

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 213 Limitation of Actions Involving Real Estate Appraisers and Appraisal Management Companies

**SPONSOR(S):** Civil Justice Subcommittee, Borrero

**TIED BILLS:** IDEN./SIM. BILLS: SB 398

| REFERENCE  | ACTION           | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|---------|---------------------------------------|
| 1) Civil Justice Subcommittee                            | 18 Y, 0 N, As CS | Mawn    | Jones                                 |
| 2) Regulatory Reform & Economic Development Subcommittee | 11 Y, 0 N        | Wright  | Anstead                               |
| 3) Judiciary Committee                                   |                  |         |                                       |

### SUMMARY ANALYSIS

Part II of ch. 475, F.S., regulates Florida real estate appraisers and the provision of real estate appraisal services. A real estate appraisal gives the current value of real property. This appraisal value is used to establish the property's fair market value, which information is useful to persons involved in real estate transactions, including buyers, sellers, financiers, and insurers.

Persons who suffer damages as a result of an act or omission in the performance of appraisal services or appraisal management services may have a cause of action against the person or party responsible for the act or omission. Available causes of action may include an action founded on contract or tort, such as negligence or fraud. Under Florida law, the statute of limitations for an action for professional malpractice, including malpractice in the provision of appraisal services or appraisal management services, whether founded on contract or tort, is generally two years, running from the time the cause of action is discovered or should have been discovered with the exercise of due diligence; however, this statute of limitations applies only to persons in privity – that is, in direct contract – with the professional. If the plaintiff is not in privity with the professional, other statutes of limitations may apply, including a four-year statute of limitations for negligence and fraud.

CS/HB 213 creates a seven-year statute of repose for a lawsuit to recover damages from an appraiser or appraisal management company based on contract, tort, or other legal theory for an act or omission in the performance of appraisal services or appraisal management services. Such statute of repose runs from the date the appraisal services or appraisal management services were performed, or should have been performed. However, under the bill, the statute of repose does not apply to any:

- Administrative proceedings initiated by specified regulatory authorities.
- Action alleging that an appraiser or appraisal management company committed fraud.

Finally, the bill provides that the statute of repose applies to any action commenced on or after the bill's effective date, except that any action that would not have been barred before the imposition of the statute of repose but would become barred by its imposition must be commenced on or before July 1, 2024. If such an action is not commenced by July 1, 2024, it is barred.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Statutes of Limitations and Repose

A statute of limitations bars a lawsuit's filing after a certain amount of time elapses following an injury.<sup>1</sup> This time period typically begins to run when a cause of action accrues (that is, on the date of the injury) but may also begin to run on the date the injury is discovered or on which it would have been discovered with reasonable efforts.<sup>2</sup> In other words, a statute of limitations bars the available civil remedy if a lawsuit is not timely filed after an injury.

A statute of repose bars the filing of a lawsuit after a fixed period of time passes following a specific act, which act is unrelated to the cause of action's accrual or the injury's discovery, even if this period ends before the plaintiff is injured.<sup>3</sup> Further, a statute of repose eliminates the underlying substantive right of action, not just the available civil remedy, upon expiration of the statutorily-specified filing period.<sup>4</sup> Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed, which encourages diligence in the prosecution of claims, eliminates the potential for abuse resulting from a stale claim, and fosters finality in liability.<sup>5</sup>

##### Real Estate Appraisers

Part II of ch. 475, F.S., regulates Florida real estate appraisers and the provision of real estate appraisal services. "Appraisal" or "appraisal services," as used in this part, means the services provided by certified<sup>6</sup> or licensed<sup>7</sup> appraisers or registered trainee appraisers,<sup>8</sup> including:

- "Appraisal assignments," denoting an engagement for which a person is employed or retained to act, or could be perceived by third parties as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.
- "Analysis assignments," denoting appraisal services relating to the employer's or client's individual objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.
- "Appraisal review assignments," denoting the employment or retention of a person to opine about the quality of another appraiser's appraisal, appraisal report, or work, which review may or may not contain the reviewing appraiser's opinion of value.<sup>9</sup>

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<sup>1</sup> Legal Information Institute, *Statute of Limitations*, [https://www.law.cornell.edu/wex/statute\\_of\\_limitations](https://www.law.cornell.edu/wex/statute_of_limitations) (last visited March 14, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> Legal Information Institute, *Statute of Repose*, [https://www.law.cornell.edu/wex/statute\\_of\\_repose](https://www.law.cornell.edu/wex/statute_of_repose) (last visited March 14, 2023); *Kush v. Lloyd*, 616 So. 2d 415 (Fla. 1992).

<sup>4</sup> *Beach v. Great Western Bank*, 692 So. 2d 146 (Fla. 1997).

<sup>5</sup> *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).

<sup>6</sup> A "certified appraiser" is either a "certified general appraiser" or a "certified residential appraiser." A "certified general appraiser" is a person who is certified by the Department of Business and Professional Regulation ("DBPR") to issue appraisal reports for any type of real property. A "certified residential appraiser" is a person who is certified by DBPR to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation. S. 475.611(1)(k) and (l), F.S.

<sup>7</sup> A "licensed appraiser" is a person who is licensed by the department to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. DBPR stopped issuing licenses for "licensed appraisers" on July 1, 2003. S. 475.611(1)(t), F.S.

<sup>8</sup> A "registered trainee appraiser" is a person who is registered with DBPR to perform appraisal services under the direct supervision of a certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his supervisory appraiser. S. 475.611(1)(v), F.S.

<sup>9</sup> S. 475.611(1)(a), F.S.

In other words, a real estate appraisal gives the current value of real property. This appraisal value is used to establish the property's fair market value, which information is useful to persons involved in real estate transactions, including buyers, sellers, financiers, and insurers.

### *Regulation of Appraisers*

Under Part II of ch. 475, the Florida Real Estate Appraisal Board ("Board"), housed within the Department of Business and Professional Regulation's ("DBPR") Division of Real Estate, has full power to regulate, by rule,<sup>10</sup> the issuance of and the establishment of qualifications for appraiser licenses, certifications, registrations, and permits; to discipline appraisers and appraisal management companies<sup>11</sup> in any manner authorized in statute;<sup>12</sup> to regulate approved courses; to establish real estate appraisal standards; and to establish standards for and regulate supervisory appraisers.<sup>13</sup>

### *Civil Actions Against Appraisers*

Persons who suffer damages as a result of an act or omission in the performance of appraisal services or appraisal management services may have a cause of action against the person or party responsible for the act or omission. Available causes of action may include an action founded on contract or tort, such as negligence<sup>14</sup> or fraud.<sup>15</sup>

Under Florida law, the statute of limitations for an action for professional malpractice, including malpractice in the provision of appraisal services or appraisal management services, whether founded on contract or tort, is generally two years,<sup>16</sup> running from the time the cause of action is discovered or should have been discovered with the exercise of due diligence; however, this statute of limitations applies only to persons in privity – that is, in direct contract – with the professional.<sup>17</sup> If the plaintiff is not in privity with the professional, other statutes of limitations may apply, including a four-year statute of limitations for negligence and fraud.<sup>18</sup>

### **Effect of Proposed Changes**

CS/HB 213 creates a seven-year statute of repose for an action to recover damages from an appraiser or appraisal management company based on contract, tort, or other legal theory for an act or omission in the performance of appraisal services or appraisal management services. Such statute of repose runs from the date the appraisal services or appraisal management services were performed, or should have been performed. However, under the bill, the statute of repose does not apply to any:

- Administrative proceedings initiated by the Board or DBPR.
- Action alleging that an appraiser or appraisal management company committed fraud.

The bill also provides that the statute of repose applies to any action commenced on or after the bill's effective date, except that any action that would not have been barred before the imposition of the

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<sup>10</sup> The Board may adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement its statutory duties. S. 475.614(1), F.S.

<sup>11</sup> An "appraisal management company" is a person who, within a 12-month period oversees an appraisal panel of more than 15 state-certified or -licensed appraisers in a state, or 25 or more such appraisers in two or more states, and who performs appraisal management services. "Appraisal management services" means the coordination or management of appraisal services for compensation by: 1) employing, contracting with, or otherwise retaining one or more licensed or certified appraisers to perform appraisal services for a client; or 2) acting as an intermediary between a client and one or more licensed or certified appraisers to facilitate the client's employing, contracting with, or otherwise retaining the appraisers. S. 475.611(1)(c) and (d), F.S.

<sup>12</sup> S. 475.624, F.S., provides for the discipline of appraisers, while s. 475.6245, F.S., provides for the discipline of appraisal management companies.

<sup>13</sup> S. 475.613(2), F.S.

<sup>14</sup> Appraisal negligence occurs when an appraiser does not exercise the degree of care and skill that an ordinary appraiser would exercise. Tony Sevelka, *Appraisal Standards and Professional Negligence Claims*, <https://intval.com/articles/Appraisal-Standards-and-Professional-Negligence-Claims.pdf> (last visited March 14, 2023).

<sup>15</sup> Appraisal fraud occurs when an appraiser makes an intentional and material misrepresentation relating to real property's value. Investopedia, *Appraisal Fraud*, <https://www.investopedia.com/terms/a/appraisalfraud.asp> (last visited March 14, 2023)

<sup>16</sup> A different statute of limitations applies to medical malpractice claims. S. 95.11(4)(b), F.S.

<sup>17</sup> S. 95.11(4)(a), F.S.

<sup>18</sup> S. 95.11(3)(a) and (j), F.S.; *Llano Financing Group, LLC v. Petit*, 230 So. 3d 141 (Fla. 1st DCA September 27, 2017).

statute of repose but would become barred by its imposition must be commenced on or before July 1, 2024. If such an action is not commenced by July 1, 2024, it is barred.

The bill provides an effective date of July 1, 2023.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 95.371, F.S., relating to actions against real estate appraisers and appraisal management companies.

**Section 2:** Provides applicability.

**Section 3:** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill limits the liability of appraisers and appraiser management companies by imposing a seven-year statute of repose on actions for damages against such persons or companies for acts or omissions in the performance of appraisal services or appraisal management services.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

## 2. Other:

### Due Process

The U.S. Constitution provides that no state shall “deprive any person of life, liberty, or property, without due process of law.”<sup>19</sup> Similarly, the Florida Constitution provides that “[n]o person shall be deprived of life, liberty, or property without due process of law...”<sup>20</sup>

Although the right to file a lawsuit is a valid and protected property interest,<sup>21</sup> a plaintiff has no vested right in a statute of limitations or repose in effect when his or her cause of action accrues.<sup>22</sup> A statute of limitations or repose may thus be either initially imposed or reduced by legislation and applied to an existing cause of action so long as the plaintiff still has a reasonable amount of time left in which to enforce his or her right to file a lawsuit.<sup>23</sup>

The bill attempts to address this issue by giving a plaintiff until July 1, 2024, to bring a suit for any act or omission in the performance of appraisal services or appraisal management services if the plaintiff's cause of action would otherwise be barred by the imposition of the statute of repose.

### B. RULE-MAKING AUTHORITY:

Not applicable.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 14, 2023, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Deleted a provision of the bill creating a one-year statute of limitations for an action to recover damages from an appraiser or appraisal management company based on contract, tort, or other legal theory for an act or omission is the performance of appraisal services or appraisal management services.
- Deleted a provision specifying that all actions for damages or other relief brought against an appraiser or appraisal management company with respect to appraisal services or appraisal management services would be governed exclusively by the section created by the bill.
- Modified language addressing due process considerations.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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<sup>19</sup> U.S. Const. amend. 14.

<sup>20</sup> Art. 1, s. 21, Fla. Const.

<sup>21</sup> See *Polk Cnty BOCC v. Special Disability Trust Fund*, 791 So. 2d 581, 583 (Fla. 1st DCA 2001).

<sup>22</sup> *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).

<sup>23</sup> *Bauld v. J.A. Jones Const. Co.*, 357 So. 2d 401, 403 (Fla. 1978), quoting *Hart v. Bostick*, 14 Fla. 162 (1872); *Walter Denson & Son v. Nelson*, 88 So. 2d 120 (Fla. 1956).