HB304

198273-2

By Representative Coleman

RFD: Boards, Agencies and Commissions

First Read: 02-APR-19
ENROLLED, An Act,

Relating to the Alabama Real Estate Appraisers Board and the licensing and regulation of real estate appraisers; to amend Sections 34-27A-2, 34-27A-3, 34-27A-5, and 34-27A-23 of the Code of Alabama 1975, to define the term "evaluation" and to provide that evaluations performed by licensed appraisers for financial institutions would not be governed by Chapter 27A and to further provide for the employment of investigators by the board who are licensees of the board.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 34-27A-2, 34-27A-3, 34-27A-5, and 34-27A-23 of the Code of Alabama 1975, are amended to read as follows:

"§34-27A-2.

"The following terms as used in this chapter shall have the following meanings:

"(1) APPRAISAL. The act or process of developing an opinion of value of real property; an opinion of the value of real property; of or pertaining to appraising real property and related functions such as appraisal practice or appraisal services.

"(2) APPRAISAL FOUNDATION. The Appraisal Foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987."
(3) APPRAISAL MANAGEMENT COMPANY. An external third party including, but not limited to, a corporation, partnership, sole proprietorship, subsidiary, or limited liability company, authorized either by a creditor of a consumer credit transaction secured by the principal dwelling of a consumer or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than four certified or licensed appraisers in a state or 25 or more nationally in a given year, that perform appraisal management services.

(4) APPRAISAL MANAGEMENT SERVICES. To directly or indirectly perform any of the following functions for a fee on behalf of a lender, financial institution, or any other entity:

a. Recruit, select, and retain appraisers.

b. Contract with licensed and certified appraisers to perform appraisal assignments.

c. Manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed.

d. Review and verify the work of appraisers.
"(5) APPRAISAL REPORT. Any communication, written or oral, of an appraisal.

"(6) APPRAISAL REVIEW. The act of developing and communicating an opinion about the quality of the work of another appraiser that was performed as part of an appraisal assignment, except that an examination of an appraisal for grammatical, typographical, or other similar errors that do not make a substantive valuation change is not an appraisal review.

"(7) APPRAISAL SUBCOMMITTEE. The appraisal subcommittee of the Federal Financial Institutions Examination Council.

"(8) APPRAISER. A person who holds a license or certification to complete a real estate appraisal in the state where real property that is the subject of the appraisal is located.

"(9) APPRAISER INDEPENDENCE. The ability of an appraiser to provide an appraisal or appraisal review services in exchange for a customary and reasonable fee without coercion, extortion, collusion, inducement, intimidation, bribery, or any other action by a regulated party intended to influence the opinion rendered by an appraiser.

"(10) APPRAISER PANEL. A network of licensed or certified appraisers who are independent contractors of an appraisal management company.
"(11) BOARD. The State of Alabama Real Estate Appraisers Board established pursuant to this chapter.

"(12) CERTIFIED APPRAISAL or CERTIFIED APPRAISAL REPORT. An appraisal or appraisal report given or signed and certified as such by a licensed real property appraiser other than a trainee or registered real property appraiser. When identifying an appraisal or appraisal report as "certified," the real property appraiser shall indicate which type of license is held. A certified appraisal or appraisal report represents to the public that it meets the appraisal standards defined in this chapter.

"(13) EVALUATION. A valuation of real property for a lending institution which is permitted by rules of any federal financial institution regulatory agency for transactions that do not require an appraisal.

"(14) EXECUTIVE DIRECTOR. The chief administrative employee of the board.

"(15) EXPERIENCE POINTS. The allowable credit for appraisal of particular types of properties.

"(16) FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES. The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.
"(16)(17) FEDERALLY RELATED TRANSACTION. 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.

"(17)(18) FINANCIAL INSTITUTION. An insured depository institution as defined in Section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in Section 101 of the Federal Credit Union Act.

"(18)(19) GEOGRAPHIC COMPETENCY. The familiarity of an appraiser with a market or a geographic area applicable to the problem to be addressed in an appraisal or an appraisal review assignment.

"(19)(20) PRINCIPAL CONTACT. An individual employed, appointed, or authorized by an appraisal management company to serve as the principal contact for the board.

"(20)(21) REAL ESTATE. An identified parcel or tract of land, including improvements, if any.

"(21)(22) REAL ESTATE APPRAISAL SERVICES. The practice of accepting an assignment to develop and report an opinion on the value of real property in conformance with the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation.
"(22)(23) REAL ESTATE-RELATED FINANCIAL TRANSACTION.
Any transaction involving any of the following:
   "a. The sale, lease, purchase, investment in, or
      exchange of real property, including interests in property, or
      the financing thereof.
   "b. The refinancing of real property or interests in
      real property.
   "c. The use of real property or interests in
      property as security for a loan or investment, including
      mortgage-backed securities.
"(23)(24) REAL PROPERTY. One or more defined
interests, benefits, and rights inherent in the ownership of
real estate.
"(24)(25) UNIFORM STANDARDS OF PROFESSIONAL
APPRAISAL PRACTICE (USPAP). Standards promulgated by the
Appraisal Foundation and adopted by rule pursuant to this
chapter.
"§34-27A-3.
"(a) It shall be unlawful for any person,
partnership, or corporation, for a fee or other valuable
consideration, or with the intention or expectation of
receiving or collecting a fee or valuable consideration from
another, to do any of the following unless he or she is
licensed under this chapter:
"(1) To be employed to perform or to perform an appraisal as defined in this chapter where the subject property of the assignment lies within the borders of the State of Alabama.

"(2) Present himself or herself, or allow himself or herself to be presented, as being able to perform an appraisal for which a license is required under this chapter.

"(b) It shall be unlawful for a person, other than a licensed real estate appraiser, to assume or use that title or any title, designation, or abbreviation likely to create the impression of licensure as a real estate appraiser by this state. It shall be unlawful for a person licensed as a real estate appraiser to assume or use a title, designation, or abbreviation likely to create the impression of licensure at a higher classification of real estate appraiser other than the classification at which the person is licensed. It shall be unlawful for a trainee real property appraiser or a registered real property appraiser pursuant to this chapter to describe or refer to any appraisal or other evaluation of real estate located in this state by the term "certified." Except where required by, or where necessary to fully comply with the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub.L. No. 101-73, as amended, and regulations issued pursuant thereto, an employee of the State of Alabama or any county who has been commissioned by the
Alabama Department of Revenue as an Alabama Certified Appraiser, for the purposes of classification only, who is engaged in the performance of official duties as an employee, shall not be subject to this chapter.

"(1) A trainee real property appraiser or a state registered real property appraiser under this chapter, shall include the following statement in the "certifications of the appraiser" section of each appraisal or specialized service report: "This assignment was made subject to regulations of the State of Alabama Real Estate Appraisers Board."

"(2) A licensed real estate appraiser licensed other than as a trainee real property appraiser or a registered real property appraiser shall include the following statement in the "Certifications of the Appraiser" section of each appraisal or specialized service report: "This assignment was made subject to regulations of the State of Alabama Real Estate Appraisers Board. The undersigned state licensed real estate appraiser has met the requirements of the board that allow this report to be regarded as a 'certified appraisal'."

"(c) Except where required by, or where necessary to fully comply with the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub.L. No. 101-73, as amended, and regulations issued pursuant thereto, this chapter shall not apply to, or preclude, a person who is not a licensed real estate appraiser from performing real
This chapter also does not apply to a licensed real estate appraiser when preparing an evaluation for a mortgage loan transaction when a financial institution has determined that an appraisal is not required or and this chapter shall not apply to a licensed real estate broker or salesperson, who in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate, or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. and this This chapter shall also does not apply to any employee, officer, director, partner, or similar person making a valuation, analysis, market study, or other appraisal for his or her employer or principal, including those related to any real estate related financial transactions for or on behalf of a financial institution. The words "employer or principal" as used in this subsection shall include any subsidiary, parent, affiliate, or partner of the direct employer or principal. This chapter shall not require now or in the future any person who lists or otherwise offers property for sale to have an appraisal of that property.

"(d) Any person violating any of the provisions of subsections (a) through (c) shall, upon conviction thereof, be
guilty of a Class A misdemeanor and shall be punished as prescribed by law.

"(e) Notwithstanding anything to the contrary in this section, an individual who is not a licensed appraiser may assist in the preparation of an appraisal if the following conditions are met:

"(1) The assistant is under the direct supervision of a licensed individual.

"(2) The final appraisal document is approved and signed by an individual who is licensed to perform that type of appraisal.

"(f)(1) Notwithstanding anything to the contrary in this chapter, a person licensed pursuant to this chapter may perform an evaluation for a financial institution as authorized by federal law.

"(2) When performing an evaluation, a person licensed pursuant to this chapter shall not be subject to any provision of this chapter except as provided in this subsection.

"(3) The evaluation shall contain a statement that "This is not an appraisal."

"(4) This chapter does not otherwise apply to an evaluation."
"(5) Evaluations shall be governed by federal law and rules of federal financial institution regulatory agencies and not the board.

"§34-27A-5.

"(a) The board shall act by a majority vote of its members to adopt administrative rules and regulations necessary, from time to time, to carry out this chapter. Rules and regulations of the board shall be adopted in compliance with the Alabama Administrative Procedure Act, Chapter 22 of Title 41.

"(b) The board shall have the following powers and duties:

"(1) To receive and process applications for licensure for all classifications of real estate appraisers, including, but not limited to, "trainee real property appraiser," "state registered real property appraiser," "licensed real property appraiser," "certified residential real property appraiser," and "certified general real property appraiser" and any subsequent classifications necessary to conform with the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, and any subsequent regulations issued pursuant thereto.

"(2) To establish the administrative procedures for processing applications for licensure for all classifications of real estate appraisers.
"(3) To maintain a registry of the names and addresses of people licensed under this chapter, and to furnish the list annually to the federal agency designated by Congress to receive it.

"(4) To retain records and all application materials submitted to it.

"(5) To establish the examination specifications when an examination is required by administrative rule for each category of licensed real estate appraiser, to provide or procure appropriate examination questions and answers, and to establish procedures for grading examinations.

"(6) To approve or disapprove applications for licensure and issue licenses.

"(7) To further define by regulation and with respect to each category of licensed real estate appraiser the continuing education requirements for the renewal of a license that will meet the statutory requirements provided in this chapter. No examinations shall be required on the continuing education except to comply with subsection (c) of Section 34-27A-19.

"(8) To review and adopt the standards for the development and communication of real estate appraisals provided in this chapter, that are generally accepted within the appraisal profession, and to adopt regulations explaining and interpreting the standards.
"(9) To establish administrative procedures for disciplinary proceedings conducted pursuant to this chapter.

"(10) To censure, suspend, and revoke licenses pursuant to the disciplinary proceedings provided for in Section 34-27A-21.

"(11)a. To hire the executive director of the board and an executive assistant if needed to fulfill the requirements of this chapter. The executive director shall administer this chapter, and may employ, subject to the approval of the board, other staff members, consultants, or service contractors as are necessary to discharge the board's duties and administer this chapter.

"b. Notwithstanding any other contrary provision of law, an investigator who contracts with the board may be a practicing licensee of the board.

"(12) To perform other functions and duties as may be necessary in carrying out this chapter, and to promulgate necessary and appropriate regulations which comply in all respects with requirements of Pub. L. No. 101-73 and any subsequent amendments thereto. Regulations shall be promulgated within 90 days following completion of the schedule for prescription and adoption of regulations by the federal financial institutions regulatory agencies and the resolution trust corporation. Regulations shall be promulgated and take effect by (i) July 1, 1991, unless an extension is
granted by the appraisal subcommittee until December 31, 1991, based on written findings as specified by Section 1119(a)(2) of Pub. L. No. 101-73; or (ii) any other date specified by subsequent act of Congress. All regulations issued by the board that govern real estate appraiser licensure and certification shall conform in all respects with the requirements of Pub. L. No. 101-73 and any subsequent amendments thereto and are subject to administrative review under the Administrative Procedure Act and to judicial review by application to the Circuit Court for Montgomery County.

"(13) To include in its regulations educational requirements for all classes of licensure of real estate appraisers that comply with this chapter and in all respects comply with the requirements of Pub. L. No. 101-73 and any subsequent amendments thereto or regulations issued thereunder.

"(c) The members of the board shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of, or any disciplinary proceeding concerning, a licensed real estate appraiser pursuant to this chapter, or alleged appraisals being made without a license, provided that the action is taken in good faith and in the reasonable belief that the action taken was pursuant to the powers and duties vested in the members of the board under this chapter.
$34-27A-23.

"A licensed real estate appraiser shall comply with the current Uniform Standards of Professional Appraisal Practice approved by the board except when performing an evaluation as defined in this chapter and in the Interagency Appraisal and Evaluation Guidelines published by the federal financial institution regulatory agencies on December 2, 2010, for lending transactions where the amount of the transaction is de minimus and the lending institution has determined that an appraisal is not required, as these guidelines may be amended from time to time or as otherwise provide by federal law."

Section 2. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.
HB304

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives
  I hereby certify that the within Act originated in
  and was passed by the House 23-APR-19.
  
  Jeff Woodard
  Clerk

Senate  21-MAY-19  Passed