

**Report Title:**

Real Estate Appraisals; Real Property

**Description:**

Provides for registration of real estate appraisal management companies with the real estate commission of the department of commerce and consumer affairs. Establishes standards and violations.

HOUSE OF REPRESENTATIVES  
TWENTY-FIFTH LEGISLATURE, 2009  
STATE OF HAWAII

**H.B. NO.** 1577

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# A BILL FOR AN ACT

RELATING TO REAL ESTATE APPRAISAL MANAGEMENT COMPANIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER**

**HAWAII APPRAISAL MANAGEMENT COMPANY**

**REGISTRATION AND REGULATION ACT**

§ **-A Title.** This chapter shall be known as the Hawaii Appraisal Management Company Registration and Regulation Act.

§ **-B Definitions.** As used in this chapter:

"Appraisal" means the act or process of developing an opinion of the value of real property in conformity with the Uniform Standards of Professional Appraisal Practice of The Appraisal Foundation.

"Appraisal management company" means any corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that administers networks of independent contract

appraisers to perform residential real estate appraisal services for clients; receives requests for residential real estate appraisal services from clients and, for a fee paid by the client, enters into an agreement with one or more independent appraisers to perform the residential real estate appraisal services contained in the request; or otherwise serves as a third-party broker of residential appraisal management services between clients and appraisers.

"Appraisal management services" means the process of receiving a request for the performance of residential real estate appraisal services from a client and, for a fee paid by the client, entering into an agreement with one or more independent appraisers to perform the real estate appraisal services contained in the request.

"Appraiser" means a person who provides an opinion of the market value of real property.

"Appraiser fee schedule" means a list of the various real estate appraisal services requested by an appraisal management company in the State from independent appraisers and the amount that the appraisal management company is willing to pay to an independent appraiser for the performance of each of the listed real estate appraisal services.

"Appraiser panel" means a group of independent appraisers that have been selected by an appraisal management company to perform residential real estate appraisal services for the appraisal management company.

"Client" means any person or entity that contracts with or otherwise enters into an agreement with an appraisal management company for the performance of residential real estate appraisal services.

"Commission" means the real estate commission.

"Controlling person" means an owner, officer or director of a

corporation, partnership or other business entity seeking to offer appraisal management services in the State; an individual employed, appointed, or authorized by an appraisal management company who has the authority to enter into a contractual relationship with clients for the performance of appraisal management services and has the authority to enter into agreements with independent appraisers for the performance of residential real estate appraisal services; or an individual who possesses, directly or indirectly, the power to direct the management or policies of an appraisal management company.

"Real estate appraisal services" means the practice of developing an opinion of the value of real property in conformity with the Uniform Standards of Professional Appraisal Practice published by The Appraisal Foundation.

§ **-C Registration required; form; fee.** (a) It shall be unlawful for a person, corporation, partnership, sole proprietorship, subsidiary, unit, or any other entity to directly or indirectly engage or attempt to engage in business as an appraisal management company, either gratuitously or for pay; to directly or indirectly perform or attempt to perform appraisal management services; or to advertise or announce oneself, either publicly or privately, as engaging in or conducting business as an appraisal management company without a valid, unexpired registration issued by the commission under this chapter, regardless of the entity's use of the term "appraisal management company", "mortgage technology company", or any other name.

(b) The registration required by subsection (a) shall, at a minimum, include the following:

- (1) Name of the entity seeking registration;
- (2) Business address of the entity seeking registration;

- (3) Telephone contact information of the entity seeking registration;
- (4) Name and contact information for the company's agent for service of process in the State if the entity is not a corporation that is domiciled in the State;
- (5) Name, address, and contact information for any individual, corporation, partnership, or other entity that owns at least a ten per cent share of the appraisal management company;
- (6) Name, address, and contact information for a controlling person of the appraisal management company;
- (7) A certification that the appraisal management company has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license in good standing in the State pursuant to chapter 466K;
- (8) A certification that the appraisal management company has a system in place to review the work of all independent appraisers who perform real estate appraisal services for the appraisal management company to ensure that real estate appraisal services are conducted in accordance with the Uniform Standards of Professional Appraisal Practice;
- (9) A certification that the entity maintains a detailed record of each service request that it receives and the independent appraiser that performs the residential real estate appraisal services for the appraisal management company;
- (10) An irrevocable Uniform Consent to Service of Process; and
- (11) Any other information required by the commission.

(c) An applicant for registration as an appraisal management company in the State shall submit to the commission an application on a form prescribed by the commission.

(d) The commission is authorized to impose and collect a fee of \$ \_\_\_\_\_ from each appraisal management company seeking registration under this chapter.

(e) An appraisal management company applying for registration under this chapter shall file an irrevocable Uniform Consent to Service of Process with the commissioner of securities.

(f) A registration granted by the commission pursuant to this chapter shall be valid for one year from the date on which it is issued.

§ **-D Ownership; requirements.** (a) No person who has had a license or certificate to act as an appraiser refused, denied, canceled, or revoked in the State or in any other state shall own

more than a ten per cent interest in an appraisal management company.

(b) Every person who owns more than a ten per cent interest in an appraisal management company in the State shall:

- (1) Be of good moral character, as determined by the commission;
- (2) Submit to a background investigation, as determined by the commission; and
- (3) Certify to the commission that the person has never had a license to act as an appraiser refused, denied, cancelled, or revoked in the State or in any other state.

§ **-E Controlling person; requirements.** (a) Each appraisal management company shall designate one controlling person to serve as the primary contact for all communication between the commission and the appraisal management company.

(b) A person designated by an appraisal management company as a controlling person shall:

- (1) Certify to the commission that the person has never had a certificate or a license issued by the State or any other state, to act as an appraiser refused, denied, canceled, or revoked;
- (2) Be of good moral character, as determined by the commission; and
- (3) Submit to a background investigation, as determined by the commission.

§ **-F Employees; requirements; limitations.** (a) Any employee of an appraisal management company, or any person working on behalf of the appraisal management company, who is responsible for selecting independent appraisers to perform residential real estate appraisal services or for reviewing completed appraisals shall be appropriately trained and qualified in the performance of residential real estate appraisals as determined by the commission.

(b) Any employee of the appraisal management company who is responsible for reviewing the work of independent appraisers shall have demonstrated knowledge of the Uniform Standards of Professional Appraisal Practice, as determined by the commission.

(c) An appraisal management company registered in the State

pursuant to this chapter shall not enter into contracts or agreements with any person for the performance of residential real estate appraisal services unless that person is licensed or certified in good standing pursuant to the chapter 466K.

§ **-G Adherence to standards; recordkeeping.** (a) Every appraisal management company in the State shall maintain a system and process to verify that any person being added to the appraiser panel of the appraisal management company holds a license in good standing in the State pursuant chapter 466K.

(b) Every appraisal management company in the State shall maintain a system and process to review the work of all independent appraisers who perform real estate appraisal services for the appraisal management company on a periodic basis to ensure that the real estate appraisal services are conducted in accordance with the Uniform Standards of Professional Appraisal Practice.

(c) Each appraisal management company in the State shall maintain detailed records of each service request and the disposition of each service request, including the appraiser performing the residential real estate appraisal services for the appraisal management company.

§ **-H Appraiser fee schedule.** (a) An appraisal management company in the State that utilizes an appraiser fee schedule shall develop the appraiser fee schedule or schedules through one or more surveys of the market rates paid to independent fee appraisers in the State for the performance of real estate appraisal services.

(b) The surveys performed pursuant to subsection (a) shall use statistically valid methodologies and techniques, and reliable data sources including representative samples of independent fee appraisers.

(c) Every appraisal management company that uses or has

developed an appraiser fee schedule shall disclose that information to the commission at the time of initial registration or ninety days before the schedule is adopted by the appraisal management company, whichever is sooner. The commission may review any appraiser fee schedule developed or utilized by an appraisal management company in the State, along with the methodologies, techniques, and data sources used in its development, to ensure that it complies with this section.

(d) Following a review of any fee schedule conducted pursuant to subsection (c), the commission shall make the substantive results of the review available to the public.

§ **-I Appraiser independence; prohibitions.** (a) It shall be unlawful for any employee, director, officer, or agent of an appraisal management company registered in the State to influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or in any other manner, including but not limited to:

- (1) Withholding or threatening to withhold timely payment for an appraisal;
- (2) Withholding or threatening to withhold future business for an independent appraiser, or demoting or terminating or threatening to demote or terminate an independent appraiser;
- (3) Expressly or impliedly promising future business, promotions, or increased compensation for an independent appraiser;
- (4) Conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an independent appraiser;
- (5) Requesting that an independent appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the independent appraiser's completion of an appraisal service;
- (6) Providing to an independent appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;
- (7) Providing to an independent appraiser, or any entity or person related to the appraiser, any financial or non-financial benefit;

(8) Removing or allowing the removal of an independent appraiser from an appraiser panel, without prior written notice to the appraiser;

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

(10) Any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(b) Nothing in subsection (a) of this section shall be construed to prohibit the appraisal management company from requesting that an independent appraiser:

(1) Provide additional information about the basis for a valuation; or

(2) Correct objective factual errors in an appraisal report.

§ **-J Guaranty of payment.** Every appraisal management company operating in the State shall, except in cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment within sixty days of the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

§ **-K Alteration of appraisal reports.** An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an independent appraiser.

§ **-L Adjudication of disputes between an appraisal management company and an independent appraiser.** (a) Except within the first thirty days after an independent appraiser is added for the first time to the appraiser panel of an appraisal management company, an appraisal management company shall not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an independent



appraiser without:

(1) Notifying the appraiser in writing of the reasons why the appraiser is being removed from the appraiser panel of the appraisal management company;

(2) Notifying the appraiser of the nature of the alleged conduct or violation if the appraiser is removed from the panel for illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice, or a violation of licensing standards; and

(3) Providing a reasonable opportunity for the appraiser to respond to the notification of the appraisal management company.

(b) An appraiser who is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice, or violation of licensing standards, may file a complaint pursuant to chapter 91 with the commission for a review of the decision of the appraisal management company. The commission's review shall be limited to the actions specified in subsection (a).

(c) The commission shall adjudicate all complaints pursuant to subsection (b) against an appraisal management company within one hundred eighty days.

(d) If after opportunity for hearing and review, the commission determines that an appraiser did not commit a violation of law, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of state licensing standards, the commission shall order that the appraiser be added, without prejudice, to the appraiser panel of the appraisal management company that was the subject of the complaint.

(e) Following the adjudication of a complaint to the commission by an appraiser against an appraisal management company, an appraisal management company may not refuse to make assignments for real estate appraisal services to an appraiser, or reduce the number of assignments, or otherwise penalize the appraiser, where the commission has found that the appraisal management company acted

improperly in removing the appraiser from the appraiser panel.

§ **-M Violations.** The following shall constitute violations of this chapter punishable by suspension or revocation of registration, fines, or civil penalties:

- (1) Committing an act in violation of this chapter;
- (2) Violating any rule adopted by the commission pursuant to this chapter; and
- (3) Procuring a license for oneself or another person by fraud, misrepresentation, or deceit.

§ **-N Rules.** Pursuant to chapter 91, the commission may adopt, amend, and repeal rules necessary to effectuate the purposes of this chapter."

SECTION 2. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 3. This Act shall take effect on July 1, 2009.

INTRODUCED BY: \_\_\_\_\_