

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S3/6/19
A Bill

SENATE BILL 394

By: Senator Hester
By: Representative Dotson

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS CONCERNING LICENSING AND
CERTIFICATION OF APPRAISERS; TO CREATE A REGISTRATION
CLASS FOR A REGISTERED APPRENTICE APPRAISER; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS CONCERNING LICENSING
AND CERTIFICATION OF APPRAISERS; AND TO
CREATE A REGISTRATION CLASS FOR A
REGISTERED APPRENTICE APPRAISER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 17-14-102(a), concerning the necessity for registration, license, or certificate of appraisers, is amended to read as follows:

(a)(1) The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., is created in response to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and specifies three (3) classes of appraisers: state-licensed, state-certified residential, and state-certified general appraisers for federally related transactions.

(2) A fourth class is created for nonfederally related transactions, which shall be known as “state-registered appraisers”.

(3) A fifth class is created for an appraiser who is subject to direct control and supervision by a qualified state-certified appraiser



supervisor as part of upgrading his or her classification to state-licensed or state-certified, which shall be known as "registered apprentice appraiser".

SECTION 2. Arkansas Code § 17-14-103 is amended to read as follows:
17-14-103. Definitions.

As used in the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.:

(1) "Appraisal":

(A) As a noun, means the act or process of estimating value or an estimate of value; and

(B) As an adjective, means of or pertaining to appraising and related functions, i.e., appraisal practice and appraisal services;

(2) "Appraisal Foundation" and "foundation" mean the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois;

(3) "Appraisal practice" and "appraisal services" mean the work or services performed by appraisers for clients;

(4) "Appraisal Standards Board" means the board created under Article XI, sections 11.01 – 11.13 inclusive, of the bylaws of the Appraisal Foundation, as amended April 22, 1990;

(5) "Appraisal Subcommittee" means the subcommittee of the Federal Financial Institutions Examination Council established under Title XI, the Real Estate Appraisal Reform Amendments of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, section 1102, by amendment to the Federal Financial Institutions Examination Council Act of 1978, 12 U.S.C. § 3301 et seq., through the addition of new section 1011, "Establishment of Appraisal Subcommittee";

(6) "Appraiser" or "real estate fee appraiser" means any person who, for a fee or other consideration, develops and communicates a real estate appraisal or otherwise gives an opinion of the value of real estate or any interest in real estate;

(7) "Appraiser Qualifications Board" means the board created under Article XII, sections 12.01 – 12.08 inclusive, of the bylaws of the Appraisal Foundation, as amended April 22, 1990;

(8) "Board" means the Arkansas Appraiser Licensing and

Certification Board established under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.;

(9) "Client" means any person for whom an appraiser performs a service;

(10) "Federal financial institutions regulatory agencies" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the United States Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration;

(11) "Federally related transaction" means any real estate-related financial transaction which:

(A) A financial institution, a federal financial institution's regulatory agency, or the Federal Deposit Insurance Corporation engages in, contracts for, or regulates; and

(B) In accordance with any federal law, rule, or regulation, as the same may be amended, requires the services of an appraiser;

(12) "Financial institution" means an insured depository institution as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c)(2), or an insured credit union as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. § 1751 et seq.;

(13) "Independent appraisal assignment" means any engagement for which an appraiser is employed or retained to act or to be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion, evaluation, or conclusions relating to the nature, quality, value, or utility identified as real estate or real property;

(14) "Market analysis" or "broker's price opinion" means a proposed sale price opinion or recommended listing price given by a licensed real estate broker, sales person, or other to a potential seller, purchaser, or third party;

(15) "Personal property" means identifiable portable and tangible objects which are considered by the general public as being "personal", e.g., furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all property that is not classified as

real estate;

(16) "Real estate" means an identified parcel or tract of land, including improvements, if any;

(17)(A) "Real estate appraisal" means an unbiased estimate of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate and related personalty.

(B)(i) A real estate appraisal may be classified by subject matter into either a valuation or an evaluation.

(ii) Valuation is the process of estimating the market value, investment value, insurable value, or other properly defined value of an identified interest or interests in a specific parcel or parcels of real estate as of a given date.

(iii) Evaluation or analysis is the study of the nature, quality, or utility of a parcel of real estate, or interests in or aspects of real property, in which a value estimate is not necessarily required, i.e., a study of real estate or real property other than estimating value;

(18) "Real estate-related financial transaction" means any transaction involving:

(A) The sale, lease, purchase, investment in, or exchange of real property, including interests in property, or the financing thereof;

(B) The refinancing of real property or interests in real property; and

(C) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities;

(19) "Real property" means interest, benefits, and rights inherent in the ownership of real estate;

(20)(A) "Registered apprentice appraiser" means an individual who has satisfied the requirements for apprentice appraiser by the Appraiser Qualifications Board and who is subject to direct control and supervision by a qualified state-certified appraiser supervisor as a party of upgrading his or her classification to state-licensed or state-certified.

(B) The scope of practice for a registered apprentice appraiser is the appraisal of properties that the state-certified appraiser supervisor is permitted by his or her current credential and competent to appraise;

~~(20)~~(21) “Report” means:

(A) Any communication, written or oral, of an appraisal, review, or analysis;

(B) The document that is transmitted to the client upon completion of an assignment; or

(C) The tangible expression of an appraiser’s service;

~~(21)~~(22) “Review” means the act or process of critically studying a report prepared by another;

~~(22)~~(23) “State-certified general appraiser” means any individual who has satisfied the requirements for state certification in the State of Arkansas and who is qualified to perform appraisals of all real property types of any monetary size and complexity;

~~(23)~~(24) “State-certified residential appraiser” means any individual who has satisfied the requirements for state certification in the State of Arkansas and who is qualified to perform appraisals of all property types up to a monetary size and complexity as prescribed by the Appraiser Qualifications Board and the federal financial institutions regulatory agencies;

~~(24)~~(25) “State-licensed appraiser” means any individual who has satisfied the requirements for state licensing in the State of Arkansas and who is qualified to perform appraisals of all property types up to a monetary size and complexity as prescribed by the Appraiser Qualifications Board and the federal financial institutions regulatory agencies;

~~(25)~~(26) “State-registered appraiser” means any person who has satisfied the requirements for ~~registering a state-registered appraiser~~ credential as set forth in § 17-14-307 or requirements as may have been determined by the board and who may perform appraisals on any type of property except when the purpose of the appraisal is for use in federally related transactions;

~~(26)~~(27) “Uniform Standards of Professional Appraisal Practice” means the entire body of rules, definitions, binding requirements, guidelines, explanatory comments, and ethical conduct provisions, as promulgated by the Appraisal Standards Board of the Appraisal Foundation, which provide the basis for an individual to conduct the practice of professional appraisal with integrity, objectivity, and independent judgment and in an ethical manner; and

~~(27)-(28)~~ “Written appraisal” means ~~a written statement used in connection with a federally related transaction that is independently and impartially prepared by a licensed appraiser or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information~~ the conclusions of an appraiser’s valuation analysis communicated to the client in writing.

SECTION 3. Arkansas Code § 17-14-105 is amended to read as follows:

17-14-105. Rights and privileges of ~~licensed or registered appraiser~~ appraisers.

(a) A state-registered appraiser or state-licensed appraiser as defined in § 17-14-103 may appraise real property for compensation if the use of a state-certified appraiser is not required under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., or by federal or state law, rule, or policy.

(b) An appraiser shall not sign an appraisal report or be cited within the report as having provided “significant real property appraisal assistance” in the development of the appraisal without having been state-registered, state-licensed, registered apprentice, or state-certified.

(c) An appraiser shall not perform or be employed to perform an appraisal where the property that is subject to the assignment lies within the borders of the State of Arkansas without first being state-registered, state-licensed, registered apprentice, or state-certified by the Arkansas Appraiser Licensing and Certification Board.

SECTION 4. Arkansas Code § 17-14-201(b)(2)(A), concerning the composition and membership of the Arkansas Appraiser Licensing and Certification Board, is amended to read as follows:

(A) A state or regional chapter of a nationally recognized real estate appraisal organization that requires an individual to have qualified appraisal experience, education, and testing in order to become a designated member and to adhere to standards of professional practice in order to retain such a designation; or

SECTION 5. Arkansas Code § 17-14-202 is amended to read as follows:

17-14-202. Powers and duties – Reporting standards – Qualification standards.

(a) The Arkansas Appraiser Licensing and Certification Board may establish, maintain, report, and periodically update meaningful qualification standards for state-licensed, registered apprentice, and state-certified appraisers practicing in the State of Arkansas, including testing, experience, and educational requirements that:

(1) Are adequate to demonstrate knowledge and competency; and

(2) Will further demonstrate the continued compliance with:

(A) All applicable federal law and regulations, including Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related requirements of the federal financial institutions regulatory agencies; and

(B) The minimum standards and qualifications as promulgated by the Appraisal Standards Board and the Appraiser Qualifications Board of the Appraisal Foundation ~~and as approved by the Appraisal Subcommittee.~~

(b) The Arkansas Appraiser Licensing and Certification Board may adopt, maintain, report, and periodically update minimum reporting standards for state-registered, state-licensed, registered apprentice, and state-certified appraisers practicing in the State of Arkansas. The reporting standards shall:

(1) Be equivalent to the “Uniform Standards of Professional Appraisal Practice” as promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(2) At all times seek compliance with:

(A) All applicable federal law and regulations, including Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related requirements of the federal financial institutions regulatory agencies; and

(B) The minimum standards as promulgated by the Appraisal Standards Board of the Appraisal Foundation ~~and as approved by the Appraisal Subcommittee.~~

SECTION 6. Arkansas Code § 17-14-203(5) and (6), concerning the powers and duties of the Arkansas Appraiser Licensing and Certification Board, are

amended to read as follows:

(5)(A) Maintain a roster of the names, addresses, email addresses, and telephone numbers of all persons licensed and certified under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., and, in accordance with sections 1103(a)(3) and 1109(a)(1) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall submit this roster ~~annually~~ monthly to the Appraisal Subcommittee.

(B) This roster may be published and periodically updated and provided to all interested parties at cost;

(6)(A) Establish by rule the minimum examination, education, experience, and continuing education requirements for state-registered, state-licensed, registered apprentice, and state-certified appraisers.

(B)(i) The criteria for a state-registered appraiser shall be less rigorous than the criteria for a state-licensed appraiser.

(ii) The criteria for a state-licensed appraiser shall be less rigorous than the criteria for a state-certified appraiser. However, the criteria will ensure that licensed appraisers have sufficient experience and training to perform appraisals for transactions within and in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(C) These rules shall at all times be equivalent to the minimum appraiser-qualification criteria as promulgated by the Appraiser Qualifications Board of the Appraisal Foundation for state-licensed, registered apprentice, and state-certified appraisers performing federally related transactions.

(D) With respect to examinations, these rules shall at all times require minimum examination contents that are equivalent to the national uniform examination content as promulgated by the Appraiser Qualifications Board of the Appraisal Foundation and shall provide for the selection and utilization of a testing service acceptable to the Appraiser Qualifications Board of the Appraisal Foundation.

(E)(i) Every application for registering, licensing, and ~~certification~~ certifying shall be accompanied by an application ~~and examination fee, as applicable,~~ and a criminal background check fee that the Arkansas Appraiser Licensing and Certification Board may establish by rule.

(ii) However, the Arkansas Appraiser Licensing and Certification Board, at its discretion, may direct each applicant to pay the actual cost of the examination fee directly to a testing service engaged by the Arkansas Appraiser Licensing and Certification Board to administer the examination.

(F)(i) ~~The examination application fee for registering, licensing, or certification to upgrade a credential from registered apprentice to state-licensed or to state-certified shall not exceed one hundred dollars (\$100).~~

(ii) The application fee to upgrade a credential from state-licensed to state-certified shall not exceed fifty dollars (\$50.00).

(G) The total annual resident registering, licensing, certification, and application fees established by the Arkansas Appraiser Licensing and Certification Board shall not exceed three hundred dollars (\$300), excluding fees for:

(i) Applicable examination and federal pass-through fees; and

(ii) Criminal background check fees.

(H) Courses, schools, seminars, and any other educational programs must be recognized by the Arkansas Appraiser Licensing and Certification Board as acceptable to satisfy registration, licensing, and certification standards and continuing education requirements under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.;

SECTION 7. Arkansas Code § 17-14-203(12)(A)(ii), concerning the powers and duties of the Arkansas Appraiser Licensing and Certification Board, is amended to read as follows:

(ii) Subdivision (12)(A)(i) of this section applies to an application for a state-registered appraiser credential, an application for a registered apprentice appraiser credential, an application to upgrade an existing appraiser credential, an application to reinstate an appraiser credential that has been inactive for more than twelve (12) months, and an application for a new reciprocal appraiser credential.

SECTION 8. Arkansas Code § 17-14-205(b), concerning hearings, review, and access to records of the Arkansas Appraisal Licensing and Certification Board, is amended to read as follows:

(b) Disciplinary hearings conducted by the board for the purpose of determining whether to levy civil penalties under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., and for the purpose of determining whether to revoke or suspend any registration, license, or certificate issued under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., shall not be deemed open public meetings but shall be executive sessions conducted as provided for in the Freedom of Information Act of 1967, § 25-19-101 et seq.

SECTION 9. Arkansas Code § 17-14-206, concerning complaints and disciplinary procedures of the Arkansas Appraiser Licensing and Certification Board, is amended to add an additional subsection to read as follows:

(c)(1) An action in tort or contract, whether oral or written, to recover damages for malpractice, negligence, error, mistake, omission, or breach shall not be brought against a registered apprentice appraiser, a state-registered appraiser, a state-licensed appraiser, or a state-certified appraiser, including any agent, firm, employee, or employer thereof, after three (3) years from the date on which the appraisal or appraisal-related service giving rise to the action was completed or should have been completed.

(2) The time for commencement of an action contained in subdivision (c)(1) of this section does not apply to any claim alleging that a state-registered appraiser, state-licensed appraiser, registered apprentice appraiser, or state-certified appraiser knowingly and intentionally:

(A) Committed fraud; or

(B) Made misrepresentations when performing a real estate appraisal or when providing an appraisal-related service.

SECTION 10. Arkansas Code § 17-14-303(a), concerning unlicensed persons and federally and nonfederally related transactions relating to appraisers, is amended to read as follows:

(a) It is a Class B misdemeanor for any person who is not licensed,

registered, or certified under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., to perform appraisal services as defined in the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., in connection with a federally related transaction.

SECTION 11. Arkansas Code § 17-14-304(d) and (e), concerning the use of terms related to appraisers and appraisals, are amended to read as follows:

(d) A person other than a state-registered appraiser, state-licensed appraiser, registered apprentice appraiser, or state-certified appraiser shall not assume or use that title or any title, designation, or abbreviation likely to create the impression of registration, licensing, or certification as an appraiser by this state.

(e) A person who is not registered, licensed, or certified under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., shall not describe or refer to any appraisal report, written or oral, or other evaluation of real estate covered under the activities of appraisers by the term “registered”, “licensed”, “certified”, or any other similar term that may be construed to imply qualification or competency recognized by the state.

SECTION 12. Arkansas Code §§ 17-14-305 and 17-14-306 are amended to read as follows:

17-14-305. Compliance with uniform standards and code of ethics – Seals – Licensing and certification documents.

(a)(1) Each state-registered appraiser, each state-licensed appraiser, each registered apprentice appraiser, and each state-certified appraiser shall comply with the Uniform Standards of Professional Appraisal Practice and Code of Ethics adopted by the Arkansas Appraiser Licensing and Certification Board and shall authenticate all written appraisal reports with a seal that shall indicate the registration, license, or certification number.

(2) The seal and number shall also be used in all statements of qualifications, contracts, or other instruments used by the registration, license, or certificate holder when reference is made to his or her status as

a state-registered appraiser, state-licensed appraiser, registered apprentice appraiser, or a state-certified appraiser.

(b) Registration, license, and certificate documents, licenses, certificates, seals, and pocket cards shall remain the property of the state, and, upon any suspension, revocation, or other termination of a registration, license, or certification under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., the individual holding the related documents shall immediately return the documents to the board.

17-14-306. Additional licenses – Nonresidents.

(a)(1) Every applicant for registration, licensure, or certification under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., who is not a resident of this state shall submit with the application for registration, licensure, or certification an irrevocable consent that service of process upon him or her may be made by delivery of the process to the Secretary of State if, in an action against the applicant in a court of this state arising out of the applicant's activities as a state-registered appraiser, state-licensed appraiser, registered apprentice appraiser, or state-certified appraiser, the plaintiff cannot effect personal service upon the applicant.

(2) A nonresident of this state who has complied with this provision may obtain a license or certification as a state-licensed appraiser or a state-certified appraiser by complying with the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., relating to state-registered appraisers, state-licensed appraisers, or state-certified appraisers, including the payment of a fee.

(b)(1) If, in the determination by the Arkansas Appraiser Licensing and Certification Board, another state is deemed to have substantially equivalent licensing and certification requirements, an applicant who is licensed or certified under the laws of the other state may obtain a ~~temporary or~~ nonresident license or certificate as a state-licensed appraiser or a state-certified appraiser in this state upon such terms and conditions as may be determined by the board.

(2) An appropriate fee is to be charged.

SECTION 13. Arkansas Code § 17-14-308(b)(2), concerning the violation of law and civil penalties, injunctions, and venue related to appraisers, is amended to read as follows:

(2) Any person cosigning an appraisal with a state-registered, state-licensed, registered apprentice, or state-certified appraiser becomes subject to the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

/s/Hester