



TEXAS OCCUPATIONS CODE

**TITLE 7. PRACTICES AND PROFESSIONS
RELATED TO REAL PROPERTY AND HOUSING**

**SUBTITLE A.
PROFESSIONS RELATED TO REAL ESTATE**

**CHAPTER 1103.
REAL ESTATE APPRAISERS**

**CHAPTER 1104.
APPRAISAL MANAGEMENT COMPANIES
As Revised and in Effect on**

**September 1, 2011
And March 1, 2012**

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Table of Contents

CHAPTER 1103. REAL ESTATE APPRAISERS.....	1
SUBCHAPTER A. GENERAL PROVISIONS	1
Sec. 1103.001. SHORT TITLE.	1
Sec. 1103.002. PURPOSE	1
Sec. 1103.003. DEFINITIONS	1
Sec. 1103.004. EFFECT OF CHAPTER	1
Sec. 1103.005. REAL ESTATE BROKER OR SALESPERSON LICENSE NOT REQUIRED.....	2
Sec. 1103.006. APPLICATION OF SUNSET ACT.....	2
SUBCHAPTER B. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD.....	2
Sec. 1103.051. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD.....	2
Sec. 1103.052. BOARD MEMBERSHIP	2
Sec. 1103.053. QUALIFICATIONS OF APPOINTED MEMBERS	2
Sec. 1103.054. ELIGIBILITY OF PUBLIC MEMBERS.....	2
Sec. 1103.055. TERMS.....	3
Sec. 1103.056. OFFICERS; EXECUTIVE COMMITTEE	3
Sec. 1103.057. GROUNDS FOR REMOVAL	3
Sec. 1103.058. PER DIEM; REIMBURSEMENT	3
Sec. 1103.059. QUASI-JUDICIAL IMMUNITY.....	3
SUBCHAPTER C. COMMISSIONER AND OTHER BOARD PERSONNEL	3
Sec. 1103.101. COMMISSIONER	3
Sec. 1103.102. OTHER BOARD PERSONNEL.....	3
Sec. 1103.103. SALARIES	3
Sec. 1103.104. DUTIES OF COMMISSIONER	3
SUBCHAPTER D. BOARD POWERS AND DUTIES.....	4
Sec. 1103.151. RULES RELATING TO CERTIFICATES AND LICENSES	4
Sec. 1103.152. APPRAISER CERTIFICATE AND LICENSE CATEGORIES	4
Sec. 1103.153. RULES RELATING TO CONTINUING EDUCATION.....	4
Sec. 1103.154. RULES RELATING TO PROFESSIONAL CONDUCT.....	4
Sec. 1103.155. ROSTER.....	4
Sec. 1103.156. FEES	4
Sec. 1103.157. GIFTS, GRANTS, AND DONATIONS.....	5

Sec. 1103.157. ADVISORY COMMITTEE	5
Sec. 1103.158. EXPERT WITNESS TESTIMONY BY BOARD MEMBER.....	5
SUBCHAPTER E. CERTIFICATE AND LICENSE REQUIREMENTS	5
Sec.1103.201. CERTIFICATE OR LICENSE REQUIRED	5
Sec. 1103.2015.GENERAL APPLICATION REQUIREMENTS	5
Sec.1103.202. ELIGIBILITY REQUIREMENTS FOR CERTIFICATE	5
Sec.1103.203. ELIGIBILITY REQUIREMENTS FOR LICENSE	6
Sec.1103.204. FULFILLMENT OF EDUCATION REQUIREMENTS	6
Sec. 1103.205. FULFILLMENT OF EXPERIENCE REQUIREMENTS	6
Sec. 1103.206. VERIFICATION OF EDUCATION AND EXPERIENCE	6
Sec. 1103.207. ADDITIONAL INFORMATION FROM CERTAIN APPLICANTS	7
Sec. 1103.209. RECIPROCAL CERTIFICATE OR LICENSE	7
Sec. 1103.2091.PROBATIONARY CERTIFICATE, LICENSE, OR TRAINEE APPROVAL	8
Sec. 1103.210. DENIAL OF CERTIFICATE OR LICENSE	8
Sec. 1103.211. CERTIFICATE OR LICENSE RENEWAL; CONTINUING EDUCATION.	8
Sec. 1103.2111.LATE RENEWAL OF CERTIFICATE, LICENSE, OR TRAINEE APPROVAL	8
Sec. 1103.212. EXTENSION OF TIME TO COMPLETE REQUIRED CONTINUING EDUCATION	8
Sec. 1103.213. INACTIVE CERTIFICATE OR LICENSE	9
SUBCHAPTER F. APPRAISER EXAMINATION.....	9
Sec. 1103.251. EXAMINATION REQUIRED	9
Sec. 1103.252. TESTING SERVICE	9
Sec. 1103.253. TIME AND PLACE OF EXAMINATION; NOTICE	9
Sec. 1103.254. EXAMINATION APPLICATION	9
Sec. 1103.255. EXPERIENCE NOT REQUIRED BEFORE TAKING EXAMINATION	9
Sec. 1103.256. MINIMUM PASSING GRADE REQUIRED	9
Sec. 1103.257. EXAMINATION RESULTS	10
Sec. 1103.258. REEXAMINATION	10
Sec. 1103.259. GUIDELINES; STUDY GUIDES	10
SUBCHAPTER G. TEMPORARY APPRAISAL AUTHORITY FOR OUT-OF-STATE APPRAISERS.....	10
Sec. 1103.301. REGISTRATION REQUIRED	10
Sec. 1103.302. REGISTRATION APPLI-CATION	10
Sec. 1103.303. ELIGIBILITY REQUIREMENTS FOR REGISTRATION.....	10

Sec. 1103.304. EXTENSION OF REGISTRATION	10
SUBCHAPTER H. APPRAISER TRAINEES	11
Sec. 1103.351. SPONSOR	11
Sec. 1103.352. APPLICATION FOR APPRAISER TRAINEE.....	11
Sec. 1103.353. ELIGIBILITY REQUIREMENTS FOR APPRAISER TRAINEE	11
Sec. 1103.354. APPRAISER TRAINEE REPORTS	11
Sec. 1103.355. DISCIPLINARY PROCEDURES FOR APPRAISER TRAINEES	11
Sec. 1103.356. RENEWAL OF APPRAISER TRAINEE APPROVAL.....	11
SUBCHAPTER I. PRACTICE BY CERTIFIED OR LICENSED APPRAISER.....	11
Sec. 1103.401. USE OF INSIGNIA OR IDENTIFICATION	11
Sec. 1103.402. SIGNATURE OR ENDORSEMENT ON APPRAISAL.....	11
Sec. 1103.403. CONTACT INFORMATION	12
Sec. 1103.404. BUSINESS RECORDS.....	12
Sec. 1103.405. PROFESSIONAL STANDARDS.....	12
SUBCHAPTER J. DISCIPLINARY PROCEEDINGS GENERALLY	12
Sec. 1103.451. COMPLAINT	12
Sec. 1103.452. REVIEW AND INVESTIGATION.....	12
Sec. 1103.453. PEER INVESTIGATIVE COMMITTEE.....	12
Sec. 1103.454. GENERAL SUBPOENA AUTHORITY.....	13
Sec. 1103.455. REPORT OF INVESTIGATION REQUIRED	13
Sec. 1103.456. ACTION BASED ON REPORT	13
Sec. 1103.457. INFORMAL DISCUSSION OF COMPLAINT.....	13
Sec. 1103.458. CONSENT ORDER.....	13
Sec. 1103.459. CONSENT AGREEMENT	14
Sec. 1103.460. PUBLIC AVAILABILITY OF FINAL DECISION	14
SUBCHAPTER K. CONTESTED CASE HEARINGS.....	14
Sec. 1103.501. APPLICABILITY OF ADMINISTRATIVE PROCEDURE LAW.	14
Sec. 1103.5011.NOTICE OF VIOLATION AND PENALTY	14
Sec. 1103.5012.PENALTY TO BE PAID OR HEARING REQUESTED	14
Sec. 1103.502. NOTICE OF HEARING	14
Sec. 1103.503. STATEMENT OF CHARGES	14
Sec. 1103.504. ATTORNEY GENERAL REPRESENTATION.	15

Sec. 1103.505. ANSWER.....	15
Sec. 1103.506. DISCOVERY PROCEDURES.....	15
Sec. 1103.507. SUBPOENA IN CONTESTED CASE.....	15
Sec. 1103.508. HEARING.....	15
Sec. 1103.510. FAILURE TO APPEAR.....	15
Sec. 1103.511. OPEN HEARING.....	15
Sec. 1103.512. RECORD OF PROCEEDINGS.....	15
Sec. 1103.513. ORDER OF PROCEEDINGS.....	16
Sec. 1103.514. COPIES OF EVIDENCE.....	16
Sec. 1103.515. RESPONSE TO CERTAIN ACCUSATIONS.....	16
Sec. 1103.516. DIRECT EXAMINATION.....	16
Sec. 1103.517. IMMUNITY OF WITNESSES.....	16
Sec. 1103.518. ACTION AFTER HEARING.....	16
Sec. 1103.519. APPLICATION FOR REHEARING.....	17
Sec. 1103.520. DECISION ON REHEARING.....	17
Sec. 1103.521. DECISION; ORDER.....	17
Sec. 1103.522. REINSTATEMENT OF CERTIFICATE OR LICENSE.....	17
SUBCHAPTER L. PENALTIES AND OTHER ENFORCEMENT PROVISIONS.....	17
Sec. 1103.551. INJUNCTION.....	17
Sec. 1103.5511 TEMPORARY SUSPENSION.....	17
Sec. 1103.552. ADMINISTRATIVE PENALTY.....	18
Sec. 1103.553. CIVIL PENALTY FOR FILING FRIVOLOUS COMPLAINT.....	18
Sec. 1103.5535.CIVIL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED CERTIFICATE OR LICENSE.....	18
Sec. 1103.554. CRIMINAL PENALTY FOR MISREPRESENTING QUALIFICATIONS.....	18
Sec. 1103.5545.CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED CERTIFICATE OR LICENSE.....	18

CHAPTER 1104. APPRAISAL MANAGEMENT COMPANIES	19
SUBCHAPTER A. GENERAL PROVISIONS	19
Sec. 1104.001. SHORT TITLE.	19
Sec. 1104.002. PURPOSE.....	19
Sec. 1104.003. DEFINITIONS.....	19
Sec. 1104.004. EXEMPTIONS.....	20
SUBCHAPTER B. BOARD POWERS AND DUTIES.....	20
Sec. 1104.051. RULES.....	20
Sec. 1104.052. FEES.....	20
SUBCHAPTER C. REGISTRATION REQUIREMENTS	20
Sec. 1104.101. REGISTRATION REQUIRED	20
Sec. 1104.102. ELIGIBILITY FOR REGISTRATION; OWNERSHIP	21
Sec. 1104.103. APPLICATION FOR REGISTRATION OR RENEWAL.....	21
Sec. 1104.104. DESIGNATION OF PRIMARY CONTACT	21
Sec. 1104.105. DENIAL OF REGISTRATION	22
Sec. 1104.106. ISSUANCE AND PUBLICATION OF REGISTRATION NUMBER.....	22
Sec. 1104.107. EXPIRATION OF REGISTRATION.....	22
SUBCHAPTER D. PRACTICE BY APPRAISAL MANAGEMENT COMPANY.....	22
Sec. 1104.151. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED	22
Sec. 1104.152. VERIFICATION OF LICENSURE OR CERTIFICATION	22
Sec. 1104.153. APPRAISAL REVIEW	23
Sec. 1104.154. COMPETENCY OF APPRAISERS	23
Sec. 1104.155. PROFESSIONAL STANDARDS.....	23
Sec. 1104.156. BUSINESS RECORDS	23
Sec. 1104.157. COMPENSATION OF APPRAISERS	23
Sec. 1104.158. STATEMENT OF FEES	23
Sec. 1104.159. DISCLOSURE OF REGISTRATION NUMBER	24
Sec. 1104.160. MANDATORY REPORTING.....	24
Sec. 1104.161. REMOVAL OF APPRAISER FROM APPRAISAL PANEL.....	24
Sec. 1104.162. DISPUTE RESOLUTION.....	24
SUBCHAPTER E. DISCIPLINARY ACTIONS AND PROCEDURES AND ADMINISTRATIVE PENALTIES	24
Sec. 1104.201. DISCIPLINARY POWERS OF BOARD	24

Sec. 1104.202.	ADMINISTRATIVE PENALTY <i>[Effective March 1, 2012]</i>	25
Sec. 1104.203.	PROHIBITED PRACTICES <i>[Effective March 1, 2012]</i>	25
Sec. 1104.204.	COMPLAINT <i>[Effective March 1, 2012]</i>	26
Sec. 1104.205.	REVIEW AND INVESTIGATION.....	27
Sec. 1104.206.	GENERAL SUBPOENA AUTHORITY.....	27
Sec. 1104.207.	REPORT OF INVESTIGATION REQUIRED <i>[Effective March 1, 2012]</i>	27
Sec. 1104.208.	ACTION BASED ON REPORT. <i>[Effective March 1, 2012]</i>	27
Sec. 1104.209.	NOTICE OF VIOLATION AND PENALTY <i>[Effective March 1, 2012]</i>	27
Sec. 1104.210.	PENALTY TO BE PAID OR HEARING REQUESTED <i>[Effective March 1, 2012]</i>	28
Sec. 1104.211.	TEMPORARY SUSPENSION <i>[Effective March 1, 2012]</i>	28
Sec. 1104.212.	NOTICE OF HEARING <i>[Effective March 1, 2012]</i>	28
Sec. 1104.213.	APPLICABILITY OF ADMINISTRATIVE PROCEDURE LAW <i>[Effective March 1, 2012]</i>	28
Sec. 1104.214.	ACTION AFTER HEARING <i>[Effective March 1, 2012]</i>	28
Sec. 1104.215.	DECISION BY BOARD <i>[Effective March 1, 2012]</i>	28
Sec. 1104.216.	APPLICATION FOR REHEARING <i>[Effective March 1, 2012]</i>	29
Sec. 1104.217.	DECISION ON REHEARING <i>[Effective March 1, 2012]</i>	29
SUBCHAPTER F. OTHER ENFORCEMENT PROVISIONS.....		29
Sec. 1104.251.	INJUNCTION <i>[Effective March 1, 2012]</i>	29
Sec. 1104.252.	CIVIL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED REGISTRATION <i>[Effective March 1, 2012]</i>	29
Sec. 1104.253.	CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED REGISTRATION <i>[Effective March 1, 2012]</i>	29

CHAPTER 1103. REAL ESTATE APPRAISERS

SUBCHAPTER A.

GENERAL PROVISIONS

Sec. 1103.001. **SHORT TITLE.** This chapter may be cited as the Texas Appraiser Licensing and Certification Act.

Sec. 1103.002. **PURPOSE.** The purpose of this chapter is to:

(1) conform state law relating to the regulation of real estate appraisers to the requirements adopted under Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(2) enforce standards for the appraisal of real property.

Sec. 1103.003. **DEFINITIONS.** In this chapter:

(1) "Appraisal" means, regardless of whether prepared for a federally related transaction:

(A) an opinion of value; or

(B) the act or process of developing an opinion of value.

(2) "Appraisal Foundation" means The Appraisal Foundation, as defined by 12 U.S.C. Section 3350, or its successor.

(2-a) "Appraisal Standards Board" means the Appraisal Standards Board of the Appraisal Foundation, or its successor.

(3) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, or its successor.

(4) "Appraiser Qualifications Board" means the Appraiser Qualifications Board of the Appraisal Foundation, or its successor.

(5) "Board" means the Texas Appraiser Licensing and Certification Board.

(6) "Commissioner" means the commissioner of the Texas Appraiser Licensing and Certification Board.

(6-a) "Federally related transaction" means

a real estate-related transaction that:

(A) requires the services of an appraiser; and

(B) is engaged in, contracted for, or regulated by a federal financial institution regulatory agency.

(6-b) "Federal financial institution regulatory agency" means:

(A) the Board of Governors of the Federal Reserve System;

(B) the Federal Deposit Insurance Corporation;

(C) the Office of the Comptroller of the Currency;

(D) the Office of Thrift Supervision;

(E) the National Credit Union Administration; or

(F) the successors of any of those agencies.

(7) "State-certified real estate appraiser" or "certified appraiser" means a person who is certified under this chapter.

(8) "State-licensed real estate appraiser" or "licensed appraiser" means a person who is licensed under this chapter.

Sec. 1103.004. **EFFECT OF CHAPTER.** (a) Repealed by Acts 2005, 79th Leg., Ch. 703, Sec. 22, eff. September 1, 2005.

(b) This chapter does not prohibit:

(1) a person authorized by law from performing an evaluation of real property for or providing an evaluation of real property to another person; or

(2) a real estate broker licensed under Chapter 1101 or a salesperson acting under the authority of a sponsoring broker from providing to another person a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion:

(A) is not referred to as an appraisal;

(B) is given in the ordinary course of the broker's or salesperson's business; and

(C) is related to the actual or potential

acquisition, disposition, encumbrance, or management of an interest in real property.

Sec. 1103.005. REAL ESTATE BROKER OR SALESPERSON LICENSE NOT REQUIRED. A person is not required to be licensed as a real estate broker or salesperson under Chapter 1101 to appraise real property in this state if the person is:

- (1) certified or licensed under this chapter;
- (2) approved as an appraiser trainee under this chapter; or
- (3) certified or licensed as a real estate appraiser by another state.

Sec. 1103.006. APPLICATION OF SUNSET ACT. If the federal government removes the requirements for the preparation or use of an appraisal by federally regulated financial institutions, the board is subject to Chapter 325, Government Code (Texas Sunset Act), and is subject to sunset review in the next regular session of the legislature following the date of the federal government's action. Unless continued in existence by that legislature as provided by that chapter, the board is abolished and this chapter expires on the 90th day after the last day of the regular session of that legislature.

SUBCHAPTER B.

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

Sec. 1103.051. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD. The Texas Appraiser Licensing and Certification Board is an independent subdivision of the Texas Real Estate Commission.

Sec. 1103.052. BOARD MEMBERSHIP. (a) The board consists of nine members as follows:

- (1) the executive secretary of the Veterans' Land Board or the executive secretary's designee; and
- (2) eight members appointed by the governor with the advice and consent of the senate as follows:

(A) four members who are certified or licensed appraisers actively engaged in the practice of appraising real property; and

(B) four public members who qualify for appointment based on their recognized business ability.

(b) The executive secretary of the Veterans' Land Board or the executive secretary's designee is a voting member of the board.

(c) In making appointments to the board, the governor shall ensure that:

- (1) a single appraisal organization is not overrepresented on the board;
- (2) the board is independent of a trade association, profession, or industry; and
- (3) the board represents:

(A) the diverse geographic areas of the state; and

(B) a cross-section of disciplines in the field of real estate appraisal.

(d) Appointments to the board shall be made without regard to:

- (1) the race, color, religion, sex, disability, familial status, or national origin of the appointee; or
- (2) the appointee's membership in an appraisal organization.

Sec. 1103.053. QUALIFICATIONS OF APPOINTED MEMBERS. (a) An appointed member of the board must be a qualified voter of this state.

(b) A person appointed to the board qualifies by taking the constitutional oath of office not later than the 15th day after the date of appointment.

Sec. 1103.054. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is a certified or licensed appraiser;
- (2) is certified or licensed by an occupational regulatory agency in the field of real estate brokerage or appraisal;
- (3) owns or controls, directly or indirectly, a business entity or other organization whose

primary purpose is to engage in real estate sales, brokerage, or appraisal; or

(4) is employed by or participates in the management of a business entity or other organization whose primary purpose is to engage in real estate sales, brokerage, or appraisal.

Sec. 1103.055. TERMS. (a) Appointed members of the board serve staggered two-year terms, with the terms of two appraiser members and two public members expiring on January 31 of each year.

(b) An appointed member may not serve more than three consecutive two-year terms.

Sec. 1103.056. OFFICERS; EXECUTIVE COMMITTEE. (a) At a regular meeting in February of each year, the board shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(b) The officers elected under Subsection (a) constitute the executive committee.

Sec. 1103.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that an appointed member:

(1) does not have at the time of appointment the qualifications required by this subchapter for appointment to the board;

(2) does not maintain during service on the board the qualifications required by this subchapter for appointment to the board;

(3) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(4) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year, unless the absence is excused by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of an appointed board member exists.

(c) If the presiding officer of the board has knowledge that a potential ground for removal of an appointed board member exists, the presiding officer shall immediately notify the governor.

Sec. 1103.058. PER DIEM; REIMBURSEMENT. An appointed board member is entitled to receive:

(1) \$75 for each day the member engages in official duties as a board member; and

(2) reimbursement for actual and necessary expenses incurred in performing official duties as a board member.

Sec. 1103.059. QUASI-JUDICIAL IMMUNITY. A member of the board is entitled to quasi-judicial immunity from suit for an action that:

(1) is taken as a member of the board; and

(2) is in compliance with the law.

SUBCHAPTER C.

COMMISSIONER AND OTHER BOARD PERSONNEL

Sec. 1103.101. COMMISSIONER. (a) The administrator of the Texas Real Estate Commission shall serve as commissioner.

(b) The board may delegate to the commissioner the responsibility for administering this chapter, including the approval of consent orders and agreements.

Sec. 1103.102. OTHER BOARD PERSONNEL. In addition to the commissioner, the board may employ other officers and employees as necessary to administer this chapter.

Sec. 1103.103. SALARIES. [Repealed September 1, 2011, SB 1000, 82R]

Sec. 1103.104. DUTIES OF COMMISSIONER. The commissioner shall:

(1) disseminate information;

(2) administer rules adopted by the board under this chapter;

(3) review each application for a certificate or license and make a recommendation for final action to the board;

(4) review and make recommendations to the board regarding the adoption of rules relating to:

(A) the examination required by Subchapter F;

(B) education and experience requirements for issuance of certificates and licenses;

(C) continuing education for a certified or licensed appraiser;

(D) standards of professional practice and ethics for a certified or licensed appraiser;

(E) standards for a real estate appraisal performed by a certified or licensed appraiser; and

(F) the fees established by the board under Section 1103.156;

(5) collect fees established by the board;

(6) manage the staff and employees of the board; and

(7) perform any other duty prescribed by the board under this chapter.

SUBCHAPTER D.

BOARD POWERS AND DUTIES

Sec. 1103.151. RULES RELATING TO CERTIFICATES AND LICENSES. The board may adopt:

(1) rules for certifying or licensing an appraiser or approving an appraiser trainee in this state that are in accordance with this chapter and consistent with applicable federal law;

(2) rules relating to the education and experience required for certifying or licensing an appraiser or approving an appraiser trainee that are consistent with the guidelines recognized by the Appraiser Qualifications Board;

(3) rules relating to the examination required by Subchapter F; and

(4) rules relating to procedures for the timely renewal of a certificate, license, or trainee approval.

Sec. 1103.152. APPRAISER CERTIFICATE AND LICENSE CATEGORIES. The board may:

(1) establish certificate and license categories that are consistent with the categories recognized by the Appraiser Qualifications Board; and

(2) prescribe qualifications for each category that are consistent with the qualifications established for that category by the Appraiser Qualifications Board.

Sec. 1103.153. RULES RELATING TO CONTINUING EDUCATION. The board may adopt rules relating to continuing education requirements for a certified or licensed appraiser or an approved appraiser trainee.

Sec. 1103.154. RULES RELATING TO PROFESSIONAL CONDUCT. The board may adopt:

(1) rules as necessary to conform to the minimum written standards of the Appraisal Standards Board by incorporating the Uniform Standards of Professional Appraisal Practice;

(2) rules requiring a certified or licensed appraiser to comply with standards of competency, professional conduct, and ethics prescribed by the Uniform Standards of Professional Appraisal Practice, as adopted by the Appraisal Standards Board; and

(3) rules relating to the standards for the development of an appraisal and the conveyance of an appraisal report by a certified or licensed appraiser that are consistent with the Uniform Standards of Professional Appraisal Practice.

Sec. 1103.155. ROSTER. (a) The board shall maintain a roster of persons who are certified or licensed under this chapter.

(b) The roster must indicate the type of certificate or license held by each person listed.

(c) The board shall send a copy of the roster to the Appraisal Subcommittee at least annually.

Sec. 1103.156. FEES (a) The board may establish reasonable fees to administer this chapter, including:

(1) an application fee for a certificate or license;

(2) an examination fee;

- (3) a renewal fee for a certificate or license;
- (4) a registration fee for a nonresident real estate appraiser;
- (5) an application fee for an appraiser trainee;
- (6) a renewal fee for an appraiser trainee;
- (7) a fee for filing a request for a return to active status; and
- (8) other appropriate fees.

(b) The board shall collect from each certified or licensed appraiser an annual registry fee in an amount established by the board not to exceed the amount required by the Appraisal Subcommittee. The board shall deposit the registry fees to the credit of the appraiser registry account in the general revenue fund.

(c) The fees collected under Subsection (b) shall be sent to the Appraisal Subcommittee regularly as required by federal law.

Sec. 1103.157. GIFTS, GRANTS, AND DONATIONS. The board may solicit, accept, and administer gifts, grants, and donations of any kind from any public or private source for the purposes of this chapter.

Sec. 1103.157. ADVISORY COMMITTEE. (a) The board shall establish an advisory committee to advise the board and make recommendations on matters related to the regulation of appraisal management companies under Chapter 1104.

(b) The advisory committee consists of the assistant presiding officer of the board and two persons appointed by the governor as follows:

(1) a controlling person of an appraisal management company registered under Chapter 1104; and

(2) a public member with recognized business ability.

(c) The assistant presiding officer of the board shall serve as the presiding officer of the advisory committee.

(d) The members of the advisory committee appointed by the governor serve staggered two-year terms, with the terms of the appraisal management company member and the public member expiring on January 31 of alternating years.

Sec. 1103.158. EXPERT WITNESS TESTIMONY BY BOARD MEMBER. Notwithstanding Section 572.051, Government Code, a board member may testify as an expert witness in an action concerning a violation of the Uniform Standards of Professional Appraisal Practice.

SUBCHAPTER E. CERTIFICATE AND LICENSE REQUIREMENTS

Sec. 1103.201. CERTIFICATE OR LICENSE REQUIRED. (a) A person may not perform an appraisal of real estate unless the person is licensed or certified as an appraiser under this chapter, registered as a temporary out-of-state appraiser under this chapter, or acting as an appraiser trainee under the sponsorship of a certified appraiser.

(b) Unless the person holds the appropriate license or certification, a person may not:

(1) use the title "state-certified real estate appraiser" or "state-licensed real estate appraiser"; or

(2) refer to an appraisal performed by the person as a "certified appraisal" or "licensed appraisal."

Sec. 1103.2015. GENERAL APPLICATION REQUIREMENTS. An applicant for a license or certificate issued under this chapter shall provide the board with the applicant's current mailing address, telephone number, and e-mail address, if available.

Sec. 1103.202. ELIGIBILITY REQUIREMENTS FOR CERTIFICATE. To be eligible for a certificate under this chapter, an applicant must:

(1) pass the examination required by Subchapter F;

(2) successfully complete the number and type of classroom hours or other educational qualifications required by the Appraiser Qualifications Board;

(3) provide evidence satisfactory to the board that the applicant has at least the minimum

number of hours of experience in performing appraisals over the specified number of calendar years as required by the Appraiser Qualifications Board; and

(4) satisfy the board as to the applicant's honesty, trustworthiness, and integrity.

Sec. 1103.203. ELIGIBILITY REQUIREMENTS FOR LICENSE. To be eligible for a license under this chapter, an applicant must:

(1) pass the examination required by Subchapter F;

(2) successfully complete the number and type of classroom hours or other educational qualifications required by the guidelines of the Appraiser Qualifications Board;

(3) provide evidence satisfactory to the board that the applicant has at least the minimum number of hours of experience in performing appraisals over the specified number of calendar years as required by the guidelines of the Appraiser Qualifications Board; and

(4) satisfy the board as to the applicant's honesty, trustworthiness, and integrity.

Sec. 1103.204. FULFILLMENT OF EDUCATION REQUIREMENTS. (a) In this section, "real estate-related financial transaction" means a transaction involving:

(1) selling, leasing, purchasing, exchanging, investing in, or financing real property or an interest in real property;

(2) refinancing real property or an interest in real property; or

(3) using real property or an interest in real property as security for a loan or investment, including a mortgage-backed security.

(b) This chapter does not limit the amount of time in which an applicant for a certificate or license is required to satisfy the education requirements under this subchapter.

(c) The board shall give an applicant for a certificate or license credit toward fulfilling the requirements of Sections 1103.202(2) and 1103.203(2) for classroom hours taken in the course of becoming licensed as a real estate broker or salesperson or for professional development or continuing education courses taken, whether the classroom hours or courses

are taken by a person as a real estate broker or salesperson or as an employee of a financial institution engaged in real estate-related financial transactions, if the classroom hours or courses satisfy the requirements established by the guidelines recognized by the Appraiser Qualifications Board.

Sec. 1103.205. FULFILLMENT OF EXPERIENCE REQUIREMENTS. (a) Except as provided by Section 1103.208, this chapter does not limit the amount of time in which an applicant for a certificate or license is required to satisfy the experience requirements under this subchapter.

(b) An applicant for a certificate or license must provide an affidavit on a form prescribed by the board stating that the applicant has the required number of hours of experience in performing appraisals as recognized by the Appraiser Qualifications Board.

(c) For the purpose of determining the qualifications of an applicant for a certificate or license under this chapter, acceptable appraisal experience includes:

(1) any one or any combination of the categories recognized by the Appraiser Qualifications Board; and

(2) experience as a real estate lending officer of a financial institution or as a real estate broker that includes the actual performance or technical review of real estate appraisals.

(d) For purposes of this subchapter, an hour of experience means 60 minutes spent in one or more of the acceptable areas of appraisal experience recognized under this subchapter. Calculation of the hours of experience must be based solely on actual hours of experience.

Sec. 1103.206. VERIFICATION OF EDUCATION AND EXPERIENCE. (a) The board shall adopt a reliable method to verify the evidence of education submitted by an applicant for a certificate or license.

(b) The board shall adopt a reliable method to verify the evidence of appraisal experience submitted by an applicant for a certificate or license. The method must include the review of appraisal experience of all applicants for certification and must rely on appropriate sampling techniques that are applied to not more

than five percent of the license applications received by the board. An applicant whose application is selected for verification has at least 60 days after the date of selection to prepare any records requested by the board. The board may not require the applicant to provide more information than the information the board may obtain under Section 1103.207.

Sec. 1103.207. ADDITIONAL INFORMATION FROM CERTAIN APPLICANTS. (a) In addition to the information or documentation specified by this subchapter, the board may obtain other information or documentation from an applicant for a certificate or license under this chapter if the board determines that:

(1) a consumer complaint or peer complaint against the applicant alleging fraud, incompetency, or malpractice is reasonable; or

(2) other just cause exists for requiring further information.

(b) The board may obtain the additional information or documentation by:

(1) requiring the applicant to complete a form prescribed by the board that includes a detailed listing of the applicant's appraisal experience and states for each appraisal claimed by the applicant:

(A) the municipality or county in which the appraisal was performed;

(B) the type and description of the building or property appraised;

(C) the approach to value used in the appraisal;

(D) the actual number of hours spent on the appraisal; and

(E) any other information determined appropriate by the board; or

(2) engaging in other investigative research determined appropriate by the board.

Sec. 1103.208. PROVISIONAL LICENSE FOR CERTAIN APPRAISER TRAINEES. (*Repealed by H.B. 2375, 82nd Leg. May 10, 2011.*)

Sec. 1103.209. RECIPROCAL CERTIFICATE OR LICENSE. (a) The board shall issue a

reciprocal certificate or license to an applicant from another state if:

(1) the appraiser licensing and certification program of the other state is in compliance with 12 U.S.C. Section 3331 et seq.;

(2) the appraiser holds a valid license or certificate from a state whose requirements for licensure or certification meet or exceed the licensure or certification requirements of this state; and

(3) the appraiser satisfies the board as to the appraiser's honesty, trustworthiness, and integrity.

(b) (*Repealed May 10, 2011, H.B. 2375*)

(c) The application form submitted for a reciprocal certificate or license under this section must be comparable to the form required of a resident of this state applying for a similar certificate or license.

(d) The fee charged to an appraiser from another state for a reciprocal certificate or license under this section must be comparable to the fee required of a resident of this state applying for a similar certificate or license. A person who obtains a certificate or license by reciprocity under this section must pay the federal registry fee and any other fee the board imposes.

(e) An applicant for a certificate or license under this chapter who is not a resident of this state must submit with the application an irrevocable consent that states that service of process in an action against the applicant arising out of the applicant's activities as a certified or licensed appraiser in this state may be made by delivery of the process to the commissioner if the plaintiff in the action, using due diligence, cannot obtain personal service on the applicant. If process is served as provided by this subsection, the commissioner shall immediately send a copy of the material served on the commissioner to the certified or licensed appraiser at the appraiser's address of record.

(f) The board shall request verification from the state in which the applicant is certified or licensed to confirm that the applicant's certificate or license is valid, active, and in good standing. The board may not issue a reciprocal certificate or license without that verification.

(g) A reciprocal certificate or license expires on the second anniversary of the last day of the

month in which it was issued.

(h) A reciprocal certificate or license is renewable under terms adopted by the board.

Sec. 1103.2091. PROBATIONARY CERTIFICATE, LICENSE, OR TRAINEE APPROVAL.

(a) The board may issue a probationary certificate or license or approve an appraiser trainee on a probationary basis.

(b) The board by rule shall adopt reasonable terms for issuing a probationary certificate or license and for approval of an appraiser trainee on a probationary basis.

(c) A person who holds a probationary certificate or license or who is approved as an appraiser trainee under this section must disclose the probationary status to all clients before accepting an assignment.

Sec. 1103.210. DENIAL OF CERTIFICATE OR LICENSE. (a) The board shall immediately provide written notice to the applicant of the board's denial of a certificate or license under this chapter.

(b) An appeal of the denial of a certificate or license is governed by Chapter 2001,

Sec. 1103.211. CERTIFICATE OR LICENSE RENEWAL; CONTINUING EDUCATION. (a) A certificate or license issued by the board expires on the second anniversary of the date of issuance.

(b) A person may renew a certificate or license by:

(1) paying the renewal fee; and

(2) providing evidence satisfactory to the board that the person has completed continuing education requirements that comply with the guidelines recognized by the Appraiser Qualifications Board and that are imposed by rule under this chapter.

(c) For purposes of Subsection (b)(2), the board shall accept as continuing education any educational offering that complies with the guidelines recognized by the Appraiser Qualifications Board that a certified or licensed appraiser was awarded by a national appraiser organization approved by the board as a provider of qualifying appraisal education.

Sec. 1103.2111. LATE RENEWAL OF CERTIFICATE, LICENSE, OR TRAINEE APPROVAL. (a) A person whose certificate, license, or approval has been expired for 90 days or less may renew the certificate, license, or approval by paying to the board a fee equal to 1-1/2 times the required renewal fee. If a certificate, license, or approval has been expired for more than 90 days but less than six months, the person may renew the certificate, license, or approval by paying to the board a fee equal to two times the required renewal fee.

(b) A certificate, license, or approval that is renewed under this section shall expire on the date that would apply had the certificate, license, or approval been timely renewed.

(c) A person may not perform an appraisal in a federally related transaction while the person is not actively licensed or certified as an appraiser.

(d) If a person's certificate, license, or approval has been expired six months or longer, the person may not renew the certificate, license, or approval. The person may obtain a new certificate, license, or approval by complying with the requirements and procedures for an original application.

Sec. 1103.212. EXTENSION OF TIME TO COMPLETE REQUIRED CONTINUING EDUCATION. (a) The board by rule may establish procedures under which a person may obtain an extension of time to complete continuing education required to renew the person's certificate or license.

(b) The board may require a person under this section to:

(1) pay an additional fee, not to exceed \$200, on or before the date the certificate or license is scheduled to expire; and

(2) complete the required continuing education not later than the 60th day after the date the certificate or license is scheduled to expire.

(c) Notwithstanding the other provisions of this section, a person must complete the required continuing education before performing an appraisal in a federally related transaction.

Sec. 1103.213. INACTIVE CERTIFICATE

OR LICENSE. (a) The board may place on inactive status the certificate or license of an appraiser if the appraiser:

- (1) is not acting as an appraiser;
- (2) is not sponsoring an appraiser trainee; and
- (3) submits a written application to the board before the expiration date of the appraiser's certificate or license.

(b) The board may place on inactive status the certificate or license of an appraiser whose certificate or license has expired if the appraiser applies for inactive status on a form prescribed by the board not later than the first anniversary of the expiration date of the appraiser's certificate or license.

(c) An appraiser applying for inactive status shall terminate the appraiser's association with each appraiser trainee sponsored by the appraiser by giving written notice to each appraiser trainee before the 30th day preceding the date the appraiser applies for inactive status.

(d) An appraiser on inactive status:

- (1) may not perform any activity regulated under this chapter;
- (2) must pay annual renewal fees; and
- (3) is not required to pay the annual registry fee described by Section 1103.156(b).

(e) The board shall maintain a list of each appraiser whose certificate or license is on inactive status.

(f) The board shall remove an appraiser's certificate or license from inactive status if the appraiser:

- (1) submits an application to the board;
- (2) pays the required fee; and

(3) submits proof of complying with the continuing education requirements of Section 1103.211 during the two years preceding the date the application under Subdivision (1) is filed.

SUBCHAPTER F.

APPRAISER EXAMINATION

Sec. 1103.251. EXAMINATION REQUIRED. (a) The board shall prescribe an appraiser examination.

(b) The examination must be:

- (1) written; and
- (2) approved by the Appraiser Qualifications Board.

Sec. 1103.252. TESTING SERVICE. (a) The board may contract with a testing service to administer the examination.

(b) The testing service may collect an examination fee from an applicant for a certificate or license.

Sec. 1103.253. TIME AND PLACE OF EXAMINATION; NOTICE. (a) The examination must be offered at least twice each year.

(b) The board shall determine the time and place of the examination.

(c) The board shall give reasonable public notice of the examination in the manner provided by board rule.

(d) The board may assign an examination date and site to an applicant. The assigned site must be the nearest examination site available to the applicant.

Sec. 1103.254. EXAMINATION APPLICATION. (a) An application to take the examination must be on a form prescribed by the board.

(b) An application is active for one year beginning on the date the application is initially accepted. If an applicant does not pass the examination before the first anniversary of the date of application, the applicant must submit a new application and pay the appropriate fees.

Sec. 1103.255. EXPERIENCE NOT REQUIRED BEFORE TAKING EXAMINATION. An applicant for the examination is not required to fulfill the experience requirement for a certificate before taking the examination.

Sec. 1103.256. MINIMUM PASSING GRADE REQUIRED. To pass the examination, an applicant for a certificate or license must achieve the minimum score required by the Appraiser Qualifications Board.

Sec. 1103.257. EXAMINATION RESULTS. (a) Not later than the 31st day after the date a person takes an examination, the board shall notify the person of the examination results. If an examination is graded or reviewed by a national testing service, the board shall notify the person of the examination results not later than the 31st day after the date the board receives the results from the testing service.

(b) If notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay not later than the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination. The request must be accompanied by a statement identifying the person and a fee in an amount determined by the board. The board shall release the analysis directly to the person requesting the analysis.

(d) The examination results are confidential.

Sec. 1103.258. REEXAMINATION. (a) An applicant who fails an examination may apply to retake the examination on payment of an additional examination fee.

(b) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the board that the applicant has completed additional education, as prescribed by the board, since the date the applicant last took the examination .

Sec. 1103.259. GUIDELINES; STUDY GUIDES. (a) The board shall:

(1) periodically publish guidelines and preexamination study guides;

(2) make the guidelines and study guides available to applicants; and

(3) update the guidelines and study guides as necessary.

(b) Except for the examination and other testing products that require secure and discreet protection, the contents of study guides and other material developed by the board or with the board's authorization are within the public

domain and free of copyright restrictions.

(c) If material described by Subsection (b) is reproduced for distribution by an entity other than the board:

(1) the material may not be sold at a price that exceeds the cost of reproduction and distribution; and

(2) the entity may not profit from the distribution of the material.

SUBCHAPTER G.

TEMPORARY APPRAISAL AUTHORITY FOR OUT-OF-STATE APPRAISERS

Sec. 1103.301. REGISTRATION REQUIRED. A person certified or licensed as a real estate appraiser by another state may appraise real property in this state without holding a certificate or license issued under this chapter if the person registers with the board under this subchapter.

Sec. 1103.302. REGISTRATION APPLICATION. A person may register with the board by:

(1) completing a registration form prescribed by the board; and

(2) meeting the requirements established under this chapter.

Sec. 1103.303. ELIGIBILITY REQUIREMENTS FOR REGISTRATION. A person is eligible to register with the board if:

(1) the certification and licensing program under which the person is certified or licensed by another state has not been disapproved by the Appraiser Qualifications Board; and

(2) the person's appraisal business in this state does not exceed six months.

Sec. 1103.304. EXTENSION OF REGISTRATION. A person may obtain a 90-day extension of a temporary registration under this subchapter by completing an extension form approved by the board and paying any required fee. The board may grant only one extension for each temporary registration.

SUBCHAPTER H.
APPRAISER TRAINEES

Sec. 1103.351. SPONSOR. (a) The board may authorize a certified appraiser under this chapter to sponsor an appraiser trainee.

(b) An appraiser trainee may have more than one sponsor.

Sec. 1103.352. APPLICATION FOR APPRAISER TRAINEE. An applicant for approval as an appraiser trainee and each sponsor of the applicant must apply to the board on a form prescribed by the board.

Sec. 1103.353. ELIGIBILITY REQUIREMENTS FOR APPRAISER TRAINEE. To be eligible for approval as an appraiser trainee, an applicant must:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States or a lawfully admitted alien;
- (3) have been a resident of this state for the 60 days preceding the date the application is filed;
- (4) satisfy the board as to the applicant's honesty, trustworthiness, and integrity; and
- (5) meet all other qualifications established by the board.

Sec. 1103.354. APPRAISER TRAINEE REPORTS. (a) An appraiser trainee approved by the board may perform an appraisal under the direction of a sponsor or authorized supervisor of the trainee.

(b) The sponsor or authorized supervisor shall sign each report prepared by the appraiser trainee performing an appraisal under the direction of the sponsor or authorized supervisor. The sponsor or authorized supervisor is responsible to the public and to the board for the appraiser trainee's conduct.

(c) An appraiser trainee may co-sign a report prepared under this section.

Sec. 1103.355. DISCIPLINARY PROCEDURES FOR APPRAISER TRAIN-

EES. (a) The board may reprimand an appraiser trainee or suspend or revoke an appraiser trainee's authority to act as an appraiser trainee for a violation of this chapter or a rule adopted under this subchapter.

(b) A disciplinary proceeding under this section is governed by Chapter 2001, Government Code.

Sec. 1103.356. RENEWAL OF APPRAISER TRAINEE APPROVAL. A person may renew an approval as an appraiser trainee by:

- (1) paying the renewal fee established by the board;
- (2) providing evidence satisfactory to the board of completion of any required continuing education; and
- (3) meeting any other renewal requirement established by the board.

SUBCHAPTER I.

PRACTICE BY CERTIFIED OR LICENSED APPRAISER

Sec. 1103.401. USE OF INSIGNIA OR IDENTIFICATION. (a) A person may not use any title, designation, initials, or other insignia or identification that would mislead the public as to the person's credentials, qualifications, or competency to perform a certified appraisal service unless the person is certified under this chapter.

(b) A person may not use any title, designation, initials, or other insignia or identification that would mislead the public as to the person's credentials, qualifications, or competency to perform licensed appraisal services unless the person is licensed under this chapter.

Sec. 1103.402. SIGNATURE OR ENDORSEMENT ON APPRAISAL. (a) A person certified or licensed under this chapter may not sign or endorse an appraisal unless the appraisal is substantially produced by that person.

(b) For purposes of this section, an appraisal is substantially produced by a person who

contributes in a material and verifiable manner to the research or analysis that results in the final opinion of value expressed in the appraisal.

Sec. 1103.403. CONTACT INFORMATION. .

(a) A certified or licensed appraiser who is a resident of this state shall maintain a fixed office in this state.

(b) Not later than the 10th day after the date an appraiser changes the appraiser's address, e-mail address, or telephone number, the appraiser shall notify the board of the change and pay any required fee.

Sec. 1103.404. BUSINESS RECORDS. A person who is certified or licensed under this chapter or who has applied for a certificate or license shall retain all business records relating to each appraisal performed by the person until at least the fifth anniversary of the date of the appraisal.

Sec. 1103.405. PROFESSIONAL STANDARDS. A person who holds a license, certificate, or approval issued under this chapter shall comply with:

(1) the most current edition of the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation; or

(2) other standards provided by board rule that are at least as stringent as the Uniform Standards of Professional Appraisal Practice.

SUBCHAPTER J.

DISCIPLINARY PROCEEDINGS GENERALLY

Sec. 1103.451. COMPLAINT. (a) Any person, including a member of the board, may initiate the complaint process under this subchapter by filing with the board a written complaint on a form prescribed by the board.

(b) The board, on its own motion, may file a formal complaint against:

- (1) a certified or licensed appraiser; or
- (2) an appraiser trainee who is approved by

the board under Subchapter H.

(c) A complaint alleging that a certified or licensed appraiser or an approved appraiser trainee has violated a rule of professional conduct adopted by the board must be filed with the board.

(d) The board, on its own motion, may file a formal complaint against a person who engages in an activity for which a certificate or license is required under this chapter without holding a certificate or license. This subchapter and Subchapter K apply to a complaint filed under this subsection in the same manner as they apply to a complaint filed under Subsection (b).

(e) A complaint alleging a violation by a person licensed, certified, or approved under this chapter may not be terminated solely on the basis that the person fails to renew the certificate, license, or approval.

Sec. 1103.452. REVIEW AND INVESTIGATION. (a) On receipt of a complaint or on its own motion, the board shall review and investigate an alleged act or omission that the board believes is a ground for disciplinary action.

(b) An investigator designated by the presiding officer of the board shall investigate each allegation in a complaint to determine whether probable cause exists for a hearing on the complaint.

(c) If the board determines that a complaint does not present facts that are grounds for disciplinary action, the board or the commissioner shall dismiss the complaint and may not take further action.

Sec. 1103.453. PEER INVESTIGATIVE COMMITTEE. (a) The presiding officer of the board, with the advice and consent of the executive committee, may appoint a peer investigative committee.

(b) A peer investigative committee consists of three certified or licensed appraisers. The presiding officer of the committee must be an appraiser member of the board. Each remaining committee member shall certify to the board that the member is familiar with the appraisal process in the appraisal that is the subject of the complaint.

(c) The peer investigative committee shall:

(1) review and determine the facts of a complaint; and

(2) submit a written report regarding the complaint to the board in a timely manner.

Sec. 1103.454. GENERAL SUBPOENA AUTHORITY. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter for inspection and copying.

(b) The board may also issue a subpoena for purposes of an investigation of a complaint to determine whether the board should institute a contested case proceeding.

(c) If a person does not comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists for the issuance of the subpoena.

Sec. 1103.455. REPORT OF INVESTIGATION REQUIRED. (a) At the conclusion of the investigation of a complaint, the investigator shall submit to the board a written report to enable the board to determine what further action is necessary.

(b) The report must contain:

(1) statements of fact;

(2) the recommendations of the investigator; and

(3) the position or defense of the investigated appraiser or appraiser trainee.

Sec. 1103.456. ACTION BASED ON REPORT. Based on the report submitted under Section 1103.455, the board may:

(1) order further investigation of the complaint;

(2) permit the appraiser or appraiser trainee who is the subject of the complaint to attend an

informal discussion as provided by Section 1103.457;

(3) determine that there is not probable cause to believe that a violation occurred and dismiss the case; or

(4) determine that there is probable cause to believe that a violation occurred and proceed as the complainant with a contested case hearing under Subchapter K.

Sec. 1103.457. INFORMAL DISCUSSION OF COMPLAINT. (a) On the action of the board or on request of the appraiser or appraiser trainee who is the subject of a complaint, the board may permit the appraiser or appraiser trainee an opportunity to appear before the board or an agent of the board for a voluntary, informal discussion of the facts and circumstances of the alleged violation.

(b) Repealed by Acts 2005, 79th Leg., Ch. 704, Sec. 16, eff. September 1, 2005.

(c) The board may seek a consent order as provided by Section 1103.458 at the time of the informal discussion.

Sec. 1103.458. CONSENT ORDER. (a) The board may negotiate a settlement and enter into a consent order with an appraiser or appraiser trainee who is the subject of a complaint under this subchapter.

(b) Repealed by Acts 2005, 79th Leg., Ch. 704, Sec. 16, eff. September 1, 2005.

(c) A consent order must be:

(1) approved by the board; and

(2) signed by the commissioner and the appraiser or appraiser trainee who is the subject of the complaint.

(d) A board member who participates in negotiating a consent order under this section is not disqualified from participating in the adjudication of a contested case that results from the negotiation.

(e) An appraiser or appraiser trainee who consents to negotiate under this section waives the right to notice and the opportunity to be heard under Chapter 2001, Government Code, during the negotiation.

(f) If the parties agree to a consent order, a statement of charges shall be filed with the

consent order.

Sec. 1103.459. CONSENT AGREEMENT. (a) The board may enter into a consent agreement as provided by this section rather than taking action against a violator of the rules of professional conduct adopted by the board.

(b) Repealed by Acts 2005, 79th Leg., Ch. 704, Sec. 16, eff. September 1, 2005.

(c) A consent agreement must be:

(1) approved by the board; and

(2) signed by the commissioner and the appraiser or appraiser trainee who is the subject of the complaint.

(d) An appraiser or appraiser trainee may be prosecuted for failure to comply with a consent agreement.

Sec. 1103.460. PUBLIC AVAILABILITY OF FINAL DECISION. A final decision of the board relating to a disciplinary action, including a consent order or consent agreement, may be provided to another state or made available to the public.

SUBCHAPTER K.

CONTESTED CASE HEARINGS

Sec. 1103.501. APPLICABILITY OF ADMINISTRATIVE PROCEDURE LAW. Except as otherwise provided by this chapter, a proceeding under this chapter is subject to Chapter 2001, Government Code.

Sec. 1103.5011. NOTICE OF VIOLATION AND PENALTY. (a) The commissioner may send an appraiser against whom a complaint has been filed a notice of violation including:

(1) a summary of the alleged violation;

(2) the recommended sanction, including the amount of any administrative penalty sought; and

(3) a conspicuous notice that the respondent has the right to a hearing to contest the alleged violation, the recommended sanction, or both.

(b) Not later than the 20th day after the date the person receives the notice under Subsection (a),

the person may:

(1) accept the commissioner's determination, including the recommended sanction; or

(2) request in writing a hearing, to be held under Chapter 2001, Government Code, on the occurrence of the violation, the sanction, or both.

Sec. 1103.5012. PENALTY TO BE PAID OR HEARING REQUESTED. If the person accepts the commissioner's determination, or fails to respond in a timely manner to the notice, the board by order shall approve the determination and order payment of the recommended penalty, impose the recommended sanction, or both.

Sec. 1103.502. NOTICE OF HEARING. (a) The board shall provide notice to the parties of a contested case hearing.

(b) The notice must:

(1) state the time and place of the hearing; and

(2) state that the appraiser or appraiser trainee must submit an answer as prescribed by Section 1103.505 not later than the 20th day after the date the appraiser or appraiser trainee receives the notice.

(c) Not later than the 30th day before the hearing date, the board shall personally deliver or send by certified mail, return receipt requested, to the appraiser or appraiser trainee:

(1) the notice prescribed by this section; and

(2) the statement of charges prescribed by Section 1103.503.

Sec. 1103.503. STATEMENT OF CHARGES. (a) The attorney representing the board shall prepare the statement of charges.

(b) The statement of charges must:

(1) state each act or omission with which the appraiser or appraiser trainee is charged, including any standard of professional practice or rule of professional conduct alleged to have been violated; and

(2) be sufficiently detailed to enable the appraiser or appraiser trainee to prepare a

defense.

Sec. 1103.504. ATTORNEY GENERAL REPRESENTATION. The attorney general may not represent the board in a contested case before the State Office of Administrative Hearings.

Sec. 1103.505. ANSWER. The appraiser's or appraiser trainee's answer must contain:

(1) the name, address, and telephone number of the appraiser or appraiser trainee;

(2) a specific statement regarding any allegation in the complaint, which must:

(A) be in the form of an admission or denial; and

(B) contain any explanation or other statement of mitigating circumstances the appraiser or appraiser trainee determines relevant; and

(3) any additional information the appraiser or appraiser trainee determines relevant to the investigation that may assist in deciding the contested case.

Sec. 1103.506. DISCOVERY PROCEDURES. The discovery procedures that are applicable to a civil action are applicable to a proceeding under this chapter.

Sec. 1103.507. SUBPOENA IN CONTESTED CASE. (a) The commissioner shall issue a subpoena to compel the attendance of a witness or the production of records or other evidence if:

(1) a party to the proceeding requests the subpoena orally or in writing;

(2) the request specifies each item of evidence sought and the full name and address of each witness sought; and

(3) the party shows reasonable cause.

(b) A party or the board may petition the district court to enforce a subpoena issued under this section. If the party or the board makes a proper showing, the district court shall order the person to whom the subpoena is issued to obey the subpoena.

Sec. 1103.508. HEARING. (a) A contested

case hearing shall be conducted before an administrative law judge of the State Office of Administrative Hearings.

(b) Repealed by Acts 2005, 79th Leg., Ch. 704, Sec. 16, eff. September 1, 2005.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(16), eff. September 1, 2007.

(d) The administrative law judge shall control the proceedings and may:

(1) administer oaths;

(2) admit or exclude testimony or other evidence; and

(3) rule on all motions and objections.

Sec. 1103.510. FAILURE TO APPEAR. (a) If an appraiser or appraiser trainee receives proper notice of a contested case hearing but does not appear in person at the hearing, the administrative law judge may conduct the hearing or enter an order, as the judge determines appropriate.

(b) The appraiser or appraiser trainee is bound by the results of the hearing to the same extent as if the appraiser or appraiser trainee had appeared.

Sec. 1103.511. OPEN HEARING. A contested case hearing is open to the public.

Sec. 1103.512. RECORD OF PROCEEDINGS. (a) Contested case proceedings shall be recorded by:

(1) mechanical or electrical means; or

(2) a certified shorthand reporter.

(b) At the request of a party, the proceedings or any part of the proceedings shall be transcribed. The expense of the transcription shall be charged to the requesting party.

(c) Before testimony may be presented, the record must:

(1) show the identities of:

(A) any board members present;

(B) the administrative law judge; and

(C) the parties and their representatives; and

(2) state that all testimony is being recorded.

(d) The recording, stenographic notes, or transcription of oral proceedings shall be filed with and maintained by the board until at least the fifth anniversary of the date of the decision in the contested case.

Sec. 1103.513. ORDER OF PROCEEDINGS. A contested case hearing shall be conducted in the following order, subject to modification at the discretion of the administrative law judge:

(1) the administrative law judge shall read a summary of the charges and answers to the charges and other responsive pleadings filed by the appraiser or appraiser trainee before the hearing;

(2) the attorney representing the board shall make a brief opening statement, including a summary of the charges and a list of the witnesses and documents to support the charges;

(3) the appraiser or appraiser trainee may make an opening statement, including the names of any witnesses the appraiser or appraiser trainee may call;

(4) the attorney representing the board shall present evidence, concluding with a summary of the evidence for the state;

(5) the appraiser or appraiser trainee shall present evidence;

(6) the attorney representing the board may present rebuttal evidence;

(7) the appraiser or appraiser trainee may present rebuttal evidence; and

(8) the closing arguments shall be made in the following order:

(A) the attorney representing the board;

(B) the appraiser or appraiser trainee; and

(C) the attorney representing the board on rebuttal.

Sec. 1103.514. COPIES OF EVIDENCE. A copy of each document offered as evidence at a contested case hearing shall be provided to the opposing party.

Sec. 1103.515. RESPONSE TO CERTAIN

ACCUSATIONS. (a) To the extent an appraiser or appraiser trainee believes the appraiser or appraiser trainee is being asked to reply to an accusation, innuendo, or fact for the first time in a contested case hearing, the appraiser or appraiser trainee may respond to the board in writing not later than the 10th day after the last day of the hearing.

(b) If the appraiser or appraiser trainee chooses to respond as provided by this section, the attorney representing the board is entitled to continue to present evidence during the hearing.

Sec. 1103.516. DIRECT EXAMINATION. In a contested case hearing, the administrative law judge may conduct a direct examination of a witness at any stage of the witness's testimony.

Sec. 1103.517. IMMUNITY OF WITNESSES. (a) The board in a contested case hearing may grant a witness immunity from disciplinary action by the board.

(b) The official record of the hearing must include the reason for granting immunity.

Sec. 1103.518. ACTION AFTER HEARING. . On conclusion of a contested case hearing and on submission of all written responses allowed under Section 1103.515, the administrative law judge shall:

(1) make findings of fact and conclusions of law; and

(2) issue to the board a proposal for decision that the board take one or more of the following actions:

(A) dismiss the charges;

(B) suspend or revoke the appraiser's certificate or license or the appraiser trainee's approval;

(C) impose a period of probation with or without conditions;

(D) require the appraiser to submit to reexamination for a certificate or license;

(E) require the appraiser or appraiser trainee to participate in additional professional education or continuing education;

(F) issue a public or private reprimand or

a warning;

(G) issue a consent order; or

(H) impose an administrative penalty as prescribed by Section 1103.552.

Sec. 1103.519. APPLICATION FOR REHEARING. (a) Not later than the 20th day after the date a final decision is issued in a contested case, a party may file an application with the board for a rehearing. The application must state:

(1) the specific grounds for rehearing; and

(2) the relief sought.

(b) The application is denied if the board does not grant it before the 20th day after the date the commissioner is served with the application.

Sec. 1103.520. DECISION ON REHEARING. (a) The decision made at the conclusion of the original contested case hearing may not be reversed or modified for a procedural, evidentiary, or other error that did not cause substantial injustice to the parties.

(b) The decision made on a rehearing may incorporate by reference any part of the decision made at the conclusion of the original hearing.

(c) On rehearing, the administrative law judge shall consider facts not presented in the original hearing if:

(1) the facts arose after the original hearing was concluded;

(2) the party offering the evidence could not reasonably have provided the evidence at the original hearing; or

(3) the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

Sec. 1103.521. DECISION; ORDER. (a) The administrative law judge shall file the judge's final decision in a contested case hearing with the commissioner.

(b) A copy of the decision and order shall immediately be:

(1) sent by certified mail, return receipt requested, to the appraiser at the appraiser's last known address; or

(2) personally delivered to the appraiser.

Sec. 1103.522. REINSTATEMENT OF CERTIFICATE OR LICENSE. A person whose certificate or license has been revoked or a person who has surrendered a certificate or license issued by the board may not apply to the board for reinstatement until the second anniversary of the date of revocation or surrender.

SUBCHAPTER L.

PENALTIES AND OTHER ENFORCEMENT PROVISIONS

Sec. 1103.551. INJUNCTION. (a) The board may institute an action in its own name against any person, including a person who is not certified or licensed under this chapter, to enjoin a violation of this chapter or a rule adopted by the board under this chapter.

(b) An action under this section must be brought in a district court in Travis County. The attorney general shall act as legal advisor to the board and provide necessary legal assistance.

Sec. 1103.5511. TEMPORARY SUSPENSION. (a) The presiding officer of the board shall appoint a disciplinary panel consisting of three board members to determine whether a person's license or certification to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed or certified to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license or certification of that person.

(c) A license or certification may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) A temporary suspension under this section automatically expires after 45 days if the board has not scheduled a hearing to take place within that time or if, at the board's request, the hearing is continued beyond the 45th day.

(e) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Sec. 1103.552. ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty for a violation of this chapter or a rule adopted or order issued by the board under this chapter in an amount not to exceed:

(1) \$1,500 for each violation; or

(2) \$5,000 for multiple violations in a single case.

(b) The person on whom the penalty is imposed shall pay the penalty not later than the 20th day after the date the order imposing the penalty becomes final.

Sec. 1103.553. CIVIL PENALTY FOR FILING FRIVOLOUS COMPLAINT. (a) A certified or licensed appraiser who files against another certified or licensed appraiser a complaint that the board determines to be frivolous is liable for a civil penalty.

(b) The amount of a civil penalty imposed under this section may not be less than \$1,000 or more than \$10,000.

(c) At the request of the board, the attorney general or a district or county attorney may bring an action in district court to recover a civil penalty under this section.

(d) A civil penalty recovered in an action brought under this section shall be deposited in the state treasury.

Sec. 1103.5535. CIVIL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED CERTIFICATE OR LICENSE. (a) A

person who receives consideration for engaging in an activity for which a certificate or license is required under this chapter and who does not hold a certificate or license is liable for a civil penalty.

(b) The amount of a civil penalty imposed under this section may not be less than the amount of money equal to the value of the consideration received or more than three times the amount of money equal to the value of the consideration received.

(c) At the request of the board, the attorney general or a district or county attorney may bring an action in district court to recover a civil penalty under this section.

(d) A civil penalty recovered in an action under this section shall be deposited in the state treasury.

Sec. 1103.554. CRIMINAL PENALTY FOR MISREPRESENTING QUALIFICATIONS. (a) A person commits an offense if the person knowingly:

(1) provides false information in connection with an affidavit filed under Section 1103.205; or

(2) violates Section 1103.401.

(b) An offense under this section is a Class B misdemeanor.

Sec. 1103.5545. CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED CERTIFICATE OR LICENSE. (a) A person commits an offense if the person engages in an activity for which a certificate or license is required under this chapter without holding a certificate or license.

(b) An offense under this section is a Class A misdemeanor.

CHAPTER 1104. APPRAISAL MANAGEMENT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1104.001. SHORT TITLE. This chapter may be cited as the Texas Appraisal Management Company Registration and Regulation Act.

Sec. 1104.002. PURPOSE. The purpose of this chapter is to establish and enforce standards related to appraisal management services for appraisal reports on residential properties located in this state with fewer than five units.

Sec. 1104.003. DEFINITIONS. (a) The definitions in Section 1103.003 apply to this chapter.

(b) In this chapter:

(1) "Appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated in a securitization, an external third party 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 that directly or indirectly performs appraisal management services.

(2) "Appraisal management service" means to directly or indirectly perform any of the following acts:

(A) administer an appraisal panel;

(B) recruit, retain, or select an appraiser;

(C) contract with an appraiser to perform an appraisal assignment;

(D) provide a completed appraisal performed by an appraiser to one or more clients; or

(E) manage the process of having an appraisal performed, including:

(i) receiving and assigning appraisal orders and reports;

(ii) tracking and determining the status of orders for appraisals;

(iii) conducting quality control of a

completed appraisal before delivery of the appraisal to the person who ordered the appraisal;

(iv) collecting fees from creditors and underwriters for services provided; or

(v) reimbursing appraisers for services performed.

(3) "Appraisal panel" means a pool of licensed or certified appraisers who perform appraisals as independent contractors for an appraisal management company.

(4) "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. The term does not include an examination of an appraisal for grammatical, typographical, mathematical, or other similar administrative errors that do not involve the appraiser's professional judgment, including compliance with the elements of the client's statement of work.

(5) "Appraiser" means a person licensed or certified under Chapter 1103.

(6) "Controlling person" means:

(A) an owner, officer, or director of an appraisal management company;

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

(C) 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.

(7) "Financial institution" means:

(A) a bank, savings bank, or savings and loan association or a subsidiary or affiliate of a bank, savings bank, or savings and loan association;

(B) a state or federal credit union or a subsidiary, affiliate, or credit union service organization of a state or federal credit union;

(C) an insurance company licensed or

authorized to do business in this state under the Insurance Code;

(D) a mortgage banker registered under Chapter 157, Finance Code;

(E) a person licensed under Chapter 156, Finance Code;

(F) a lender licensed under Chapter 342, Finance Code;

(G) a farm credit system institution; or

(H) a political subdivision of this state conducting an affordable home ownership program.

(8) "Uniform Standards of Professional Appraisal Practice" means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

Sec. 1104.004. EXEMPTIONS. (a) This chapter does not apply to:

(1) a person who exclusively employs appraisers on an employer and employee basis for the performance of appraisals;

(2) a person acting as an appraisal firm as defined by board rule that at all times during a calendar year employs on an exclusive basis as independent contractors not more than 15 appraisers for the performance of appraisals;

(3) a financial institution, including a department or unit within the institution, that is regulated by an agency of this state or the United States government;

(4) subject to Subsection (b), a person who enters into an agreement with an appraiser for the performance of an appraisal that on completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal;

(5) an appraisal management company with an appraisal panel of not more than 15 appraisers at all times during a calendar year; or

(6) an appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to appraisal independence standards at least as stringent as those under Section 1104.203 or the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) through regulation by an agency of this state or the United States government.

(b) An appraisal management company may

not require an employee of the appraisal management company who is an appraiser to sign an appraisal that is completed by another appraiser who contracts with the appraisal management company in order to avoid the requirements of this chapter.

SUBCHAPTER B.

BOARD POWERS AND DUTIES

Sec. 1104.051. RULES. The board may adopt rules necessary to administer the provisions of this chapter.

Sec. 1104.052. FEES. (a) Subject to Subsection (b), the board by rule shall establish application, renewal, and other fees in amounts so that the sum of the fees paid by all appraisal management companies seeking registration under this chapter is sufficient for the administration of this chapter.

(b) The board shall collect from each appraisal management company registered under this chapter the national registry fee required by the appraisal subcommittee for each person who is on the appraisal panel of the company and licensed or certified as an appraiser in this state. The board shall deposit the registry fees to the credit of the appraiser registry account in the general revenue fund.

(c) The fees collected under Subsection (b) shall be sent to the appraisal subcommittee regularly as required by federal law.

SUBCHAPTER C.

REGISTRATION REQUIREMENTS

Sec. 1104.101. REGISTRATION REQUIRED. Unless a person is registered under this chapter, a person may not:

(1) act or attempt to act as an appraisal management company;

(2) provide or attempt to provide appraisal management services; or

(3) advertise or represent or attempt to advertise or represent the person as an appraisal management company.

[Effective March 1, 2012]

Sec. 1104.102. ELIGIBILITY FOR REGISTRATION; OWNERSHIP. (a) A person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state may not own in any manner more than one percent of an appraisal management company registered or applying for registration under this chapter unless the person has subsequently had a license or certificate to act as an appraiser granted or reinstated.

(b) An entity more than 10 percent of which is owned by a person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state may not own more than 10 percent of an appraisal management company registered or applying for registration under this chapter unless the person has subsequently had a license or certificate to act as an appraiser granted or reinstated.

(c) A person owning more than 10 percent of an appraisal management company in this state must:

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

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

(d) An appraisal management company applying for registration under this chapter shall certify to the board that:

(1) it has reviewed each entity that owns more than 10 percent of the company; and

(2) no entity reviewed under Subdivision (1) is more than 10 percent owned by a person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation and who has not subsequently had a license or certificate to act as an appraiser granted or reinstated.

Sec. 1104.103. APPLICATION FOR REGISTRATION OR RENEWAL. (a) An applicant for registration or registration renewal under this chapter must submit:

(1) an application on a form approved by the board; and

(2) the application or renewal fee established under Section 1104.052(a).

(b) The application must contain:

(1) the name, business address, and telephone contact information of the entity seeking registration;

(2) if the entity is not a corporation domiciled in this state, the name and contact information for the company's agent for service of process in this state;

(3) the name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns more than 10 percent of the appraisal management company;

(4) the name, address, and contact information for at least one controlling person;

(5) the designation of a primary contact under Section 1104.104;

(6) the name and contact information of at least one appraiser designated by the company to respond to and communicate with appraisers on the company's appraisal panel regarding appraisal assignments;

(7) a certification that the entity has a system in place to ensure compliance with Subchapter D and Section 129E of the Truth in Lending Act (15 U.S.C. Section 1601 et seq.);

(8) a written irrevocable consent to service of process; and

(9) any other information required by the board to approve the application.

(c) The board shall adopt rules regarding the renewal of a registration under this chapter.

Sec. 1104.104. DESIGNATION OF PRIMARY CONTACT. (a) An appraisal management company applying for registration under this chapter shall designate one controlling person as the primary contact for all communication between the board and the company.

(b) The controlling person designated under Subsection (a):

(1) must:

(A) be certified as an appraiser in at least one state at all times during the designation; or

(B) have completed:

(i) the 15-hour national Uniform Standards of Professional Appraisal Practice course; and

(ii) the seven-hour national Uniform Standards of Professional Appraisal Practice update course not more than two years before the renewal of the appraisal management company's registration;

(2) may not have had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state unless the person has subsequently had a license or certificate to act as an appraiser granted or reinstated;

(3) must be of good moral character, as determined by the board; and

(4) shall submit to a background investigation, as determined by the board.

Sec. 1104.105. DENIAL OF REGISTRATION.
(a) The board may deny a registration:

(1) to an applicant who fails to satisfy a requirement of this chapter; or

(2) on a determination by the board that:

(A) there is reasonable evidence that any person who owns more than 10 percent of the appraisal management company or any controlling person of the company has, within the 24 months preceding the date of the application, had a license or certification as an appraiser or a registration as an appraisal management company suspended, revoked, or put on probation in any state;

(B) the applicant has, while registered under this chapter, demonstrated incompetency, untrustworthiness, or conduct or practices that render the registrant unfit to perform appraisal management services; or

(C) the applicant no longer performs appraisal management services in good faith and is a source of detriment, injury, or loss to the public.

(b) The board shall immediately provide written notice to the applicant of the board's denial of a registration under this chapter.

(c) An appeal of the denial of a registration is governed by Chapter 2001, Government Code.

Sec. 1104.106. ISSUANCE AND PUBLICATION OF REGISTRATION NUMBER. The board shall:

(1) issue a unique registration number to each appraisal management company registered under

this chapter; and

(2) publish annually a list of the companies registered under this chapter and the registration number of each company.

Sec. 1104.107. EXPIRATION OF REGISTRATION. Unless renewed, a registration issued under this chapter expires on the second anniversary of the date the registration is issued.

SUBCHAPTER D.

PRACTICE BY APPRAISAL MANAGEMENT COMPANY

Sec. 1104.151. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED. (a) An appraisal management company registered under this chapter may not knowingly:

(1) employ a person in a position in which the person has the responsibility to order appraisals or to review completed appraisals if the person has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state;

(2) enter into any independent contractor arrangement for the provision of appraisals or appraisal management services with any person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state; or

(3) enter into any contract, agreement, or other business relationship for the provision of appraisals or appraisal management services with any entity that employs, has entered into an independent contract arrangement, or has entered into any contract, agreement, or other business relationship with any person who has ever had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state.

(b) An appraisal management company is not in violation of Subsection (a) if the person whose license or certification was denied, revoked, or surrendered in lieu of revocation has since that denial, revocation, or surrender had a license or certificate granted or reinstated and the person maintains the license or certificate in good standing.

Sec. 1104.152. VERIFICATION OF LICEN-

SURE OR CERTIFICATION. An appraisal management company registered under this chapter must verify that an individual to whom the company is making an assignment for the completion of an appraisal:

(1) is licensed or certified under Chapter 1103; and

(2) has not had a license or certificate as an appraiser denied, revoked, or surrendered in lieu of revocation since the last time the company made an assignment for an appraisal to the appraiser.

Sec. 1104.153. APPRAISAL REVIEW. A person who performs an appraisal review for an appraisal management company must be licensed or certified under Chapter 1103 with at least the same certification for the property type as the appraiser who completed the report being reviewed.

Sec. 1104.154. COMPETENCY OF APPRAISERS. Before making an assignment to an appraiser, an appraisal management company must verify that the appraiser receiving the assignment satisfies each provision of the competency rule of the Uniform Standards of Professional Appraisal Practice for the appraisal being assigned.

Sec. 1104.155. PROFESSIONAL STANDARDS. An appraisal management company registered under this chapter shall on a periodic basis perform an appraisal review of the work of appraisers performing appraisal services for the company to ensure that the services comply with:

(1) the edition of the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal; or

(2) other standards prescribed by board rule.

Sec. 1104.156. BUSINESS RECORDS. (a) An appraisal management company registered under this chapter or that has applied for registration under this chapter shall retain for at least five years all business records relating to each service request that the company receives and the appraiser who performs the appraisal for the company.

(b) The board may audit the records of an

appraisal management company registered under this chapter to ensure compliance with this chapter, board rules, and the Uniform Standards of Professional Appraisal Practice.

(c) A written record of all substantive communications between an appraisal management company registered under this chapter and an appraiser relating to inclusion on an appraisal panel or to an appraisal assignment must be maintained as provided under Subsection (a).

Sec. 1104.157. COMPENSATION OF APPRAISERS. (a) An appraisal management company shall:

(1) except in cases of breach of contract or substandard performance of services, pay an appraiser for the completion of an appraisal or valuation assignment not later than the 60th day after the date the appraiser provides the completed appraisal or valuation assignment to the company or its assignee; and

(2) compensate appraisers at a rate that is reasonable and customary for appraisals being performed in the market area of the property being appraised consistent with the presumptions under federal law.

(b) An appraiser who is aggrieved under this section may file a complaint with the board against the appraisal management company if the matter remains unresolved after the appraiser completes the company's dispute resolution process under Section 1104.162.

Sec. 1104.158. STATEMENT OF FEES. (a) In reporting to a client, an appraisal management company shall separately state the fees:

(1) paid to an appraiser for the completion of an appraisal; and

(2) charged by the company for appraisal management services.

(b) An appraisal management company may not:

(1) prohibit an appraiser from recording in the body of the report that is submitted by the appraiser to the company the fee that the appraiser was paid by the company for completing the appraisal; or

(2) include any fees for appraisal management services performed by the company in the amount the company reports as charges for the

actual completion of an appraisal by an appraiser.

Sec. 1104.159. DISCLOSURE OF REGISTRATION NUMBER. An appraisal management company registered under this chapter shall disclose the company's registration number on all documents used to procure appraisals in this state.

Sec. 1104.160. MANDATORY REPORTING. An appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice in a manner that materially affects a value conclusion, violating applicable laws, or otherwise engaging in unethical or unprofessional conduct shall refer the matter to the board in the manner provided by Section 1104.204.

Sec. 1104.161. REMOVAL OF APPRAISER FROM APPRAISAL PANEL. (a) Other than during the first 30 days after the date an appraiser is first added to the appraisal panel of an appraisal management company, a company may not remove an appraiser from its panel, or otherwise refuse to assign requests for appraisal services to an appraiser without:

(1) notifying the appraiser in writing of the reasons for removal from the company's panel;

(2) if the appraiser is being removed from the panel for illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of this chapter, notifying the appraiser of the nature of the alleged conduct or violation; and

(3) providing an opportunity for the appraiser to respond in writing to the notification.

(b) An appraiser who is removed from the appraisal panel of an appraisal management company for alleged illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of this chapter, may file a complaint with the board for a review of the decision of the company if the matter remains unresolved after the appraiser completes the company's dispute resolution process under Section 1104.162.

(c) In a review under Subsection (b), the board may not make any determination regarding the nature of the business relationship between the appraiser and the appraisal management

company that is unrelated to the grounds for the removal.

(d) The board shall hear and resolve a complaint filed under Subsection (b) not later than the 180th day after the date the complaint is filed with the board.

(e) If after opportunity for hearing and review, the board determines that an appraiser did not commit the alleged violation, the board shall order that the appraiser be returned to the appraisal panel of the appraisal management company. The appraisal management company may not refuse to make assignments for appraisal services or otherwise penalize the appraiser after returning the appraiser to the company's appraisal panel.

Sec. 1104.162. DISPUTE RESOLUTION. An appraisal management company shall make a dispute resolution process available to review a written request by an appraiser who:

(1) is dismissed from the company's appraisal panel for a reason stated in Section 1104.161(a) (2);

(2) is not paid as required by Section 1104.157; or

(3) alleges a violation by the company of one or more prohibitions in Section 1104.203.

SUBCHAPTER E.

DISCIPLINARY ACTIONS AND PROCEDURES AND ADMINISTRATIVE PENALTIES

Sec. 1104.201. DISCIPLINARY POWERS OF BOARD. (a) The board may reprimand an appraisal management company or conditionally or unconditionally suspend or revoke any registration issued under this chapter if the board determines that the appraisal management company has:

(1) violated or attempted to violate this chapter or any rule adopted by the board under this chapter; or

(2) procured or attempted to procure a license or registration by fraud, misrepresentation, or deceit.

(b) The board may probate the suspension or revocation of a registration under reasonable

terms determined by the board.

[Effective March 1, 2012]

Sec. 1104.202. ADMINISTRATIVE PENALTY. (a) In addition to any other disciplinary action under this chapter, the board may impose an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The amount of the administrative penalty may not exceed \$10,000 for each violation. Each day of a continuing violation is a separate violation.

(c) The amount of the penalty shall be based on:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts made to correct the violation; and
- (5) any other matter that justice may require.

[Effective March 1, 2012]

Sec. 1104.203. PROHIBITED PRACTICES. (a) An appraisal management company or an employee, director, officer, or agent of an appraisal management company may not:

(1) cause or attempt to cause the appraised value of a property assigned under an appraisal to be based on any factor other than the independent judgment of the appraiser;

(2) cause or attempt to cause the mischaracterization of the appraised value of a property in conjunction with a consumer credit transaction;

(3) seek to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of a consumer credit transaction;

(4) alter, modify, or otherwise change a completed appraisal report submitted by an appraiser by:

(A) altering or removing the appraiser's signature or seal; or

(B) adding information to, removing information from, or changing information contained in the appraisal report, including any

disclosure submitted by an appraiser in or with the report;

(5) condition the request for an appraisal or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;

(6) request that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time before the appraiser's completion of an appraisal;

(7) provide to an 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 a purchase transaction may be provided;

(8) make any part of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including:

(A) a loan closing; or

(B) a specific valuation being achieved by the appraiser in the appraisal report;

(9) withhold or threaten to withhold timely payment for an appraisal report or appraisal services rendered when the appraisal report or services are provided in accordance with the contract between the parties;

(10) withhold or threaten to withhold future business from an appraiser;

(11) demote or terminate or threaten to demote or terminate an appraiser;

(12) expressly or impliedly promise future business, promotions, or increased compensation for an appraiser;

(13) provide to an appraiser, or any person related to the appraiser, stock or other financial or nonfinancial benefits;

(14) allow the removal of an appraiser from an appraisal panel, without prior written notice to the appraiser;

(15) obtain, use, or pay for a second or subsequent appraisal or order an automated valuation model in connection with a mortgage financing transaction unless:

(A) 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;

(B) the subsequent appraisal or automated valuation model is done under a bona fide pre-funding or post-funding appraisal review or quality control process; or

(C) the subsequent appraisal or automated valuation model is otherwise required or permitted by federal or state law;

(16) prohibit legal and allowable communication between the appraiser and:

(A) the lender;

(B) a real estate license holder; or

(C) any other person from whom the appraiser, in the appraiser's own professional judgment, believes information would be relevant;

(17) refuse to accept an appraisal report prepared by more than one appraiser if an appraiser provides substantial assistance to another appraiser in the preparation of the report, unless the appraisal assignment names an individual appraiser or the statement of work requires an unassisted report; or

(18) require an appraiser to:

(A) prepare an appraisal report if the appraiser, in the appraiser's own professional judgment, believes the appraiser does not have the necessary expertise for the specific geographic area and the appraiser has notified the company of this belief;

(B) prepare an appraisal report under a schedule that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations if the appraiser has notified the company of this belief;

(C) provide the appraisal management company with the appraiser's digital signature or seal;

(D) modify any aspect of an appraisal report without the appraiser's agreement that the modification is appropriate;

(E) engage in any act or practice that does not comply with:

(i) the Uniform Standards of Professional Appraisal Practice; or

(ii) any assignment conditions and certifications required by the client;

(F) engage in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality;

(G) enter into an agreement to not serve on the panel of another appraisal management company;

(H) indemnify or hold harmless the appraisal management company against liability except liability for errors and omissions by the appraiser; or

(I) pay a fee imposed on the appraisal management company under Section 1104.052.

(b) Subsection (a) may not be construed to prohibit:

(1) an appraiser from reimbursing an appraisal management company for the actual cost of discretionary services provided to the appraiser;

(2) an appraiser from voluntarily providing the appraiser's digital signature to another person;

(3) an appraisal management company from asking an appraiser, after a report is delivered, to:

(A) consider additional appropriate property information, including the consideration of additional comparable properties to make or support an appraisal;

(B) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(C) correct errors in the appraisal report;

(4) an appraisal management company from requiring an appraiser to provide advance notice of and an opportunity for the appraisal management company to participate in any legal and allowable communications between the appraiser and a lender; or

(5) a copy of an executed contract for a purchase transaction being provided to an appraiser.

(c) The board may institute a disciplinary action or impose an administrative penalty under Chapter 1103 against an appraiser who, while acting as an employee, officer, or agent of an appraisal management company, engages in conduct prohibited by Subsection (a).

[Effective March 1, 2012]

Sec. 1104.204. COMPLAINT. (a) Any person, including a member of the board, may file with the board a written complaint on a form prescribed by the board.

(b) The board, on its own motion, may file a

complaint against an appraisal management company registered under this chapter.

[Effective March 1, 2012]

Sec. 1104.205. REVIEW AND INVESTIGATION. (a) On receipt of a complaint or on its own motion, the board shall review and investigate an alleged act or omission that the board believes is a ground for disciplinary action.

(b) An investigator designated by the presiding officer of the board or commissioner shall investigate each allegation in a complaint to determine whether probable cause exists for a hearing on the complaint.

(c) If the board determines that a complaint does not present facts that are grounds for disciplinary action, the board or the commissioner shall dismiss the complaint and may not take further action.

Sec. 1104.206. GENERAL SUBPOENA AUTHORITY. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter for inspection and copying.

(b) The board may also issue a subpoena for purposes of an investigation of a complaint to determine whether the board should institute a contested case proceeding.

(c) If a person does not comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists for the issuance of the subpoena.

Sec. 1104.207. REPORT OF INVESTIGATION REQUIRED. (a) At the conclusion of the investigation of a complaint, the investigator shall submit to the board a written report to enable the board to determine what further action is necessary.

(b) The report must contain:

(1) statements of fact;

(2) the recommendations of the investigator; and

(3) the position or defense of the investigated appraisal management company.

[Effective March 1, 2012]

Sec. 1104.208. ACTION BASED ON REPORT. (a) Based on the report submitted under Section 1104.207, the board may:

(1) order further investigation of the complaint;

(2) determine that there is not probable cause to believe that a violation occurred and dismiss the case; or

(3) determine that there is probable cause to believe that a violation occurred and enter into an agreed order with the respondent or proceed as the complainant with a contested case hearing under Chapter 2001, Government Code.

(b) The board by rule may delegate any of its authority under Subsection (a) to the commissioner.

[Effective March 1, 2012]

Sec. 1104.209. NOTICE OF VIOLATION AND PENALTY. (a) If, after investigating a possible violation and the facts surrounding that possible violation, the board determines that a violation occurred, the board shall give written notice of the violation to the person alleged to have committed the violation.

(b) The notice must:

(1) include a summary of the alleged violation;

(2) state the recommended sanction, including the amount of the proposed administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(c) Not later than the 20th day after the date the person receives the notice, the person may:

(1) accept the board's determination, including the proposed administrative penalty; or

(2) make a written request for a hearing on that determination.

[Effective March 1, 2012]

Sec. 1104.210. PENALTY TO BE PAID OR HEARING REQUESTED. If the person accepts the board's determination or fails to respond to the notice in a timely manner, the board by order shall approve the determination and impose the proposed penalty.

[Effective March 1, 2012]

Sec. 1104.211. TEMPORARY SUSPENSION. (a) The presiding officer of the board shall appoint a three-member disciplinary panel consisting of board members to determine whether a person's registration under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person registered under this chapter would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the person's registration.

(c) A registration may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) A temporary suspension under this section automatically expires after 45 days if the board has not scheduled a hearing to take place within that time or if, at the board's request, the hearing is continued beyond the 45th day.

(e) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

[Effective March 1, 2012]

Sec. 1104.212. NOTICE OF HEARING. Not later than the 30th day before the hearing date of a contested case involving an appraisal

management company, the board shall personally deliver or send by certified mail to the company notice of the hearing.

[Effective March 1, 2012]

Sec. 1104.213. APPLICABILITY OF ADMINISTRATIVE PROCEDURE LAW. Except as otherwise provided by this chapter, a proceeding under this subchapter is subject to Chapter 2001, Government Code.

[Effective March 1, 2012]

Sec. 1104.214. ACTION AFTER HEARING. On conclusion of a contested case hearing under this subchapter, the administrative law judge shall:

(1) make findings of fact and conclusions of law; and

(2) issue to the board a proposal for decision that the board shall take one or more of the following actions:

(A) dismiss the charges;

(B) revoke the appraisal management company's registration;

(C) suspend the registration of the appraisal management company for a period of not more than five years;

(D) impose a period of probation, with or without conditions;

(E) issue a public or private reprimand or a warning;

(F) impose an administrative penalty; or

(G) require the payment of costs expended by the board associated with the contested case, including legal fees and administrative costs.

[Effective March 1, 2012]

Sec. 1104.215. DECISION BY BOARD. (a) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the board by order may determine that:

(1) a violation has occurred and may impose an administrative penalty or another sanction; or

(2) a violation did not occur.

(b) The board shall give notice of the order to the person. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed or a description of any sanction imposed; and

(3) a statement of the right of the person to judicial review of the order.

[Effective March 1, 2012]

Sec. 1104.216. APPLICATION FOR REHEARING. (a) Not later than the 20th day after the date a final decision is issued in a contested case, a party may file an application with the board for a rehearing. The application must state:

(1) the specific grounds for rehearing; and

(2) the relief sought.

(b) The application is denied if the board does not grant it before the 120th day after the date the commissioner is served with the application.

[Effective March 1, 2012]

Sec. 1104.217. DECISION ON REHEARING. (a) The decision made at the conclusion of the original contested case hearing may not be reversed or modified for a procedural, evidentiary, or other error that did not cause substantial injustice to the parties.

(b) The decision made on a rehearing may incorporate by reference any part of the decision made at the conclusion of the original hearing.

(c) On rehearing, the administrative law judge shall consider facts not presented in the original hearing if:

(1) the facts arose after the original hearing was concluded;

(2) the party offering the evidence could not reasonably have provided the evidence at the original hearing; or

(3) the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

[Effective March 1, 2012]

Sec. 1104.251. INJUNCTION. (a) The board may institute an action in its own name against any person, including a person who is not registered under this chapter, to enjoin a violation of this chapter or a rule adopted by the board under this chapter.

(b) An action under this section must be brought in a district court in Travis County. The attorney general shall act as legal advisor to the board and provide necessary legal assistance.

[Effective March 1, 2012]

Sec. 1104.252. CIVIL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED REGISTRATION. (a) A person who receives consideration for engaging in an activity for which registration is required under this chapter and who is not registered is liable for a civil penalty.

(b) The amount of a civil penalty imposed under this section may not be less than the amount of money equal to the value of the consideration received or more than three times the amount of money equal to the value of the consideration received.

(c) At the request of the board, the attorney general or a district or county attorney may bring an action in district court to recover a civil penalty under this section.

(d) A civil penalty recovered in an action under this section shall be deposited in the state treasury.

Sec. 1104.253. CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED REGISTRATION. (a) A person commits an offense if the person engages in an activity for which registration is required under this chapter without being registered

(b) An offense under this section is a Class A misdemeanor.

[Effective March 1, 2012]

SUBCHAPTER F.

OTHER ENFORCEMENT PROVISIONS