

Assembly Bill No. 2519

Passed the Assembly May 10, 2012

Chief Clerk of the Assembly

Passed the Senate August 23, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 11315, 11340, 11343, 11345.3, 11345.45, 11345.6, 11400, 11404, 11405, and 11408 of, and to add Section 11315.3 to, the Business and Professions Code, relating to real estate appraisers.

LEGISLATIVE COUNSEL’S DIGEST

AB 2519, Bill Berryhill. Real estate appraisers: licensing.

Existing law, the Real Estate Appraisers’ Licensing and Certification Law, provides for the licensure and regulation of real estate appraisers and vests the duty of enforcing and administering that law in the Office of Real Estate Appraisers. Existing law authorizes the Director of the Office of Real Estate Appraisers to adopt regulations governing the process and procedure of licensing real estate appraisers, as specified.

(1) Existing law authorizes the Director of the Office of Real Estate Appraisers to issue to a licensee, or course provider, as specified, a citation that may impose the requirement to complete an education course or courses by the licensee, under specified conditions. Existing law provides for the automatic suspension of a real estate appraiser’s license if the licensee fails to satisfactorily or timely complete an education course as imposed by the citation.

This bill would prohibit the renewal of a license if the licensee fails to satisfactorily complete the additional education requirements imposed by the citation, as specified.

(2) Existing law authorizes the office to publish a summary of public disciplinary actions taken by the office against licensees and registrants, including resignations while under investigation.

This bill would authorize the office to institute or continue disciplinary proceedings against a licensee or registrant, or to suspend or revoke a license or certificate of registration, notwithstanding the expiration, or suspension, cancellation, or forfeiture by operation of law, or by an order of the office or a court of law, of the license or certificate of registration, as specified.

(3) Existing law requires fingerprinting and background checks, as specified, by the Department of Justice of applicants for real

estate appraiser licenses and each controlling person of an applicant for registration as an appraisal management company.

This bill would require the applicants for real estate appraiser licenses and each controlling person of each applicant for registration as an appraisal management company to submit to the Department of Justice fingerprint images and information via LiveScan. The bill would also require that applicants located out of state submit fingerprint cards with their application package, for submission by the office to the department.

(4) Existing law sets forth standards with which an appraisal management company needs to comply regarding independent contractor appraisers, including standards relating to licensure, performance of appraisal services, and appraisal reports.

This bill would, in addition, make these requirements applicable to employee appraisers, as specified.

(5) Existing law prohibits a registered appraisal management company from requiring an appraiser to provide it with the appraiser's digital signature or seal. Existing law, however, allows an appraiser to provide his or her digital signature or seal to another person voluntarily.

This bill would allow an appraiser to provide his or her digital signature or seal to another person only to the extent permissible under the Uniform Standards of Professional Appraiser Practice.

(6) Existing law requires the department to charge licensing and issuance-related fees to each applicant, and requires that these fees be paid to the office at the time of filing the application. Existing law also provides that fees may be paid, among other means, by government purchase order.

This bill would remove the requirement that issuance-related fees be paid at the time of filing that application. The bill would also delete the provision allowing payment of these fees by government purchase order.

(7) Existing law requires that applications for a license be submitted to the office within one year of the successful completion of the required examination.

This bill would instead specify that an applicant is not eligible to have a license issued unless he or she notifies the office within one year of successful completion of the required examination.

(8) This bill would also delete an obsolete reference and make other conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 11315 of the Business and Professions Code is amended to read:

11315. (a) The director may issue to a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation, a citation that may contain an order to pay an administrative fine assessed by the office if the person or entity is in violation of this part or any regulations adopted to carry out its purposes.

(b) A citation shall be written and describe with particularity the nature of the violation, including a specific reference to the provision of law determined to have been violated.

(c) If appropriate, the citation may contain an order of abatement fixing a reasonable time for abatement of the violation.

(d) (1) If appropriate, the citation may contain an order to enroll in and successfully complete additional basic or continuing education courses.

(2) When a citation imposes an education course or courses, the completion of the course or courses by the licensee shall be subject to the following conditions:

(A) The citation imposing the education requirement may specify the specific course content, the number of hours to be completed, the date by which the course is to be completed, and the method by which satisfaction of the order is to be reported to the office.

(B) An education course imposed by citation may not be credited towards the licensee's continuing education requirements pursuant to Section 11360.

(C) Only courses accredited by the office shall be accepted for purposes of fulfilling education imposed by citation.

(D) Any failure to satisfactorily complete or timely report an education course to the office by the date specified in the citation shall result in the automatic suspension of the licensee's real estate appraiser license as of that date. A license shall not be renewed prior to the satisfactory completion of an education course specified in the citation, unless the citation provides for a completion date that is subsequent to the license renewal date.

(E) Reinstatement of a license suspended pursuant to subparagraph (D) shall be made only if all of the following events occur:

(i) Satisfactory verification of the completion of the education course or courses imposed by the citation.

(ii) Completion and filing of a reinstatement application.

(iii) Payment of all applicable fees, fines, or penalties.

(e) In no event shall an administrative fine assessed by the office by citation or order exceed ten thousand dollars (\$10,000) per violation. In assessing a fine, the office shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the person who committed the violation, and the history of previous violations.

(f) A citation or fine assessment issued pursuant to a citation shall inform the person cited that, if he or she desires a hearing to contest the finding of a violation, he or she must request a hearing by written notice to the office within 30 days of the date of issuance of the citation or assessment. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The citation or fine assessment shall also inform the person cited that failure to respond to the citation or fine assessment shall result in any order or administrative fine imposed becoming final, and that any order or administrative fine shall constitute an enforceable civil judgment in addition to any other penalty or remedy available pursuant to law.

(g) (1) If a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation fails to pay a fine, penalty, or required installment payment on the fine or penalty by the date when it is due, the director shall charge him or her interest and a penalty of 10 percent of the fine or installment payment amount. Interest shall be charged at the pooled money investment rate.

(2) Failure of a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider

accreditation to pay a fine or required installment payment on the fine within 30 days of the date ordered in the citation, unless the citation is being appealed, shall be cause for additional disciplinary action by the office.

(3) If a citation is not contested and a fine or fine payment is not paid within 30 days of the date ordered in the citation or other order of the director, the full amount of the unpaid balance of the assessed fine shall be added to any fee for renewal of a license. A license shall not be renewed prior to payment of the renewal fee and fine.

(4) The director may order the full amount of any fine to be immediately due and payable if any payment due on a fine is not received by the office within 30 days of its due date.

(5) Any fine, or interest thereon, not paid within 30 days of a final citation or order shall constitute a valid and enforceable civil judgment.

(6) A certified copy of the final order, or the citation with certification by the office that no request for hearing was received within 30 days of the date of issuance of the citation, shall be conclusive proof of the civil judgment, its terms, and its validity.

(h) A citation may be issued without the assessment of an administrative fine.

(i) Any administrative fine or penalty imposed pursuant to this section shall be in addition to any other criminal or civil penalty provided for by law.

(j) Administrative fines collected pursuant to this section shall be deposited in the Real Estate Appraisers Regulation Fund.

SEC. 2. Section 11315.3 is added to the Business and Professions Code, to read:

11315.3. The suspension, expiration, or forfeiture by operation of law of a license or certificate of registration issued by the office, or its suspension, forfeiture, or cancellation by order of the office or by order of a court of law, or its surrender without the written consent of the office, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the office of its authority to institute or continue a disciplinary proceeding against the licensee or registrant upon any ground provided by law or to enter an order suspending or revoking the license or certificate of registration, or otherwise taking disciplinary action against the licensee or registrant on any such ground.

SEC. 3. Section 11340 of the Business and Professions Code is amended to read:

11340. The director shall adopt regulations governing the process and the procedure of applying for a license which shall include, but not be limited to, necessary experience or education, equivalency, and minimum requirements of the Appraisal Foundation, if any.

(a) For purposes of the educational background requirements established under this section, the director shall grant credits for any courses taken on real estate appraisal ethics or practices pursuant to Section 10153.2, or which are deemed by the director to meet standards established pursuant to this part and federal law.

(b) For the purpose of implementing and applying this section, the director shall prescribe by regulation “equivalent courses” and “equivalent experience.” The experience of employees of an assessor’s office or of the State Board of Equalization in setting forth opinions of value of real property for tax purposes shall be deemed equivalent to experience in federally related real estate appraisal activity. Notwithstanding any other law, a holder of a valid real estate broker license shall be deemed to have completed appraisal license application experience requirements upon proof that he or she has accumulated 1,000 hours of experience in the valuation of real property.

(c) The director shall adopt regulations for licensure which shall meet, at a minimum, the requirements and standards established by the Appraisal Foundation and the federal financial institutions regulatory agencies acting pursuant to Section 1112 of the Financial Institutions Reform Recovery and Enforcement Act of 1989, Public Law 101-73 (FIRREA). The director shall, by regulation, require the application for a real estate appraiser license to include the applicant’s social security number.

(d) In evaluating the experience of any applicant for a license, regardless of the number of hours required of that applicant, the director shall apply the same standards to the experience of all applicants.

(e) No license shall be issued to an applicant who is less than 18 years of age.

SEC. 4. Section 11343 of the Business and Professions Code is amended to read:

11343. (a) Each real estate appraiser license applicant and each controlling person of each applicant for registration as an appraisal management company shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice via LiveScan for the purposes of allowing the office to obtain information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal. If the applicant is located out of state, then the applicant shall include his or her fingerprint card with the application package and the office shall submit the fingerprint cards to the Department of Justice for the purposes of this subdivision.

(b) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the office.

(c) The Department of Justice shall provide a response to the office pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(d) The office shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a).

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

SEC. 5. Section 11345.3 of the Business and Professions Code is amended to read:

11345.3. The director may not issue a certificate of registration to an appraisal management company unless the appraisal management company confirms in its application for registration that all of its contracts with clients include provision of each of the following as standard business practices, as and where applicable:

(a) Ensuring that employee appraisers and independent contractor appraisers contracted by the applicant possess all required licenses and certificates from the office.

(b) Reviewing the work of all employee appraisers and independent contractor appraisers contracted by the applicant to ensure that appraisal services are performed in accordance with the Uniform Standards of Professional Appraisal Practice.

(c) Maintaining records of each of the following for each service request:

(1) Date of receipt of the request.

(2) Name of the person from whom the request was received.

(3) Name of the client for whom the request was made, if different from the name of the person from whom the request was received.

(4) The appraiser or appraisers assigned to perform the requested service.

(5) Date of delivery of the appraisal product to the client.

SEC. 6. Section 11345.45 of the Business and Professions Code is amended to read:

11345.45. A person or entity may not structure an appraisal assignment for, or a contract with, an employee appraiser or an independent contractor appraiser for the purpose of evading the provisions of this part relating to appraisal management companies.

SEC. 7. Section 11345.6 of the Business and Professions Code is amended to read:

11345.6. (a) No registered appraisal management company may alter, modify, or otherwise change a completed appraisal report submitted by an employee appraiser or an independent contractor appraiser, including, without limitation, by doing either of the following:

(1) Permanently removing the appraiser's signature or seal.

(2) Adding information to, or removing information from, the appraisal report with an intent to change the value conclusion.

(b) No registered appraisal management company may require an employee or independent contractor appraiser to provide it with the appraiser's digital signature or seal. However, nothing in this subdivision shall be deemed to prohibit an appraiser from voluntarily providing his or her digital signature or seal to another person, to the extent permissible under the Uniform Standards of Professional Appraiser Practice.

SEC. 8. Section 11400 of the Business and Professions Code is amended to read:

11400. (a) Initial application fees shall be paid to the office at the time of application.

(b) All fees shall be paid by cashier's check, certified check, or money order. In addition, the office may accept personal checks or credit cards for the payment of fees. All fees shall be deemed earned by the office upon receipt and are refundable at the discretion of the director.

SEC. 9. Section 11404 of the Business and Professions Code is amended to read:

11404. The fee for an original or renewal real estate appraiser license or appraiser trainee license shall not exceed four hundred fifty dollars (\$450).

SEC. 10. Section 11405 of the Business and Professions Code is amended to read:

11405. The fee for an original or renewal certification as a state certified real estate appraiser shall not exceed five hundred twenty-five dollars (\$525).

SEC. 11. Section 11408 of the Business and Professions Code is amended to read:

11408. (a) An applicant for licensure shall not be eligible to have a license issued unless he or she notifies the office within one year of successful completion of the examination.

(b) Every applicant or licensee shall pay federal registry fees and state registry processing fees to the state as required as part of licensing fees.

Approved _____, 2012

Governor