

HOUSE No. 04117

The Commonwealth of Massachusetts

HOUSE, May 08, 2012

The committee on Consumer Protection and Professional Licensure, reports, on House, No. 124, a Bill to regulate real estate appraisal management companies (House, No. 4117). May 24, 2012. Theodore C. Speliotis, for the committee.

For the committee,

THEODORE C. SPELIOTIS.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act to regulate real estate appraisal management companies.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 112 of the General Laws, as appearing in the 2008 Official Edition is
2 hereby amended by adding at the end thereof the following 14 new sections:-

3 Section 236. Definitions.

4 (a) As used in sections 237 through 249, inclusive, the following words shall have the
5 following meanings, unless the context clearly requires otherwise:

6 “Applicant”, a person who applies to be registered as an appraisal management company in the
7 Commonwealth.

8 “Appraisal management company” means, in connection with valuing properties collateralizing
9 mortgage loans or mortgages incorporated into a securitization, any external third party
10 authorized either by a creditor of a consumer credit transaction secured by a consumer's principal
11 dwelling or by an underwriter of or other principal in the secondary mortgage markets, that
12 oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or

13 more nationally, excluding those appraisers who do not provide appraisal services for Covered
14 Transactions, within a given year--

15 (A) to recruit, select, and retain appraisers;

16 (B) to contract with licensed and certified appraisers to perform appraisal
17 assignments;

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

22 (D) to review and verify the work of appraisers.'

23 “Appraisal practice”, valuation services performed by an individual acting as an appraiser,
24 including but not limited to appraisal, appraisal review, or appraisal consulting.

25 “Appraisal review”, the act or process of developing and communicating an opinion about the
26 quality of another appraiser’s work that was performed as part of an appraisal assignment related
27 to the appraiser’s data collection, analysis, opinions, conclusions, opinion of value, or
28 compliance with the Uniform Standards of Professional Appraisal Practice. The term does not
29 include: (i) a general examination for grammatical, typographical or similar errors, or (ii) a
30 general examination for completeness including regulatory and/or client requirements as
31 specified in an agreement process that does not communicate an opinion of value.

32 “Appraisal services” means the services required to perform an appraisal, including defining the
33 scope of work, inspecting the property, reviewing necessary and appropriate public and private

34 data sources (for example, multiple listing services, tax assessment records and public land
35 records), developing and rendering an opinion of value, and preparing and submitting the
36 appraisal report.

37 “Board”, the Massachusetts Board of Registration of Real Estate Appraisers under Section 92 of
38 Chapter 13.

39 “Controlling person”, means one or more of the following: (1) an officer or director of an
40 appraisal management company, or an individual who holds a 10 percent or greater ownership
41 interest in an appraisal management company; (2) an individual employed, appointed, or
42 authorized by an appraisal management company that has the authority to enter into a contractual
43 relationship with clients for the performance of appraisal services and that has the authority to
44 enter into agreements with independent appraisers for the completion of appraisals; or (3) an
45 individual who possesses the power to direct or cause the direction of the management or
46 policies of an appraisal management company.

47 “Covered transaction” means an extension of consumer credit that is or will be secured by the
48 consumer's principal dwelling.

49 “Dwelling” means a residential structure that contains one to four units, whether or not that
50 structure is attached to real property. The term includes an individual condominium unit,
51 cooperative unit, mobile home, and trailer, if it is used as the consumer’s principal residence.

52 “Employee”, an individual who has an employment relationship with a person acknowledged by
53 both the individual and the person, and who is treated as an employee for purposes of
54 compliance with federal income tax laws.

55 “Employee in Charge” or “(EIC)”, a designated employee of the appraisal management
56 company, who is a state certified appraiser in at least one state, with the responsibilities and
57 obligations to the board as set forth in section 241.

58 “Fee Appraiser means: (A) a natural person who is a state-licensed or state-certified appraiser
59 and receives a fee for performing an appraisal, but who is not an employee of the person
60 engaging the appraiser; or (B) an organization that, in the ordinary course of business, employs
61 state-licensed or state-certified appraisers to perform appraisals, receives a fee for performing the
62 appraisals and is not subject to Section 1124 of the federal Financial Institutions Reform,
63 Recovery and Enforcement Act of 1989. A fee appraiser, as defined in (A) above, shall be
64 exempt from the provisions of Massachusetts General Law Chapter 149, Section 148B. ”

65 “Person”, an individual, sole proprietorship, partnership, limited liability company, limited
66 partnership, corporation, association, or other group engaged in joint business activities, however
67 organized.

68 “Registrant”, a real estate appraisal management company registered under this Act.

69 “Valuation Services”, services pertaining to all aspects of property value

70 (b) The definitions contained in section 173 of Chapter 112 also apply.

71 Section 237. Registration required of real estate appraisal management companies; exceptions.

72 (a) It shall be unlawful for a person, as defined herein, to directly or indirectly engage or
73 attempt to engage in business as an appraisal management company, to directly or indirectly
74 engage or attempt to perform appraisal management services or to advertise or hold itself out as
75 engaging in or conducting business as an appraisal management company without first being

76 registered by the Board under the provisions of this Act, regardless of the person's use of the
77 term "appraisal management company", "mortgage technology company", or any other name.

78 (b) The provisions of this Act shall not apply to:

79 (1) Any agency of the federal government or any State or municipal government;

80 (2) An appraisal management company that is a subsidiary owned and controlled by a
81 financial institution regulated by a Federal financial institution regulatory agency provided the
82 appraisal management company is in compliance with Section 1124 of the Federal Financial
83 Institutions Reform, Recovery and Enforcement Act of 1989 and any rules promulgated pursuant
84 to the authority granted in said Section 1124.

85 (d) A fee appraiser may not perform appraisal services for real property located in
86 Massachusetts for an appraisal management company that is not registered under this Act unless
87 exempt from licensing as provided for in this section

88 Section 238. Rule making authority.

89 (a) The Board shall have the authority to adopt rules consistent with the provisions of this
90 Act and the General Laws of the Commonwealth that are reasonable and necessary to
91 implement, administer, and enforce the provisions of this Act.

92 Section 239. Qualifications for registration; duties of registrants.

93 (a) Any person desiring to be registered as an appraisal management company in the
94 Commonwealth shall make written application to the Board on forms prescribed by the Board
95 setting forth the applicant's qualifications for registration. The application shall be accompanied
96 by the applicable fee under Section 243 of Chapter 112 of the General Laws, and any other

97 information the Board deems necessary pursuant to rules adopted by the Board. Upon receipt of
98 a properly completed application and fee and upon a determination by the Board that the
99 applicant is of good moral character, the Board shall issue to the applicant a certificate of
100 registration authorizing the applicant to act as a real estate appraisal management company in the
101 Commonwealth.

102 (b) An application for registration under this Act must include the following certifications
103 from the applicant:

104 (1) A certification that the applicant has a system and process in place to verify that a
105 person being added to the appraiser panel of the appraisal management company for appraisal
106 assignments on real property located in Massachusetts holds a license or certification in good
107 standing in the Commonwealth issued pursuant to this Chapter;

108 (2) A certification that the applicant has a system in place to review the work of all fee
109 appraisers that are performing real estate appraisal services for the appraisal management
110 company on a periodic basis to confirm that the real estate appraisal services are being conducted
111 in accordance with the Uniform Standards of Professional Appraisal Practice; and

112 (3) A certification that the applicant maintains a detailed record of each service request
113 that it receives and the fee appraiser that performs the residential real estate appraisal services for
114 the appraisal management company.

115 (c)(i) A person who, directly or indirectly owns more than 10 percent of an applicant for
116 registration, or (ii) any officer, controlling person, employee in charge or managing principal of
117 an applicant for registration, who has had a license or certificate to act as an appraiser or to
118 engage in any activity related to the transfer of real property refused, denied, canceled or revoked

119 in this state or in any other state, whether on a temporary or permanent basis or, who is not of
120 good moral character as determined by the Board, shall not be eligible for registration under this
121 Act.

122 (d) Each applicant for registration under this Act shall submit the name and address of the
123 applicant's registered agent located in the Commonwealth.

124 (e) Any registrant having a good faith belief that a real estate appraiser licensed in the
125 Commonwealth has violated applicable law or the Uniform Standards of Professional Appraisal
126 Practice (USPAP) or engaged in unethical conduct shall promptly file a complaint with the
127 Board.

128 Section 240. Controlling person.

129 Each appraisal management company applying to the board for registration in this state
130 shall designate one controlling person that will be the main contact for all communication
131 between the board and the appraisal management company. The controlling person may also be
132 designated the employee in charge.

133 Section 241. Employee in charge.

134 In order to serve as the employee in charge for a registered AMC, a designee shall, in
135 addition to continually holding a valid license issued by a state appraiser licensing authority as a
136 state certified appraiser:

137 (a) not have had a license to practice as an appraiser or to engage in any activity related to
138 the transfer of real property refused, denied, canceled or revoked in this state or in any other
139 state;

140 (b) be of good moral character;

141 (c) submit to a state background investigation; and

142 (d) shall be responsible for:

143 (1) management of the process of selecting appraisers for the performance of real estate
144 appraisal services;

145 (2) management of the process of conducting appraisal reviews. Any employee of an
146 appraisal management company or any contractor working on behalf of such company who has
147 any involvement in the performance of an appraisal review of completed appraisals of real
148 property located in Massachusetts shall be licensed or certified in the Commonwealth and in
149 good standing pursuant to the provisions of this Chapter.

150 (3) maintaining required documentation as part of the board file.

151 Section 242. Vacancy in controlling person or employee in charge.

152 The appraisal management company shall file a form with the Board indicating the
153 appraisal management company's designation of controlling person and employee in charge and
154 the individual's acceptance of the responsibility. An appraisal management company shall notify
155 the Board of any change in the appraisal management company's controlling person or employee
156 in charge and shall have 30 days from the date a vacancy occurs in either position to designate a
157 temporary or permanent replacement and, in the event a temporary designation is made, 90 days
158 to appoint a permanent replacement. Any appraisal management company that does not comply
159 with this section shall have the appraisal management company's registration suspended pursuant
160 to Section 246 of Chapter 112 of the General Laws until the appraisal management company

161 complies with this section. An individual operating an appraisal management company as a sole
162 proprietorship shall be a certified general or certified residential appraiser and shall be
163 considered the managing principal for purposes of this Act unless another managing principal is
164 designated.

165 Section 243. Fees and renewals.

166 The following fees shall be determined annually by the commissioner of administration
167 and finance under the provision of section three B of chapter seven and shall be collected by the
168 board: (a) application fee; (b) initial license fee; (c) annual renewal fee; (d) change in controlling
169 person or employee in charge; and (e) late renewal fee.

170 Section 244. Surety Bond.

171 In addition to the filing fee, each applicant for registration shall post with the board and
172 maintain a surety bond in the amount of twenty thousand dollars (\$20,000). The bond shall:

173 (1) Be in the form prescribed by rule of the board; and

174 (2) Accrue to the state for the benefit of a claimant against the registrant to secure the
175 faithful performance of the registrant's obligations under this Act.

176 The aggregate liability of the surety shall not exceed the principal sum of the bond. A
177 party having a claim against the registrant may bring suit directly on the surety bond, or the
178 board may bring suit on behalf of the party having a claim against the registrant. A deposit of
179 cash or security may be accepted in lieu of the surety bond. A claim reducing the face amount of
180 the bond shall be annually restored upon renewal of the registrant's registration.

181 Section 245. Prohibited acts.

182 (a) No employee, director, officer, managing principal or agent of an appraisal
183 management company or any other third party acting as joint venture partner or independent
184 contractor shall influence or attempt to influence the development, reporting, result, or review of
185 a real estate appraisal through coercion, extortion, collusion, compensation, inducement,
186 intimidation, bribery, or in any other manner, including:

187 (1) Withholding or threatening to withhold timely payment for a real estate appraisal
188 report except in cases of breach of contract or substandard performance of services;

189 (2) Withholding or threatening to withhold future business from a real estate appraiser or
190 demoting or terminating or threatening to demote or terminate a real estate appraiser;

191 (3) Expressly or impliedly promising future business, promotions, or increased
192 compensation for a real estate appraiser;

193 (4) Conditioning the ordering of a real estate appraisal report or the payment of a real
194 estate appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on
195 a preliminary estimate requested from a real estate appraiser;

196 (5) Requesting that a real estate appraiser provide an estimated, predetermined, or desired
197 valuation in a real estate appraisal report or provide estimated values or comparable sales at any
198 time before the appraiser's completion of the appraisal report;

199 (6) Providing to a real estate appraiser an anticipated, estimated, encouraged, or desired
200 value for a subject property or a proposed or targeted amount to be loaned to the borrower;
201 provided, however, a real estate appraiser should be provided with a copy of the sales contract
202 for purchase transactions, if available;

203 (7) Providing to a real estate appraiser, or any entity or person related to the appraiser,
204 stock or other financial or non-financial benefits;

205 (8) Allowing the removal of a real estate appraiser from a list of qualified appraisers used
206 by any entity without prior written notice stating the reason for removal to the appraiser. The
207 notice shall include written evidence if the appraiser is removed from the list for illegal conduct,
208 substandard performance, or otherwise improper or unprofessional behavior or any violation of
209 the Uniform Standards of Professional Appraisal Practice (USPAP) or State licensing standards;

210 (9) Any other act or practice that impairs or attempts to impair a real estate appraiser's
211 independence, objectivity, or impartiality; or

212 (10) Requesting or requiring a real estate appraiser to collect a fee from, or be
213 compensated by, the borrower, homeowner, real estate agent, mortgage broker or any other third
214 party in the provision of real estate appraisal services.

215 (b) No employee, director, officer, managing principal or agent of an appraisal
216 management company or any other third party acting as joint venture partner or independent
217 contractor shall:

218 (1) Alter, modify, or otherwise change a completed appraisal report submitted by a fee
219 appraiser without the appraiser's written knowledge and consent;

220 (2) Alter, modify, or otherwise change a completed appraisal report submitted by a fee
221 appraiser and must, in all cases, transmit a "true and exact copy" to the client and any intended
222 users;

223 (3) Use an appraisal report submitted by a fee appraiser for any other transaction;

224 (4) Require a fee appraiser to sign any indemnification agreement that would require
225 the fee appraiser to defend and hold harmless the appraisal management company or any of its
226 agents, employees, or independent contractors for any liability, damage, losses, or claims arising
227 out of the services performed by the appraisal management company or its agents, employees, or
228 independent contractors and not the services performed by the fee appraiser;

229 (5) Require a fee appraiser to provide the company with the appraiser's digital signature
230 or seal;

231 (6) Prohibit a fee appraiser from recording the fee the fee appraiser was paid for the
232 performance of an appraisal assignment within the body of the appraisal report;

233 (7) Require a fee appraiser to accept an appraisal assignment if the fee appraiser, in the fee
234 appraiser's own independent professional judgment believes, (i) the fee appraiser does not have
235 the necessary expertise for the assignment, or (ii) knowledge of the geographic area; or (iii) that
236 the time frame does not allow the appraiser the ability to meet all of the fee appraiser's relevant
237 legal or professional obligations, and the fee appraiser has communicated such belief to the
238 appraisal management company.

239 (8) Knowingly fail to compensate fee appraisers at a rate that is customary and reasonable for
240 appraisal services in the market area of the property being appraised, consistent with Section
241 129E of the Truth in Lending Act and regulations promulgated thereunder.

242 (c) Nothing in this section shall be construed as prohibiting an appraisal management
243 company from requesting that a fee appraiser:

244 (1) Consider additional appropriate material property information;

245 (2) Provide further detail, substantiation, or explanation for the real estate appraiser's
246 value conclusion; or

247 (3) Correct errors in the real estate appraisal report.

248 (d) An appraisal management company shall not refuse to assign requests or orders for
249 appraisals or reduce the number of assignments or otherwise penalize a fee appraiser who does
250 not accept an assignment or order in accordance with Section 245(b) 7 of this Act, except that
251 nothing in this section shall require an appraisal management company to offer future appraisal
252 assignments of a particular nature or type to a fee appraiser who previously indicated a lack of
253 the necessary expertise or geographic knowledge for such assignments, except in the case where
254 the fee appraiser subsequently demonstrates, to the satisfaction of the appraisal management
255 company, that they have gained the required experience or geographic knowledge to competently
256 complete the assignments.

257 Section 246. Disciplinary authority.

258 (a) The Board may, by order, deny, suspend, revoke, or refuse to issue or renew a
259 registration of an appraisal management company under this Act or may restrict or limit
260 activities of a person who owns an interest in or participates in the business of an appraisal
261 management company if the Board determines that an applicant, registrant, or any partner,
262 member, manager, officer, director, managing principal, or person occupying a similar status,
263 performing similar functions, or directly or indirectly controlling the applicant or registrant has
264 done any of the following:

265 (1) Filed an application for registration that, as of its effective date or as of any date after
266 filing, contained any statement that, in light of the circumstances under which it was made, is
267 false or misleading with respect to any material fact;

268 (2) Violated or failed to comply with any provision of this Act or any rules adopted by
269 the Board;

270 (3) Been convicted of any felony or, within the past 10 years, been convicted of any
271 misdemeanor involving any activity related to the transfer of real property, including, but not
272 limited to mortgage lending or real estate appraisal or any offense involving breach of trust,
273 moral turpitude, or fraudulent or dishonest dealing;

274 (4) Been permanently or temporarily enjoined by any court of competent jurisdiction
275 from engaging in or continuing any conduct or practice involving any aspect of the real estate
276 appraisal management business;

277 (5) Been the subject of an order of the Board or any other state appraiser regulatory
278 agency denying, suspending, or revoking the person's license as a real estate appraiser;

279 (6) Acted as an appraisal management company while not properly licensed by the
280 Board;

281 (7) Structured an appraisal assignment or a contract with a fee appraiser for the purpose
282 of evading the provisions of this Act; or

283 (8) Failed to pay the proper filing or renewal fee under this Act.

284 (b) The Board may, by order, impose a civil penalty upon a registrant or any partner,
285 officer, director, managing principal, or other person occupying a similar status or performing

286 similar functions on behalf of a registrant for any violation of this Act. The civil penalty shall not
287 exceed \$10,000 for each violation of this Act.

288 (c) In addition to other powers under this Act, upon finding that any action of a person is
289 in violation of this Act, the Board may order the person to cease from the prohibited action. If the
290 person subject to the order fails to appeal the order of the Board or the person appeals the order
291 and the appeal is denied or dismissed and the person continues to engage in the prohibited action
292 in violation of the Board's order, the person shall be subject to a civil penalty of not more than
293 \$25,000 for each violation of the order. The penalty provision of this section shall be in addition
294 to and not in lieu of any other provision of law applicable to a registrant for the registrant's
295 failure to comply with an order of the Board.

296 (d) Unless otherwise provided, all actions and hearings under this Act shall be governed
297 by Chapter 30A.

298 (e) If the Board has reasonable grounds to believe that an appraisal management
299 company has violated the provisions of this Act or that facts exist that would be the basis for an
300 order against an appraisal management company, the Board may at any time, either personally or
301 by a person duly designated by the Board, investigate or examine the books, accounts, records,
302 and files of any registrant or other person relating to the complaint or matter under investigation.

303 (f) The Board shall have the power to issue subpoenas requiring the attendance of persons
304 and the production of papers and records before the Board in any hearing, investigation, inquiry,
305 or other proceeding conducted by the Board. Upon the production of any papers, records, or
306 documents, the Board shall have the power to authorize true copies of the papers, records, or

307 documents to be substituted in the permanent record of the matter in which the papers, records,
308 or documents shall have been introduced in evidence.

309 Section 247. Records.

310 (a) The Board shall maintain a list of all applicants for registration under this Act that
311 includes for each applicant the date of application, the name and primary business location of the
312 applicant, and whether the registration was granted or refused.

313 (b) The Board shall maintain a current roster showing the names and places of business
314 of all registered appraisal management companies that lists the appraisal management
315 companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of
316 the Board; (ii) contain information regarding all orders or other action taken against the
317 company, its officers, and other persons; and (iii) be open to public inspection.

318 (c) Every registered appraisal management company shall maintain the records related to
319 services provided by the appraisal management company as prescribed in rules adopted by the
320 Board. All records shall be preserved for five years unless the Board, by rule, prescribes
321 otherwise for particular types of records.

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

325 Section 248. Penalty; injunctive relief.

326 The Board may appear in its own name in superior court in actions for injunctive relief to
327 prevent any person from violating the provisions of this Act or rules adopted by the Board. The

328 superior court shall have the power to grant these injunctions whether criminal prosecution has
329 been or may be instituted as a result of the violations or whether the person is the holder of a
330 registration issued by the Board under this Act.

331 Section 249. Background Checks

332 (a) The Board shall have the authority to conduct investigations and examinations for:

333 (1) purposes of initial registration, registration renewal, registration suspension,
334 registration conditioning, registration revocation or termination, or general or specific inquiry or
335 investigation to determine compliance with this chapter, the Board shall have the authority to
336 access, receive and use any books, accounts, records, files, documents, information or evidence
337 including, but not limited to: (i) criminal, civil and administrative history information, including
338 non-conviction data as specified in applicable provisions of the General Laws; and (ii) any other
339 documents, information or evidence the Board deems relevant to the inquiry or investigation
340 regardless of the location, possession, control or custody of such documents, information or
341 evidence; and

342 (2) the purposes of investigating violations or complaints arising under this chapter, or for
343 the purposes of examination, the Board may review, investigate, or examine any licensee,
344 individual or person subject to this chapter, in order to carry out the purposes of this chapter.

345 (b) If an applicant, registrant or managing principal's criminal history record check
346 reveals one or more convictions, the conviction shall not automatically bar registration, provided
347 the conviction is not related to the transfer of real property. The Board shall consider all of the
348 following factors regarding the conviction:

- 349 (1) The level of seriousness of the crime;
- 350 (2) The date of the crime;
- 351 (3) The age of the person at the time of the conviction;
- 352 (4) The circumstances surrounding the commission of the crime, if known;
- 353 (5) The nexus between the criminal conduct of the person and the job duties of the
354 position to be filled; and
- 355 (6) The person's prison, jail, probation, parole, rehabilitation, and employment records
356 since the date the crime was committed.

357 Section 250 Appraisal Board

358 Chapter 13, Section 92 of the General Laws is hereby amended as follows:

359 Section 92. There is hereby established a board of real estate appraisers which shall consist of
360 nine members to be appointed by the governor, one of whom shall be members of the general
361 public, in accordance with the provisions of section nine B, one of whom shall be a member of
362 the banking industry, one of whom shall be a licensed real estate broker, one of whom shall
363 represent an appraisal management company, and five of whom shall be real estate appraisers.
364 Each real estate appraiser member of the board appointed after January first, nineteen hundred
365 and ninety-two shall be a state-licensed or state-certified real estate appraiser under the
366 provisions of sections one hundred and seventy-three to one hundred and ninety-five, inclusive,
367 of chapter one hundred and twelve.

368 The term of each appointed member shall be three years.

369 Upon expiration of their terms, members of the board shall continue to hold office until the
370 appointment and qualification of their successors. No person shall serve as a member of the
371 board for more than two consecutive terms. The appointing authority may remove a member for
372 cause.

373 Each member of the board shall be paid for expenses actually incurred in the performance of
374 official duties.

375 The board shall annually elect a chairperson from among its members.

376 The board shall hold at least six meetings each year and may hold special meetings as required at
377 a time and place determined by the board.

378 The director of the department of professional licensure, with approval of the board, shall
379 appoint an executive secretary to serve the board. The department of professional licensure shall
380 employ such other clerical and technical assistants as may be necessary to discharge the official
381 duties of the board.