
Civil Rights & Judiciary Committee

HB 1015

Brief Description: Concerning actions arising out of real estate appraisal activity.

Sponsors: Representatives Jenkin, Kirby, Vick and Blake.

Brief Summary of Bill

- Provides that, with the exception of a cause of action alleging fraud, a cause of action against a real estate appraiser or trainee or real estate appraisal company arising out of an appraisal report must be brought within the earlier of one year from discovery or within three years from the date the appraisal report was signed, and then only by certain persons or entities for whom the report is deemed to have been prepared.

Hearing Date: 1/16/19

Staff: Cece Clynch (786-7195).

Background:

Real Estate Appraisers and Trainees.

Real estate appraisers evaluate the value of real property. The Department of Licensing (DOL), in accordance with the Certified Real Estate Appraiser Act (Act), certifies and licenses real estate appraisers. The Act authorizes four levels of licensing and registration:

1. state licensed real estate appraiser (complex and noncomplex one to four unit residential units having transaction values as specified in the DOL rules);
2. state certified residential real estate appraiser (all types of residential property of one to four units, without regard to value, and nonresidential property having transaction values as specified in the DOL rules);
3. state certified general real estate appraiser (all types of property); and
4. state-registered appraiser trainee.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

As indicated, each level of licensing and certification authorizes appraisal work with respect to different types and values of properties. State-registered appraiser trainees may only work under the direct supervision of state-certified appraisers.

The Act defines an "appraisal report" as any communication, written or oral, of an appraisal, review, or consulting service in accordance with the standards of professional conduct or practice, that is transmitted to the client upon completion of an assignment. "Client" means any party for whom one of the above-referenced licensees performs a service.

Appraisal Management Companies.

An appraisal management company is a business entity that administers a panel of appraisers to complete real estate appraisal assignments on behalf of others. An appraisal management company's functions include recruiting appraisers, negotiating fees, and administering appraisal orders. It is unlawful to engage in business as an appraisal management company or to perform appraisal management services without obtaining a license from the DOL.

Appraisal management services include the following functions performed on behalf of a lender, financial institution, mortgage broker, loan originator, or any other person:

- administering an appraiser panel;
- recruiting, qualifying, verifying licensing or certification, and negotiating fees and service level expectations with persons who are part of an appraiser panel;
- receiving an order for an appraisal from one person or entity and delivering the order to an appraiser for completion;
- tracking and determining the status of appraisal orders;
- conducting quality control of a completed appraisal prior to delivery of the appraisal; and
- providing a completed appraisal to one or more persons or entities.

The Uniform Regulation of Business and Professions Act governs unlicensed practice, the issuance and denial of licenses, and the discipline of real estate appraisers and trainees and appraisal management companies (collectively referred to as licensees).

Statutes of Limitation.

The goal or policy behind statutes of limitation is to require claims to be brought when the evidence is still available and while witnesses can still recall the events. Generally, a limitations period begins to run when the cause of action "accrues," which is such time as all elements of the cause of action are susceptible of proof and the injured party has a right to apply to a court for relief. A cause of action may be subject to what is known as the "discovery rule." This rule provides that the limitations period does not begin to run until the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the facts that give rise to his or her cause of action.

There are numerous statutes of limitation. Which one applies depends upon the cause of action. For instance:

- Actions upon written contracts must be commenced within six years.
- Actions upon contracts that are not in writing must be commenced within three years.
- Actions for relief on the ground of fraud must be commenced within three years. (A cause of action in such case is not to deemed to have accrued until the discovery of the facts constituting fraud.)

- Actions for relief for which there is not a specific statute of limitations provided must be commenced within two years.

Statutes of Repose.

While a statute of limitations specifies how long a plaintiff has to bring a lawsuit after a cause of action has accrued, a statute of repose sets a time limit within which a cause of action must accrue. This means that any claim must accrue within that timeframe or be barred. If the claim accrues within the period of repose, the claimant then must bring the action within the applicable statute of limitation period.

Summary of Bill:

Except in the case of fraud, any claim or cause of action against a state-certified or state-licensed real estate appraiser, state-registered appraiser trainee, appraisal management company, or real estate appraisal company or business (collectively referred to as licensees) arising out of an appraisal report must be brought within the *earlier* of:

- one year from the date of discovery of the act or omission giving rise to the claim or cause of action; or
- three years from the date the licensee signs or affixes his or her signature, electronically or otherwise, to the appraisal report.

A licensee may not be held liable in any court of law in any action arising out of an appraisal report to any person or entity other than: the client; an intended user of the appraisal report as specified in the appraisal report; and, if the client is a financial institution or mortgage lender, its successors in interest. An appraisal report is deemed to be prepared for the intended use specified in the appraisal report.

These new provisions apply to any claim or cause of action against a licensee arising out of an appraisal report completed on or after the effective date.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.