Chapter 674

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Real Estate Appraisers and Appraisal

GENERAL PROVISIONS

674.010 Definitions

674.020 Purposes

CERTIFICATION AND LICENSURE

674.100 Persons engaged in real estate appraisal activity required to be certified or licensed; exclusions

Note Termination of existing licenses--1991 c.5 §7

674.120 Nonresident certificate or license recognized; criteria

674.130 Appraisal standards for federally related transactions

674.140 Grounds for discipline

674.150 Maintenance of appraisal records in this state

674.160 Reciprocal agreements with other states; procedures

674.170 Acquisition of criminal information; consent; rules; fee

BOARD

674.305 Appraiser Certification and Licensure Board; appointment; term; compensation; conduct of business; rules

674.310 Duties and powers of board

674.320 Continuing authority of board

674.330 Fees

674.340 Appraiser Account; Federal Registry Fund

MISCELLANEOUS

675.405 When required adjustments to appraisal limited

PENALTIES

674.850 Civil penalties

674.990 Criminal penalties

CROSS REFERENCES

Definitions for real estate transactions, 696.010

674.170

Denial, suspension or revocation of license prohibited solely because of criminal conviction, 670.280

GENERAL PROVISIONS

674.010 Definitions. For purposes of this chapter:

(1) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(2) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council established pursuant to the federal Act.

(3) "Appraiser assistant" means an individual who has been registered as an appraiser assistant under ORS 674.310.

(4) "Board" means the Appraiser Certification and Licensure Board established under ORS 674.305.

(5) "Department" means the Department of Consumer and Business Services.

(6) "Director" means the Director of the Department of Consumer and Business Services.

(7) "Federal Act" means Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

(8) "Federal financial institution regulatory agency" means:

(a) The Board of Governors of the Federal Reserve System;

(b) The Federal Deposit Insurance Corporation;

(c) The Office of the Comptroller of the Currency;

(d) The Office of Thrift Supervision; or

(e) The National Credit Union Administration.

(9) "Federally related transaction" means any real estate-related financial transaction that:

(a) A federal financial institution regulatory agency or the Resolution Trust Corporation engages in, contracts for or regulates; and

(b) Requires the services of an appraiser.

(10) "Financial institution" means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Federal Credit Union Act.

(11) "Mortgage banker" has the meaning given that term in ORS 59.840.

(12) "Professional real estate activity" has the meaning given that term in ORS 696.010.

(13) "Real estate appraisal activity" means the activity described in ORS 674.100.

(14) "Real estate-related financial transaction" means any transaction involving:

(a) The sale, lease, purchase, investment in or exchange of real property, including interests in real property, or the financing thereof;

(b) The refinancing of real property or interests in real property; and

(c) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

(15) "State certified appraiser" means an individual who has been certified as a state certified appraiser under ORS 674.310.

(16) "State licensed appraiser" means an individual who has been licensed as a state licensed appraiser under ORS 674.310.

(17) "State certified residential appraiser" means an individual who has been certified as a state certified residential appraiser under ORS 674.310. [1991 c.5 §2; 1993 c.465 §2; 1993 c.508 §41; 1993 c.744 §217]

674.020 Purposes. The purposes of this chapter are to:

(1) Require that all individuals engaged in real estate appraisal activity render appraisals in writing and that such appraisals be prepared in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

(2) Conform the law of this state to the requirements of federal law.

(3) Assure the availability of state certified and state licensed appraisers for the performance of real estate appraisal activity, including the performance of appraisals in federally related transactions, and to assure effective supervision of the activities of state certified and state licensed appraisers. [1991 c.5 §1]

CERTIFICATION AND LICENSURE

674.100 Persons engaged in real estate appraisal activity required to be certified or licensed; exclusions. (1)(a) No person shall engage in, carry on, advertise or purport to engage in or carry on real estate appraisal activity within this state without first obtaining certification or licensure as provided for in ORS 674.310.

(b) Real estate appraisal activity is the preparation, completion and issuance of an opinion as to the value on a given date or at a given time of real property or any interest in real property, whether such activity is performed in connection with a federally related transaction or is not performed in con-

nection with a federally related transaction. Notwithstanding any other provision of law, a state certified appraiser or a state licensed appraiser:

(A) Is not required to be licensed under ORS 696.025 to perform any real estate appraisal activity or any other activity that constitutes the giving of an opinion as to the value of real property or any interest in real property; and

(B) Is not subject to regulation under ORS 696.010 to 696.495 and 696.710 to 696.990 in connection with the performance of any real estate appraisal activity or the performance of any activity which constitutes the giving of an opinion as to the value of real estate or any interest in real estate.

(2) Real estate appraisal activity excludes any activity that is not performed in connection with a federally related transaction and that:

(a) Is performed by a nonlicensed regular full-time employee of a single owner of real estate, if the activity involves the real estate of the employer and is incidental to the employee's normal, nonreal estate activities;

(b) Is performed by a nonlicensed regular full-time employee whose activity involves the real estate of the employer, when such activity is the employee's principal activity, but the employer's principal activity or business is not the appraisal of real estate;

(c) Is performed by any attorney at law rendering services in the performance of duties as an attorney at law;

(d) Is performed by any registered geologist, registered professional engineer or architect rendering services as a registered geologist, registered professional engineer or architect;

(e) Is performed by a certified public accountant rendering services as a certified public accountant;

(f) Is performed by a mortgage banker rendering services as a mortgage banker;

(g) Constitutes a letter opinion or a competitive market analysis, as defined by rule of the board, and is performed by a person who is licensed to engage in professional real estate activity under the provisions of ORS 696.007 to 696.495;

(h) Is performed by any salaried employee of the State of Oregon or any of its political subdivisions while engaged in the performance of the duties of such employee;

(i) Is limited to analyzing or advising of permissible land use alternatives, environmental impact, building and use permit procedures or demographic market studies, if the performance of such activities does not involve the rendering of an opinion as to the value of the real estate in question;

(j) Is performed by a professional forester appraising or valuing timber, timberland or both as part of services performed as a private consultant in forest management, but only if, in the case of timberland, the appraisal or valuation is limited to the use of the land as forestland; or

(k) Is limited to the giving of an opinion in any administrative or judicial proceeding regarding the value of real estate for taxation.

(3)(a) "Real estate appraisal activity" does not include an analysis, evaluation, opinion, conclusion, notation or compilation of data prepared by a financial institution or affiliate, a consumer finance company licensed under ORS chapter 725, or by an insurance company or affiliate, made for internal use only by the financial institution or affiliate, consumer finance company or by the insurance company or affiliate, concerning an interest in real estate for ownership or collateral purposes by the financial institution or affiliate, by the consumer finance company licensed under ORS chapter 725, or by the insurance company or affiliate. Nothing in this subsection shall be construed to excuse a financial institution or affiliate from complying with the provisions of Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

(b) As used in this section, "evaluation" means a study of the nature, quality or utility of a parcel of real estate or interests in, or aspects of, real property in which a value estimate is not necessarily required. [1991 c.5 §3; 1993 c.465 §1; 1993 c.744 §218]

Note: Section 7, chapter 5, Oregon Laws 1991, provides:

Sec. 7. Termination of existing licenses. (1) After the operative date set forth in section 49 of this Act [July 1, 1991], all real estate appraiser licenses issued pursuant to ORS 696.025 (1989 Edition) shall be of no further force and effect, and a person who is not a state certified appraiser or state licensed appraiser may not thereafter engage in any real estate appraisal activity.

(2) The Real Estate Commissioner shall deliver to the Appraisal Certification and Licensure Board all records and property within the jurisdiction of the commissioner that relate to the duties, functions and powers transferred by sections 1 to 17 of this Act [chapter 674].

(3) Nothing in this Act relieves any person of any obligation with respect to a tax, fee, fine or other charge, interest, penalty, forfeiture or other liability, duty or obligation.

(4) Any proceeding, action, prosecution or other business or matter undertaken or commenced before the effective date of this Act [April 2, 1991] by the commissioner, with respect to the duties, functions or powers transferred to the board by this Act, and still pending on the effective date of this Act, may be conducted and completed by the board in the same manner, under the same terms and conditions and with the same effect as

though undertaken, conducted or completed by the commissioner before the transfer.

(5) All records maintained by an appraiser licensed under ORS 696.025 (1989 Edition) shall be maintained under the provisions of section 17 of this Act [674.150].

(6) The provisions of this section are of a temporary nature and are repealed on July 1, 1995. [1991 c.5 §7]

674.120 Nonresident certificate or license recognized; criteria. The board shall recognize temporarily the certificate or license of an appraiser issued by another state if:

(1) The appraiser's business is of a temporary nature; and

(2) The appraiser registers with the board. [1991 c.5 §8; 1993 c.465 §6]

674.130 Appraisal standards for federally related transactions. Notwithstanding any other provision of law, any real estate appraisal that is performed in connection with a federally related transaction shall be in writing and shall be performed and completed in accordance with the appraisal standards established by the federal financial institution regulatory agency having jurisdiction over the federally related transaction for which the appraisal is performed. In the event of any conflict between the provisions of any other law and the appraisal standards established by the federal financial institution regulatory agency having jurisdiction, the standards established by the federal financial institution regulatory agency shall prevail. [1991 c.5 §9]

674.140 Grounds for discipline. The board may suspend or revoke the certificate or license of any state certified or state licensed appraiser or reprimand any state certified or state licensed appraiser or may deny the issuance or renewal of a certificate or license to an applicant who has done any of the following:

(1) Knowingly or negligently pursued a continued course of material misrepresentation in matters related to real estate appraisal activity, whether or not damage or injury resulted, or knowingly or negligently made any material misrepresentation or false promise in a matter related to real estate appraisal activity, if the material misrepresentation or material false promise created a reasonable probability of damage or injury, whether or not damage or injury actually resulted.

(2) Disregarded or violated any provisions of ORS 674.130, 674.150, 674.310 and 674.330, any rule adopted thereunder or the federal Act.

(3) Knowingly or negligently made, printed, distributed or in any manner published materially misleading or untruthful advertising, descriptions or promises, of such character as reasonably to induce any person to act to the damage or injury of the person, whether or not actual damage or injury resulted.

(4) Guaranteed, authorized or permitted any person to guarantee future profits that may result in the resale of real property.

(5) Failed for any reason to pay to the board the annual registry fee provided for under ORS 674.330 (1) or the fees provided for under ORS 674.330 (2).

(6) Failed or refused upon demand by the board to produce or to supply for inspection by the board true copies of any document, book or record in the individual's possession or control or concerning any real estate appraisal activity transacted by the individual.

(7) Failed to maintain at all times any records which the individual is required to maintain under ORS 674.150.

(8) Accepted employment or compensation for performing or agreeing to perform a real estate appraisal activity contingent upon the reporting of a predetermined value or performed real estate appraisal activity on real estate in which the individual had an undisclosed interest.

(9) Entered a plea of nolo contendere or been found guilty of, or been convicted of, a felony or misdemeanor substantially related to the individual's trustworthiness or competence to engage in real estate appraisal activity.

(10) Knowingly authorized, directed or aided in the publication, advertisement, distribution or circulation of any material false statement or misrepresentation concerning the individual's business.

(11) Demonstrated negligence or incompetence in performing any act for which the individual is required to hold a certificate or license.

(12) Knowingly permitted any individual whose certificate or license has been suspended or revoked to engage in real estate appraisal activity with or on behalf of a state certified appraiser or state licensed appraiser.

(13) Committed any act or conduct, whether of the same or of a different character specified in this section, that constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings. [1991 c.5 §12]

674.150 Maintenance of appraisal records in this state. Every state certified appraiser and every state licensed appraiser shall maintain within this state records of all real estate appraisal activity conducted by

the appraiser. Such records shall at all times be open for inspection by the board or its duly authorized representatives. Such records shall be maintained by the appraiser for a period of not less than six years after the date of completion of the appraisal to which the record pertains. [1991 c.5 §17]

674.160 Reciprocal agreements with other states; procedures. (1) If the administrator of the Appraiser Certification and Licensure Board determines that the standards, qualifications and examinations for licensing, certifying or registration of real estate appraisers of another state are substantially similar to the standards, qualifications and examinations required under this chapter and the rules adopted pursuant thereto, the administrator with approval of the Appraiser Certification and Licensure Board may enter into a reciprocal agreement with such other state to issue without examination licenses or certificates upon proof of licensing or certification in such other state and upon payment of appropriate fees.

(2) Reciprocal agreements may be terminated by the administrator with approval of the Appraiser Certification and Licensure Board upon a determination that the other state is not maintaining and enforcing standards, qualifications and examinations substantially similar to those of this state. [1993 c.465 §4]

674.170 Acquisition of criminal information; consent; rules; fee. (1) On the request of the administrator of the Appraiser Certification and Licensure Board and written consent of the person about whom information is being requested, the Department of State Police shall furnish to the administrator such information as the Department of State Police may have in its possession from its central bureau of criminal identification including, but not limited to, manual or computerized information concerning any applicant or licensee regulated under this chapter.

(2) On the request of the administrator, the Department of State Police shall conduct nationwide criminal checks through the Federal Bureau of Investigation of any applicant or licensee regulated under this chapter. A person making application for a license or a certificate under this chapter shall be deemed, upon signing or with signature upon the application filed under this chapter, to have given consent necessary for purposes of this section.

(3) The Appraiser Certification and Licensure Board shall adopt rules to restrict dissemination of information received under this section to persons with a demonstrated and legitimate need to know the information.

(4) The Appraiser Certification and Licensure Board may charge an applicant or licensee a fee as set by rule by the board not to exceed the board's actual cost to obtain the information provided for in this section. [1993 c.465 §5]

BOARD

674.305 Appraiser Certification and Licensure Board; appointment; term; compensation; conduct of business; rules. (1) There is created in the Department of Consumer and Business Services an Appraiser Certification and Licensure Board consisting of 10 members, nine of whom are voting members who are residents of this state appointed by the Governor.

(2) The board shall be composed of:

(a) Four appraisers certified under ORS 674.310;

(b) One appraiser licensed under ORS 674.310;

(c) Two individuals who are employed by a financial institution or a mortgage banker or one individual from each;

(d) Two individuals who are public members and who:

(A) Are not engaged in professional real estate activity;

(B) Are not state certified or state licensed appraisers;

(C) Are not employed by financial institutions or mortgage bankers; and

(D) Do not have a direct financial interest in any person who is required, or whose employees or agents are required, to be state licensed or state certified appraisers; and

(e) The Director of the Department of Consumer and Business Services, or a designated representative, who shall serve as a nonvoting member of the board.

(3) The term of office of each member is four years with two terms maximum, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. No individual shall be appointed to serve more than two consecutive terms on the board.

(4) A member of the board is entitled to compensation and expenses as provided in ORS 292.495.

(5) The board shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties

and powers necessary for the performance of the functions of such offices as the board determines.

(6) A majority of the members of the board constitutes a quorum for the transaction of business.

(7) The board shall meet at least once every three months at a place, day and hour determined by the board. The board also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

(8) In accordance with applicable provisions of ORS 183.310 to 183.550, the board shall adopt rules necessary for the administration of this chapter.

(9) The appointment of the board is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(10) The director shall appoint an administrator subject to the approval of the board who shall be in the unclassified service and fix the compensation of such officer. [1991 c.5 §4; 1993 c.18 §146; 1993 c.744 §219]

674.310 Duties and powers of board. (1) The board shall:

(a) Have the power to do all things necessary and convenient to carry into effect the provisions of this chapter and the federal Act and to regulate the activities of state licensed appraisers and state certified appraisers to insure that all real estate appraisals conform to the law in effect on the date of the real estate appraisal activity.

(b) Certify and license appraisers as necessary to carry out the federal Act and the purposes set forth in ORS 674.010.

(c) Supervise the activities of state certified and state licensed appraisers as provided in this chapter, to insure that they perform all real estate appraisal activity in strict conformance with the provisions of this chapter and of the federal Act, and that they otherwise comply with the provisions of this chapter in the conduct of their professional activities.

(d) Establish, keep current and, no less than annually, transmit to the Appraisal Subcommittee a roster listing state certified appraisers and state licensed appraisers.

(e) Collect and remit annual registry fees as required by ORS 674.330.

(2) All rules adopted by the board to govern real estate appraiser certification and licensure shall conform in all respects with the requirements of the federal Act. The board shall adopt rules including but not limited to:

(a) Establishing programs for the certification and licensure of individuals who engage in real estate appraisal activity.

(b) Establishing educational requirements for certification and licensure of appraisers that insure protection of the public interest and comply in all respects with the requirements of the federal Act. Education requirements for state certified appraisers shall specifically meet the minimum criteria established by the Appraiser Qualification Board of the Appraisal Foundation.

(c) Establishing a professional code of responsibility for state certified appraisers and state licensed appraisers that is in conformance with the federal Act.

(d) Providing for registration of out-of-state appraisers as provided for under ORS 674.120.

(3) No individual shall be a state certified appraiser unless the individual has achieved a passing grade upon a suitable examination equivalent to the Uniform Certification Examination issued or indorsed by the Appraisal Qualification Board of the Appraisal Foundation. [1991 c.5 §6; 1993 c.744 §220]

674.320 Continuing authority of board. The lapsing or suspension of a certificate or license by operation of law or by order of the board or decision of a court of law, or the voluntary surrender of a certificate or license by an appraiser shall not deprive the board of jurisdiction to proceed with any investigation of or any action or disciplinary proceedings against such appraiser, or to revise or render null and void an order suspending or revoking such certificate or license. [1991 c.5 §15]

674.330 Fees. (1) The board shall collect from each state certified appraiser and each state licensed appraiser an annual registry fee as required by the federal Act and in an amount determined by the Appraisal Subcommittee. All annual registry fees collected by the board under this subsection shall be remitted to the Federal Financial Institutions Examination Council in accordance with the federal Act.

(2) Except as provided in subsection (1) of this section and in addition to any fees required by subsection (1) of this section, the board shall establish by rule the amounts for fees to be charged and collected under this chapter. The amounts for fees established by the board under this section shall not exceed the costs of administering the programs and the following maximum amounts for fees:

(a) For each certification or licensure examination administered under ORS 674.310, the actual costs of the board to purchase the examination.

(b) For each certificate or license awarded or issued under ORS 674.310, $350.

(c) For each renewal of a certificate or license awarded or issued under ORS 674.310, $300.

(d) For each duplicate certificate or license, where the original license is lost or destroyed and affidavit made thereof, $10.

(e) For the renewal of an inactive certificate or license, $50.

(f) For the reactivation of an inactive certificate or license, $60.

(g) For late renewal, in addition to the renewal fee, $50.

(h) For a temporary registration provided for under ORS 674.120, $100.

(i) For each application, $75.

(j) For inactive status, $200.

(k) For each walk-in examination, $15.

(L) For each appraiser assistant registration, $75.

(m) For each appraiser assistant renewal, $75. [1991 c.5 §10; 1993 c.89 §1; 1993 c.465 §7]

674.340 Appraiser Account; Federal Registry Fund. (1) The Appraiser Account is established as an account in the Consumer and Business Services Fund created by ORS 705.145. All moneys, fees and charges collected or received by the board pursuant to ORS 674.330 shall be paid into the Consumer and Business Services Fund created by ORS 705.145 and credited to the account. All moneys in the account are appropriated continuously to the department to carry out the duties which the board is charged with administering.

(2) The Federal Registry Fund is established in the Appraiser Account in the Consumer and Business Services Fund. Proceeds received under ORS 674.330 (1) shall be deposited in the Federal Registry Fund of the Appraiser Account in the Consumer and Business Services Fund. The moneys in the Federal Registry Fund shall be used solely as set forth in ORS 674.330 (1). [1991 c.5 §11; 1993 c.744 §222]

MISCELLANEOUS

674.405 When required adjustments to appraisal limited. A person engaging in or carrying on real estate appraisal activity shall not be required to make adjustments to otherwise comparable sales solely on the basis of the form of the conveyance. [1993 c.41 §2]

PENALTIES

674.850 Civil penalties. (1) Any person who violates any provision of ORS 674.130 to 674.150, 674.310 and 674.330, or any rule or final order of the board or any final judgment or decree made by any court upon application of the board, may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the board of not more than $500 for each offense. Each violation shall be deemed a separate offense.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.090.

(3) The provisions of this section are in addition to and not in lieu of any other enforcement provision contained in ORS 674.130 to 674.150, 674.310 and 674.330.

(4) The remedies provided in subsections (1) to (3) of this section are in addition to and not exclusive of any other remedies provided by law. [1991 c.5 §§13,14; 1993 c.744 §223]

674.990 Criminal penalties. (1) Violation of ORS 674.100 (1) is a Class A misdemeanor.

(2) Any officer, director or shareholder or agent of a corporation, or member or agent of a partnership or association, who personally participates in or is an accessory to any violation of ORS 674.100 (1) by the partnership, association or corporation, is subject to the penalties prescribed in subsection (1) of this section.

(3) Any person who violates ORS 674.100 (1) may be required by the board to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the board of:

(a) Not less than $100 nor more than $500 for the first offense of uncertified or unlicensed real estate appraisal activity; and

(b) Not less than $500 nor more than $1,000 for the second and subsequent offenses of uncertified or unlicensed real estate appraisal activity.

(4) In addition to the civil penalties set forth in subsection (3) of this section, any person who violates ORS 674.100 (1) may be required by the board to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the board but not to exceed the amount by which such person profited in any transaction which violates ORS 674.100 (1).

(5) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county

of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

(6) The civil penalty provisions of subsections (3) and (4) of this section are in addition to and not in lieu of the criminal penalties for unlicensed real estate appraisal activity in subsections (1) and (2) of this section. [1991 c.5 §16]