

E AND R AMENDMENTS TO LB 410

Introduced by Larson, 40, Chairperson Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

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

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

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

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

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

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

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

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

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

9 (4) Appraisal practice has the same meaning as in section
10 76-2205.01;

11 (5) Appraisal report has the same meaning as in section
12 76-2206;

13 (6) Appraisal review means the act or process of
14 developing and communicating an opinion about the quality of
15 another appraiser's work that was performed as part of a real
16 property appraisal activity, except that a quality control
17 examination of an appraisal report shall not be an appraisal
18 review;

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

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

27 (9) Appraiser panel means a group of licensed or

1 certified independent appraisers that have been selected to perform
2 appraisal services for a third party;

3 (10) Board means the Real Property Appraiser Board;

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

6 (12) Controlling person means:

7 (a) An officer or director of, or owner of greater than
8 a ten percent interest in, a corporation, partnership, or other
9 business entity seeking to act or acting as an appraisal management
10 company in this state;

11 (b) An individual employed, appointed, or authorized
12 by an appraisal management company that has the authority to
13 enter into a contractual relationship with other persons for the
14 performance of services requiring registration as an appraisal
15 management company and that has the authority to enter into
16 agreements with appraisers for the performance of appraisals; or

17 (c) An individual who possesses, directly or indirectly,
18 the power to direct or cause the direction of the management or
19 policies of an appraisal management company;

20 (13) Federal financial institution regulatory agency
21 means the Board of Governors of the Federal Reserve System,
22 the Federal Deposit Insurance Corporation, the Office of the
23 Comptroller of the Currency, the Office of Thrift Supervision, the
24 National Credit Union Administration, or the successor of any of
25 such agencies;

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

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

4 (b) Requires the services of an appraiser;

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

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

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

15 (18) Real estate has the same meaning as in section
16 76-2214;

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

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

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

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

27 (20) Real property has the same meaning as in section

1 76-2217;

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

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

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

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

14 Sec. 3. (1) It is unlawful for a person to directly
15 or indirectly engage in or attempt to engage in business as an
16 appraisal management company or to advertise or hold itself out
17 as engaging in or conducting business as an appraisal management
18 company in this state without first obtaining a registration issued
19 by the board.

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

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

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

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

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

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

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

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

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

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

27 (j) A certification that the person seeking registration

1 has a system in place to require that appraisals are conducted
2 independently and free from inappropriate influence and coercion
3 as required by the appraisal independence standards established
4 under section 129E of the federal Truth in Lending Act, as
5 amended, including the requirements for payment of a reasonable and
6 customary fee to appraisers when the appraisal management company
7 is providing appraisal services for a consumer credit transaction
8 secured by the principal dwelling of a consumer;

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

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

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

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

23 (4) An applicant for registration as an appraisal
24 management company in this state shall furnish to the board, at
25 the time of making application, a surety bond in the amount of
26 twenty-five thousand dollars. The surety bond required under this
27 subsection shall be issued by a bonding company or insurance

1 company authorized to do business in this state, and a copy of the
2 bond shall be filed with the board. The bond shall be in favor
3 of the state for the benefit of any person who is damaged by any
4 violation of the Nebraska Appraisal Management Company Registration
5 Act. The bond shall also be in favor of any person damaged by such
6 a violation. Any person claiming against the bond for a violation
7 of the act may maintain an action at law against the appraisal
8 management company and against the surety. The aggregate liability
9 of the surety to all persons damaged by a violation of the act
10 by an appraisal management company shall not exceed the amount of
11 the bond. The bond shall be maintained until one year after the
12 date that the appraisal management company ceases operation in this
13 state.

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

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

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

27 (2) An appraisal management company that is owned and

1 controlled by a financial institution regulated by a federal
2 financial institution regulatory agency;

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

9 (4) A relocation management company.

10 Sec. 5. Each person seeking registration as an appraisal
11 management company in this state that is not domiciled in this
12 state shall submit an irrevocable consent that service of process
13 upon such person may be made by delivery of the process to the
14 director of the board if the plaintiff cannot, in the exercise of
15 due diligence, effect personal service upon the person in an action
16 against the applicant in a court of this state arising out of the
17 person's activities in this state.

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

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

1 (a) In whole or in part, directly or indirectly, be owned
2 by any person who has had an appraiser license or certificate
3 in this state or in any other state refused, denied, canceled,
4 surrendered in lieu of revocation, or revoked; and

5 (b) Be more than ten percent owned by a person who is not
6 of good moral character, which for purposes of this section shall
7 require that such person has not been convicted of, or entered
8 a plea of nolo contendere to, a felony relating to the appraisal
9 practice or any crime involving fraud, misrepresentation, or moral
10 turpitude.

11 (2) For purposes of subdivision (1)(b) of this section,
12 each owner of more than ten percent of an appraisal management
13 company shall submit and pay the costs of a national criminal
14 history record information check. The check shall be carried out by
15 the board.

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

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

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

1 or revoked; or

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

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

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

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

25 Sec. 12. Each appraisal management company seeking to
26 be registered in this state shall certify to the board on
27 a biennial basis that it maintains a detailed record of each

1 appraisal service request that it receives and of the appraiser
2 who performs the appraisal services for the appraisal management
3 company. Record retention requirements are for a period of five
4 years after appraisal services are completed or two years after
5 final disposition of a judicial proceeding related to the real
6 property appraisal activity, whichever period expires later.

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

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

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

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

21 Sec. 15. (1) Each appraisal management company registered
22 in this state, except in cases of noncompliance with the conditions
23 of the engagement, shall make payment of fees to an appraiser for
24 the completion of an appraisal or valuation assignment within sixty
25 days after the date on which the appraiser transmits or otherwise
26 provides the completed appraisal report or valuation assignment to
27 the appraisal management company or its assignee.

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

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

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

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

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

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

27 (a) Provide written findings to the involved parties;

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

3 (c) Make recommendations for action.

4 Sec. 16. (1) To the extent permitted by any applicable
5 federal legislation or regulation, the board may censure an
6 appraisal management company, conditionally or unconditionally
7 suspend or revoke the registration issued to the appraisal
8 management company under the Nebraska Appraisal Management Company
9 Registration Act, or levy fines or impose civil penalties not to
10 exceed five thousand dollars for a first offense and not to exceed
11 ten thousand dollars for a second or subsequent offense, if the
12 board determines that an appraisal management company is attempting
13 to perform, has performed, or has attempted to perform any of the
14 following:

15 (a) A material violation of the act;

16 (b) A violation of any rule or regulation adopted and
17 promulgated by the board; or

18 (c) Procurement of a registration for itself or any other
19 person by fraud, misrepresentation, or deceit.

20 (2) In order to promote voluntary compliance, encourage
21 appraisal management companies to correct errors promptly, and
22 ensure a fair and consistent approach to enforcement, the board
23 shall endeavor to impose fines or civil penalties that are
24 reasonable in light of the nature, extent, and severity of the
25 violation. The board shall also take action against an appraisal
26 management company's registration only after less severe sanctions
27 have proven insufficient to ensure behavior consistent with the

1 Nebraska Appraisal Management Company Registration Act. When
2 deciding whether to impose a sanction permitted by subsection (1)
3 of this section, determining the sanction that is most appropriate
4 in a specific instance, or making any other discretionary decision
5 regarding the enforcement of the act, the board shall consider
6 whether an appraisal management company:

7 (a) Has an effective program reasonably designed to
8 ensure compliance with the act;

9 (b) Has taken prompt and appropriate steps to correct and
10 prevent the recurrence of any detected violations; and

11 (c) Has independently reported to the board any
12 significant violations or potential violations of the act prior
13 to an imminent threat of disclosure or investigation and within a
14 reasonably prompt time after becoming aware of the occurrence of
15 such violations.

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

20 (2) Before the board may censure, suspend, or revoke
21 the registration of, or levy a fine or civil penalty against, a
22 registered appraisal management company, the board shall notify the
23 company in writing of any charges made under the Nebraska Appraisal
24 Management Company Registration Act at least twenty days prior
25 to the date set for the hearing and shall permit the appraisal
26 management company an opportunity to be heard in person or by
27 counsel. The notice shall be satisfied by personal service on the

1 controlling person of the company or agent for service of process
2 in this state or by sending the notice by certified mail, return
3 receipt requested, to the address of the controlling person of the
4 company that is on file with the board.

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

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

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

24 Sec. 20. An appraisal management company that has a
25 reasonable basis to believe that an appraiser has failed to comply
26 with applicable laws or the Uniform Standards of Professional
27 Appraisal Practice shall refer the matter to the board if the

1 failure to comply is material.

2 Sec. 21. Section 76-2223, Revised Statutes Cumulative
3 Supplement, 2010, is amended to read:

4 76-2223 (1) The Real Property Appraiser Board shall
5 administer and enforce the Real Property Appraiser Act and may:

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

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

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

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

24 ~~(5)~~ (e) Collect all fees required or permitted by the
25 act. The Real Property Appraiser Board shall remit all such
26 receipts to the State Treasurer for credit to the Real Property
27 Appraiser Fund. In addition, the board may collect and transmit

1 to the appropriate federal authority any fees established under
2 the Financial Institutions Reform, Recovery, and Enforcement Act of
3 1989, as the act existed on January 1, ~~2010~~2011;

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

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

17 ~~(8)~~ (h) Deny, censure, suspend, or revoke an application
18 or credential if it finds that the applicant or credential holder
19 has committed any of the acts or omissions set forth in section
20 76-2238 or otherwise violated the act. Any disciplinary matter
21 may be resolved through informal disposition pursuant to section
22 84-913;

23 ~~(9)~~ (i) Take appropriate disciplinary action against a
24 credential holder if the Real Property Appraiser Board determines
25 that a credential holder has violated any provision of the act or
26 the Uniform Standards of Professional Appraisal Practice;

27 ~~(10)~~ (j) Enter into consent decrees and issue cease and

1 desist orders upon a determination that a violation of the act has
2 occurred;

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

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

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

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

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

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

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

23 2. On page 1, strike beginning with "section" in line 1
24 through "and" in line 2; and strike beginning with "add" in line
25 5 through line 8 and insert "provide a duty for the Real Property
26 Appraiser Board; to adopt updated federal law relating to fees; to
27 provide an operative date; and to repeal the original section."