

ASSEMBLY, No. 1756
STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:
Assemblyman VINCENT PRIETO
District 32 (Bergen and Hudson)
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District 18 (Middlesex)

SYNOPSIS

“Appraisal Management Company Registration Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

AN ACT concerning the regulation of appraisal management companies, and amending and supplementing P.L.1991, c.68.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) Sections 1 through 19 and section 21 of this act shall be known and may be cited as the “Appraisal Management Company Registration Act.”

2. (New section) As used in this act:

“Appraisal or real estate appraisal” means the same as that term is defined pursuant to section 2 of P.L.1991, c.68 (C.45:14F-2).

“Appraisal management company” means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party that oversees a network or panel of more than 15 certified or licensed appraisers in New Jersey or 25 or more nationally within a given year, that is authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets to:

(1) Recruit, select, and retain appraisers;

(2) Contract with licensed and certified appraisers to perform appraisal assignments;

(3) Manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

(4) Review and verify the work of appraisers.

“Appraisal review” means the act or process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal assignment, except that a Quality Control Examination of an appraisal shall not be an appraisal review.

“Appraiser” means a State certified real estate appraiser, State certified general or residential real estate appraiser, or State licensed real estate appraiser.

“Appraiser panel” means a group of licensed or certified appraisers who are independent contractors that have been selected to perform appraisals for a third party.

“Board” means the State Real Estate Appraiser Board established pursuant to section 3 of P.L.1991, c.68 (C.45:14F-3).

“Controlling person” means:

(1) An officer, director, or owner of greater than a 10 percent interest, of a corporation, partnership or other business entity, seeking to act as an appraisal management company in this State;

(2) An individual employed, appointed, or authorized by an appraisal management company who has the authority to enter into a contractual relationship with other persons for the performance of services requiring registration as an appraisal management company and has the authority to enter into agreements with appraisers for the performance of appraisals; or

(3) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

“Federal financial institution regulatory agencies” means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the National Credit Union Administration.

“Federally related transaction” means the same as that term is defined pursuant to section 2 of P.L.1991, c.68 (C.45:14F-2).

“Quality Control Examination” means an examination of an appraisal report for compliance and completeness including grammatical, typographical, or other similar errors.

“Uniform Standards of Professional Appraisal Practice” (USPAP) means the current standards of the appraisal profession, developed for appraisers and users of appraisal services by the Appraisal Standards Board of the Appraisal Foundation.

3. (New section) a. No person shall, directly or indirectly, engage or attempt to engage in business as an appraisal management company, or advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the board under the provisions of this act.

b. The registration required by subsection a. of this section shall include the following written

information on a form prescribed by the board:

- (1) The name of the entity or individual seeking registration, and the fictitious name or names, if any, under which it does business in any state;
- (2) The business address of the entity or individual seeking registration;
- (3) The telephone number of the entity or individual seeking registration;
- (4) The name and contact information for the individual's or entity's agent for service of process in this State, if the entity or individual is not a corporation that is domiciled in this State;
- (5) The name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns 10 percent, or more, of the appraisal management company;
- (6) The name, address, and telephone number for one controlling person designated as the main contact for all communication between the appraisal management company and the board;
- (7) A certification that the entity or individual 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 or certification in good standing in this State pursuant to the "Real Estate Appraisers Act," P.L.1991, c.68 (C.45:14F-1 et seq.);
- (8) A certification that the entity or individual requires appraisers completing appraisals at its request to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, including the requirements for geographic and product competence;
- (9) A certification that the entity or individual has a system in place to verify that only licensed or certified appraisers are used for federally related transactions;
- (10) A certification that the entity or individual has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under section 1639e of the federal Truth in Lending Act (15 U.S.C. s.1639e), including the requirements for payment of customary and reasonable compensation to fee appraisers when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer;
- (11) A certification by the board that the entity maintains a detailed record of each service request that it receives and the name of the appraiser that performs the residential real estate appraisal services for the appraisal management company;
- (12) Whenever applicable, an irrevocable Uniform Consent to Service of Process pursuant to section 5 of this act; and
- (13) Any other information as required by the board that is reasonably necessary to implement this act.

c. An application for the renewal of a registration shall include information substantially similar to that required under subsection b. of this section for an initial registration, as determined by the board.

4. (New section) The provisions of this act shall not apply to an appraisal management company

that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institutions regulatory agency.

5. (New section) An entity or individual applying for a registration as an appraisal management company that is not domiciled in this State shall complete an irrevocable Uniform Consent to Service of Process, as prescribed by the board.

6. (New section) a. The board shall establish by regulation a processing fee to be paid by each appraisal management company seeking registration under this act that is sufficient for the administration of the registration process, but in no case shall the fee be more than \$500.

b. A processing fee, similar to that provided for in subsection a. of this section not to exceed \$500, may be charged by the board in connection with the renewal of a registration.

c. A registration granted by the board pursuant to this act shall be effective for a one-year period and may be renewed annually.

7. (New section) a. An appraisal management company applying to the board for registration in this State shall not:

(1) In whole or in part, directly or indirectly, be owned by any person who has had an appraiser license or certificate in this State or in any other state, refused, denied, cancelled, surrendered in lieu of revocation, or revoked;

(2) Be more than 10 percent owned by a person who is not of good moral character, which for purposes of this section shall require that such person has not been convicted of, or entered a plea of nolo contendere to, a crime relating to the practice of appraisal or any crime involving fraud, misrepresentation or moral turpitude.

b. For purposes of paragraph (2) of subsection a. of this section, each owner of more than 10 percent of an appraisal management company shall submit to a background investigation to be carried out by the board, in accordance with standards as established by the board by regulation.

8. (New section) An appraisal management company applying to the board for registration in this State shall designate one controlling person that will be the designated contact for all communication between the board and the appraisal management company.

9. (New section) An appraisal management company that applies to the board for registration in this State shall not:

a. Knowingly employ any individual to perform appraisal services, who has had a license or certificate to act as an appraiser in this State or in any other state, refused, denied, cancelled, surrendered in lieu of revocation, or revoked; or

b. Knowingly enter into any independent contractor arrangement, whether in verbal, written, or other form, with any individual, to perform appraisal services, who has had a license or certificate to act as an appraiser in this State or in any other state, refused, denied, cancelled, surrendered in lieu of

revocation, or revoked.

10. (New section) Prior to assigning appraisal orders, an appraisal management company shall have a system in place to verify that a person being added to the appraiser panel holds the appropriate appraiser credential in good standing.

11. (New section) An employee of, or independent contractor to, an appraisal management company that performs a Uniform Standards of Professional Appraisal Practice Standard 3 review of an appraisal report on property located in this State shall be an appraiser with the proper level of licensure, as prescribed pursuant to P.L.1991, c.68 (C.45:14F-1 et seq.). The provisions of this section shall not apply to any individual conducting a Quality Control Examination.

12. (New section) An appraisal management company seeking to be registered in this State shall certify to the board, biannually, on a form prescribed by the board, that the appraisal management company has a system in place to verify that an individual on the appraiser panel has not had a license or certification as an appraiser refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation.

13. (New section) An appraisal management company seeking to be registered in this State shall certify to the board, biannually, that it:

a. Requires appraisers completing appraisals at its request to comply with the Uniform Standards of Professional Appraisal Practice, including the requirements for geographic and product competence;

b. Has a system in place to verify that only licensed or certified appraisers are used for federally related transactions; and

c. Has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under section 1639e of the federal Truth in Lending Act (15 U.S.C. s.1639e), including the requirements for payment of customary and reasonable compensation to fee appraisers when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer.

14. (New section) An appraisal management company seeking to be registered in this State shall certify to the board, biannually, that it maintains a detailed record of each service request that it receives and the name of the appraiser that performs the appraisal for the appraisal management company. Records shall be retained for a period of at least five years after an appraisal is completed or two years after final disposition of a judicial proceeding related to the assignment, whichever period expires later.

15. (New section) An appraisal management company shall not alter, modify, or otherwise

change a completed appraisal report submitted by an appraiser without the appraiser's written consent, except as necessary to comply with statutory and regulatory requirements.

16. (New section) a. The board shall issue a unique registration number to each appraisal management company that is registered in this State.

b. The board shall maintain a published list of the appraisal management companies that have registered with the board pursuant to this act and have been issued a registration number pursuant to subsection a. of this section.

c. An appraisal management company registered in this State shall disclose the registration number provided to it by the board on any engagement documents presented to the appraiser.

17. (New section) a. Except within the first 90 days after an appraiser is first added 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 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 any alleged conduct or violation, if the appraiser is being removed from the panel for illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice, or a violation of State licensing standards; and

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

b. An appraiser that 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 State licensing standards may file a complaint with the board for review of the decision of the appraisal management company. The scope of the board's review in any such case shall be limited to determining whether the appraisal management company has complied with the provisions of subsection a. of this section and whether illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of State licensing standards has occurred.

c. If an appraiser files a complaint against an appraisal management company pursuant to subsection b. of this section, the board shall adjudicate the complaint within 180 days of receiving the complaint.

d. If after opportunity for hearing and review, the board determines that an appraisal management company acted improperly in removing the appraiser from the appraiser panel, or that the 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 board shall:

(1) Provide written findings to the involved parties;

(2) Provide an opportunity for the appraisal management company and appraiser to respond to the findings; and

(3) Make recommendations for action.

18. (New section) a. The board may suspend or revoke any registration issued under this act, levy fines, or impose civil penalties not to exceed \$5,000 for each violation if, after appropriate investigation, the board concludes that an appraisal management company is attempting to perform, has performed, or has attempted to perform any of the following:

- (1) Any action in violation of this act or regulations adopted hereunder; or
- (2) Procuring a registration for itself or any other person by fraud, misrepresentation, or deceit.

b. When deciding whether to impose a sanction, determining the sanction that is most appropriate in a specific instance, or making any other discretionary decision regarding the enforcement of this act, the board shall consider whether an appraisal management company:

- (1) Has an effective program reasonably designed to ensure compliance with this act;
- (2) Has taken prompt and appropriate steps to correct and prevent the recurrence of any detected violations; and
- (3) Has independently reported to the board any significant violations or potential violations of this act, prior to an imminent threat of disclosure or investigation and within a reasonably prompt time after becoming aware of their occurrence.

19. (New section) Whenever the board finds cause to refuse to renew, suspend or revoke any registration, or to levy a fine or impose a civil penalty, the board shall notify the registrant of the reasons therefor, in writing, and provide opportunity for a hearing in accordance with the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).

20. Section 3 of P.L.1991, c.68 (C.45:14F-3) is amended to read as follows:

3. There is created within the Division of Consumer Affairs in the Department of Law and Public Safety a State Real Estate Appraiser Board. The board shall consist of [~~nine~~] 10 members who are residents of the State, two of whom shall be public members and one of whom shall be a State executive department member appointed pursuant to the provisions of section 2 of P.L.1971, c.60 (C.45:1-2.2). Of the remaining [~~six~~] seven members, three shall be, except for those first appointed, State licensed real estate appraisers [~~and~~], three shall be, except for those first appointed, State certified real estate appraisers, and one shall be a representative of the appraisal management company industry. The initial real estate appraiser members of the board may hold a real estate appraisal designation from an organization recognized by the Appraisal Foundation, but these appointments shall not be granted or denied on the basis of organizational membership alone.

The Governor shall appoint the public members [~~and~~], the real estate appraiser members, and the representative of the appraisal management company industry to the board with the advice and consent of the Senate. The Governor shall appoint each member for a term of three years, except that with regard to the real estate appraiser members first appointed, two shall serve for terms of three years, two shall serve for terms of two years, and two shall serve for terms of one year. Each member shall serve until his successor has been qualified. Any vacancy in the membership of the board shall be filled for the unexpired term in the manner provided by the original appointment. No member of

the board shall serve more than two successive terms in addition to any unexpired term to which he has been appointed. The Governor may remove a member of the board for cause.

(cf: P.L.1991, c.68, s.3)

21. (New section) The State Real Estate Appraiser Board shall adopt rules and regulations pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of this act.

22. This act shall take effect 120 days after the adoption by the State Real Estate Appraiser Board of regulations to effectuate the purposes of this act.

STATEMENT

This bill establishes registration requirements for real estate appraisal management companies that employ licensed and certified real estate appraisers to provide appraisal services in New Jersey.

An appraisal management company (“AMC”) is a business entity that administers a network of certified and licensed appraisers to fulfill real estate appraisal assignments on behalf of mortgage lending institutions, as well as other entities. AMCs recruit, qualify, verify licensing, and negotiate fees and service level expectations with a network of third-party appraisers. AMCs also provide administrative duties such as tracking and providing clients with the status of their appraisal requests and preparing preliminary and hard copy reports for delivery to clients.

Currently, State law only prescribes licensing and certification requirements for individual appraisers, which are enforced by the State Real Estate Appraiser Board. Real estate appraisal management companies are unregulated and are not currently required to register with any State agency or department in order to provide services in New Jersey.

The bill prohibits any individual or business entity from engaging or providing real estate appraisal management services, or advertising or holding himself or the business entity out as engaging in or conducting business as an AMC without being registered with the State Real Estate Appraiser Board, which is within the Division of Consumer Affairs in the Department of Law and Public Safety.

Specifically, the bill: (1) requires AMCs to register with the board prior to providing appraisal services and to renew such registration on an annual basis; (2) prohibits AMCs from hiring or entering into contracts with third-parties who contract with individuals who are not licensed or certified as real estate appraisers in this State for federally related transactions; (3) requires AMCs to submit biannual certifications to the board confirming that all of its employees are licensed or certified appraisers, that appraisals are conducted independently and free from inappropriate influence and coercion, and that detailed records of service requests are retained; and (5) establishes grounds for which the board may refuse to renew, suspend or revoke any registration issued, or levy fines or impose civil penalties.

In addition, the bill amends section 3 of P.L.1991, c.68 (C.45:14F-3) to increase the membership of the State Real Estate Appraiser Board from nine to ten members by adding a representative of the appraisal management company industry to the board. Currently, the board consists of three licensed real estate appraisers, three certified real estate appraisers, two public members and one State executive department member.