

House Bill 1050 (COMMITTEE SUBSTITUTE)

By: Representatives Benton of the 31st and Smith of the 113th

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"43-39A-1.

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

SECTION 2.

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

"43-39A-2.

As used in this chapter, the term:

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

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

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

(i) Functions as a third-party intermediary between an appraiser and a user of real estate appraisal services;

(ii) Administers a network of appraisers performing real estate appraisal services as independent contractors;

(iii) Enters into an agreement to provide real estate appraisal services with a user of such services and one or more appraisers performing such services as independent contractors; or

(iv) Otherwise serves as a third-party broker of appraisal services.

(B) 'Appraisal management company' does not include:

(i) An appraisal firm;

(ii) Any person licensed to practice law in this state who orders an appraisal in connection with a bona fide client relationship when that person directly contracts with an independent appraiser;

(iii) Any person or entity that contracts with an independent appraiser acting as an independent contractor for the completion of appraisal assignments that the person or entity cannot complete for any reason, including, without limitation, competency, workload, scheduling, or geographic location; and

(iv) Any person that contracts with an independent appraiser acting as an independent contractor for the completion of a real estate appraisal assignment and who, upon the completion of such an assignment, cosigns the appraisal report with the independent appraiser acting as an independent contractor.

(4) 'Appraisal management services' means services performed by an appraisal management company and may include, but are not limited to, such activities as recruiting appraisers, contracting with appraisers to perform real estate appraisal activity, negotiating fees for appraisals, receiving appraisal orders and appraisal reports, and submitting appraisal reports received from appraisers to clients.

~~(3)~~(5) 'Appraisal report' means any communication, written or oral, of an appraisal. For purposes of this chapter, the testimony of an appraiser dealing with the appraiser's analyses, conclusions, or opinions concerning identified real property is deemed to be an oral appraisal report.

~~(4)~~(6) 'Appraisal Subcommittee' means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. Section 3301, et seq.), as amended.

~~(5)~~(7) 'Appraiser' means any person who, for a valuable consideration or with the intent or expectation of receiving the same from another, engages in real estate appraisal activity on any type of real estate or real property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(16)~~(23) 'Real estate related financial transaction' means any transaction involving:

(A) The sale, lease, purchase, or exchange of or investment in real estate or real property or the financing thereof;

(B) The refinancing of real estate or real property; and

(C) The use of real estate or real property as security for a loan or investment, including mortgage backed securities.

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

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

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

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

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

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

SECTION 3.

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

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

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

SECTION 4.

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

"43-39A-7.

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

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

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

- (1) The name, address, and telephone number of the applicant and the name under which the applicant intends to conduct business;
- (2) If the applicant is a domestic or foreign corporation, the name and address of the corporation's registered agent as required under Code Section 14-2-501 or 14-2-1507, respectively. Written notice of any change in the identity or address of the registered 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."

SECTION 7.

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

"43-39A-14.1.

(a) An appraisal management company shall maintain a registered agent and provide the board with such registered agent's identity and address and any change thereto.

(b) An appraisal management company shall permit only licensed or certified appraisers to conduct real estate appraisal activities.

(c) An appraisal management company shall designate a manager or managing principal who shall hold a certified appraiser classification. The manager or managing principal of an appraisal management company must:

(1) Certify that the appraisal management company has a system in place for verifying that an independent appraiser or member of an appraiser panel is licensed under this chapter;

(2) Certify that the appraisal management company has a system in place to ensure that all real estate appraisal activity performed by independent appraisers on behalf of the appraisal management company is in compliance with this chapter and all rules and regulations promulgated by the board;

(3) Maintain records of all requests for real estate appraisal activities;

(4) Maintain records of all independent appraisers assigned to perform real estate appraisal activity on behalf of the appraisal management company; and

(5) Maintain records of the amount of fees collected from a client and the amount paid to the appraiser for the performed appraisal activities.

(d) Records required to be maintained by a manager or managing principal shall be kept for a period of time to be specified by the board through regulation. The board shall be authorized to inspect such records as frequently as deemed necessary.

(e) An employee, director, officer, agent, manager, or managing principal of an appraisal management company or any other third party acting as a joint venture partner with or independent contractor for an appraisal management company shall not engage in any of the following unfair trade practices:

(1) Improperly influence the development, reporting, result, or review of a real estate appraisal;

(2) Coerce an appraiser to provide the appraisal management company with the appraiser's seal or digital signature;

(3) Alter, amend, or change an appraisal report submitted by a licensed or certified appraiser;

(4) Remove an independent appraiser from an appraiser panel without written notice to the appraiser;

(5) Inform an appraiser of the anticipated, expected, or desired amount to be loaned to a client or for a valuation of a property, unless such information is contained in the sales contract for a purchase transaction;

(6) Take any action that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality in conducting real estate appraisal activities; or

(7) Pay a fee or other form of valuable consideration in exchange for contracts for real estate appraisal activities.

(f) Whenever the board initiates an investigation as provided for in Code Section 43-39A-22 and the evidence gathered in the investigation reveals an apparent violation by the appraisal management company of this chapter or of the rules and regulations promulgated by the board or of any unfair trade practices, including, but not limited to, those listed in this Code section, the board shall file notice of hearing in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' If the board finds an appraisal management company has violated a provision of this chapter or the rules and regulations promulgated by the board pursuant to this chapter after such hearing has taken place, the board shall have the power to take any one or more of the following actions:

(1) Refuse to grant or renew registration to an appraisal management company;

(2) Suspend or revoke the registration of an appraisal management company;

(3) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or the rules and regulations promulgated by the board, with fines for multiple violations limited to \$5,000.00 in any one disciplinary proceeding or such other amount as parties agree; or

(4) Take other appropriate disciplinary action as established by the rules and regulations of the board."

SECTION 8.

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

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

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

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

SECTION 9.

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

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

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

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

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

SECTION 10.

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

SECTION 11.

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