

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1417

BY: BEGLEY

AS INTRODUCED

AN ACT RELATING TO PROFESSIONS AND OCCUPATIONS;

AMENDING SECTIONS 4, 5, 6, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23 AND 24, CHAPTER 327, O.S.L. 1990 (59 O.S. SUPP. 1990, SECTIONS 858-703, 858-704, 858-705, 858-708, 858-709, 858-710, 858-711, 858-712, 858-713, 858-717, 858-718, 858-719, 858-720, 858-721, 858-722 AND 858-723), WHICH RELATE TO THE OKLAHOMA CERTIFIED REAL ESTATE APPRAISERS ACT; ADDING AND MODIFYING DEFINITIONS; MODIFYING CERTAIN TERMINOLOGY; MODIFYING APPRAISAL BOARD QUALIFICATION REQUIREMENTS; AMENDING CERTAIN TERMINOLOGY; MODIFYING TERMINOLOGY USED FOR TYPES OF CERTIFICATIONS AND EXAMINATIONS; ADDING NEW FEE; REQUIRING TRANSMITTAL OF CERTAIN FEE; PROVIDING FOR CERTAIN TEMPORARY LICENSE AND CERTIFICATION; REQUIRING CERTAIN CONDITIONS AND PROCEDURES UPON ISSUANCE OF TEMPORARY LICENSE OR CERTIFICATION; CHANGING TERMINOLOGY USED IN CLASSIFICATION OF CERTIFICATION; MODIFYING SCOPE FOR LICENSED APPRAISALS; MODIFYING TERMINOLOGY USED IN ACT; CHANGING EXPERIENCE REQUIREMENTS FOR CERTIFICATION; MODIFYING TERMINOLOGY USED IN ACT; MODIFYING BOARD'S REGULATION ADOPTION PROCEDURES; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 4, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-703), is amended to read as follows:

Section 858-703. As used in the Oklahoma Certified Real Estate Appraisers Act:

1. "Appraisal" or "real estate appraisal" means an analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate other than oil, gas, coal, water, and all other energy and nonfuel mineral and elements or the value of underground space to be used for storage of commodities or for the disposal of waste unless they are appraised as part of a federally related transaction covered by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. An appraisal may be classified by subject matter into either a valuation or an analysis. A "valuation" is an estimate of the value of real estate or real property. An "analysis" is a study of real estate or real property other than estimating value.

2. "Appraisal report" means any written communication, ~~written or oral~~, of an appraisal.

3. "Appraisal Subcommittee" means the subcommittee created by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

4. "Board" means the Real Estate Appraisal Board established pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act.

5. "Certification" shall refer to either a state licensed appraiser or a state certified appraiser.

6. "Certified appraisal or certified appraisal report" means an appraisal or appraisal report given or signed and certified as such by a state licensed or certified real estate appraiser. When identifying an appraisal or appraisal report as "certified", the state licensed or certified real estate appraiser must indicate which type of certification is held. A certified appraisal or appraisal report represents to the public that it meets the appraisal standards defined in the Oklahoma Certified Real Estate Appraisers Act.

~~6.~~ 7. "Department" means the Oklahoma Insurance Department.

~~7.~~ 8. "Real estate" means an identified parcel or tract of land, including improvements, if any.

~~8.~~ 9. "Real property" means one or more defined interests, benefits, and rights inherent in the ownership of real estate.

~~9.~~ 10. "State licensed or certified real estate appraiser" means a person who develops and communicates real estate appraisals and who holds a current, valid certificate issued to such person for either general or residential real estate pursuant to provisions of the Oklahoma Certified Real Estate Appraisers Act.

~~10.~~ 11. "Appraisal 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 relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate.

~~11.~~ 12. "Specialized services" means those appraisal services which do not fall within the definition of appraisal assignment. The term "specialized services" may include valuation work and analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or

the public as acting as a disinterested third party in rendering an unbiased analysis, opinion or conclusion, the work is classified as an appraisal assignment and not "specialized services".

SECTION 2. AMENDATORY Section 5, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-704), is amended to read as follows:

Section 858-704. A. No person, other than an Oklahoma licensed or certified real estate appraiser, shall assume or use that title or any title, designation, or abbreviation likely to create the impression of certification as a real estate appraiser by this state. A person who is not certified pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act shall not describe or refer to any appraisal or other evaluation of real estate located in this state by using the term "state certified".

B. This shall not preclude a person who is not certified under this act from appraising real estate for compensation, except for appraisals involving federally related transactions covered by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

SECTION 3. AMENDATORY Section 6, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-705), is amended to read as follows:

Section 858-705. A. There is hereby established as an adjunct to the Department an independent Real Estate Appraiser Board which shall consist of seven (7) members: one from the commercial banking industry; one from the savings and loan industry; one of whom shall be in the real estate sales industry; and four of whom shall be real estate appraisers with no more than one nationally recognized organization having a plurality of members on the Board.

B. The Governor shall appoint the members of the Real Estate Appraiser Board within thirty (30) days of enactment of this act.

~~C. The real estate appraiser members first appointed to the Board shall be designated members in good standing of a nationally recognized real estate appraisal organization that, as of August 1989, required appraisal experience, education, and testing in order to become a designated member, in addition to adherence to standards of professional practice in order to retain such designation.~~

~~D.~~ Each real estate appraiser member of the Board appointed after July 1, 1991, or within twenty-four (24) months of the effective date of this act, whichever occurs first, must be a state licensed or certified real estate appraiser. The four appraiser members shall hold the Certified Appraiser ~~II~~ certificate.

~~E.~~ D. The term of each member shall be five (5) years; except that of the members first appointed, two shall serve for one (1) year, two shall serve for two (2) years, one shall serve for three (3) years, one shall serve for four (4) years, and one shall serve for five (5) years.

~~F.~~ E. Members of the Board shall hold office until the appointment and qualification of their successors. No person shall serve as a member of the Board for more than two consecutive terms. The Governor may remove a member for inefficiency, neglect of duty, or malfeasance in office. The member shall be given notice and an opportunity to be heard prior to removal.

~~G.~~ F. The Board shall meet at least once each calendar quarter to conduct its business. Written notice shall be given to each member of the time and place of each meeting of the Board at least ten (10) days before the scheduled date of the meetings.

~~H.~~ G. The members of the Board shall elect a chairperson from among the members to preside at Board meetings.

~~I.~~ H. A quorum of the Board shall be five (5) members.

SECTION 4. AMENDATORY Section 9, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-708), is amended to read as follows:

Section 858-708. A. The Insurance Department shall charge and collect fees not to exceed the following:

1. ~~Certified~~ Licensed Appraiser ~~±~~ Certificate (annually) \$150.00
2. Certified Appraiser ~~±~~ Certificate (annually) \$150.00
3. ~~Certified~~ Licensed Appraiser ~~±~~ Examination \$150.00
4. Certified Appraiser ~~±~~ Examination \$150.00
5. Re-examination Fee \$150.00
6. Late Fee \$10.00
7. Reinstatement Fee \$50.00
8. Duplicate for Lost or Destroyed Certificate \$5.00
9. Temporary Practice Fee \$200.00

B. The Insurance Department shall charge and collect a Federal Registry Fee of Twenty-five Dollars (\$25.00). Said fee shall be transmitted to the Federal Financial Institutions Examination Council.

SECTION 5. AMENDATORY Section 10, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-709), is amended to read as follows:

Section 858-709. A. Applications for original certification, renewal certification and examinations shall be made in writing to the Department on forms approved by the Board.

B. Appropriate fees, as fixed by the Department pursuant to Section 9 of the Oklahoma Certified Real Estate Appraisers Act, must accompany all applications for original certification, renewal certification and examination.

C. At the time of filing an application for certification, each applicant shall sign a pledge to comply with the standards set forth in the Oklahoma Certified Real Estate Appraisers Act, and state that such applicant understands the types of misconduct for which disciplinary proceedings may be initiated against an Oklahoma certified real estate appraiser, as set forth in the Oklahoma Certified Real Estate Appraisers Act.

D. In accordance with Section 3351 of Title 12 of the United States Code, the Board shall recognize, on a temporary basis, the certification or license of an appraiser issued by another state if:

1. the property to be appraised is part of a federally related transaction, as defined in the federal real estate appraisal reform amendments;

2. the appraiser's business is of a temporary nature and certified by the appraiser not to exceed ninety (90) days;

3. the appraiser registers the temporary practice with the Board and pays fees as provided herein; and

4. the appraiser resides in and/or is working out of a state that is also in compliance with Section 3351 of Title 12 of the United States Code, that recognizes, on a temporary basis, the certification or license of an Oklahoma appraiser in their state.

E. The applicant or any person registering with the Board for temporary practice shall file an irrevocable consent that suits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise from his actions as a state licensed or certified real estate appraiser or in which the plaintiff may reside, by the service of any processes or pleadings authorized by the laws of this state on the Board. The consent shall stipulate and agree that such service of process or pleadings on the Board shall be taken and held in all courts to be as valid and binding as if personal service had been made upon the applicant in Oklahoma. In case any processes or pleading mentioned in the case is served upon the Board, it shall be by duplicate copies, one of which shall be filed with the Board administrator and the other immediately forwarded by registered mail to the nonresident state licensed or certified real estate appraiser to whom the processes or pleadings are directed.

SECTION 6. AMENDATORY Section 11, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-710), is amended to read as follows:

Section 858-710. A. There shall be two classes for Oklahoma certified real estate appraisers:

1. ~~Certified~~ Licensed Appraiser ~~I~~ shall consist of those persons meeting the requirements for certification relating to the appraisal of any real property with a transaction value under Two Hundred Fifty Thousand Dollars (\$250,000.00), whether commercial or residential, and appraisal of residential real property of one to four units of a value of One Million Dollars (\$1,000,000.00) or less.

2. Certified Appraiser ~~II~~ shall consist of those persons meeting the requirements for certification relating to the appraisal of all types of real property.

B. The application for original certification, renewal certification and examination shall specify the classification of certification being applied for and previously granted.

SECTION 7. AMENDATORY Section 12, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-711), is amended to read as follows:

Section 858-711. An original certification as an Oklahoma licensed or certified real estate appraiser shall not be issued to any person who has not demonstrated through a written examination process that such person possesses the following:

1. Appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing, and economic concepts applicable to real estate;

2. Understanding of the principles of land economics, real estate appraisal processes, and of problems likely to be encountered in gathering, interpreting, and processing of data in carrying out appraisal disciplines;

3. Understanding of the standards for the development and communication of real estate appraisals as provided in the Oklahoma Certified Real Estate Appraisers Act;

4. Knowledge of theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal that are appropriate for the classification of certificate applied for;

5. Knowledge of other principles and procedures as may be appropriate for the respective classifications;

6. Basic understanding of real estate law; and

7. Understanding of the types of misconduct for which disciplinary proceedings may be initiated against an Oklahoma licensed or certified real estate appraiser, as set forth in the Oklahoma Certified Real Estate Appraisers Act.

SECTION 8. AMENDATORY Section 13, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-712), is amended to read as follows:

Section 858-712. A. Certified Appraiser ~~II~~ - As a prerequisite to taking the examination for certification as a Certified Appraiser ~~II~~, an applicant shall present satisfactory evidence to the Board that such applicant has successfully completed not less than ~~one hundred fifty (150)~~ one hundred sixty-five (165) classroom hours of courses in subjects related to real estate appraisal from a nationally recognized appraisal organization or college or university or area vocational-technical school or private school approved by the Board and such classes shall be made available on a regional basis throughout the State of Oklahoma prior to the required examination date with the cost of the classes being established by the Board, ~~plus fifteen (15)~~ which must include classroom hours related to standards of professional practice ~~and the provisions of the Oklahoma Certified Real Estate Appraisers Act.~~

B. ~~Certified~~ Licensed Appraiser ~~±~~ - As a prerequisite to taking the examination for certification as a ~~Certified~~ Licensed Appraiser ~~±~~, an applicant shall present satisfactory evidence to the Board that such applicant has successfully completed not less than sixty (60) classroom hours of courses in subjects related to real estate appraisal from a nationally recognized appraisal organization or a college or university or area vocational-technical school or private school approved by the Board and such classes shall be made available on a regional basis throughout the State of Oklahoma prior to the required examination date with the cost of the classes being established by the Board, ~~plus fifteen (15)~~ which must include classroom hours related to standards of professional practice ~~and the provisions of the Oklahoma Certified Real Estate Appraisers Act.~~

SECTION 9. AMENDATORY Section 14, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-713), is amended to read as follows:

Section 858-713. A. An original certification as an Oklahoma Certified or Licensed Appraiser shall not be issued to any person who does not possess the equivalent of two (2) years' experience in real property appraisal supported by adequate written reports or file memoranda. ~~Such experience, or the equivalent thereof, must be acquired within a period of five (5) years immediately preceding the filing of the application for certification.~~

B. Each applicant for certification shall furnish under oath a detailed listing of the real estate appraisal reports or file memoranda for each year for which experience is claimed by the applicant. Upon request, the applicant shall make available to the Board for examination, a sample of appraisal reports which the applicant has prepared in the course of that applicant's appraisal practice.

SECTION 10. AMENDATORY Section 18, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-717), is amended to read as follows:

Section 858-717. The Board may, in accordance with the provisions of the Oklahoma Certified Real Estate Appraisers Act relating to hearings, deny the issuance of a certificate as an Oklahoma licensed or certified real estate appraiser to an applicant on any of the grounds enumerated in the Oklahoma Certified Real Estate Appraisers Act.

SECTION 11. AMENDATORY Section 19, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-718), is amended to read as follows:

Section 858-718. A. Each Oklahoma licensed or certified real estate appraiser shall advise the Board of the address of that appraiser's principal place of business and all other addresses at which such appraiser is currently engaged in the business of preparing real property appraisal reports.

B. Whenever an Oklahoma licensed or certified real estate appraiser changes a place of business, that appraiser shall immediately give written notification of the change to the Board and apply for an amended certificate.

C. Every Oklahoma licensed or certified real estate appraiser shall notify the Board of that appraiser's current residence address. Residence addresses on file with the Board are exempt from disclosure as public records.

SECTION 12. AMENDATORY Section 20, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-719), is amended to read as follows:

Section 858-719. A. A certificate issued pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act shall bear the signatures or facsimile signatures of the members of the Board and a certificate number assigned by the Board.

B. Each Oklahoma licensed or certified real estate appraiser shall place that appraiser's certificate number adjacent to or immediately below the title ~~Certified~~ Licensed Appraiser ~~I~~ or Certified Appraiser II when used in an appraisal report or in a contract or other instrument used by the certificate holder in conducting real property appraisal activities.

SECTION 13. AMENDATORY Section 21, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-720), is amended to read as follows:

Section 858-720. A. The ~~term~~ terms "Oklahoma Licensed or Certified Real Estate Appraiser" may only be used to refer to individuals who hold the license or certificate and may not be used following or immediately in connection with the name or signature of a firm, partnership, corporation, or group; or in such manner that it might be interpreted as referring to a firm, partnership, corporation, group, or anyone other than an individual holder of the certificate.

B. No certificate shall be issued pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act to a corporation, partnership, firm or group. This shall not be construed to prevent an Oklahoma licensed or certified real estate appraiser from signing an appraisal report on behalf of a corporation, partnership, firm or group practice.

SECTION 14. AMENDATORY Section 22, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-721), is amended to read as follows:

Section 858-721. A. To obtain a renewal certificate as an Oklahoma licensed or certified real estate appraiser, the holder of a current, valid certificate shall make application and pay the prescribed fee to the Board not earlier than one hundred twenty (120) days nor later than thirty (30) days after the expiration date of the certificate then held. With the application for renewal, the

Oklahoma licensed or certified real estate appraiser shall present evidence in the form prescribed by the Board of having completed the continuing education requirements for renewal specified pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act.

B. If a person fails to renew a certificate as an Oklahoma licensed or certified real estate appraiser prior to its expiration, the person may obtain a renewal certificate by satisfying all of the requirements for renewal and by the payment of a late renewal fee.

SECTION 15. AMENDATORY Section 23, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-722), is amended to read as follows:

Section 858-722. A. As a prerequisite to renewal of certification, an Oklahoma licensed or certified real estate appraiser shall present evidence satisfactory to the Board of having met the continuing education requirements of this section.

B. The basic continuing education requirement of renewal of certification shall be the completion by the applicant, during the immediately preceding term of certification, of not less than thirty (30) classroom hours of instruction in courses or seminars which have received the approval of the Board.

C. In lieu of meeting the requirements of subsection B of this section, an applicant for recertification may satisfy all or part of the requirements by presenting evidence of the following:

1. Completion of an educational program of study determined by the Board to be equivalent, for continuing education purposes, to courses approved by the Board pursuant to subsection B of this section; or

2. Participation other than as a student in educational processes and programs approved by the Board which relate to real property appraisal theory, practices or techniques, including, but not necessarily limited to, teaching program development and

preparation of textbooks, monographs, articles, and other instructional materials.

D. The Board shall adopt regulations for implementation of the provisions of this section assuring that persons renewing their certifications as Oklahoma licensed or certified real estate appraisers have current knowledge of real property appraisal theories, practices, and techniques which will provide a high degree of service and protection to those members of the public with whom they deal in a professional relationship under authority of the certification. The regulations shall prescribe the following:

1. Policies and procedures for obtaining Board approval of courses of instruction pursuant to subsection B of this section;

2. Standards, policies, and procedures to be applied by the Board in evaluating applicant's claims of equivalency in accordance with subsection C of this section;

3. Standards, monitoring methods, and systems for recording attendance to be employed by course sponsors as a prerequisite to Board approval of courses for credit.

~~E. In adopting regulations pursuant to paragraph 1 of subsection D of this section, the Board shall give favorable consideration to courses of instruction, seminars, and other real property appraisal educational courses or programs previously or hereafter developed by or under the auspices of professional appraisal organizations and utilized by those associations for purposes of designation, or indicating compliance with the continuing education requirements of such organizations.~~

~~F.~~ No amendment or repeal of a regulation adopted by the Board pursuant to this section shall operate to deprive an Oklahoma licensed or certified real estate appraiser of credit toward renewal of certification for any course of instruction completed by the applicant prior to the amendment or repeal of the regulation which

would have qualified for continuing education credit under the regulation as it existed prior to the repeal or amendment.

~~G.~~ F. Commencing thirty (30) days after the effective date of this act, a certification as an Oklahoma licensed or certified real estate appraiser that has been revoked as a result of disciplinary action by the Board shall not be reinstated unless the applicant presents evidence of completion of the continuing education required pursuant to the provisions of the Oklahoma Real Estate Appraisers Act. This requirement of evidence of continuing education shall not be imposed upon an applicant for reinstatement who has been required to successfully complete the examination for Oklahoma licensed or certified real estate appraiser as a condition to reinstatement of certification.

SECTION 16. AMENDATORY Section 24, Chapter 327, O.S.L. 1990 (59 O.S. Supp. 1990, Section 858-723), is amended to read as follows:

Section 858-723. A. The rights of any holder under a certificate as an Oklahoma licensed or certified real estate appraiser may be revoked or suspended, or the holder of the certificate may be otherwise disciplined pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act, upon any of the grounds set forth in this section. The Board may investigate the actions of an Oklahoma licensed or certified real estate appraiser, and may revoke or suspend the rights of a certificate holder or otherwise discipline an Oklahoma licensed or certified real estate appraiser for any of the following acts or omissions:

1. Procuring or attempting to procure a certificate pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act by knowingly making a false statement, knowingly submitting false information, refusing to provide complete information in response to a question in an application for certification or through any form of fraud or misrepresentation;

2. Failing to meet the minimum qualifications established pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act;

3. Paying money other than provided for by the Oklahoma Certified Real Estate Appraisers Act to any member or employee of the Board to procure a certificate pursuant to the Oklahoma Certified Real Estate Appraisers Act;

4. A conviction, including a conviction based upon a plea of guilty or nolo contendere, of a felony which is substantially related to the qualifications, functions, and duties of a person developing real estate appraisals and communicating real estate appraisals to others;

5. An act or omission involving dishonesty, fraud, or misrepresentation with the intent to substantially benefit the certificate holder or another person or with the intent to substantially injure another person;

6. Violation of any of the standards for the development or communication of real estate appraisals as provided in the Oklahoma Certified Real Estate Appraisers Act;

7. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

8. Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

9. Willfully disregarding or violating any of the provisions of the Oklahoma Certified Real Estate Appraisers Act or the regulations of the Board for the administration and enforcement of the provisions of the Oklahoma Certified Real Estate Appraisers Act;

10. Accepting an appraisal assignment as defined in Section 28 of the Oklahoma Certified Real Estate Appraisers Act when the employment itself is contingent upon the appraiser reporting a predetermined estimate, analysis or opinion, or where the fee to be

paid is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment;

11. Violating the confidential nature of governmental records to which the appraiser gained access through employment or engagement as an appraiser by a governmental agency; or

12. Entry of a final civil judgment against the person on grounds of deceit, fraud, or willful or knowing misrepresentation in the making of any appraisal of real property.

B. In a disciplinary proceeding based upon a civil judgment, the Oklahoma licensed or certified real estate appraiser shall be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment.

SECTION 17. This act shall become effective September 1, 1991.

43-1-5066

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