

1 SB320
2 126814-2
3 By Senator Holley
4 RFD: Governmental Affairs
5 First Read: 05-APR-11

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8 SYNOPSIS: Existing law does not provide for the
9 registration of real estate appraisal management
10 companies.

11 This bill would rename the Alabama Real
12 Estate Appraisers Act the Alabama Real Estate
13 Appraisers and Appraisal Management Company
14 Registration and Regulation Act.

15 This bill would provide for the licensing
16 and regulation of real estate appraisal management
17 companies by the State of Alabama Real Estate
18 Appraisers Board to maintain appraiser independence
19 as mandated by the federal Dodd-Frank Wall Street
20 Reform and Consumer Protection Act of 2010.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 Relating to real estate appraisal management
27 companies; to rename the Alabama Real Estate Appraisers Act

1 the Alabama Real Estate Appraisers and Appraisal Management
2 Company Registration Act; to designate existing Chapter 27A,
3 consisting of Sections 34-27A-1 to 34-27A-29, inclusive, of
4 Title 34, Code of Alabama 1975, as Article 1 and add Article
5 2, consisting of Sections 34-27A-50 to 34-27A-63, inclusive,
6 to Chapter 27A of Title 34, Code of Alabama 1975, and amend
7 Sections 34-27A-1 and 34-27A-2, Code of Alabama 1975, to
8 provide for the registration of real estate appraisal
9 management companies by the State of Alabama Real Estate
10 Appraisers Board.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. An article heading is added before
13 Section 34-27A-1 of the Code of Alabama 1975, to read as
14 follows:

15 ARTICLE 1. REAL ESTATE APPRAISERS.

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

18 "§34-27A-1.

19 "This chapter shall be known and may be cited as the
20 "Alabama Real Estate Appraisers and Appraisal Management
21 Company Registration and Regulation Act."

22 "§34-27A-2.

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

25 "(1) APPRAISAL. The act or process of developing an
26 opinion of value of real property; an opinion of the value of
27 real property; of or pertaining to appraising real property

1 and related functions such as appraisal practice or appraisal
2 services.

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

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

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

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

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

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

1 "~~(4)(2)~~ APPRAISAL SUBCOMMITTEE. The appraisal
2 subcommittee of the Federal Financial Institutions Examination
3 Council.

4 "~~(5)(3)~~ APPRAISAL FOUNDATION. The Appraisal
5 Foundation incorporated as an Illinois not-for-profit
6 corporation on November 30, 1987.

7 "~~(6)(4)~~ APPRAISAL REPORT. Any communication, written
8 or oral, of an appraisal.

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

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

19 "(9) APPRAISER PANEL. A network of licensed or
20 certified appraisers who are independent contractors of an
21 appraisal management company.

22 "(10) APPRAISAL REVIEW. The act of developing and
23 communicating an opinion about the quality of the work of
24 another appraiser that was performed as part of an appraisal
25 assignment, except that an examination of an appraisal for
26 grammatical, typographical, or other similar errors that do

1 not make a substantive valuation change is not an appraisal
2 review.

3 "~~(11)(5)~~ BOARD. The State of Alabama Real Estate
4 Appraisers Board established pursuant to ~~the provisions of~~
5 this chapter.

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

15 "~~(7)~~ COMPLETE APPRAISAL. ~~The act or process of~~
16 ~~developing an opinion of value of real property or an opinion~~
17 ~~of value of real property performed without invoking the~~
18 ~~departure rule.~~

19 "~~(13)(8)~~ EXECUTIVE DIRECTOR. The chief
20 administrative employee of the board.

21 "~~(14)(9)~~ EXPERIENCE POINTS. The allowable credit for
22 appraisal of particular types of properties.

23 "~~(15)(10)~~ FEDERALLY RELATED TRANSACTION. Any real
24 estate-related financial transaction which:

25 "a. A federal financial institutions regulatory
26 agency or the resolution trust corporation engages in,
27 contracts for, or regulates; and

1 "b. Requires the services of an appraiser.

2 "~~(16)(11)~~ FEDERAL FINANCIAL INSTITUTIONS REGULATORY
3 AGENCIES. The Board of Governors of the Federal Reserve
4 System, the Federal Deposit Insurance Corporation, the Office
5 of the Comptroller of the Currency, the Office of Thrift
6 Supervision, and the National Credit Union Administration.

7 "~~(17)(12)~~ 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 "~~(13) LIMITED APPRAISAL. The act or process of~~
12 ~~developing an opinion of value of real property or an opinion~~
13 ~~of value of real property developed under and resulting from~~
14 ~~invoking the departure rule.~~

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

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

22 "~~(20)(14)~~ REAL ESTATE. An identified parcel or tract
23 of land, including improvements, if any.

24 "(21) REAL ESTATE APPRAISAL SERVICES. The practice
25 of accepting an assignment to develop and report an opinion on
26 the value of real property in conformance with the Uniform

1 Standards of Professional Appraisal Practice published by the
2 Appraisal Foundation.

3 "~~(22)~~(15) REAL ESTATE-RELATED FINANCIAL TRANSACTION.
4 Any transaction involving any of the following:

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

8 "b. The refinancing of real property or interests in
9 real property.

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

13 "~~(23)~~(16) REAL PROPERTY. One or more defined
14 interests, benefits, and rights inherent in the ownership of
15 real estate.

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

19 Section 3. Article 2, consisting of Sections
20 34-27A-50 to 34-27A-64, inclusive, is added to Chapter 27A of
21 Title 34, Code of Alabama 1975, to read as follows:

22 ARTICLE 2. REAL ESTATE APPRAISAL MANAGEMENT
23 COMPANIES.

24 §34-27A-50.

25 It is unlawful for any person or entity to engage in
26 or attempt to engage in business as an appraisal management
27 company, perform appraisal management services, or advertise

1 or hold itself out as engaging in or conducting business as an
2 appraisal management company without first being registered by
3 the board pursuant to this article.

4 §34-27A-51.

5 (a) Application for registration under this article
6 shall be made in writing to the board on forms prescribed by
7 the board and shall include all of the following:

8 (1) The name of the applicant.

9 (2) The business, physical, and email address of the
10 applicant.

11 (3) A telephone number and other contact information
12 for the applicant.

13 (4) If the applicant is a not an Alabama domestic
14 corporation, the name and contact information for the
15 registered agent of the applicant for service of process in
16 this state.

17 (5) The name, address, and contact information of a
18 principal contact for the applicant.

19 (6) Certification that the applicant verifies that
20 any person added to an appraiser panel of the applicant holds
21 a license in good standing in this state pursuant to Article
22 1.

23 (7) Certification that the applicant verifies, for
24 each appraisal assignment, that the appraiser has geographic
25 competency to perform the assignment.

26 (8) Certification that the applicant reviews the
27 work of all appraisers that are performing real estate

1 appraisal services for the applicant on a periodic basis to
2 verify that the real estate appraisal services are being
3 conducted in accordance with the Uniform Standards of
4 Professional Appraisal Practice and Article 1.

5 (9) Certification that the applicant maintains
6 records of each service request that it receives and
7 identification of the appraiser that performs the real estate
8 appraisal services for the applicant.

9 (10) An irrevocable uniform consent to service of
10 process.

11 (11) Any other information required by the board and
12 reasonably necessary to complete registration.

13 (b) Upon receipt of a properly completed application
14 for registration, the board shall issue to the applicant a
15 certificate of registration authorizing the applicant to do
16 business as a real estate appraisal management company in this
17 state.

18 (c) Registration granted by the board pursuant to
19 this article shall be valid for one year from the date on
20 which it is issued.

21 §34-27A-52.

22 (a) An appraisal management company applying for
23 registration in this state may not be owned, in whole or in
24 part, directly or indirectly, by any person who has had an
25 appraiser license or certificate refused, denied, cancelled,
26 surrendered in lieu of revocation, or revoked in any state.
27 Additionally, each person who owns more than 10 percent of an

1 appraisal management company shall be of good moral character,
2 as determined by the board, and shall submit to a background
3 investigation by the board.

4 (b) An appraisal management company applying for
5 registration in this state may not employ for the purposes of
6 appraisal review, analysis, or performance evaluation any
7 person who has ever had a registration, license, or
8 certificate to act as an appraiser in this or any other state
9 refused, denied, canceled, or revoked unless a registration,
10 license, or certificate has subsequently been issued or
11 reinstated by the state in which the appraisal registration,
12 license, or certificate had been refused, denied, canceled, or
13 revoked.

14 (c) An employee of an appraisal management company,
15 or any contractor working in any capacity on behalf of an
16 appraisal management company, that has any involvement in the
17 actual performance of appraisal services, or the review and
18 analysis of completed appraisals shall be an appraiser
19 certified in the state in which the activity is being
20 performed. The license classification shall qualify the
21 employee to perform all applicable job functions. The
22 appraisal management company applying for registration in this
23 state shall verify that the individual has geographic
24 competency to perform the services assigned by the company.

25 §34-27A-53.

26 An appraisal management company applying for
27 registration in this state shall designate one principal

1 contact for all communication between the board and the
2 appraisal management company.

3 §34-27A-54.

4 The board may adopt rules not inconsistent with this
5 article which are reasonably necessary to implement,
6 administer, and enforce this article. The requirements for an
7 appraisal management company may be revised as necessary to
8 comply with the Dodd-Frank Wall Street Reform and Consumer
9 Protection Act of 2010, Pub. L. No. 111-203, and regulations
10 issued thereto, or any subsequent amendments or regulations
11 issued thereto. The board may revise any appraisal management
12 company requirements by rule adopted pursuant to the Alabama
13 Administrative Procedure Act.

14 §34-27A-55.

15 (a) The board shall establish by rule fees to be
16 charged to an appraisal management company in an amount
17 sufficient to sustain administration of this article. The
18 board may also establish a late filing fee and other fees
19 deemed necessary by the board for the proper administration of
20 this article.

21 (b) In addition to the application fee and late
22 filing fee, where applicable, an applicant for registration
23 shall post with the board a surety bond in the amount of
24 twenty-five thousand dollars (\$25,000). The bond shall be
25 annually maintained on renewal. The bond shall be in a form
26 prescribed by the board by rule and shall accrue to the state
27 for the benefit of a claimant against the registrant to secure

1 the faithful performance of obligations under this article.
2 The aggregate liability of the surety may not exceed the
3 principal sum of the bond.

4 (c) An appropriate deposit of cash or security may
5 be accepted by the board in lieu of the required bond. The
6 face amount of the bond shall annually be restored upon
7 renewal of registration. Annual renewal of registration shall
8 occur before the expiration date of the registration. Failure
9 to timely renew registration shall result in loss of authority
10 to operate an appraisal management company in this state.
11 Request for reinstatement after expiration shall be
12 accompanied by the annual registration fee and any late filing
13 fee established by board rule.

14 §34-27A-56.

15 (a) The board shall issue a unique registration
16 number to each appraisal management company and shall annually
17 publish a list of registered appraisal management companies
18 and their corresponding registration numbers.

19 (b) Each appraisal management company shall include
20 its registration number on all engagement letters for
21 appraisals in Alabama.

22 §34-27A-57.

23 An appraisal management company shall do all of the
24 following:

25 (1) Annually certify to the board, on a form
26 prescribed by the board, that the appraisal management company
27 verifies that any person added to the appraiser panel of the

1 appraisal management company is licensed or certified in good
2 standing pursuant to Article 1.

3 (2) Annually certify to the board, on a form
4 prescribed by the board, that the appraisal management company
5 periodically reviews the work of all appraisers performing
6 appraisals and appraisal reviews for the appraisal management
7 company to verify that the appraisals are being conducted in
8 accordance with Uniform Standards of Professional Appraisal
9 Practice.

10 (3) Annually certify to the board, on a form
11 prescribed by the board, that the appraisal management company
12 requires appraisers who receive assignments for appraisals and
13 appraisal reviews to verify geographic competency to perform
14 the appraisals or appraisal reviews.

15 (4) Maintain a detailed record of each service
16 request received and each appraiser assigned to perform the
17 appraisal. A copy of the record shall be retained for at least
18 five years after the date the appraisal management company
19 forwards the appraisal to the client.

20 §34-27A-58.

21 (a) Before placing an assignment with an appraiser,
22 an appraisal management company shall verify that the
23 appraiser receiving the assignment is geographically competent
24 for the performance of the appraisal being assigned and that
25 the license or credential held by the appraiser qualifies the
26 appraiser to accept the assignment.

1 (b) An appraisal management company operating in
2 this state, except in cases of a mutually agreed upon payment
3 date, breach of contract, or performance of services that
4 violates Uniform Standards of Professional Appraisal Practice
5 or any published standards of best practices, shall make
6 payment to an appraiser for the completion of an appraisal or
7 valuation assignment within 45 days after the date the
8 appraisal management company, or an assignee, receives a
9 completed appraisal or valuation study.

10 §34-27A-59.

11 An appraisal management company may not remove an
12 appraiser from an appraiser panel without:

13 (1) Providing written notice to the appraiser of the
14 reasons for removal.

15 (2) Providing written notice of the nature of any
16 alleged illegal conduct or violation of Uniform Standards of
17 Professional Appraisal Practice or state licensing standards
18 if such is the reason for removal.

19 (3) Providing an opportunity for the appraiser to
20 respond to the written notice.

21 §34-27A-60.

22 (a) It is unlawful for any employee, director,
23 officer, or agent of an appraisal management company to
24 influence or attempt to influence the development, reporting,
25 or review of an appraisal through coercion, extortion,
26 collusion, compensation, instruction, inducement,

1 intimidation, bribery, or in any other manner including, but
2 not limited to, any of the following:

3 (1) Withholding or threatening to withhold timely
4 payment for an appraisal.

5 (2) Withholding or threatening to withhold payment
6 for an appraisal if the loan transaction is not completed.

7 (3) Withholding or threatening to withhold future
8 business of, or demoting or terminating the services of, or
9 threatening to demote or terminate the services of an
10 appraiser.

11 (4) Promising future business, promotions, or
12 increased compensation to an appraiser.

13 (5) Conditioning the request for an appraisal, or
14 the payment of an appraisal fee or salary or bonus, on the
15 opinion, conclusion, or valuation to be reached by an
16 appraiser, or on a preliminary estimate or opinion requested
17 from an appraiser.

18 (6) Requesting that an appraiser provide an
19 estimated, predetermined, or desired valuation in an appraisal
20 report, or provide estimated values or comparable sales at any
21 time prior to the completion of an appraisal.

22 (7) Providing to an appraiser an anticipated,
23 estimated, encouraged, or desired value for a subject
24 property, or a proposed or target amount to be loaned to the
25 borrower, except that a copy of the sales contract for
26 purchase transactions may be provided.

1 (8) Providing to an appraiser, or any entity or
2 person related to the appraiser, stock or other financial or
3 nonfinancial benefits.

4 (9) Obtaining, using, or paying for a second or
5 subsequent appraisal, or ordering an automated valuation model
6 in connection with a mortgage financing transaction, unless
7 there is a reasonable basis to believe that the initial
8 appraisal was flawed or tainted and such basis is clearly and
9 appropriately noted in the loan file, or unless such appraisal
10 or automated valuation model is done pursuant to a bona fide
11 pre-funding or post-funding appraisal review or quality
12 control process.

13 (10) Any other act or practice that impairs or
14 attempts to impair the independence, objectivity, or
15 impartiality of an appraiser.

16 (b) Nothing in subsection (a) shall be construed as
17 prohibiting an appraisal management company from requesting
18 that an appraiser do any of the following:

19 (1) Provide additional information regarding the
20 basis for a valuation.

21 (2) Correct objective factual errors in an appraisal
22 report.

23 (3) Consider additional verifiable information not
24 previously known or considered by the appraiser in completing
25 an assignment.

1 (c) An appraisal management company may not alter,
2 modify, or otherwise change an appraisal report submitted by
3 an appraiser.

4 (d) Any registrant having a good faith belief that
5 a real estate appraiser licensed in this state has violated
6 applicable law or the Uniform Standards of Professional
7 Appraisal Practice, or has engaged in unethical conduct, may
8 file a complaint with the board.

9 §34-27A-61.

10 The board may censure, conditionally or
11 unconditionally suspend registration, revoke registration,
12 levy fines, or impose civil penalties not exceeding
13 twenty-five thousand dollars (\$25,000) against any appraisal
14 management company that the board determines is attempting to
15 or has performed any of the following:

16 (1) An act in violation of this article.

17 (2) A violation of any rule adopted by the board in
18 the interest of the public and consistent with this article.

19 (3) The procurement of registration through fraud,
20 misrepresentation, or deceit.

21 §34-27A-62.

22 (a) The board shall conduct adjudicatory proceedings
23 for any violation of this article in accordance with the
24 Administrative Procedure Act. Adjudicatory proceedings shall
25 include, but not be limited to, all of the following due
26 process protections:

1 (1) Before censuring, suspending, or revoking
2 registration under this article, the board shall notify the
3 registrant in writing of any charges at least 20 days before
4 the date set for hearing and shall afford the registrant an
5 opportunity to be heard in person or by counsel.

6 (2) The written notice shall be served by certified
7 mail, return receipt requested, to the principal contact at
8 the address of the registrant on file with the board.

9 (3) The hearing on the charges shall be at a time
10 and place prescribed by the board, in accordance with the
11 Administrative Procedure Act.

12 (4) The hearing may be conducted before a hearing
13 officer designated by the board who shall make findings of
14 fact, conclusions of law, and enter an adjudicatory
15 disposition.

16 (5) The board shall deliver or mail any findings of
17 fact, conclusions of law, and adjudicatory dispositions to the
18 registrant.

19 (b) Nothing in this section shall prevent the
20 resolution of a pending matter through an alternative dispute
21 resolution process or informal settlement process adopted by
22 the board.

23 §34-27A-63.

24 This article does not apply to:

25 (1) A financial institution, an Alabama chartered
26 bank, or a department, division, or unit within a financial
27 institution or an Alabama chartered bank that is regulated by

1 a federal financial institution regulatory agency. An
2 appraisal management company that is a wholly owned subsidiary
3 of a financial institution may not be considered a department,
4 division, or unit within a financial institution.

5 (2) A person who enters into an agreement with an
6 appraiser for the performance of an appraisal and, upon the
7 completion of the appraisal, the report of the appraiser
8 performing the appraisal is signed by both the appraiser who
9 completed the appraisal and the person who requested the
10 completion of the appraisal.

11 Section 4. This act shall become effective on
12 October 1, 2011, following its passage and approval by the
13 Governor, or its otherwise becoming law.