

SB 279/HB 376

**Statute of Limitations on Civil & Administrative Claims
Against Real Estate Appraisers**

**Protect “Small Business” Appraisal Companies
From Years Old Lawsuits & Administrative Complaints**

Summary: This legislation would establish a statutory limitation on the time in which civil and administrative actions against real estate appraisers can be filed. The bill implements a one year statute of limitations on civil claims against appraisers from the person’s discovery of the act or omission giving rise to the action, but the action may not be brought more than five years after the appraisal was conducted. Any administrative complaint filed with the Tennessee Real Estate Appraiser Commission must be done so within 3 years of when the appraisal was completed.

Why is this legislation needed?

Real estate appraisers are facing legal action in relation to appraisals performed for mortgage transactions originated during the 2005-2008 “real estate bubble.” These loans have defaulted and financial institutions are attempting to recoup some of their losses. Under current law, the “Discovery Rule” results in an almost infinite statute of limitations for claims against appraisers because the time for filing a suit does not commence until the party filing the claim discovers, or should have discovered, the alleged defect. This discovery does not occur until the loan has gone into default and a review of the appraisal has been performed. Because these appraisals were performed many years ago, the appraiser does not have the ability to adequately defend themselves. The maximum 5-year statute of limitations would match the record keeping requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). Many of these allegedly defective appraisals also result in administrative complaints to the Tennessee Real Estate Appraiser Commission for disciplinary action.

Key Points

- USPAP requires that an appraiser retain a work file for each appraisal for a period of five years after the appraisal was prepared or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.
- Many appraisers purge their files of all information related to an appraisal after five years. As a result, it is difficult for an appraiser to defend themselves against a lawsuit that is in relation to an appraisal that was done as long as 15 years ago.

- A statute of limitations that is specific to claims against real estate appraisers will provide the certainty of knowing the time period during which a suit or disciplinary action might be filed. The appraiser will be better able to take appropriate risk management steps, such as obtaining insurance coverage and retaining appropriate records.
- These lawsuits generally allege professional negligence, fraud, breach of contract, etc. Currently, the statute of limitations on a claim against an appraiser is going to vary based on the legal theory that forms the basis for the complaint. However, under the “Discovery Rule” the time for filing a claim does not commence until the alleged defect is discovered, or should have been discovered.
- An adequate appraisal review program within a financial institution should have detected any defects in an appraisal at the time the appraisal was originally performed. Many financial institutions neglected the appraisal review function during the real estate price bubble.
- Some appraisers carry general liability insurance and errors and omissions insurance. However, these policies often have limits of liability that are far below the damages being requested in the lawsuits. Without a statute of limitations, appraisers have to carry their insurance policies long after retirement in case they ever get sued.
- Most appraisers are small businesses and a lawsuit or disciplinary action, or the threat, can be devastating.

Other Examples of Statute of Limitations in Place:

- In Tennessee, there is a statute of limitations on civil actions brought against a land surveyor of a period of 4 years from the date the survey is recorded on the plat.
- In Tennessee, any complaint against a real estate agent must be filed with the real estate commission within two years from the date of commission of the alleged violation or the date the complainant actually became aware of the violation.
- Kentucky has a one-year statute of limitations for civil actions against an appraiser; North Carolina 5-years; South Dakota 3-years
- Ohio has a 4-year statute of limitations.
- Legislation similar to SB 279/HB 376 is currently pending in Arizona, Minnesota, New Mexico, and Oregon.