

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 279

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11 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

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AN ACT

RELATING TO PROPERTY; AMENDING AND ENACTING SECTIONS OF THE
APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT; PROVIDING FOR
COMPLIANCE WITH FEDERAL LAW; PROVIDING A DEFINITION OF
"APPRAISAL MANAGEMENT COMPANIES"; PROVIDING FOR REGISTRATION
STANDARDS, FEES AND COMPLIANCE WITH THE UNIFORM STANDARDS OF
PROFESSIONAL APPRAISAL PRACTICE; PROVIDING FOR AUTOMATED
VALUATION MODELS; PROVIDING FOR BROKER PRICE OPINIONS;
PROVIDING FOR INDEPENDENCE OF APPRAISALS; PROVIDING FOR
CRIMINAL BACKGROUND CHECKS; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 47-14-2 NMSA 1978 (being Laws 2009,
Chapter 214, Section 2) is amended to read:

"47-14-2. DEFINITIONS.--As used in the Appraisal
Management Company Registration Act:

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underscored material = new
[bracketed material] = delete

1 A. "appraisal" means the act or process of
2 developing an opinion of the value of real property in
3 conformance with the uniform standards for professional
4 appraisal practice published by the appraisal foundation;

5 B. "appraisal foundation" means the appraisal
6 foundation incorporated as an Illinois not-for-profit
7 corporation on November 30, 1987 and to which reference is made
8 in the Federal Financial Institutions Examination Council Act
9 of 1978, as amended by Title 11, Real Estate Appraisal Reform
10 Amendments;

11 C. "appraisal management company" means [~~a~~
12 ~~corporation, partnership, sole proprietorship, subsidiary,~~
13 ~~limited liability company or other business entity that:~~

14 ~~(1) contracts with independent appraisers to~~
15 ~~perform real estate appraisal services for clients;~~

16 ~~(2) receives requests for real estate~~
17 ~~appraisal services from clients and, for a fee paid by the~~
18 ~~client, enters into an agreement with one or more independent~~
19 ~~appraisers to perform the real estate appraisal services~~
20 ~~contained in the request; or~~

21 ~~(3) otherwise serves as a third-party broker~~
22 ~~of appraisal management services between clients and~~
23 ~~appraisers]:~~

24 (1) any external third party that oversees a
25 network or panel of certified or licensed appraisers to:

- 1 (a) recruit, select and retain
 2 appraisers;
 3 (b) contract with appraisers to perform
 4 appraisal assignments;
 5 (c) manage the process of having an
 6 appraisal performed; or
 7 (d) review and verify the work of
 8 appraisers; or
 9 (2) any external third party that contracts
 10 with a qualifying licensed real estate broker or associate
 11 broker as defined in Chapter 61, Article 29 NMSA 1978 to
 12 provide broker price opinions;

13 D. "appraisal management services" means the
 14 process of receiving a request for the performance of real
 15 estate appraisal services from a client, and for a fee paid by
 16 the client, entering into an agreement with one or more
 17 independent appraisers to perform the real estate appraisal
 18 services contained in the request;

19 E. "appraiser" means a person who provides an
 20 opinion of the market value of real property and holds a state
 21 license, registration or certified license in good standing;

22 F. "appraiser panel" means a group of independent
 23 appraisers that have been selected and retained by an appraisal
 24 management company to perform real estate appraisal services
 25 for the appraisal management company;

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1 G. "automated valuation model" means any
2 computerized model used by mortgage originators and secondary
3 market issuers to determine the collateral worth of a mortgage
4 secured by a consumer's principal dwelling;

5 ~~[G.]~~ H. "board" means the real estate appraisers
6 board created pursuant to the Real Estate Appraisers Act;

7 I. "broker price opinion" means an opinion by a
8 qualifying or associate broker of the price of real estate for
9 the purpose of marketing, selling, purchasing, leasing or
10 exchanging the real estate or any interest therein or for the
11 purposes of providing a financial institution with a collateral
12 assessment of any real estate in which the financial
13 institution has an existing or potential security interest;
14 provided that the opinion of the price shall not be referred to
15 or construed as an appraisal or appraisal report and shall not
16 be used as the primary basis to determine the value of real
17 estate for the purpose of loan origination;

18 ~~[H.]~~ J. "client" means a person or entity that
19 contracts with, or otherwise enters into an agreement with, an
20 appraisal management company for the performance of real estate
21 appraisal services;

22 ~~[I.]~~ K. "controlling person" means:

23 (1) an owner, officer or director of a
24 corporation, partnership, limited liability company or other
25 business entity seeking to offer appraisal management services

1 in this state;

2 (2) an individual employed, appointed or
 3 authorized by an appraisal management company that has the
 4 authority to enter into a contractual relationship with clients
 5 for the performance of appraisal management services and that
 6 has the authority to enter into agreements with independent
 7 appraisers for the performance of real estate appraisal
 8 services; or

9 (3) an individual who possesses, directly or
 10 indirectly, the power to direct or cause the direction of the
 11 management or policies of an appraisal management company;

12 [~~J.~~] L. "real estate appraisal services" means the
 13 practice of developing an opinion of the value of real property
 14 in conformance with the uniform standards of professional
 15 appraisal practice published by the appraisal foundation; and

16 [~~K.~~] M. "uniform standards of professional
 17 appraisal practice" means the uniform standards of professional
 18 appraisal practice promulgated by the appraisal foundation and
 19 adopted by rule pursuant to the Real Estate Appraisers Act."

20 **SECTION 2.** Section 47-14-3 NMSA 1978 (being Laws 2009,
 21 Chapter 214, Section 3, as amended) is amended to read:

22 "47-14-3. REGISTRATION REQUIRED.--

23 A. It is unlawful for a person, corporation,
 24 partnership, sole proprietorship, subsidiary, limited liability
 25 company or any other business entity to, directly or

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1 indirectly, engage or attempt to engage in business as an
2 appraisal management company, to, directly or indirectly,
3 engage or attempt to perform appraisal management services or
4 to advertise or hold itself out as engaging in or conducting
5 business as an appraisal management company without first
6 obtaining a certificate of registration issued by the board
7 under the provisions of the Appraisal Management Company
8 Registration Act, regardless of the entity's use of the term
9 "appraisal management company", "mortgage technology company"
10 or any other name.

11 B. A person, corporation, partnership, sole
12 proprietorship, subsidiary, limited liability company or any
13 other business entity seeking the registration required by
14 Subsection A of this section shall:

15 (1) register with the appraisal subcommittee
16 or the board and be subject to supervision by the board;

17 (2) verify that only licensed or certified
18 appraisers are used for federally related transactions;

19 (3) require that appraisals comply with the
20 uniform standards of professional appraisal practice; and

21 (4) require that appraisals are conducted
22 independently and free from inappropriate influence and
23 coercion pursuant to the appraisal independence standards
24 established pursuant to the federal Truth in Lending Act.

25 [~~B.~~] C. The registration required by Subsection A

1 of this section shall include:

2 (1) the name of the entity seeking
3 registration;

4 (2) the business address of the entity seeking
5 registration;

6 (3) telephone contact information of the
7 entity seeking registration;

8 (4) if the entity seeking registration is not
9 a corporation that is domiciled in this state, the name and
10 contact information for the company's agent for service of
11 process in this state;

12 (5) the name, address and contact information
13 for any individual or any corporation, partnership or other
14 business entity that owns ten percent or more of the appraisal
15 management company;

16 (6) the name, address and contact information
17 for a controlling person;

18 (7) a certification that the entity seeking
19 registration has a system and process in place to verify that
20 ~~[a person being added to the]~~ an appraiser is selected and
21 retained for the network or the appraiser panel of the
22 appraisal management company holds a license or certification
23 in good standing in this state pursuant to the Real Estate
24 Appraisers Act;

25 (8) a certification that the entity seeking

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1 registration has a system in place to review, on a periodic
2 basis, the work of all independent appraisers that are
3 performing real estate appraisal services for the appraisal
4 management company [~~on a periodic basis~~] to ensure that the
5 real estate appraisal services are being conducted in
6 accordance with uniform standards of professional appraisal
7 practice;

8 (9) a certification that the entity maintains
9 a detailed record of each service request that it receives and
10 of the independent appraiser that performs the real estate
11 appraisal services for the appraisal management company;

12 (10) an irrevocable consent to service of
13 process;

14 (11) a bond or other equivalent means of
15 security as required by the Appraisal Management Company
16 Registration Act; and

17 (12) any other information required by the
18 board.

19 D. The requirements of Subsection B of this section
20 shall apply to an appraisal management company that is a
21 subsidiary owned and controlled by a financial institution
22 regulated by a federal financial institution regulatory
23 agency."

24 SECTION 3. Section 47-14-6 NMSA 1978 (being Laws 2009,
25 Chapter 214, Section 6) is amended to read:

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1 "47-14-6. EXPIRATION OF LICENSE.--A registration granted
2 by the board pursuant to the Appraisal Management Company
3 Registration Act shall [~~be valid for one year from the date on~~
4 ~~which it is issued~~] expire on September 30 of each year."

5 SECTION 4. Section 47-14-8 NMSA 1978 (being Laws 2009,
6 Chapter 214, Section 8) is amended to read:

7 "47-14-8. FEE.--

8 A. The board shall establish the fee for appraisal
9 management company registration by rule to cover the cost of
10 the administration of the Appraisal Management Company
11 Registration Act, but in no case shall the fee be more than two
12 thousand dollars (\$2,000).

13 B. Registration fees shall be credited to the
14 appraiser fund pursuant to Section 61-30-18 NMSA 1978.

15 C. An appraisal management company that either has
16 registered with the board or operates as a subsidiary of a
17 federally regulated financial institution shall pay to the
18 board an annual registry as determined by the appraisal
19 subcommittee."

20 SECTION 5. Section 47-14-9 NMSA 1978 (being Laws 2009,
21 Chapter 214, Section 9) is amended to read:

22 "47-14-9. OWNER REQUIREMENTS.--

23 A. An appraisal management company applying for
24 registration may not be owned by a person or have any principal
25 of the company who has had a license or certificate to act as

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1 an appraiser refused, denied, canceled or revoked in this state
2 or in any other state.

3 B. Each person that owns, is an officer of or has a
4 financial interest in an appraisal management company in this
5 state shall:

6 (1) be of good moral character, as determined
7 by the board; and

8 (2) submit to a background investigation, as
9 determined by the board. [~~and~~

10 ~~(3) certify to the board that the person has~~
11 ~~never had a license to act as an appraiser refused, denied,~~
12 ~~canceled or revoked in this state or in any other state]~~

13 C. An appraisal management company shall not be
14 registered by the board or included on the national registry if
15 the company, in whole or in part, directly or indirectly, is
16 owned by any person who has had an appraiser license or
17 certificate refused, denied, canceled, surrendered in lieu of
18 revocation or revoked in any state and not subsequently granted
19 or reinstated. A person that owns more than ten percent of an
20 appraisal management company shall be of good moral character,
21 as determined by the board, and shall submit to a background
22 investigation carried out by the board."

23 SECTION 6. Section 47-14-17 NMSA 1978 (being Laws 2009,
24 Chapter 214, Section 17) is amended to read:

25 "47-14-17. APPRAISER INDEPENDENCE--PROHIBITIONS.--

1 A. Appraisals shall be conducted independently and
2 free from inappropriate influence and coercion pursuant to the
3 appraisal independence standards established pursuant to the
4 federal Truth in Lending Act.

5 ~~[A.]~~ B. It is unlawful for any employee, director,
6 officer or agent of an appraisal management company registered
7 pursuant to the Appraisal Management Company Registration Act
8 to influence or attempt to influence the development, reporting
9 or review of an appraisal through coercion, extortion,
10 collusion, compensation, instruction, inducement, intimidation,
11 bribery or in any other manner, including:

12 (1) withholding or threatening to withhold
13 timely payment for an appraisal;

14 (2) withholding or threatening to withhold
15 future business for an independent appraiser or demoting or
16 terminating, or threatening to demote or terminate, an
17 independent appraiser;

18 (3) expressly or impliedly promising future
19 business, promotions or increased compensation for an
20 independent appraiser;

21 (4) conditioning the request for an appraisal
22 service or the payment of an appraisal fee or salary or bonus
23 on the opinion, conclusion or valuation to be reached or on a
24 preliminary estimate or opinion requested from an independent
25 appraiser;

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1 (5) requesting that an independent appraiser
2 provide an estimated, predetermined or desired valuation in an
3 appraisal report or provide estimated values of comparable
4 sales at any time prior to the independent appraiser's
5 completion of an appraisal service;

6 (6) providing to an independent appraiser an
7 anticipated, estimated, encouraged or desired value for a
8 subject property or a proposed or target amount to be loaned to
9 the borrower, except that a copy of the sales contract for
10 purchase transactions may be provided;

11 (7) providing to an independent appraiser, or
12 any entity or person related to the appraiser, stock or other
13 financial or non-financial benefits;

14 (8) allowing the removal of an independent
15 appraiser from an appraiser panel, without prior written notice
16 to such appraiser;

17 (9) obtaining, using or paying for a second or
18 subsequent appraisal or ordering an automated valuation model
19 in connection with a mortgage financing transaction unless
20 there is a reasonable basis to believe that the initial
21 appraisal was flawed or tainted and such basis is clearly and
22 appropriately noted in the loan file, or unless such appraisal
23 or automated valuation model is done pursuant to a bona fide
24 pre- or post-funding appraisal review or quality control
25 process; or

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1 (10) engaging in any other act or practice
 2 that impairs or attempts to impair an appraiser's independence,
 3 objectivity or impartiality.

4 ~~[B-]~~ C. Nothing in Subsection ~~[A]~~ B of this section
 5 shall be construed as prohibiting the appraisal management
 6 company from requesting that an independent appraiser:

7 (1) provide additional information about the
 8 basis for a valuation; or

9 (2) correct objective factual errors in an
 10 appraisal report.

11 D. In an effort to preclude discrimination,
 12 criteria shall be established by the appraisal management
 13 company and may include education achieved, experience, sample
 14 appraisals and references from prior clients. Membership in a
 15 nationally recognized professional appraisal organization may
 16 be a criterion considered, though lack of membership shall not
 17 be the sole bar against consideration for an assignment under
 18 these criteria."

19 **SECTION 7.** Section 47-14-21 NMSA 1978 (being Laws 2009,
 20 Chapter 214, Section 21) is amended to read:

21 "47-14-21. ENFORCEMENT.--

22 A. The board may censure an appraisal management
 23 company, conditionally or unconditionally suspend or revoke any
 24 registration issued under the Appraisal Management Company
 25 Registration Act, levy fines or impose civil penalties not to

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1 exceed twenty-five thousand dollars (\$25,000) per violation if,
2 in the opinion of the board, an appraisal management company is
3 attempting to perform, has performed or has attempted to
4 perform any of the following acts:

5 ~~[A.]~~ (1) committing any act in violation of
6 the Appraisal Management Company Registration Act;

7 ~~[B.]~~ (2) violating any rule or regulation
8 adopted by the board in the interest of the public and
9 consistent with the provisions of the Appraisal Management
10 Company Registration Act;

11 ~~[C.]~~ (3) procuring a registration, license or
12 certification by fraud, misrepresentation or deceit; or

13 ~~[D.]~~ (4) violating the Real Estate Appraisers
14 Act or the federal Financial Institutions Reform, Recovery, and
15 Enforcement Act of 1989.

16 B. The board may deny an application for
17 registration for failure to comply with the minimum
18 requirements and criteria as set forth by the Appraisal
19 Management Company Registration Act.

20 C. Board action relating to the issuance,
21 suspension or revocation of any registration, license or
22 certificate shall be governed by the provisions of the Uniform
23 Licensing Act; provided that the time limitations set forth in
24 the Uniform Licensing Act shall not apply to the processing of
25 administrative complaints filed with the board, which shall be

1 governed by federal statute, regulation or policy."

2 SECTION 8. A new section of the Appraisal Management
3 Company Registration Act is enacted to read:

4 "[NEW MATERIAL] AUTOMATED VALUATION MODELS USED TO
5 ESTIMATE COLLATERAL VALUE FOR MORTGAGE LENDING PURPOSES.--

6 A. Automated valuation models shall adhere to
7 quality control standards designed to:

8 (1) ensure a high level of confidence in the
9 estimates produced by automated valuation models;

10 (2) protect against the manipulation of data;

11 (3) seek to avoid conflicts of interest;

12 (4) require random sample testing and reviews;

13 and

14 (5) account for any other such factor that the
15 board determines to be appropriate.

16 B. The board, in consultation with the staff of the
17 appraisal subcommittee and the appraisal standards board of the
18 appraisal foundation, shall promulgate rules to implement the
19 quality control standards required under this section."

20 SECTION 9. A new section of the Appraisal Management
21 Company Registration Act is enacted to read:

22 "[NEW MATERIAL] CRIMINAL BACKGROUND CHECKS.--

23 A. The board may adopt rules that provide for
24 criminal background checks for all licensees to include:

25 (1) requiring criminal history background

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1 checks of applicants for licensure pursuant to the Appraisal
2 Management Company Registration Act;

3 (2) requiring applicants for licensure to be
4 fingerprinted;

5 (3) providing for an applicant who has been
6 denied licensure to inspect or challenge the validity of the
7 background check record;

8 (4) establishing a fingerprint and background
9 check fee not to exceed the current rate as determined by the
10 department of public safety to be paid by the applicant; and

11 (5) providing for submission of an applicant's
12 fingerprint cards to the federal bureau of investigation to
13 conduct a national criminal history background check and to the
14 department of public safety to conduct a state criminal history
15 check.

16 B. Arrest record information received from the
17 department of public safety and the federal bureau of
18 investigation shall be privileged and shall not be disclosed to
19 persons not directly involved in the decision affecting the
20 applicant.

21 C. Electronic live fingerprint scans may be used
22 when conducting criminal history background checks."