

ARTICLE 14

Appraisal Management Company Registration

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47-14-1. Short title.

Chapter 47, Article 14 NMSA 1978 may be cited as the "Appraisal Management Company Registration Act".

47-14-2. Definitions.

As used in the Appraisal Management Company Registration Act :

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

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

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

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

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

E. "appraiser" means a person who provides an opinion of the market value of real property;

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

G. "board" means the real estate appraisers board created pursuant to the Real Estate Appraisers Act [61-30-1 NMSA 1978];

H. "client" means a person or entity that contracts with, or otherwise enters into an agreement with, an appraisal management company for the performance of real estate appraisal services;

I. "controlling person" means:

- (1) an owner, officer or director of a corporation, partnership, limited liability company or other business entity seeking to offer appraisal management services in this state;
- (2) an individual employed, appointed or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal management services and that has the authority to enter into agreements with independent appraisers for the performance of real estate appraisal services; or
- (3) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company;

J. "real estate appraisal services" means the practice of developing an opinion of the value of real property in conformance with the uniform standards of professional appraisal practice published by the appraisal foundation; and

K. "uniform standards of professional appraisal practice" means the uniform standards of professional appraisal practice promulgated by the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

47-14-3. Registration required.

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

B. The registration required by Subsection A of this section shall include:

- (1) the name of the entity seeking registration;
- (2) the business address of the entity seeking registration;

- (3) telephone contact information of the entity seeking registration;
- (4) if the entity seeking registration is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state;
- (5) the name, address and contact information for any individual or any corporation, partnership or other business entity that owns ten percent or more of the appraisal management company;
- (6) the name, address and contact information for a controlling person;
- (7) a certification that the entity seeking registration has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license or certification in good standing in this state pursuant to the Real Estate Appraisers Act;
- (8) a certification that the entity seeking registration has a system in place to review the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company on a periodic basis to ensure that the real estate appraisal services are being conducted in accordance with uniform standards of professional appraisal practice;
- (9) a certification that the entity maintains a detailed record of each service request that it receives and the independent appraiser that performs the real estate appraisal services for the appraisal management company;
- (10) an irrevocable consent to service of process;
- (11) a bond or other equivalent means of security as required by the Appraisal Management Company Registration Act; and
- (12) any other information required by the board.

47-14-3.1. Bonding requirements.

A. In order to qualify for registration or renewal of registration, an appraisal management company shall maintain a bond underwritten by a corporate surety authorized to transact business in New Mexico, or other equivalent means of security. The board shall set by rule the amount and conditions of the surety bond or other equivalent means of security required by this section, provided that the amount of the bond or security required shall not exceed twenty-five thousand dollars (\$25,000).

B. The bond or other equivalent means of surety shall secure payment for any administrative or judicial penalties that may be imposed by the board or the state and for any penalties or costs required by a board disciplinary action, and also as indemnity for any loss sustained by any person damaged as a result of a violation by the appraisal management company, of any provision of the Appraisal Management Company Registration Act or of any rule of the board adopted pursuant to that act. Consumer claims shall be given priority in recovering from the bond or equivalent surety.

C. An appraisal management company shall notify the board in writing of any claim made on the appraisal management company's bond or equivalent surety.

D. A deposit of cash or security may be accepted in lieu of the surety bond.

47-14-4. Exemptions.

The Appraisal Management Company Registration Act is not applicable to:

A. a corporation, partnership, sole proprietorship, subsidiary, limited liability company or other business entity that employs persons on an employer and employee basis exclusively for the performance of real estate appraisal services in the normal course of its business and the entity is responsible for ensuring that the real estate appraisal services being performed by its employees are being performed in accordance with uniform standards of professional appraisal practice;

B. an individual who in the normal course of the individual's business enters into an agreement, whether written or otherwise, with another independent contractor appraiser for the performance of real estate appraisal services that the hiring or contracting appraiser cannot complete for any reason, including competency, work load, schedule or geographic location; or

C. an individual, corporation, partnership, sole proprietorship, subsidiary, limited liability company or other business entity that in the normal course of business enters into an agreement, whether written or otherwise, with an independent contractor appraiser for the performance of real estate appraisal services and upon the completion of the appraisal, the report of the appraiser performing the real estate appraisal services is co-signed by the appraiser who subcontracted with the independent appraiser for the performance of the real estate appraisal services.

47-14-5. Forms.

An applicant for registration as an appraisal management company shall submit to the board an application on a form prescribed by the board.

47-14-6. Expiration of license.

A registration granted by the board pursuant to the Appraisal Management Company Registration Act shall be valid for one year from the date on which it is issued.

47-14-7. Consent to service of process.

Each entity applying for registration as an appraisal management company shall complete and execute an irrevocable consent to service of process form as prescribed by the board.

47-14-8. Fee.

The board shall establish the fee for appraisal management company registration by rule to cover the cost of the administration of the Appraisal Management Company Registration Act, but in no case shall the fee be more than two thousand dollars (\$2,000). Registration fees shall be credited to the appraiser fund pursuant to Section 61-30-18 NMSA 1978.

47-14-9. Owner requirements.

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

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

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

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

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

47-14-10. Controlling person.

Each appraisal management company applying to the board for registration in this state shall designate one controlling person that will be the main contact for all communication between the board and the appraisal management company.

47-14-11. Controlling person requirements.

In order to serve as a controlling person of an appraisal management company, a person shall:

A. certify to the board that the person has never had a certificate or a license issued by the board of this state, or the board of any other state, to act as an appraiser refused, denied, canceled or revoked;

B. be of good moral character, as determined by the board; and

C. submit to a background investigation, as determined by the board.

47-14-12. Employee requirements.

A. Any employee of the appraisal management company, or any person working on behalf of the appraisal management company, that has the responsibility of selecting independent appraisers for the performance of real estate appraisal services for the appraisal management company or the responsibility of reviewing completed appraisals shall have geographic and product competence and be appropriately trained and qualified in the performance of real estate appraisals as determined by the board by rule.

B. Any employee of the appraisal management company that has the responsibility to review the work of independent appraisers shall have demonstrated knowledge of the uniform standards of professional appraisal practice, as determined by the board by rule.

47-14-13. Requirements; liability.

A. An appraisal management company registered in this state pursuant to the Appraisal Management Company Registration Act shall not enter into contracts or agreements with an independent appraiser for the performance of real estate appraisal services unless that person is licensed or certified in good standing pursuant to the Real Estate Appraisers Act [61-30-1 NMSA 1978].

B. An appraisal management company shall not require an appraiser to indemnify the appraisal management company against liability except liability for errors and omissions by the appraiser.

47-14-14. Pre-engagement certification.

Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis on a form prescribed by the board that the appraisal management company has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license in good standing in this state pursuant to the Real Estate Appraisers Act [61-30-1 NMSA 1978].

47-14-15. Adherence to standards.

Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has a system in place to review the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company on a periodic basis to ensure that the real estate appraisal services are being conducted in accordance with uniform standards of professional appraisal practice.

47-14-16. Recordkeeping.

Each appraisal management company seeking to be registered shall certify to the board on an annual basis that it maintains a detailed record of each service request that it receives and the independent appraiser that performs the real estate appraisal services for the appraisal management company.

47-14-17. Appraiser independence; prohibitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47-14-18. Payment; limits; disclosure; nontaxable transaction certificate.

A. The fees paid to an appraiser for completion of the appraisal shall not include a fee for management of the appraisal process or any activity other than the performance of the appraisal.

B. An appraisal management company shall separately state the fees paid to an appraiser for appraisal services and the fees charged by the appraisal management company for services associated with the management of the appraisal process, including procurement of the appraiser's services to the client, borrower and any other payor.

C. Appraisers shall not be prohibited by the appraisal management company, client or other third party from disclosing the fee paid to the appraiser for the performance of the appraisal in the appraisal report.

D. As used in this section, "payor" means any person or entity who is responsible for making payment for the appraisal.

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

F. An appraisal management company shall provide an appraiser with the appropriate nontaxable transaction certificate pursuant to Section 7-9-48 NMSA 1978.

47-14-19. Appraisal reports; alteration; use.

An appraisal management company shall not:

- A. alter, modify or otherwise change a completed appraisal report submitted by an independent appraiser without the appraiser's written knowledge and consent; or
- B. use an appraisal report submitted by an independent appraiser for any other transaction.

47-14-20. Adjudication of disputes between an appraisal management company and an independent appraiser.

A. Except within the first thirty days after an independent appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company shall not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an independent appraiser without notifying the appraiser in writing of the reasons for the appraiser being removed from the appraiser panel of the appraisal management company. If the appraiser is being removed from the panel for illegal conduct, violation of the uniform standards of professional appraisal practice or a violation of state licensing standards, the appraisal management company shall provide the independent appraiser the nature of the alleged conduct or violation and provide an opportunity for the appraiser to respond.

B. An independent appraiser that is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the uniform standards of professional appraisal practice or violation of state licensing standards may file a complaint with the board for a review of the decision of the appraisal management company, except that in no case shall the board make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the actions specified in Subsection A of this section.

C. If an independent appraiser files a complaint against an appraisal management company pursuant to Subsection B of this section, the board shall adjudicate the complaint within one hundred eighty days.

D. If after opportunity for hearing and review, the board determines that an independent appraiser did not commit a violation of law, a violation of the uniform standards of professional appraisal practice or a violation of state licensing standards, the board shall order that the appraiser be added to the appraiser panel of the appraisal management company that was the subject of the complaint without prejudice.

47-14-21. Enforcement.

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

- A. committing any act in violation of the Appraisal Management Company Registration Act;
- B. violating any rule or regulation adopted by the board in the interest of the public and consistent with the provisions of the Appraisal Management Company Registration Act;
- C. procuring a registration, license or certification by fraud, misrepresentation or deceit; or
- D. violating the Real Estate Appraisers Act [61-30-1 NMSA 1978] or the federal Financial Institutions Reform Recovery and Enforcement Act of 1989.

47-14-22. Disciplinary hearings.

The board shall conduct adjudicatory proceedings in accordance with the Uniform Licensing Act [61-1-1 NMSA 1978]; provided that:

A. a written notice shall be satisfied by personal service on the controlling person of the registrant or the registrant's agent for service of process in this state or by sending the notice by certified mail, return receipt requested, to the controlling person of the registrant to the registrant's address on file with the board; and

B. a hearing on the charges shall be at a time and place prescribed by the board.

47-14-23. Rulemaking authority.

The board may adopt rules that are reasonably necessary to implement, administer and enforce the provisions of the Appraisal Management Company Registration Act, including rules for obtaining copies of appraisals and other documents necessary to audit compliance with the Appraisal Management Company Registration Act.