

LEGISLATIVE BILL 989

Approved by the Governor March 11, 2024

Introduced by Dungan, 26; Slama, 1.

A BILL FOR AN ACT relating to real property; to amend sections 76-3201, 76-3203.02, 76-3206, and 76-3220, Reissue Revised Statutes of Nebraska, and sections 76-2233, 76-2233.01, 76-3202, 76-3203, 76-3207, and 76-3216, Revised Statutes Cumulative Supplement, 2022; to change and eliminate provisions of the Real Property Appraiser Act and the Nebraska Appraisal Management Company Registration Act; to provide civil and criminal immunity for the Real Property Appraiser Board; to define and redefine terms; to harmonize provisions; to repeal the original sections; and to outright repeal sections 76-3209 and 76-3211, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 76-2233, Revised Statutes Cumulative Supplement, 2022, is amended to read:

76-2233 (1) A person currently credentialed to engage in real property appraisal practice concerning real estate and real property under the laws of another jurisdiction may qualify for a credential through reciprocity as a licensed residential real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser by complying with all of the provisions of the Real Property Appraiser Act relating to the appropriate classification of credentialing.

(2) An applicant under this section may qualify for a credential if, in the determination of the board:

(a) The requirements for credentialing in the applicant's jurisdiction of practice specified in an application for credentialing meet or exceed the minimum requirements of the Real Property Appraiser Qualification Criteria as adopted and promulgated by the Appraiser Qualifications Board of The Appraisal Foundation; and

(b) The regulatory program of the applicant's jurisdiction of practice specified in an application for credentialing is determined to be effective in accordance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(3) The status of an applicant's jurisdiction of practice specified in an application for credentialing through reciprocity shall be verified through the most recent Compliance Review Report issued by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. In the case that findings pertaining to the adoption or implementation of the Real Property Appraiser Qualification Criteria indicate that one or more credentialing requirements do not meet or exceed the Real Property Appraiser Qualification Criteria as promulgated by the Appraiser Qualifications Board of The Appraisal Foundation, the board may request evidence from the jurisdiction of practice or the Appraisal Subcommittee of the Federal Financial Institutions Examination Council showing that progress has been made to mitigate the findings in the Compliance Review Report.

(4) To qualify for a credential through reciprocity, the applicant shall:

(a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board;

(b) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities as a real property appraiser in this state; and

(c) Comply with such other terms and conditions as may be determined by the board.

(5) The credential status of an applicant under this section, including current standing and any disciplinary action imposed against his or her credentials, shall be verified through the Appraiser National Registry of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Sec. 2. Section 76-2233.01, Revised Statutes Cumulative Supplement, 2022, is amended to read:

76-2233.01 (1) A nonresident currently credentialed to engage in real property appraisal practice concerning real estate and real property under the laws of another jurisdiction may obtain a temporary credential as a licensed residential real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser to engage in real

property appraisal practice in this state.

(2) To qualify for the issuance of a temporary credential, an applicant shall:

- (a) Submit an application on a form approved by the board;
- (b) Submit a letter of engagement or a contract indicating the location of the real property appraisal practice assignment;
- (c) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities in this state; and
- (d) Pay the appropriate application fee in an amount established by the board pursuant to section 76-2241.

(3) The credential status of an applicant under this section, including current standing and any disciplinary action imposed against his or her credentials, shall be verified through the Appraiser National Registry of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(4) Application for a temporary credential is valid for one year from the date application is made to the board or upon the expiration of the assignment specified in the letter of engagement, whichever occurs first.

(5) A temporary credential issued under this section shall be expressly limited to a grant of authority to engage in real property appraisal practice required for an assignment in this state. Each temporary credential shall expire upon the completion of the assignment or upon the expiration of a period of six months from the date of issuance, whichever occurs first. A temporary credential may be renewed for one additional six-month period.

(6) Any person issued a temporary credential to engage in real property appraisal practice in this state shall comply with all of the provisions of the Real Property Appraiser Act relating to the appropriate classification of credentialing. The board may, upon its own motion, and shall, upon the written complaint of any aggrieved person, cause an investigation to be made with respect to an alleged violation of the act by a person who is engaged in, or who has engaged in, real property appraisal practice as a temporary credential holder, and that person shall be deemed a real property appraiser within the meaning of the act.

Sec. 3. Section 76-3201, Reissue Revised Statutes of Nebraska, is amended to read:

76-3201 Sections 76-3201 to 76-3222 and section 11 of this act shall be known and may be cited as the Nebraska Appraisal Management Company Registration Act.

Sec. 4. Section 76-3202, Revised Statutes Cumulative Supplement, 2022, is amended to read:

76-3202 For purposes of the Nebraska Appraisal Management Company Registration Act:

(1) Affiliate means any person that controls, is controlled by, or is under common control with, another person;

(2) AMC appraiser means a person who holds a valid credential or equivalent to appraise real estate and real property under the laws of this state or another jurisdiction, and holds the status of active on the Appraiser National Registry of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council in one or more jurisdictions;

~~(3) AMC final rule means, collectively, the rules adopted by the federal agencies as required in section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as such rules existed on January 1, 2019;~~

~~(3) (4) AMC National Registry means the registry of appraisal management companies that hold a registration as an appraisal management company issued by the board or the equivalent issued in another jurisdiction, and federally regulated appraisal management companies, maintained by the Appraisal Subcommittee;~~

(4) AMC rule means, collectively, the rules adopted by the federal agencies as required in section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as such rules existed on January 1, 2024;

(5) Appraisal has the same meaning as in section 76-2204;

(6) Appraisal management company means a person that:

(a) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(b) Provides appraisal management services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(c) Within a twelve-month period, oversees an appraiser panel of:

(i) More than fifteen AMC appraisers ~~who each hold a credential~~ in this state; or

(ii) Twenty-five or more AMC appraisers ~~who each hold a credential or equivalent~~ in two or more jurisdictions;

(7) Appraisal management services means one or more of the following:

(a) To recruit, select, and retain AMC appraisers;

(b) To contract with AMC appraisers to perform assignments;

(c) To manage the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and reports, submitting completed reports to creditors and secondary mortgage

market participants, collecting fees from creditors and secondary mortgage market participants for services provided, and paying AMC appraisers for valuation services performed; or

(d) To review and verify the work of AMC appraisers;

(8) Appraisal Subcommittee means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council;

(9) Appraiser panel means a network, list, or roster of AMC appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company;

(10) Assignment has the same meaning as in section 76-2207.01;

(11) Board has the same meaning as in section 76-2207.18;

(12) Consumer credit means credit offered or extended to a consumer primarily for personal, family, or household purposes;

(13) Contact person means a person designated by the appraisal management company as the main contact for all communication between the appraisal management company and the board;

(14) Covered transaction means any consumer credit transaction secured by the consumer's principal dwelling;

(15) Credential has the same meaning as in section 76-2207.25;

(16) Creditor means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, not including a downpayment, and to whom the obligation is initially payable, either on the face of the note or contract or by agreement when there is no note or contract. A person regularly extends consumer credit if:

(a) The person extended credit, other than credit subject to the requirements of 12 C.F.R. 1026.32, as such regulation existed on January 1, 2019, more than five times for transactions secured by a dwelling in the preceding calendar year, or in the current calendar year if a person did not meet these standards in the preceding calendar year; and

(b) In any twelve-month period, the person originates more than one credit extension that is subject to the requirements of 12 C.F.R. 1026.32, as such regulation existed on January 1, 2019, or one or more such credit extensions through a mortgage broker;

(17) Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer if used as a residence. With respect to a dwelling:

(a) A consumer may have only one principal dwelling at a time;

(b) A vacation or secondary dwelling is not a principal dwelling; and

(c) A dwelling bought or built by a consumer with the intention of that dwelling becoming the consumer's principal dwelling within one year, or upon completion of construction, is considered to be the consumer's principal dwelling for the purpose of the Nebraska Appraisal Management Company Registration Act;

(18) Federally regulated appraisal management company means an appraisal management company that is:

(a) Owned and controlled by an insured depository institution as defined in 12 U.S.C. 1813, as such section existed on January 1, ~~2019~~ 2024; and

(b) Regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the successor of any such agencies;

(19) Federal agencies means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Consumer Financial Protection Bureau, the Federal Housing Finance Agency, or the successor of any of such agencies;

(20) Financial Institutions Reform, Recovery, and Enforcement Act of 1989 has the same meaning as in section 76-2207.30;

(21) Independent contractor means a person established as an independent contractor by the appraisal management company for the purpose of federal income taxation;

(22) Jurisdiction has the same meaning as in section 76-2207.32;

(23) Person has the same meaning as in section 76-2213.02;

(24) Real estate has the same meaning as in section 76-2214;

(25) Real property has the same meaning as in section 76-2214.01;

(26) Real property appraisal practice has the same meaning as in section 76-2215;

(27) Real property appraiser has the same meaning as in section 76-2216;

(28) (27) Registration means a registration as an appraisal management company in this state issued by the board if all requirements for approval as an appraisal management company required in the Nebraska Appraisal Management Company Registration Act have been met by a person making application to the board, including the submission of all required fees, and the board has granted all rights to the person to operate as an appraisal management company in this state as allowed under the act;

(29) (28) Report has the same meaning as in section 76-2216.02;

(30) (29) Secondary mortgage market participant means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities, and only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security;

(31) (30) Uniform Standards of Professional Appraisal Practice has the

same meaning as in section 76-2218.02; and

(32) ~~(31)~~ Valuation services has the same meaning as in section 76-2219.01.

Sec. 5. Section 76-3203, Revised Statutes Cumulative Supplement, 2022, is amended to read:

76-3203 (1) An application for issuance of a registration shall be made in writing to the board on forms approved by the board, which includes, but is not limited to, all information required by the board necessary to administer and enforce the Nebraska Appraisal Management Company Registration Act, and the name of the contact person for the appraisal management company.

(2) An applicant for issuance of a registration shall furnish to the board, at the time of making application, a surety bond in the amount of twenty-five thousand dollars. The surety bond required under this subsection shall be issued by a bonding company or insurance company authorized to do business in this state, and a copy of the bond shall be filed with the board. The bond shall be in favor of the state for the benefit of any person who is damaged by any violation of the Nebraska Appraisal Management Company Registration Act. The bond shall also be in favor of any person damaged by such a violation. Any person claiming against the bond for a violation of the act may maintain an action at law against the appraisal management company and against the surety. The aggregate liability of the surety to all persons damaged by a violation of the act by an appraisal management company shall not exceed the amount of the bond. The bond shall be maintained until one year after the date that the appraisal management company ceases operation in this state.

(3) A registration shall be issued only to persons who:

(a) Meet the requirements for issuance of a registration;

(b) Have a good reputation for honesty, trustworthiness, integrity, and competence to perform appraisal management services in such manner as to safeguard the interest of the public as determined by the board; and

(c) Have not had a final civil or criminal judgment entered against them for fraud, dishonesty, breach of trust, or misrepresentation involving real estate, financial services, or appraisal management services within a five-year period immediately preceding the date of application.

(4) A registration shall be valid for a period of twelve months beginning on the date which the registration was issued or renewed unless canceled, revoked, or surrendered.

(5) All information related to an appraisal management company's registration shall be reported to the Appraisal Subcommittee as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the AMC ~~final~~ rule, and any policy or rule established by the Appraisal Subcommittee.

(6) The renewal of a registration includes the same requirements found in subsections (1) through (5) of this section. An application for renewal of a registration shall be furnished to the board no later than sixty days prior to the date of expiration of the registration.

(7) For the purpose of subdivision (6) of section 76-3202, the twelve-month period for renewal of a registration shall consist of the twelve months pursuant to subsection (4) of this section.

Sec. 6. Section 76-3203.02, Reissue Revised Statutes of Nebraska, is amended to read:

76-3203.02 (1) A federally regulated appraisal management company must report all information required to be submitted to the Appraisal Subcommittee pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the AMC ~~final~~ rule, and any policy or rule established by the Appraisal Subcommittee related to its operation in this state, including, but not limited to, the collection of information related to ownership limitations.

(2) The board may collect and transmit to the Appraisal Subcommittee any fees established by the Appraisal Subcommittee pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the AMC ~~final~~ rule, and any policy or rule established by the Appraisal Subcommittee required for inclusion on the AMC ~~National~~ Registry, and collect any fees as deemed appropriate by the board for services provided as related to a federally regulated appraisal management company's operation in this state.

(3) Nothing in the Nebraska Appraisal Management Company Registration Act shall prevent issuance by the board of a registration to a federally regulated appraisal management company.

(4) Except for a federally regulated appraisal management company that holds a registration issued by the board, section 76-3202, and this section, a federally regulated appraisal management company is exempt from the Nebraska Appraisal Management Company Registration Act.

Sec. 7. Section 76-3206, Reissue Revised Statutes of Nebraska, is amended to read:

76-3206 (1) The board shall charge and collect fees for its services under the Nebraska Appraisal Management Company Registration Act as follows:

(a) An application fee of no more than three hundred fifty dollars;

(b) An initial registration fee of no more than two thousand dollars;

(c) A renewal registration fee of no more than two ~~one~~ thousand five hundred dollars; and

(d) A late renewal processing fee of twenty-five dollars for each month or portion of a month the renewal registration fee is late.

(2) The board may collect and transmit to the Appraisal Subcommittee any

fees established by the Appraisal Subcommittee under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the AMC ~~final~~ rule, and any policy or rule established by the Appraisal Subcommittee ~~final~~ for inclusion on the AMC ~~National~~ Registry.

Sec. 8. Section 76-3207, Revised Statutes Cumulative Supplement, 2022, is amended to read:

76-3207 (1) A person applying for issuance of a registration or renewal of a registration shall not:

(a) In whole or in part, directly or indirectly, be owned by any person who has had a real property appraiser credential or equivalent refused, denied, canceled, or revoked or who has surrendered a real property appraiser credential or equivalent in lieu of revocation in any jurisdiction for a substantive cause as determined by the board; and

(b) Be more than ten percent owned by a person who is not of good moral character, which for purposes of this section shall require that such person has not been convicted of, or entered a plea of nolo contendere to, a felony relating to the real property appraisal practice or any crime involving fraud, misrepresentation, or moral turpitude or failed to submit to a criminal history record check through the Nebraska State Patrol and the Federal Bureau of Investigation.

(2) For purposes of subdivision (1)(b) of this section, each individual owner of more than ten percent of an appraisal management company shall: -

(a) At at the time an application for issuance of a registration is made, submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation; -

(b) At the time an application for renewal of a registration is made, submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation if a fingerprint-based national criminal history records check has not been completed pursuant to subdivision (2)(a) of this section; and

(c) At the time an individual owner of more than ten percent of an appraisal management company is identified by the board, submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation if a fingerprint-based national criminal history records check has not been completed pursuant to subdivision (2)(a) or (2)(b) of this section.

(3) The board shall pay the Nebraska State Patrol the costs associated with conducting a fingerprint-based national criminal history record check through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board.

(4) ~~(3)~~ For the purpose of subdivision (1)(a) of this section, a person is not barred from issuance of a registration if the real property appraiser credential or equivalent of the person with an ownership interest was not refused, denied, canceled, revoked, or surrendered in lieu of revocation for a substantive cause as determined by the board and has been reinstated by the jurisdiction in which the action was taken.

Sec. 9. Section 76-3216, Revised Statutes Cumulative Supplement, 2022, is amended to read:

76-3216 (1) It is unlawful for a person to directly or indirectly engage in or attempt to engage in business as an appraisal management company or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state without first obtaining a registration or by meeting the requirements as a federally regulated appraisal management company.

(2) Except as provided in section 76-3204, any person who, directly or indirectly for another, offers, attempts, or agrees to perform all actions described in subdivision (6) of section 76-3202 or any action described in subdivision (7) of such section, shall be deemed an appraisal management company within the meaning of the Nebraska Appraisal Management Company Registration Act, and such action shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such person in any action arising out of the act.

(3) The board may issue a cease and desist order against any person who violates this section by performing any action described in subdivision (6) or (7) of section 76-3202 without the appropriate registration. Such order shall be final ten days after issuance unless such person requests a hearing pursuant to section 76-3217. The board may, through the Attorney General, obtain an order from the district court for the enforcement of the cease and desist order.

(4) To the extent permitted by any applicable federal legislation or regulation, the board may censure an appraisal management company, conditionally or unconditionally suspend or revoke its registration, or levy fines or impose civil penalties not to exceed five thousand dollars for a first offense and not to exceed ten thousand dollars for a second or subsequent offense, if the board determines that an appraisal management company is attempting to perform, has performed, or has attempted to perform any of the following:

- (a) A material violation of the act;
- (b) A violation of any rule or regulation adopted and promulgated by the board; or
- (c) Procurement of a registration for itself or any other person by fraud, misrepresentation, or deceit.

(5) In order to promote voluntary compliance, encourage appraisal management companies to correct errors promptly, and ensure a fair and consistent approach to enforcement, the board shall endeavor to impose fines or civil penalties that are reasonable in light of the nature, extent, and severity of the violation. The board shall also take action against an appraisal management company's registration only after less severe sanctions have proven insufficient to ensure behavior consistent with the Nebraska Appraisal Management Company Registration Act. When deciding whether to impose a sanction permitted by subsection (4) of this section, determining the sanction that is most appropriate in a specific instance, or making any other discretionary decision regarding the enforcement of the act, the board shall consider whether an appraisal management company:

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

(6) Any violation of appraisal-related laws or rules and regulations, and disciplinary action taken against an appraisal management company, shall be reported to the Appraisal Subcommittee as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the AMC final rule, and any policy or rule established by the Appraisal Subcommittee.

Sec. 10. Section 76-3220, Reissue Revised Statutes of Nebraska, is amended to read:

76-3220 An appraisal management company that has a reasonable basis to believe that an AMC appraiser has failed to comply with applicable laws or the Uniform Standards of Professional Appraisal Practice shall refer the matter to the board if the failure to comply is material.

Sec. 11. Any member of the board, employee of the board, or person under contract with the board shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of or any disciplinary proceeding concerning an appraisal management company pursuant to the Nebraska Appraisal Management Company Registration Act if the member, employee, or person initiates or assists in such investigation or proceeding without malicious intent and in the reasonable belief that the investigation or proceeding was allowed by the powers vested in such member, employee, or person.

Sec. 12. Original sections 76-3201, 76-3203.02, 76-3206, and 76-3220, Reissue Revised Statutes of Nebraska, and sections 76-2233, 76-2233.01, 76-3202, 76-3203, 76-3207, and 76-3216, Revised Statutes Cumulative Supplement, 2022, are repealed.

Sec. 13. The following sections are outright repealed: Sections 76-3209 and 76-3211, Reissue Revised Statutes of Nebraska.