

2018 Regular Session

HOUSE BILL NO. 882

BY REPRESENTATIVE CARMODY AND SENATOR MARTINY

REAL ESTATE/APPRAISERS: Provides relative to customary and reasonable fees paid by appraisal management companies

1 AN ACT

2 To amend and reenact R.S. 37:3415.15(B) and (C), 3415.19(B) through (D), and
3 3415.20(A)(5) and (B) and to enact R.S. 37:3415.15(D) through (F), 3415.19(E),
4 3415.20(A)(6) and (7), and 3415.21(B), relative to appraisal management
5 companies; to provide for the promulgation and adoption of rules by the Louisiana
6 Real Estate Appraisers Board; to provide relative to ensuring appraisal management
7 companies pay appraisers customary and reasonable appraisal fees; to require the
8 division of administrative law to actively supervise the board's implementations
9 relative to the enforcement of customary and reasonable appraisal fees; and to
10 provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 37:3415.15(B) and (C), 3415.19(B) through (D), and 3415.20(A)(5)
13 and (B) are hereby amended and reenacted and R.S. 37:3415.15(D) through (F), 3415.19(E),
14 3415.20(A)(6) and (7), and 3415.21(B) are hereby enacted to read as follows:

15 §3415.15. Fees; customary and reasonable; disclosure

16 * * *

17 B.(1) For the purpose of determining whether appraisal fees paid by an
18 appraisal management company are customary and reasonable, the geographic
19 market area of the property being appraised shall be identified by zip code, parish,
20 or metropolitan area.

1 (2)(a) Evidence for customary and reasonable fees may be established by the
2 study of objective third-party information such as government agency fee schedules,
3 academic studies, and independent private sector surveys. Fee studies and surveys
4 described in this Subparagraph shall exclude assignments ordered by appraisal
5 management companies.

6 (b) Notwithstanding the provisions of Subparagraph(B)(2)(a) of this
7 Subsection, a licensee electing to compensate fee appraisers on any basis other than
8 an established fee study, schedule, or survey shall, at a minimum, review the factors
9 listed in Subsection C of this Section on each assignment made, and make
10 appropriate adjustments to recent rates paid in the relevant geographic market
11 necessary to ensure that the amount of compensation is reasonable.

12 C. An appraisal management company shall maintain written documentation
13 that describes or substantiates all methods, factors, variations, and differences used
14 to determine the customary and reasonable fee for appraisal services conducted in
15 the geographic market of the appraisal assignment. This documentation shall, at a
16 minimum, include all of the following elements:

17 (1) The type of property for each appraisal performed.

18 (2) The scope of work for each appraisal performed.

19 (3) The time in which the appraisal services are required to be performed.

20 (4) The fee appraiser's qualifications.

21 (5) The fee appraiser's experience and professional record.

22 (6) The fee appraiser's work quality.

23 D. The appraisal management company shall maintain records of all
24 methods, factors, variations, and differences used to determine the customary and
25 reasonable rate of compensation paid for each appraisal assignment in the geographic
26 market of the property being appraised.

27 B E. An appraisal management company shall separately state to the client
28 ~~all~~ each of the following:

29 (1) The fees paid to an appraiser for appraisal services.

1 (2) The fees charged by the appraisal management company for services
2 associated with the management of the appraisal process, including procurement of
3 the appraiser's services.

4 ~~C.(1)~~ F.(1) An appraisal management company shall not prohibit any
5 appraiser who is part of an appraiser panel from recording the fee that the appraiser
6 was paid by the appraisal management company for the performance of the appraisal
7 within the appraisal report that is submitted by the appraiser to the appraisal
8 management company.

9 (2) An appraisal management company shall not include any fees for
10 appraisal management services performed by the company in the amount the
11 company reports as charges for the actual completion of an appraisal by the
12 appraiser.

13 * * *

14 ~~§3415.19. Enforcement~~ Investigations; proposed enforcement actions; review by the
15 division of administrative law; civil penalties; prohibitions

16 * * *

17 B.(1) Prior to the initiation of a formal or informal investigation or of any
18 other proposed enforcement action with respect to an appraisal management
19 company's potential violation of the provisions of R.S. 37:3415.15 or related
20 regulations of the board, the board shall refer the proposed enforcement action to the
21 division of administrative law, hereinafter referred to in this Chapter as the
22 "division". The division shall determine each of the following:

23 (a) Whether the evidence presented is sufficient to show a likelihood that the
24 appraisal management company has not complied with the customary and reasonable
25 fee requirements set forth in R.S. 37:3415.15.

26 (b) Whether the proposed enforcement action serves Louisiana's public
27 policy of protecting the integrity of residential mortgage appraisals by requiring that
28 fees paid by appraisal management companies for such appraisals are customary and
29 reasonable in accordance with R.S. 37:3415.15.

1 (2) The division may approve, reject, or modify the proposed enforcement
2 action or return it to the board with a request for further information.

3 (3)(a) Prior to dismissing or informally resolving a formal or informal
4 investigation, or prior to accepting or proposing a settlement agreement that arises
5 from an enforcement action approved in accordance with Paragraph (2) of this
6 Subsection, the board shall refer the proposed dismissal, resolution, or settlement
7 agreement to the division for a determination as to whether such dismissal,
8 resolution, or agreement serves Louisiana's policy of protecting the integrity of
9 residential mortgage appraisals by requiring that fees paid by appraisal management
10 companies for such appraisals are customary and reasonable in accordance with R.S.
11 37:3415.15.

12 (b) The division may approve, reject, or modify the proposed dismissal,
13 resolution, or settlement agreement or return it to the board with a request for further
14 information.

15 (4) The board and the division shall enter into a contract to carry out the
16 division's responsibilities described in Paragraphs (1) through (3) of this Subsection.

17 ~~B.†~~ C.(1) In addition to any other civil remedy or civil penalty provided for
18 in this Chapter, the board may issue a subpoena to any person or persons who the
19 board has probable cause to believe has engaged in real estate appraisal activity
20 without a currently valid license.

21 (2) Subpoenas issued by the board shall comply with the notice requirements
22 of R.S. 49:955. These subpoenas shall be served upon the unlicensed individual
23 personally or by any type of mailing requiring a return receipt and shall include a
24 statement of the manner in which the unlicensed person shall be required to respond
25 to the commission.

26 € D. The board may impose a civil penalty of no more than five thousand
27 dollars upon any unlicensed person who, after a hearing or informal resolution in
28 accordance with all provisions of this Chapter and the Administrative Procedure Act,
29 is found to have engaged in real estate appraisal activity without a currently valid

1 license having been issued by the board pursuant to the provisions of this Chapter.
2 In addition, the board may assess costs and attorney fees against the unlicensed
3 person found to have been engaged in real estate appraisal activity without a current
4 license.

5 ~~D~~ E. No person engaged in real estate appraisal activity without a currently
6 valid license shall have the right to receive any compensation for services so
7 rendered. In addition to any other penalties imposed under this Chapter, the board
8 may require that any person engaged in real estate appraisal activity without a license
9 return any fees collected for engaging in real estate appraisal activity.

10 §3415.20. Disciplinary hearings; orders; findings of liability; fines; costs; remedial
11 action; review by the division of administrative law

12 A. The conduct of adjudicatory proceedings in accordance with the
13 Administrative Procedure Act for violations of this Chapter is vested in the board,
14 subject to the following provisions:

15 * * *

16 (5) The board may make findings of fact and shall deliver or mail such
17 findings to the licensee charged with an offense ~~under~~ pursuant to the provisions of
18 ~~this Chapter. Any finding of fact by the board pursuant to the provisions of this~~
19 ~~Section shall be conclusive.~~

20 (6) Pursuant to a contract between the board and the division, prior to the
21 board's entry of any order finding liability, imposing a fine or costs, or requiring or
22 approving a remedial action with respect to an appraisal management company's
23 potential violation of the provisions of R.S. 37:3415.15 or related regulations of the
24 board, the board shall refer such order, along with the administrative record thereof,
25 to the division. The division shall determine whether the order meets the
26 requirements of Paragraph (7) of this Subsection. The division shall provide to the
27 board a written determination approving, rejecting, or modifying the board's order,
28 or the division may remand the order to the board to provide instructions or to obtain
29 additional evidence for the record on review.

1 company compliance with customary and reasonable fee requirements as provided
 2 for in R.S. 37:3415.15, along with the administrative record thereof, to ensure that
 3 such proposed regulation serves Louisiana's public policy of protecting the integrity
 4 of residential mortgage appraisals by requiring that fees paid by appraisal
 5 management companies are customary and reasonable in accordance with R.S.
 6 37:3415.15.

7 (2) The designated person shall do each of the following:

8 (a) Review and make a determination to approve, reject, or modify the
 9 proposed administrative regulation.

10 (b) Provide to the board written documentation of the determination within
 11 sixty days of the designated person's receipt of such administrative regulation.

12 (3) The review and determination described in Paragraph (2) of this
 13 Subsection shall occur prior to the board's submission of the proposed administrative
 14 regulation to the legislature pursuant to R.S. 49:968.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 882 Original

2018 Regular Session

Carmody

Abstract: Requires the division of administrative law to actively supervise relative to the La. Real Estate Appraisers Board's implementations ensuring the payment of customary and reasonable appraisal fees.

Present law requires an appraisal management company (hereinafter "AMC") to compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the provisions of federal law.

Proposed law retains present law.

For the purpose of determining whether appraisal fees paid by AMCs are customary and reasonable, proposed law requires an AMC to consider and ensure application of each of the following:

(1) The geographic market area of the property being appraised must be identified by zip code, parish, or metropolitan area.

(2) The evidence for customary and reasonable fees which may be established by the study of objective third-party information such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies and surveys exclude assignments ordered by AMCs.

Proposed law requires an AMC electing to compensate fee appraisers on any basis other than an established fee study, schedule, or survey to review certain factors on each assignment made and make appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.

Proposed law requires an AMC to maintain written documentation describing or substantiating all methods, factors, variations, and differences used to determine the customary and reasonable fee for appraisal services conducted in the geographic market of the appraisal assignment. Further requires the documentation to include, at a minimum, all of the following:

- (1) Type of property for each appraisal performed.
- (2) Scope of work for each appraisal performed.
- (3) Time in which the appraisal services are required to be performed.
- (4) Fee appraiser's qualifications.
- (5) Fee appraiser's experience and professional record.
- (6) Fee appraiser's work quality.

Proposed law requires an AMC to maintain records of all methods, factors, variations, and differences used to determine the customary and reasonable rate of compensation paid for each appraisal assignment in the geographic market of the property being appraised.

Present law provides for certain enforcement and requires an AMC to separately state certain fee information to clients.

Proposed law retains present law.

Present law provides that an AMC cannot prohibit an appraiser, who is part of an appraiser panel, from recording the fee paid to the appraiser by the AMC for the performance of the appraisal within the appraisal report that is submitted by the appraiser to the AMC. Prohibits an AMC from including any fees for appraisal management services performed by the company in the amount the company reports as charges for the actual completion of an appraisal by the appraiser.

Proposed law retains present law.

If the La. Real Estate Appraisers Board (hereinafter "board") has the opinion that an AMC is attempting to perform, is performing, has performed, or attempted to perform certain violative actions, present law authorizes the board to censure the AMC or conditionally or unconditionally suspend or revoke any license issued pursuant to present law, levy fines, or impose civil penalties not to exceed \$50,000.

Proposed law retains present law.

Prior to the initiation of a formal or informal investigation or a proposed enforcement action relative to a potential violation by an AMC, proposed law requires the board to refer the proposed enforcement action to the division of administrative law (hereinafter "division").

Proposed law requires the division to determine each of the following:

- (1) Whether the evidence presented is sufficient to show a likelihood that the AMC has not complied with the customary and reasonable fee requirements of present law and proposed law.

(2) Whether the proposed enforcement action serves the state's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs for such appraisals are customary and reasonable in accordance with present law and proposed law.

Proposed law authorizes the division to approve, reject, or modify the proposed enforcement action or return it to the board with a request for further information.

Prior to dismissing or informally resolving a formal or informal investigation, and prior to accepting or proposing a settlement agreement arising out of an approved enforcement action, proposed law requires the board to refer a proposed settlement agreement to the division for its determination as to whether the proposed agreement serves the state's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs are customary and reasonable in accordance with present law and proposed law.

Proposed law authorizes the division to approve, reject, or modify the proposed settlement agreement or return it to the board with a request for further information.

Proposed law requires the board and the division to enter into a contract to carry out the division's responsibilities described in proposed law.

Present law authorizes the board to conduct disciplinary hearings in conformity with provisions of the Administrative Procedure Act (APA). Proposed law retains present law.

Present law authorizes the board to make findings of fact and requires the board to deliver or mail such findings to the licensee charged with an offense. Requires the board's findings of fact to be conclusive.

Proposed law deletes the required conclusiveness relative to the board's findings of fact. Otherwise retains present law.

Prior to the entry of any order finding liability, imposing costs or fines, or requiring or approving remedial action, proposed law requires the board to refer to the division the board's order and administrative record. Requires the division to determine whether such order meets the requirements of proposed law. Requires the division's written determination to approve, reject, or modify the board's order, and authorizes the division to remand the order to the board with instructions or to obtain additional evidence for the record on review.

Proposed law requires the division to review the order to determine whether the order will serve the state's policy of protecting the integrity of residential mortgage appraisals relative to the required payment of customary and reasonable appraisal fees paid by AMCs. Requires the division to conduct the review according to standards set forth in present law (R.S. 49:964(G)). Further specifically requires the division's review to comply with the following:

(1) All questions of law and statutory and regulatory interpretations must be determined in accordance with present law (R.S. 49:964(G)(1)-(4)) without deference to the board's determinations.

(2) The proposed remedy must be reviewed in accordance with present law (R.S. 49:964(G)(5)) in light of the underlying policies of the state of La. and the determination by the division of the findings of fact.

(3) All findings of fact must be determined by a preponderance of the evidence in accordance with present law (R.S. 49:964(G)(6)).

Present law authorizes the 19th Judicial District Court to review questions of law involved in any final decision of the board. Requires any application for review made by an aggrieved party to be filed within 30 days after the final decision of the board. Requires the

court to affirm the decision, order, or ruling of the board, if the court finds the board regularly pursued its authority and has not acted arbitrarily. Further requires the case to be specifically fixed for trial within 30 days from the filing of an answer by the board, if a petition to review the final decision of the board is filed.

Proposed law amends present law to authorize the 19th JDC to review any final decision of the board in accordance with present law. Requires any application for review made by an aggrieved party to be filed within 30 days after the final decision of the board. Further requires the case to be specifically fixed for trial within 30 days from the filing of an answer by the board, if a petition to review the final decision of the board is filed.

Present law authorizes the board to adopt rules and regulations in accordance with the APA.

Proposed law retains present law.

Proposed law requires the board to submit for review to a person designated by the governor any proposed administrative regulation concerning AMC compliance with customary and reasonable fee requirements, along with the administrative record, to ensure that such proposed regulation serves the state's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs are customary and reasonable in accordance with present law and proposed law.

Proposed law requires the designated person to do each of the following:

- (1) Review and make a determination to approve, reject, or modify the proposed administrative regulation.
- (2) Provide to the board written documentation of the determination within 60 days of the designated person's receipt of such administrative regulation.

Proposed law requires the review and determination to occur prior to the board's submission of the proposed administrative regulation to the legislature.

(Amends R.S. 37:3415.15(B) and (C), 3415.19(B)-(D), and 3415.20(A)(5) and (B); Adds R.S. 37:3415.15(D)-(F), 3415.19(E), 3415.20(A)(6) and (7), and 3415.21(B))