

HOUSE BILL NO. 29

INTRODUCED BY T. JACOBSON

BY REQUEST OF THE BOARD OF REAL ESTATE APPRAISERS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LICENSING AND REGULATION OF REAL ESTATE APPRAISERS; PROVIDING FOR THE REGULATION OF REAL ESTATE APPRAISER MENTORS; PROVIDING FINGERPRINT AND BACKGROUND CHECKS FOR ALL NEW APPLICANTS; REQUIRING CERTIFIED REAL ESTATE APPRAISERS TO MEET EXPERIENCE REQUIREMENTS SET BY THE BOARD; REQUIRING APPRAISAL MANAGEMENT COMPANIES TO ALLOW TRAINEES TO PROVIDE APPRAISAL ASSISTANCE TO APPRAISERS ON THE COMPANY'S APPRAISAL PANEL; REQUIRING APPRAISAL MANAGEMENT COMPANIES TO ALLOW AN APPRAISER ON THE COMPANY'S APPRAISAL PANEL TO TRANSFER AN APPRAISAL ASSIGNMENT TO A LICENSED EMPLOYEE OF THE APPRAISER; AND AMENDING SECTIONS 37-54-102, 37-54-105, 37-54-202, 37-54-302, 37-54-508, AND 37-54-518, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-54-102, MCA, is amended to read:

"37-54-102. Definitions. Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of Professional Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Appraisal" means the practice of developing an opinion of the value of real property in conformance with the Uniform Standards of Professional Appraisal Practice as developed by the appraisal foundation.

(2) "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and



1 (c) develop or assist in the development of appropriate examinations for qualified appraisers.

2 (3) "Appraisal management company" means, in connection with valuation of properties collateralizing
3 mortgage loans or mortgages incorporated into a securitization, an external third party, authorized either by a
4 creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter or
5 other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified
6 or licensed appraisers in this state or 25 or more nationally within a given year.

7 (4) "Appraisal management services" means the direct or indirect performance of any of the following
8 functions on behalf of a lender, financial institution, client, or other person in conjunction with a consumer credit
9 transaction that is secured by a consumer's principal dwelling:

10 (a) administering an appraiser panel;

11 (b) recruiting, retaining, or selecting appraisers to be part of an appraisal panel;

12 (c) qualifying and verifying licensing or certification, negotiating fees, and verifying service level
13 expectations with appraisers who are part of an appraiser panel;

14 (d) contracting with appraisers from the appraiser panel to perform appraisal assignments;

15 (e) receiving an order for an appraisal assignment from one person and delivering the order for the
16 appraisal assignment to an appraiser who is part of an appraiser panel for completion;

17 (f) managing the process of having an appraisal assignment performed, including performing
18 administrative duties such as receiving appraisal assignment orders and reports, submitting completed appraisal
19 reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and
20 reimbursing appraisers for services performed;

21 (g) tracking and determining the status of orders for appraisal assignments;

22 (h) conducting quality control examinations of a completed appraisal assignment prior to the delivery of
23 the appraisal report to a client who ordered the appraisal assignment; and

24 (i) providing a completed appraisal report performed by an appraiser to one or more clients.

25 (5) "Appraisal review" means the act or process of developing and communicating an opinion about the
26 quality of another appraiser's work that was performed as part of an appraisal assignment. The term does not
27 include a quality control examination.

28 (6) "Appraiser" means an individual who holds a license or certification to complete an appraisal
29 assignment in the state where the real property that is the subject of the appraisal assignment is located.

30 (7) "Appraiser panel" means a network of licensed or certified appraisers who are independent

- 1 contractors with respect to an appraisal management company and who have:
- 2 (a) responded to an invitation, request, or solicitation from an appraisal management company to:
- 3 (i) perform an appraisal assignment for a client that has ordered an appraisal assignment through the
- 4 appraisal management company; or
- 5 (ii) perform appraisal assignments for the appraisal management company directly on a periodic basis
- 6 as requested and assigned by the appraisal management company; and
- 7 (b) been selected and approved by an appraisal management company to perform appraisal
- 8 assignments for any client of the company that has ordered an appraisal assignment through the company or to
- 9 perform appraisal assignments for the appraisal management company directly on a periodic basis as assigned
- 10 by the appraisal management company.
- 11 (8) "Board" means the board of real estate appraisers provided for in 2-15-1758.
- 12 (9) "Certified real estate appraiser" means a person who develops and communicates real estate
- 13 appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.
- 14 (10) "Controlling person" means:
- 15 (a) an owner, officer, or director of a corporation, partnership, or other business entity that offers
- 16 appraisal management services in this state;
- 17 (b) an individual employed, appointed, or authorized by an appraisal management company to enter into
- 18 a contractual relationship with other persons for the performance of appraisal management services and to enter
- 19 into agreements with appraisers for the performance of appraisal assignments; or
- 20 (c) an individual who possesses directly or indirectly the power to direct or cause the direction of the
- 21 management or policies of an appraisal management company.
- 22 (11) "Department" means the department of labor and industry provided for in 2-15-1701.
- 23 (12) "Licensed real estate appraisal trainee" means a person authorized only to assist a certified real
- 24 estate appraiser in the performance of an appraisal assignment.
- 25 (13) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser
- 26 license issued under 37-54-201.
- 27 (14) "Person" means an individual, firm, partnership, association, corporation, or other business entity.
- 28 (15) "Quality control examination" means an examination of an appraisal report for completeness,
- 29 including grammatical, mathematical, and typographical errors.
- 30 (16) "Real estate appraiser mentor" means a certified real estate appraiser who meets the qualifications

1 set by the board and is approved by the board to supervise licensed real estate appraisal trainees."

2

3 **Section 2.** Section 37-54-105, MCA, is amended to read:

4 **"37-54-105. Powers and duties of board.** The board shall:

5 (1) adopt rules to implement and administer the provisions of this chapter;

6 (2) establish and collect fees commensurate with the costs of processing an application for licensure and
7 certification and renewal of a license or certificate;

8 (3) establish minimum requirements for education, experience, and examination for licensure and
9 certification as set out by the appraisal qualification board of the appraisal foundation;

10 (4) prescribe the examinations for licensure or certification and determine the acceptable level of
11 performance on examinations;

12 (5) receive and review applications for licensure and certification and issue licenses and certificates;

13 (6) review periodically the standards for development and communication of appraisals and adopt rules
14 explaining and interpreting the standards;

15 (7) retain all applications and other records submitted to it;

16 (8) adopt by rule standards of professional appraisal practice in this state;

17 (9) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated
18 the standards established for licensed and certified real estate appraisers or registered appraisal management
19 companies; and

20 (10) regulate and establish minimum requirements and qualifications for real estate appraiser mentors;

21 and

22 ~~(10)~~(11) perform other duties necessary to implement this chapter."

23

24 **Section 3.** Section 37-54-202, MCA, is amended to read:

25 **"37-54-202. Qualifications for licensure.** (1) To qualify for a real estate appraiser license, an applicant:

26 (a) must be of good moral character;

27 (b) shall successfully complete a course of study prescribed by the board;

28 (c) must have the type and amount of experience in real estate appraisal prescribed by the board;

29 (d) shall successfully complete an examination prescribed by the board; and

30 (e) shall comply with any other requirements related to the practice of real estate appraisal as prescribed

1 by the board by rule.

2 (2) To qualify for licensure as a real estate appraisal trainee, an applicant:

3 (a) must be of good moral character;

4 (b) shall successfully complete a course of study prescribed by the board;

5 (c) shall provide a written acknowledgment from the ~~certified real estate appraiser~~ real estate appraiser
6 mentor that the applicant will be assisting; and

7 (d) is not required to take an examination.

8 (3) As a prerequisite to the issuance of a real estate appraiser license or real estate appraisal trainee
9 license, the board shall require the applicant to submit fingerprints for the purpose of fingerprint and background
10 checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

11 (4) If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the
12 opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust,
13 and if the board determines that the applicant is not, the license may be denied."

14

15 **Section 4.** Section 37-54-302, MCA, is amended to read:

16 **"37-54-302. Certification process -- fees.** (1) An application for certification, original certification, or
17 renewal of certification must be made in writing to the board on forms approved by the board.

18 (2) A fee established by the board by rule must accompany the application.

19 (3) When an applicant files an application for original certification or renewal of certification, the applicant
20 shall sign a pledge to comply with the standards of professional appraisal practice established for certified real
21 estate appraisers under 37-54-403 and affirm that the applicant understands the types of misconduct for which
22 disciplinary action may be initiated under 37-1-308.

23 (4) To be eligible for original certification as a real estate appraiser, an applicant shall:

24 (a) specify the class or classes of certification for which the applicant is applying and provide evidence
25 satisfactory to the board that the applicant has the education required for the class or classes of certification for
26 which application is made; and

27 (b) pass an examination prescribed by the board; and

28 (c) have the type and amount of experience in real estate appraisal prescribed by the board.

29 (5) A certificate issued under 37-54-305 must bear the signatures or facsimile signatures of the members
30 of the board and a certificate number assigned by the board.

1 (6) As a prerequisite to certification as a real estate appraiser, the board shall require the applicant to
 2 submit fingerprints for the purpose of fingerprint and background checks by the Montana department of justice
 3 and the federal bureau of investigation as provided in 37-1-307.

4 (7) If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the
 5 opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust,
 6 and if the board determines the applicant is not, the license may be denied."

7

8 **Section 5.** Section 37-54-508, MCA, is amended to read:

9 **"37-54-508. Limitations.** (1) An appraisal management company registered in this state pursuant to
 10 this chapter may not enter into contracts or agreements with an individual for the performance of appraisals
 11 unless the company obtains verification that the individual is licensed or certified to perform appraisals pursuant
 12 to this chapter. Verification by reference to information published on the website of the appraisal subcommittee
 13 of the federal financial institutions examination council must be considered acceptable for purposes of compliance
 14 with this section.

15 (2) An UNLESS PROHIBITED BY THE POLICIES OF A CLIENT OR AN END USER OF AN APPRAISAL REPORT, AN
 16 appraisal management company may not prevent or otherwise restrict a licensed real estate appraisal trainee
 17 from performing work in accordance with the Uniform Standards of Professional Appraisal Practice, pursuant to
 18 the requirements of the board, and under the supervision of a real estate appraiser mentor who is on the
 19 appraisal management company's appraisal panel.

20 (3) An UNLESS PROHIBITED BY THE POLICIES OF A CLIENT OR AN END USER OF AN APPRAISAL REPORT OR BY
 21 OTHER STATE OR FEDERAL LAW, AN appraisal management company may not prevent or otherwise restrict a
 22 licensed or certified real estate appraiser from transferring an appraisal assignment to another licensed or
 23 certified real estate appraiser who is on the appraisal management company's appraisal panel if:

24 (a) the transferee is an employee of the transferor; and

25 (b) the transferee can complete the appraisal assignment in accordance with the Uniform Standards of
 26 Professional Appraisal Practice and pursuant to the requirements of the board."

27

28 **Section 6.** Section 37-54-518, MCA, is amended to read:

29 **"37-54-518. Advertising.** (1) An appraisal management company registered in this state shall disclose
 30 its registration number on its engagement letter for each appraisal assignment.

1 (2) ~~An appraiser who completes work for an unregistered or suspended appraisal management company~~
2 ~~is subject to disciplinary action for unprofessional conduct.~~ An appraiser shall list the appraisal management
3 company's approved registration number in the body of the appraisal report."
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