

1 AN ACT

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

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

15 "47-14-2. DEFINITIONS.--As used in the Appraisal
16 Management Company Registration Act:

17 A. "appraisal" means the act or process of
18 developing an opinion of the value of real property in
19 conformance with the uniform standards for professional
20 appraisal practice published by the appraisal foundation;

21 B. "appraisal foundation" means the appraisal
22 foundation incorporated as an Illinois not-for-profit
23 corporation on November 30, 1987 and to which reference is
24 made in the Federal Financial Institutions Examination
25 Council Act of 1978, as amended by Title 11, Real Estate

1 Appraisal Reform Amendments;

2 C. "appraisal management company" means:

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

5 (a) recruit, select and retain
6 appraisers;

7 (b) contract with appraisers to perform
8 appraisal assignments;

9 (c) manage the process of having an
10 appraisal performed; or

11 (d) review and verify the work of
12 appraisers; or

13 (2) any external third party that contracts
14 with a qualifying licensed real estate broker or associate
15 broker as defined in Chapter 61, Article 29 NMSA 1978 to
16 provide broker price opinions;

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

23 E. "appraiser" means a person who provides an
24 opinion of the market value of real property and holds a
25 state license, registration or certified license in good

1 standing;

2 F. "appraiser panel" means a group of independent
3 appraisers that have been selected and retained by an
4 appraisal management company to perform real estate appraisal
5 services for the appraisal management company;

6 G. "automated valuation model" means any
7 computerized model used by mortgage originators and secondary
8 market issuers to determine the collateral worth of a
9 mortgage secured by a consumer's principal dwelling;

10 H. "board" means the real estate appraisers board
11 created pursuant to the Real Estate Appraisers Act;

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

23 J. "client" means a person or entity that
24 contracts with, or otherwise enters into an agreement with,
25 an appraisal management company for the performance of real

1 estate appraisal services;

2 K. "controlling person" means:

3 (1) an owner, officer or director of a
4 corporation, partnership, limited liability company or other
5 business entity seeking to offer appraisal management
6 services in this state;

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

14 (3) an individual who possesses, directly or
15 indirectly, the power to direct or cause the direction of the
16 management or policies of an appraisal management company;

17 L. "real estate appraisal services" means the
18 practice of developing an opinion of the value of real
19 property in conformance with the uniform standards of
20 professional appraisal practice published by the appraisal
21 foundation; and

22 M. "uniform standards of professional appraisal
23 practice" means the uniform standards of professional
24 appraisal practice promulgated by the appraisal foundation
25 and adopted by rule pursuant to the Real Estate Appraisers

1 Act."

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

4 "47-14-3. REGISTRATION REQUIRED.--

5 A. It is unlawful for a person, corporation,
6 partnership, sole proprietorship, subsidiary, limited
7 liability company or any other business entity to, directly
8 or indirectly, engage or attempt to engage in business as an
9 appraisal management company, to, directly or indirectly,
10 engage or attempt to perform appraisal management services or
11 to advertise or hold itself out as engaging in or conducting
12 business as an appraisal management company without first
13 obtaining a certificate of registration issued by the board
14 under the provisions of the Appraisal Management Company
15 Registration Act, regardless of the entity's use of the term
16 "appraisal management company", "mortgage technology company"
17 or any other name.

18 B. A person, corporation, partnership, sole
19 proprietorship, subsidiary, limited liability company or any
20 other business entity seeking the registration required by
21 Subsection A of this section shall:

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

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

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

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

7 C. The registration required by Subsection A of
8 this section shall include:

9 (1) the name of the entity seeking
10 registration;

11 (2) the business address of the entity
12 seeking registration;

13 (3) telephone contact information of the
14 entity seeking registration;

15 (4) if the entity seeking registration is
16 not a corporation that is domiciled in this state, the name
17 and contact information for the company's agent for service
18 of process in this state;

19 (5) the name, address and contact
20 information for any individual or any corporation,
21 partnership or other business entity that owns ten percent or
22 more of the appraisal management company;

23 (6) the name, address and contact
24 information for a controlling person;

25 (7) a certification that the entity seeking

1 registration has a system and process in place to verify that
2 an appraiser is selected and retained for the network or the
3 appraiser panel of the appraisal management company holds a
4 license or certification in good standing in this state
5 pursuant to the Real Estate Appraisers Act;

6 (8) a certification that the entity seeking
7 registration has a system in place to review, on a periodic
8 basis, the work of all independent appraisers that are
9 performing real estate appraisal services for the appraisal
10 management company to ensure that the real estate appraisal
11 services are being conducted in accordance with uniform
12 standards of professional appraisal practice;

13 (9) a certification that the entity
14 maintains a detailed record of each service request that it
15 receives and of the independent appraiser that performs the
16 real estate appraisal services for the appraisal management
17 company;

18 (10) an irrevocable consent to service of
19 process;

20 (11) a bond or other equivalent means of
21 security as required by the Appraisal Management Company
22 Registration Act; and

23 (12) any other information required by the
24 board.

25 D. The requirements of Subsection B of this

1 section shall apply to an appraisal management company that
2 is a subsidiary owned and controlled by a financial
3 institution regulated by a federal financial institution
4 regulatory agency."

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

7 "47-14-6. EXPIRATION OF LICENSE.--A registration
8 granted by the board pursuant to the Appraisal Management
9 Company Registration Act shall expire on September 30 of each
10 year."

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

13 "47-14-8. FEE.--

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

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

21 C. An appraisal management company that either has
22 registered with the board or operates as a subsidiary of a
23 federally regulated financial institution shall pay to the
24 board an annual registry as determined by the appraisal
25 subcommittee."

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

3 "47-14-9. OWNER REQUIREMENTS.--

4 A. An appraisal management company applying for
5 registration may not be owned by a person or have any
6 principal of the company who has had a license or certificate
7 to act as an appraiser refused, denied, canceled or revoked
8 in this state or in any other state.

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

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

14 (2) submit to a background investigation, as
15 determined by the board.

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

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

3 "47-14-17. APPRAISER INDEPENDENCE--PROHIBITIONS.--

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

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

16 (1) withholding or threatening to withhold
17 timely payment for an appraisal;

18 (2) withholding or threatening to withhold
19 future business for an independent appraiser or demoting or
20 terminating, or threatening to demote or terminate, an
21 independent appraiser;

22 (3) expressly or impliedly promising future
23 business, promotions or increased compensation for an
24 independent appraiser;

25 (4) conditioning the request for an

1 appraisal service or the payment of an appraisal fee or
2 salary or bonus on the opinion, conclusion or valuation to be
3 reached or on a preliminary estimate or opinion requested
4 from an independent appraiser;

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

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

15 (7) providing to an independent appraiser,
16 or any entity or person related to the appraiser, stock or
17 other financial or non-financial benefits;

18 (8) allowing the removal of an independent
19 appraiser from an appraiser panel, without prior written
20 notice to such appraiser;

21 (9) obtaining, using or paying for a second
22 or subsequent appraisal or ordering an automated valuation
23 model in connection with a mortgage financing transaction
24 unless there is a reasonable basis to believe that the
25 initial appraisal was flawed or tainted and such basis is

1 clearly and appropriately noted in the loan file, or unless
2 such appraisal or automated valuation model is done pursuant
3 to a bona fide pre- or post-funding appraisal review or
4 quality control process; or

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

8 C. Nothing in Subsection B of this section shall
9 be construed as prohibiting the appraisal management company
10 from requesting that an independent appraiser:

11 (1) provide additional information about the
12 basis for a valuation; or

13 (2) correct objective factual errors in an
14 appraisal report.

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

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

25 "47-14-21. ENFORCEMENT.--

1 A. The board may censure an appraisal management
2 company, conditionally or unconditionally suspend or revoke
3 any registration issued under the Appraisal Management
4 Company Registration Act, levy fines or impose civil
5 penalties not to exceed twenty-five thousand dollars
6 (\$25,000) per violation if, in the opinion of the board, an
7 appraisal management company is attempting to perform, has
8 performed or has attempted to perform any of the following
9 acts:

10 (1) committing any act in violation of the
11 Appraisal Management Company Registration Act;

12 (2) violating any rule or regulation adopted
13 by the board in the interest of the public and consistent
14 with the provisions of the Appraisal Management Company
15 Registration Act;

16 (3) procuring a registration, license or
17 certification by fraud, misrepresentation or deceit; or

18 (4) violating the Real Estate Appraisers Act
19 or the federal Financial Institutions Reform, Recovery, and
20 Enforcement Act of 1989.

21 B. The board may deny an application for
22 registration for failure to comply with the minimum
23 requirements and criteria as set forth by the Appraisal
24 Management Company Registration Act.

25 C. Board action relating to the issuance,

1 suspension or revocation of any registration, license or
2 certificate shall be governed by the provisions of the
3 Uniform Licensing Act; provided that the time limitations set
4 forth in the Uniform Licensing Act shall not apply to the
5 processing of administrative complaints filed with the board,
6 which shall be governed by federal statute, regulation or
7 policy."

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

10 "AUTOMATED VALUATION MODELS USED TO ESTIMATE COLLATERAL
11 VALUE FOR MORTGAGE LENDING PURPOSES.--

12 A. Automated valuation models shall adhere to
13 quality control standards designed to:

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

16 (2) protect against the manipulation of
17 data;

18 (3) seek to avoid conflicts of interest;

19 (4) require random sample testing and
20 reviews; and

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

23 B. The board, in consultation with the staff of
24 the appraisal subcommittee and the appraisal standards board
25 of the appraisal foundation, shall promulgate rules to

1 implement the quality control standards required under this
2 section."

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

5 "CRIMINAL BACKGROUND CHECKS.--

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

8 (1) requiring criminal history background
9 checks of applicants for licensure pursuant to the Appraisal
10 Management Company Registration Act;

11 (2) requiring applicants for licensure to be
12 fingerprinted;

13 (3) providing for an applicant who has been
14 denied licensure to inspect or challenge the validity of the
15 background check record;

16 (4) establishing a fingerprint and
17 background check fee not to exceed the current rate as
18 determined by the department of public safety to be paid by
19 the applicant; and

20 (5) providing for submission of an
21 applicant's fingerprint cards to the federal bureau of
22 investigation to conduct a national criminal history
23 background check and to the department of public safety to
24 conduct a state criminal history check.

25 B. Arrest record information received from the

1 department of public safety and the federal bureau of
2 investigation shall be privileged and shall not be disclosed
3 to persons not directly involved in the decision affecting
4 the applicant.

5 C. Electronic live fingerprint scans may be used
6 when conducting criminal history background checks." _____

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