

LEGISLATIVE BILL 410

Approved by the Governor March 10, 2011

Introduced by Utter, 33.

FOR AN ACT relating to appraisers; to amend section 76-2223, Revised Statutes Cumulative Supplement, 2010; to adopt the Nebraska Appraisal Management Company Registration Act; to provide a duty for the Real Property Appraiser Board; to adopt updated federal law relating to fees; to provide an operative date; and to repeal the original section.

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

Section 1. Sections 1 to 20 of this act shall be known and may be cited as the Nebraska Appraisal Management Company Registration Act.

Sec. 2. For purposes of the Nebraska Appraisal Management Company Registration Act:

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

(2) Appraisal Foundation has the same meaning as in section 76-2205;

(3) Appraisal management company means, in connection with valuing real property collateralizing mortgage loans, mortgages, or trust deeds incorporated into a securitization, any external third party that oversees a network or panel of more than fifteen certified or licensed appraisers in this state or twenty-five or more certified or licensed appraisers nationally within a given year and that is authorized, either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets:

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

(b) To contract with certified or licensed appraisers to perform real property appraisal activity;

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

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

(4) Appraisal practice has the same meaning as in section 76-2205.01;

(5) Appraisal report has the same meaning as in section 76-2206;

(6) 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 a real property appraisal activity, except that a quality control examination of an appraisal report shall not be an appraisal review;

(7) Appraisal services means residential valuation assignments performed by an individual acting as an appraiser, including, but not limited to, appraisal, appraisal review, or consulting services;

(8) Appraiser means an individual who holds a license or certification as an appraiser and is expected to perform valuation assignments competently and in a manner that is independent, impartial, and objective;

(9) Appraiser panel means a group of licensed or certified independent appraisers that have been selected to perform appraisal services for a third party;

(10) Board means the Real Property Appraiser Board;

(11) Consulting service has the same meaning as in section 76-2211.01;

(12) Controlling person means:

(a) An officer or director of, or owner of greater than a ten percent interest in, a corporation, partnership, or other business entity seeking to act or acting as an appraisal management company 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 services requiring registration as an appraisal management company and that 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;

(13) Federal financial institution regulatory agency means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance

Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, or the successor of any of such agencies;

(14) Federally related transaction means any real estate-related financial transaction which:

(a) A federal financial institution regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and

(b) Requires the services of an appraiser;

(15) Owned and controlled means direct or indirect ownership or control of more than twenty-five percent of the voting shares of an appraisal management company;

(16) Person means an individual, firm, partnership, limited partnership, limited liability company, association, corporation, or other group engaged in joint business activities, however organized;

(17) Quality control examination means an examination of an appraisal report for compliance and completeness, including grammatical, typographical, or other similar errors;

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

(19) Real estate-related financial transaction means any transaction involving:

(a) The sale, lease, purchase, investment in, or exchange of real property, including interests in real property or the financing thereof;

(b) The refinancing of real property or interests in real property;

or

(c) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities;

(20) Real property has the same meaning as in section 76-2217;

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

(22) Relocation management company means a business entity in which the preponderance of its business services include relocation of employees as an agent or contracted service provider to the employer for the purposes of determining an anticipated sales price for the residence of an employee being relocated by the employer;

(23) Uniform Standards of Professional Appraisal Practice has the same meaning as in section 76-2213.01; and

(24) Valuation assignment has the same meaning as in section 76-2219.

Sec. 3. (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 issued by the board.

(2) An application for the registration required by subsection (1) of this section shall include the following information:

(a) The name of the person seeking registration and any other name or names, if any, under which it will do business in this state;

(b) The business address of the person seeking registration;

(c) The telephone contact information of the person seeking registration;

(d) If the person seeking registration is not a corporation that is domiciled in this state, the name and contact information for the person's agent for service of process in this state;

(e) The name, address, and contact information for any person that owns ten percent or more of the person seeking registration;

(f) The name, address, and contact information for one controlling person designated as the main contact for all communication between the person seeking registration and the board;

(g) A certification that the person seeking registration has a system and process in place to verify that an appraiser selected to the appraiser panel of the person seeking registration holds a license or certification in good standing in this state pursuant to the Real Property Appraiser Act;

(h) A certification that the person seeking registration requires appraisers completing appraisal services at the person's request to comply with the Uniform Standards of Professional Appraisal Practice, including the requirements for geographic and product competence;

(i) A certification that the person seeking registration has a system in place to verify that only licensed or certified appraisers are used for federally related transactions;

(j) A certification that the person seeking registration has a system in place to require that appraisals are conducted independently and

free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the federal Truth in Lending Act, as amended, including the requirements for payment of a reasonable and customary fee to appraisers when the appraisal management company is providing appraisal services for a consumer credit transaction secured by the principal dwelling of a consumer;

(k) A certification that the person seeking registration maintains a detailed record of each request for appraisal services that it receives and the appraiser that performs the residential real estate appraisal services for the appraisal management company;

(l) If the person seeking registration is a nonresident, an irrevocable consent for service of process, if required pursuant to section 5 of this act; and

(m) Any other information required by the board which is reasonably necessary to implement the Nebraska Appraisal Management Company Registration Act.

(3) An applicant for registration as an appraisal management company in this state shall submit to the board an application on a form or forms prescribed by the board.

(4) An applicant for registration as an appraisal management company in this state 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.

(5) A registration issued pursuant to the Nebraska Appraisal Management Company Registration Act shall be valid for two years after the date on which it is issued. An application for the renewal of a registration shall include substantially similar information required for the initial registration as provided in subsection (2) of this section.

Sec. 4. The Nebraska Appraisal Management Company Registration Act does not apply to:

(1) A person that exclusively employs persons for the performance of appraisal services. The employer is responsible for ensuring that the appraisal services are performed by employees in accordance with the Uniform Standards of Professional Appraisal Practice;

(2) An appraisal management company that is owned and controlled by a financial institution regulated by a federal financial institution regulatory agency;

(3) An appraiser that enters into an agreement, written or oral, with an appraiser for the performance of appraisal services if upon the completion of the appraisal services the appraisal report is signed by both the appraiser who completed the appraisal services and the appraiser who requested the appraisal services; or

(4) A relocation management company.

Sec. 5. Each person seeking registration as an appraisal management company in this state that is not domiciled in this state shall submit an irrevocable consent that service of process upon such person 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 person in an action against the applicant in a court of this state arising out of the person's activities in this state.

Sec. 6. The board shall charge and collect fees for its services under the Nebraska Appraisal Management Company Registration Act as follows: (1) An application fee of no more than three hundred fifty dollars; (2) an initial registration fee of no more than two thousand dollars; (3) a renewal registration fee of no more than one thousand five hundred dollars; and (4) a late renewal fee of twenty-five dollars for each month or portion of a month the fee is late.

Sec. 7. (1) An appraisal management company applying for registration in this state shall not:

(a) In whole or in part, directly or indirectly, be owned by any person who has had an appraiser license or certificate in this state or in any

other state refused, denied, canceled, surrendered in lieu of revocation, or revoked; 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 appraisal practice or any crime involving fraud, misrepresentation, or moral turpitude.

(2) For purposes of subdivision (1)(b) of this section, each individual owner of more than ten percent of an appraisal management company shall, at the time an application for registration as an appraisal management company 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. 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.

Sec. 8. An appraisal management company that applies to the board for a registration to do business in this state as an appraisal management company shall not:

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

(2) Knowingly enter into any independent contractor arrangement to perform appraisal services, whether in verbal, written, or other form, with any individual who has had a license or certificate to act as an appraiser in this state or in any other state refused, denied, canceled, surrendered in lieu of revocation, or revoked; or

(3) Knowingly prohibit an appraiser from including within the body of an appraisal report that is submitted by the appraiser to the appraisal management company or its assignee the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal report.

Sec. 9. Prior to assigning appraisal orders, an appraisal management company shall have a system in place to verify that an appraiser being added to the appraiser panel holds the appropriate appraiser license or certification in good standing.

Sec. 10. Any employee of or independent contractor to an appraisal management company that performs a Uniform Standards of Professional Appraisal Practice standard 3 appraisal review shall be an appraiser with the proper level of licensure in this state. Quality control examinations are exempt from this requirement as they are not considered a standard 3 review.

Sec. 11. Each appraisal management company seeking to be registered in this state shall certify to the board on a biennial basis on a form prescribed by the board that the appraisal management company has a system in place to verify that an appraiser on the appraiser panel has not had a license or certification as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state in the previous twenty-four months.

Sec. 12. Each appraisal management company seeking to be registered in this state shall certify to the board on a biennial basis that it maintains a detailed record of each appraisal service request that it receives and of the appraiser who performs the appraisal services for the appraisal management company. Record retention requirements are for a period of five years after appraisal services are completed or two years after final disposition of a judicial proceeding related to the real property appraisal activity, whichever period expires later.

Sec. 13. An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser without the appraiser's written consent.

Sec. 14. (1) The board shall issue a unique registration number to each appraisal management company that is registered in this state.

(2) The board shall maintain a published list of the appraisal management companies that have registered with the board pursuant to the Nebraska Appraisal Management Company Registration Act and have been issued a registration number pursuant to subsection (1) of this section.

(3) An appraisal management company registered in this state shall disclose the registration number provided to it by the board on the engagement documents presented to the appraiser.

Sec. 15. (1) Each appraisal management company registered in this state, except in cases of noncompliance with the conditions of the engagement,

shall make payment of fees to an appraiser for the completion of an appraisal or valuation assignment within sixty days after the date on which the appraiser transmits or otherwise provides the completed appraisal report or valuation assignment to the appraisal management company or its assignee.

(2) Except within the first ninety days after an appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company may not remove the appraiser from the appraiser panel of the appraisal management company or otherwise refuse to assign requests for appraisal services to an appraiser on the appraiser panel without:

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

(b) Providing an opportunity for the appraiser to respond to the notification from the appraisal management company.

(3) An appraiser who is removed from the appraiser panel of an appraisal management company may file a complaint with the board for a review of the decision of the appraisal management company. The scope of the board's review in any such case is limited to determining that the appraisal management company has complied with subsection (2) of this section and whether a violation of the Real Property Appraiser Act has occurred.

(4) If an appraiser files a complaint against an appraisal management company pursuant to subsection (3) of this section, the board shall adjudicate the complaint within one hundred eighty days after the filing of the complaint.

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

(a) Provide written findings to the involved parties;

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

(c) Make recommendations for action.

Sec. 16. (1) 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 the registration issued to the appraisal management company under the Nebraska Appraisal Management Company Registration Act, 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.

(2) 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 (1) 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 reasonably prompt time after becoming aware of the occurrence of such violations.

Sec. 17. (1) The board shall conduct disciplinary hearings for any violation of the Nebraska Appraisal Management Company Registration Act in accordance with the Administrative Procedure Act.

(2) Before the board may censure, suspend, or revoke the registration of, or levy a fine or civil penalty against, a registered appraisal management company, the board shall notify the company in writing of any charges made under the Nebraska Appraisal Management Company Registration

Act at least twenty days prior to the date set for the hearing and shall permit the appraisal management company an opportunity to be heard in person or by counsel. The notice shall be satisfied by personal service on the controlling person of the company or agent for service of process in this state or by sending the notice by certified mail, return receipt requested, to the address of the controlling person of the company that is on file with the board.

(3) Any hearing pursuant to this section shall be heard by a hearing officer at a time and place prescribed by the board. The hearing officer may make findings of fact and shall deliver such findings to the board. The board shall take such disciplinary action as it deems appropriate, subject to the limitations contained within section 16 of this act.

Sec. 18. The board may adopt and promulgate rules and regulations not inconsistent with the Nebraska Appraisal Management Company Registration Act which may be reasonably necessary to implement, administer, and enforce the provisions of the act.

Sec. 19. The board shall collect all fees and other revenue pursuant to the Nebraska Appraisal Management Company Registration Act and shall remit such fees and revenue to the State Treasurer for credit to the Appraisal Management Company Fund, which is hereby created. The fund shall be used to implement, administer, and enforce the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 20. An appraisal management company that has a reasonable basis to believe that an 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. 21. Section 76-2223, Revised Statutes Cumulative Supplement, 2010, is amended to read:

76-2223 (1) The Real Property Appraiser Board shall administer and enforce the Real Property Appraiser Act and may:

(1) (a) Receive applications for credentialing under the act, process such applications and regulate the issuance of credentials to qualified applicants, and maintain a directory of the names and addresses of persons who receive credentials under the act;

(2) (b) Hold meetings, public hearings, informal conferences, and administrative hearings, prepare or cause to be prepared specifications for all appraiser classifications, solicit bids and enter into contracts with one or more testing services, and administer or contract for the administration of examinations approved by the Appraiser Qualifications Board in such places and at such times as deemed appropriate;

(3) (c) Develop the specifications for credentialing examinations, including timing, location, and security necessary to maintain the integrity of the examinations;

(4) (d) Review the procedures and criteria of a contracted testing service to ensure that the testing meets with the approval of the Appraiser Qualifications Board;

(5) (e) Collect all fees required or permitted by the act. The Real Property Appraiser Board shall remit all such receipts to the State Treasurer for credit to the Real Property Appraiser Fund. In addition, the board may collect and transmit to the appropriate federal authority any fees established under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2010+2011;

(6) (f) Establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the Real Property Appraiser Act;

(7) (g) Issue subpoenas to compel the attendance of witnesses and the production of books, documents, records, and other papers, administer oaths, and take testimony and require submission of and receive evidence concerning all matters within its jurisdiction. In case of disobedience of a subpoena, the Real Property Appraiser Board may make application to the district court of Lancaster County to require the attendance and testimony of witnesses and the production of documentary evidence. If any person fails to obey an order of the court, he or she may be punished by the court as for contempt thereof;

(8) (h) Deny, censure, suspend, or revoke an application or credential if it finds that the applicant or credential holder has committed any of the acts or omissions set forth in section 76-2238 or otherwise violated the act. Any disciplinary matter may be resolved through informal disposition pursuant to section 84-913;

(9) (i) Take appropriate disciplinary action against a credential

holder if the Real Property Appraiser Board determines that a credential holder has violated any provision of the act or the Uniform Standards of Professional Appraisal Practice;

~~(10)~~ (j) Enter into consent decrees and issue cease and desist orders upon a determination that a violation of the act has occurred;

~~(11)~~ (k) Promote research and conduct studies relating to the profession of real property appraisal, sponsor real property appraisal educational activities, and incur, collect fees for, and pay the necessary expenses in connection with activities which shall be open to all credential holders;

~~(12)~~ (l) Establish and adopt minimum standards for appraisals as required under section 76-2237;

~~(13)~~ (m) Adopt and promulgate rules and regulations to carry out the act. The rules and regulations may include provisions establishing minimum standards for schools, courses, and instructors. The rules and regulations shall be adopted pursuant to the Administrative Procedure Act; and

~~(14)~~ (n) Do all other things necessary to carry out the Real Property Appraiser Act.

(2) The Real Property Appraiser Board shall also administer and enforce the Nebraska Appraisal Management Company Registration Act.

Sec. 22. This act becomes operative on January 1, 2012.

Sec. 23. Original section 76-2223, Revised Statutes Cumulative Supplement, 2010, is repealed.