

CHAPTER 2017-30

Committee Substitute for Committee Substitute for House Bill No. 927

An act relating to real estate appraisers; amending s. 475.451, F.S.; revising authorized methods of instruction and certain requirements for specified real estate practice courses; amending s. 475.611, F.S.; defining and redefining terms; amending s. 475.612, F.S.; authorizing appraisers to perform evaluations; requiring appraisers to comply with specified standards for evaluations; repealing s. 475.6175, F.S., relating to registered trainee appraisers; amending s. 475.621, F.S.; requiring the Department of Business and Professional Regulation to transmit a specified roster to an appraisal subcommittee; requiring the department and the Florida Real Estate Appraisal Board to collect an annual fee from certain appraisal management companies and transmit such fee to the appraisal subcommittee; requiring the board to adopt certain rules; amending s. 475.6235, F.S.; deleting an exception to a provision that deems a specified person unqualified for registration as an appraisal management company; revising applicability; amending s. 475.6245, F.S.; authorizing the board to deny an appraisal management company's registration renewal application; prohibiting an appraisal management company from requiring or attempting to require a client to sign a certain agreement; reenacting s. 475.626(1)(b), F.S., relating to violations and penalties, to incorporate the amendment made by the act to s. 475.6245, F.S., in a reference thereto; amending s. 475.628, F.S.; authorizing the board to adopt rules establishing certain standards of practice; reenacting s. 475.629, F.S., relating to retention of records, to incorporate the amendment made by the act to s. 475.611, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 475.451, Florida Statutes, is amended to read:

475.451 Schools teaching real estate practice.—

(6) Any course prescribed by the commission as a condition precedent to ~~a person~~ any person's becoming initially licensed as a sales associate or broker may be taught by a ~~in any~~ real estate school in a classroom or via distance learning pursuant to s. 475.17(2) ~~through the use of a video tape of instruction~~ by a currently permitted instructor from any such school ~~or may be taught by distance learning pursuant to s. 475.17(2).~~ The commission may require that ~~any such video tape course have a single session of live instruction by a currently permitted instructor from any such school;~~ however, this requirement shall not exceed 3 classroom hours. All other prescribed courses, except the continuing education course required by s. 475.182, shall be taught by a currently permitted school instructor

personally in attendance at such course or by distance learning pursuant to s. 475.17. The continuing education course required by s. 475.182 may be taught by distance learning pursuant to s. 475.17 or by an equivalent correspondence course; however, any such correspondence course shall be required to have a final examination, prepared and administered by the school or course provider issuing the correspondence course. The continuing education requirements provided in this chapter do not apply to an attorney who is otherwise qualified under this chapter and who is a member in good standing of The Florida Bar.

Section 2. Subsections (1) and (2) of section 475.611, Florida Statutes, are amended to read:

475.611 Definitions.—

(1) As used in this part, the term:

(a) “Appraisal” or “appraisal services” means the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:

1. “Appraisal assignment” denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.

2. “Analysis assignment” denotes appraisal services that relate to the employer’s or client’s individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.

3. “Appraisal review assignment” denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser’s appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser’s opinion of value.

(b) “Appraisal Foundation” or “foundation” means The Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) “Appraisal management company” means a person who, within a 12-month period, oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state, or 25 or more state-certified or state-licensed appraisers in two or more states, and who performs appraisal management services regardless of the use of the term “appraisal

management company,” “appraiser cooperative,” “appraiser portal,” “mortgage technology company,” or other term.

(d) “Appraisal management services” means the coordination or management of appraisal services for compensation by:

1. Employing, contracting with, or otherwise retaining one or more licensed or certified appraisers to perform appraisal services for a client; or
2. Acting as a broker or intermediary between a client and one or more licensed or certified appraisers to facilitate the client’s employing, contracting with, or otherwise retaining the appraisers.

(e) “Appraisal report” means any communication, written or oral, of an appraisal, appraisal review, appraisal consulting service, analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in, or aspect of, identified real property, and includes any report communicating an appraisal analysis, opinion, or conclusion of value, regardless of title. However, in order to be recognized in a federally related transaction, an appraisal report must be written.

(f) “Appraisal review” means the act or process of developing and communicating an opinion about the quality of another appraiser’s appraisal, appraisal report, or work.

(g) “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. ss. 3301 et seq.), as amended.

(h) “Appraiser” means any person who is a registered trainee real estate appraiser, a licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

(i) “Appraiser panel” means a network, list, or roster of licensed or certified appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company. An appraiser is an independent contractor for purposes of this paragraph if the appraiser is treated as an independent contractor by the appraisal management company for federal income tax purposes. The term “appraiser panel” includes:

1. Appraisers accepted by the appraisal management company for consideration for future appraisal assignments in covered transactions or secondary mortgage market participants in connection with covered transactions.

2. Appraisers employed by, contracted with, or otherwise retained by the appraisal management company to perform one or more appraisals in covered transactions or for secondary mortgage market participants in

~~connection with covered transactions group of appraisers selected by an appraisal management company to perform appraisal services for clients on behalf of the company.~~

(j) “Board” means the Florida Real Estate Appraisal Board established under this section.

(k) “Certified general appraiser” means a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

(l) “Certified residential appraiser” means a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

(m) “Client” means a person who contracts with an appraiser or appraisal management company for the performance of appraisal services.

(n) “Covered transaction” means a consumer credit transaction secured by the consumer’s principal dwelling.

~~(o)(n)~~ “Department” means the Department of Business and Professional Regulation.

~~(p)(e)~~ “Direct supervision” means the degree of supervision required of a supervisory appraiser overseeing the work of a registered trainee appraiser by which the supervisory appraiser has control over and detailed professional knowledge of the work being done. Direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board.

(q) “Evaluation” means a valuation permitted by any federal financial institutions regulatory agency appraisal regulations for transactions that do not require an appraisal, as such valuations qualify for an applicable exemption under federal law. The board shall adopt rules, as necessary, to define the term “evaluation” and the applicable exemptions under federal law.

(r) “Federally regulated appraisal management company” means an appraisal management company that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. s. 1813, and regulated by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

~~(s)(p)~~ “Federally related transaction” means any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser.

~~(t)~~(q) “Licensed appraiser” means a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. After July 1, 2003, the department shall not issue licenses for the category of licensed appraiser.

(u) “Order file” means the documentation necessary to support the performance of appraisal management services.

~~(v)~~(r) “Registered trainee appraiser” means a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

(w) “Secondary mortgage market participant” means a guarantor, insurer, underwriter, or issuer of mortgage-backed securities. The term includes an individual investor in a mortgage-backed security only if such investor also serves in the capacity of a guarantor, an insurer, an underwriter, or an issuer for the mortgage-backed security.

~~(x)~~(s) “Signature” means personalized evidence indicating authentication of work performed by an appraiser and the acceptance of responsibility for the content of an appraisal, appraisal review, or appraisal consulting service or conclusions in an appraisal report.

~~(y)~~(t) “Subsidiary” means an organization that is owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency.

~~(z)~~(u) “Supervisory appraiser” means a certified residential appraiser or a certified general appraiser responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers. The board, by rule, shall determine the responsibilities of a supervisory appraiser, the geographic proximity required, the minimum qualifications and standards required of a certified appraiser before she or he may act in the capacity of a supervisory appraiser, and the maximum number of registered trainee appraisers to be supervised by an individual supervisory appraiser.

~~(aa)~~(v) “Training” means the process of providing for and making available to a registered trainee appraiser, under direct supervision, a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical appraisal skills as determined by rule of the board.

~~(bb)~~(w) “Uniform Standards of Professional Appraisal Practice” means the most recent standards approved and adopted by the Appraisal Standards Board of The Appraisal Foundation.

(cc)(x) “Valuation services” means services pertaining to aspects of property value and includes such services performed by certified appraisers, registered trainee appraisers, and others.

(dd)(y) “Work file” means the documentation necessary to support an appraiser’s analysis, opinions, and conclusions.

(2) Wherever the word “operate” or “operating” appears in this part with respect to a registered trainee appraiser, registered appraisal management company, licensed appraiser, or certified appraiser; in any order, rule, or regulation of the board; in any pleading, indictment, or information under this part; in any court action or proceeding; or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in this part as constituting or defining a registered trainee appraiser, registered appraisal management company, licensed appraiser, or certified appraiser, not including, however, any of the exceptions stated therein. A single act is sufficient to bring a person within the meaning of this subsection, and each act, if prohibited herein, constitutes a separate offense.

Section 3. Subsection (7) is added to section 475.612, Florida Statutes, to read:

475.612 Certification, licensure, or registration required.—

(7) Notwithstanding any other provision of law, an appraiser may perform an evaluation of real property in connection with a real estate-related financial transaction, as defined by rule of the board, which is regulated by a federal financial institutions regulatory agency. The appraiser shall comply with the standards for evaluations imposed by the federal financial institutions regulatory agency and other standards as prescribed by the board. However, an evaluation may not be referred to or construed as an appraisal.

Section 4. Section 475.6175, Florida Statutes, is repealed.

Section 5. Section 475.621, Florida Statutes, is amended to read:

475.621 Registry of licensed and certified appraisers; registry of appraisal management companies.—

(1) The department shall transmit to the appraisal subcommittee, at least no less than annually, a roster listing individuals who hold a valid state license or certification as an appraiser. The department shall transmit to the appraisal subcommittee, at least annually, a roster listing individuals or companies that hold a valid state registration as an appraisal management company.

(2) The department shall collect from such individuals who perform or seek to perform appraisals in federally related transactions, an annual fee as set by rule of, and transmitted to, the appraisal subcommittee. The department shall collect from such appraisal management companies that

perform or seek to perform appraisal management services in covered transactions an annual fee set by rule of the board and transmitted to the appraisal subcommittee.

(3) Notwithstanding the prohibition against requiring registration of a federally regulated appraisal management company as provided in s. 475.6235(8)(b), the board shall establish a procedure to collect from a federally regulated appraisal management company an annual fee as set by rule of the board and transmitted to the appraisal subcommittee.

Section 6. Subsection (5) and paragraph (b) of subsection (8) of section 475.6235, Florida Statutes, are amended to read:

475.6235 Registration of appraisal management companies required; exemptions.—

(5) Each person listed in paragraph (2)(f) must be competent and qualified to engage in appraisal management services with safety to the general public and those with whom the person may undertake a relationship of trust and confidence. If any person listed in paragraph (2)(f) has been denied registration, licensure, or certification as an appraiser or has been disbarred, or if the person’s registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been revoked or suspended by this or any other state, any nation, any possession or district of the United States, or any court or lawful agency thereof because of any conduct or practices that would have warranted a like result under this part, or if the person has been guilty of conduct or practices in this state or elsewhere that would have been grounds for disciplining her or his registration, license, or certification under this part had the person then been a registered trainee appraiser or a licensed or certified appraiser, the person shall be deemed not to be qualified to be registered unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the board that the interest of the public is not likely to be endangered by the granting of registration.

(8) This section does not apply to:

~~(b) A federally regulated An appraisal management company that is a subsidiary owned and controlled by a financial institution, as defined in s. 655.005, that is regulated by a federal financial institution regulatory agency.~~

Section 7. Subsection (1) of section 475.6245, Florida Statutes, is amended to read:

475.6245 Discipline of appraisal management companies.—

(1) The board may deny an application for registration or renewal registration of an appraisal management company; may investigate the actions of any appraisal management company registered under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for

each count or separate offense against any such appraisal management company; and may revoke or suspend, for a period not to exceed 10 years, the registration of any such appraisal management company, or place any such appraisal management company on probation, if the board finds that the appraisal management company or any person listed in s. 475.6235(2)(f):

(a) Has violated any provision of this part or s. 455.227(1); however, any appraisal management company registered under this part is exempt from s. 455.227(1)(i).

(b) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, express, or implied, in an appraisal assignment; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the appraisal management company that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the appraisal management company or was an identified member of the general public.

(c) Has advertised services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(d) Has violated any provision of this part or any lawful order or rule issued under this part or chapter 455.

(e) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the activities of an appraisal management company or that involves moral turpitude or fraudulent or dishonest conduct. The record of a conviction certified or authenticated in such form as admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

(f) Has had a registration, license, or certification as an appraiser or a registration as an appraisal management company revoked, suspended, or otherwise acted against; has been disbarred; has had her or his registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(g) Has become temporarily incapacitated from acting as an appraisal management company with safety to those in a fiduciary relationship with her or him because of drunkenness, use of drugs, or temporary mental derangement; however, suspension of a registration in such cases shall only be for the period of such incapacity.

(h) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; or, through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity.

(i) Has failed to inform the board in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

(j) Has been found guilty, for a second time, of any misconduct that warrants disciplinary action, or has been found guilty of a course of conduct or practice that shows that she or he is incompetent, negligent, dishonest, or untruthful to an extent that those with whom she or he may sustain a confidential relationship may not safely do so.

(k) Has made or filed a report or record, either written or oral, that the appraisal management company knows to be false; has willfully failed to file a report or record required by state or federal law; has willfully impeded or obstructed such filing; or has induced another person to impede or obstruct such filing. However, such reports or records shall include only those that are signed or presented in the capacity of an appraisal management company.

(l) Has obtained or attempted to obtain a registration, license, or certification by means of knowingly making a false statement, submitting false information, refusing to provide complete information in response to an application question, or engaging in fraud, misrepresentation, or concealment.

(m) Has paid money or other valuable consideration, except as required by this section, to any member or employee of the board to obtain a registration, license, or certification under this section.

(n) Has instructed an appraiser to violate any standard of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice.

(o) Has engaged in the development of an appraisal or the preparation of an appraisal report, unless the appraisal management company is owned or controlled by certified appraisers.

(p) Has failed to communicate an appraisal without good cause.

(q) Has accepted an appraisal assignment if the employment itself is contingent upon the appraisal management company reporting a

predetermined result, analysis, or opinion or if the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached upon the consequences resulting from the appraisal assignment.

(r) Has failed to timely notify the department of any change in principal business location as an appraisal management company.

(s) Has influenced or attempted to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or any other means, including, but not limited to:

1. Withholding or threatening to withhold timely payment for an appraisal, unless such nonpayment is based upon specific quality or other service issues that constitute noncompliance with the appraisal engagement agreement.

2. Withholding or threatening to withhold future business from an appraiser.

3. Promising future business, promotions, or increased compensation for an appraiser, whether the promise is express or implied.

4. Conditioning a request for appraisal services or the payment of an appraisal fee, salary, or bonus upon the opinion, conclusion, or valuation to be reached or upon a preliminary estimate or opinion requested from an appraiser.

5. Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of appraisal services.

6. Providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.

7. Providing to an appraiser, or any person related to the appraiser, stock or other financial or nonfinancial benefits.

8. Allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser.

9. Obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated

valuation model is issued pursuant to a bona fide prefunding or postfunding appraisal review or quality control process.

10. Any other act or practice that impairs or attempts to impair an appraiser’s independence, objectivity, or impartiality.

(t) Has altered, modified, or otherwise changed a completed appraisal report submitted by an appraiser to an appraisal management company.

(u) Has employed, contracted with, or otherwise retained an appraiser whose registration, license, or certification is suspended or revoked to perform appraisal services or appraisal management services.

(v) Has required or attempted to require an appraiser to sign any indemnification agreement that would require the appraiser to hold harmless the appraisal management company or its owners, agents, employees, or independent contractors from any liability, damage, loss, or claim arising from the services performed by the appraisal management company or its owners, agents, employees, or independent contractors and not the services performed by the appraiser.

(w) Has required or attempted to require a client to sign any indemnification agreement that would require the client to hold harmless the appraisal management company or its owners, agents, or employees from any liability, damage, loss, or claim arising from the services performed by an appraiser.

Section 8. For the purpose of incorporating the amendment made by this act to section 475.6245, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 475.626, Florida Statutes, is reenacted to read:

475.626 Violations and penalties.—

(1) A person may not:

(b) If an appraisal management company, commit any conduct or practice set forth in s. 475.6245.

Section 9. Section 475.628, Florida Statutes, is amended to read:

475.628 Professional standards for appraisers registered, licensed, or certified under this part.—

(1) The board shall adopt rules establishing standards of professional practice which meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation. Each appraiser registered, licensed, or certified under this part must comply with the rules. Statements on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation, or elaboration through the Appraisal Foundation are

binding on any appraiser registered, licensed, or certified under this part, upon adoption by rule of the board.

(2) The board may adopt rules establishing standards of professional practice other than standards adopted by the Appraisal Standards Board of the Appraisal Foundation for nonfederally related transactions. The board shall require that when performing an appraisal or appraisal service for any purpose other than a federally related transaction, an appraiser must comply with the Ethics and Competency Rules of the standards adopted by the Appraisal Standards Board of the Appraisal Foundation, and other requirements as determined by rule of the board. An assignment completed using alternate standards does not satisfy the experience requirements under s. 475.617 unless the assignment complies with the standards adopted by the Appraisal Standards Board of the Appraisal Foundation.

Section 10. For the purpose of incorporating the amendment made by this act to section 475.611, Florida Statutes, in a reference thereto, section 475.629, Florida Statutes, is reenacted to read:

475.629 Retention of records.—An appraiser registered, licensed, or certified under this part shall prepare and retain a work file for each appraisal, appraisal review, or appraisal consulting assignment. An appraisal management company registered under this part shall prepare and retain an order file for each appraisal, appraisal review, or appraisal consulting assignment. The work file and the order file shall be retained for 5 years or the period specified in the Uniform Standards of Professional Appraisal Practice, whichever is greater. The work file must contain original or true copies of any contracts engaging the appraiser's or appraisal management company's services, appraisal reports, and supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services and all other data, information, and documentation required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of The Appraisal Foundation, as established by rule of the board. The order file must contain original or true copies of any contracts engaging the appraiser's services, the appraisal reports, any engagement materials or instructions from the client, and all other documents required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of The Appraisal Foundation, as established by rule of the board. Notwithstanding the foregoing, while general contracts and materials pertaining to impaneling of an appraiser by an appraisal management company shall be retained under this section, such contracts and materials are not required to be maintained within the order file. Except as otherwise specified in the Uniform Standards of Professional Appraisal Practice, the period for retention of the records applicable to each engagement of the services of the appraiser or appraisal management company runs from the date of the submission of the appraisal report to the client. Appraisal management companies shall also retain the company accounts, correspondence, memoranda, papers, books, and other records in accordance

with administrative rules adopted by the board. These records must be made available by the appraiser or appraisal management company for inspection and copying by the department upon reasonable notice to the appraiser or company. If an appraisal has been the subject of or has served as evidence for litigation, reports and records must be retained for at least 2 years after the trial or the period specified in the Uniform Standards of Professional Appraisal Practice, whichever is greater.

Section 11. This act shall take effect October 1, 2017.

Approved by the Governor May 23, 2017.

Filed in Office Secretary of State May 23, 2017.