

House Bill 1050

By: Representative Benton of the 31st

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 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) 'Appraisal management company' means a business that, for a valuable consideration
 25 or with the intent or expectation of receiving the same from another, provides real estate
 26 appraisal activity by an appraiser or appraiser panel certified under the board.

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

32 ~~(3)~~ (5) 'Appraisal report' means any communication, written or oral, of an appraisal. For
 33 purposes of this chapter, the testimony of an appraiser dealing with the appraiser's
 34 analyses, conclusions, or opinions concerning identified real property is deemed to be an
 35 oral appraisal report.

36 ~~(4)~~ (6) 'Appraisal Subcommittee' means the designees of the heads of the federal
 37 financial institutions regulatory agencies established by the Federal Financial Institutions
 38 Examination Council Act of 1978 (12 U.S.C. Section 3301, et seq.), as amended.

39 ~~(5)~~ (7) 'Appraiser' means any person who, for a valuable consideration or with the intent
 40 or expectation of receiving the same from another, engages in real estate appraisal
 41 activity on any type of real estate or real property.

42 ~~(6)~~ (8) 'Appraiser classification' means any category of appraiser which the board creates
 43 by designating criteria for qualification for such category and by designating the scope
 44 of practice permitted for such category, including the registration of real estate appraisal
 45 management companies.

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

48 ~~(7)~~ (10) 'Board' means the Georgia Real Estate Appraisers Board established pursuant
 49 to the provisions of this chapter.

50 ~~(8)~~ (11) 'Certified appraisal' or 'certified appraisal report' means an appraisal or appraisal
 51 report given, signed, and certified as such by a certified real estate appraiser. A certified
 52 appraisal or appraisal report represents to the public that it meets the appraisal standards
 53 defined in this chapter.

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

57 ~~(9)~~ (13) 'Commission' means the Georgia Real Estate Commission created in Code
 58 Section 43-40-2.

59 ~~(10)~~ (14) 'Commissioner' means the real estate commissioner.

60 ~~(11)~~ (15) 'Evaluation assignment' means an engagement for which an appraiser is
 61 employed or retained to give an analysis, opinion, or conclusion that relates to the nature,
 62 quality, or utility of identified real estate or identified real property.

63 ~~(12)~~ (16) 'Federally related transaction' means any real estate related financial transaction
 64 which (A) a federal financial institutions regulatory agency or the Resolution Trust
 65 Corporation engages in, contracts for, or regulates; and (B) requires the services of an
 66 appraiser.

67 ~~(13)~~ (17) 'Independent appraisal assignment' means an engagement for which an
 68 appraiser is employed or retained to act, or would be perceived by third parties or the
 69 public as acting, as a disinterested third party in rendering an unbiased analysis, opinion,
 70 or conclusion relating to the nature, quality, value, or utility of identified real estate or
 71 identified real property.

72 (18) 'Manager' or 'managing principal' means any person employed, appointed, or
 73 authorized by an appraisal management company to contract with clients or independent
 74 appraisers for the performance of an appraisal valuation or analysis. The manager or
 75 managing principal of an appraisal management company must:

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

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

83 (C) Maintain records of all independent appraisers assigned to perform real estate
 84 appraisal activity on behalf of the appraisal management company.

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

87 (20) 'Person' means an individual, partnership, limited liability company, limited
 88 partnership, corporation, association, or other organization.

89 ~~(14)~~ (21) 'Real estate' means condominiums and leaseholds as well as any other interest
 90 or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether
 91 the real estate is situated in this state or elsewhere. Such term also includes any structure
 92 or structures equipped with the necessary service connections and made so as to be
 93 readily moveable as a unit or units when such a structure is affixed to land.

94 ~~(15)~~ (22) 'Real estate appraisal activity' means the act or process of valuation of real
 95 estate or real property and preparing an appraisal report.

96 ~~(16)~~ (23) 'Real estate related financial transaction' means any transaction involving:

- 97 (A) The sale, lease, purchase, or exchange of or investment in real estate or real
 98 property or the financing thereof;
- 99 (B) The refinancing of real estate or real property; and
- 100 (C) The use of real estate or real property as security for a loan or investment,
 101 including mortgage backed securities.
- 102 ~~(17)~~ (24) 'Real property' means one or more defined interests, benefits, and rights
 103 inherent in the ownership of real estate.
- 104 (25) 'Registered agent' means the person or corporation on whom service of process is
 105 to be made in a proceeding against an appraisal management company. Written notice
 106 of any change in the identity or address of an appraisal management company's registered
 107 agent must be delivered to the board in addition to and at the same time as such notice is
 108 filed with the Secretary of State. The provisions of Part 1 of Article 5 of Chapter 2 of
 109 Title 14 shall apply to any such registered agent.
- 110 ~~(18)~~ (26) 'Specialized services' means services, other than independent appraisal
 111 assignments which are performed by an appraiser. Specialized services may include
 112 marketing, financing, and feasibility studies; valuations; analyses; and opinions and
 113 conclusions given in connection with activities such as real estate brokerage, mortgage
 114 banking, real estate counseling, and real estate tax counseling.
- 115 ~~(19)~~ (27) 'State' means any state, district, territory, possession, or province of the United
 116 States or Canada and any sovereign nation or any political subdivision of such sovereign
 117 nation.
- 118 ~~(20)~~ (28) 'Valuation' means an estimate of the value of real estate or real property.
- 119 ~~(21)~~ (29) 'Valuation assignment' means an engagement for which an appraiser is
 120 employed or retained to give an analysis, opinion, or conclusion that estimates the value
 121 of an identified parcel of real estate or identified real property at a particular point in
 122 time."

123 SECTION 3.

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

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

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

135 **SECTION 4.**

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

138 "43-39A-7.

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

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

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

- 152 (1) The name, address, and telephone number of the applicant and the name under which
 153 the applicant intends to conduct business;
 154 (2) If the applicant is a domestic corporation, the name and address of the corporation's
 155 registered agent as required under Code Section 14-2-501;
 156 (3) If the applicant is a foreign corporation, a copy of the corporation's certificate of
 157 authority from the Secretary of State as required under Code Section 14-2-1501;
 158 (4) The name and address of any owner, along with a certification from each owner that
 159 the owner's license to act as an appraiser has never been refused, denied, canceled, or
 160 revoked by the State of Georgia or any other state;
 161 (5) The name and address of a manager or managing principal;
 162 (6) A certification from the manager or managing principal that the appraisal
 163 management company:
 164 (A) Has a system and process in place to verify that a person being added to the
 165 appraiser panel of the appraisal management company holds a valid state license or
 166 certification;
 167 (B) Has a system in place to review the work of independent appraisers who are
 168 performing real estate appraisal activity for the company on a periodic basis to ensure

169 that the real estate appraisal activities being conducted are in accordance with the
 170 minimum standards under this chapter and are in compliance with the rules and
 171 regulations promulgated by the board; and

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

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

185 **SECTION 5.**

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

188 "(n) The board shall require that an applicant for registration as a real estate appraisal
 189 management company provide proof of financial responsibility in the form of a surety bond
 190 to secure faithful performance of the standards required of an appraisal management
 191 company under this chapter. The board shall establish through its rules and regulations the
 192 criteria that such surety bonds must meet. In lieu of a surety bond, the board may accept
 193 a cash bond or property bond which shall in all respects be subject to the same claims and
 194 actions as would exist against a surety bond. A party having a claim against an appraisal
 195 management company or the board itself may bring suit directly on the surety bond, with
 196 consumer claims having priority."

197 **SECTION 6.**

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

200 "43-39A-13.

201 The board, through its rules and regulations, shall have the full power to regulate the
 202 issuance of appraiser classifications and registrations, to discipline appraisers in any
 203 manner permitted by this chapter, to establish qualifications for appraiser classifications

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

225 **SECTION 7.**

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

227 "43-39A-14.1.

228 (a) An appraisal management company shall maintain a registered agent.

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

231 (c) An appraisal management company shall designate a manager or managing principal
 232 to maintain records of all requests for real estate appraisal activities that have been assigned
 233 to an independent appraiser, including the amount of fees collected from a client and the
 234 amount paid to the appraiser for the performed appraisal activities. Such records shall be
 235 kept for a period of time to be specified by the board through regulation. The board shall
 236 be authorized inspect such records as frequently as deemed necessary.

237 (d) An employee, director, officer, or agent of an appraisal management company or any
 238 other third party acting as a joint venture partner with or independent contractor for an

239 appraisal management company shall not engage in any of the following unfair trade
240 practices:

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

243 (2) Request a broker's price opinion or comparative market analysis on a property unless
244 it is to be performed upon the personal property of the member of the appraisal
245 management company;

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

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

250 (5) Remove an independent appraiser from an appraiser panel without written notice to
251 the appraiser which shall include a description of the appraiser's alleged illegal conduct,
252 activity which violated applicable regulations, evidence of substandard performance, or
253 example of improper or unprofessional behavior;

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

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

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

261 (e) Whenever the board initiates an investigation as provided for in Code Section
262 43-39A-22 and an appraisal management company has been found guilty of a violation of
263 this chapter or of the rules and regulations promulgated by the board or of any unfair trade
264 practices, including, but not limited to, those listed in this Code section, the board shall file
265 notice of hearing in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
266 Procedure Act.' If the board finds an appraisal management company has violated a
267 provision of this chapter or the rules and regulations promulgated by the board pursuant to
268 this chapter after such hearing has taken place, the board shall have the power to take any
269 one or more of the following actions:

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

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

272 (3) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or the rules
273 and regulations promulgated by the board, with fines for multiple violations limited to
274 \$5,000.00 in any one disciplinary proceeding or such other amount as parties agree; or

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

277 **SECTION 8.**

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

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

285 (b) If any appraiser, appraisal management company, or applicant fails to appear at any
 286 hearing after reasonable notice, the board may proceed to hear the evidence against such
 287 appraiser, appraisal management company, or applicant and take action as if such
 288 appraiser, appraisal management company, or applicant had been present. A notice of
 289 hearing, initial or proposed decision, or final decision of the board in a disciplinary
 290 proceeding shall be served upon the appraiser, appraisal management company, or
 291 applicant by personal service or by certified mail or statutory overnight delivery, return
 292 receipt requested, to the last known address of record with the board. If such material is
 293 returned marked 'unclaimed' or 'refused' or is undeliverable and if the appraiser, appraisal
 294 management company, or applicant cannot, after diligent effort, be located, the real estate
 295 commissioner shall be deemed to be the agent for such appraiser, appraisal management
 296 company, or applicant for the purposes of this Code section, and service upon the real
 297 estate commissioner shall be deemed service upon the appraiser, appraisal management
 298 company, or applicant."

299 **SECTION 9.**

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

302 "(a) The board may, upon its own motion, and shall, upon the sworn written request of any
 303 person, investigate the actions of any appraiser, applicant, appraisal management company,
 304 or school approved by the board; provided, however, that, whenever a request for
 305 investigation involves an appraisal report which varies from a sales, lease, or exchange
 306 price by 20 percent or less, or, if the appraiser or appraisal management company is acting
 307 as a tax consultant, which varies from the tax assessor's value by 20 percent or less, the
 308 board may in its discretion decline to conduct an investigation. Except for investigations
 309 of applicants for appraiser classifications, investigations of allegations of fraudulent

310 conduct, or investigations of possible violations of this chapter which have been litigated
 311 in the courts or arise from litigation in the courts, the board shall not initiate an
 312 investigation on its own motion or upon a sworn written request for investigation unless
 313 the act or acts which may constitute a violation of this chapter occurred within five years
 314 of the initiation of the investigation."

315 "(d) The results of all investigations shall be reported only to the board or to the
 316 commissioner and the records of such investigations shall not be subject to subpoena in
 317 civil actions. Records of investigations shall be kept by the board and no part of any
 318 investigative record shall be released for any purpose other than a hearing before the board
 319 or its designated hearing officer, review by another law enforcement agency or lawful
 320 licensing authority upon issuance of a subpoena from such agency or authority or at the
 321 discretion of the board upon an affirmative vote of a majority of the quorum of the board,
 322 review by the appraiser, ~~or applicant, or manager or managing principal of an appraisal~~
 323 management company who is the subject of the notice of hearing after its service, review
 324 by the board's legal counsel, or an appeal of a decision by the board to a court of competent
 325 jurisdiction; provided, however, if an investigation authorized by this chapter results in the
 326 board's filing a notice of hearing or entering into settlement discussions with a member of
 327 the board, the commissioner shall immediately notify the Governor or the Governor's legal
 328 counsel of such action by the board. After service of a notice of hearing, the appraiser, ~~or~~
 329 applicant, or manager or managing principal of an appraisal management company who
 330 is the subject of the notice of hearing shall have a right to obtain a copy of the investigative
 331 record pertaining to the hearing.

332 (e) Whenever the board revokes or suspends for more than 60 days an appraiser
 333 classification or a school approval or whenever an appraiser, appraisal management
 334 company, or an approved school surrenders an appraiser classification or an approval to the
 335 board after the board has filed a notice of hearing, the board shall publish the name of such
 336 appraiser, appraisal management company, or approved school in its official newsletter."
 337

338 **SECTION 10.**

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