

Senate Bill No. 237

Passed the Senate August 27, 2009

Secretary of the Senate

Passed the Assembly August 20, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 11302, 11314, 11315.5, 11409, and 11422 of, to add Sections 11315.1, 11320.5, 11328.1, 11345, 11345.05, 11345.1, 11345.2, 11345.3, 11345.4, 11345.45, 11345.6, 11346, and 11406.5 to, and to repeal and add Section 11343 of, the Business and Professions Code, and to amend Section 1090.5 of the Civil Code, relating to real estate appraisers, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 237, Calderon. Real estate appraisers.

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. Fees and assessments collected under these provisions are deposited into the Real Estate Appraisers Regulation Fund, and 5% of the amount of any license or certificate fee collected is credited to the Recovery Account in that fund, which account is continuously appropriated. Existing law subjects applicants for real estate appraisers licenses to fingerprinting and criminal background checks.

This bill would require appraisal management companies, as defined, to register with the Office of Real Estate Appraisers, and would subject those entities to the provisions of the Real Estate Appraisers' Licensing and Certification Law. The bill would require the office to adopt regulations governing the implementation of the registration process, with specified minimum requirements, and establish the fees to be imposed for registration in an amount sufficient to cover the costs incurred by the office in administering the registration. Because 5% of those fees would be credited to the Recovery Account, a continuously appropriated fund, the bill would make an appropriation. The bill would also require fingerprinting and background checks by the Department of Justice of each controlling person of an applicant for registration, as defined, and would require the department to charge all applicants for licensure or registration specified fees for those services. The bill would also set forth standards with which an

appraisal management company would need to comply, and would provide to the office specified investigative and enforcement authority, including the authority to issue citations or administrative penalties for a violation thereof, to be deposited into the Real Estate Appraisers Regulation Fund. The bill would make conforming changes within other provisions of the Real Estate Appraisers' Licensing and Certification Law to incorporate the changes made by the bill.

This bill would make any provision under the Real Estate Appraisers' Licensing and Certification Law that relates to appraisal management companies inoperative 60 days after the effective date of any federal law that mandates the registration or licensing of appraisal management companies with an entity other than the state regulatory authority with jurisdiction over appraisers.

Existing law prohibits a person with an interest in a real estate transaction involving an appraisal to improperly influence or attempt to improperly influence, through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan, and specifies that a violation of this provision by a person licensed under a state licensing law also constitutes a violation of that law.

This bill would enumerate specified prohibited acts under that provision, including, but not limited to, withholding or threatening to withhold timely payment for an appraisal, or requesting the payment of compensation to achieve higher priority in the assignment of appraisal business.

Appropriation: yes.

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

SECTION 1. Section 11302 of the Business and Professions Code is amended to read:

11302. For the purpose of applying this part, the following terms, unless otherwise expressly indicated, shall mean and have the following definitions:

(a) "Agency" means the Business, Transportation and Housing Agency.

(b) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion in a federally related transaction as to the market value of

an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

The term “appraisal” does not include an opinion given by a real estate licensee or engineer or land surveyor in the ordinary course of his or her business in connection with a function for which a license is required under Chapter 7 (commencing with Section 6700) or Chapter 15 (commencing with Section 8700) of Division 3, or Chapter 3 (commencing with Section 10130) or Chapter 7 (commencing with Section 10500) and the opinion shall not be referred to as an appraisal. This part does not apply to a probate referee acting pursuant to Sections 400 to 408, inclusive, of the Probate Code unless the appraised transaction is federally related.

(c) “Appraisal Foundation” means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

(d) (1) “Appraisal management company” means any person or entity that satisfies all of the following conditions:

(A) Maintains an approved list or lists, containing 11 or more independent contractor appraisers licensed or certified pursuant to this part, or employs 11 or more appraisers licensed or certified pursuant to this part.

(B) Receives requests for appraisals from one or more clients.

(C) For a fee paid by one or more of its clients, delegates appraisal assignments for completion by its independent contractor or employee appraisers.

(2) “Appraisal management company” does not include any of the following, when that person or entity directly contracts with an independent appraiser:

(A) Any bank, credit union, trust company, savings and loan association, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.

(B) Any finance lender or finance broker licensed pursuant to Division 9 (commencing with Section 22000) of the Financial Code, when acting under the authority of that license.

(C) Any residential mortgage lender or residential mortgage servicer licensed pursuant to Division 20 (commencing with

Section 50000) of the Financial Code, when acting under the authority of that license.

(D) Any real estate broker licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, when acting under the authority of that license.

(3) “Appraisal management company” does not include any person licensed to practice law in this state who is working with or on behalf of a client of that person in connection with one or more appraisals for that client.

(e) “Appraisal Subcommittee” means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(f) “Controlling person” means one or more of the following:

(1) An officer or director of an appraisal management company, or an individual who holds a 10 percent or greater ownership interest in an appraisal management company.

(2) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal services and that has the authority to enter into agreements with independent appraisers for the completion of appraisals.

(3) An individual who possesses the power to direct or cause the direction of the management or policies of an appraisal management company.

(g) “Director” means the Director of the Office of Real Estate Appraisers.

(h) “Federal financial institutions regulatory agency” means the Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Home Loan Bank System, National Credit Union Administration, and any other agency determined by the director to have jurisdiction over transactions subject to this part.

(i) “Federally related real estate appraisal activity” means the act or process of making or performing an appraisal on real estate or real property in a federally related transaction and preparing an appraisal as a result of that activity.

(j) “Federally related transaction” means any real estate-related financial transaction which a federal financial institutions

regulatory agency engages in, contracts for or regulates and which requires the services of a state licensed real estate appraiser regulated by this part. This term also includes any transaction identified as such by a federal financial institutions regulatory agency.

(k) “License” means any license, certificate, permit, registration, or other means issued by the office authorizing the person to whom it is issued to act pursuant to this part within this state.

(l) “Licensure” means the procedures and requirements a person shall comply with in order to qualify for issuance of a license and includes the issuance of the license.

(m) “Office” means the Office of Real Estate Appraisers.

(n) “Registration” means the procedures and requirements with which a person or entity shall comply in order to qualify to conduct business as an appraisal management company.

(o) “Secretary” means the Secretary of Business, Transportation and Housing.

(p) “State licensed real estate appraiser” is a person who is issued and holds a current valid license under this part.

(q) “Uniform Standards of Professional Appraisal Practice” are the standards of professional appraisal practice established by the Appraisal Foundation.

(r) “Course provider” means a person or entity that provides educational courses related to professional appraisal practice.

SEC. 2. Section 11314 of the Business and Professions Code is amended to read:

11314. The office is required to include in its regulations requirements for licensure and discipline of real estate appraisers that ensure protection of the public interest and comply in all respects with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73 and any subsequent amendments thereto. Requirements for each level of licensure shall, at a minimum, meet the criteria established by the Appraiser Qualification Board of the Appraisal Foundation. The office may additionally include in its regulations requirements for the registration of appraisal management companies consistent with this part.

SEC. 3. Section 11315.1 is added to the Business and Professions Code, to read:

11315.1. (a) The director may issue to a registrant or person who acts in a capacity that requires a certificate of registration under this part, a citation that may contain an order to pay an administrative fine assessed by the office, if the person is in violation of this part or any regulations adopted to carry out its purposes.

(b) A citation shall be written and shall 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) 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 that committed the violation, and the history of previous violations.

(e) A citation or fine assessment issued pursuant to a citation shall inform the person cited that, if the person desires a hearing to contest the finding of a violation, he or she or one of its controlling persons 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.

(f) (1) If a registrant or person who acts in a capacity that requires a certificate of registration 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 that person interest and a penalty of the fine or installment payment amount. Interest shall be charged at the pooled money investment rate.

(2) Failure of a registrant or person who requires a certificate of registration 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 certificate of registration. A certificate of registration 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.

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

(h) 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.

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

SEC. 4. Section 11315.5 of the Business and Professions Code is amended to read:

11315.5. Notwithstanding any other provision of law, the office may, at any time the director deems it to be in the public interest, enter into a settlement of any administrative allegation of violation of this part, or of regulations promulgated pursuant thereto, upon any terms and conditions as the director deems appropriate. Those settlements may include, but are not limited to, a plan for abatement of the violation or rehabilitation or requalification of the applicant, licensed appraiser, course provider, registrant, or person acting in a capacity requiring a license, certificate of registration, or course provider accreditation within a specified time.

SEC. 5. Section 11320.5 is added to the Business and Professions Code, to read:

11320.5. No person or entity shall act in the capacity of an appraisal management company without first obtaining a certificate of registration from the office.

SEC. 6. Section 11328.1 is added to the Business and Professions Code, to read:

11328.1. If the director has a reasonable belief that a registrant, or person or entity acting in a capacity that requires a certificate of registration, has engaged in activities prohibited under this part, he or she may submit a written request to the registrant, person, or entity, requesting copies of written material related to his or her investigation. Any registrant, person, or entity receiving a written request from the director for information related to an investigation of prohibited activities shall submit that information to the director or the office within a reasonable period of time, which shall be specified by the director in his or her written request. Any material submitted shall be kept confidential by the director and the office.

SEC. 7. Section 11343 of the Business and Professions Code is repealed.

SEC. 8. Section 11343 is added to the Business and Professions Code, to read:

11343. (a) The office shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all real estate appraiser license applicants and each controlling person of each applicant for registration as an appraisal management company, for the purposes of obtaining 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.

(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. 9. Section 11345 is added to the Business and Professions Code, to read:

11345. The director shall adopt regulations governing the process and procedure of applying for registration as an appraisal management company. Applications for a certificate of registration shall require, at a minimum, all of the following:

(a) The name of the person or entity seeking registration.

(b) The business address and telephone number of the person or entity seeking registration.

(c) If the applicant is not a person or entity domiciled in this state, the name and contact number of a person or entity acting as agent for service of process in this state, along with an irrevocable consent to service of process in favor of the office.

(d) The name, address, and contact information for each controlling person employed by the applicant who has operational authority to direct the management of, and establish policies for, the applicant. If the applicant employs more than 10 individuals meeting the criteria of this subdivision, the applicant may list the names, addresses, and contact information for the 10 individuals meeting the criteria who hold the greatest level of management responsibility within its organization.

SEC. 10. Section 11345.05 is added to the Business and Professions Code, to read:

11345.05. (a) A registrant shall notify the office within 10 business days, on a form developed by the office, of any additions, deletions, or changes in the names, addresses, and contact information for the individuals listed on its application.

(b) A registrant shall correct information on file with the office within 10 business days of discovering an error in that information, and shall not be subject to disciplinary action by the director or the office for incorrect information the registrant corrects within 10 business days of its discovery as being inaccurate.

SEC. 11. Section 11345.1 is added to the Business and Professions Code, to read:

11345.1. A certificate of registration as an appraisal management company shall be valid for a period of two years, unless otherwise extended or limited by the director.

SEC. 12. Section 11345.2 is added to the Business and Professions Code, to read:

11345.2. (a) No individual may act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

SEC. 13. Section 11345.3 is added to the Business and Professions Code, 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 independent contractor appraisers contracted by the applicant possess all required licenses and certificates from the office.

(b) Reviewing the work of all 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 contracted service.

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

SEC. 14. Section 11345.4 is added to the Business and Professions Code, to read:

11345.4. No person or entity acting in the capacity of an appraisal management company shall improperly influence or attempt to improperly influence the development, reporting, result, or review of any appraisal by engaging, without limitation, in any of the following:

(a) Withholding or threatening to withhold timely payment for an appraisal.

(b) Withholding or threatening to withhold future business for an independent appraiser, including removal from approved panels of appraisers.

(c) Expressly or impliedly promising future business, promotions, or increased compensation for an independent appraiser.

(d) Conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation in an appraisal report, or on a preliminary estimate or opinion requested from an independent appraiser.

(e) Requesting the payment of compensation to achieve higher priority in the assignment of appraisal business.

(f) Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, providing to an appraiser an anticipated, estimated, encouraged, or desired valuation in an appraisal report, or requesting that an appraiser provide estimated values of comparable sales at any time before the appraiser completes an appraisal report.

SEC. 15. Section 11345.45 is added to the Business and Professions Code, to read:

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

SEC. 16. Section 11345.6 is added to the Business and Professions Code, to read:

11345.6. (a) No registered appraisal management company may alter, modify, or otherwise change a completed appraisal report submitted by an independent 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 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.

SEC. 17. Section 11346 is added to the Business and Professions Code, to read:

11346. The provisions of this part relating to appraisal management companies shall cease to be operative 60 days after the effective date of a federal law that mandates the registration or licensing of appraisal management companies with an entity other than the state regulatory authority with jurisdiction over licensed and certified appraisers.

SEC. 18. Section 11406.5 is added to the Business and Professions Code, to read:

11406.5. The director shall, by regulation, establish the fees to be imposed on appraisal management companies. The fees shall be sufficient to cover the costs incurred by the office in administering the changes to this part made by the act adding this section.

SEC. 19. Section 11409 of the Business and Professions Code is amended to read:

11409. (a) Except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, registrant, applicant for a certificate of registration, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation found to have committed a violation or violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to exceed

the reasonable costs of investigation, enforcement, and prosecution of the case.

(b) Where an order for recovery of costs is made and payment is not made within 30 days of the date directed in the office's decision, the order for recovery shall constitute a valid and enforceable civil judgment. This judgment shall be in addition to, and not in place of, any other criminal or civil penalties provided for by law.

(c) (1) Failure of a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, registrant, applicant for a certificate of registration, 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 recovery costs or make a recovery cost payment within 30 days of the date ordered, shall result in disciplinary action by the office. If the person fails to pay recovery costs within 30 days, that person shall pay interest and a penalty of 10 percent of the recovery costs or payment amount. Interest shall be charged at the pooled money investment rate.

(2) If recovery costs are not paid as ordered, the full amount of the assessed fine shall be added to any fee for renewal of a license or a certificate of registration. A license or a certificate of registration shall not be renewed prior to payment of the renewal fee and recovery costs.

(3) The director may order the full amount of any recovery costs to be immediately due and payable if any payment on the recovery costs, or portion thereof, is not received within 30 days of its due date.

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

(d) A certified copy of the office's decision shall be conclusive proof of the validity of the order and its terms.

(e) The office shall not renew or reinstate the license of any licensee or the certificate of registration of any registrant who has failed to pay all of the costs ordered under this section.

(f) Nothing in this section shall preclude the office from including the recovery of the costs of investigation and enforcement of a case in any default decision or stipulated settlement.

SEC. 20. Section 11422 of the Business and Professions Code is amended to read:

11422. The office shall, on or before February 1, 1994, and at least annually thereafter, transmit to the appraisal subcommittee specified in subdivision (e) of Section 11302 a roster of persons licensed pursuant to this part.

SEC. 21. Section 1090.5 of the Civil Code is amended to read:

1090.5. (a) No person with an interest in a real estate transaction involving an appraisal shall improperly influence or attempt to improperly influence, through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. Prohibited acts include, but are not limited to, the following:

(1) Withholding or threatening to withhold timely payment for an appraisal.

(2) Withholding or threatening to withhold future business for an independent appraiser, including removal from approved panels of appraisers.

(3) Expressly or impliedly promising future business, promotions, or increased compensation for an independent appraiser.

(4) Conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation in an appraisal report, or on a preliminary estimate or opinion requested from an independent appraiser.

(5) Requesting the payment of compensation to achieve higher priority in the assignment of appraisal business.

(6) Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, providing to an appraiser an anticipated, estimated, encouraged, or desired valuation in an appraisal report, or requesting that an appraiser provide estimated values of comparable sales at any time before the appraiser completes an appraisal report.

(b) Subdivision (a) does not prohibit a person with an interest in a real estate transaction from asking an appraiser to do any of the following:

(1) Consider additional, appropriate property information.

(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

(3) Correct errors in the appraisal report.

(c) If a person who violates this section is licensed or registered under any state licensing or registration law and the violation occurs within the course and scope of the person's duties as a licensee or registrant, the violation shall be deemed a violation of that law.

(d) Nothing in this section shall be construed to authorize communications that are otherwise prohibited under existing law.

Approved _____, 2009

Governor