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COMMITTEE REPORT

May 17, 2016

**H. 5023**

Introduced by Reps. Sottile and Sandifer

S. Printed 5/17/16--S.

Read the first time April 21, 2016.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 5023) to amend Section 40-60-20, as amended, Code of Laws of South Carolina, 1976, relating to definitions in the South Carolina Real Estate Appraiser License and Certification Act, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

THOMAS C. ALEXANDER for Committee.

**A** **BILL**

TO AMEND SECTION 40‑60‑20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN THE SOUTH CAROLINA REAL ESTATE APPRAISER LICENSE AND CERTIFICATION ACT, SO AS TO DELETE AND REVISE CERTAIN DEFINITIONS; TO AMEND SECTION 40‑60‑30, RELATING TO ACTIVITIES REQUIRING LICENSURE AS A REAL ESTATE APPRAISER, SO AS TO REVISE EXCEPTIONS; TO AMEND SECTION 40‑60‑34, AS AMENDED, RELATING TO MISCELLANEOUS REQUIREMENTS FOR LICENSES, CERTIFICATIONS, AND PERMITS ISSUED BY THE SOUTH CAROLINA REAL ESTATE APPRAISERS BOARD, SO AS TO REVISE REQUIREMENTS CONCERNING EXPIRED AND REVOKED LICENSES, CERTIFICATIONS, AND PERMITS; TO AMEND SECTION 40‑60‑50, RELATING TO FEES, SO AS TO DELETE THE REQUIREMENT THAT CERTAIN FEES BE PAID BY CERTIFIED FUNDS; TO AMEND SECTION 40‑60‑80, AS AMENDED, RELATING TO INVESTIGATIONS OF COMPLAINTS AND VIOLATIONS, SO AS TO DELETE THE SIX‑MONTH LIMIT ON STAYS AND SUPERSEDEAS OF CERTAIN BOARD ORDERS PENDING APPEAL, AND TO PROVIDE PARTIES AGGRIEVED BY FINAL DECISIONS OF THE BOARD MAY APPEAL PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT; AND TO AMEND SECTION 40‑60‑120, RELATING TO THE EFFECTIVE TIME OF CERTAIN ORDERS OF THE BOARD, SO AS TO DELETE A PROVISION STATING PETITIONS FOR REVIEW DO NOT OPERATE AS SUPERSEDEAS OR STAYS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 40‑60‑10(B)(4) of the 1976 Code is amended to read:

“(4) Four members must be licensed or certified appraisers, actively engaged in real estate appraisal for at least three years, at least two of whom must be certified general appraisers and at least one of whom must be a certified residential appraiser. In appointing real estate appraisers to the board, the Governor, while not automatically excluding other appraisers, shall give preference to real estate appraisers whose primary source of income is derived from appraising real estate and not real estate brokerage.”

SECTION 2. Section 40‑60‑20 of the 1976 Code, as last amended by Act 180 of 2014, is further amended to read:

“Section 40‑60‑20. As used in this chapter unless the context requires otherwise:

(1) ‘Analysis’ means a study of real estate or real property other than one estimating value.

(2) ‘Appraisal’, as a noun, means the act or process of developing an opinion of value; as an adjective, ‘appraisal’ means of or pertaining to appraising and related functions including, but not limited to, appraisal practice and appraisal services.

(3) ‘Appraisal assignment’ or ‘valuation assignment’ means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion that estimates the value of real estate.

(4) ‘Appraisal Foundation’ means the Appraisal Foundation established on November 30, 1987, as a not‑for‑profit corporation under the laws of Illinois, containing the Appraisal Standards Board (ASB), Appraiser Qualifications Board (AQB), a board of trustees, and other advisory bodies.

(5) ‘Appraisal report’ means any communication, written or oral, of an appraisal. The testimony of an individual dealing with the analyses, conclusions, or opinions concerning identified real estate or real property ~~is~~ may be considered to be an oral appraisal report.

(6) ‘Appraisal subcommittee’ means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. Section 3301, et seq.), as amended, as well as the Secretary of the Department of Housing and Urban Development, or his designee, under the Department of Housing and Urban Development Reform Act of 1989 (12 U.S.C. Section 1708(e)).

(7) ‘Appraiser’ means a person who holds a permit, license, or certification issued by the board that allows the person to appraise real property.

(8) ‘Apprentice appraiser’ means an individual authorized by permit to assist a state certified appraiser in the performance of an appraisal if the apprentice is actively and personally supervised by the certified appraiser.

(9) ‘Board’ means the South Carolina Real Estate Appraisers Board established pursuant to the provisions of this chapter.

(10) ‘Complex residential property appraisal’ means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

(11) ~~‘Evaluation’ means an analysis, opinion, or conclusion that relates to the nature, quality, or utility of identified real estate and does not estimate value.~~

~~(12)~~ ‘Federally related transaction’ means any real estate‑related financial transaction which a federal financial institution regulatory agency engages in, contracts for, or regulates.

(~~13~~12) ‘Market analysis’ means a study of real estate market conditions for a specific type of property.

(~~14~~13) ‘Mass appraisal’ means the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing.

(~~15~~14) ‘Mass appraiser’ means any appraiser who is employed in the office of a tax assessor to appraise real property for ad valorem tax purposes and who is licensed or certified as a mass appraiser.

(~~16~~15) ‘Noncomplex residential property appraisal’ means one in which the property to be appraised, the form of ownership, and market conditions are those which are typically found in the subject market.

(~~17~~16) ‘Person’ means an individual, corporation, partnership, or association, foreign and domestic.

(~~18~~17) ‘Real estate’ means an identified parcel or tract of land including improvements, if any.

(~~19~~18) ‘Real estate appraisal activity’ means the act or process of ~~valuing real estate or real property~~ performing an appraisal and preparing an ~~oral or written~~ appraisal report.

(~~20~~19) ‘Real property’ means the interests, benefits, and rights inherent in the ownership of real estate.

(~~21~~20) ‘Residential appraisal’ is an appraisal of a vacant or improved parcel of land that is devoted to or available for use as a one to four family abode including, but not limited to, a single family home, apartment, or rooming house.

~~(22)~~ ~~‘Specialized services’ means services other than independent appraisal assignments which are performed by an appraiser. Specialized services may include marketing studies, financing studies, and feasibility studies, valuations, analyses, opinions, and conclusions given in connection with activities including, but not limited to, real estate brokerage, mortgage banking, real estate counseling, and real estate tax counseling.~~

(~~23~~21) ‘Standards of professional appraisal practice’ or ‘USPAP’ means the National Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of the Appraisal Foundation and adopted by the board.

(~~24~~22) ‘State‑certified general appraiser’ means an appraiser authorized to engage in the appraisal of all types of real property.

(~~25~~23) ‘State‑certified general mass appraiser’ means an appraiser authorized to engage in all types of real estate mass appraisal activity for ad valorem purposes.

(~~26~~24) ‘State‑certified residential appraiser’ means an appraiser authorized to engage in the appraisal of one to four residential units without regard to transaction value or complexity and nonresidential appraisals with a transaction value less than two hundred fifty thousand dollars.

(~~27~~25) ‘State‑certified residential mass appraiser’ means an appraiser authorized to engage in the mass appraisal of one to four residential units without regard to value or complexity and nonresidential appraisals with a transaction value less than two hundred fifty thousand dollars.

(~~28~~26) ‘State‑licensed appraiser’ means an appraiser authorized to engage in the appraisal of noncomplex one to four residential units having a transaction value less than one million dollars and complex one to four residential units and nonresidential appraisals having a transaction value less than two hundred fifty thousand dollars.

(~~29~~27) ‘State‑licensed mass appraiser’ means an appraiser authorized to engage in the mass appraisal of noncomplex one to four residential units having a transaction value less than one million dollars and complex one to four residential units and nonresidential appraisals having a transaction value less than two hundred fifty thousand dollars.

(~~30~~28) ‘Timberland’ means forestland that is producing or is capable of producing timber as a crop.

(~~31~~29) ‘Valuation’ means an estimate of the value of real estate or real property.”

SECTION 3. Section 40‑60‑30 of the 1976 Code is amended to read:

“Section 40‑60‑30. It is unlawful for an individual to assume or use a title, designation, or abbreviation likely to create the impression that the person is a real estate appraiser or to engage in real estate appraisal activity or advertise as an appraiser without a valid license issued by the department. However, nothing in this chapter may be construed to apply to:

(1) A real estate licensee licensed in accordance with Chapter 57 ~~of~~, Title 40 who performs a market analysis or gives an opinion as to the price of real estate on the condition that the market analysis or opinion is not referred to as an appraisal. Before performing a market analysis, the real estate licensee must disclose to the requesting party: ‘This market analysis may not be used for the purposes of obtaining financing in a ~~federally‑related~~ federally related transaction’~~;~~.

(2) A forester registered pursuant to Chapter 27 ~~of~~, Title 48 who appraises or ~~evaluates~~ values standing or growing timber or timberland located in this State and issues an appraisal or ~~evaluation~~ valuation on the timber or timberland~~; however~~, as permitted by Chapter 27, Title 48 and Regulation 53‑13. When an appraisal or ~~evaluation~~ valuation is to be used in a ~~federally‑related~~ federally related transaction, the registered forester must be licensed or certified under this chapter if required by federal law or regulation.

(3) An employee of a lender in the performance of appraisals or valuations with respect to which federal law or regulations does not require a licensed or certified appraiser. This exception does not apply to third party contractors.”

SECTION 4. Section 40‑60‑34 of the 1976 Code, as last amended by Act 180 of 2014, is further amended to read:

“Section 40‑60‑34. (A) The board shall prescribe the form of a permit, license, and certificate containing an identification number that the appraiser shall use when signing appraisal reports. When an appraiser advertises or executes contracts or other instruments, the appraiser’s name, appraiser classification, and number assigned by the board must be printed or typed adjacent to the appraiser’s signature.

(B) The apprentice appraiser performing fee appraisal work or seeking to establish experience for a state‑licensed or state‑certified designation shall:

(1) perform appraisal assignments only under the direct supervision of a state‑certified appraiser;

(2) maintain, jointly with the supervising appraiser, a log containing the following for each assignment:

(a) type of property;

(b) date of report;

(c) address of appraised property;

(d) description of work performed by the trainee and scope of review and supervision of the supervising appraiser;

(e) number of actual work hours by the trainee on the assignment; and

(f) signature and state certification number of the supervising appraiser with a separate appraisal log maintained for each supervising appraiser, if applicable;

(3) sign or be given credit in all appraisal reports for which the apprentice acts as an appraiser;

(4) maintain or have access to complete copies of all appraisals.

(C) The apprentice appraiser performing mass appraisal work seeking to establish credit for a licensed or certified mass appraiser designation shall:

(1) perform appraisal assignments only under the direct supervision of a state‑certified residential or state‑certified general real estate appraiser, mass or otherwise;

(2) maintain a log on a form provided by the board.

(D) The appraiser supervising an apprentice fee appraiser shall:

(1) personally review appraisal reports prepared by the apprentice and sign and certify the report as being independently and impartially prepared in compliance with the National USPAP and applicable statutory requirements;

(2) provide a copy or access to final appraisal documents to any participating apprentice;

(3) directly supervise no more than three apprentice appraisers at any one given time;

(4) be certified for a minimum of three years and not subject to any disciplinary action within the immediately preceding three years; and

(5) attend a trainee/supervisor orientation conducted in compliance with AQB requirements.

(E) The appraiser supervising an apprentice appraiser performing mass appraisal work shall personally review and approve all work performed by the apprentice to ensure that the work is prepared in compliance with the National USPAP and applicable statutory requirements.

(F) The board may issue to an appraiser who is licensed or certified in another state a temporary permit, which is only effective for one specific appraisal assignment. If the appraisal is not completed within six months from the date of the permit, the board may grant an extension upon request from the appraiser. The appraiser shall place the following notation on all statements of qualification, contracts, or other instruments: “Practicing in the State of South Carolina under Temporary Permit No.”.

(G) Licenses, certifications, and apprentice permits expire biennially on June thirtieth. As a condition of renewal, an appraiser shall provide evidence satisfactory to the board of having met the continuing education requirements established by this chapter. An apprentice appraiser may maintain the permit for five years provided continuing education requirements are satisfied.

(H) Permits, licenses, or certifications not renewed by date of expiration are no longer valid but may be reinstated within twelve months after expiration upon proper application, payment of renewal fee, a late penalty, as established in the fee schedule, and proof of having met continuing education requirements as prescribed.

(I) A permit, license, or certification that has expired and has not been reinstated by the last day of the twelfth month following expiration must be canceled. ~~All qualifications and conditions that apply to individuals applying for a permit, license, or certification who have not been previously licensed must be met.~~ Such a cancelled permit, license, or certification may be considered for reinstatement as provided by the board in regulation.

(J) A license or certification may be placed on inactive status by informing the board in writing and must be renewed in the same manner as provided for active renewal.

(K) A fee appraiser must retain for five years the original or exact copy of each appraisal report prepared or signed by the appraiser and all supporting data assembled and formulated by the appraiser in preparing each appraisal report. The five‑year period for retention of records is applicable to each engagement of the services of the appraiser and commences on the date of delivery of each appraisal report to the client. The appraiser must retain the work file for a period of at least two years after final disposition of appeals of all judicial proceedings in which the appraiser provided testimony related to the assignment, whichever period expires last.

(L) An appraiser who has had a permit, license, or certification revoked by the board ~~must~~ may not be issued a new permit, license, or certification within two years after the date of the revocation or at any time thereafter except upon an affirmative vote of a majority of the board. ~~A person seeking a permit, license, or certification after revocation shall meet all qualifications and conditions that apply to individuals applying for a permit, license, or certification who have not been previously permitted, licensed, or certified.~~”

SECTION 5. Section 40‑60‑36(C) of the 1976 Code, as last amended by Act 180 of 2014, is further amended to read:

“(C) The board may deny, publicly or privately, reprimand, fine, suspend, or revoke the approval of an education provider or instructor if the board finds that the education provider or instructor has violated or failed to satisfy the provisions of this chapter or the regulations and standards promulgated pursuant to this chapter.”

SECTION 6. Section 40‑60‑50(D) of the 1976 Code is amended to read:

“(D) Application and license fees are payable to the department in advance and must accompany an examination application or a license application. ~~Initial fees for exam, permit, license, or certificate must be paid by certified funds.~~ Fees are nonrefundable.”

SECTION 7. Section 40‑60‑80 of the 1976 Code, as last amended by Act 180 of 2014, is further amended to read:

“Section 40‑60‑80. (A) The department shall investigate complaints and violations of this chapter as provided in this chapter and Section 40‑1‑80.

(B) If a complaint filed with the board involves an appraisal report that varies from a sales, lease, or exchange price, the board may decline to conduct an investigation.

(C) The board is prohibited from conducting an investigation based solely on a dispute over the value of property for ad valorem tax purposes.

(D) ~~No stay or supersedeas may be granted for more than six months pending appeal from a decision by the board to revoke, suspend, or otherwise restrict a permit, license, or certification.~~

~~(E)~~ A person aggrieved by a final action of the board may seek review of the decision in accordance with Section 40‑1‑160 and the South Carolina Administrative Procedures Act.”

SECTION 8. Section 40‑60‑120(B) of the 1976 Code is amended to read:

“(B) A decision by the board to publicly or privately reprimand, fine, revoke, suspend, or otherwise restrict a license or to limit or otherwise discipline a licensee becomes effective upon delivery of a copy of the decision to the licensee ~~and a petition for review does not operate as a supersedeas or stay~~.”

SECTION 9. This act takes effect upon approval by the Governor.

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