

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 405

An Act to amend and reenact §§ 54.1-2011, 54.1-2012, 54.1-2020, 54.1-2021, 54.1-2022, and 54.1-2023 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.

[H 210]

Approved March 30, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2011, 54.1-2012, 54.1-2020, 54.1-2021, 54.1-2022, and 54.1-2023 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:

§ 54.1-2011. Necessity for license.

A. After December 31, 1992, except as provided in § 54.1-2010 and in subsections C and E of this section, it shall be unlawful to engage in the appraisal of real estate or real property for compensation or valuable consideration in this Commonwealth without first obtaining a real estate appraiser's license in accordance with Board regulations promulgated pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

B. After December 31, 1992, except as provided in § 54.1-2010, it shall be unlawful for any person who is not licensed pursuant to this chapter to perform an appraisal in connection with a federally related transaction.

C. Notwithstanding subsections A and B of this section, an individual who is not a licensed residential real estate appraiser, a certified residential real estate appraiser, or a certified general real estate appraiser may assist in the preparation of and sign an appraisal if:

1. The assistant is under the direct supervision of a licensed residential real estate appraiser, a certified residential real estate appraiser, or a certified general real estate appraiser; and

2. The appraisal is reviewed, attested to be accurate and complete, and signed by such licensed residential real estate appraiser, certified residential real estate appraiser, or certified general real estate appraiser in accordance with this chapter.

D. This chapter shall not prevent or affect the practice of any profession or trade for which licensing, certification, or registration is required under any other Virginia law.

E. A corporation, partnership, or other business entity may provide appraisal services if each appraisal is prepared and signed by an individual licensed in accordance with this chapter and such corporation, partnership, or other business entity has registered with the Board. *However, any appraisal management company that is required to be licensed under § 54.1-2021.1 shall not be required to have an additional license under this section.*

F. *An appraiser engaged by an appraisal management company to perform appraisal services shall disclose the actual fee paid to the appraiser by the appraisal management company as part of the appraisal report. The disclosure of such fee shall not be prohibited by the appraisal management company as otherwise provided in § 54.1-2022.*

§ 54.1-2012. Real Estate Appraiser Board; membership; chairman; meetings; seal.

A. The Real Estate Appraiser Board shall be composed of ~~nine~~ 10 members as follows: (i) six members shall be licensed as real estate appraisers, provided that, at all times, at least two of the appraiser members on the Board shall be certified general real estate appraisers and one shall be a certified residential real estate appraiser, and provided further, that all six appraiser members have been licensed for a period of at least five years prior to their appointment; (ii) one member shall be an officer or employee familiar with mortgage lending of a financial institution as defined in § 6.2-100 or an affiliate or subsidiary thereof; ~~(iii) one member shall be an officer or employee of an appraisal management company;~~ and ~~(iii)~~ (iv) two members shall be citizen members. The terms of Board members shall be four years.

The appointment of appraiser members may be made from lists of at least three names each, submitted by Virginia affiliates of professional appraisal organizations that are members of the Appraisal Foundation. The appointment of the bank or savings institution member may be made from lists of at least three names each, submitted by the Virginia Bankers Association and the Virginia Association of Community Banks. *The appointment of the appraisal management company member may be made from lists of at least three names each, submitted by the Virginia Bankers Association.* Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the above organizations of any vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

Notwithstanding § 54.1-200, all members of the Board, including the citizen members, shall be eligible to participate in all matters, including decisions regarding the examination of applicants for licensure and decisions regarding the professional competence of licensees.

The Board shall elect a chairman and a vice-chairman from its membership, provided that the chairman shall be an appraiser member.

The Board shall meet at least four times annually, and additional meetings may be called by the chairman or, if the chairman is incapacitated, by the vice-chairman, as deemed necessary.

The Board shall adopt a seal by which it shall authenticate its proceedings.

B. As soon as practicable, the Board shall determine the anticipated availability of licensed and certified appraisers to perform appraisals in Virginia. If, at any time, the Board determines that there is, or will be, a scarcity of certified general real estate appraisers, certified residential real estate appraisers, or licensed residential real estate appraisers to perform appraisals in connection with federally related transactions in any part of Virginia that leads, or will lead, to significant delays in the performance of such appraisals, the Board, subject to federal approval, shall extend the effective date of the licensing requirements of this chapter to the extent permitted under any temporary waiver granted under the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. § 3301 et seq.).

§ 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 for the purposes of this subdivision.

§ 54.1-2021.1. *Appraisal management companies; license required; posting of bond or letter of credit.*

A. Beginning July 1, 2014, the Board may issue a license 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 all requirements established by the Board that are consistent with this chapter and are reasonably necessary to implement, administer, and enforce the provisions of this chapter; 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, canceled, or revoked by the Commonwealth or any other state;

i. That 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. That 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. 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. Any person that owns 10 percent or more of an appraisal management company and any controlling person of an appraisal management company seeking to be licensed pursuant to this chapter shall be of good moral character, as determined by the Board, and shall submit to a background investigation, as determined by the Board.

C. In addition to the filing fee, each applicant for licensure shall post either a bond or a letter of credit as follows:

1. If a bond is posted, the bond shall (i) be in the amount of \$25,000 or any other amount as set by regulation of the Board, (ii) be in a form prescribed by regulation of the Board, and (iii) accrue to the Commonwealth for the benefit of (a) a claimant against the licensee to secure the faithful performance of the licensee's obligations under this chapter or (b) an appraiser who has performed an appraisal for the licensee for which the appraiser has not been paid. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond. When a claimant or an appraiser is awarded a final judgment in a court of competent jurisdiction against a licensee of this section for the licensee's failure to faithfully perform its obligations under this chapter or failure to pay an appraiser who performed an appraisal, the claimant or the appraiser may file a claim with the Board for a directive ordering payment from the bond issuer of the amount of the judgment, court costs and reasonable attorney fees as awarded by the court. Such claim shall be filed with the Board no later than 12 months after the judgment becomes final. Upon receipt of the claim against the licensee, the Board may cause its own investigation to be conducted. The amount of the bond shall be restored by the licensee to the full amount required within 15 days after the payment of any claim on the bond. If the licensee fails to restore the full amount of the bond, the Board shall immediately revoke the license of the licensee whose conduct resulted in payment from the bond.

2. If a letter of credit is posted, the letter of credit shall (i) be in the amount of \$25,000 or any other amount as set by regulation of the Board, (ii) be irrevocable and in a form approved by the Board, payable to the Department of Professional Occupational Regulation, and (iii) be for the use and the benefit of (a) a claimant against the licensee to secure the faithful performance of the licensee's obligations under this chapter or (b) an appraiser who has performed an appraisal for the licensee for

which the appraiser has not been paid. The aggregate liability on the letter of credit shall not exceed the principal sum of the letter of credit. When a claimant or an appraiser is awarded a final judgment in a court of competent jurisdiction against a licensee of this section for the licensee's failure to faithfully perform its obligations under this chapter or failure to pay an appraiser who performed an appraisal, the claimant or the appraiser may file a claim with the Board for a directive ordering payment from the issuer of the letter of credit of the amount of the judgment, court costs and reasonable attorney fees as awarded by the court. Such claim shall be filed with the Board no later than 12 months after the judgment becomes final. Upon receipt of the claim against the licensee, the Board may cause its own investigation to be conducted. Upon a draw against a letter of credit, the licensee shall provide a new letter of credit in the amount required by this subdivision within 15 days after payment of any claim on the letter of credit. If the licensee fails to restore the full amount of the letter of credit, the Board shall immediately revoke the license of the licensee whose conduct resulted in payment from the bond.

§ 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; *or*

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

~~9. D. The appraisal management company shall not engage in any of the following:~~

~~1. 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. 2. Altering, modifying, or otherwise changing a completed appraisal report submitted by an independent appraiser without the appraiser's written knowledge and consent;~~

~~11. 3. 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 *or state* agency in the normal course of business or when providing a copy of the appraisal is otherwise required by law;~~

~~12. Requiring 4. 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 5. Requesting or requiring an appraiser to provide the company with the appraiser's digital signature or seal.~~

~~D.~~ E. 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.

§ 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.

2. That the Virginia Real Estate Appraiser Board shall promulgate regulations to implement the provisions of this act to be effective July 1, 2014.

3. That the provisions of this act shall become effective on July 1, 2012, except that § 54.1-2021.1 of this act shall become effective July 1, 2014.