

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5582

By Delegate Phillips

[Introduced February 12, 2024; Referred to the
Committee on Government Organization]

1 A BILL to amend and reenact §30-38-1, §30-38-3, §30-38-6, §30-38-7, and §30-38-11 of the Code
2 of West Virginia, 1931, as amended, relating to updating the requirements regarding real
3 estate appraisal licenses.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION
ACT.**

§30-38-1. Real estate appraiser license required; exceptions.

1 (a) It is unlawful for any person, for compensation or valuable consideration, to prepare a
2 valuation appraisal or a valuation appraisal report relating to real estate or real property in this
3 state without first being licensed or certified as provided in this article. This section shall not be
4 construed to apply to persons who do not render significant professional assistance in arriving at a
5 real estate appraisal analysis, opinion or conclusion. Nothing in this article may be construed to
6 prohibit any person who is licensed to practice in this state under any other law from engaging in
7 the practice for which he or she is licensed.

8 (b) No person other than a person licensed or certified under this article may use the title of
9 licensed appraiser or certified appraiser or any title, designation or abbreviation likely to create the
10 impression that the person is licensed or certified by the state.

11 (c) This article does not apply to:

12 (1) A real estate broker or salesperson licensed by this state who, in the ordinary course of
13 his or her business, gives an opinion to a potential seller or third party as to the recommended
14 listing price of real estate or an opinion to a potential purchaser or third party as to the
15 recommended purchase price of real estate, when this opinion as to the listing price or the
16 purchase price is not to be referred to as an appraisal, no opinion is rendered as to the value of the
17 real estate and no fee is charged;

18 (2) A casual or drive-by inspection of real estate in connection with a consumer loan
19 secured by the real estate, when the inspection is not referred to as an appraisal, no opinion is
20 rendered as to the value of the real estate and no fee is charged for the inspection;

21 (3) An employee who renders an opinion as to the value of real estate for his or her full-time
22 employer, for the employer's internal use only and performed in the regular course of the
23 employee's position, when the opinion is not referred to as an appraisal and no fee is charged;

24 (4) Appraisals of personal property, including, but not limited to, jewelry, household
25 furnishings, vehicles and manufactured homes not attached to real estate;

26 (5) Any officer or employee of the United States, or of the State of West Virginia or a
27 political subdivision thereof, when the employee or officer is performing his or her official duties:
28 *Provided*, That such individual does not furnish advisory service for compensation to the public or
29 act as an independent contracting party in West Virginia or any subdivision thereof in connection
30 with the appraisal of real estate or real property: *Provided, however*, That this exception shall not
31 apply with respect to federally related transactions as defined in Title XI of the United States Code,
32 entitled "Financial Institutions Reform, Recovery, and Enforcement Act of 1989"; or

33 (6) Any evaluation by an individual not licensed in accordance with §30-38-1, et seq. of this
34 code, of the value of real estate serving as collateral for a loan made by a financial institution
35 insured by the federal deposit insurance corporation: *Provided*, That the evaluation is on a form
36 that includes the following statements in a conspicuous location and in bold print: "This evaluation
37 has been prepared in compliance with §30-38-1(c)(6) and the following conditions are satisfied,

38 (A) The amount of the loan is equal to or less than ~~\$250,000~~ the federal de minimus threshold; (B)
39 the evaluation is used solely by the lender in its records to document the collateral value; (C) the
40 evaluation clearly indicates on its face that it is for the lender's internal use only; (D) the evaluation
41 is not labeled an appraisal and explicitly states that the evaluation was performed by an individual
42 that is not licensed as an appraiser in accordance with §30-38-1, et seq. and (E) the evaluation is
43 on a form approved by the board. Individuals performing these evaluations may be compensated

44 for their services. ~~The lender shall notify its customer if it intends to use an unlicensed evaluator~~
45 ~~and give the customer the opportunity to elect an evaluation, by a certified or licensed appraiser,~~
46 ~~the cost of which will be paid as agreed between the lender and the customer~~

§30-38-3.

Definitions.

1 As used in this article, the following terms have the following meanings:

2 (a) "Appraisal" means an analysis, opinion, or conclusion prepared by a real estate
3 appraiser relating to the nature, quality, value, or utility of specified interests in, or aspects of,
4 identified real estate or identified real property. An appraisal may be classified by the nature of the
5 assignment as a valuation appraisal, an analysis assignment, or a review assignment.

6 (b) "Analysis assignment" means an analysis, opinion, or conclusion prepared by a real
7 estate appraiser that relates to the nature, quality, or utility of identified real estate or identified real
8 property.

9 (c) "Appraisal foundation" means the appraisal foundation established on November 30,
10 1987, as a not-for-profit corporation under the laws of Illinois.

11 (d) "Appraisal report" means any communication, written or oral, of an appraisal. An
12 appraisal report may be classified by the nature of the assignment as a "valuation report",
13 "analysis report", or "review report". For purposes of this article, the testimony of an appraiser
14 dealing with the appraiser's analyses, conclusions, or opinions concerning identified real estate or
15 identified real property is considered an oral appraisal report.

16 (e) "Board" means the real estate appraiser licensing and certification board established
17 by the provisions of this article.

18 (f) "Certified appraisal report" means a written appraisal report that is certified by a state
19 licensed or certified real estate appraiser. When a real estate appraiser identifies an appraisal
20 report as "certified", the real estate appraiser must indicate the type of licensure or certification he
21 or she holds. By certifying an appraisal report, a state licensed residential real estate appraiser, a

22 state certified general real estate appraiser, or a state certified residential real estate appraiser
23 represents to the public that the report meets the appraisal standards established by this article.

24 (g) "Certified real estate appraiser" means a person who holds a current, valid certification
25 as a state certified residential real estate appraiser or a state certified general real estate appraiser
26 issued to him or her under the provisions of this article.

27 (h) "Complex appraisal" means an appraisal that: (1) For nonresidential property, relies on
28 all three approaches to value, being the cost approach, the income approach, and the sales
29 comparison approach, or does not have the characteristics of a noncomplex appraisal; and (2) for
30 residential property, relies to any significant degree on at least two of the three approaches to
31 value, with one approach being the sales comparison approach, or one in which the property to be
32 appraised, the form of ownership, or the market conditions are atypical.

33 (i) "Cost approach" means an approach to valuing real estate that requires an appraiser to:
34 (1) Develop an opinion of site value by an appropriate appraisal method or technique; (2) analyze
35 comparable cost data as are available to estimate the cost new of the improvements if any; and (3)
36 analyze comparable data as are available to estimate the difference between the cost new and the
37 present worth of the improvements, also called accrued depreciation.

38 (j) "Evaluation" means an opinion about the market value of real estate that is:

39 (1) Made in accordance with the 2010 "Interagency Appraisal and Evaluation Guidelines"
40 developed by the following federal agencies that regulate financial institutions: The Federal
41 Reserve Board; The Office of the Comptroller of the Currency; The Federal Deposit Insurance
42 Corporation; The Office of Thrift Supervision; and the National Credit Union Administration,

43 (2) Provided to a financial institution for use in a real estate related transaction for which an
44 appraisal is not required by the federal agencies listed in subsection (j)(1) of this section.

45 (j) (k) "Income approach" means an approach to valuing real estate that requires an
46 appraiser to: (1) Analyze comparable rental data as are available to estimate the market rental of
47 the property; (2) analyze comparable operating expense data as are available to estimate the

48 operating expenses of the property; (3) analyze comparable data as are available to estimate
49 rates of capitalization or rates of discount; and (4) base projections of future rent and expenses on
50 reasonably clear and appropriate evidence.

51 ~~(k)~~ (l) "Licensed real estate appraiser" means a person who holds a current, valid license
52 as a state licensed residential real estate appraiser issued to him or her under the provisions of
53 this article.

54 ~~(j)~~ (m) "Noncomplex appraisal" means an appraisal for which: (1) There is an active market
55 of essentially identical properties; (2) adequate data is available to the appraiser; (3) adjustments
56 to comparable sales are not large in the aggregate, specifically not exceeding the trading range
57 found in the market of essentially identical properties; and (4) for residential properties, the
58 contract sales price falls within the market norm or median sales price for homes or lots within the
59 same area.

60 ~~(m)~~ (n) "Real estate" means an identified parcel or tract of land, including improvements, if
61 any.

62 ~~(n)~~ (o) "Real estate appraisal activity" means the act or process of making an appraisal of
63 real estate or real property and preparing an appraisal report.

64 ~~(o)~~ (p) "Real estate appraiser" means a person who engages in real estate appraisal
65 activity for a fee or other valuable consideration.

66 ~~(p)~~ (q) "Real property interests" means one or more defined interests, benefits, or rights
67 inherent in the ownership of real estate.

68 ~~(q)~~ (r) "Review assignment" means an analysis, opinion, or conclusion prepared by a real
69 estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation
70 appraisal or an analysis assignment.

71 ~~(r)~~ (s) "Sales comparison approach" means an approach to valuing real estate that
72 requires an appraiser to analyze such comparable sales data as are available to indicate a value
73 conclusion.

21 (1) No member may serve for more than three consecutive terms.

22 (2) Before entering upon the performance of his or her duties, each member shall
23 subscribe to the oath required by section five, article IV of the constitution of this state.

24 (3) The Governor shall, within 60 days following the occurrence of a vacancy on the board,
25 fill the vacancy by appointing a person who meets the requirements of this section for the
26 unexpired term.

27 (4) Any member may be removed by the Governor in case of incompetency, neglect of
28 duty, gross immorality, or malfeasance in office.

29 (c) The board shall elect a chairman.

30 (d) A majority of the members of the board constitutes a quorum.

31 (e) The board shall meet at least once in each calendar quarter on a date fixed by the
32 board.

33 (1) The board may, upon its own motion, or shall upon the written request of three
34 members of the board, call additional meetings of the board upon at least 24 hours' notice.

35 (2) No member may participate in a proceeding before the board to which a corporation,
36 partnership, or unincorporated association is a party, and of which he or she is or was at any time
37 in the preceding 12 months a director, officer, owner, partner, employee, member, or stockholder.

38 (3) A member may disqualify himself or herself from participation in a proceeding for any
39 other cause the member considers sufficient.

40 (f) The appointed members will receive compensation and expense reimbursement in
41 accordance with the provisions of §30-1-11 of this code.

42 (g) The board may employ and authorize staff as necessary to perform the functions of the
43 board, to be paid out of the board fund created by the provisions of this article. Persons employed
44 by any real estate agent, broker, appraiser, or lender, or by any partnership, corporation,
45 association, or group engaged in any real estate business, may not be employed by the board.

46 The board may hire a licensed or certified appraiser whose license status is inactive or who is not
47 employed by any of the prohibited employers listed.

§30-38-7. General powers and duties.

1 The board shall:

2 (a) Define by rule the type of educational experience, appraisal experience and equivalent
3 experience that will meet the statutory requirements of this article;

4 (b) Establish examination specifications as prescribed herein and provide for appropriate
5 examinations;

6 (c) Establish registration requirements and procedures for appraisal management
7 companies under the provisions of §30-38a-1, *et seq.*;

8 (d) Approve or disapprove applications for certification and licensure;

9 (e) Approve or disapprove applications for registration under the provisions of §30-38a-1,
10 *et seq.*;

11 (f) Define by rule continuing education requirements for the renewal of certifications and
12 licenses;

13 (g) Censure, suspend or revoke licenses and certification as provided in this article;

14 (h) Suspend or revoke registrations under the provisions of §30-38a-1, *et seq.*;

15 (i) Hold meetings, hearings and examinations;

16 (j) Establish procedures for submitting, approving and disapproving applications;

17 (k) Maintain an accurate registry of the names, addresses and contact information of all
18 persons certified or issued a license to practice under this article;

19 (l) Maintain an accurate registry of the names, addresses and contact information of all
20 persons and firms registered under the provisions of article thirty-eight-a of this chapter;

21 (m) Maintain accurate records on applicants and licensed or certified real estate
22 appraisers;

23 (n) Maintain accurate records on applicants under the provisions of article thirty-eight-a of
24 this chapter;

25 (o) Issue to each licensed or certified real estate appraiser ~~a pocket card with the~~
26 ~~appraiser's name and license or certification number. Pocket cards are the property of the State of~~
27 ~~West Virginia and, upon suspension or revocation of the license to practice pursuant to this article,~~
28 ~~will be returned immediately to the board~~ a copy of their current active license credential via an
29 electronic format of the board's choosing;

30 (p) Issue registration numbers to registrants under the provisions of article thirty-eight-a of
31 this chapter;

32 (q) Deposit all fees collected by the board to the credit of the West Virginia appraiser
33 licensing and certification board fund established in the office of the State Treasurer. The board
34 shall disburse moneys from the account to pay the cost of board operation. Disbursements from
35 the account may not exceed the moneys credited to it;

36 (r) Keep records and make reports as required by article one of this chapter; and

37 (s) Perform any other functions and duties necessary to carry out the provisions of this
38 article and article thirty-eight-a of this chapter.

§30-38-11. Applications for license or certification; renewals.

1 (a) An individual who desires to engage in real estate appraisal activity in this state shall
2 make application for a license, in writing, on a form as the board may prescribe.

3 (b) To assist the board in determining whether grounds exist to deny the issuance of a
4 license to an applicant, the board may require the fingerprinting of every applicant for an original
5 license.

6 (c) The payment of the appropriate fee must accompany all applications for original
7 certification and renewal of certification and all applications to take an examination.

8 (d) At the time of filing an application for original certification or for renewal of certification,
9 each applicant shall sign a pledge to comply with the standards of professional appraisal practice

10 and the ethical rules to be observed by an appraiser. Each applicant shall also certify that he or she
11 understands the types of misconduct, as set forth in this article, for which disciplinary proceedings
12 may be initiated.

13 (e) To obtain a renewal of license or certification under this article, the holder of a current
14 license or certification shall make application and pay the prescribed fee to the board no earlier
15 than 120 days nor later than 30 days prior to the expiration date of the current license or
16 certification. Each application for renewal must be accompanied by evidence in the form
17 prescribed by the board that the applicant has completed the continuing education requirements
18 for renewal specified in this article and the board's rules.

19 (f) If the board determines that an applicant for renewal has failed to meet the requirements
20 for renewal of license or certification through mistake, misunderstanding, or circumstances
21 beyond the control of the applicant, the board may extend the term of the applicant's license or
22 certification for a period not to exceed six months upon payment by the applicant of a prescribed
23 fee for the extension. If the applicant for renewal of license or certification satisfies the
24 requirements for renewal during the extension period, the beginning date of his or her renewal
25 license or certificate shall be the day following the expiration of the certificate previously held by
26 the applicant.

27 (g) If a state-licensed or certified real estate appraiser under this article fails to renew his or
28 her license or certification prior to its expiration or within any period of extension granted by the
29 board pursuant to this article, the applicant may obtain a renewal of his or her license or
30 certification by satisfying all of the requirements for renewal and filing an application for renewal,
31 accompanied by a late renewal fee: ~~within two years of the date that his or her license or~~
32 ~~certification expired~~ Provided, That the applicant can demonstrate they could resume practicing
33 with reasonable skill and safety in accordance with §30-1-8a of this code.

34 (h) The board may deny the issuance or renewal of a license or certification for any reason
35 enumerated in this article or in the rules of the board, or for any reason for which it may refuse an
36 initial license or certification.

37 (i)(1) If the board denies issuance of a renewal of a license or certification, or denies an
38 initial license or certification application, the board shall provide a written statement to the
39 applicant for an initial license or certification, or applicant for a renewal of a license or certification,
40 clearly describing the deficiencies of the application for his or her license or certificate.

41 (2) The board shall provide this statement to an initial applicant or a renewal applicant
42 within 15 calendar days of its decision to deny licensure or certification. The board may send its
43 statement through the United States mail, electronic mail service, or both, to ensure it reaches the
44 applicant or renewal applicant.

45 (3) If the basis for the denial is due to submitted appraisals failing to conform to the Uniform
46 Standards of Professional Appraisal Practice (USPAP), the board shall provide written guidance to
47 the applicant describing, in detail, each aspect of each submitted appraisal that does not conform
48 to USPAP and the corrective action necessary to remedy nonconformity. The board shall provide
49 60 days to the applicant to remedy any nonconformity. The applicant shall resubmit any corrected
50 appraisals on or before the 60th day and the board shall reevaluate the appraisals only pertaining
51 to any nonconformity. If the nonconformity or nonconformities are remedied and resubmitted on or
52 before the 60th day, the board shall accept the appraisal for purposes of issuing a license.

NOTE: The purpose of this bill is to update the requirements regarding real estate appraisal licenses.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.