

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 398

INTRODUCER: Judiciary Committee and Senator Rodriguez

SUBJECT: Limitation of Actions Involving Real Estate Appraisers and Appraisal Management Companies

DATE: March 29, 2023 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>RI</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 398 creates s. 95.371, F.S., which contains new and exclusive statutes of limitation and repose governing actions against appraisers or appraisal management companies. The effect of the bill is to overturn the holding in *Llano Financing Group, LLC v. Petit*.

Specifically, the bill:

- Provides that 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 must be brought:
 - Within 2 years after the date that the alleged act or omission is discovered, or should have been discovered.
 - No more than 4 years after the date the appraisal services or appraisal management services were performed, or should have been performed.
- Provides that notwithstanding any other law to the contrary, all actions for damages or other relief brought against an appraiser or appraisal management companies will be governed exclusively by the provisions of the new statute.

The bill does not apply to:

- Any administrative proceedings initiated by the Florida Real Estate Appraisal Board (the board) or the Department of Business and Professional Regulation (the department).

- Any action founded upon fraud in the provision of appraisal services or appraisal management services by an appraiser or appraisal management company.

The bill provides that plaintiffs having an accrued cause of action have at least 1 year after the effective date of the bill to bring an action for negligence in the provision of appraisal or appraisal management services.

The bill takes effect July 1, 2023.

II. Present Situation:

Appraisers

An “appraiser” is any person who is a registered trainee real estate appraiser, a licensed real estate appraiser, or a certified real estate appraiser.¹

- A “registered trainee appraiser” means a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a certified appraiser. A registered trainee appraiser may accept appraisal assignments only from his or her primary or secondary supervisory appraiser.²
- A “licensed appraiser” means a person who is licensed by the department as qualified 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.³
- A “certified appraiser” may be either:
 - A “certified general appraiser,” who is a person certified by the department as qualified to issue appraisal reports for any type of real property;⁴ or
 - A “certified residential appraiser,” who is a person certified by the department as qualified 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.⁵

Appraisal Services

“Appraisal” or “appraisal services” means the services provided by certified or licensed appraisers or registered trainee appraisers.⁶ Such services include the following three kinds of assignments:

- *Appraisal assignments.* An appraisal assignment is an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public 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.⁷

¹ Section 475.611(1)(h), F.S.

² Section 475.611(1)(v), F.S.

³ Section 475.611(1)(t), F.S. As of July 1, 2003, the department no longer issues licenses for this category. *Id.*; *see also s.* 475.611(1)(l), F.S. (defining a “certified residential appraiser” as performing similar duties).

⁴ Section 475.611(1)(k), F.S.

⁵ Section 475.611(1)(l), F.S.

⁶ Section 475.611(1)(a), F.S.

⁷ Section 475.611(1)(a)1., F.S.

- *Analysis assignments.* An analysis assignment is a kind of appraisal service that relates to an employer or client’s individual needs or investment objectives. It 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.⁸
- *Appraisal review assignments.* An appraisal review assignment is an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser’s appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser’s opinion of value.⁹

Appraisal Management

An “appraisal management company” is a person who, within a 12-month period, oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state, or 25 or more state-certified or state-licensed appraisers in two or more states.¹⁰

“Appraisal management services” means the coordination or management of appraisal services for compensation by:

- Employing, contracting with, or otherwise retaining one or more licensed or certified appraisers to perform appraisal services for a client; or
- Acting as a broker or 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.¹¹

Department of Business and Professional Regulation

The Department of Business and Professional Regulation is the state agency charged with licensing and regulating Florida businesses and professionals.¹² The department’s regulation of professionals is undertaken “for the preservation of the health, safety, and welfare of the public under the police powers of the state.”¹³

Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and

⁸ Section 475.611(1)(a)2., F.S.

⁹ Section 475.611(1)(a)3., F.S.

¹⁰ Section 475.611(1)(c), F.S. Any person who performs appraisal management services, regardless of the particular term used (“appraisal management company,” “appraiser cooperative,” “appraiser portal,” “mortgage technology company,” or other term) qualifies as an appraisal management company for purposes of the statute. *See id.*

¹¹ Section 475.611(1)(d), F.S.

¹² State of Florida, *Department of Business and Professional Regulation*, <https://jobs.myflorida.com/go/Department-of-Business-and-Professional-Regulation/2815000/> (last visited Mar. 16, 2023); *see also* Section 475.611(1)(o), F.S. (defining “department” as the Department of Business and Professional Regulation); *see also* s. 455.01(6), F.S. (defining the word “profession” as any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation”).

¹³ Section 455.201(2), F.S.

- Less restrictive means of regulation are not available.¹⁴

Division of Real Estate and the Florida Real Estate Appraisal Board

The Division of Real Estate is one of the department's divisions.¹⁵ It protects the public by regulating real estate and appraisal licenses pursuant to chapter 475, F.S. The division is responsible for the examination, licensing, and regulation of over a quarter of a million individuals, corporations, real estate schools, and instructors. It also provides administrative support to the Florida Real Estate Appraisal Board, which administers and enforces the real estate appraiser license law, chapter 475, Part II, F.S.¹⁶

The Florida Real Estate Appraisal Board is a 9-member board, headquartered in Orlando,¹⁷ whose members are appointed by the Governor subject to confirmation by the Senate.¹⁸ The board is responsible for:¹⁹

- Regulating the issuance of licenses, certifications, and registrations to appraisers;
- Disciplining appraisers in any manner permitted under state law;
- Establishing qualifications for licenses, certifications, registrations, and permits consistent with state law;
- Regulating approved courses;
- Establishing standards for real estate appraisals; and
- Establishing standards for, and regulating, supervisory appraisers.²⁰

The composition of the board is provided by state law.²¹ Specifically:

- 4 members must be real estate appraisers who have been engaged in the general practice of appraising real estate in Florida for at least 5 years immediately preceding appointment;
- 1 member must represent the appraisal management industry;
- 1 member must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance; and
- 3 members must represent the general public and may not be connected in any way with the practice of real estate appraisal.²²

¹⁴ Section 455.201(2)(a)-(c), F.S.

¹⁵ Section 20.165(2)(a)-(k), F.S. The others are the Divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Professions; Regulation; Technology; and Service Operations. *Id.*

¹⁶ Fla. Dep't of Bus. & Prof. Reg., *Division of Real Estate Brochure*, available at http://www.myfloridalicense.com/dbpr/re/documents/DRE_Lic_Brochure.pdf (last visited Mar. 16, 2023).

¹⁷ Section 475.613(1)(b), F.S.

¹⁸ Section 475.613(1), F.S.; *see also* s. 475.611(1)(j), F.S. (defining "board" as the Florida Real Estate Appraisal Board established under s. 475.613, F.S.).

¹⁹ Section 475.613(2), F.S.

²⁰ *Id.* The board administers and enforces the real estate appraiser license law, part II of chapter 475, F.S., and is also empowered to adopt rules that enable it to implement its statutory authorized duties and responsibilities. *See generally* Fla. Admin. Code Ch. 61J1; *see also* Fla. Dep't of Bus. & Prof. Reg., *Real Estate Appraisal – Board Information*, <http://www.myfloridalicense.com/DBPR/real-estate-appraisal-board/board-information/> (last visited Mar. 16, 2023).

²¹ Section 475.613(1), F.S.

²² *Id.* The Governor is directed to give preference to real estate appraisers who are not primarily engaged in real estate brokerage or mortgage lending activities. *Id.* Additionally, the appraiser members are supposed to be as representative of the entire industry as possible, and membership in a nationally-recognized or state-recognized appraisal organization may not be a prerequisite to membership on the board. *Id.* To the extent possible, no more than 2 members of the board may be primarily

Members of the board are appointed for 4-year terms, and may not serve for more than 2 consecutive terms. The board meets at least once each calendar quarter to conduct its business.²³

Statutes of Limitation and Repose

Legal actions must be brought within the timeframes authorized by law.

A statute of limitations typically sets a time limit within which an action must be filed as measured from the accrual of the cause of action, after which time obtaining relief is barred.²⁴

An appraiser renders a professional service and is a professional within the meaning of the statute of limitations governing actions for professional malpractice.²⁵ Actions for professional malpractice must be commenced within 2 years from the time the cause of action is discovered or should have been discovered with the exercise of due diligence.²⁶ This 2-year limitation on actions for professional malpractice is limited to persons in privity with the professional.²⁷

A statute of repose precludes a right of action after a specified time, instead of establishing a time period within which the action must be brought measured from the point in time when the cause of action accrued.²⁸

Llano Financing Group, LLC v. Petit

In 2015, Llano Financing Group, LLC (Llano), the investment trust assignee of a certain mortgage loan, sued Theodore Petit (Petit), a real estate appraiser, for professional negligence, negligent misrepresentation, and false information negligently supplied for the advice of others.²⁹

Llano asserted that an appraisal prepared by Petit in 2004 undervalued a certain property foreclosed upon by Llano, which caused Llano to sell the property at a loss about 10 years later. Because the original lender would not have made the loan but for the bad appraisal, and Llano would not have purchased the loan from the original lender but for the bad appraisal, Llano alleged that Petit was liable for any loss suffered by Llano. Petit moved to dismiss the case, arguing that the statute of limitations precluded Llano's claims. The trial court granted the motion, and Llano appealed. At issue before the First District Court of Appeals was when the statute of limitations commenced on the negligent appraisal claims.³⁰

affiliated with any one particular national or state appraisal association. Two of the members must be licensed or certified residential real estate appraisers and 2 of the members must be certified general real estate appraisers at the time of their appointment. *Id.*

²³ Section 475.613(1)(a) and (c), F.S.

²⁴ *National Auto Service Centers, Inc., v. F/R 500, LLC*, 192 So. 3d 498, 509-10 (Fla. 2d DCA 2016) (stating that the purpose of a statute of limitations is to “require that a plaintiff with a known cause of action prosecute that claim diligently and within a predictable time that will allow for finality of claims prior to the potential loss of available evidence over time”) (internal citations omitted).

²⁵ Section 475.611(1)(h), F.S. (citing s. 95.11(4)(a), F.S.).

²⁶ Section 95.11(4)(a), F.S.

²⁷ *Id.*

²⁸ *National Auto Service Centers, Inc.*, 192 So. 3d at 509 (citing *Univ. of Miami v. Bogorff*, 583 So. 2d 1000, 1003 (Fla. 1991)).

²⁹ *Llano Financing Group, LLC v. Petit*, 230 So. 3d 141, 142-43 (Fla. 1st DCA 2017).

³⁰ *Id.*

The Court held that the 4-year statute of limitations for negligence actions, instead of the 2-year statute of limitations for professional malpractice actions, applied to the claims brought by Llano. The Court reasoned that because Llano was not in “direct contractual privity” with Petit, the 2-year statute of limitations for professional malpractice actions did not apply, but the 4-year state of limitations for negligence did.³¹

Consequently, Llano had 4 years, instead of 2, to bring its claims against Petit – measured from the time that the original lender relied upon the appraisal to fund the loan (i.e. measured from 2004). Because Llano brought suit over a decade after the 4-year statute of limitations for negligence began to run, the Court affirmed the trial court’s dismissal of the case.³²

III. Effect of Proposed Changes:

CS/SB 398 creates s. 95.371, F.S., entitled “Actions against real estate appraisers and appraisal management companies,” within chapter 95, F.S., which governs limitations of actions and adverse possession. The effect of the bill is to overturn the holding in *Llano Financing Group, LLC v. Petit*, by enacting new statutes of limitation and repose which are exclusive to appraisers and appraisal management companies.

Specifically, the bill provides that 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 must be brought within 2 years after the date that the alleged act or omission is discovered, or should have been discovered, but in no case more than 4 years after the date the appraisal services or appraisal management services were performed, or should have been performed.

The bill provides that notwithstanding any other law to the contrary, all actions for damages or other relief brought against an appraiser or appraisal management company with respect to appraisal services or appraisal management services will be governed exclusively by the provisions of the new statute.

The bill provides that it does not apply to:

- Any administrative proceedings initiated by the board or department; or
- Any action founded upon fraud in the provision of appraisal services or appraisal management services by an appraiser or appraisal management company.

The bill provides that s. 95.371, F.S., applies to any action accruing on or after July 1, 2023. Any action accruing before July 1, 2023, which would not have been barred before July 1, 2023, must be commenced by July 1, 2024. Any such action that is not commenced by July 1, 2024, is barred by the bill.

The bill takes effect July 1, 2023.

³¹ *Id.* at 143-45; *see also* s. 95.11(3)(a), F.S. (limitation on actions for negligence) and s. 95.11(4)(a), F.S. (limitation on actions for professional malpractice).

³² *Id.* at 145.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the bill will shorten the amount of time one has to bring a lawsuit for professional malpractice against an appraiser or an appraisal management company, it is anticipated the bill will reduce litigation and the legal fees and court costs associated with defending such lawsuits.

C. Government Sector Impact:

Because the bill will shorten the amount of time one has to bring a lawsuit for professional malpractice against an appraiser or an appraisal management company, it is anticipated the bill will reduce litigation and court workloads, thereby promoting judicial economy.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 95.371, of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 29, 2023:

The committee substitute:

- Increases the amount of time that a plaintiff has to bring a lawsuit against an appraiser or appraisal management company for an act or omission in the performance of appraisal services or appraisal management services, from 1 year to 2 years after discovery.
- Clarifies that the time periods in the bill do not apply to an action founded upon fraud.
- Creates a savings clause to ensure that plaintiffs having an accrued cause of action have at least 1 year after the effective date of the bill to bring an action for negligence in the provision of appraisal or appraisal management services.

- B. **Amendments:**

None.