

SENATE BILL 3155

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 39, relative to the Tennessee Appraisal Management Company Registration and Regulation Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 39, is amended by adding Sections 2 through 30 as a new part thereto:

SECTION 2. This part shall be known and may be cited as the "Tennessee Appraisal Management Company Registration and Regulation Act".

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Appraisal" means the practice of developing an opinion of the value of real property in conformance with the Uniform Standards for Professional Appraisal Practice (USPAP) as developed by the Appraisal Foundation;

(2) "Appraisal management company" means a corporation, partnership, sole partnership, subsidiary unit, or other business entity that directly or indirectly performs appraisal management services, regardless of the use of the term appraisal management company, mortgage technology provider, lender processing services, lender services, loan processor, mortgage services, real estate closing services provider, settlement services provider, real estate closing services provider, vendor management company or any other term;

(3) "Appraisal management services" means to, directly or indirectly, perform any of the following functions on behalf of a lender, financial institution, client, or any other person:

(A) Administer an appraiser panel;

(B) Recruit, qualify, verify licensing or certification, and negotiate fees and service level expectations with persons who are part of an appraiser panel;

(C) Receive an order for an appraisal from one (1) person, and deliver the order for the appraisal to an appraiser that is part of an appraiser panel for completion;

(D) Track and determine the status of orders for appraisals;

(E) Conduct quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal; and

(F) Provide a completed appraisal performed by an appraiser to one (1) or more persons who have ordered an appraisal;

(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, except that an examination of an appraisal for grammatical, typographical, or other similar errors shall not be an appraisal review;

(5) "Appraiser" means an individual who holds a license or certification to complete an appraisal pursuant to this chapter;

(6) "Appraiser fee schedule" means a list of the various appraisals requested by an appraisal management company from appraisers and the amount that the appraisal management company pays to an appraiser for the performance of the appraisals;

(7) "Appraiser panel" means a network of licensed or certified appraisers who are independent contractors to the appraisal management company that have:

(A) Responded to an invitation, request, or solicitation from an appraisal management company, in any form, to perform appraisals for persons that have ordered appraisals through the appraisal management company or to perform

appraisals for the appraisal management company directly, on a periodic basis, as requested and assigned by the appraisal management company; and

(B) Been selected and approved by an appraisal management company to perform appraisals for any client of the appraisal management company that has ordered an appraisal through the appraisal management company or to perform appraisals for the appraisal management company directly, on a periodic basis, as assigned by the appraisal management company;

(8) "Commission" means the real estates appraisers commission created by § 62-39-201;

(9) "Compliant appraiser" means an appraiser that satisfies each provision of the competency rule of the Uniform Standards of Professional Appraisal Practice (USPAP) for a specific appraisal assignment that the appraiser has received or may receive from an appraisal management company; and

(10) "Controlling person" means:

(A) An owner, officer or director of a corporation, partnership or other business entity seeking to offer appraisal management services in this state;

(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 has 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.

#### SECTION 4.

(a) No person shall 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 registration issued by the commission under this part.

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

(1) Name of the entity seeking registration;

(2) Business address of the entity seeking registration which must be located and maintained within this state;

(3) Phone contact information of the entity seeking registration;

(4) If the entity 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 (10%) or more of the appraisal management company;

(6) The name, address, and contact information for one (1) or more controlling persons;

(7) A certification that the entity 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 Tennessee pursuant to part 3 of this chapter, if a license or certification is required to perform appraisals, pursuant to Section 18 of this act;

(8) A certification that the entity has a system in place to review the work of all appraisers who 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 (USPAP), pursuant to Section 19 of this act;

(9) A certification that the entity maintains a detailed record of each service request that it receives and the appraiser who performs the residential real estate appraisal services for the appraisal management company, pursuant to Section 20 of this act;

(10) An irrevocable Uniform Consent to Service of Process, pursuant to Section 8 of this act; and

(11) Any other information required by the commission.

#### SECTION 5.

This part does not apply to:

(1) A person who exclusively employs appraisers on an employer and employee basis for the performance of appraisals if:

(A) The employer is responsible for ensuring that the appraisals are performed by employees in accordance with Uniform Standards of Professional Appraisal Practice (USPAP); and

(B) The employer accepts all liability associated with the performance of the appraisal by the employee;

(2) A department or unit within a financial institution that is subject to direct regulation by an agency of the United States government, or by the department of financial institutions, that receives a request for the performance of an appraisal from one (1) employee of the financial institution, and another employee of the same financial institution assigns the request for the appraisal to an appraiser who is an independent contractor to the institution, except that an

appraisal management company that is a wholly-owned subsidiary of a financial institution shall not be considered a department or unit within a financial institution to which this part does not apply; or

(3) A person that enters into an agreement, whether written or otherwise, with an appraiser for the performance of an appraisal, and upon the completion of the appraisal, the report of the appraiser performing the appraisal is signed by both the appraiser who completed the appraisal and the appraiser who requested the completion of the appraisal, except that an appraisal management company may not avoid the requirements of this section by requiring that an employee of the appraisal management company who is an appraiser to sign an appraisal that is completed by an appraiser that is part of the appraisal panel of the appraisal management company.

SECTION 6. An applicant for a registration as an appraisal management company shall submit to the commission an application on a form prescribed by the commission.

SECTION 7. Registration shall be valid for one (1) year from its issuance.

SECTION 8. Each entity applying for a registration as an appraisal management company in Tennessee shall complete an irrevocable Uniform Consent to Service of Process, as prescribed by the commission.

SECTION 9.

(a) The commission shall establish by rule and regulation the fee to be paid by each appraisal management company seeking registration under this part, such that the sum of the fees paid by all appraisal management companies seeking registration under this section shall be sufficient for the administration of this part. However, the fee shall not be more than two thousand dollars (\$2,000).

(b) Each applicant for registration shall post with the commission and maintain on renewal a surety bond in the amount of fifty thousand dollars (\$50,000). The details of the bond shall be prescribed by rule and regulation of the commission.

#### SECTION 10.

(a) An appraisal management company applying for a registration in Tennessee shall not be more than ten percent (10%) owned by:

(1) A person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state;

(2) An entity that is more than ten percent (10%) owned by any person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state; or

(3) A financial institution or other mortgage origination entity.

(b) Each person who owns more than ten percent (10%) of an appraisal management company in this state shall:

(1) Be of good moral character, as determined by the commission; and

(2) Submit to a background investigation, as determined by the commission.

(c) Each appraisal management company applying for registration shall certify to the commission that it has reviewed each entity that owns more than ten percent (10%) of the appraisal management company and that no entity that owns more than ten percent (10%) of the appraisal management company is more than ten percent (10%) owned by any person who has had a license or certificate to act as an appraiser refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation.

(d) Each appraisal management company shall notify the commission within thirty (30) days of a change in its controlling principal, agent of record, or ownership composition.

#### SECTION 11.

(a) Each appraisal management company applying to the commission for a registration in this state shall designate one (1) compliance manager who will be the main contact for all communication between the commission and the appraisal management company.

(b) The compliance manager designated pursuant to subsection (a) shall:

(1) Hold a certificate to act as an appraiser in this state;

(2) Have never had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state;

(3) Be of good moral character, as determined by the commission; and

(4) Submit to a background investigation, as determined by the commission.

#### SECTION 12.

(a) An appraisal management company that applies to the commission for registration to do business in this state as an appraisal management company shall not:

(1) Employ any person who has had a license or certificate to act as an appraiser in Tennessee or in any other state, refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation;

(2) Enter into any independent contractor arrangement, whether in verbal, written, or other form, with any person who has had a license or certificate to act as an appraiser in Tennessee or in any other state, refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation;

(3) Enter into any contract, agreement, or other business relationship, whether in verbal, written, or any other form, with any entity that employs, has entered into an independent contract arrangement, or has entered into any contract, agreement, or other business relationship, whether in verbal, written, or any other form, with any person who has ever had a license or certificate to act as an appraiser in Tennessee or in any other state, refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation; or

(4) Allow an 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 to select appraisers or order appraisals without obtaining geographic and product competence and appropriate training and being qualified in the performance of real estate appraisals as determined by the commission.

SECTION 13. Before placing an assignment with an appraiser on the appraiser panel of an appraisal management company, the appraisal management company shall verify that the appraiser receiving the assignment is a compliant appraiser for the performance of the appraisal.

SECTION 14. Any employee or independent contractor of the appraisal management company who performs an appraisal review shall be an appraiser certified in the state in which the property is located and shall have demonstrated knowledge of the Uniform Standards of Professional Appraisal Practice (USPAP) as determined by the commission.

SECTION 15. An appraisal management company registered pursuant to this part may not enter into any contracts or agreements with an appraiser for the performance of appraisals

unless it verifies that the individual is licensed or certified in good standing to perform an appraisal pursuant to this chapter.

SECTION 16. Each appraisal management company seeking to be registered shall certify to the commission on an annual basis on a form prescribed by the commission that the appraisal management company has a system and process in place to verify that an individual being added to the appraiser panel of the appraisal management company holds a license in good standing in this state pursuant to this chapter.

SECTION 17. Each appraisal management company seeking to be registered shall certify to the commission on an annual basis on a form prescribed by the commission that the appraisal management company has a system in place to verify that an individual to whom the appraisal management company is making an assignment for the completion of an appraisal has not had a license or certification as an appraiser refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation since the last time that the appraisal management company made an assignment to the appraiser for an appraisal.

SECTION 18. Each appraisal management company seeking to be registered shall certify to the commission on an annual basis that it has a system in place to perform an appraisal review on a periodic basis of the work of all appraisers who are performing appraisals for the appraisal management company to ensure that the appraisals are being conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP).

SECTION 19.

(a) Each appraisal management company shall be subject to an audit of the appraisals received by the appraisal management company from appraisers performed at least once annually to ensure that appraisals being received by the appraisal management company are being performed in Uniform Standards of Professional Appraisal Practice (USPAP).

(b) The audit in subsection (a) shall consist of, at a minimum, a quality control test, by use of retroactive reports or additional appraisal reports or other appropriate methods, of a randomly selected ten percent (10%) of the appraisals received by the appraisal management company.

(c) A copy of the appraisal management company's most recent audit report that is no more than eleven (11) months old shall be provided to the commission upon each renewal of an appraisal management company's registration. An appraisal management company shall not be required to submit an audit report with its initial application for registration.

#### SECTION 20.

(a) Each appraisal management company seeking to be registered shall certify to the commission annually that it maintains a detailed record of each service request that it receives and of each appraiser who performs an appraisal for the appraisal management company.

(b) All appraisal management company records shall be retained for five (5) years.

#### SECTION 21.

(a) An appraisal management company shall compensate appraisers on its appraiser panel at a rate that is reasonable and customary for appraisals being performed without the services of an appraisal management company in the market area of the property being appraised.

(b) An appraisal management company shall not include any appraiser panel fees for appraisal management services that are performed by the appraisal management company for a lender, client, or other person.

(c) An appraisal management company shall not prohibit its appraiser who is part of an appraiser panel from recording the fee that the appraiser was paid by the appraisal

management company for the performance of the appraisal within the appraisal report that is submitted by the appraiser to the appraisal management company.

(d) Fees charged to a lender, client, or any other person by an appraisal management company for appraisal management services shall be separate and distinct from any fees charged to a client by the appraisal management company for the actual completion of an appraisal by an appraiser that is part of the appraiser panel of the appraisal management company. The appraisal management company shall disclose to the client, buyer, and seller the amount paid to an appraiser for each appraisal performed.

(e) An appraisal management company shall disclose to the commission as part of the registration process if it has developed or utilizes one (1) or more appraiser fee schedules.

(f) An appraisal management company that utilizes an appraiser fee schedule shall develop such schedule through one (1) or more surveys of the market rates being paid to appraisers in Tennessee for the performance of appraisals.

(g) The surveys performed pursuant to subsection (e) shall be performed utilizing statistically valid methodologies, techniques, and reliable data sources, including representative samples of appraisers.

(h) The commission may in its discretion review any appraiser fee schedule developed by an appraisal management company to ensure that the appraiser fee schedule was developed pursuant to the requirements of subsection (e) and subsection (f).

(i) Upon a formal request of the commission, an appraisal management company that utilizes an appraiser fee schedule shall disclose to the commission the methodologies, techniques, and data sources that were utilized to determine the amounts listed on the schedules.

(j) Following a review of any fee schedule conducted pursuant to subsection (g) and subsection (h), the commission shall make the substantive results of the review available to the public.

(k) An appraisal management company shall not require an appraiser to collect an appraisal fee on behalf of the appraisal management company from the borrower, homeowner, or other third party.

## SECTION 22.

(a) No employee, director, officer, or agent of an appraisal management company shall influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery or in any other manner, including but not limited to:

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

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

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

(4) Conditioning the request for an appraisal 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 appraiser;

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

(6) Providing 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 purchase transactions may be provided;

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

(8) Allowing the removal of an 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;

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

(11) Hiring, employing, or in any way contracting with or paying a real estate broker or affiliate broker to perform a broker's price opinion or comparative market analysis unless in the course of listing and selling a property in which the company owns; or

(12) Requiring a hold harmless provision in the contract with a client or require the appraiser to indemnify the appraisal management company against liability.

(b) Nothing in subsection (a) shall prohibit the appraisal management company from requesting that an appraiser:

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

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

SECTION 23. An appraisal management company shall not:

(1) Require an appraiser to modify any aspect of an appraisal report unless the modification complies with Section 22 of this act;

(2) Require an appraiser to 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;

(3) Require an appraiser to prepare an appraisal report under a time frame 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;

(4) Prohibit or inhibit communication between the appraiser and:

(A) The lender;

(B) A real estate licensee; or

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

(5) Require the appraiser to do anything that does not comply with:

(A) Uniformed Standards of Professional Appraisal Practice (USPAP); or

(B) Any assignment conditions and certifications required by the client;

(6) Make any portion of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including but not limited to:

(A) A loan closing; or

(B) Specific dollar amount being achieved by the appraiser in the appraisal report; or

(7) Request, for the purpose of facilitating a mortgage loan transaction:

(A) A broker price opinion; or

(B) Any other real property price or value estimation that does not qualify as an appraisal.

SECTION 24. Each appraisal management company shall, except in cases of breach of contract or substandard performance of services, make payment to an appraiser for the completion of an appraisal or valuation assignment within sixty (60) days from when the

appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

#### SECTION 25.

(a) An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser by:

- (1) Permanently removing the appraiser's signature or seal; or
- (2) Adding information to, or removing information from, the appraisal report with an intent to change the valuation conclusion.

(b) No registered appraisal management company may require an appraiser to provide the appraisal management company with the appraiser's digital signature or seal. Nothing in this subsection (b) shall prohibit an appraiser from voluntarily providing such appraiser's digital signature to another person.

#### SECTION 26.

(a) The commission shall issue a unique registration number to each appraisal management company.

(b) The commission shall publish annually a list of the appraisal management companies that have registered pursuant to this part and have been issued a registration number.

SECTION 27. An appraisal management company shall disclose the registration number provided to it on all print and electronic advertising, including any electronic advertising or communication by means of the Internet.

#### SECTION 28.

(a) Except within the first thirty (30) days after an appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company may not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an appraiser without:

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

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

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

(b) An appraiser who is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice (USPAP), or violation of state licensing standards, may file a complaint with the commission for a review of the decision of the appraisal management company, except that in no case shall the commission make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company which is unrelated to the actions specified in subsection (a).

(c) If an appraiser files a complaint against an appraisal management company pursuant to subsection (b), the commission shall adjudicate the complaint within one hundred eighty (180) days.

(d) If after notice and an opportunity for hearing and review, the commission determines that an appraiser did not commit a violation of law, a violation of the Uniform Standards of Professional Appraisal Practice (USPAP), or a violation of state licensing standards, the commission shall order that such appraiser be added to the appraiser panel of the appraisal management company.

(e) If the commission has found that the appraisal management company acted improperly in removing the appraiser from the appraiser panel, an appraisal

management company may not refuse to make assignments for real estate appraisal services to an appraiser, or reduce the number of assignments, or otherwise penalize the appraiser.

#### SECTION 29.

(a) The commission may censure an appraisal management company, conditionally or unconditionally suspend or revoke any registration issued under this part or impose civil penalties not to exceed twenty-five thousand dollars (\$25,000), by a majority vote of the commission, if an appraisal management company is:

- (1) Committing any act in violation of this part;
- (2) Violating any rule or regulation adopted by the commission; or
- (3) Procuring a license by fraud, misrepresentation, or deceit.

#### SECTION 30.

The conduct of adjudicatory proceedings in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for violations of this section is vested in the commission, provided:

(1) Before censuring any registrant, or suspending or revoking any registration, the commission shall notify the registrant in writing of any charges made at least twenty (20) days before the hearing and shall afford the registrant an opportunity to be heard in person or by counsel; and

(2) 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 commission.

SECTION 31. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 32. This act shall take effect July 1, 2010, the public welfare requiring it.