

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

3. Contracts for services. The administrator may employ and engage experts, professionals and other personnel of other state and federal regulatory agencies as necessary to assist the Securities Division in carrying out its regulatory functions.

Sec. 24. 32 MRSA §11031, sub-§2, as enacted by PL 1985, c. 702, §2, is amended to read:

2. Licenses. Licenses granted by the superintendent under this section ~~shall be~~ are for a period of 2 years and ~~shall~~ expire on July 31st or at such other times as the superintendent may designate. Each license may be renewed biennially ~~so~~ as long as the superintendent regards the business as responsible and safe, but in all cases ~~to~~ terminate unless renewed by the expiration date. Each license ~~shall~~ must plainly state the name and business address of the licensee and ~~shall~~ be posted in a conspicuous place in the office where the business is transacted. The fee for each biennial license is \$400. When the unexpired license term of an applicant is or will be less than one year at a time of licensure, the license fee ~~shall~~ may not exceed 1/2 the biennial license fee. If ~~the~~ a licensee desires to carry on business in more than one place ~~within the State, he~~ the licensee shall procure a branch office license for each additional place where the business is to be conducted. The fee for each biennial branch office license is \$200.

See title page for effective date.

CHAPTER 185

H.P. 1026 - L.D. 1437

An Act to Reorganize the Real Estate Appraisers Law

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-A, sub-§9-B, as enacted by PL 1989, c. 806, §1, is amended to read:

9-B. Board of \$35/Day 32 MRSA ~~@13967-~~
Real Estate §14011
Appraisers

Sec. 2. 23 MRSA §152, first ¶, as amended by PL 1991, c. 684, §1, is further amended to read:

The State Claims Commission, established by Title 5, section 12004-B, subsection 5, consists of 5 members. Four of the members must be appointed by the Governor, 2 of whom must be qualified appraisers certified as general real estate appraisers pursuant to Title 32, chapter ~~423~~ 124 and 2 of whom must be attorneys-at-law. The Governor shall designate one of the attorneys-at-law to be chair. The members of the

commission appointed by the Governor shall serve for terms of 4 years. They must be sworn, and for inefficiency, willful neglect of duty or for malfeasance in office may, after notice and hearing, be removed by the Governor on the address of both branches of the Legislature or by impeachment. In case of a vacancy occurring through death, resignation or removal, the Governor shall appoint a successor for the whole term of the member whose place that successor takes, subject to removal as provided in this section.

Sec. 3. 32 MRSA §13251-A, as enacted by PL 1995, c. 240, §1, is amended to read:

§13251-A. Conflict of interest

A real estate broker or associate broker may not knowingly provide or offer an appraisal or opinion of market value, as set forth in section ~~43963~~ 14004, on real estate in a transaction where the broker or associate broker, or any other licensee licensed with the agency, is to receive a fee on that transaction.

Sec. 4. 32 MRSA c. 123, as amended, is repealed.

Sec. 5. 32 MRSA c. 124 is enacted to read:

CHAPTER 124

REAL ESTATE APPRAISAL LICENSING AND CERTIFICATION

SUBCHAPTER I

GENERAL PROVISIONS

§14001. Short title

This chapter may be known and cited as the "Real Estate Appraisal Licensing and Certification Act."

§14002. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Appraisal. "Appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser related to the nature, quality, value or utility of specified interests in, or aspects of, identified real property.

2. Appraisal foundation. "Appraisal foundation" means the appraisal foundation incorporated as an Illinois nonprofit corporation on November 30, 1987 and recognized under the federal Financial Institutions Reform, Recovery, and Enforcement Act

of 1989 as the organization that establishes the Uniform Standards of Professional Appraisal Practice.

3. Appraiser qualifications board. "Appraiser qualifications board" means an independent board of the appraisal foundation authorized to establish the minimum education, experience and examination criteria for licensed real estate appraisers.

4. Appraisal report. "Appraisal report" means any written or oral communication of an appraisal.

5. Board. "Board" means the Board of Real Estate Appraisers.

6. Commissioner. "Commissioner" means the Commissioner of Professional and Financial Regulation.

7. Complex residential property. "Complex residential property" means a residential property of one to 4 units exhibiting characteristics, determined by the board, that are not typical of the property type or marketplace, including, but not limited to:

A. Unusual forms of ownership, such as partial interests;

B. Property interests other than fee simple, such as those encumbered by easements, life estates or elaborate lease terms;

C. Unstable market conditions;

D. Changing patterns of land use when issues of compatibility, zoning and highest and best use are significant factors;

E. Environmentally contaminated properties; and

F. Physical characteristics, such as lot size, topography and building type, that are unusual.

8. Department. "Department" means the Department of Professional and Financial Regulation.

9. Federally related transaction. "Federally related transaction" means federally related transaction as defined in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73 or in the federal Office of Management and Budget Circular A-129, as either is amended, or as the rules referred to in either are amended.

10. Noncomplex residential property. "Noncomplex residential property" means property that is not defined as complex residential property in subsection 7.

11. Real estate. "Real estate" means an identified parcel of land, including improvements, if any.

12. Real estate appraisal activity. "Real estate appraisal activity" means the act or process of making an appraisal of real property and communicating a report.

13. Real estate appraiser. "Real estate appraiser" means a person who engages in real estate appraisal activity for a fee or other valuable consideration. "Real estate appraiser" includes review appraisers and appraisal administrators.

14. Real property. "Real property" means one or more defined interests, benefits or rights inherent in the ownership of real estate.

15. Uniform Standards of Professional Appraisal Practice. "Uniform Standards of Professional Appraisal Practice" means those standards adopted by the appraisal standards board of the appraisal foundation.

§14003. License required

Except as provided in section 14004, it is unlawful for a person to prepare, for a fee or other valuable consideration, an appraisal or appraisal report relating to real estate or real property in this State without first obtaining a real estate appraisal license. This section does not apply to individuals who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion. Nothing in this chapter prohibits any person who is licensed to practice in this State under any other law from engaging in the practice for which that person is licensed.

§14004. Exemption

Real estate appraisal activity does not include:

1. Salaried employees. Appraisals prepared by a salaried employee of a real estate owner who, in the regular course of employment, makes appraisals of the real estate of the employer or of real estate under consideration for purchase or exchange for the sole consideration of the employer; and

2. Brokers or associate brokers. Appraisals or opinions of market value prepared by associate brokers or brokers who maintain active licenses pursuant to chapter 114 rendered for purposes other than for federally related transactions.

Any opinion or appraisal of market value rendered under this section must contain the following language in bold print in a prominent location: "This opinion or appraisal was prepared solely for the client, for the purpose and function stated in this report and is not intended for subsequent use. It was not prepared

by a licensed or certified appraiser and may not comply with the appraisal standards of the uniform standards of professional appraisal practice."

§14005. Civil actions

A person may not bring or maintain any action in the courts of this State for the collection of compensation for the performance of real estate appraisal services without first proving that the person was properly licensed by the board at the time the cause of action arose.

§14006. Violation; injunction

A person who violates this chapter commits a Class E crime. The State may bring action in Superior Court to enjoin a person from violating this chapter, regardless of whether proceedings have been or may be instituted in the Administrative Court or whether criminal proceedings have been or may be instituted.

SUBCHAPTER II

BOARD

§14011. Board of Real Estate Appraisers; establishment

1. Establishment. The Board of Real Estate Appraisers is established within the department pursuant to Title 5, section 12004-A, subsection 9-B and shall carry out the purposes of this Act.

2. Members. The board consists of 7 members appointed by the Governor. Each member must be a citizen of the United States and a resident of this State. The board consists of:

A. Two public members; and

B. Five members who hold valid appraiser licenses, including at least one member who holds a certified general license.

3. Geographic distribution. The Governor, in making appointments, shall consider the desirability of having a broad geographic distribution of representation.

4. Terms; removal. Terms of the members of the board are for 3 years. Members may be removed by the Governor for cause.

5. Meetings; quorum. The board shall hold at least 4 regular meetings each year. Additional meetings may be held upon the call or upon the written request of 2 board members. A majority of the members of the board constitutes a quorum for the transaction of business under this Act.

6. Election of officers. The board shall annually elect a chair and other officers as it determines necessary.

§14012. Rules

The board may establish guidelines and rules by which this chapter must be administered. Rules adopted pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Rules are subject to Title 5, chapter 375, subchapter II.

1. Hearings. The board may adopt rules governing the conduct of hearings, including provisions governing communications among the members of the board.

2. Investigations. The board may adopt rules governing investigations and filing and processing of complaints in order to ensure prompt, effective investigations of alleged violations of this chapter as necessary to protect and promote the interests of the public.

3. Standards. The board may adopt rules consistent with the standards set forth in this chapter governing real estate appraisal conduct in order to establish standards of practice that serve the interest of the public and the appraisal business.

4. License qualifications. The board may adopt rules relating to the qualifications and application for any license authorized under this chapter that it considers necessary to ensure that applicants are sufficiently trustworthy and competent to make real estate appraisals.

5. Education. The board may adopt rules to be applied in determining whether educational programs meet the license qualifications required under this chapter.

6. Other. The board may adopt and enforce other rules that are necessary for the performance of its duties under this chapter.

7. Fees. The board may establish, by rule, fees that are reasonable and necessary for their respective purposes, except that the set fee for any one purpose may not exceed \$300 biennially.

§14013. Hearings

1. Purpose. The board shall conduct hearings in conformity with the Maine Administrative Procedure Act to assist with investigations and to determine whether grounds exist for suspension, revocation or denial of a license or as the board otherwise determines necessary to fulfill its responsibilities under this chapter.

2. Procedure. Except as provided in Title 5, section 10004, a license may not be denied, suspended or revoked and renewal may not be refused without prior written notice and opportunity for hearing on that denial, suspension, revocation or refusal. The burden of proof is on the board in any proceeding to suspend or revoke a license. A license may not be denied, suspended or revoked and renewal may not be refused under this section except by majority vote of the board.

3. Complaints. Any person may file a complaint with the board seeking disciplinary action against the holder of a license issued by the board. In addition, the board upon its own motion may file a complaint. Complaints received by the board must be processed in a manner consistent with section 60-G.

§14014. Grounds for disciplinary action

1. Grounds. The board may suspend, revoke or refuse to renew a license pursuant to Title 5, section 10004. In addition, the board may take any other action pursuant to Title 10, section 8003, subsection 5. The board's actions may be taken based on any of the following grounds:

A. The licensee procures or attempts to procure licensure under this chapter by knowingly making a false statement, submitting false information or making a material misrepresentation in an application filed with the board or procures or attempts to procure a license through fraud or misrepresentation;

B. The licensee commits an act or omission in the practice of real estate appraising that constitutes dishonesty, fraud or misrepresentation with the intent to substantially benefit the licensee or another person or with the intent to substantially injure another person;

C. There is entry of a final civil or criminal judgment against a licensee on grounds of fraud, misrepresentation or deceit in the making of an appraisal of real estate;

D. Subject to Title 5, chapter 341, the licensee is convicted in any court of any Class A, B, or C crime or a crime that is substantially related to the qualifications, functions or duties of a person developing real estate appraisals and communicating real estate appraisals to others;

E. The licensee pays a finder's fee or a referral fee to a person who does not have an appraiser license in this State in connection with an appraisal of real estate or real property in this State;

F. The licensee makes a false or misleading statement in that portion of a written appraisal

report that deals with professional qualifications or in any testimony concerning professional qualifications;

G. The licensee violates this chapter or any rule adopted under this chapter;

H. The licensee accepts a fee for performing an independent appraisal service when, in fact, the fee is or was contingent upon the appraiser's reporting a predetermined analysis, opinion or conclusion or is or was contingent upon the analysis, opinion, conclusion or valuation reached or upon the consequences resulting from the appraisal assignment;

I. The licensee fails or refuses without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

J. The licensee demonstrates negligence or incompetence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

K. The licensee violates the confidential nature of individual, business or governmental records to which a licensee gained access through employment or engagement as an appraiser; or

L. The licensee engages in appraisal activity requiring a license under this chapter that is beyond the scope of acts authorized by the license held.

SUBCHAPTER III

CERTIFIED GENERAL, CERTIFIED RESIDENTIAL, REAL PROPERTY APPRAISER, APPRAISER TRAINEE, TEMPORARY LICENSE

§14021. General qualifications

This section governs the application for licensure under this chapter.

1. Application. The applicant must submit a properly completed application on forms furnished by the board, together with the prescribed fee.

2. Age. The applicant must be at least 18 years of age at the time of application.

3. Residence. The applicant shall provide evidence of the applicant's legal residence.

4. High school. The applicant must be a high school graduate or hold an equivalency certificate.

5. Reputation. The applicant must have a good reputation for honesty, truthfulness, fair dealing and competency. The recommendation of at least 3 persons not related to the applicant who have acknowledged before a notary public that they have known the applicant for at least one year immediately preceding the date of the application that the applicant has such a reputation creates a rebuttable presumption that the applicant meets that qualification.

6. Other. The applicant shall comply with other requirements that may be prescribed by the board from time to time.

§14022. Place of business

A licensee shall designate and maintain a principal place of business where real estate appraisal records may be inspected for purposes consistent with this chapter and shall conspicuously display the license in the principal place of business. A nonresident is not required to maintain a place of business in this State if the nonresident maintains an active place of business in the state of domicile.

§14023. License denial

A license may be denied to any applicant:

1. Complete application. Who fails to submit a complete application within 30 days after being notified of the materials needed to complete the application;

2. Proof that applicant is trustworthy. Who fails to provide satisfactory proof that the applicant is trustworthy and competent to conduct real estate appraisal activity in a manner that safeguards the interests of the public;

3. Suspension or revocation of license. Who has had any professional or occupational license suspended or revoked for disciplinary reasons or any application rejected for reasons relating to untrustworthiness within 3 years prior to the date of application;

4. Conviction of crime. Subject to Title 5, chapter 341, who has been convicted of any Class A, B or C crime or any crime that bears on the practice of real estate appraising; or

5. Meeting requirements of subchapter. Who fails to meet the professional qualifications for licensure as provided in this subchapter.

§14024. Nonresidents and applicants licensed in another jurisdiction

1. Consent to service. All nonresident license applicants shall submit, with the application, an irrevocable consent that service of process on the applicant for an action filed in a court of this State

arising out of the applicant's activities as a real estate appraiser in this State may be made by delivery of the process to the commissioner if, in the exercise of due diligence, a plaintiff can not effect personal service upon the applicant.

2. Reciprocal agreements. The board may enter into reciprocal agreements with other jurisdictions that have substantially equivalent licensure laws and accord substantially equal reciprocal rights to residents licensed in good standing in this State.

3. Applicants licensed in another jurisdiction. An applicant who is licensed under the laws of another jurisdiction is governed by this subsection.

A. An applicant who is licensed under the laws of a jurisdiction that has a current reciprocal agreement with the board may obtain a license upon such terms and conditions as may be agreed upon through the reciprocal agreement.

B. An applicant who is licensed, in good standing, under the laws of a jurisdiction that has not entered into a reciprocal agreement with the board may qualify for licensure by submitting evidence, satisfactory to the board, that the applicant has met all of the qualifications for licensure equivalent to those as set forth by this subchapter for that level of licensure.

§14025. License renewal

Licenses expire biennially on December 31st or on such other date as the commissioner determines. The board shall issue a renewal license for each ensuing biennial period in the absence of any reason or condition that might warrant the refusal of granting a license, upon receipt of the written request of the applicant, the biennial fee for the license and upon the applicant presenting evidence of compliance with the requirements of section 14027. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee, as established by board rule, in addition to the renewal fee.

The board shall deny a renewal license to any applicant whose license has lapsed for more than 90 days, unless the applicant satisfies the provisions governing new applicants under this subchapter, except that the board may waive the education and examination requirements for new applicants, if the renewal application is received within 2 years from the date of that expiration.

§14026. Changes

The applicant shall report any change of address or name or other material change in the conditions or qualifications set forth in the original application no later than 10 days after the change. Upon proper

application, the board's records must be changed and a new license issued for the unexpired term of the current license, if appropriate.

§14027. Continuing education

As a prerequisite to renewal of a license, an applicant must have completed the minimum hour requirements for continuing education in programs or courses approved by the board and as set by the appraiser qualification board. For purposes of this section, the board may establish, by rule, a core educational requirement.

§14028. Standards of professional appraisal practice

A real estate appraiser licensed under this chapter shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice and ethics are currently, at a minimum, those established by the Uniform Standards of Professional Appraisal Practice.

§14029. Individual licensing

Only an individual may be licensed under this chapter.

§14030. Certified general real property appraiser

1. **Scope of license.** A certified general real property appraiser license entitles the holder to appraise all types of real property.

2. **Professional qualifications.** Each applicant for a certified general real property appraiser license must:

A. Hold a valid license under this chapter and demonstrate experience as a real estate appraiser as required by the appraiser qualifications board;

B. Satisfactorily complete the minimum classroom hours required by the appraiser qualifications board in courses of study approved by the Board of Real Estate Appraisers that relate to real estate appraisal theory and practice. To meet the classroom requirement, an applicant must successfully complete no fewer than 15 hours in courses of study approved by the board that relate specifically to the Uniform Standards of Professional Appraisal Practice; and

C. Pass an examination administered by the board designed to test an individual's knowledge of the basic principles of land economics, real estate appraising, the Uniform Standards of Professional Appraisal Practice and the ethical rules to be observed by a real estate appraiser.

§14031. Certified residential real property appraiser

1. **Scope of license.** A certified residential real property appraiser license entitles the holder to appraise residential real estate or real property of one to 12 units, or land related to that property, without regard to transaction value or complexity when a net income capitalization analysis is not required by the terms of the assignment. For federally related transactions, a certified residential real property appraiser may only appraise residential real estate or real property of one to 4 units, or land related to that property, without regard to transaction value or complexity when a net income capitalization analysis is not required by the terms of the assignment.

2. **Professional qualifications.** Each applicant for a certified residential license must:

A. Hold a valid license under this chapter and demonstrate experience as a real estate appraiser as required by the appraiser qualifications board;

B. Satisfactorily complete the minimum classroom hours required by the appraiser qualifications board in courses of study approved by the Board of Real Estate Appraisers that relate to real estate appraisal theory and practice. To meet the classroom requirement, an applicant must successfully complete no fewer than 15 hours of study approved by the board that relate specifically to the Uniform Standards of Professional Appraisal Practice; and

C. Pass an examination administered by the board designed to test an individual's knowledge of the basic principles of land economics, real estate appraising, the Uniform Standards of Professional Appraisal Practice and the ethical rules to be observed by a real estate appraiser.

§14032. Licensed real property appraiser

1. **Scope of license.** A real property appraiser license entitles the holder to appraise noncomplex residential property of one to 4 units or the land related to that property when a net income capitalization analysis is not required by the terms of the assignment. For federally related transactions, a licensed real property appraiser may appraise only residential property of one to 4 units having a transaction value of less than \$1,000,000.

2. **Professional qualifications.** Each applicant for a licensed appraiser license must meet the following qualifications:

A. Demonstrate experience in the real estate appraisal field as required by the appraiser qualifications board;

B. Have satisfactorily completed the minimum classroom hours required by the appraiser qualifications board in courses of study approved by the Board of Real Estate Appraisers that relate to the basic principles of real estate appraisal. The required classroom hours must include no fewer than 15 classroom hours of study specifically relating to the Uniform Standards of Professional Appraisal Practice; and

C. Pass an examination administered by the board designed to determine the fitness of the applicant to practice.

§14033. Trainee real property appraiser

1. Scope of license. A trainee real property appraiser license or "trainee license" entitles the holder or "trainee" to appraise for a fee or other valuable consideration under the direct supervision of a licensed real property appraiser, a certified general real property appraiser or a certified residential real property appraiser those properties that the supervising appraiser is permitted to appraise.

2. Professional qualification. Each applicant for a trainee license must submit evidence of satisfactory completion of the minimum classroom hours required by the appraiser qualifications board in courses of study approved by the Board of Real Estate Appraisers, which must include coverage of the Uniform Standards of Professional Appraisal Practice.

3. Filing with board. Before employing a trainee, a licensed real property appraiser, certified residential real property appraiser or certified general real property appraiser must register the name and starting date of employment of that trainee with the board.

4. Limited license term. Trainee licenses may only be renewed for 2 biennial terms. After 6 years, the trainee is not eligible for renewal but must qualify as a new applicant.

§14034. Temporary license

A temporary license may be issued to a nonresident in accordance with this section.

1. Scope of license. A temporary license authorizes the holder to perform the appraisal of real estate or real property in this State required by a contract.

2. Professional qualifications. An applicant for a temporary license must:

A. Submit evidence that the applicant is licensed, in good standing under the laws of the applicant's state of domicile;

B. File a consent to service application meeting the provisions of section 14024, subsection 1; and

C. Submit a copy of the contract for appraisal services that requires the applicant to appraise real estate or real property in this State and certify that the contract is in full force and effect.

3. License limitations. A temporary license expires upon the completion of the appraisal work required by the contract or upon the expiration of a period of 6 months from the date of issuance, whichever occurs first. A temporary license may be extended for a period of 6 months from the expiration date of the original license upon request of the license holder and as necessary to fulfill the terms of the contract for appraisal services.

Sec. 6. 37-B MRSA §264, sub-§1, as enacted by PL 1995, c. 684, §3, is amended to read:

1. Sale of property; proceeds. The Adjutant General shall designate an officer to inspect military property, real and personal, and may condemn any inspected property that the Adjutant General determines to be unfit for use by the military. Property condemned under this subsection may be sold by the Adjutant General. Real property condemned under this subsection may not be sold for less than its appraised value as determined by a person licensed as a real estate appraiser under Title 32, chapter ~~123~~ 124.

All proceeds from the sale of condemned property must be paid into the State Treasury and credited to the Capital Repair Account of the Military Bureau established under section 154.

See title page for effective date.

CHAPTER 186

S.P. 556 - L.D. 1618

An Act to Amend the Laws Regarding Professional Engineers

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §1255, sub-§1, as amended by PL 1995, c. 355, §2, is further amended to read:

1. Limited practice by nonresident. A person not a resident of and not having established a place of business in this State, practicing or offering to practice the profession of engineering when such practice does not exceed more than 30 consecutive days in any calendar year, if the person is legally qualified by