hearing examiner must be postponed and the Board must review the settlement agreement at its next regularly scheduled meeting. If the Board disapproves the settlement agreement, the hearing before the hearing examiner must be rescheduled. (R.C. 4768.12(F) and (H).)

Under the bill, any hearing officer who conducts a hearing regarding prohibited acts must, upon completion of that hearing, submit a report of findings of fact and conclusions of law with the Superintendent, the Board, the complainant, and the person against whom the complaint is filed. The bill provides the person against whom the complaint was filed and the Division with the opportunity to file with the Board objections to that report within ten calendar days of receiving a copy of the report. The bill requires that the Board consider these objections before approving, modifying, or rejecting the hearing examiner's report. (R.C. 4768.12(G).)

If, after review of the hearing examiner's report or the settlement agreement, the Board determines that a person engaged in a prohibited act (see "**Prohibited acts**" above), the bill requires the Board to order the disciplinary action it considers appropriate, except that the order cannot be inconsistent with a settlement agreement in the matter if the agreement was approved by the Board. Otherwise, the disciplinary action allowed under the bill can include any of the following:

- (1) Reprimand of the person, if the person is licensed as an appraisal management company;
- (2) Imposition of a fine, not exceeding \$25,000 per violation;⁸
- (3) Suspension of the appraisal management company license, if the person is licensed as an appraisal management company;
- (4) Revocation of the appraisal management company license, if the person is licensed as an appraisal management company.

Under the bill, the decision and order of the Board is final, subject to review in the manner provided for in the Administrative Procedure Act and appeal to the court of common pleas of Franklin County (R.C. 4768.12(I) and (J)).

⁸ The bill directs the Superintendent to deposit this money, and all money collected under the bill, in the existing Real Estate Appraiser Operating Fund (R.C. 4768.14). The bill expands the purposes for which the Fund may be used to include expenses of the Superintendent relating to the administration and enforcement of the Appraisal Management Company Law (R.C. 4763.15).

Sanctions against unlicensed activity

The bill allows the Superintendent of Real Estate and Professional Licensing, upon written complaint or upon the Superintendent's own motion, to investigate any person that allegedly operates as an appraisal management company in violation of the prohibitions against operating without a license described in "**Licensure of appraisal management companies**" above in the Appraisal Management Company Law (R.C. 4768.13(A)).⁹ If, after investigation, the Superintendent determines that there exists reasonable evidence of a violation, the bill requires the Superintendent to send the party who is the subject of the investigation a written notice, by regular mail, within 14 business days after that determination. The written notice must include all of the following information:

(1) A description of the activity in which the party allegedly is engaging or has engaged that constitutes the violation;

(2) The applicable law allegedly violated;

(3) A statement informing the party that a hearing concerning the alleged violation will be held before a hearing examiner, and a statement giving the date and place of that hearing;

(4) A statement informing the party that the party or the party's attorney can appear in person at the hearing and present evidence and examine witnesses appearing for and against the party, or the party can submit written testimony stating any positions, arguments, or contentions. (R.C. 4768.13(B).)

Before the hearing is held, the person who is the subject of the investigation is permitted under the bill to apply to the Superintendent to enter into a settlement agreement regarding the alleged violation. If a settlement agreement is reached, the bill requires that the hearing be postponed and that the Real Estate Appraiser Board review the settlement agreement at its next regularly scheduled meeting. If the Board disapproves the settlement agreement, the bill requires that the hearing be rescheduled. (R.C. 4768.13(C).)

⁹ During any investigation that the Superintendent conducts under the bill, the investigators and auditors employed by the Division of Real Estate and Professional Licensing can review and audit the business records of licensees during normal business hours (R.C. 4768.04(A)(9)). Any information that is obtained during those investigations and audits, and all reports, documents, and other work products that arise from that information and that are prepared by personnel of the Department of Commerce, is confidential and is not a public record under the Public Records Law, although the bill allows the Division of Real Estate to release information relating to licensees to other governmental agencies for certain purposes. (R.C. 4768.04(C).)

The bill requires that, at the hearing, the hearing examiner must hear the testimony of all parties present at the hearing and consider any written testimony submitted by the party or the party's attorney. At the end of the hearing, the hearing examiner must determine if there has been a violation of the licensure requirement and file with the Superintendent, the Board, the complainant, and the parties a written report setting forth the examiner's findings of fact and conclusions of law and a recommendation of the action to be taken by the Superintendent. The bill allows ten days after receiving the report for the parties and the Division of Real Estate and Professional Licensing to file with the Board written objections to the report. The Board must review the hearing examiner's report at the next regularly scheduled Board meeting held at least 15 business days after receiving the hearing examiner's report and it must consider the objections before approving, modifying, or disapproving the report. (R.C. 4768.13(D) and (E).)

Under the bill, the Board must decide whether to impose sanctions after reviewing the hearing examiner's report or the settlement agreement. The Board can assess a civil penalty under the bill in an amount it determines, not to exceed \$1,000 per violation, but the civil penalty must be consistent with any Board-approved settlement agreement that exists in the matter.¹⁰ The bill specifies that each day a violation occurs or continues is a separate violation. The Board must determine the terms of payment and it must maintain a transcript of the proceedings of the hearing and issue a written opinion to all parties, citing its findings and grounds for any action taken. (R.C. 4768.13(F).)

Under the bill, if a party fails to timely pay a civil penalty assessed for unlicensed activity, the Superintendent must forward to the Attorney General the name of the party and the amount of the civil penalty, for the purpose of collecting that civil penalty. The bill requires that the party pay any fee assessed by the Attorney General for collection of the civil penalty in addition to the civil penalty assessed. (R.C. 4768.13(H).)

Definitions

The bill provides the following definitions:

(1) "Appraisal" or "real estate appraisal" means the act or process of developing an opinion of value of real property in conformity with the uniform standards of professional appraisal practice.

¹⁰ The bill directs the Superintendent to deposit this money into the existing Real Estate Appraiser Operating Fund (R.C. 4768.13(G)).

(2) "Appraisal consulting" means the act or process of developing an analysis, recommendation, or opinion to solve a problem related to real estate.

(3) "Appraisal management company" means any person who, directly or indirectly, performs appraisal management services, regardless of the use of the term "appraisal management company," "lender processing services," "lender services," "loan processor," "mortgage services," "mortgage technology provider," "real estate closing services provider," "settlement services provider," "vendor management company," or any other term.

(4) "Appraisal management services" means any of the following when done on behalf of a lender, financial institution, client, or any other person:

(a) Administering an appraiser panel;

(b) Recruiting, qualifying, verifying licensure or certification, and negotiating fees and service level expectations with persons who are part of an appraiser panel;

(c) Receiving an order for an appraisal from one person and delivering that order to an appraiser who is part of an appraiser panel for completion;

(d) Tracking and determining the status of orders for appraisals;

(e) Conducting quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal;

(f) Providing a completed appraisal performed by an appraiser to one or more persons that have ordered an appraisal.

(5) "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, appraisal review, or appraisal consulting assignment.

(6) "Appraiser" means a person licensed or certified under the Real Estate Appraisers Law.

(7) "Appraiser fee schedule" means a list of the various real estate appraisal services requested by an appraisal management company in this state from independent appraisers and the amount that the appraisal management company is willing to pay to an independent appraiser for the performance of each of the listed services.

(8) "Appraiser panel" means a network of appraisers who are independent contractors to the appraisal management company who have been approved by the

appraisal management company, after responding to an invitation or request from the appraisal management company, to perform appraisals for any client of the appraisal management company or for the company directly, on a periodic basis, as assigned by the company.

(9) "Client" means any person that contracts with, or otherwise enters into an agreement with, an appraisal management company for residential or commercial real estate appraisal services.

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

(a) An owner, officer, or director of a business entity seeking to offer appraisal management services in Ohio;

(b) An individual employed, appointed, or authorized by an appraisal management company, who has the authority to enter into contractual relationships with clients for the performance of appraisal management services and the authority to enter into agreements with independent appraisers for the performance of residential or commercial real estate appraisal services;

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

(11) "Person" means an individual, corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity.

(12) "Real estate" includes leaseholds as well as any and every interest or estate in land situated in Ohio, whether corporeal or incorporeal, whether freehold or nonfreehold, and the improvements on the land, but does not include cemetery interment rights.

(13) "Real estate appraisal services" means a written communication, or oral communication if documented by a writing that supports the communication, of a real estate appraisal, appraisal review, or appraisal consulting service. (R.C. 4768.01.)

Real estate appraisers

Under continuing law, real estate appraisers are governed by the Real Estate Appraisers Law (R.C. Chapter 4763.). That law generally requires any person performing a real estate appraisal for a mortgage loan to be licensed or certified as an appraiser under that Law and provides the regulatory framework for that licensure or certification.

Currently, the licensure requirement does not apply to a lender using a market analysis or price opinion, an internal valuation analysis, or an automated valuation model or report based on an automated valuation model, and any person providing that report to the lender, in performing a valuation for purposes of a loan application. This exception to the licensure requirement applies as long as the lender (1) gives the consumer loan applicant a copy of any written market analysis or price opinion or valuation report based on an automated valuation model, and (2) includes a disclaimer on the consumer's copy specifying that the valuation used for purposes of the application was obtained from a market analysis or price opinion or automated valuation model report and not from a person licensed or certified under the Real Estate Appraiser Law.

The bill changes this exception so that the licensure requirement does not apply to a lender who, in performing a valuation for purposes of validating or supporting an appraisal report that is provided by a licensed or certified appraiser, uses (1) a market analysis or price opinion, (2) an internal valuation analysis, or (3) an automated valuation model or report based on an automated valuation model that is validated by a licensed or certified appraiser. The bill continues to exempt from the licensure requirement any person providing the lender with the report described in (3) above. The bill removes the requirement that the lender provide the consumer the information described in (1) and (2) in the preceding paragraph. (R.C. 4763.19.)

"Real estate appraisal" or "appraisal"

Currently, the law defines "real estate appraisal" or "appraisal" as an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of identified real estate that is classified as either a valuation or an analysis. The bill changes the definition to match the definition for those same terms in the Appraisal Management Company Law so that real estate appraisal and appraisal means the act or process of developing an opinion of value of real property in conformity with the uniform standards of professional appraisal practice. So that the terms are consistent with their usage through the Real Estate Appraiser Law, the bill adds that when the context requires it, the terms mean the opinion formed from that act or process. (R.C. 4763.01(A).)

Other

The bill makes a technical change in R.C. 4763.05(A)(1)(b). Specifically, the bill corrects a cross reference to a division of the law governing criminal records checks for applicants for real estate appraiser licenses.

HISTORY

ACTION

DATE

Introduced

05-17-10

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