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Chapter No. 464

11/HR07/R583SG

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HOUSE BILL NO. 990

Originated in House Don Richardson Clerk

HOUSE BILL NO. 990

AN ACT TO AMEND SECTION 73-34-5, MISSISSIPPI CODE OF 1972, TO EXCLUDE REAL ESTATE LICENSEES PERFORMING A BROKER PRICE OPINION FROM THE PROVISIONS OF THE REAL ESTATE APPRAISERS LAW; TO AMEND SECTION 73-35-3, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS; TO CREATE SECTION 73-35-4, MISSISSIPPI CODE OF 1972, TO ALLOW REAL ESTATE BROKERS OR SALESPERSONS TO GIVE AN OPINION TO A POTENTIAL PURCHASER OR THIRD PARTY AS TO THE RECOMMENDED LISTING PRICE OF REAL ESTATE; TO PROVIDE THAT SUCH OPINIONS AND EVALUATIONS SHALL NOT BE APPRAISALS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 73-34-5, Mississippi Code of 1972, is amended as follows:

73-34-5. (1) Except as otherwise provided for in this section, it shall be unlawful for anyone to engage in real estate appraisal activity in this state without first obtaining one (1) of the four (4) real estate appraiser licenses as provided in this chapter.

(a) Any person who is engaged in real estate appraisal activity on July 1, 1990, shall continue through June 30, 1991, to be subject to the provisions of the Real Estate Brokers License Law of 1954, but, thereafter, all real estate appraisal activity shall be governed by and licensed pursuant to the provisions of this chapter. However, if the United States Congress or the Appraisal Subcommittee of the Federal Financial Institutions Examination Council extends the effective date for the use of certified or licensed appraisers in federally related transactions, then the above date of June 30, 1991, shall be extended to the date immediately preceding such extended effective date. In addition, if such appraisal subcommittee waives any requirement relating to certification or licensing of persons to

perform appraisals in Mississippi, then such waiver shall also be effective in Mississippi under the Real Estate Appraiser Licensing and Certification Act and such requirement shall be waived by the Real Estate Appraiser Licensing and Certification Board until the waiver is terminated by the appraisal subcommittee. The Mississippi Real Estate Appraiser Licensing and Certification Board shall waive or modify statutory minimum requirements for hours of courses of study and provide by regulation for applicants who desire to do so to challenge the examinations, or one or some of them, by taking an examination on such courses without actually taking such courses, if such waivers or modifications are allowed or allowable under law or regulations adopted and promulgated by the United States Congress or the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(b) The provisions of this chapter shall not apply to any director, officer or salaried employee of commercial banks, savings banks, credit unions, and savings and loan associations, when engaged in appraisal or evaluation activities for and on behalf of such financial institution unless there is a fee charged for the appraisal or evaluation; provided that a federal statute, rule or regulation does not require such appraisal or evaluation activities to be performed by a state licensed appraiser.

(c) This section shall not be construed to apply to individuals who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion. Examples of the type of assistance which are not considered "significant professional assistance" under this section include the following: (i) assistance in obtaining the data upon which the appraisal is based; (ii) assistance in the physical preparation of the appraisal report (such as taking photographs, preparing charts, maps or graphs, or typing or printing the report); and (iii) any other assistance that does not directly involve the exercise of judgment in arriving at the

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(b) The provisions of this chapter shall not apply to any director, officer or salaried employee of commercial banks, savings banks, credit unions, and savings and loan associations, when engaged in appraisal or evaluation activities for and on behalf of such financial institution unless there is a fee charged for the appraisal or evaluation; provided that a federal statute, rule or regulation does not require such appraisal or evaluation activities to be performed by a state licensed appraiser.

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analysis, opinions or conclusions concerning real estate or real property set forth in the appraisal report.

* * *

(2) The provisions of this chapter shall not apply to:

(a) Any state, county, or municipal public officers or their salaried employees while performing their duties as such;

(b) The employees of private firms engaged pursuant to Section 27-35-165(2)(a) who perform work under the direction of the county tax assessor; or

(c) Private consultants hired pursuant to Section 27-35-165(2)(b) and all personnel employed or otherwise engaged by private consultants to appraise property who perform work under the direction of the county tax assessor.

(3) No license shall be issued under the provisions of this chapter to a corporation, partnership, firm or group.

(4) The provisions of this chapter shall not apply to individuals performing timber cruises, valuation on timberland real estate appraisals for nonfederally related transactions.

(5) The provisions of this chapter shall not apply to real estate licensees who are on active status and who perform a broker price opinion pursuant to Section 3 of this act.

SECTION 2. Section 73-35-3, Mississippi Code of 1972, is amended as follows:

73-35-3. (1) The term "real estate broker" within the meaning of this chapter shall include all persons, partnerships, associations and corporations, foreign and domestic, who for a fee, commission or other valuable consideration, or who with the intention or expectation of receiving or collecting the same, list, sell, purchase, exchange, rent, lease, manage or auction any real estate, or the improvements thereon, including options; or who negotiate or attempt to negotiate any such activity; or who advertise or hold themselves out as engaged in such activities; or

who direct or assist in the procuring of a purchaser or prospect calculated or intended to result in a real estate transaction. The term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary or upon fee, commission or otherwise, to sell such real estate, or parts thereof, in lots or other parcels, including timesharing and condominiums, and who shall sell, exchange or lease, or offer or attempt or agree to negotiate the sale, exchange or lease of, any such lot or parcel of real estate.

(2) The term "real estate" as used in this chapter shall include leaseholds as well as any and every interest or estate in land, including timesharing and condominiums, whether corporeal or incorporeal, freehold or nonfreehold, and whether said property is situated in this state or elsewhere; provided, however, that the term "real estate" as used in this chapter shall not include oil, gas or mineral leases, nor shall it include any other mineral leasehold, mineral estate or mineral interest of any nature whatsoever.

(3) One (1) act in consideration of or with the expectation or intention of, or upon the promise of, receiving compensation, by fee, commission or otherwise, in the performance of any act or activity contained in subsection (1) of this section, shall constitute such person, partnership, association or corporation a real estate broker and make him, them or it subject to the provisions and requirements of this chapter.

(4) The term "real estate salesperson" shall mean and include any person employed or engaged by or on behalf of a licensed real estate broker to do or deal in any activity as included or comprehended by the definitions of a real estate broker in subsection (1) of this section, for compensation or otherwise.

(5) The term "automated valuation method" means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

(6) The term "broker price opinion" means an estimate prepared by a real estate broker, agent, or salesperson that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model.

(7) Exempt from the licensing requirements of this chapter shall be any person, partnership, association or corporation, who, as a bona fide owner, shall perform any aforesaid act with reference to property owned by them, or to the regular employees thereof who are on a stated salary, where such acts are performed in the regular course of business.

(8) The provisions of this chapter shall not apply to:

(a) Attorneys at law in the performance of primary or incidental duties as such attorneys at law.

(b) Any person holding in good faith a duly executed power of attorney from the owner, authorizing the final consummation and execution for the sale, purchase, leasing or exchange of real estate.

(c) The acts of any person while acting as a receiver, trustee, administrator, executor, guardian or under court order, or while acting under authority of a deed of trust or will.

(d) Public officers while performing their duties as such.

(e) Anyone dealing exclusively in oil and gas leases and mineral rights.

(9) Nothing in this chapter shall be construed to prohibit life insurance companies and their representatives from

negotiating or attempting to negotiate loans secured by mortgages on real estate, nor shall these companies or their representatives be required to qualify as real estate brokers or agents under this chapter.

(10) The provisions of this chapter shall not apply to the activities of mortgagees approved by the Federal Housing Administration or the United States Department of Veterans Affairs, banks chartered under the laws of the State of Mississippi or the United States, savings and loan associations chartered under the laws of the State of Mississippi or the United States, licensees under the Small Loan Regulatory Law, being Sections 75-67-101 through 75-67-135, and under the Small Loan Privilege Tax Law, being Sections 75-67-201 through 75-67-243, small business investment companies licensed by the Small Business Administration and chartered under the laws of the State of Mississippi, or any of their affiliates and subsidiaries, related to the making of a loan secured by a lien on real estate or to the disposing of real estate acquired by foreclosure or in lieu of foreclosure or otherwise held as security. No director, officer or employee of any such financial institution shall be required to qualify as a real estate broker or agent under this chapter when engaged in the aforesaid activities for and on behalf of such financial institution.

SECTION 3. The following shall be codified as Section 73-35-4, Mississippi Code of 1972:

73-35-4. (1) A person licensed under this chapter may prepare a broker's price opinion and charge and collect a fee for such opinion if:

(a) The license of that licensee is active and in good standing; and

(b) The broker's price opinion meets the requirements of subsections (3) and (4) of this section.

(2) Notwithstanding any provision to the contrary, a person licensed under this chapter may prepare a broker's price opinion for:

(a) An existing or potential seller for the purposes of listing and selling a parcel of real property;

(b) An existing or potential buyer of a parcel of real property;

(c) A third party making decisions or performing due diligence related to the potential listing, offering, sale, exchange, option, lease or acquisition price of a parcel of real property; or

(d) An existing or potential lienholder or other third party for any purpose other than as the basis to determine the value of a parcel of real property, for a mortgage loan origination, including first and second mortgages, refinances, or equity lines of credit.

(e) The provisions of this subsection do not preclude the preparation of a broker's price opinion to be used in conjunction with or in addition to an appraisal.

(3) A broker's price opinion prepared under the authority granted in this act shall be in writing and shall conform to the standards and guidelines published by a nationally recognized association of providers of broker price opinions. The Mississippi Real Estate Commission shall promulgate regulations that are consistent with, but not limited to, the standards and guidelines of a nationally recognized association of providers of broker price opinions.

(4) A broker's price opinion shall be in writing and contain the following:

(a) A statement of the intended purpose of the price opinion;

(b) A brief description of the subject property and property interest to be priced;

(c) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;

(d) Any assumptions or limiting conditions;

(e) A disclosure of any existing or contemplated interest of the broker or salesperson issuing the opinion;

(f) The effective date of the price opinion;

(g) The name and signature of the broker or salesperson issuing the price opinion;

(h) The name of the real estate brokerage firm for which the broker or salesperson is acting;

(i) The signature date;

(j) A disclaimer stating that, "This opinion is not an appraisal of the market value of the property, and may not be used in lieu of an appraisal. If an appraisal is desired, the services of a licensed or certified appraiser must be obtained. This opinion may not be used by any party as the primary basis to determine the value of a parcel of real property for a mortgage loan origination, including first and second mortgages, refinances or equity lines of credit."; and

(k) A certification that the licensee is covered by errors and omissions insurance, to the extent required by state law, for all liability associated with the preparation of the broker's price opinion.

(5) If a broker's price opinion is submitted electronically or on a form supplied by the requesting party:

(a) A signature required by paragraph (g) of subsection (4) may be an electronic signature, as defined in Section 75-12-3.

(b) A signature required by paragraph (g) of subsection (4) and the disclaimer required by paragraph (j) of subsection (4) may be transmitted in a separate attachment if the electronic format or form supplied by the requesting party does not allow

additional comments to be written by the licensee. The electronic format or the form supplied by the requesting party must:

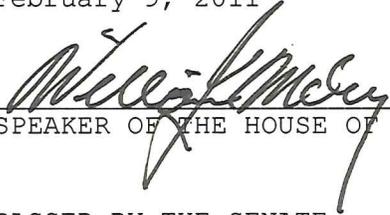
(i) Reference the existence of a separate attachment; and

(ii) Include a statement that the broker's price opinion is not complete without the attachment.

(6) Notwithstanding any provisions to the contrary, a person licensed pursuant to this chapter may not prepare a broker's price opinion for any purpose in lieu of an appraisal when an appraisal is required by federal or state statute. A broker's price opinion which estimates value or worth of a parcel of real estate rather than sales price shall be deemed to be an appraisal and may not be prepared by a licensed broker or sales agent under the authority of their licensee but may only be prepared by a duly licensed appraiser and must meet the regulations promulgated by the Mississippi Real Estate Appraiser Licensing and Certification Board. A broker's price opinion may not under any circumstances be referred to as a valuation or appraisal.

SECTION 4. This act shall take effect and be in force from and after July 1, 2011.

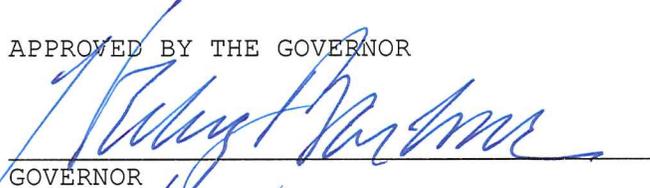
PASSED BY THE HOUSE OF REPRESENTATIVES
February 9, 2011


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 9, 2011


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

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