

- SUBJECT:** Registration and regulation of appraisal management companies
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 5 ayes — Hamilton, Quintanilla, Geren, Harless, Kuempel
0 nays
4 absent — Driver, Gutierrez, Menendez, Thompson
- WITNESSES:** For — Scott Burdette, FACT; Richard Brian Hearne, Sara Jones Oates, FACT- Foundation Appraiser Coalition of Texas; Lori Levy, Texas Association of Realtors (*Registered, but did not testify*: Daniel Gonzalez, Texas Association of Realtors; Gavin Massingill, Foundation Appraisers Coalition of Texas)

Against — Johnnie Davis, Lender's e-amc, LLC (*Registered, but did not testify*: Celeste Embrey, Texas Bankers Association; John Fleming, Texas Mortgage Bankers; Jack Roberts, Bank of America; Kelly Rodgers, Wells Fargo Bank)

On — Douglas Oldmixon; Texas Appraiser Licensing and Certification Board
- BACKGROUND:** The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires that states regulate appraisal management companies within 36 months of adoption of final rules promulgated by the Federal Financial Institutions Examination Council and the Bureau of Consumer Financial Protection.
- DIGEST:** CSHB 1146, the proposed Texas Appraisal Management Company Registration and Regulation Act, would amend Occupations Code, secs. 1103.052 and 1103.055 and would add ch. 1104 to establish and enforce standards related to appraisal management services for appraisal reports on residential properties with fewer than five units.

The bill also would change the composition of the Texas Appraiser Licensing and Certification Board by decreasing the number of public

members appointed to the board from four to three, and by adding a member to the board who would be a controlling person of an appraisal management company.

The board would have the authority to grant or deny appraisal management company registration applications and would establish application, renewal, and other fees to cover the administration of the bill.

Registration. The board could deny registration of an applicant that did not meet the requirements under the bill. Under CSHB 1146, an appraisal management company registered by the board could not be directly or indirectly owned, wholly or partly, by a person who had had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state, or by another entity more than 10 percent of which was owned by a person who had had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state.

A person who owned more than 10 percent of an appraisal management company in Texas would have to be of good moral character as determined by the board and submit to a background investigation.

The board would prohibit a person not registered under CSHB 1146 from acting or attempting to act as an appraisal management company and from providing or attempting to provide appraisal management services.

Practice. CSHB 1146 would prohibit an appraisal management company from knowingly:

- employing a person in a position in which the person had the responsibility to order appraisals or to review completed appraisals if the person has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state;
- entering into any independent contractor arrangement with any person who had had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state; or
- entering into any contract, agreement, or other business relationship with any entity that employed, had entered into any contract, agreement, or other business relationship with any person who had ever had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state.

An appraisal management company would not be in violation of the bill if the person whose license or certification was denied, revoked, or surrendered in lieu of revocation had had a license or certificate granted or reinstated and maintained the license or certificate in good standing.

Under CSHB 1146, a registered appraisal management company periodically would have to perform an appraisal review of the work of appraisers performing appraisal services for the company to ensure that the services complied with the Uniform Standards of Professional Appraisal Practice and other standards prescribed by the board.

An appraisal management company that was registered or had applied would have to retain for at least five years all business records relating to each service request that the company received and the appraiser who performed the appraisal for the company. The board could audit the records of an appraisal management company to ensure compliance with the bill, board rules, and the Uniform Standards of Professional Appraisal Practice.

An appraisal management company would have to compensate appraisers at a rate that was reasonable and customary for appraisals being performed in the market area of the property being appraised without the services of an appraisal management company.

Statement of fees. In reports to the board, a client, or for a settlement statement, an appraisal management company would have to state separately the fees paid to an appraiser for the completion of an appraisal and the fees charged by the company for appraisal management services. An appraisal management company could not prohibit an appraiser from reporting the fee that the appraiser was paid for performance of the appraisal, nor could it include any fees for appraisal management services performed by the company as fees for the actual completion of an appraisal done by an appraiser.

Dispute resolution. An appraisal management company would make an internal independent or external third-party dispute resolution process available on written request of an appraiser who was dismissed from a company's appraisal panel, had a grievance regarding compensation, or alleged a violation of one or more of the prohibitions in the bill. The board would have authority to establish requirements for an appraisal management company's dispute resolution process. If, after an appraiser

were removed from the company's appraisal panel, the matter remained unresolved after the appraiser completed the company's dispute resolution process, an aggrieved appraiser could file a complaint with the board for a review of the decision of the company.

If the board determined that an appraiser did not commit the alleged violation, the board would order that the appraiser be returned to the appraisal panel of the appraisal management company. The appraisal management company could not refuse to make assignments for appraisal services or otherwise penalize the appraiser after the appraiser returned to the company's appraisal panel.

If, after review, the board determined that the appraiser committed the alleged violation, the board could require the appraiser to reimburse the appraisal management company for the cost of a third-party dispute resolution process

The board would have the authority to reprimand an appraisal management company or suspend or revoke any registration issued if the board determined that the appraisal management company had violated or attempted to violate provisions of the bill or any rule adopted by the board under CSHB 1146.

Prohibited practices. Under CSHB 1146, an appraisal management company or an employee, director, officer, or agent of an appraisal management company could not:

- cause or attempt to cause the appraised value of a property assigned under an appraisal to be based on any factor other than an independent judgment of the appraiser;
- cause or attempt to cause the mischaracterization of the appraised value of a property in conjunction with a consumer credit transaction;
- seek to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of a consumer credit transaction;
- alter, modify, or otherwise change a completed appraisal report submitted by an appraiser by altering or removing the appraiser's signature or seal or by adding information to, removing information from, or changing information contained in the appraisal report, including any disclosure submitted by an appraiser in or with the report;

- condition the request for an appraisal or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;
- request that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time before the appraiser's completion of an appraisal;
- provide to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for a purchase transaction could be provided;
- make any part of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including a loan closing or a specific valuation being achieved by the appraiser in the appraisal report;
- withhold or threaten to withhold timely payment for an appraisal report or appraisal services rendered when the appraisal report or services were provided in accordance with the contract between the parties;
- withhold or threaten to withhold future business from an appraiser;
- demote or terminate or threaten to demote or terminate an appraiser;
- expressly or impliedly promise future business, promotions, or increased compensation for an appraiser;
- provide to an appraiser or any person related to the appraiser stock or other financial or nonfinancial benefits;
- allow the removal of an appraiser from an appraisal panel without prior written notice to the appraiser;
- obtain, use, or pay for a second or subsequent appraisal or order an automated valuation model in connection with a mortgage financing transaction, unless there was a reasonable basis to believe that the initial appraisal was flawed or tainted and that basis was clearly and appropriately noted in the loan file, the subsequent appraisal or automated valuation model was done under a bona fide pre-funding or post-funding appraisal review or quality control process, or the subsequent appraisal or automated valuation model was otherwise required or permitted by federal or state law;

- prohibit or inhibit communication between the appraiser and the lender, a real estate license holder, an appraiser designated by the company to respond to appraisers regarding appraisal assignments, or any other person from whom the appraiser, in the appraiser's own professional judgment, believed information would be relevant;
- refuse to accept an appraisal report prepared by more than one appraiser if an appraiser provided substantial assistance to another appraiser in the preparation of the report, unless the appraisal assignment named an individual appraiser or the statement of work required an unassisted report; or
- require an appraiser to prepare an appraisal report if the appraiser did not have the necessary expertise for the specific geographic area or require the appraiser to engage in any other act or practice that impaired or attempted to impair an appraiser's independence, objectivity, or impartiality.

Any person, including a member of the board, could file a written complaint with the board on a form prescribed by the board. The board could file a complaint against an appraisal management company registered under CSHB 1146.

The board would have the authority to institute a disciplinary action or impose an administrative penalty against an appraiser who, while acting as an employee, officer, or agent of an appraisal management company, engaged in conduct prohibited by CSHB 1146.

On receipt of a complaint or on its own motion, the board would have to review and investigate an alleged act or omission that the board believed was a ground for disciplinary action. An investigator designated by the presiding officer of the board would investigate each allegation in a complaint to determine whether probable cause existed for a hearing on the complaint. If the board determined that a complaint did not present facts that were grounds for disciplinary action, the board or the commissioner would have to dismiss the complaint and could not take further action.

CSHB 1146 would not apply to:

- a person who exclusively employed appraisers on an employer and employee basis for the performance of appraisals;

- a person who acted as an appraisal firm as defined by board rule that at all times during a calendar year employed not more than 15 appraisers for the performance of appraisals on an exclusive basis as independent contractors;
- a department or unit within a financial institution that was subject to appraisal independence standards at least as stringent as those under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) through direct regulation by an agency of this state or the U. S. government;
- a department or unit within a financial institution that received a request for the performance of an appraisal from one employee of the financial institution and another employee of the same financial institution assigned the appraisal request to an appraiser who is was independent contractor;
- a person who entered into an agreement with an appraiser for the performance of an appraisal that upon completion resulted in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal;
- an appraisal management company that had an appraisal panel of not more than 15 appraisers at all times during a calendar year; or
- an appraisal management company that was a subsidiary owned and controlled by a financial institution that was subject to appraisal independence standards at least as stringent as those under the Truth in Lending Act through direct regulation by a federal financial institution regulatory agency.

Penalties. A person would commit a class A misdemeanor offense (up to one year in jail and/or a maximum fine of \$4,000) if the person engaged in an activity for which registration was required under CSHB 1146 without being registered.

The board would have authority to impose an administrative penalty against a person who violated CSHB 1146 or a rule adopted under the bill. The administrative penalty could not exceed \$10,000 for each violation. Each day of a continuing violation would be a separate violation, and the amount of the penalty would be based on the seriousness of the violation, the history of previous violation, the amount necessary to deter a future violation, efforts made to correct the violation, and any other matter that justice would require.

Effective date. Except as specified by certain sections, the bill would take effect September 1, 2011.

The Texas Appraiser Licensing and Certification Board would have to adopt all rules, fees, and forms as required by Occupations Code, ch. 1104, not later than January 1, 2012.

**SUPPORTERS
SAY:**

CSHB 1146 is needed because oversight of appraisal management companies in Texas is inadequate. Every facet of real estate transactions today is highly regulated, with the exception of appraisal management companies. This bill is necessary to address this gap in regulation, to protect consumers and appraisers, and to comply with federal regulations.

CSHB 1146 would regulate appraisal management companies that are not already regulated by state or federal government regulations. It would help to halt abuses happening in Texas now. It would be unwise to wait until the final federal rules are adopted.

The bill would create a level playing field for appraisers and appraisal management companies. It would allow the Texas Appraiser Licensing and Certification Board to investigate complaints that fees paid were not customary and reasonable. Currently, many appraisal management companies are basing their selection of appraisers predominantly on fees, with little concern about the experience and geographic knowledge of the appraiser, which has resulted in inaccurate appraisals. The complaint process established under the bill would help to ensure that consumers were getting accurate appraisals.

CSHB 1146 would require an appraisal management company to designate an appraiser to answer questions about appraisal assignments from the appraisers on their panel. This would ensure that the appraisal management company's panel had the ability to communicate with a licensed appraiser about appraisal issues that could arise and would provide consumer protection.

The dispute resolution process would hold state costs to a minimum while encouraging stakeholder parties to work out their differences. The process would ensure that complainants did not file unwarranted complaints and would help to ensure accountability by allowing the appraisal management company to make the first attempt at resolution.

Fees would be collected from registered appraisal management companies, but the amount collected would be scaled to the size of the appraisal management company for fairness.

OPPONENTS
SAY:

Federal regulations do not yet require that states regulate appraisal management companies. Texas should wait to impose state regulations until the final federal rules have been promulgated.

Large, bank-owned companies and small companies would not be regulated under CSHB 1146. The burden of registration fees would fall on too few companies and could result in medium-sized appraisal management companies going out of business or having to scale back services. If registered appraisal management companies have to raise fees paid to appraisers, these increased costs will be passed along to the consumer.

The bill would require appraisal management companies to designate an appraiser on staff to answer questions from the company's appraiser panel. This could mean an appraisal management company had to hire or contract with a licensed appraiser, which would be a burdensome requirement for the company.

HB 1146 would require an independent dispute resolution process. Some appraisal management companies already have internal dispute resolution processes, and this requirement would be unnecessary and an additional cost to companies.

NOTES:

The companion bill, SB 734 by Carona, was considered in a public hearing on March 30 and is pending in the Senate Business and Commerce Committee.

According to the fiscal note prepared by the Legislative Budget Board, CSHB 1146 would have no net fiscal impact. The Texas Appraiser Licensing and Certification Board would need five additional FTEs in fiscal years 2012-16, but it is assumed that costs associated with the implementation of the bill would be covered by the registration fees collected.

CSHB 1146 contains provisions not included in the original version of the bill that would change the composition of the Texas Appraiser Licensing and Certification Board; omit a provision found in the original that would

cap the application fee at \$2,500; require the annual collection of a national registry fee from each person on an appraisal panel of a registered appraisal management company; allow Texas Appraiser Licensing and Certification Board to audit the records of a registered appraisal management company to ensure compliance with the board, CSHB 1146, and the Uniform Standards of Professional Appraisal Practice; and allow an aggrieved appraiser who had completed a company's dispute resolution process to file a complaint against an appraisal management company with the board.

HB 1146 originally was placed on the Local, Consent, and Resolutions Calendar for April 21. After being withdrawn from the calendar, it was transferred to the Calendars Committee, which set the bill on today's General State Calendar.

The companion bill, SB 734 by Carona, was considered in a public hearing and left pending by the Senate Business and Commerce Committee on March 30.