

The Senate Regulated Industries and Utilities Committee offered the following substitute to HB 1050:

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 who 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) 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 appraiser;

(ii) Any person that contracts with an 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 appraiser who is acting as an independent contractor;

(iii) Any federal, state, or local government or any of its departments, agencies, or authorities that order appraisals; or

(iv) Any person who orders an appraisal on behalf of any federal, state, or local government or its departments, agencies, or authorities as an employee thereof.

(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.

(6) 'Appraisal review' means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment, except that an examination of an appraisal for grammatical, typographical, or other similar errors shall not be an appraisal review.

(4)(7) '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)~~(8) '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)~~(9) '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.

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

~~(7)~~(11) 'Board' means the Georgia Real Estate Appraisers Board established pursuant to the provisions of this chapter.

~~(8)~~(12) '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.

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

~~(9)~~(14) 'Commission' means the Georgia Real Estate Commission created in Code Section 43-40-2.

~~(10)~~(15) 'Commissioner' means the real estate commissioner.

(16) 'Controlling person' means:

(A) An owner, officer, or director of a corporation, partnership, or other business entity seeking to offer appraisal management services in this state;

(B) An individual employed, appointed, or authorized by an appraisal management company who has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals; or

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

~~(11)~~(17) '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)~~(18) '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)~~(19) '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.

~~(20)~~ 'Owner' means any person who owns 5 percent or more of an appraisal management company.

~~(21)~~ 'Person' means an individual, partnership, limited liability company, limited partnership, corporation, association, or any other legal or commercial entity.

~~(14)~~(22) '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)~~(23) 'Real estate appraisal activity' means the act or process of valuation of real estate or real property and preparing an appraisal report.

~~(16)~~(24) '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)~~(25) 'Real property' means one or more defined interests, benefits, and rights inherent in the ownership of real estate.

~~(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 or any person issued an appraisal management company registration 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)(1) No person shall directly or indirectly engage or attempt to engage in business as an appraisal management company, directly or indirectly engage or attempt to perform appraisal management services, or advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the board.

(2) The registration required by paragraph (1) of this subsection shall, at a minimum, include the following:

(A) Name of the entity seeking registration;

(B) Business address of the entity seeking registration which must be located and maintained within this state;

(C) Telephone contact information of the entity seeking registration;

(D) If the entity is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state;

(E) The name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns 5 percent or more of the appraisal management company;

(F) The name, address, and contact information for a designated controlling person to be the primary communication source for the board;

(G) A certification that the entity has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company for appraisal services to be performed in Georgia holds a license or certification in good standing in Georgia pursuant to this chapter;

(H) A certification that the entity has a system in place to review the work of all appraisers who are performing real estate appraisal services for the appraisal management company on a periodic basis to validate that the real estate appraisal services are being conducted in accordance with the standards for real estate appraisals established by the board;

(I) A certification that the entity maintains a detailed record of each service request that it receives for appraisal services within the State of Georgia and the name, address, and telephone number of the appraiser who performs the requested real estate appraisal services for the appraisal management company;

(J) An irrevocable consent to service of process; and

(K) Any such other information as the board shall require.

(3) The board shall issue a unique registration number to each appraisal management company.

(4) The board shall publish annually a list of the appraisal management companies that have registered pursuant to this chapter and have been issued a registration number.

(5) An appraisal management company shall be required to disclose the registration number on each engagement letter utilized in assigning an appraisal request for real estate appraisal assignments within the State of Georgia.

(b.1) Any employee or independent contractor of an appraisal management company who performs appraisal review services must be an individual who holds a valid appraiser license or certification issued pursuant to this chapter.

~~(b)~~(c) Notwithstanding any provision of Article 4 of Chapter 18 of Title 50 to the contrary, all applications, including supporting documents and other personal information submitted by applicants, ~~and classified appraisers, and appraisal management companies~~ as part of an application filed with the board, shall be confidential. The board shall deem as public records the following information and shall make such information reasonably available

for inspection by the general public: an appraiser's name, classification number and status, business name, business address, business telephone number, type of classification held, and term of classification; the fact that an appraiser has or has not received a disciplinary sanction; and such other information pertaining to the classification of an appraiser or approval of a school, course, or instructor as the board may determine by rule."

SECTION 5.

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

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

SECTION 6.

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

"43-39A-13.

The board, through its rules and regulations, shall have the full power to regulate the issuance of appraiser classifications and registrations, to discipline appraisers in any manner permitted by this chapter, to establish qualifications for appraiser classifications and registrations consistent with this chapter, to regulate approved courses, and to establish standards for real estate appraisals, and to establish standards consistent with this chapter for appraisal management companies operating within the State of Georgia. Except for conducting an investigation as provided in this chapter, the board is authorized to enter into such contracts as are necessary to carry out its duties under this chapter; provided, however, the board may enter into contracts to assist it in the conduct of investigations authorized by this chapter only whenever it needs special legal or appraisal expertise or other extraordinary circumstances exist. Whenever the board contracts to perform such investigative functions, any such contractor working on an investigation authorized by this chapter shall be under the supervision of the board or a duly authorized representative of the board. Any contractor used by the board shall be knowledgeable in the work area for which such contractor is retained. A contractor shall not be empowered to determine the disposition of any investigation nor to make any discretionary decision that the board is authorized by law to make. Notwithstanding any other provision of law, the board is authorized to retain all funds received as collection fees for use in defraying the cost of

collection of fees required under this chapter. Any such funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury; provided, however, that nothing in this Code section shall be construed so as to allow the board to retain any funds required by the Constitution to be paid into the state treasury; provided, further, that the board shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act,' except Code 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) Each appraisal management company applying to the board for registration shall designate a controlling person who shall be the main contact for all communication between the board and the appraisal management company and who shall also serve as the person upon whom service of process may be made in a proceeding against the appraisal management company.

(b) The controlling person designated pursuant to subsection (a) of this Code section shall:

(1) Have never had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(2) Be of good moral character, as determined by the board; and

(3) Submit to a background investigation, as determined by the board.

(c) Each appraisal management company shall certify to the commission on an annual basis that it:

(1) Includes instructions to appraisers in letters of engagement to decline the assignment in the event the appraiser is not geographically competent or the assignment falls outside the appraiser's scope of practice restrictions;

(2) Has a system in place to verify that the appraiser receiving the assignment holds a license or registration in good standing in the State of Georgia and has not had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(3) Has a system in place to perform an appraisal review on a periodic basis of the work of all appraisers who are performing appraisals for the appraisal management company to validate that the appraisals are being conducted in accordance with the standards for real estate appraisals established by the board;

(4) Has reported to the board the results of any appraisal reviews in which an appraisal is found to be substantially noncompliant with the standards for real estate appraisals established by the board or any state or federal laws pertaining to appraisals; and

(5) Maintains records required to be kept by the board that the board is authorized to inspect.

(d) An appraisal management company doing business in this state shall not:

(1) Knowingly employ any person directly involved in real estate appraisal or appraisal management services who does not hold a license or registration in good standing in the State of Georgia or who has had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(2) Knowingly enter into any independent contractor arrangement, whether in oral, written, or other form, with any person for the performance of real estate appraisal services who does not hold a license or registration in good standing in the State of Georgia or who has had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(3) Knowingly enter into any contract, agreement, or other business relationship directly involved with the performance of real estate appraisal or appraisal management services, whether in oral, written, or any other form, with any entity that employs, has entered into an independent contract arrangement, or has entered into any contract, agreement, or other business relationship, whether in oral, written, or any other form, with any person who does not hold a license or registration in good standing in the State of Georgia or who has had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(4) Request or require an appraiser to modify any aspect of an appraisal report unless the modification provides additional information about the basis for a valuation, corrects objective factual errors in the appraisal report, or provides additional information within the appraisal regarding additional sales provided through an established dispute process;

(5) Require an appraiser to prepare an appraisal if the appraiser, in the appraiser's own independent professional judgment, believes the appraiser does not have the necessary expertise for the assignment or for the specific geographic area and has notified the appraisal management company and declined the assignment;

(6) Require an appraiser to prepare an appraisal under a time frame that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations, and the appraiser has notified the appraisal management company and declined the assignment;

(7) Prohibit or inhibit legal or other allowable communication between the appraiser and a lender, a real estate licensee, or any other person who the appraiser, in the appraiser's own professional judgment, believes possesses information that would be relevant;

314 (8) Knowingly require an appraiser to take any action that does not comply with any
315 provision of this chapter and the rules and regulations promulgated by the board or any
316 assignment conditions and certifications required by the client for whom an appraisal is
317 being performed;

318 (9) Make any portion of its fee or the appraiser's fee contingent on a predetermined or
319 favorable outcome including, but not limited to, a loan closing or a specific dollar amount
320 being determined by the appraiser in the appraisal;

321 (10) Prohibit any appraiser who is part of an appraiser panel from recording the fee that
322 the appraiser was paid by the appraisal management company for the performance of the
323 appraisal within the appraisal report that is submitted by the appraiser to the appraisal
324 management company;

325 (11) Alter, modify, or otherwise change a completed appraisal report submitted by an
326 appraiser by:

327 (A) Permanently removing the appraiser's signature or seal; or

328 (B) Adding information to or removing information from the appraisal report with an
329 intent to change the valuation conclusion; or

330 (12) Require an appraiser to provide the appraisal management company with the
331 appraiser's digital signature or seal; provided, however, that an appraiser shall not be
332 prohibited from voluntarily providing such appraiser's digital signature or seal to another
333 person.

334 (e) An appraisal management company shall separately state to the client the fees paid to
335 an appraiser for appraisal services and the fees charged by the appraisal management
336 company for services associated with the management of the appraisal process, including
337 procurement of the appraiser's services.

338 (f) An appraisal management company shall be held responsible for the actions of its
339 controlling person affiliated with such appraisal management company should such
340 controlling person violate any of the provisions of this chapter or any rules and regulations
341 promulgated by the board or engage in any unfair trade practices.

342 (g) Whenever the board initiates an investigation as provided for in Code Section
343 43-39A-22 and the evidence gathered in the investigation reveals an apparent violation by
344 the appraisal management company of this chapter, of the rules and regulations
345 promulgated by the board, or of any unfair trade practices, including, but not limited to,
346 those listed in this Code section, the board shall file notice of hearing in accordance with
347 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Whenever an appraisal
348 management company has been found guilty of a violation of any provision of this chapter
349 or the rules and regulations promulgated by the board, or of any unfair trade practices 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, of the rules and regulations promulgated by the board, or of any unfair trade practices 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:

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

398 "(d) The results of all investigations shall be reported only to the board or to the
399 commissioner and the records of such investigations shall not be subject to subpoena in
400 civil actions. Records of investigations shall be kept by the board and no part of any
401 investigative record shall be released for any purpose other than a hearing before the board
402 or its designated hearing officer, review by another law enforcement agency or lawful
403 licensing authority upon issuance of a subpoena from such agency or authority or at the
404 discretion of the board upon an affirmative vote of a majority of the quorum of the board,
405 review by the appraiser, ~~or applicant,~~ or appraisal management company who is the subject
406 of the notice of hearing after its service, review by the board's legal counsel, or an appeal
407 of a decision by the board to a court of competent jurisdiction; provided, however, if an
408 investigation authorized by this chapter results in the board's filing a notice of hearing or
409 entering into settlement discussions with a member of the board, the commissioner shall
410 immediately notify the Governor or the Governor's legal counsel of such action by the
411 board. After service of a notice of hearing, the appraiser, ~~or applicant,~~ or appraisal
412 management company who is the subject of the notice of hearing shall have a right to
413 obtain a copy of the investigative record pertaining to the hearing.

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

419 **SECTION 10.**

420 This Act shall become effective 90 days after the date this Act is approved by the Governor
421 or becomes law without such approval.

422 **SECTION 11.**

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