

HOUSE BILL No. 2772

AN ACT concerning real estate; imposing conditions relating to the appraisal and sales contracts therefor; amending K.S.A. 58-4102, 58-4103, 58-4117 and 58-4118 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. On and after July 1, 2009, each contract for the sale of residential real property shall contain the following language:

“Every buyer of residential real property is notified that the property may present exposure to dangerous concentrations of indoor radon gas that may place occupants at risk of developing radon-induced lung cancer. Radon, a class-A human carcinogen, is the leading cause of lung cancer in non-smokers and the second leading cause overall. Kansas law requires sellers to disclose any information known to the seller that shows elevated concentrations of radon gas in residential real property. The Kansas department of health and environment recommends all home-buyers have an indoor radon test performed prior to purchasing or taking occupancy of residential real property. All testing for radon should be conducted by a radon measurement technician. Elevated radon concentrations can be easily reduced by a radon mitigation technician. For additional information go to www.kansasradonprogram.org.”

Sec. 2. K.S.A. 58-4102 is hereby amended to read as follows: 58-4102. As used in this act:

(a) “Appraisal” or “real estate appraisal” means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis. A valuation is an estimate of the value of real estate or real property. An analysis is a study of real estate or real property other than estimating value.

(b) “Appraisal assignment” means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested party in rendering an unbiased analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate.

(c) “*Broker’s price opinion*” and “*comparative market analysis*” means an analysis, opinion or conclusion prepared by an individual licensed as a real estate broker or salesperson pursuant to K.S.A. 58-3034 et seq., and amendments thereto, relating to the price of specified interests in or aspects of identified real estate property that is provided to a potential customer, client or third party in the ordinary course of business.

(d) “Board” means the real estate appraisal board established pursuant to the provisions of this act.

~~(e)~~ (e) “Federal law” means title XI of the financial institutions reform, recovery and enforcement act of 1989 (12 U.S.C. 3331 et seq.) and any other federal law, and any regulations adopted pursuant thereto.

~~(f)~~ (f) “Federally related transaction” means any real estate-related financial transaction which: (1) A federal financial institutions regulatory agency or the resolution trust corporation engages in, contracts for or regulates; and (2) requires the services of an appraiser.

~~(g)~~ (g) “Real estate” means an identified parcel or tract of land, including improvements, if any.

~~(h)~~ (h) “Real estate appraisal organization” means any nationally recognized organization of professional appraisers.

~~(i)~~ (i) “Real estate-related financial transaction” means any transaction involving: (1) The sale, lease, purchase, investment in or exchange of real property, including interests in property or the financing thereof; (2) the refinancing of real property or interests in real property; ~~and~~ (3) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities; or (4) a federally related transaction.

~~(j)~~ (j) “Real property” means one or more defined interests, benefits and rights inherent in the ownership of real estate.

~~(k)~~ (k) “Specialized services” means those appraisal services which do not fall within the definition of appraisal assignment. Specified services may include valuation work and analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested party in rendering an unbiased analysis, opinion or conclusion, the work is classified as an appraisal assignment and not specialized services.

~~(k)~~ (l) A “state certified appraiser” means a person who develops and communicates real estate appraisals and who holds a current, valid certificate issued to such person under the provisions of this act.

~~(j)~~ (m) A “state licensed appraiser” means a person who develops and communicates real estate appraisals and holds a current, valid license issued to such person under the provisions of this act.

~~(i)~~ (n) “Written appraisal” means a written statement used in connection with a ~~federally-related~~ *real estate-related financial* transaction that is independently and impartially prepared by a licensed or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.

(o) “Appraiser” means a person who develops and communicates real estate appraisals for real estate-related financial transactions and holds a current valid certification or license issued to such person under the provisions of K.S.A. 58-4101 et seq., and amendments thereto.

Sec. 3. K.S.A. 58-4103 is hereby amended to read as follows: 58-4103. (a) Except as provided in subsection (b), no person, other than a state certified or licensed appraiser, shall:

(1) Engage in any written appraisal in connection with a ~~federally related real estate-related financial~~ transaction ~~for which certification or licensure is required pursuant to federal law; or;~~

(2) assume or use the title of state certified or licensed appraiser or any title, designation or abbreviation likely to create the impression of certification or licensure as a real estate appraiser by this state; or

(3) advertise or otherwise represent in any manner that such person is a state certified or licensed appraiser.

(b) The board shall recognize on a temporary basis the certification or license of an appraiser issued by another state ~~in accordance with federal law~~ if:

(1) The property to be appraised is part of a ~~federally-related real estate-related financial~~ transaction ~~pursuant to federal law;~~

(2) the appraiser’s business in this state is of a temporary nature; and

(3) the appraiser registers with the board, as prescribed by the board.

(c) Violation of subsection (a) is a ~~class B misdemeanor~~ *class A non-person misdemeanor*.

~~(d) The provisions of this act requiring certification or licensure or the issuance of a certificate or license authorizing the practice of real estate appraisal shall not be construed to prevent a person who is not a state certified or licensed real estate appraiser from appraising real estate for compensation if state certification or licensure is not required pursuant to federal law.~~

~~(e)~~ An individual who is not a state certified or licensed appraiser may assist in the preparation of an appraisal if: (1) The assistant is under the direct supervision of an individual who is a state licensed or certified appraiser; and (2) the final appraisal document is approved and signed by an individual who is a state certified or licensed appraiser.

(e) (1) *The provisions of paragraph (1) of subsection (a) shall not be applicable to financial institutions engaging in real estate-related financial transactions and otherwise subject to K.S.A. 58-4101 et seq., and amendments thereto, when the following conditions are met:*

(A) *An employee of the financial institution conducts an appraisal as defined in subsection (a) of K.S.A. 58-4102, and amendments thereto, or conducts an evaluation in accordance with state and federal banking regulations; and*

(B) *when the loan that is the subject of such appraisal is not intended to be sold in the secondary market and is intended to be held by the financial institution for the life of the loan.*

(2) *If the financial institution disposes of the loan granted under paragraph (1)(B) of this subsection in the secondary market, such financial institution shall be required to obtain an appraisal by a state licensed or certified appraiser as required by paragraph (1) of subsection (a). The employee of the financial institution that conducted the prior appraisal shall not be considered to be an appraiser under the law unless such person is a state certified or licensed appraiser.*

(f) *The provisions of paragraph (1) of subsection (a) shall not preclude an individual licensed as a real estate broker or salesperson pursuant to*

K.S.A. 58-3034 et seq., and amendments thereto, from performing and providing a comparative market analysis or broker's price opinion to a customer, client or third party for compensation in the ordinary course of business. In no event shall such comparative market analysis or broker's price opinion be referred to as an appraisal nor shall such individual represent such individual's self as a certified or licensed appraiser under this act unless such person is a state certified or licensed appraiser.

(g) The provisions of paragraph (1) of subsection (a) shall not preclude an individual licensed as a certified public accountant pursuant to K.S.A. 1-301 et seq., and amendments thereto, from performing and providing services as a certified public accountant or as otherwise allowed by law. In no event shall any report by a certified public accountant be referred to as an appraisal nor shall such certified public accountant represent such individual's self as a state certified or licensed appraiser unless such certified public accountant is a state certified or licensed appraiser.

(h) The provisions of paragraph (1) of subsection (a) shall not preclude an individual licensed as an attorney pursuant to K.S.A. 7-103 et seq., and amendments thereto, from performing and providing services as an attorney or as otherwise allowed by law. In no event shall any report by an attorney be referred to as an appraisal nor shall such attorney represent such individual's self as a state certified or licensed appraiser unless such attorney is a state certified or licensed appraiser.

(i) The provisions of paragraph (1) of subsection (a) shall not be applicable to employees of the Kansas department of transportation performing appraisals for the department for the purpose of real property acquisition or disposal of real property by the department. In no event shall such employee performing such appraisal represent such individual's self as a state certified or licensed appraiser unless such employee is a state certified or licensed appraiser.

(j) The provisions of paragraph (1) of subsection (a) shall not preclude an individual licensed as an insurance agent pursuant to K.S.A. 40-4901 et seq., and amendments thereto, or an individual retained by an insurance company, while acting within the scope of the Kansas insurance code, from performing and providing services as an insurance agent or an individual retained by an insurance company as otherwise allowed by law. In no event shall any report by an insurance agent or an individual retained by an insurance company be referred to as an appraisal nor shall such insurance agent or an individual retained by an insurance company represent such individual's self as a state certified or licensed appraiser unless such employee is a state certified or licensed appraiser.

Sec. 4. K.S.A. 58-4117 is hereby amended to read as follows: 58-4117. (a) As a prerequisite to renewal of a certificate or license, the appraiser shall present evidence satisfactory to the board of having met the continuing education requirements.

(b) The basic continuing education requirement for renewal of a certificate or license shall be the completion by the applicant, during the immediately preceding term of certification or licensure, of the number of hours of classroom instruction which have been established pursuant to K.S.A. 58-4109 and amendments thereto and which have received the approval of the board.

(c) No amendment or repeal of a rule and regulation adopted by the board shall operate to deprive an applicant of credit toward renewal of a certificate or license for any course of instruction completed by the applicant prior to the amendment or repeal of the rule and regulation which would have qualified for continuing education credit under the rule and regulation as it existed prior to the repeal or amendment.

(d) A certificate or license that has been revoked as a result of disciplinary action by the board shall not be reinstated unless the applicant presents evidence of completion of the continuing education required pursuant to this act. ~~This requirement of evidence of continuing education shall not be imposed upon an applicant for reinstatement who has been required to successfully complete an examination as a condition of reinstatement.~~

Sec. 5. K.S.A. 58-4118 is hereby amended to read as follows: 58-4118. (a) The board may investigate the actions of a state certified or licensed appraiser and may revoke, condition, limit or suspend the cer-

tificate or license of the appraiser, or censure the appraiser, for any of the following acts or omissions:

(1) Procuring or attempting to procure a certificate or license pursuant to this act by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification or licensure or any form of fraud or misrepresentation;

(2) failing to meet the minimum qualifications established by this act;

(3) paying money, other than provided for by this act, to any member or employee of the board to procure a certificate or license under this act;

(4) a plea of guilty or nolo contendere to, or conviction of: (A) Forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any other similar offense; (B) a crime involving moral turpitude; or (C) any felony charge;

(5) an act or omission involving dishonesty, fraud or misrepresentation, with the intent to substantially benefit the appraiser or another person or with the intent to substantially injure another person;

(6) violation of any of the standards for the development or communication of real estate appraisals as provided in this act;

(7) failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

(8) negligence or incompetence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

(9) willfully disregarding or violating any provision of this act or rules and regulations of the board for the administration and enforcement of the provisions of this act;

(10) accepting an appraisal assignment, described in K.S.A. 58-4122, and amendments thereto, when the employment itself is contingent upon the appraiser reporting a predetermined estimate, analysis or opinion, or when the fee to be paid is contingent upon the opinion, conclusion or valuation reached, or upon the consequences resulting from the appraisal assignment;

(11) violating the confidential nature of governmental records to which the appraiser gained access through employment or engagement as an appraiser by a governmental agency;

(12) entry of a final civil judgment against the person on grounds of fraud, misrepresentation or deceit in the making of any appraisal of real property;

(13) disciplinary action in relation to appraisal work, including, but not limited to, denial, revocation or suspension of a license or certificate by another state, district or territory of the United States or another country; or

(14) receipt of an order of prohibition in relation to appraisal work, by consent or otherwise, issued by an agency of the federal government.

(b) In addition to or in lieu of any other administrative, civil or criminal remedy provided by law, the board upon a finding that a state certified or licensed appraiser has violated any provision of this act or of any rules and regulations adopted hereunder *or upon a finding that a person who is not a state certified or licensed appraiser has violated any provision of subsection (a) of K.S.A. 58-4103, and amendments thereto*, may impose upon such appraiser *or such person* a civil fine not exceeding \$1,000 for each violation. All moneys collected by the board from such fines shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(c) In a disciplinary proceeding based upon a civil judgment, the appraiser shall be afforded an opportunity to present matters in mitigation and extenuation but may not collaterally attack the civil judgment.

(d) *If the board determines that a person has violated any provision of subsection (a) of K.S.A. 58-4103, and amendments thereto, in addition to any other penalties imposed by law, the board may issue a cease and desist order against such person.*

(e) All administrative proceedings pursuant to this section shall be conducted in accordance with the Kansas administrative procedure act.

Sec. 6. K.S.A. 58-4102, 58-4103, 58-4117 and 58-4118 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.