

1 HB304  
2 198273-2  
3 By Representative Coleman  
4 RFD: Boards, Agencies and Commissions  
5 First Read: 02-APR-19

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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.

1           "(3) APPRAISAL MANAGEMENT COMPANY. An external third  
2 party including, but not limited to, a corporation,  
3 partnership, sole proprietorship, subsidiary, or limited  
4 liability company, authorized either by a creditor of a  
5 consumer credit transaction secured by the principal dwelling  
6 of a consumer or by an underwriter of or other principal in  
7 the secondary mortgage markets, that oversees a network or  
8 panel of more than four certified or licensed appraisers in a  
9 state or 25 or more nationally in a given year, that perform  
10 appraisal management services.

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

15           "a. Recruit, select, and retain appraisers.

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

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

24           "d. Review and verify the work of appraisers.

1           "(5) APPRAISAL REPORT. Any communication, written or  
2 oral, of an appraisal.

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

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

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

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

23           "(10) APPRAISER PANEL. A network of licensed or  
24 certified appraisers who are independent contractors of an  
25 appraisal management company.

1           "(11) BOARD. The State of Alabama Real Estate  
2 Appraisers Board established pursuant to this chapter.

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

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

16           "~~(13)~~ (14) EXECUTIVE DIRECTOR. The chief  
17 administrative employee of the board.

18           "~~(14)~~ (15) EXPERIENCE POINTS. The allowable credit  
19 for appraisal of particular types of properties.

20           "~~(15)~~ (16) FEDERAL FINANCIAL INSTITUTIONS REGULATORY  
21 AGENCIES. The Board of Governors of the Federal Reserve  
22 System, the Federal Deposit Insurance Corporation, the Office  
23 of the Comptroller of the Currency, the Office of Thrift  
24 Supervision, and the National Credit Union Administration.

1           "~~(16)~~ (17) FEDERALLY RELATED TRANSACTION. Any real  
2 estate-related financial transaction which:

3           "a. A federal financial institutions regulatory  
4 agency or the resolution trust corporation engages in,  
5 contracts for, or regulates; and

6           "b. Requires the services of an appraiser.

7           "~~(17)~~ (18) FINANCIAL INSTITUTION. An insured  
8 depository institution as defined in Section 3 of the Federal  
9 Deposit Insurance Act or an insured credit union as defined in  
10 Section 101 of the Federal Credit Union Act.

11           "~~(18)~~ (19) GEOGRAPHIC COMPETENCY. The familiarity of  
12 an appraiser with a market or a geographic area applicable to  
13 the problem to be addressed in an appraisal or an appraisal  
14 review assignment.

15           "~~(19)~~ (20) PRINCIPAL CONTACT. An individual employed,  
16 appointed, or authorized by an appraisal management company to  
17 serve as the principal contact for the board.

18           "~~(20)~~ (21) REAL ESTATE. An identified parcel or tract  
19 of land, including improvements, if any.

20           "~~(21)~~ (22) REAL ESTATE APPRAISAL SERVICES. The  
21 practice of accepting an assignment to develop and report an  
22 opinion on the value of real property in conformance with the  
23 Uniform Standards of Professional Appraisal Practice published  
24 by the Appraisal Foundation.

1           "~~(22)~~ (23) REAL ESTATE-RELATED FINANCIAL TRANSACTION.

2           Any transaction involving any of the following:

3           "a. The sale, lease, purchase, investment in, or  
4           exchange of real property, including interests in property, or  
5           the financing thereof.

6           "b. The refinancing of real property or interests in  
7           real property.

8           "c. The use of real property or interests in  
9           property as security for a loan or investment, including  
10          mortgage-backed securities.

11          "~~(23)~~ (24) REAL PROPERTY. One or more defined  
12          interests, benefits, and rights inherent in the ownership of  
13          real estate.

14          "~~(24)~~ (25) UNIFORM STANDARDS OF PROFESSIONAL  
15          APPRAISAL PRACTICE (USPAP). Standards promulgated by the  
16          Appraisal Foundation and adopted by rule pursuant to this  
17          chapter.

18          "§34-27A-3.

19          "(a) It shall be unlawful for any person,  
20          partnership, or corporation, for a fee or other valuable  
21          consideration, or with the intention or expectation of  
22          receiving or collecting a fee or valuable consideration from  
23          another, to do any of the following unless he or she is  
24          licensed under this chapter:

1           "(1) To be employed to perform or to perform an  
2 appraisal as defined in this chapter where the subject  
3 property of the assignment lies within the borders of the  
4 State of Alabama.

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

8           "(b) It shall be unlawful for a person, other than a  
9 licensed real estate appraiser, to assume or use that title or  
10 any title, designation, or abbreviation likely to create the  
11 impression of licensure as a real estate appraiser by this  
12 state. It shall be unlawful for a person licensed as a real  
13 estate appraiser to assume or use a title, designation, or  
14 abbreviation likely to create the impression of licensure at a  
15 higher classification of real estate appraiser other than the  
16 classification at which the person is licensed. It shall be  
17 unlawful for a trainee real property appraiser or a registered  
18 real property appraiser pursuant to this chapter to describe  
19 or refer to any appraisal or other evaluation of real estate  
20 located in this state by the term "certified." Except where  
21 required by, or where necessary to fully comply with the  
22 provisions of the Financial Institutions Reform, Recovery and  
23 Enforcement Act of 1989, Pub.L. No. 101-73, as amended, and  
24 regulations issued pursuant thereto, an employee of the State  
25 of Alabama or any county who has been commissioned by the

1 Alabama Department of Revenue as an Alabama Certified  
2 Appraiser, for the purposes of classification only, who is  
3 engaged in the performance of official duties as an employee,  
4 shall not be subject to this chapter.

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

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

20 "(c) Except where required by, or where necessary to  
21 fully comply with the provisions of the Financial Institutions  
22 Reform, Recovery and Enforcement Act of 1989, Pub.L. No.  
23 101-73, as amended, and regulations issued pursuant thereto,  
24 this chapter shall not apply to, or preclude, a person who is  
25 not a licensed real estate appraiser from performing real

1 estate market analysis, in that person's capacity as a  
2 licensed real estate broker or salesperson under this title~~7~~.  
3 This chapter also does not apply to a licensed real estate  
4 appraiser when preparing an evaluation for a mortgage loan  
5 transaction when a financial institution has determined that  
6 an appraisal is not required or ~~and this chapter shall not~~  
7 ~~apply~~ to a licensed real estate broker or salesperson, who in  
8 the ordinary course of business, gives an opinion to a  
9 potential seller or third party as to the recommended listing  
10 price of real estate, or an opinion to a potential purchaser  
11 or third party as to the recommended purchase price of real  
12 estate. ~~and this~~ This chapter shall also does not apply to any  
13 employee, officer, director, partner, or similar person making  
14 a valuation, analysis, market study, or other appraisal for  
15 his or her employer or principal, including those related to  
16 any real estate related financial transactions for or on  
17 behalf of a financial institution. The words "employer or  
18 principal" as used in this subsection shall include any  
19 subsidiary, parent, affiliate, or partner of the direct  
20 employer or principal. This chapter shall not require now or  
21 in the future any person who lists or otherwise offers  
22 property for sale to have an appraisal of that property.

23 "(d) Any person violating any of the provisions of  
24 subsections (a) through (c) shall, upon conviction thereof, be

1 guilty of a Class A misdemeanor and shall be punished as  
2 prescribed by law.

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

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

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

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

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

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

22 "(4) This chapter does not otherwise apply to an  
23 evaluation.

1           "(5) Evaluations shall be governed by federal law  
2 and rules of federal financial institution regulatory agencies  
3 and not the board.

4           "§34-27A-5.

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

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

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

23           "(2) To establish the administrative procedures for  
24 processing applications for licensure for all classifications  
25 of real estate appraisers.

1           "(3) To maintain a registry of the names and  
2 addresses of people licensed under this chapter, and to  
3 furnish the list annually to the federal agency designated by  
4 Congress to receive it.

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

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

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

14           "(7) To further define by regulation and with  
15 respect to each category of licensed real estate appraiser the  
16 continuing education requirements for the renewal of a license  
17 that will meet the statutory requirements provided in this  
18 chapter. No examinations shall be required on the continuing  
19 education except to comply with subsection (c) of Section  
20 34-27A-19.

21           "(8) To review and adopt the standards for the  
22 development and communication of real estate appraisals  
23 provided in this chapter, that are generally accepted within  
24 the appraisal profession, and to adopt regulations explaining  
25 and interpreting the standards.

1           "(9) To establish administrative procedures for  
2 disciplinary proceedings conducted pursuant to this chapter.

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

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

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

16           "(12) To perform other functions and duties as may  
17 be necessary in carrying out this chapter, and to promulgate  
18 necessary and appropriate regulations which comply in all  
19 respects with requirements of Pub. L. No. 101-73 and any  
20 subsequent amendments thereto. Regulations shall be  
21 promulgated within 90 days following completion of the  
22 schedule for prescription and adoption of regulations by the  
23 federal financial institutions regulatory agencies and the  
24 resolution trust corporation. Regulations shall be promulgated  
25 and take effect by (i) July 1, 1991, unless an extension is

1 granted by the appraisal subcommittee until December 31, 1991,  
2 based on written findings as specified by Section 1119(a)(2)  
3 of Pub. L. No. 101-73; or (ii) any other date specified by  
4 subsequent act of Congress. All regulations issued by the  
5 board that govern real estate appraiser licensure and  
6 certification shall conform in all respects with the  
7 requirements of Pub. L. No. 101-73 and any subsequent  
8 amendments thereto and are subject to administrative review  
9 under the Administrative Procedure Act and to judicial review  
10 by application to the Circuit Court for Montgomery County.

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

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

1           "§34-27A-23.

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

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

