



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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(As Passed by the General Assembly)

Reps. Dever, Celebrezze, Antonio, Arndt, Ashford, Blessing, Boggs, Galonski, Hambley, Holmes, Ingram, Rogers, Seitz, Strahorn, Sweeney

Sens. Coley, Eklund, Hoagland, O'Brien, Terhar

Effective date: Emergency, but most provisions effective December 14, 2018; certain provisions effective June 14, 2018

ACT SUMMARY

- Prohibits a person from performing appraisal management services, or otherwise engaging in business as an appraisal management company, without an appraisal management company license.
- Establishes procedures and criteria relating to an appraisal management company license.
- Prohibits certain acts relating to the appraisal management business.
- Changes the circumstances under which a lender can be excused from the requirement that a person performing a real estate appraisal for a mortgage loan be licensed or certified as an appraiser.
- Makes changes to the Real Estate Appraisal Law.

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CONTENT AND OPERATION

Background – federal law

Under federal law, if a state does not regulate appraisal management companies in accordance with federal law by August 10, 2018, the companies are barred from providing appraisal management services in that state for federally related transactions (a real estate related financial transaction that requires appraiser services and that a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates). This requirement does not apply to an appraisal management company that:

- (1) Is owned and controlled by a federally regulated depository institution; or
- (2) Oversees an appraiser panel of 15 or fewer state-certified or state-licensed appraisers in a single state or fewer than 25 appraisers nationally in a year.

To comply with federal law, the state must require that appraisal management companies:

- Register with, and be subject to supervision by, an appraiser certifying and licensing agency in the state or states where the company operates;
- Verify that only state-certified or state-licensed appraisers are used for federally related transactions;



- Require that appraisals comply with the Uniform Standards of Professional Appraisal Practice; and
- Require that appraisals are conducted in accordance with the statutory valuation independence standards under the Truth in Lending Act and its implementing regulations.

Additionally, each person that owns more than 10% of an appraisal management company must be of good moral character and must submit to a background investigation.

If an appraisal management company is a subsidiary owned and controlled by an insured depository institution and regulated by a federal financial institutions regulatory agency, the appraisal management company is subject to all of the minimum requirements except the requirement to register with a state.

An appraisal management company cannot be registered by a state or included on the national appraisal management registry if it is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any state.¹

The Appraisal Management Company Law

Licensure of appraisal management companies

The act prohibits a person from doing any of the following without an appraisal management company license:

- (1) Engaging in or attempting to engage in business as an appraisal management company;
- (2) Engaging in or attempting to perform appraisal management services;
- (3) Advertising or holding out as conducting business as an appraisal management company.²

¹ 12 United States Code (U.S.C.) 3350 and 3353; 12 Code of Federal Regulations 225.190 (notes); and Federal Deposit Insurance Corporation, *Minimum Requirements for Appraisal Management Companies*, https://www.fdic.gov/news/board/2015/2015-04-21_notice_sum_d_fr.pdf.

² R.C. 4768.02(A).

This provision takes effect December 14, 2018, which is six months after the act's effective date.³

An "**appraisal management company**" is any person that: (1) is authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, and (2) performs appraisal management services in connection with valuing properties collateralizing mortgage loans or valuing properties collateralizing mortgages incorporated in a securitization.⁴ "**Appraisal management services**" means performing any of the following functions on behalf of any person in conjunction with a consumer credit transaction that is secured by a consumer's primary dwelling:

- Administering an appraiser panel;
- Recruiting, retaining, or selecting appraisers;
- Qualifying, verifying licensure or certification, and negotiating fees and service level expectations with persons who are part of an appraiser panel;
- Contracting with appraisers to perform appraisal assignments;
- Receiving an order for an appraisal and delivering it to an appraiser that is part of an appraiser panel for completion;
- Managing the process of having an appraisal performed;
- Tracking and determining the status of orders for appraisals;
- Conducting quality control of a completed appraisal prior to delivery;
- Providing a completed appraisal performed by an appraiser to one or more clients.⁵

The act permits the Superintendent of Real Estate and Professional Licensing to investigate any alleged violation of this licensing requirement and permits the Real Estate Appraiser Board to assess a civil penalty if it finds that a violation has occurred (see "**Sanctions against unlicensed activity**" below).

³ Section 5.

⁴ R.C. 4768.01(B).

⁵ R.C. 4768.01(C).



Persons not subject to the act

The act does not apply to:

- (1) A federally regulated appraisal management company;
- (2) Any person that exclusively employs appraisers on an employer and employee basis for the performance of appraisals;
- (3) Any person engaged in appraisal services who, in the normal course of business, enters into an agreement with an independent appraiser for appraisals that the hiring or contracting person is not completing for any reason. This exception applies only to an appraiser and to that appraiser's business entity, provided that entity is engaging in real estate appraisal services and not appraisal management services.
- (4) Any person engaged in appraisal services who, in the normal course of business, enters into an agreement with an independent contractor appraiser for appraisals and, upon the appraisal's completion, the report of the independent contractor appraiser performing the appraisal is cosigned by the person who subcontracted with the independent contractor for performance of the appraisal. An appraisal management company cannot avoid this requirement by requiring an employee of the appraisal management company, who is an appraiser, to sign the appraisal report that has been completed by an appraiser that is part of the appraisal panel for the appraisal management company.
- (5) Any appraiser engaged in mass appraisal services under the direction of the Tax Commissioner or a county auditor.⁶

Real Estate Appraiser Board

Duties

Effective June 14, 2018, the act requires the Real Estate Appraiser Board to do all of the following with respect to appraisal management companies:

- (1) Adopt rules, in accordance with the Administrative Procedure Act, that establish (a) procedures for the criminal records checks that are required for initial licensure, (b) nonrefundable fees for the initial appraisal management company license (which cannot exceed \$2,000), the annual renewal (which also cannot exceed \$2,000), and late filing (which cannot exceed \$1,000), (c) requirements for settlement agreements that the Superintendent and an appraisal management company or other person can

⁶ R.C. 4768.02(B).



enter into under the act, (d) presumptions of compliance with regard to customary and reasonable fees that are required to be paid to each appraiser who performs appraisal services for an appraisal management company, with consideration for presumptions of compliance promulgated under the federal Truth in Lending Act, and (e) rules regarding consent to service of process for appraisal management companies, which appraisal management companies are required to complete when applying for an appraisal management company license.

(2) Determine the appropriate disciplinary actions to be taken for prohibited acts (see "**Sanctions against prohibited acts**" below);

(3) Hear appeals from decisions and orders that the Superintendent issues;

(4) Request that the Superintendent initiate an investigation of a violation of the Appraisal Management Company Law or the rules adopted under it.⁷

Additionally, the act permits the Board to subpoena witnesses and to compel the production of any book, paper, or document pertaining to any matter over which the Board has jurisdiction (see "**Orders and subpoenas of the Board and Superintendent**" below).⁸

Composition

Continuing law requires four members of the five-member Board to be persons certified or licensed under the Real Estate Appraiser Law, at least two of whom hold a state-certified general real estate appraiser certificate. The act adds that one of these four members also must be an owner, controlling person, or management-level employee of a licensed appraisal management company that is in good standing. Under prior law revised by the act, one member was required to represent the public and could not be engaged in the practice of issuing real estate appraisals, real estate brokerage or sales, or have any financial interest in these practices. The act changes this, in part, by stating that the member representing the public cannot be engaged in the practice of *performing* real estate appraisals or have any financial interest in such practices, *or be actively engaged* in real estate brokerage or sales.

The act specifies that the Director of Commerce is ex officio the Board's executive officer, but permits the Director to designate the Superintendent to act as the executive officer.

⁷ R.C. 4768.03 and Sections 5 and 6.

⁸ R.C. 4768.05.



The act extends the time that a member of the Board may remain in office if no successor is appointed. Under the act, a member must remain in office until a successor takes office or until 90 days have elapsed, whichever is sooner. Prior law limited the period to 60 days.

The act requires the Board to annually select a vice-chairperson from its membership in addition to a chairperson, as required by continuing law.⁹

None of these changes to the Board affect the term of any member of the Board serving on the act's June 14, 2018, immediate effective date.¹⁰

Duties of the Superintendent

The act requires the Superintendent of Real Estate and Professional Licensing to:

(1) Prescribe the form and content of all appraisal management company license and renewal applications;

(2) Receive applications for the licenses and renewals and establish procedures for processing, approving, and disapproving them;

(3) Retain records and all application materials submitted to the Superintendent;

(4) Issue licenses and maintain a register of the names and addresses of all appraisal management company licensees;

(5) Perform any other functions and duties, including employment of staff, necessary to administer the Appraisal Management Company Law;

(6) Administer the Law;

(7) Issue all orders necessary to implement the Law;

(8) Investigate complaints concerning any violation of the Law or the conduct of any person holding an appraisal management company license;

(9) Establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries as appropriate to enforce the Law;

⁹ R.C. 4763.02(A), (B), and (D).

¹⁰ Section 3.



(10) Appoint a hearing examiner for any proceeding involving prohibited acts or unlicensed activity;

(11) Make and transmit any reports and collect and transmit any fees that are required by the federal Financial Institutions, Reform, Recovery, and Enforcement Act.¹¹

Additionally, the act grants the Superintendent authority to further various parts of the Law. The Superintendent may subpoena witnesses in accordance with investigatory powers under the act and may compel the production of any document pertaining to any matter over which the Superintendent has jurisdiction.

The Superintendent may apply to the appropriate court to enjoin any violation of the Appraisal Management Company Law. Upon a showing that any person has violated or is about to violate the Law, the court must grant appropriate relief.

The Superintendent may request the Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check (including an FBI check) of any owner or controlling person of a licensee that the Superintendent has reasonable cause to believe has committed a criminal offense. The Superintendent may assess the licensee the fee assessed for the check.¹²

Investigations by the Board and Superintendent

Orders and subpoenas

The act grants the Board and the Superintendent the same authority to compel witnesses and evidence under the Appraisal Management Companies Law as under the Real Estate Appraisers Law.¹³ It allows them to compel witnesses, by order or subpoena, to testify on any matter that is the subject of inquiry and investigation concerning an appraisal management company, and to require the production of documents pertaining to an investigation. It also gives them the same power as judges of county courts to administer oaths, compel attendance of witnesses, and punish witness for refusal to testify.

The act establishes requirements for actions relating to the right of the Board and Superintendent to conduct inquiries and investigations. Service of a subpoena may be made by sheriffs or by certified mail, return receipt requested. The subpoena is deemed served on the date delivery is made or the date the recipient refuses to accept delivery.

¹¹ R.C. 121.08(H) and 4768.04(A).

¹² R.C. 4768.04(B) and 4768.05.

¹³ R.C. 4768.05 and R.C. 4763.04, not in the act.



Sheriffs or constables must return the process and will receive the same fees as are allowed for like services if the sheriff or constable had served it. Witnesses will receive the requisite witness fees and mileage after their appearance before the Board or Superintendent.¹⁴

If a person fails to file any statement or report, obey any subpoena, give testimony, answer questions, or produce records or documents that the Board or Superintendent requires in the course of an inquiry or investigation, the Board or Superintendent may apply to a court of common pleas setting forth this failure. After receiving an application, the court may (1) make an order awarding process of subpoena or subpoena duces tecum for the person to appear and testify before the Board or Superintendent, (2) order any person to give testimony and answer questions, and (3) order any person to produce records or documents, as required by the Board or Superintendent.

The court may order the offender to be committed and kept in close custody if the offender disobeys such a court order.¹⁵

Application for licensure

To obtain a license to operate as an appraisal management company, an applicant must submit to the Superintendent:

(1) The name of a controlling person who will be the main contact between the company and the Division of Real Estate and Professional Licensing and the Board;

(2) The required fee for initial licensure;

(3) A list of all of the company's owners and controlling persons;

(4) A completed consent to service of process in Ohio as prescribed by Board rule;

(5) The name of each state in which the company holds an appraisal management company license, certificate, or registration and affirmation that the applicant is in good standing in each of those states;

(6) Statements that the applicant acknowledges that a system or process must be in place to:

¹⁴ R.C. 119.094, not in the act.

¹⁵ R.C. 4768.05.



- Verify that any appraiser added to its appraiser panel is licensed or certified under the Real Estate Appraisers Law in good standing;
- Review the work of appraisers who are performing real estate appraisal services for compliance with the Uniform Standards of Professional Appraisal Practice;
- Verify that any employee or independent contractor that performs an appraisal review must be an appraiser licensed or certified under the Real Estate Appraisers Law;
- Disclose to its client the actual fees paid to an appraiser for appraisal services separately from any other fees or charges for appraisal management services;
- Disclose the company's license, certificate, or registration number on each engagement letter used in assigning an appraisal request for appraisal assignments in Ohio.

(7) Statements that:

- The applicant understands the grounds for any disciplinary action that can be initiated under the Appraisal Management Company Law;
- The applicant acknowledges that the company's controlling person has successfully completed 15 hours of Uniform Standards of Professional Appraisal Practice and thereafter must complete seven hours of instruction in those standards at least every two years;
- The applicant acknowledges that it is required to report suspected violations of the Real Estate Appraisal Law;
- The applicant acknowledges the Board or the Superintendent may require the applicant to submit to an audit, conducted by Division staff;
- The applicant acknowledges that it is required to comply with the federal Truth in Lending Act;
- Each owner and controlling person of the company is (a) at least 18, (b) has graduated the 12th grade or received a certificate of high school equivalence, (c) is honest, truthful, and of good moral character, and (d) has not had a license, certificate, or registration to act as an appraiser be

refused, denied, canceled, surrendered, or revoked in Ohio or in any other state for a substantive reason.¹⁶

Additionally, each owner and controlling person of an appraisal management company must satisfy all of the criteria in the immediately preceding bullet point and submit to a criminal records check.¹⁷

When the Superintendent receives a license application, the Superintendent must request BCII, or a vendor approved by BCII, to conduct a criminal records check (including an FBI check), based on fingerprints, of each owner and controlling person of the applicant. Upon that request, BCII must conduct a criminal records check to determine whether any information exists indicating that the person has been convicted of or pleaded guilty to a felony in Ohio or any other state. The applicant must pay for any fee required for the criminal records check.¹⁸

Issuing a license

The Superintendent must issue an appraisal management company license if the applicant and each owner or controlling person of the applicant satisfies the licensure requirements (see above) and no grounds for refusal exist (see "**Grounds for refusal to issue or renew a license**" below). However, the act prohibits the Superintendent from issuing a license if any owner or controlling person of the applicant is a felon, unless the person has proven to the Superintendent, by a preponderance of the evidence, that the person's subsequent activities and employment record show that the person is honest, truthful, and of good moral character, and there is no basis in fact for believing that the person will commit a felony again.¹⁹

License renewal

An appraisal management company license expires after one year. To renew a license, an appraisal management company must file a renewal application with the Superintendent and pay the renewal fee. The Superintendent sets the fee by rule, but it may not exceed \$2,000. The renewal application must include a statement, similar to the statement required for the initial application, signed by the licensee's controlling person, which states all of the following:

¹⁶ R.C. 4768.03 and 4768.06(A) and (B); and Truth in Lending Act, section 129e, 15 U.S.C. 1639e.

¹⁷ R.C. 4768.06(B).

¹⁸ R.C. 109.572, 121.08, and 4768.06(C).

¹⁹ R.C. 4768.06(D).



(1) The licensee has a system or process in place to:

- Verify that any appraiser added to the company's appraiser panel to perform real estate appraiser services is a licensed or certified appraiser in good standing;
- Review the work of appraisers who are performing real estate appraisal services for compliance with the Uniform Standards of Professional Appraisal Practice;
- Disclose to its client the actual fees paid to an appraiser for appraisal services separately from any other fees or charges for appraisal management services;
- Disclose the company's license, certificate, or registration number on each engagement letter used in assigning an appraisal request in Ohio.

(2) The controlling person of the licensee has successfully completed an initial 15 hours of Uniform Standards of Professional Appraisal Practice and thereafter completes seven hours of instruction in those standards at least every two years.

(3) The licensee acknowledges that it is required to report suspected violations of the Real Estate Appraisal Law by a person licensed, registered, or certified under that Law.

(4) The licensee acknowledges that the Board or the Superintendent may require the licensee to submit to an audit, conducted by Division staff, of the applicant's operations or books.

(5) The licensee acknowledges that it is required to comply with the federal Truth in Lending Act.

(6) Each owner and controlling person of the licensee continues to satisfy the age, education, and character requirements for initial licensure described in (7) under "**Application for licensure**," above.²⁰

The renewal application must be filed between 120 and 30 days before the license expires. If a licensee fails to renew its license before its expiration, the licensee is ineligible to obtain a renewal license and must instead go through the process for initial licensure to regain licensure. However, a licensee can, within three months after the license expires, renew it without having to comply with the initial licensure

²⁰ R.C. 4768.03, 4768.06(E), and 4768.07(A) and (B).

requirements, if the licensee pays the renewal and late filing fees. The Superintendent sets the late fee by rule, which may not exceed \$1,000. A licensee who applies for late renewal cannot engage in any activities permitted by the license period following the license's normal expiration date until all renewal fees and the late filing fee are paid.²¹

The Superintendent must renew the license if the applicant satisfies the above requirements and there exist no grounds for the Superintendent to refuse renewal (see below).²²

Grounds for refusal to issue or renew a license

The Superintendent may refuse to issue an appraisal management company license based upon any prohibited act for which a person can be disciplined under the act (see "**Prohibited acts**" below). The Superintendent also may refuse to renew a license if the licensee has failed to comply with the Appraisal Management Company Law. The Superintendent must notify the applicant or the licensee of the basis for the refusal, by certified mail, return receipt requested, and must conduct a hearing in accordance with the Administrative Procedure Act.

An applicant or licensee may appeal the Superintendent's decision to the Board, which must provide the applicant or licensee with the opportunity to be heard in person or by counsel, or both. The Board's decision and order are final, subject to review in the manner provided in the Administrative Procedure Act and appeal to the Franklin County Court of Common Pleas.²³

Prohibited acts

General prohibitions

The act prohibits any person, including licensed and unlicensed appraisal management companies, from doing any of the following:

(1) Procuring or attempting to procure an appraisal management company license by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in a license application, or by any means of fraud or misrepresentation;

²¹ R.C. 4768.03 and 4768.07(B) and (C).

²² R.C. 4768.07(B).

²³ R.C. 4768.08 and 4768.13(N).



(2) Paying, or attempting to pay, anything of value (other than the required fees or assessments) to any Board member or employee to procure a license;

(3) Failing to provide copies of records to the Superintendent or to include certain information in the appraisal assignment file as required under the act;

(4) Failing to assist the Superintendent in the investigation of complaints;

(5) Offering or otherwise providing appraisal management services without a license under a business structure designed to circumvent the act.²⁴

Appraisal management company prohibitions – licensed and unlicensed

The act prohibits any appraisal management company, licensed or unlicensed, from doing any of the following:

(1) Removing an independent appraiser from the company's appraiser panel, or otherwise refusing to assign requests for real estate appraisal services to an appraiser, without first (a) notifying the appraiser in writing of the reasons for the decision and (b) providing the appraiser with an opportunity to respond, in writing, within 10 days after the company sends the removal notification (if the removal occurs after the appraiser has been on the panel for at least 30 days). A violation of this prohibition is a first degree misdemeanor.²⁵

(2) Recklessly altering, modifying, or otherwise changing a completed appraisal report submitted by an appraiser, except the format of the appraisal report may be modified solely for the purpose of transmission.²⁶ A violation of this prohibition is a fifth degree felony.²⁷

(3) Having a license, certificate, or registration that was issued by another state revoked or surrendered for a substantive reason;²⁸

(4) Having an owner or controlling person that was convicted of or pleaded guilty to a felony.²⁹

²⁴ R.C. 4768.13(K)(1), (2), (3), (7), and (10).

²⁵ R.C. 4768.09, 4768.11(A)(10), 4768.13(K)(4), and 4768.99.

²⁶ R.C. 4768.13(K)(5) and 4768.11(C).

²⁷ R.C. 4768.99(A).

²⁸ R.C. 4768.13(K)(11).

²⁹ R.C. 4768.13(K)(16).



Licensed appraisal management company prohibitions

The act prohibits appraisal management companies licensed under the act from doing any of the following:

(1) Failing to maintain, for at least five years after the appraisal report is submitted to the client, (a) the original copy of every request relating to the report that the company receives from a client, (b) the original copy of each request sent to an appraiser who is considered for the assignment, and (c) copies of the appraisal report and all versions of that report. Failure to comply with a subpoena related to these records is prima facie evidence of a violation.³⁰

(2) Failing to include in each appraisal assignment file the name and contact information of both the company and the individual from the company involved in ordering the appraisal; the amount of any fee paid to the appraiser for each assignment included in the assignment file and the time and method of payment; and details of all communications between the company, the appraiser, and the client for each appraisal assignment included in the assignment file;³¹

(3) Having a final judgment entered against the licensee for fraud, deceit, misrepresentation, or coercion in the making of any real estate appraisal;³²

(4) Failing to notify the Board within 30 days of an order revoking or permanently surrendering any professional appraisal management company license, certificate, or registration issued by any public entity other than the Division;³³

(5) Failing to provide written notice to the Division within 15 days of changing the controlling person who was designated in the license application as the company's main contact;³⁴

(6) Entering into contracts or agreements with an appraiser who is not licensed or certified under the Real Estate Appraisers Law for performance of real estate appraisal services;³⁵

³⁰ R.C. 4768.13(K)(7) and (L) and 4768.10(A).

³¹ R.C. 4768.13(K)(7) and 4768.10(B).

³² R.C. 4768.13(K)(8).

³³ R.C. 4768.13(K)(9) and (M).

³⁴ R.C. 4768.13(K)(12).

³⁵ R.C. 4768.13(K)(13).



(7) Failing to pay an appraiser for completion of an appraisal within 60 days after the appraiser transmits or otherwise provides the completed appraisal to the company or its assignees, except in cases of breach of contract or substandard performance of services;³⁶

(8) Failing to compensate each appraiser who performs appraisal services for the company a customary and reasonable rate, in accordance with the federal Truth in Lending Act, and taking into account the increased time, difficulty, and scope of the work for a complex assignment;³⁷

(9) Failing to verify that an appraiser added to the company's appraiser panel is licensed under the Real Estate Appraisers Law;³⁸

(10) Failing to require appraisals coordinated by the company to comply with the Uniform Standards of Professional Appraisal Practice.³⁹

Employee, officer, and agent prohibitions

The act specifically prohibits an employee, director, officer, or agent of a licensed appraisal management company from recklessly influencing or attempting to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or in any other manner, including the following:

(1) Withholding or threatening to withhold timely payment for appraisal services rendered in accordance with a contract between the parties;

(2) Withholding or threatening to withhold future business for an appraiser, or demoting, terminating, or threatening to demote or terminate an appraiser;

(3) Expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;

(4) Conditioning the assignment of an appraisal or payment for an appraisal on the opinion, conclusion, or valuation to be reached by, or on a preliminary estimate or opinion requested from, an appraiser;

³⁶ R.C. 4768.12(A) and 4768.13(K)(6).

³⁷ R.C. 4768.12(B) and 4768.13(K)(6).

³⁸ R.C. 4768.13(K)(14).

³⁹ R.C. 4768.13(K)(15).

(5) Requesting that an appraiser provide a desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the independent appraiser's completion of an appraisal;

(6) Providing to an appraiser a desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that the employee, director, officer, or agent of an appraisal management company can provide the appraiser with a copy of the sales contract for purchase transactions;

(7) Providing stock or other financial or nonfinancial benefits to an appraiser or any person related to the appraiser;

(8) Any other act or practice that impairs an appraiser's independence, objectivity, or impartiality;

(9) Obtaining a subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction, unless (a) there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, (b) the appraisal or automated valuation model is done pursuant to a bona fide pre- or post-funding appraisal review or quality control process, or (c) a second appraisal is required under state or federal law;

(10) Allowing the removal of an independent appraiser from the company's appraiser panel, after the first 30 days of being added to the panel, without prior written notice and an opportunity to respond as required under the act;

(11) Requiring an appraiser to indemnify the company against liability, or losses other than those arising out of the services performed by the appraiser, whether as a result of negligence or willful misconduct. This prohibition applies only to contracts entered into on or after the act's June 14, 2018, immediate effective date.

(12) Requiring an appraiser to perform an appraisal assignment if the appraiser declines the assignment and informs the company that the appraiser is not competent to perform the assignment and the appraiser declines to acquire the necessary competency to perform it;

(13) Requiring an appraiser who has notified the company and declined the assignment 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 legal and professional obligations.⁴⁰

⁴⁰ R.C. 4768.11(A) and Section 4.



In addition to the sanctions to which an employee, director, officer, or agent of a licensed appraisal management company may be subject under the act for influencing an appraisal through coercion, extortion, or similar tactics (see "**Sanctions against prohibited acts**" below), a person who engages in the acts specified in (1) through (9) above is guilty of a fifth degree felony and a person who engages in the acts specified in (10) through (13) is guilty of a first degree misdemeanor.

The act specifies that its prohibition against coercive and intimidating acts does not prohibit an appraisal management company from requesting that an appraiser consider additional, appropriate property information, including the consideration of additional comparable properties; to provide further detail, substantiation; or explanation for an appraisal or correct objective factual errors in an appraisal report.⁴¹

Each appraisal management company must require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards of the federal Truth in Lending Act.⁴²

Sanctions against prohibited acts

Within ten business days after a person files with the Division a written complaint against a person licensed under the Appraisal Management Company Law or any other person, the Superintendent must acknowledge receipt of the complaint by sending notice to the person against whom the complaint is filed that includes a copy of the complaint. That notice and the acknowledgment to the complainant can additionally state that an informal mediation meeting will be held with the complainant, the person against whom the complaint is filed, and an investigator from the Division's investigation and audit section, if the complainant and person both request the meeting within 20 calendar days after the acknowledgment and notice are mailed.⁴³

If the complainant and the person against whom the complaint is filed both request an informal mediation meeting, the Superintendent must notify them of the date, time, and place of the meeting by regular mail. If they reach an accommodation at the meeting, the investigator must report the accommodation to the Superintendent and

⁴¹ R.C. 4768.11(B), 4768.13(K), and 4768.99.

⁴² R.C. 4768.11(D).

⁴³ R.C. 4768.13(A).



the parties. The file must be closed when the Superintendent receives satisfactory notice that the accommodation agreement was fulfilled.⁴⁴

If the complainant and the person against whom the complaint is filed fail to agree to an informal mediation meeting, fail to reach an accommodation agreement, or fail to fulfill an accommodation agreement, the Superintendent must assign the complaint to an investigator for an investigation. During the investigation, and at any time that the Superintendent feels it is necessary, the investigators and auditors employed by the Division can review and audit the business records of licensees during normal business hours. Under the act, any information that is obtained during these investigations and audits, and all work products that arise from that information and that are prepared by personnel of the Department of Commerce, are confidential and are not public records. However, the act allows the Division to release information relating to licensees to other governmental agencies for specified purposes.⁴⁵

At the end of the investigation, the investigator must file a written report of the results with the Superintendent. The Superintendent must review the report and determine whether reasonable and substantial evidence exists to justify disciplinary action for committing a prohibited act. Regardless of the Superintendent's determination, the Superintendent must notify the complainant and the person against whom the complaint was made of that determination. If the Superintendent determines that the necessary level of evidence does not exist, the Superintendent also must inform the parties of the basis for the determination.⁴⁶

If the Superintendent finds the evidence does not exist to justify disciplinary action, the complainant has 15 days after notification of the Superintendent's decision to file with the Division a request for review by the Board. That review must be conducted at the next regularly scheduled meeting held at least 15 business days, but not longer than six months, after the request is filed. If the Board affirms the Superintendent's determination, the Superintendent must notify the complainant and the person against whom the complaint is filed within ten business days. If the Board reverses the Superintendent's determination, a hearing before a hearing examiner must be held, and the complainant and the person against whom the complaint is filed must be notified.⁴⁷

⁴⁴ R.C. 4768.13(B).

⁴⁵ R.C. 4768.04(A)(9) and (C) and 4768.13(C).

⁴⁶ R.C. 4768.13(D), (E), and (F).

⁴⁷ R.C. 4768.13(E).

Under the act, except as otherwise provided, all notices, written reports, and determinations relating to sanctions for prohibited acts must be mailed via certified mail, return receipt requested. If the notice, written report, or determination is returned because of failure of delivery or was unclaimed, it is deemed served if the Superintendent sends it via regular mail and obtains a certificate of its mailing. Refusal of delivery by personal service or by mail is not failure of delivery and service is deemed to be complete.⁴⁸

If the Superintendent finds that reasonable and substantial evidence exists to justify disciplinary action, the person against whom the complaint was filed may request a hearing before a hearing examiner pursuant to the Administrative Procedure Act.

The act also allows the person, before the hearing, to apply to the Superintendent to enter into a settlement agreement regarding the alleged violation. If this is done, the hearing must be postponed and the Board must review the settlement agreement at its next regularly scheduled meeting. If the Board disapproves the settlement agreement, the hearing must be rescheduled.⁴⁹

Upon completion of a hearing, the hearing examiner must submit a report of findings of fact and conclusions of law to the Superintendent, the Board, the complainant, and the person against whom the complaint is filed. The person against whom the complaint was filed and the Division may file with the Board objections to that report within ten calendar days of receiving a copy of the report. The Board must consider these objections before approving, modifying, or rejecting the hearing examiner's report.⁵⁰

If, after reviewing the hearing examiner's report or the settlement agreement, the Board determines that a person engaged in a prohibited act, the Board must order the disciplinary action it considers appropriate. The order cannot be inconsistent with a settlement agreement if the agreement was approved by the Board. Otherwise, the disciplinary action can include any of the following:

(1) Reprimand of the person, if the person is licensed as an appraisal management company;

(2) A fine, not exceeding \$25,000 per violation;

⁴⁸ R.C. 4768.13(N).

⁴⁹ R.C. 4768.13(F) and (H).

⁵⁰ R.C. 4768.13(G).

(3) Suspension of the appraisal management company license for a specific period of time;

(4) Revocation of the appraisal management company license.

The Board's decision and order are final, subject to review in the manner provided for in the Administrative Procedure Act and appeal to the Franklin County Court of Common Pleas.⁵¹

Sanctions against unlicensed activity

The act allows the Superintendent, on written complaint or the Superintendent's own motion, to investigate any person that allegedly operates as an appraisal management company in violation of the prohibitions against operating without a license.⁵²

If, after investigation, the Superintendent determines that reasonable evidence of a violation exists, the Superintendent must send the subject of the investigation a written notice, by regular mail, within 14 business days after that determination. The written notice must include:

(1) A description of the alleged activity that constitutes the violation;

(2) The law allegedly violated;

(3) A statement informing the party that a hearing concerning the alleged violation will be held before a hearing examiner, including the date and place of that hearing;

(4) A statement that the party or the party's attorney can appear in person at the hearing and present evidence and examine witnesses, or the party can submit written testimony stating any positions, arguments, or contentions.⁵³

Before the hearing, the subject of the investigation can apply the Superintendent to enter into a settlement agreement. If a settlement agreement is reached, the hearing must be postponed and the Board must review the settlement agreement at its next

⁵¹ R.C. 4768.13(I) and (J).

⁵² R.C. 4768.02(A) and 4768.14(A).

⁵³ R.C. 4768.14(B).



regularly scheduled meeting. If the Board disapproves the settlement agreement, the hearing must be rescheduled.⁵⁴

At the hearing, the hearing examiner must hear the testimony of all parties present and consider any written testimony submitted by the party or the party's attorney. At the end of the hearing, the hearing examiner must determine if there has been a violation of the licensure requirement and file with the Superintendent, the Board, the complainant, and the parties a written report setting forth the examiner's findings of fact and conclusions of law and a recommendation of action to be taken by the Superintendent. The parties and the Division have ten days to file with the Board written objections to the report. The Board must review the hearing examiner's report at its next regularly scheduled meeting held at least 15 business days after receiving the hearing examiner's report, and it must consider the objections before approving, modifying, or disapproving the report. It must maintain a transcript of the proceedings of the hearing and issue a written opinion to all parties, citing its findings and grounds for any action taken.⁵⁵

The Board must decide whether to impose sanctions after reviewing the hearing examiner's report or the settlement agreement. The Board can assess a civil penalty, not to exceed \$1,000 per violation nor \$10,000 in aggregate, but the civil penalty must be consistent with any Board-approved settlement agreement in the matter. Each day a violation occurs or continues is a separate violation. The Board must determine the terms of payment.⁵⁶

If a party fails to timely pay a civil penalty assessed for unlicensed activity, the Superintendent must forward the matter to the Attorney General for collection. The Attorney General can impose an additional fee up to \$10,000 for collection of the civil penalty.⁵⁷

Investigations, confidentiality, and sharing of information

During an investigation, the Division can review and audit the business records of licensees during normal business hours. Any information that is obtained during those investigations and audits, and all work products that arise from that information and that are prepared by Department of Commerce personnel, are confidential and are

⁵⁴ R.C. 4768.14(C).

⁵⁵ R.C. 4768.14(D), (E), and (F).

⁵⁶ R.C. 4768.14(F).

⁵⁷ R.C. 4768.14(H).



not public records. However, the Division may release information relating to licensees to other governmental agencies for certain purposes.⁵⁸

Real Estate Appraiser Operating Fund

The act directs the Superintendent to deposit all fines, and all other money collected under the Appraisal Management Company Law, into the existing Real Estate Appraiser Operating Fund.⁵⁹ The act expands the purposes for which the Fund may be used to include expenses of the Superintendent relating to the administration and enforcement of the Appraisal Management Company Law.⁶⁰

Definitions

The act provides the following definitions under the Appraisal Management Company Law:

(1) "**Real estate appraisal**" or "**appraisal**" means the act or process of developing an opinion of value of real property in conformity with the Uniform Standards of Professional Appraisal Practice.

(2) "**Appraisal report**" has the same meaning in the Appraisal Management Licensing Law as it does in the Real Estate Appraiser Law: a written communication of a real estate appraisal or appraisal review, or an oral communication of a real estate appraisal or appraisal review that is documented by a writing that supports the oral communication.

(3) "**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 or appraisal review. "Appraisal review" does not include an examination of an appraisal for grammatical errors, typographical errors, or completeness, provided the review for completeness does not require an opinion about the quality of the work of an appraiser. The Board may define, by rule, "review for completeness."

(4) "**Appraisal services**" or "**real estate appraisal services**" means a real estate appraisal or appraisal review.

⁵⁸ R.C. 4768.04(A)(9) and (C).

⁵⁹ R.C. 4768.14(G) and 4768.15.

⁶⁰ R.C. 4763.15.

(5) "**Appraiser**" means a person licensed or certified under the Real Estate Appraisers Law.

(6) "**Appraiser panel**" means a network of appraisers who are independent contractors to the appraisal management company who have been approved by the appraisal management company, after responding to an invitation or request from the appraisal management company, to perform appraisals for any client of the appraisal management company or for the company directly, on a periodic basis, as assigned by the company.

(7) "**Automated valuation model**" means a computer software program that analyzes data using an automated process that produces an output that may become a basis for appraisal or appraisal review if the appraiser believes the output to be credible for use in a specific assignment.

(8) "**Client**" means any person that contracts with, or otherwise enters into an agreement with, an appraisal management company for residential or commercial real estate appraisal services.

(9) "**Controlling person**" means any of the following:

(a) An owner, officer, or director of a business entity seeking to offer appraisal management services in Ohio;

(b) An individual employed, appointed, or authorized by an appraisal management company, who has the authority to enter into contractual relationships with clients for the performance of appraisal management services and the authority to enter into agreements with appraisers for the performance of residential or commercial real estate appraisal services;

(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.

(10) "**Federally regulated appraisal management company**" means an appraisal management company that is owned and controlled by an insured depository institution or an insured credit union and that is regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, or the Federal Deposit Insurance Corporation.

(11) "**Owner**" means a person who owns or controls 10% or more of an appraisal management company.



(12) "**Person**" means an individual, corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity.

(13) "**Real estate**" includes leaseholds as well as any and every interest or estate in land situated in Ohio, whether corporeal or incorporeal, whether freehold or nonfreehold, and the improvements on the land, but does not include cemetery interment rights.⁶¹

Real estate appraisers

Under continuing law, real estate appraisers are governed by the Real Estate Appraisers Law.⁶² The act makes a number of changes to the Law.

Division of Real Estate and Professional Licensing

Under continuing law, the Division can release information relating to certificate holders, registrants, and licensees to certain individuals and entities, such as to the Attorney General. The act expands this list to include:

(1) The Commissioner of Securities, for purposes relating to the Corporations and Partnerships Law; and

(2) All law enforcement agencies, not just local agencies as under prior law.⁶³

Real Estate Appraisers Board rules

The act provides that any rule the Board adopts relating to real estate appraisers must meet or exceed the requirements specified in federal law or regulations. Prior law required the rules to not exceed the requirements specified in federal law or regulations.⁶⁴

Renewals

The act removes the requirement that a renewal real estate appraiser certificate, registration, or license include the principal address of the certificate holder, registrant, or licensee.⁶⁵

⁶¹ R.C. 4768.01.

⁶² R.C. Chapter 4763.

⁶³ R.C. 4763.03(E).

⁶⁴ R.C. 4763.03(F).

⁶⁵ R.C. 4763.08.

Out-of-state licenses and certificates

The act permits a person who has a residential real estate appraiser license, a residential real estate appraiser certificate, or a general real estate appraiser certificate from another state to obtain a license or certificate in Ohio if the other state's requirements meet or exceed the Ohio Real Estate Appraisal Law. The act permits the application for out-of-state licensees or certificate holders to include:

(1) A pledge, signed by the applicant, that the applicant will comply with the standards under the Ohio Real Estate Appraisal Law;

(2) A statement that the applicant understands the types of misconduct for which disciplinary proceedings may be initiated under the Ohio Law; and

(3) A consent to service of process.

Under prior law, a nonresident could obtain a certificate, registration, or license and, like the act, the Board was required to adopt rules regarding specific requirements. Also, under prior law, a nonresident applicant was required to submit a statement consenting to service of process.

The act also requires an application for a temporary registration to contain the information described in (1) to (3) immediately above. Under continuing law a temporary registration can be issued to a person twice a year and allows the person to perform one appraisal in Ohio with each issuance.

The act also permits the Board to enter into reciprocal agreements with other states. The Board must adopt reciprocal agreement requirements by rule.⁶⁶

Disciplinary action

The act permits the certificate holder, registrant, or licensee to enter into a settlement agreement with the Superintendent if the Superintendent finds evidence exists that the certificate holder, registrant, or licensee committed one of the specified acts prohibited under the Real Estate Appraisal Law.

Under continuing law the certificate holder, registrant, or licensee can request an administrative hearing regarding the Superintendent's finding of a violation. If a formal hearing is conducted, prior law required the hearing examiner to file a report of the examiner's findings of fact and conclusions of law with:

⁶⁶ R.C. 4763.05(E).



- (1) The Board;
- (2) The Superintendent;
- (3) The complainant; and
- (4) The certificate holder, licensee, or registrant.

The act instead requires that this report be filed with the Division hearing administrator and the administrator serve the hearing examiner report to the interested parties listed above. Additionally, the act expands the list of interested parties who receive the report to also include the Assistant Attorney General representing the Superintendent and counsel representing the complainant, certificate holder, licensee, or registrant. Consistent with the "**Notices**," below, the report must be served on the complainant and certificate holder, licensee, or registrant by certified mail, return receipt requested. It may be served on the Assistant Attorney General and the Board by regular mail or electronic means and may be served on the counsel representing the complainant and certificate holder, licensee, or registrant by regular mail.

Under the act, within ten days of receiving the report, the Assistant Attorney General may file written objections to the hearing examiner's report, which the Board must consider before approving, modifying, or rejecting the hearing examiner's report (similar to continuing law regarding certificate holder, licensee, and registrant objections). The Superintendent may grant an extension of time to file an objection for good cause shown.

If the Board orders a disciplinary action, the Superintendent may grant an extension of time to satisfy the Board-ordered disciplinary action for good cause shown. The act also adds to the list of disciplinary action the Board may take surrender of the appraiser certificate.

In addition, the act requires the Board to take disciplinary action when a certificate holder, registrant, licensee, or applicant is convicted of or pleads guilty or no contest to a crime involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, drug trafficking, or any criminal offense involving money or securities, including a violation of an existing or former Ohio law, any other state law, or U.S. law that is substantially equivalent to the offense.

The Board must also take disciplinary action for the following:

- In the case of a certificate holder acting as a supervisory appraiser, refusing to sign an appraiser experience log required by rule for a person making application for an initial state-certified general real estate



appraiser certificate, state-certified residential real estate appraiser certificate, or state-licensed residential real estate appraiser license, unless there is reasonable and substantial evidence that there is false information contained within the log;

- When a certificate holder, applicant, or licensee is being sanctioned or disciplined in another jurisdiction as a real estate appraiser;
- When a certificate holder, applicant, or licensee fails to provide assistance to the members and staff of the Board or to the Division in the enforcement of the Real Estate Appraisal Law and the rules adopted under it.

The act eliminates a requirement that the Board take disciplinary action when the certificate holder, applicant, or licensee willfully disregards Real Estate Appraiser Law or rules (but retains the ability to take disciplinary actions for violations by those persons).⁶⁷

Notices

The act requires that acknowledgment of complaint notices and continuance notices associated with hearings must be sent by regular mail and a certificate of mailing must be obtained. All other notices issued to a complainant and to a certificate holder, registrant, licensee, or other party must be mailed via certified mail, return receipt requested. Prior law required all notices be sent via certified mail, return receipt requested.

The act adds additional procedures that must be followed after failure of delivery of one of the notices described above. It specifies that failure of delivery occurs only when a notice is returned by postal authorities, marked undeliverable, address or addressee unknown, or forwarding address unknown or expired. If a notice is returned for failure of delivery, the Superintendent must make personal delivery by an employee or agent of the Department of Commerce, or must cause a summary of the notice's substantive provision to be published once a week for three consecutive weeks in a newspaper of general circulation in the county of the party's last known address.

When notice is given by publication, a proof of publication affidavit, with the first publication set forth in affidavit, must be mailed by regular mail to the party at the party's last known address. The notice is deemed received as of the date of the summary's last publication.

⁶⁷ R.C. 4763.11.



The act permits a Department employee or agent to make personal delivery of the notice upon the party at any time.⁶⁸

Exemptions

Continuing law prohibits a person performing a real estate appraisal for a mortgage loan without a real estate appraiser license or certification. The act additionally prohibits a person from performing or preparing an appraisal, an appraisal report, or a real estate appraisal review for a mortgage loan without licensure or certification.⁶⁹

The act makes changes to the exemptions from the licensure requirements. Continuing law exempts a lender who uses (1) a market analysis or price opinion, (2) an internal valuation analysis, or (3) an automated valuation model or report based on such a model, and any person providing that report to the lender. The act qualifies (3) by requiring the purpose of the report be to validate or support the value conclusion provided by the person licensed or certified to do the appraisal.

The act removes requirements that the lender, in performing a valuation for purposes of a loan application:

(1) Give the consumer loan applicant a copy of any written market analysis or price opinion or valuation report based on an automated valuation model; and

(2) Include a disclaimer on the consumer's copy specifying that the valuation used for the application was obtained from a market analysis or price opinion or automated valuation model report and not from a person licensed or certified under the Real Estate Appraiser Law.⁷⁰

Requirements for written reports

The act requires that, in addition to including all the information required by continuing law, every written report rendered by a certificate holder or licensee in conjunction with an appraisal assignment or specialized service must include the license, certificate, or registration number of the appraisal management company that has engaged the appraiser. In addition, if an appraisal report is completed for an appraisal management company, the report must include actual fees paid to the appraiser or, if the appraiser is employed by the company on an employee-employer

⁶⁸ R.C. 4763.11(H) and (K).

⁶⁹ R.C. 4763.19(A).

⁷⁰ R.C. 4763.19(B).



basis for the performance of appraisals, a statement of that fact and a statement that the appraiser was not paid a fee.⁷¹

Records retention

The act extends the time in which a person licensed, registered, or certified under the Real Estate Appraisers Law must retain records. Under continuing law, the records normally must be retained for five years after the appraisal report is submitted to the client. But, under prior law, if, during that five-year period, the person was notified that the appraisal report was the subject of or otherwise involved in pending litigation, the five-year retention period began on the date of final disposition of the litigation. Under the act, the retention period begins two years after that date.⁷²

Definitions

The act changes the definition of "**real estate appraisal**" or "**appraisal**" to match the definition for those same terms in the Appraisal Management Company Law. Previously, the law defined "real estate appraisal" or "appraisal" as an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of identified real estate that was classified as either a valuation or an analysis. The act changes the terms to mean the act or process of developing an opinion of value of real property in conformity with the Uniform Standards of Professional Appraisal Practice.⁷³

The act changes the definition of "**state-registered real estate appraiser assistant**" to reflect the changes to the definition of "real estate appraisal" or "appraisal." It provides that an assistant is a person, other than a state-certified general or residential or state-licensed residential real estate appraiser, who satisfies the registration requirements of the Real Estate Appraiser Law for participating in real estate appraisals and who holds a current and valid registration or renewal registration issued to the person. Prior law contained a similar definition for a state-registered real estate appraiser assistant, except that it specified that an assistant was a person who satisfied the registration requirement of the Law for participating in the development and preparation of real estate appraisals.⁷⁴

⁷¹ R.C. 4763.12(C).

⁷² R.C. 4763.14.

⁷³ R.C. 4763.01(A), with conforming changes in R.C. 4763.02, 4763.05, 4763.08, 4763.11, 4763.12, 4763.13, 4763.14, and 4763.17.

⁷⁴ R.C. 4763.01(O).

Similarly, in order to match the definition provided in the Appraisal Management Company Law, the definition of "**appraisal review**" specifies that "appraisal review" does not include an examination of an appraisal for grammatical, typographical errors, or completeness, provided the review for completeness does not require an opinion about the quality of an appraiser's work. The Board may define, by rule, "review for completeness."⁷⁵

The act changes the definition of "**institution of higher education**" to have the same meaning as the Real Estate Broker Law, which includes all of the following:

(1) A state institution of higher education (state universities, community colleges, state community colleges, university branches, and technical colleges);

(2) A nonprofit institution issued a certificate of authorization under the Educational Corporation Law;

(3) A private institution exempt from regulation under the Career College and School Law;

(4) An institution with a certificate of registration from the State Board of Career Colleges and Schools that is approved to offer degree programs.⁷⁶

"**Prepare**" means to develop and communicate, whether through a personal physical inspection or through the act or process of critically studying a report prepared by another who made the physical inspection, an appraisal report or specialized service report. This differs from the prior definition, which included the study of an analysis or opinion.⁷⁷

"**Automated valuation model**" means a computer software program that analyzes data using an automated process that produces an output that may become a basis for appraisal or appraisal review if the appraiser believes the output to be credible for use in a specific assignment.⁷⁸

⁷⁵ R.C. 4763.01(S).

⁷⁶ R.C. 4763.01(P).

⁷⁷ R.C. 4763.01(I).

⁷⁸ R.C. 4763.01(U).

HISTORY

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