

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 138

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO APPRAISAL MANAGEMENT COMPANIES; AMENDING PROCEDURES
FOR DISCIPLINARY PROCEEDINGS; CLARIFYING THE RIGHTS AND
OBLIGATIONS OF APPRAISERS AND APPRAISAL MANAGEMENT COMPANIES
WITH REGARD TO LIABILITY, FEES AND DISCLOSURE; REQUIRING
SURETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 47-14-1 NMSA 1978 (being Laws 2009,
Chapter 214, Section 1) is amended to read:

"47-14-1. SHORT TITLE.--~~[Sections 1 through 23 of this
act]~~ Chapter 47, Article 14 NMSA 1978 may be cited as the
"Appraisal Management Company Registration Act"."

Section 2. Section 47-14-3 NMSA 1978 (being Laws 2009,
Chapter 214, Section 3) is amended to read:

"47-14-3. REGISTRATION REQUIRED.--

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1 A. It is unlawful for a person, corporation,
2 partnership, sole proprietorship, subsidiary, limited liability
3 company or any other business entity to directly or indirectly
4 engage or attempt to engage in business as an appraisal
5 management company, to directly or indirectly engage or attempt
6 to perform appraisal management services or to advertise or
7 hold itself out as engaging in or conducting business as an
8 appraisal management company without first obtaining a
9 certificate of registration issued by the board under the
10 provisions of the Appraisal Management Company Registration
11 Act, regardless of the entity's use of the term "appraisal
12 management company", "mortgage technology company" or any other
13 name.

14 B. The registration required by Subsection A of
15 this section shall include:

- 16 (1) the name of the entity seeking
17 registration;
- 18 (2) the business address of the entity seeking
19 registration;
- 20 (3) telephone contact information of the
21 entity seeking registration;
- 22 (4) if the entity seeking registration is not
23 a corporation that is domiciled in this state, the name and
24 contact information for the company's agent for service of
25 process in this state;

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

5 (6) the name, address and contact information
6 for a controlling person;

7 (7) a certification that the entity seeking
8 registration has a system and process in place to verify that a
9 person being added to the appraiser panel of the appraisal
10 management company holds a license or certification in good
11 standing in this state pursuant to the Real Estate Appraisers
12 Act;

13 (8) a certification that the entity seeking
14 registration has a system in place to review the work of all
15 independent appraisers that are performing real estate
16 appraisal services for the appraisal management company on a
17 periodic basis to ensure that the real estate appraisal
18 services are being conducted in accordance with uniform
19 standards of professional appraisal practice;

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

24 (10) an irrevocable consent to service of
25 process; [and]

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1 (11) a bond or other equivalent means of
2 security as required by the Appraisal Management Company
3 Registration Act; and

4 [~~(11)~~] (12) any other information required by
5 the board."

6 Section 3. Section 47-14-12 NMSA 1978 (being Laws 2009,
7 Chapter 214, Section 12) is amended to read:

8 "47-14-12. EMPLOYEE REQUIREMENTS.--

9 A. Any employee of the appraisal management
10 company, or any person working on behalf of the appraisal
11 management company, that has the responsibility of selecting
12 independent appraisers for the performance of real estate
13 appraisal services for the appraisal management company or the
14 responsibility of reviewing completed appraisals shall have
15 geographic and product competence and be appropriately trained
16 and qualified in the performance of real estate appraisals as
17 determined by the board by rule.

18 B. Any employee of the appraisal management company
19 that has the responsibility to review the work of independent
20 appraisers shall have demonstrated knowledge of the uniform
21 standards of professional appraisal practice, as determined by
22 the board by rule."

23 Section 4. Section 47-14-13 NMSA 1978 (being Laws 2009,
24 Chapter 214, Section 13) is amended to read:

25 "47-14-13. [~~LIMITATIONS~~] REQUIREMENTS--LIABILITY.--

1 A. An appraisal management company registered in
 2 this state pursuant to the Appraisal Management Company
 3 Registration Act ~~[may]~~ shall not enter into contracts or
 4 agreements with an independent appraiser for the performance of
 5 real estate appraisal services unless that person is licensed
 6 or certified in good standing pursuant to the Real Estate
 7 Appraisers Act.

8 B. An appraisal management company shall not
 9 include a hold harmless provision in a contract with an
 10 appraiser or require the appraiser to indemnify the appraisal
 11 management company against liability."

12 Section 5. Section 47-14-18 NMSA 1978 (being Laws 2009,
 13 Chapter 214, Section 18) is amended to read:

14 "47-14-18. PAYMENT--LIMITS--DISCLOSURE--NONTAXABLE
 15 TRANSACTION CERTIFICATE.--

16 A. An appraisal management company shall compensate
 17 appraisers at a rate that is customary and reasonable for
 18 appraisal services performed in the market area of the property
 19 being appraised.

20 B. The fees paid to an appraiser for completion of
 21 the appraisal shall not include a fee for management of the
 22 appraisal process or any activity other than the performance of
 23 the appraisal.

24 C. An appraisal management company shall separately
 25 state the fees paid to an appraiser for appraisal services and

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1 the fees charged by the appraisal management company for
2 services associated with the management of the appraisal
3 process, including procurement of the appraiser's services to
4 the client, borrower and any other payor.

5 D. Appraisers shall not be prohibited by the
6 appraisal management company, client or other third party from
7 disclosing the fee paid to the appraiser for the performance of
8 the appraisal in the appraisal report.

9 E. As used in this section:

10 (1) "payor" means any person or entity who is
11 responsible for making payment for the appraisal; and

12 (2) "customary and reasonable" means a rate
13 that is most consistent with that of appraisers for a given
14 category of appraisal charged by the majority of appraisers
15 with similar training and experience providing services within
16 the same geographical area.

17 ~~[A. Each]~~ F. An appraisal management company
18 shall, except in cases of breach of contract or substandard
19 performance of services, make payment to an independent
20 appraiser for the completion of an appraisal or valuation
21 assignment within sixty days of the date on which the
22 independent appraiser transmits or otherwise provides the
23 completed appraisal or valuation study to the appraisal
24 management company or its assignee.

25 ~~[B.]~~ G. An appraisal management company shall

1 provide an appraiser with the appropriate nontaxable
 2 transaction certificate pursuant to Section 7-9-48 NMSA 1978."

3 Section 6. Section 47-14-22 NMSA 1978 (being Laws 2009,
 4 Chapter 214, Section 22) is amended to read:

5 "47-14-22. DISCIPLINARY HEARINGS.--The board [~~may~~] shall
 6 conduct adjudicatory proceedings in accordance with the
 7 [~~Administrative Procedures~~] Uniform Licensing Act; provided
 8 that:

9 ~~[A. before censuring any registrant, or suspending~~
 10 ~~or revoking any registration, the board shall notify the~~
 11 ~~registrant in writing of any charges made at least twenty days~~
 12 ~~prior to the date set for the hearing and shall afford the~~
 13 ~~registrant an opportunity to be heard in person or by counsel;~~

14 ~~B. the] A.~~ a written notice shall be satisfied by
 15 personal service on the controlling person of the registrant or
 16 the registrant's agent for service of process in this state or
 17 by sending the notice by certified mail, return receipt
 18 requested, to the controlling person of the registrant to the
 19 registrant's address on file with the board; and

20 ~~[C. the] B.~~ a hearing on the charges shall be at a
 21 time and place prescribed by the board [~~and~~

22 ~~D. the board may make findings of fact and shall~~
 23 ~~deliver or mail such findings to the registrant charged with an~~
 24 ~~offense under the Appraisal Management Company Registration~~
 25 ~~Act]."~~

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1 Section 7. A new section of the Appraisal Management
2 Company Registration Act is enacted to read:

3 "[NEW MATERIAL] BONDING REQUIREMENTS.--

4 A. In order to qualify for registration or renewal
5 of registration, an appraisal management company shall maintain
6 a bond underwritten by a corporate surety authorized to
7 transact business in New Mexico, or other equivalent means of
8 security. The board shall set by rule the amount and
9 conditions of the surety bond or other equivalent means of
10 security required by this section, provided that the amount of
11 the bond or security required shall not exceed twenty-five
12 thousand dollars (\$25,000).

13 B. The bond or other equivalent means of surety
14 shall secure payment for any administrative or judicial
15 penalties that may be imposed by the board or the state and for
16 any penalties or costs required by a board disciplinary action,
17 and also as indemnity for any loss sustained by any person
18 damaged as a result of a violation by the appraisal management
19 company, of any provision of the Appraisal Management Company
20 Registration Act or of any rule of the board adopted pursuant
21 to that act. Consumer claims shall be given priority in
22 recovering from the bond or equivalent surety.

23 C. An appraisal management company shall notify the
24 board in writing of any claim made on the appraisal management
25 company's bond or equivalent surety.

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1 D. A deposit of cash or security may be accepted in
2 lieu of the surety bond."

3 Section 8. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2010.

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