

State of Arkansas
87th General Assembly
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A Bill

HOUSE BILL 1694

By: Representative Hyde

For An Act To Be Entitled

AN ACT CONCERNING THE REGISTRATION OF APPRAISAL
MANAGEMENT COMPANIES; AND FOR OTHER PURPOSES.

Subtitle

THE ARKANSAS APPRAISAL MANAGEMENT
COMPANY REGISTRATION ACT.

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

SECTION 1. Arkansas Code Title 17, Chapter 14 is amended to add an additional subchapter to read as follows:

SUBCHAPTER 4

ARKANSAS APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT

17-14-401. Short title.

This subchapter shall be known and may be cited as the "Arkansas Appraisal Management Company Registration Act".

17-14-402. Definitions.

As used in this subchapter:

(1)(A) "Appraisal management company" means a person, partnership, corporation, sole proprietorship, employee, or business entity that administers a network of state licensed appraisers to fulfill real estate appraisal assignments on behalf of mortgage lending institutions and other entities for a fee.

(B) Administering a network includes without limitation:



- 1 (i) Recruiting appraisers;
2 (ii) Contracting with appraisers to perform
3 appraisal assignments;
4 (iii) Negotiating fees with appraisers;
5 (iv) Providing administrative duties such as
6 receiving appraisal orders and appraisal reports; and
7 (v) Submitting appraisal reports received from
8 appraisers to the company's clients;

9 (2) "Appraisal management services" means to act for
10 compensation or gain or in the expectation of compensation or gain, either
11 directly or indirectly, by accepting or offering to accept an appraisal
12 assignment, soliciting or offering to solicit an appraisal assignment, or
13 employing or contracting with a licensed or certified real estate appraiser
14 to prepare an appraisal assignment on behalf of a client, whether such acts
15 are done through contact by telephone, by electronic means, by mail, or in
16 person;

17 (3) "Appraiser" means an individual under § 17-14-401 et seq.
18 who develops an opinion of the value of real property;

19 (4) "Appraiser panel" means a group of independent appraisers
20 that have been selected by an appraisal management company to perform real
21 estate appraisal services for the appraisal management company;

22 (5) "Client" means a person or entity that contracts with, or
23 otherwise enters into an agreement with an appraisal management company for
24 the performance of real estate appraisal services;

25 (6) "Controlling person or managing principal" means an
26 individual employed, appointed, or authorized by an appraisal management
27 company that has the authority to enter into a contractual relationship with
28 clients for the performance of appraisal management services and has the
29 authority to enter into agreements with independent appraisers for the
30 performance of real estate appraisal services;

31 (7) "Employee" means an individual who has an employment
32 relationship, which is acknowledged by both the individual and the company
33 and is treated as an employee for purposes of compliance with the federal
34 income tax laws;

35 (8) "Exempted person or business entity" means any of the
36 following:

1 (A) An agency of the federal government or a state or
 2 municipal government;

3 (B) Persons authorized to engage in business as a bank,
 4 farm credit system, savings institution, or a credit union under the laws of
 5 the United States, Arkansas, or any other state;

6 (C)(i) A licensed real estate broker who is performing
 7 activities subject to the regulation of the Arkansas Real Estate Commission.

8 (ii) Notwithstanding the above, an exempt person
 9 does not include a real estate broker or agent who receives compensation of
 10 any kind in connection with the referral, placement, or execution of an
 11 appraisal assignment; or

12 (D) An officer or employee of an exempt entity described
 13 in this section when acting within the scope of employment for the exempted
 14 person or entity;

15 (9) "Person" means an individual, partnership, limited liability
 16 company, limited partnership, corporation, association, or other group
 17 engaged in joint business activities, however organized for purposes of
 18 providing appraisal management services;

19 (10) "Real property appraisal services" means the practice of
 20 developing an opinion of the value of real property in conformance with the
 21 minimum reporting standards under § 17-14-202(b); and

22 (11) "Registrant" means an appraisal management company or
 23 person that is registered under this subchapter.

24
 25 17-14-403. Registration required of all real estate appraisal
 26 management companies.

27 Effective January 1, 2010, it shall be unlawful:

28 (1) For a person to act as a real estate appraisal management
 29 company, to directly or indirectly engage or attempt to engage in the
 30 business of real estate appraisal management in this state, or to advertise
 31 or hold himself or herself out as engaging in or conducting the business of
 32 real estate appraisal management in this state without first registering with
 33 the board; and

34 (2) With regard to appraisals of real property where a portion
 35 of that property is located within this state, for a person to perform any of
 36 the acts listed in subdivision (1) of this section without first being

1 registered by the board under this subchapter.

2
3 17-14-404. Rulemaking authority.

4 (a) The Arkansas Appraiser Licensing and Certification Board may adopt
5 rules consistent with this subchapter that may be reasonably necessary to
6 implement, administer, and enforce this subchapter.

7 (b) Rules may include without limitation:

8 (1) Prescribing forms and procedures for submitting information
9 to the board;

10 (2) Prescribing standards of practice for companies registered
11 under this subchapter; and

12 (3) Prescribing standards for the operation of real estate
13 appraisal management companies.

14
15 17-14-405. Requirements for registration.

16 (a)(1) Prior to acting or offering to act as an appraisal management
17 company in this state, the person or company shall make written application
18 to the Arkansas Appraiser Licensing and Certification Board for the
19 registration of the company accompanied by the fee and bond established by
20 the board.

21 (2) The application shall include without limitation the
22 following information:

23 (A) The name of the person or entity seeking registration;

24 (B) The business address of the entity seeking
25 registration;

26 (C) Telephone contact information of the entity seeking
27 registration;

28 (D)(i) If the applicant is a foreign corporation,
29 documentation that an agent for service of process has been appointed by
30 submitting with the application for registration a copy of:

31 (a) The company's filing with the Secretary of
32 State appointing an agent for service of process in Arkansas under § 4-20-
33 112; or

34 (b) A certificate of authority issued by the
35 Secretary of State under § 4-27-1501 to transact business within the state.

36 (ii) A foreign entity's failure to establish an

1 agent for service of process with the Secretary of State renders the
2 application nonresponsive;

3 (E) The name, address, and contact information for any
4 individual or any corporation, partnership, or other business entity that
5 owns ten percent (10%) or more of the appraisal management company;

6 (F) The name, address, and contact information for a
7 controlling person;

8 (G) A certification that the entity has a system and
9 process in place to verify that a person being added to the appraiser panel
10 of the appraisal management company holds a license in good standing in this
11 state under the Arkansas Appraiser Licensing and Certification Act. § 17-14-
12 101 et seq.;

13 (H) A certification that the entity has a system in place
14 to review the work of all independent appraisers that are performing real
15 estate appraisal services for the appraisal management company on a periodic
16 basis to ensure that the appraisal services are being conducted in accordance
17 with the minimum reporting standards under § 17-14-202(b);

18 (I) A certification that the entity maintains a detailed
19 record of each service request that it receives and the independent appraiser
20 that performs the real estate appraisal services for the appraisal management
21 company; and

22 (J) Any other information required by the board.

23 (b) The board shall issue to the company a certificate of registration
24 authorizing the company to act or offer to act as an appraisal management
25 company in Arkansas upon:

26 (1) Receipt of a properly completed application;

27 (2) Payment of the required fee;

28 (3) Posting of a bond; and

29 (4) A determination by the board that the activities of the
30 company will be directed and conducted by persons of good moral character.

31 (c)(1) In the event the board finds that there is substantial reason
32 to deny the application for registration, the board shall notify the
33 applicant that the application has been denied and shall afford the applicant
34 an opportunity for a hearing before the board to show cause why the
35 application should not be denied.

36 (2) All proceedings concerning the denial of a certificate of

1 registration shall be governed by the Arkansas Administrative Procedure Act,
2 § 25-15-101 et. seq.

3 (d) The acceptance by the board of an application for registration
4 shall not constitute the approval of its contents or waive the authority of
5 the board to take disciplinary action under this subchapter.

6
7 17-14-406. Fees and renewals.

8 (a) The Arkansas Appraiser Licensing and Certification Board shall
9 establish by rule a fee not to exceed five hundred dollars (\$500) to be paid
10 by each appraisal management company seeking registration under this
11 subchapter.

12 (b)(1) In addition to the filing fee, each applicant for registration
13 shall post with the board and maintain on renewal a surety bond in the amount
14 of twenty thousand dollars (\$20,000).

15 (2) The bond shall:

16 (A) Be in the form prescribed by the board by rule; and

17 (B) Accrue to the state for the benefit of a claimant
18 against the registrant to secure the faithful performance of the obligations
19 under this subchapter.

20 (3) The aggregate liability of the surety shall not exceed the
21 principal sum of the bond.

22 (4) A party having a claim against the registrant may bring suit
23 directly on the surety bond or the board may bring suit on behalf of the
24 claimant.

25 (5) Consumer claims are given priority in recovering from the
26 bond.

27 (6) An appropriate deposit of cash or security shall be accepted
28 in lieu of any bond that is required.

29 (7) A claim reducing the face amount of the bond shall be
30 annually restored upon renewal of the management company's registration.

31 (c)(1) Registrations issued under this subchapter shall be renewed
32 annually twelve (12) months from the date of issuance.

33 (2)(A) Failure to timely renew a registration will result in a
34 loss of authority to operate the company.

35 (B) A request for reinstatement shall be accompanied by a
36 penalty of fifty dollars (\$50) for each month of delinquency.

17-14-407. Registrant responsibilities and duties.

(a)(1) An applicant for registration under this subchapter who is not a resident of this state shall submit with the application an irrevocable consent that service of process in any action against the applicant arising out of the applicant's activities as an appraisal management company may be made under the appointment of an agent of record as provided in this subchapter.

(2) An application for registration shall submit the name and address of a registered agent located in the state.

(b)(1) A registrant shall maintain or cause to be maintained complete records of appraisal assignments referred to an appraiser licensed or certified by the Arkansas Appraiser Licensing and Certification Board, including without limitation records pertaining to the acceptance of fees from borrowers or clients and payments to appraisers.

(2) The board may inspect the records periodically without prior notice and may inspect the records whenever the board determines that they are pertinent to an investigation of a specific complaint against a registrant.

(c)(1) A registrant shall designate a controlling person or managing principal who is responsible to assure that the company operates in compliance with this subchapter.

(2) A company shall file a form with the board indicating their controlling person or managing principal and the individual's acceptance of the responsibility.

(3) A registrant shall notify the board within thirty (30) days of a change in its controlling principal.

(4) An individual registrant who operates as a sole proprietorship is considered a controlling managing principal for the purposes of this subchapter.

(d)(1) A registered appraisal management company shall make and keep the accounts, correspondence, memoranda, papers, books, and other records in accordance with rules promulgated by the board.

(2) All records shall be retained for five (5) years unless the board, by rule, prescribes a different retention period for particular types of records.

(e) If the information contained in a document filed with the board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall promptly file a correcting amendment to the information contained in the document.

(f) The appraisal management company shall disclose to its client or lender the actual fees paid to an appraiser separately from any administration fees that may be consistent with the services performed.

17-14-408. Prohibited activities.

(a) An employee, director, officer, or agent of a real estate appraisal management company, or any other third party acting as joint venture partner or independent contractor, shall not influence or attempt to influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or in any other manner including without limitation the failure to pay when due, reasonable fees to an appraiser for appraisal services that are requested from the appraiser in writing by the appraisal management company and performed by the appraiser.

(b) The registrant shall not:

(1) Require an appraiser to collect the appraisal fee from a borrower, homeowner, or other third party;

(2) Hire, employ, or in any way contract with or pay a real estate broker to perform a broker's price opinion or comparative market analysis unless the broker's price opinion or comparative market analysis will be performed only for listing or selling property that the company owns;

(3) Require an appraiser to provide the company with the appraiser's digital signature or seal;

(4) Alter, amend, or change an appraisal report submitted by an Arkansas licensed or certified appraiser in any fashion including without limitation removing the appraiser's signature or seal, or adding information to or removing information from the report;

(5)(A) Allow the removal of an independent appraiser from an appraiser panel without prior written notice to the appraiser.

(B) Written notice shall include written evidence of:

(i) The appraiser's illegal conduct;

1 (ii) A violation of the minimum reporting standards
 2 under § 17-14-202(b) or other applicable statutes or rules;

3 (iii) Substandard performance; or

4 (iv) Otherwise improper or unprofessional behavior;

5 (6) Enter into contracts or agreements with an independent
 6 appraiser for the performance of real property appraisal services unless that
 7 person is licensed or certified in good standing;

8 (7) Request that an appraiser provide an estimated,
 9 predetermined, or desired valuation in an appraisal report or provide
 10 estimated values or comparable sales at any time before the appraiser's
 11 completion of an appraisal report;

12 (8)(A) Except as provided in subdivision (b)(8)(B) of this
 13 section, provide to an appraiser an anticipated, estimated, encouraged, or
 14 desired value for a subject property or a proposed or target amount to be
 15 loaned to the borrower.

16 (B) A copy of the sales contract for purchase transactions
 17 may be provided; or

18 (9) Commit an act or practice that impairs or attempts to impair
 19 an appraiser's independence, objectivity or impartiality.

20 (c) Subsection (a) of this section shall not be construed as
 21 prohibiting the appraisal management company from requesting that an
 22 independent appraiser:

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

25 (2) Correct objective factual errors in an appraisal report; or

26 (3) Provide further detail, substantiation, or explanation for
 27 the appraiser's value conclusion.

28
 29 17-14-409. Registry of applicants and roster.

30 (a)(1) The executive director of the Arkansas Appraiser Licensing and
 31 Certification Board shall keep a register of all applicants for registration.

32 (2) The register shall indicate:

33 (A) The date of application;

34 (B) The applicant's name;

35 (C) The applicant's business address; and

36 (D) Whether the registration was granted or denied.

1 (3) The register shall be prima facie evidence of all matters
 2 contained in the register.

3 (b)(1) The executive director of the board shall keep a current roster
 4 showing the name and address of all appraisal management companies registered
 5 with the board.

6 (2) The roster shall be kept on file in the office of the board
 7 and shall be open for public inspection.

8
 9 17-14-410. Disciplinary authority, enforcement, and hearings.

10 (a) The Arkansas Appraiser Licensing and Certification Board may deny,
 11 suspend, revoke, or refuse to issue or renew a registration of an appraisal
 12 management company under this subchapter or may restrict or limit the
 13 activities relating to real estate appraisal management companies or a person
 14 who owns an interest in or participates in the business of an appraisal
 15 management company if the board finds that any of the following circumstances
 16 apply to the applicant, registrant, or a partner, member, manager, officer,
 17 director, managing principal, or a person occupying a similar status or
 18 performing similar functions or a person directly or indirectly controlling
 19 the applicant or registrant:

20 (1) The person has filed an application for registration that,
 21 as of its effective date or as of any date after filing, contained a
 22 statement that in light of the circumstances under which it was made, is
 23 false or misleading with respect to a material fact;

24 (2) The person has violated or failed to comply with a provision
 25 of this subchapter or a rule adopted by the board;

26 (3) The person has been convicted of:

27 (A) A felony; or

28 (B) Within the past ten (10) years, has been convicted of:

29 (i) A misdemeanor involving mortgage lending or real
 30 estate appraisal; or

31 (ii) An offense involving breach of trust, moral
 32 turpitude, or fraudulent or dishonest dealing;

33 (4) The person is permanently or temporarily enjoined by a court
 34 of competent jurisdiction from engaging in or continuing any conduct or
 35 practice involving any aspect of the real estate appraisal management
 36 business;

1 (5) The person is the subject of an order of the Arkansas
 2 Appraiser Licensing and Certification Board or any other state appraisal
 3 management company regulatory agency denying, suspending, or revoking that
 4 person's privilege as an appraisal management company;

5 (6) The person acted as an appraisal management company while
 6 not properly licensed by the board; or

7 (7) The person failed to pay the proper filing or renewal fee
 8 under this subchapter.

9 (b) Upon its own motion or written complaint of a person and after
 10 notice and hearing as prescribed by the Arkansas Administrative Procedure
 11 Act, § 25-15-201 et. seq., the board may:

12 (1) Suspend or revoke the registration of a registrant;

13 (2) Impose a fine not to exceed one thousand dollars (\$1,000)
 14 per violation; or

15 (3) Take other appropriate disciplinary actions as established
 16 by rule.

17 (c)(1) Before imposing a penalty on a registrant, the board shall:

18 (A) Notify the registrant in writing of any charges made
 19 at least twenty (20) days before the date set for the hearing; and

20 (B) Afford the registrant an opportunity to be heard in
 21 person or by counsel.

22 (2) The board may make findings of fact and shall deliver or
 23 mail the findings to the registrant charged with an offense under this
 24 subchapter.

25
 26 17-14-411. Injunctive relief -- Criminal penalty.

27 (a) The Arkansas Appraiser Licensing and Certification Board may
 28 appear in its own name in a circuit court of competent jurisdiction in
 29 actions for injunctive relief to prevent a person from violating the
 30 provisions of this subchapter or the rules promulgated by the board.

31 (b) The circuit court of competent jurisdiction shall have the power
 32 to grant injunctions regardless of whether:

33 (1) Criminal prosecution has been or may be instituted as a
 34 result of the violations; or

35 (2) The person is the holder of a registration issued by the
 36 board.

1 (c) A violation of this subchapter is a Class D felony.
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