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HOUSE BILL NO. 210

Offered January 11, 2012

Prefiled January 9, 2012

A BILL to amend and reenact §§ 54.1-2020, 54.1-2021, 54.1-2022, 54.1-2023, and 55-525.14 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2021.1, relating to the regulation of real estate appraisal management companies.

Patron—Miller

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2020, 54.1-2021, 54.1-2022, 54.1-2023, and 55-525.14 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2021.1 as follows:

§ 54.1-2020. Definitions.

A. As used in this chapter, unless the context clearly requires otherwise:

"Appraisal management company" means a person or entity that (i) administers a network of independent contract appraisers, receives requests for appraisals from clients, and receives a fee paid by the client for the appraisals and (ii) enters into an agreement with one or more independent appraisers in its network to perform the appraisals contained in the request.

"Appraisal services" means acting as an appraiser to provide an appraisal or appraisal review.

"Appraiser" means a person licensed or certified under § 54.1-2017 and as otherwise provided in Chapter 20.1 (§ 54.1-2009 et seq.).

"Board" means the Virginia Real Estate Appraiser Board.

"Employee" means an individual who has an employment relationship acknowledged by both the individual and the company and is treated as an employee for purposes of compliance with federal income tax laws.

"Uniform Standards of Professional Appraisal Practice" means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

B. The definitions contained in § 54.1-2009 shall be applicable except to the extent inconsistent with the definitions contained in this chapter.

§ 54.1-2021. Exemptions.

The provisions of this chapter shall not apply to:

1. Any agency of the federal government or any agency of the Commonwealth or local government;

2. Any person or entity that exclusively employs persons on an employer and employee basis for the performance of ~~appraisals in the normal course of its business and the entity is responsible for ensuring that the appraisals are being performed in accordance with this chapter and with the Uniform Standards of Professional Appraisal Practice~~ *appraisal services*;

3. Any person or entity *licensed pursuant to § 54.1-2017* that has as its primary business the ~~development of appraisals~~ *performance of appraisal services* in the Commonwealth in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) ~~of this title~~ and with the Uniform Standards of Professional Appraisal Practice;

4. Any person or entity *licensed pursuant to § 54.1-2017* that has as its primary business the ~~development of appraisals~~ *performance of appraisal services* in the Commonwealth but that in the normal course of business enters into an agreement with an independent contract appraiser for the performance of ~~appraisals~~ *appraisal services* that the contracting entity cannot complete either because of the location or type of property in question;

5. Any licensed real estate broker performing activities in accordance with Chapter 21 (§ 54.1-2100 et seq.) ~~of this title~~; ~~or~~

6. Any officer or employee of an exempt entity described in this chapter when acting in the scope of employment for the exempt entity*;*

7. An appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to appraisal independence standards at least as stringent as those under the Truth in Lending Act (15 U.S.C. § 1601 et seq.); or

8. A department or unit within a financial institution that is subject to direct regulation by an agency of the United States government that is a member of the Federal Financial Institutions Examination Council or its successor, or to regulation by an agency of this state, that receives a request for the performance of an appraisal from one employee of the financial institution, and another employee of the *same financial institution assigns the request for the appraisal to an appraiser that is an independent contractor to the institution, except that an appraisal management company that is a wholly owned subsidiary of a financial institution shall not be considered a department or unit within a financial institution to which the provisions of this chapter apply.*

§ 54.1-2021.1. Appraisal management companies; license required; performance agreement.

A. Beginning July 1, 2014, the Board may issue a license to a person or entity to do business as an appraisal management company in the Commonwealth to any applicant who has submitted a complete application and provides satisfactory evidence that he has successfully:

1. Completed the requirements established by the Board; and

2. Certified to the Board the following information and such other information as may be reasonably required by the Board, regarding the person or entity seeking licensure:

a. The name of the person or entity;

b. The business address of the person or entity;

c. Phone contact information for the person or entity, and email address;

d. If the entity is not an entity domiciled in the Commonwealth, the name and contact information for the entity's agent for service of process in the Commonwealth;

e. If the entity is not an entity domiciled in the Commonwealth, proof that the entity is properly and currently registered with the Virginia State Corporation Commission;

f. The name, address, and contact information for any person or any entity that owns 10 percent or more of the appraisal management company;

g. The name, address, and contact information for a responsible person for the appraisal management company located in the Commonwealth, who shall be a person or entity licensed under Chapter 20.1 (§ 54.1-2009 et seq.);

h. That any person or entity that owns 10 percent or more of the appraisal management company has never had a license to act as an appraiser refused, denied, cancelled, or revoked by the Commonwealth or any other state;

i. The entity has a system in place to review the work of all appraisers that may perform appraisal services for the appraisal management company on a periodic basis to ensure that the appraisal services are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice;

j. The entity maintains a detailed record of the following: (i) each request for an appraisal service that the appraisal management company receives; (ii) the name of each independent appraiser that performs the appraisal; (iii) the physical address or legal identification of the subject property; (iv) the name of the appraisal management company's client for the appraisal; (v) the amount paid to the appraiser; and (vi) the amount paid to the appraisal management company; and

k. A certification that the entity has a system in place to ensure compliance with § 129E of the Truth in Lending Act (15 U.S.C. § 1601 et seq.).

B. The Board shall require an appraisal management company as a condition of licensure to execute a performance agreement and provide collateral to the Board in the form of cash, letter of credit, or bond in an amount sufficient as reasonably determined by the Board to secure the payment of the obligations of the licensee for its transactions in the Commonwealth for a period not less than 12 months.

§ 54.1-2022. Appraisal management companies.

A. An appraisal management company shall not enter into any contracts or agreements with an independent appraiser for the performance of residential real estate appraisal services unless the independent appraiser is licensed to provide that service under § 54.1-2017 and as otherwise provided in Chapter 20.1 (§ 54.1-2009 et seq.) ~~of this title~~.

B. The appraisal management company shall not prohibit an appraiser from disclosing in the appraisal report the actual fees charged by an appraiser for appraisal services, and shall otherwise comply with any applicable requirements of federal law including the requirements of the United States Department of Housing and Urban Development.

C. No employee, director, officer, or agent of an appraisal management company shall influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

1. Withholding or threatening to withhold timely payment for a real estate appraisal report;

2. Withholding or threatening to withhold future business from a real estate appraiser or demoting or terminating or threatening to demote or terminate a real estate appraiser;

3. Expressly or impliedly promising future business, promotions, or increased compensation for a real estate appraiser;

4. Conditioning the ordering of a real estate appraisal report or the payment of a real estate appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate

requested from a real estate appraiser;

5. Requesting *or requiring* that a real estate appraiser provide an estimated, predetermined, or desired valuation in a real estate appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of the appraisal report;

6. Providing to a real estate appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or targeted amount to be loaned to the borrower. However, a real estate appraiser may be provided with a copy of the sales contract for purchase transactions;

7. Allowing the removal of a real estate appraiser from a list of qualified appraisers used by any entity without prior written notice to the appraiser. The notice shall include written evidence of the appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior or any violation of the Uniform Standards of Professional Appraisal Practice or licensing standards for appraisers in the Commonwealth;

8. Any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, or impartiality;

9. Requesting or requiring a real estate appraiser to collect a fee from the borrower, homeowner, or any other person in the provision of real estate appraisal services;

10. Altering, modifying, or otherwise changing a completed appraisal report submitted by an independent appraiser without the appraiser's written knowledge and consent;

11. Use, by the appraisal management company, of an appraisal report submitted by an independent appraiser for any other transaction, purpose or use other than for that which the appraisal was prepared; however, nothing in this section shall be construed as prohibiting an appraisal management company from providing a copy of the appraisal to a federal agency in the normal course of business or when providing a copy of the appraisal is otherwise required by law;

12. ~~Requiring~~ *Requesting or requiring* an appraiser to sign any indemnification agreement that would require the appraiser to defend and hold harmless the appraisal management company or any of its agents, employees or independent contractors for any liability, damage, losses, or claims arising out of the services performed by the appraisal management company or its agents, employees or independent contractors and not the services performed by the appraiser; or

13. ~~Requiring~~ *Requesting or requiring* an appraiser to provide the company with the appraiser's digital signature or seal.

D. Nothing in this section shall be construed as prohibiting an appraisal management company from requesting that a real estate appraiser:

1. Consider additional appropriate property information;

2. Provide further detail, substantiation, or explanation for the real estate appraiser's value conclusion; or

3. Correct errors in the real estate appraisal report.

E. The fees charged by an appraisal management company and fees paid to appraisers shall be separately reflected on the good faith estimate provided by the lender and on the settlement statement in compliance with (i) the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. § 2601 et seq.), as amended; (ii) regulations adopted pursuant to the Real Estate Settlement Procedures Act of 1974; and (iii) § 55-525.14.

§ 54.1-2023. Penalty.

In *addition to the powers vested in the Board, in* any action brought under this chapter, if a court finds that a person has willfully engaged in an act or practice in violation of this chapter, the Attorney General, the attorney for the Commonwealth, or the attorney for the locality may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than ~~$2,500~~ *$10,000* per violation. For purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General, the attorney for the Commonwealth, or the attorney for the locality notifies the alleged violator by certified mail that an act or practice is a violation of this chapter and the alleged violator, after receipt of the notice, continues to engage in the act or practice.

Violations of this chapter shall constitute separate and distinct offenses. If the acts or activities violating this chapter also violate another provision of law, an action brought under this chapter shall not prohibit or bar any prosecution or proceeding under such other provision or the imposition or any penalties provided for thereby.

§ 55-525.14. Disclosure of charges for appraisal or valuation using automated or other valuation mechanism; appraisal management company fees.

Any lender providing a loan secured by a first deed of trust or mortgage on real estate containing not more than four residential dwelling units shall disclose on the settlement statement, as that term is defined in § 55-525.16, *(i)* any fee charged to the borrower for an appraisal, as that term is defined in § 54.1-2009~~, and~~*; (ii)* any fee charged to the borrower for a valuation or opinion of value of the property prepared using an automated or other mechanism prepared by a person who is not licensed as an appraiser under Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1*; and (iii) any fee paid to an appraisal management company as defined in § 54.1-2020*.

2. That the Virginia Real Estate Appraiser Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.