

No. 2008-59

AN ACT

SB 485

Amending the act of July 10, 1990 (P.L.404, No.98), entitled "An act providing for the certification of real estate appraisers; specifying requirements for certification; providing for sanctions and penalties; and making an appropriation," further providing for real estate appraiser certification required, for State Board of Certified Real Estate Appraisers, for powers and duties of board, for application and qualifications, for certification renewal and records, for disciplinary and corrective measures, for reinstatement of certificate, for surrender of suspended or revoked certificate and for penalties.

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

Section 1. Section 3 of the act of July 10, 1990 (P.L.404, No.98), known as the Real Estate Appraisers Certification Act, amended July 2, 1996 (P.L.460, No.71), is amended to read:

Section 3. Real estate appraiser certification required.

[It shall be unlawful, on or after January 1, 1993, 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 an appropriate, current and valid certification from the board to perform real estate appraisals. It shall be unlawful two years after the effective date of this act for any person to perform real estate appraisals in nonfederally related transactions unless that person holds a valid certificate from the board to perform real estate appraisals.] It shall be unlawful for any person to do any of the following:

(1) 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 an appropriate, current and valid certificate from the board to perform real estate appraisals.

(2) To perform real estate appraisals in nonfederally related transactions unless that person holds an appropriate, current and valid certificate or license from the board to perform real estate appraisals.

(3) To hold himself out as a real estate appraiser or appraiser trainee without an appropriate, current and valid certificate or license from the board.

Section 2. Sections 4(a) and (g) and 5 of the act are amended to read:
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.]** *the following members:*

(1) *The Secretary of the Commonwealth or a designee.*

(2) *The Attorney General or a designee.*

(3) *The Secretary of Banking or a designee.*

(4) *Eight 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 and six of whom shall be persons who are State-certified real estate appraisers.*

* * *

(g) Compensation.—Each member of the board, except the secretary, *the Attorney General and the Secretary of Banking*, 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.

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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 *or licensure* 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 *and licenses of appraiser trainees* 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 licenses* 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 2.1. Section 6 of the act, amended July 2, 1996 (P.L.460, No.71) and October 18, 2000 (P.L.600, No.77), is amended to read:

Section 6. Application and qualifications.

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

(1) **[Residential]** *Certified residential appraiser*, which shall consist of those persons applying for and granted certification relating solely to the appraisal of residential real property **[as]** *in accordance with the criteria established by the Appraiser Qualifications Board of the Appraisal Foundation* required pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183).

(2) **[General]** *Certified general appraiser*, which shall consist of those persons applying for and granted certification relating to the appraisal of both residential and nonresidential real property without limitation **[as]** *in accordance with the criteria established by the Appraiser Qualifications Board of the Appraisal Foundation* required pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183).

(3) Broker/appraiser, which shall consist of those persons who, [on the effective date of this act, are] *as of September 3, 1996, were* licensed real estate brokers under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, and who, [within two years of the effective date of this act, make] *by September 3, 1998, made* application to the board and [are] *were* granted without examination a broker/appraiser certificate. A holder of a broker/appraiser certificate shall only be permitted to perform those real property appraisals that were permitted to be performed by a licensed real estate broker under the Real Estate Licensing and Registration Act as of [the effective date of this act] *September 3, 1996*. A holder of a broker/appraiser certificate is not authorized to perform real estate appraisals pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(a.1) Appraiser trainee license.—In addition to the certificates authorized in subsection (a), the board shall issue an appraiser trainee license, without examination, to any person who meets the appraiser trainee educational requirements set by the board and who does not already hold an appraiser credential under subsection (a). An appraiser trainee shall operate under the direct supervision of one certified residential appraiser or certified general appraiser for the purpose of completing the experience requirement for an appraiser credential in subsection (a). An appraisal trainee shall be permitted to assist in the performance of any appraisal that is within the supervisory appraiser's scope of practice. The supervisory appraiser shall be in good standing, have at least five years of experience as a certified residential appraiser or certified general appraiser and shall not supervise more than three appraiser trainees.

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

(c) Application.—An applicant for certification *or license* [as a certified real estate appraiser] shall submit a written application on forms provided by the board. The application and any and all documentation submitted with the application shall be subscribed and sworn to before a notary public. The applicant shall be held responsible for the statements contained in the application. The making of a false statement in an application may constitute a ground for *certification or license* denial or revocation. The application shall evidence that:

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

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

(d) Residential *appraiser* 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 *appraiser* 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 (a), (a.1), (d) and (e). To the extent permitted pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 *with regard to certified residential and general appraisers*, 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 *or license* 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.

(i) *Real estate brokers as appraisers.*—

(1) *Nothing in this section shall preclude a licensed real estate broker from also holding an appraiser license or certificate under subsection (a)(1) or (2) or (a.1).*

(2) *All persons holding a broker/appraiser certificate under subsection (a)(3) shall be entitled to hold the certificate for the entire term and shall be entitled and subject to the privileges, obligations and renewals which accompany the certificate.*

Section 2.2. Section 10 of the act, amended December 20, 2000 (P.L.733, No.103), is amended to read:

Section 10. Certification renewal[;], *licensure renewal and records.*

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

(b) Continuing education for residential and general appraisers.—The board shall by regulation require evidence of professional activity or continuing education as a condition of certification renewal of residential and general appraisers 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.

(b.1) Continuing education for broker/appraisers.—Broker/appraisers shall be subject to the same continuing education requirements for

certification renewal as residential and general appraisers. The board shall have the power and authority to promulgate regulations to prescribe evidence of continuing education required for certification renewal pursuant to this section.

(c) Records.—A record of all persons *licensed as appraiser trainees and 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 *and shall be accessible on the board's Internet website*. Each certificateholder *and licensee* shall advise the board of the address of his or her principal place of business.

Section 3. Section 11(a) and (b) of the act, amended July 2, 1996 (P.L.460, No.71), are amended to read:

Section 11. Disciplinary and corrective measures.

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

(1) Procuring or attempting to procure a certificate *or license* or renewal of a certificate *or license* 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 licensure* or renewal *of certification or licensure* 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 *or licensee* 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 by an appraisal licensure or certification authority of another state, territory or country, or receiving other disciplinary actions by the appraisal licensure or certification authority of another state, territory or country.

(16) Suspension or revocation of the right to practice by a Federal or State governmental agency.

(17) Having been found by a civil court of competent jurisdiction to have performed a fraudulent appraisal.

(b) Board action.—When the board finds that the [certification or certificate or license, application for certification or licensure or renewal of certification or licensure 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 licensure or for renewal of certification or licensure.

(2) Administer a public reprimand.

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

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

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

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Section 4. Sections 12, 14 and 15(b) of the act are amended to read:
Section 12. Reinstatement of certificate or license.

Unless ordered to do so by Commonwealth Court or an appeal therefrom, the board shall not reinstate the certificate *or license* of a person to practice as a certified real estate appraiser *or as an appraiser trainee*, pursuant to this act, which has been revoked. Any person whose [certification] *certificate or license* has been revoked may apply for reinstatement, after a period of at least five years, but must meet all of the certification *or licensure* 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 14. Surrender of suspended or revoked certificate *or license*.

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

Section 15. Penalties.

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(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] *\$10,000* 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.] *certificateholder or licensee who violates any provision of this act or any noncertificateholder who holds himself out as a real estate appraiser in this Commonwealth or who performs an appraisal for which certification or licensure is required under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183) an appraisal in any federally related or nonfederally related transaction or any other appraisal.* 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).

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Section 5. This act shall take effect in 60 days.

APPROVED—The 8th day of July, A.D. 2008.

EDWARD G. RENDELL