ENGROSSED HOUSE
BILL NO. 2935

By: Phillips, Boyd (Laura), Kinnamon, Sullivan (Leonard) and Satterfield of the House

and

Ford of the Senate

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 858-701, 858-702, 858-705, as amended by Section 3, Chapter 132, O.S.L. 1992, 858-708, as last amended by Section 2, Chapter 144, O.S.L. 1994, 858-723, as amended by Section 15, Chapter 132, O.S.L. 1992 and 858-726 (59 O.S. Supp. 1995, Sections 858-705, 858-708 and 858-723), which relate to the Oklahoma Certified Real Estate Appraisers Act; modifying purpose, application and uniform standards to reflect certain real estate-related financial transactions; requiring conformity with certain ethics code; modifying qualifications of members of the Real Estate Appraiser Board; modifying grounds for revocation or suspension of certificate; permitting certain complaints to be filed by certain persons; permitting certain complaints to be filed under certain circumstances; establishing certain requirements for complaints; providing for certain hearings or proceedings; requiring certain appraisers to conform with certain ethics standards; specifying certain ethics standards;

providing legislative intent; repealing 59 O.S. 1991, Sections 858-727 and 858-728, which relate to employment of certified real estate appraisers and contingent fees; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 1991, Section 858-701, is amended to read as follows:

Section 858-701. It is the intent of the Legislature to develop a real estate appraiser certification process which meets the federal guidelines set forth in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The purpose of the Oklahoma Certified Real Estate Appraisers Act is to provide appraisers within the state a process for certification which will allow them to participate in a federally related transaction and real estate-related financial transactions of the agencies, instrumentalities and federally recognized entities as defined and recognized in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. It is not the intent of this legislation to prevent any person who is currently conducting business as an appraiser from continuing such action unless such action ~~is related to a federal transaction~~ involves a federally related transaction or a real estate-related financial transaction as defined in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 858-702, is amended to read as follows:

Section 858-702. A. This act shall ~~not~~ only apply to ~~any appraisal or appraiser involving any transaction or proceeding which does not involve federally related transactions covered by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989~~:

1. Any appraisal or appraiser involving the following:

a. a federally related transaction,

b. real estate-related financial transactions of the agencies, instrumentalities, and federally recognized entities covered by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and

c. any real estate-related transactions where an appraisal report was made under a written agreement that the appraisal report would follow the Uniform Standards of Professional Appraisal Practice guidelines or where a written appraisal states that it is in compliance with the Uniform Standards of Professional Appraisal Practice; and

2. Appraisers certified or licensed pursuant to the Oklahoma Certified Real Estate Appraisers Act to the extent that the appraisers and any real property valuation performed by them shall conform to the code of ethics as set forth in Section 7 of this act.

B. Certified public accountants, licensed in the States or other U.S. jurisdictions, who perform appraisals of real estate incidental to the performance of professional services they provide to clients are excluded from the licensing and certification provisions of the Oklahoma Certified Real Estate Appraisers Act unless the appraisal is ~~related to a federal transaction~~ a federally related transaction or a real estate-related financial transaction of the agencies, instrumentalities and federally recognized entities covered by the Financial Institutions, Reform, Recovery and Enforcement Act of ~~1986~~ 1989.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 858-705, as amended by Section 3, Chapter 132, O.S.L. 1992 (59 O.S. Supp. 1995, 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) regular members and one ex officio member. The ex officio member shall be the Insurance Commissioner. The seven (7) regular members shall be as follows: 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 nationally recognized real estate appraisal organization having ~~a plurality of~~ more than two members on the Board.

B. The Governor shall appoint the members of the Real Estate Appraiser Board.

C. 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, state certified residential or state certified general real estate appraiser.

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.

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.

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.

G. The members of the Board shall elect a vice-chairperson from among the members to preside at Board meetings when the chairperson is absent.

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

SECTION 4. AMENDATORY 59 O.S. 1991, Section 858-708, as last amended by Section 2, Chapter 144, O.S.L. 1994 (59 O.S. Supp. 1995, 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. | State Licensed Appraiser Certificate (annually) | $150.00 |
| 2. | State Certified General Appraiser Certificate (annually) | $150.00 |
| 3. | State Certified Residential Appraiser Certificate (annually) | $150.00 |
| 4. | State Licensed Appraiser Examination | $150.00 |
| 5. | State Certified General Appraiser Examination | $150.00 |
| 6. | State Certified Residential Appraiser Examination | $150.00 |
| 7. | Re-examination Fee | $150.00 |
| 8. | Late Fee | ~~$10.00~~ <u>$50.00</u> |
| 9. | Reinstatement Fee | $50.00 |
| 10. | Duplicate for Lost or Destroyed Certificate | $5.00 |
| 11. | Temporary Practice Fee Per Appraisal | $50.00 |

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 59 O.S. 1991, Section 858-723, as amended by Section 15, Chapter 132, O.S.L. 1992 (59 O.S. Supp. 1995, Section 858-723), is amended to read as follows:

Section 858-723. A. The rights of any holder under a certificate as a state licensed, state certified residential or state certified general 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 a state licensed, state certified residential or state certified general real estate appraiser, and may revoke or suspend the rights of a certificate holder or otherwise discipline a state licensed, state certified residential or state certified general 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; or

13. Violating any of the provisions in the code of ethics set forth in Section 7 of this act.

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

C. 1. A complaint may be filed with the Board against a state licensed or state certified appraiser for any violations relating to a specific transaction of the Oklahoma Certified Real Estate Appraisers Act by any person who is the recipient of, relies upon or uses an appraisal prepared for a federally related transaction or real estate-related financial transaction as described in Section 858-701 of this title.

2. Any person with knowledge of any circumstances surrounding an act or omission by a state licensed or state certified appraiser involving fraud, dishonesty or misrepresentation in any real property valuation-related activity, not limited to federally related transactions, may file a complaint with the Board setting forth all facts surrounding the act or omission.

3. A complaint may be filed against a state licensed or state certified appraiser directly by the Board, if reasonable cause exists for violations of Section 7 of this act.

4. Any complaint filed pursuant to this subsection shall be in writing and signed by the person filing same and shall be on a form approved by the Board. The state licensed or state certified appraiser shall be entitled to any hearings or subject to any disciplinary proceedings provided for in the Oklahoma Certified Real Estate Appraisers Act based upon any complaint filed pursuant to this subsection.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 858-726, is amended to read as follows:

Section 858-726. An Oklahoma certified real estate appraiser must comply with the Uniform Standards of Professional Appraisal Practice, as approved by the Appraisal Subcommittee when involved in a federally related transaction or a real estate-related financial transaction of the agencies, instrumentalities and federally recognized entities as defined and recognized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or when both the appraiser and user of appraisal services agree in writing that the work product is an appraisal, or when a written appraisal states that it is in compliance with the Uniform Standards of Professional Appraisal Practice.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-732 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. All appraisers certified or licensed pursuant to the Oklahoma Certified Real Estate Appraisers Act must conduct all real property valuations in conformance with the following:

1. An appraiser must perform ethically and competently and not engage in conduct that is unlawful, unethical or improper. An appraiser who could reasonably be perceived to act as a disinterested third party in rendering an unbiased real property valuation must perform assignments with impartiality, objectivity and independence and without accommodation of personal interests;

2. The acceptance of compensation that is contingent upon the reporting of a predetermined value or a direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event is unethical;

3. The payment of undisclosed fees, commissions or things of value in connection with the procurement of real property valuation assignments is unethical;

4. Advertising for or soliciting appraisal assignments in a manner which is false, misleading or exaggerated is unethical; and

5. An appraiser must protect the confidential nature of the appraiser-client relationship.

B. Although this code of ethics is based upon the ethics provisions of the Uniform Standards of Professional Appraisal Practice, it is not the intent of the Legislature to incorporate the standards set forth in the Uniform Standards of Professional Appraisal Practice.

SECTION 8. REPEALER 59 O.S. 1991, Sections 858-727 and 858-728, are hereby repealed.

SECTION 9. This act shall become effective July 1, 1996.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 5th day of March, 1996.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1996.

President of the Senate