

No. 1990-98

AN ACT

SB 756

Providing for the certification of real estate appraisers; specifying requirements for certification; providing for sanctions and penalties; and making an appropriation.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Real Estate Appraisers Certification Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Applicant.” A natural person.

“Appraisal.” A written analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real property, for or in expectation of compensation.

“Board.” The State Board of Certified Real Estate Appraisers within the Bureau of Professional and Occupational Affairs in the Department of State.

“Secretary.” The Secretary of the Commonwealth or his or her designee.

“State-certified real estate appraiser.” A person who holds a current valid certificate issued to him under the provisions of this act.

Section 3. Real estate appraiser certification required.

It shall be unlawful, on or after July 1, 1991, for any person to hold himself out as a State-certified real estate appraiser or to perform appraisals required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183) to be performed by a State-certified or State-licensed real estate appraiser unless that person holds a current, valid certification from the board to perform real estate appraisals. The board shall postpone the prohibition on the performance of appraisals without certification from on or after July 1, 1991, to on or after a later date upon notice that such prohibition has been postponed pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Nothing in this act shall prohibit a person who is licensed or exempted from licensure under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, from performing a real property appraisal without being a State-certified real estate appraiser if that appraisal is not required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to be performed by a State-certified or a State-licensed real estate appraiser.

Section 4. State Board of Certified Real Estate Appraisers.

(a) Creation.—There is hereby created the State Board of Certified Real Estate Appraisers as a departmental administrative board in the Department of State. The board shall consist of seven members who are citizens of the United States and who have been residents of this Commonwealth for a two-year period immediately prior to appointment, two of whom shall be public members, four of whom shall be persons who are State-certified real estate appraisers and one of whom shall be the Secretary of the Commonwealth or his or her designee. For the initial board appointments, the four professional members need not be certified at the time of appointment but shall have appropriate appraisal experience and education and shall have demonstrated adherence to standards of professional practice.

(b) Term of office.—The professional and public members shall serve four-year terms, except as provided in subsection (c), and shall be appointed by the Governor by and with the advice and consent of a majority of the members elected to the Senate.

(c) Initial appointments.—Within 90 days of the effective date of this act, the Governor shall nominate one professional member to serve a four-year term; one public member and one professional member to serve three-year terms; one public member and one professional member to serve two-year terms; and one professional member to serve a one-year term.

(d) Continuation in office.—Each professional and public member shall continue in office until a successor is duly appointed and qualified but no longer than six months after the expiration of the term. In the event that a board member shall die, resign or otherwise become disqualified during the

term of office, a successor shall be appointed in the same way and with the same qualifications as set forth in this section and shall hold office for the unexpired portion of the unexpired term.

(e) **Limit on terms.**—No board member shall be eligible for appointment to serve more than two consecutive four-year terms.

(f) **Forfeiture of membership.**—A board member who fails to attend three consecutive meetings shall forfeit his or her seat unless the secretary, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of a family member.

(g) **Compensation.**—Each member of the board, except the secretary, shall receive per diem compensation at the rate of \$60 per diem when actually attending to the work of the board. Members shall also receive reasonable traveling, hotel and other necessary expenses incurred in the performance of their duties in accordance with Commonwealth regulations.

(h) **Forfeiture for nonattendance.**—A public member who fails to attend two consecutive statutorily mandated training seminars in accordance with section 813(e) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, shall forfeit his or her seat unless the secretary, upon written request from the public member, finds that the public member should be excused from a meeting because of illness or the death of a family member.

(i) **Quorum.**—A majority of the members of the board serving in accordance with law shall constitute a quorum for purposes of conducting the business of the board. A member may not be counted as part of a quorum or vote on any issue unless he or she is physically in attendance at the meeting.

(j) **Meetings.**—The board shall meet at least four times a year in Harrisburg.

(k) **Notice.**—Reasonable notice of all meetings shall be given in conformity with the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act.

(l) **Operating procedures.**—The board shall meet within 30 days after the appointment of its initial members and set up operating procedures and an application form for certifying appraisers. It shall be the responsibility of the board to circulate these forms and educate the public to the requirements of certification. No other board and no commission within the Bureau of Professional and Occupational Affairs shall be responsible, in any manner, for the policies, procedures or other substantive matters which are within the powers and duties of the board as set forth in this act.

(m) **Election of officers.**—The board shall elect annually from its membership a chairman, a vice chairman and a secretary.

Section 5. Powers and duties of board.

The board shall have the following powers and duties:

(1) To pass upon the qualifications and fitness of applicants for certification and to adopt and revise rules and regulations requiring applicants for certification to pass examinations relating to their qualifications for certification.

(2) To adopt and, from time to time, revise such rules and regulations as may be necessary to carry out the provisions of this act. Such regulations shall include, but not be limited to, standards of professional appraisal practice requiring that appraisals be performed in accordance with generally accepted appraisal standards as required pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183).

(3) To examine for, deny, approve, issue, revoke, suspend or renew certificates of appraisers pursuant to this act and to conduct hearings in connection therewith.

(4) To conduct hearings upon complaints concerning violations of the provisions of this act and the rules and regulations adopted pursuant to this act and seek the prosecution and enjoinder of all such violations.

(5) To expend moneys necessary to the proper carrying out of its assigned duties.

(6) To establish fees for the operation of the board, including fees for the issuance and renewal of certificates and for examinations.

(7) To submit annually a report to the Professional Licensure Committee of the House of Representatives and the Consumer Protection and Professional Licensure Committee of the Senate containing a description of the types of complaints received, status of the cases, board action which has been taken and length of time from the initial complaint to final board resolution.

(8) To submit annually to the Department of State, an estimate of the financial requirements of the board for its administrative, investigative, legal and miscellaneous expenses.

(9) To submit annually to the Appropriations Committees of the House of Representatives and the Senate, 15 days after the Governor has submitted his budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the board previously submitted to the Department of State.

(10) To submit annually pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 a roster listing individuals who have received State certification.

Section 6. Application and qualifications.

(a) Classes of certification.—There shall be two classes of certification for certified real estate appraisers as follows:

(1) Residential, which shall consist of those persons applying for certification relating solely to the appraisal of residential real property as required pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183).

(2) General, which shall consist of those persons applying for certification relating to the appraisal of both residential and nonresidential real property without limitation.

(b) Classification to be specified.—The application for examination, original certification and renewal of certification shall specify the classification being applied for.

(c) **Application.**—An applicant for certification as a certified real estate appraiser shall submit a written application on forms provided by the board evidencing that:

(1) He or she is of good moral character.

(2) His or her application has been accompanied by the application fee.

(d) **Residential certification.**—As a prerequisite to taking the examination for certification relating solely to the appraisal of residential real property, an applicant shall, in addition to meeting the requirements of subsection (c), meet the minimum education and experience requirements established pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(e) **General certification.**—As a prerequisite to taking the examination for the general certification relating to the appraisal of real property, an applicant shall, in addition to meeting the requirements of subsection (c), meet the minimum education and experience requirements established pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(f) **Definition of subjects.**—The board shall prescribe and define the subjects related to real property appraisal and the experience in real property appraisal which will satisfy the requirements of subsections (d) and (e). To the extent permitted pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the board may give credit to an applicant for classroom hours of academic experience successfully completed prior to the board's prescription and definition of subjects pursuant to this subsection.

(g) **Examinations.**—Examinations for certification shall be selected in accordance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Examinations shall be prepared and administered by a qualified and approved professional testing organization in accordance with section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(h) **Guidelines and regulations.**—In order to facilitate the speedy implementation of this act, the board shall have the power and authority to promulgate, adopt and use guidelines to prescribe the education, experience, examination and other qualifications required for certification pursuant to this section. Such guidelines shall be published in the Pennsylvania Bulletin. The guidelines shall not be subject to review pursuant to section 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and shall be effective for a period not to exceed two years from the effective date of this act. After the expiration of the two-year period, the guidelines shall expire and shall be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

Section 7. Reciprocity.

The board shall have the power to grant a reciprocal certification to an applicant who is certified or licensed as an appraiser in another state and has demonstrated qualifications which equal or exceed those required pursuant to this act in the determination of the board, provided that no certificate shall be granted under this section to an applicant unless the state in which the applicant is certified or licensed affords reciprocal treatment to persons who are residents of this Commonwealth and who are certified pursuant to this act.

Section 8. Temporary practice.

As required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183), 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;
- (2) the appraiser's business is of a temporary nature; and
- (3) the appraiser registers with the board.

Section 9. Fees.

(a) **Imposition and increases.**—All fees established pursuant to this act shall be fixed by the board by regulation and shall be subject to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. If the revenues raised by fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures over a two-year period, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures.

(b) **Additional increases.**—If the Bureau of Professional and Occupational Affairs determines that the fees established by the board under subsection (a) are inadequate to meet the minimum enforcement efforts required by this act, then the bureau, after consultation with the board and subject to the Regulatory Review Act, shall increase the fees by regulation in an amount that adequate revenues are raised to meet the required enforcement effort.

(c) **Additional fees.**—In addition to fees established pursuant to this act, the board is authorized to collect and transmit fees required pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183).

Section 10. Certification renewal; records.

(a) **Renewal term.**—Renewal of certification shall be on a biennial basis.

(b) **Continuing education.**—The board shall by regulation require evidence of professional activity or continuing education as a condition of certification renewal if, and only to the minimum extent, required pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183). No credit shall be given for any course in office management or practice building. In order to facilitate the speedy implementation of this act, the board shall have the power and authority to promulgate, adopt and use guidelines to prescribe the evidence of professional activity or continuing certification required for certification renewal

pursuant to this section. Such guidelines shall be published in the Pennsylvania Bulletin. The guidelines shall not be subject to review pursuant to section 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and shall be effective for a period not to exceed two years from the effective date of this act. After the expiration of the two-year period, the guidelines shall expire and shall be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

(c) Records.—A record of all persons certified as real estate appraisers in this Commonwealth shall be kept in the office of the board and shall be open to public inspection and copying upon payment of a nominal fee for copying the record. Each certificateholder shall advise the board of the address of his or her principal place of business.

Section 11. Disciplinary and corrective measures.

(a) Authority of board.—The board may deny, suspend or revoke certificates, or limit, restrict or reprimand a certificateholder for any of the following causes:

(1) Procuring or attempting to procure a certificate or renewal of a certificate pursuant to this act by knowingly making a false statement, submitting false information or refusing to provide complete information in response to a question in an application for certification or renewal through any form of fraud or misrepresentation.

(2) Failing to meet the minimum qualifications established by this act.

(3) Paying, or offering to pay, any valuable consideration other than provided for by this act to any member or employee of the board to procure a certificate under this act.

(4) Being convicted of or pleading guilty to a crime which is substantially related to the qualifications, functions and duties of a person developing real property appraisals and communicating real property appraisals to others.

(5) Performing an act or omitting an act when such performance or omission involves dishonesty, fraud or misrepresentation with intent to substantially benefit the certificateholder in his profession or with the intent to substantially injure another person.

(6) Violating any of the standards for the development or communication of real property appraisals as required pursuant to this act or the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183).

(7) Failing or refusing, without good cause, to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal.

(8) Negligently or incompetently developing an appraisal, preparing an appraisal report or communicating an appraisal.

(9) Willfully disregarding or violating any of the provisions of this act or the guidelines or regulations of the board for the administration and enforcement of the provisions of this act.

(10) Accepting an appraisal assignment when the employment itself is contingent upon the appraiser's reporting a predetermined analysis or opinion, or where the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion or valuation reached, or upon the consequence resulting from the appraisal assignment.

(11) Violating the confidential nature of records to which the appraiser gained access through employment or engagement as an appraiser.

(12) Making the fee or compensation contingent upon an award or recovery in any case where the amount of the award or recovery would be affected by the appraisal.

(13) Basing the fee or compensation on a percentage of the final estimate of value.

(14) Contracting for or accepting compensation for appraisal services in the form of a commission, rebate, division of brokerage commissions or any other similar form.

(15) Having a license or certificate to perform appraisals suspended, revoked, or refused or receiving other disciplinary actions by the appraisal licensure or certification authority of another state, territory or country.

(b) Board action.—When the board finds that the certification or application for certification or renewal of any person may be denied, revoked, restricted or suspended under the terms of subsection (a), the board may:

(1) Deny the application for certification or renewal.

(2) Administer a public reprimand.

(3) Revoke, suspend, limit or otherwise restrict a certificate as determined by the board.

(4) Suspend enforcement of its findings thereof and place a certificateholder on probation with the right to vacate the probationary order for noncompliance.

(5) Restore a suspended certification and impose any disciplinary or corrective measure which it might originally have imposed.

(c) Hearing.—All actions of the board shall be taken subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. (relating to administrative law and procedure). Appeals from actions of the board shall be taken to Commonwealth Court or to such other court as prescribed by law.

Section 12. Reinstatement of certificate.

Unless ordered to do so by Commonwealth Court or an appeal therefrom, the board shall not reinstate the certificate of a person to practice as a certified real estate appraiser, pursuant to this act, which has been revoked. Any person whose certification has been revoked may apply for reinstatement, after a period of at least five years, but must meet all of the certification qualifications of this act, including the examination requirement, if he or she desires to hold himself or herself out or to practice as a certified real estate appraiser pursuant to this act at any time after such revocation.

Section 13. Reporting of multiple certification.

Any appraiser certified in this Commonwealth who is also certified or licensed to perform appraisals in any other state, territory or country shall report this information to the board on the biennial renewal application. Any disciplinary action taken in any other state, territory or country shall be reported to the board on the biennial renewal application, or within 90 days of disposition, whichever is sooner. Multiple licensure or certification shall be noted by the board on the certified appraiser's record, and such state, territory or country shall be notified by the board of any disciplinary actions taken against said certified appraiser in this Commonwealth.

Section 14. Surrender of suspended or revoked certificate.

The board shall require a person whose certification has been suspended or revoked to return the certificate in such manner as the board directs. Failure to do so shall be a misdemeanor of the third degree.

Section 15. Penalties.

(a) **Criminal penalties.**—A person who violates this act commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of up to \$1,000 or to imprisonment for not more than 90 days, or both.

(b) **Civil penalty.**—In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law, or by a vote of the majority of the duly qualified and confirmed membership or a minimum of three members, whichever is greater, may levy a civil penalty of up to \$1,000 on any current certificateholder who violates any provision of this act or on any person who holds himself or herself out as a certified real estate appraiser or performs appraisals for which certification or licensure is required pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183) without being so certified pursuant to this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in 2 Pa.C.S. (relating to administrative law and procedure).

(c) **Disposition.**—All fines and civil penalties imposed in accordance with this section shall be paid into the Professional Licensure Augmentation Account.

Section 16. Subpoenas.

(a) **Power to issue.**—The board shall have the authority to issue subpoenas, upon application of an attorney responsible for representing the Commonwealth in disciplinary matters before the board, for the purpose of investigating alleged violations of the disciplinary provisions administered by the board. The board shall have the power to subpoena witnesses, to administer oaths, to examine witnesses and to take such testimony or compel the production of such books, records, papers and documents as it may deem necessary or proper in, and pertinent to, any proceeding, investigation or hearing held or had by it. Client records may not be subpoenaed without consent of the client or without order of a court of competent jurisdiction on a showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitations on the scope of the subpoena as

are necessary to prevent unnecessary intrusion into client confidential information. The board is authorized to apply to Commonwealth Court to enforce its subpoenas.

(b) Notification of board.—An attorney responsible for representing the Commonwealth in disciplinary matters before the board shall notify the board immediately upon receiving notification of an alleged violation of this act. The board shall maintain current records of all reports of alleged violations and periodically review the records for the purpose of determining that each alleged violation has been resolved in a timely manner.

Section 17. Injunctive relief.

(a) Injunction.—A violation of section 3 may be enjoined by the courts upon petition of the secretary or the board. In any proceeding under this section, it shall not be necessary to show that any person is individually injured by the actions complained of. If the court finds that the respondent has violated section 3, it shall enjoin him or her from so practicing or holding himself or herself out until he or she has been duly certified. Procedure in such cases shall be the same as in any other injunction suit.

(b) Remedy cumulative.—The injunctive remedy provided in this section shall be in addition to any other civil or criminal prosecution and punishment.

Section 18. State licensure requirements.

Persons who are certified as real estate appraisers under this act shall also be deemed to be State-licensed appraisers under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183).

Section 19. Appropriation.

The sum of \$85,000, or as much thereof as may be necessary, is hereby appropriated from the Professional Licensure Augmentation Account within the General Fund to the Bureau of Professional and Occupational Affairs in the Department of State for the payment of costs of processing certificates and renewals, for the operation of the board and for other general costs of the bureau operations relating to this act. The appropriation granted shall be repaid by the board within six years of the beginning of issuance of certificates by the board.

Section 20. Effective date.

This act shall take effect immediately.

APPROVED—The 10th day of July, A. D. 1990.

ROBERT P. CASEY