

The House Committee on Regulated Industries offers the following substitute to HB 1050:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real
2 estate appraisers, so as to add regulations for the establishment and maintenance of a real
3 estate appraisal management company; to correct cross-references; to provide for related
4 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real estate
8 appraisers, is amended in Code Section 43-39A-1, relating to the short title, by revising said
9 Code section as follows:

10 "43-39A-1.

11 This chapter shall be known and may be cited as the 'Real Estate Appraiser and Real Estate
12 Appraisal Management Company Classification and Regulation Act.'"

13 **SECTION 2.**

14 Said chapter is further amended in Code Section 43-39A-2, relating to definitions relative to
15 real estate appraisers, by revising said Code section as follows:

16 "43-39A-2.

17 As used in this chapter, the term:

18 (1) 'Analysis' means a study of real estate or real property other than one estimating
19 value.

20 (2) 'Appraisal' or 'real estate appraisal' means an analysis, opinion, or conclusion
21 prepared by an appraiser relating to the nature, quality, value, or utility of specified
22 interests in, or aspects of, identified real estate. An appraisal may be classified by subject
23 matter into either a valuation or an analysis.

24 (3)(A) 'Appraisal management company' means a person, limited liability company,
25 partnership, association, or corporation which for compensation:

- 26 (i) Functions as a third-party intermediary between an appraiser and a user of real
 27 estate appraisal services;
- 28 (ii) Administers a network of appraisers performing real estate appraisal services as
 29 independent contractors;
- 30 (iii) Enters into an agreement to provide real estate appraisal services with a user of
 31 such services and one or more appraisers performing such services as independent
 32 contractors; or
- 33 (iv) Otherwise serves as a third-party broker of appraisal services.
- 34 (B) 'Appraisal management company' does not include:
- 35 (i) An appraisal firm;
- 36 (ii) Any person licensed to practice law in this state who orders an appraisal in
 37 connection with a bona fide client relationship when that person directly contracts
 38 with an independent appraiser;
- 39 (iii) Any person or entity that contracts with an independent appraiser acting as an
 40 independent contractor for the completion of appraisal assignments that the person or
 41 entity cannot complete for any reason, including, without limitation, competency,
 42 workload, scheduling, or geographic location; and
- 43 (iv) Any person that contracts with an independent appraiser acting as an independent
 44 contractor for the completion of a real estate appraisal assignment and who, upon the
 45 completion of such an assignment, cosigns the appraisal report with the independent
 46 appraiser acting as an independent contractor.
- 47 (4) 'Appraisal management services' means services performed by an appraisal
 48 management company and may include, but are not limited to, such activities as
 49 recruiting appraisers, contracting with appraisers to perform real estate appraisal activity,
 50 negotiating fees for appraisals, receiving appraisal orders and appraisal reports, and
 51 submitting appraisal reports received from appraisers to clients.
- 52 ~~(3)~~(5) 'Appraisal report' means any communication, written or oral, of an appraisal. For
 53 purposes of this chapter, the testimony of an appraiser dealing with the appraiser's
 54 analyses, conclusions, or opinions concerning identified real property is deemed to be an
 55 oral appraisal report.
- 56 ~~(4)~~(6) 'Appraisal Subcommittee' means the designees of the heads of the federal financial
 57 institutions regulatory agencies established by the Federal Financial Institutions
 58 Examination Council Act of 1978 (12 U.S.C. Section 3301, et seq.), as amended.
- 59 ~~(5)~~(7) 'Appraiser' means any person who, for a valuable consideration or with the intent
 60 or expectation of receiving the same from another, engages in real estate appraisal
 61 activity on any type of real estate or real property.

62 ~~(6)~~(8) 'Appraiser classification' means any category of appraiser which the board creates
 63 by designating criteria for qualification for such category and by designating the scope
 64 of practice permitted for such category, including the registration of real estate appraisal
 65 management companies.

66 (9) 'Appraiser panel' means a group of independent appraisers selected to perform an
 67 appraisal valuation or analysis for an appraisal management company.

68 ~~(7)~~(10) 'Board' means the Georgia Real Estate Appraisers Board established pursuant to
 69 the provisions of this chapter.

70 ~~(8)~~(11) 'Certified appraisal' or 'certified appraisal report' means an appraisal or appraisal
 71 report given, signed, and certified as such by a certified real estate appraiser. A certified
 72 appraisal or appraisal report represents to the public that it meets the appraisal standards
 73 defined in this chapter.

74 (12) 'Client' means any person or business who enters into an agreement with an
 75 appraiser or an appraisal management company for the performance of real estate
 76 appraisal activity.

77 ~~(9)~~(13) 'Commission' means the Georgia Real Estate Commission created in Code
 78 Section 43-40-2.

79 ~~(10)~~(14) 'Commissioner' means the real estate commissioner.

80 ~~(11)~~(15) 'Evaluation assignment' means an engagement for which an appraiser is
 81 employed or retained to give an analysis, opinion, or conclusion that relates to the nature,
 82 quality, or utility of identified real estate or identified real property.

83 ~~(12)~~(16) 'Federally related transaction' means any real estate related financial transaction
 84 which (A) a federal financial institutions regulatory agency or the Resolution Trust
 85 Corporation engages in, contracts for, or regulates; and (B) requires the services of an
 86 appraiser.

87 ~~(13)~~(17) 'Independent appraisal assignment' means an engagement for which an appraiser
 88 is employed or retained to act, or would be perceived by third parties or the public as
 89 acting, as a disinterested third party in rendering an unbiased analysis, opinion, or
 90 conclusion relating to the nature, quality, value, or utility of identified real estate or
 91 identified real property.

92 (18) 'Manager' or 'managing principal' means any person who holds a certified appraiser
 93 classification and is employed, appointed, or authorized by an appraisal management
 94 company to contract with clients or independent appraisers for the performance of an
 95 appraisal valuation or analysis.

96 (19) 'Owner' means any person who owns 5 percent or more of an appraisal management
 97 company.

98 (20) 'Person' means an individual, partnership, limited liability company, limited
 99 partnership, corporation, association, or any other legal or commercial entity.

100 ~~(14)~~(21) 'Real estate' means condominiums and leaseholds as well as any other interest
 101 or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether
 102 the real estate is situated in this state or elsewhere. Such term also includes any structure
 103 or structures equipped with the necessary service connections and made so as to be
 104 readily moveable as a unit or units when such a structure is affixed to land.

105 ~~(15)~~(22) 'Real estate appraisal activity' means the act or process of valuation of real
 106 estate or real property and preparing an appraisal report.

107 ~~(16)~~(23) 'Real estate related financial transaction' means any transaction involving:
 108 (A) The sale, lease, purchase, or exchange of or investment in real estate or real
 109 property or the financing thereof;
 110 (B) The refinancing of real estate or real property; and
 111 (C) The use of real estate or real property as security for a loan or investment,
 112 including mortgage backed securities.

113 ~~(17)~~(24) 'Real property' means one or more defined interests, benefits, and rights inherent
 114 in the ownership of real estate.

115 (25) 'Registered agent' means the person or corporation on whom service of process is
 116 to be made in a proceeding against an appraisal management company.

117 ~~(18)~~(26) 'Specialized services' means services, other than independent appraisal
 118 assignments which are performed by an appraiser. Specialized services may include
 119 marketing, financing, and feasibility studies; valuations; analyses; and opinions and
 120 conclusions given in connection with activities such as real estate brokerage, mortgage
 121 banking, real estate counseling, and real estate tax counseling.

122 ~~(19)~~(27) 'State' means any state, district, territory, possession, or province of the United
 123 States or Canada and any sovereign nation or any political subdivision of such sovereign
 124 nation.

125 ~~(20)~~(28) 'Valuation' means an estimate of the value of real estate or real property.

126 ~~(21)~~(29) 'Valuation assignment' means an engagement for which an appraiser is
 127 employed or retained to give an analysis, opinion, or conclusion that estimates the value
 128 of an identified parcel of real estate or identified real property at a particular point in
 129 time."

130 **SECTION 3.**

131 Said chapter is further amended in Code Section 43-39A-6, relating to records maintained
132 by the Georgia Real Estate Appraisers Board, by revising subsection (b) as follows:

133 "(b) The board shall maintain records so that it may certify the history of ~~appraisers~~
134 appraiser classifications issued under this chapter for a period of up to five years preceding
135 the date of certification. The board may certify the classification history of an appraiser
136 or appraisal management company based on electronic data that it maintains. When that
137 electronic data is derived from a paper record, upon converting the information on the
138 paper record to electronic form and after verification of the electronic record, the board
139 may:

- 140 (1) Properly destroy the paper record; or
141 (2) Retain the paper record for a period of time determined by the board."

142 **SECTION 4.**

143 Said chapter is further amended in Code Section 43-39A-7, relating to application for real
144 estate appraiser classification, by revising said Code section as follows:

145 "43-39A-7.

146 (a) Any person desiring to act as a real estate appraiser must file an application for an
147 appraiser classification with the board. All original and subsequent applications filed with
148 the board shall be in such form and detail as the board shall prescribe, setting forth the
149 following:

- 150 (1) The name and address of the applicant and the name under which the applicant
151 intends to conduct business;
152 (2) The place or places, including the city with the street and street number, if any, where
153 the business is to be conducted; and
154 (3) Such other information as the board shall require.

155 (b) Any person desiring to act as a real estate appraisal management company must file
156 an application for registration with the board. All original and subsequent applications
157 filed with the board shall be in such form and detail as the board shall prescribe, setting
158 forth the following:

- 159 (1) The name, address, and telephone number of the applicant and the name under which
160 the applicant intends to conduct business;
161 (2) If the applicant is a domestic or foreign corporation, the name and address of the
162 corporation's registered agent as required under Code Section 14-2-501 or 14-2-1507,
163 respectively. Written notice of any change in the identity or address of the registered
164 agent shall be filed with the board at the same time such notice of any such change is

165 filed with the Secretary of State pursuant to Code Section 14-2-502 or 14-2-1508,
 166 respectively;

167 (3) If the applicant is a foreign corporation, a copy of the corporation's certificate of
 168 authority from the Secretary of State as required under Code Section 14-2-1501. A copy
 169 of any amended certificate of authority obtained from the Secretary of State must be filed
 170 with the board within 30 days of receipt thereof;

171 (4) The name and address of any owner, along with a certification from each owner who
 172 holds an appraiser license that his or her license has never been refused, denied, canceled,
 173 or revoked by the State of Georgia or any other state;

174 (5) The name and address of a manager or managing principal; and

175 (6) A certification from the manager or managing principal that the appraisal
 176 management company:

177 (A) Has a system and process in place to verify that a person being added to the
 178 appraiser panel of the appraisal management company holds a valid state license or
 179 certification;

180 (B) Has a system in place to review on a periodic basis the work of independent
 181 appraisers who are performing real estate appraisal activity for the company to ensure
 182 that the real estate appraisal activities being conducted are in accordance with the
 183 minimum standards under this chapter and are in compliance with the rules and
 184 regulations promulgated by the board; and

185 (C) Will maintain a detailed record of requests for real estate appraisal activities and
 186 the independent appraiser assigned to perform the appraisal.

187 ~~(b)~~ (c) Notwithstanding any provision of Article 4 of Chapter 18 of Title 50 to the
 188 contrary, all applications, including supporting documents and other personal information
 189 submitted by applicants and classified appraisers and appraisal management companies as
 190 part of an application filed with the board, shall be confidential. The board shall deem as
 191 public records the following information and shall make such information reasonably
 192 available for inspection by the general public: an appraiser's name, classification number
 193 and status, business name, business address, business telephone number, type of
 194 classification held, and term of classification; the fact that an appraiser has or has not
 195 received a disciplinary sanction; and such other information pertaining to the classification
 196 of an appraiser or approval of a school, course, or instructor as the board may determine
 197 by rule."

198 **SECTION 5.**

199 Said chapter is further amended in Code Section 43-39A-11, relating to fees associated with
 200 real estate appraisers classification, by adding a new subsection to read as follows:

201 "(n) The board may through the establishment of rules or regulations require that an
202 applicant for registration as a real estate appraisal management company provide proof of
203 financial responsibility in the form of a surety bond, cash or property bond, or trust or
204 escrow account to secure faithful performance of the standards required of an appraisal
205 management company under this chapter."

206 **SECTION 6.**

207 Said chapter is further amended in Code Section 43-39A-13, relating to the powers of the
208 Georgia Real Estate Appraisers Board, by revising said Code section as follows:

209 "43-39A-13.

210 The board, through its rules and regulations, shall have the full power to regulate the
211 issuance of appraiser classifications and registrations, to discipline appraisers in any
212 manner permitted by this chapter, to establish qualifications for appraiser classifications
213 and registrations consistent with this chapter, to regulate approved courses, ~~and~~ to establish
214 standards for real estate appraisals, and to establish standards for the operation of real estate
215 appraisal management companies. Except for conducting an investigation as provided in
216 this chapter, the board is authorized to enter into such contracts as are necessary to carry
217 out its duties under this chapter; provided, however, the board may enter into contracts to
218 assist it in the conduct of investigations authorized by this chapter only whenever it needs
219 special legal or appraisal expertise or other extraordinary circumstances exist. Whenever
220 the board contracts to perform such investigative functions, any such contractor working
221 on an investigation authorized by this chapter shall be under the supervision of the board
222 or a duly authorized representative of the board. Any contractor used by the board shall
223 be knowledgeable in the work area for which such contractor is retained. A contractor
224 shall not be empowered to determine the disposition of any investigation nor to make any
225 discretionary decision that the board is authorized by law to make. Notwithstanding any
226 other provision of law, the board is authorized to retain all funds received as collection fees
227 for use in defraying the cost of collection of fees required under this chapter. Any such
228 funds not expended for this purpose in the fiscal year in which they are generated shall be
229 deposited in the state treasury; provided, however, that nothing in this Code section shall
230 be construed so as to allow the board to retain any funds required by the Constitution to be
231 paid into the state treasury; provided, further, that the board shall comply with all
232 provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act,' except Code
233 Section 45-12-92, prior to expending any such funds."

234 **SECTION 7.**

235 Said chapter is further amended by adding a new Code section to read as follows:

236 "43-39A-14.1.237 (a) An appraisal management company shall maintain a registered agent and provide the
238 board with such registered agent's identity and address and any change thereto.239 (b) An appraisal management company shall permit only licensed or certified appraisers
240 to conduct real estate appraisal activities.241 (c) An appraisal management company shall designate a manager or managing principal
242 who shall hold a certified appraiser classification. The manager or managing principal of
243 an appraisal management company must:244 (1) Certify that the appraisal management company has a system in place for verifying
245 that an independent appraiser or member of an appraiser panel is licensed under this
246 chapter;247 (2) Certify that the appraisal management company has a system in place to ensure that
248 all real estate appraisal activity performed by independent appraisers on behalf of the
249 appraisal management company is in compliance with this chapter and all rules and
250 regulations promulgated by the board;251 (3) Maintain records of all requests for real estate appraisal activities;252 (4) Maintain records of all independent appraisers assigned to perform real estate
253 appraisal activity on behalf of the appraisal management company; and254 (5) Maintain records of the amount of fees collected from a client and the amount paid
255 to the appraiser for the performed appraisal activities.256 (d) Records required to be maintained by a manager or managing principal shall be kept
257 for a period of time to be specified by the board through regulation. The board shall be
258 authorized to inspect such records as frequently as deemed necessary.259 (e) An employee, director, officer, agent, manager, or managing principal of an appraisal
260 management company or any other third party acting as a joint venture partner with or
261 independent contractor for an appraisal management company shall not engage in any of
262 the following unfair trade practices:263 (1) Improperly influence the development, reporting, result, or review of a real estate
264 appraisal;265 (2) Coerce an appraiser to provide the appraisal management company with the
266 appraiser's seal or digital signature;267 (3) Alter, amend, or change an appraisal report submitted by a licensed or certified
268 appraiser;269 (4) Remove an independent appraiser from an appraiser panel without written notice to
270 the appraiser;

271 (5) Inform an appraiser of the anticipated, expected, or desired amount to be loaned to
 272 a client or for a valuation of a property, unless such information is contained in the sales
 273 contract for a purchase transaction;
 274 (6) Take any action that impairs or attempts to impair an appraiser's independence,
 275 objectivity, or impartiality in conducting real estate appraisal activities; or
 276 (7) Pay a fee or other form of valuable consideration in exchange for contracts for real
 277 estate appraisal activities.

278 (f) Whenever the board initiates an investigation as provided for in Code Section
 279 43-39A-22 and the evidence gathered in the investigation reveals an apparent violation by
 280 the appraisal management company of this chapter or of the rules and regulations
 281 promulgated by the board or of any unfair trade practices, including, but not limited to,
 282 those listed in this Code section, the board shall file notice of hearing in accordance with
 283 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' If the board finds an
 284 appraisal management company has violated a provision of this chapter or the rules and
 285 regulations promulgated by the board pursuant to this chapter after such hearing has taken
 286 place, the board shall have the power to take any one or more of the following actions:
 287 (1) Refuse to grant or renew registration to an appraisal management company;
 288 (2) Suspend or revoke the registration of an appraisal management company;
 289 (3) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or the rules
 290 and regulations promulgated by the board, with fines for multiple violations limited to
 291 \$5,000.00 in any one disciplinary proceeding or such other amount as parties agree; or
 292 (4) Take other appropriate disciplinary action as established by the rules and regulations
 293 of the board."

294 **SECTION 8.**

295 Said chapter is further amended in Code Section 43-39A-21, relating to hearings for
 296 sanctions of appraisers, by revising subsections (a) and (b) as follows:

297 "(a) Before the board shall impose on any appraiser or appraisal management company any
 298 sanction permitted by this chapter, it shall provide an opportunity for a hearing for such
 299 appraiser or appraisal management company in accordance with Chapter 13 of Title 50, the
 300 'Georgia Administrative Procedure Act.' Unless otherwise agreed to by the board, all such
 301 hearings shall be held in the county of domicile of the board.

302 (b) If any appraiser, appraisal management company, or applicant fails to appear at any
 303 hearing after reasonable notice, the board may proceed to hear the evidence against such
 304 appraiser, appraisal management company, or applicant and take action as if such
 305 appraiser, appraisal management company, or applicant had been present. A notice of
 306 hearing, initial or proposed decision, or final decision of the board in a disciplinary

307 proceeding shall be served upon the appraiser, appraisal management company, or
 308 applicant by personal service or by certified mail or statutory overnight delivery, return
 309 receipt requested, to the last known address of record with the board. If such material is
 310 returned marked 'unclaimed' or 'refused' or is undeliverable and if the appraiser, appraisal
 311 management company, or applicant cannot, after diligent effort, be located, the real estate
 312 commissioner shall be deemed to be the agent for such appraiser, appraisal management
 313 company, or applicant for the purposes of this Code section, and service upon the real
 314 estate commissioner shall be deemed service upon the appraiser, appraisal management
 315 company, or applicant."

316 **SECTION 9.**

317 Said chapter is further amended in code section 43-39A-22, relating to investigations of
 318 appraisers, by revising subsections (a), (d), and (e) as follows:

319 "(a) The board may, upon its own motion, and shall, upon the sworn written request of any
 320 person, investigate the actions of any appraiser, applicant, appraisal management company,
 321 or school approved by the board; provided, however, that, whenever a request for
 322 investigation involves an appraisal report which varies from a sales, lease, or exchange
 323 price by 20 percent or less, or, if the appraiser or appraisal management company is acting
 324 as a tax consultant, which varies from the tax assessor's value by 20 percent or less, the
 325 board may in its discretion decline to conduct an investigation. Except for investigations
 326 of applicants for appraiser classifications, investigations of allegations of fraudulent
 327 conduct, or investigations of possible violations of this chapter which have been litigated
 328 in the courts or arise from litigation in the courts, the board shall not initiate an
 329 investigation on its own motion or upon a sworn written request for investigation unless
 330 the act or acts which may constitute a violation of this chapter occurred within five years
 331 of the initiation of the investigation."

332 "(d) The results of all investigations shall be reported only to the board or to the
 333 commissioner and the records of such investigations shall not be subject to subpoena in
 334 civil actions. Records of investigations shall be kept by the board and no part of any
 335 investigative record shall be released for any purpose other than a hearing before the board
 336 or its designated hearing officer, review by another law enforcement agency or lawful
 337 licensing authority upon issuance of a subpoena from such agency or authority or at the
 338 discretion of the board upon an affirmative vote of a majority of the quorum of the board,
 339 review by the appraiser, ~~or applicant,~~ or manager or managing principal of an appraisal
 340 management company who is the subject of the notice of hearing after its service, review
 341 by the board's legal counsel, or an appeal of a decision by the board to a court of competent
 342 jurisdiction; provided, however, if an investigation authorized by this chapter results in the

343 board's filing a notice of hearing or entering into settlement discussions with a member of
344 the board, the commissioner shall immediately notify the Governor or the Governor's legal
345 counsel of such action by the board. After service of a notice of hearing, the appraiser, or
346 applicant, or manager or managing principal of an appraisal management company who
347 is the subject of the notice of hearing shall have a right to obtain a copy of the investigative
348 record pertaining to the hearing.

349 (e) Whenever the board revokes or suspends for more than 60 days an appraiser
350 classification or a school approval or whenever an appraiser, appraisal management
351 company, or an approved school surrenders an appraiser classification or an approval to the
352 board after the board has filed a notice of hearing, the board shall publish the name of such
353 appraiser, appraisal management company, or approved school in its official newsletter."

354 **SECTION 10.**

355 This Act shall become effective 60 days after the date this Act is approved by the Governor
356 or becomes law without such approval.

357 **SECTION 11.**

358 All laws and parts of laws in conflict with this Act are repealed.