

No. 2012-4

AN ACT

HB 398

Providing for registration of appraisal management companies, for powers of the State Board of Certified Real Estate Appraisers with respect to appraisal management companies, for the responsibilities and duties of appraisal management companies, for prohibited activities, for discipline and for penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Appraisal Management Company Registration Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Applicant." A person who files an application for registration as an appraisal management company.

"Appraisal." The term has the meaning provided in section 2 of the act of July 10, 1990 (P.L.404, No.98), known as the Real Estate Appraisers Certification Act.

"Appraisal management company." A person that provides appraisal management services and acts as a third-party intermediary between a person seeking a valuation of real estate located in this Commonwealth and an appraiser or firm of appraisers.

"Appraisal management services." Conducting business by telephone, by electronic means, by mail or in person directly or indirectly for compensation or in the expectation of compensation to manage the performance of appraisals for a client, including, without limitation:

- (1) Recruiting appraisers.
- (2) Contracting with appraisers to perform appraisals.
- (3) Negotiating fees with appraisers.
- (4) Receiving appraisal orders and appraisals.
- (5) Submitting appraisals received from appraisers to the client.
- (6) Providing related administrative and clerical duties.

"Appraisal review." An appraisal review as defined by the Uniform Standards of Professional Appraisal Practice issued by the Appraisal Standards Board.

"Appraiser." An individual certified under the act of July 10, 1990 (P.L.404, No.98), known as the Real Estate Appraisers Certification Act, as a certified residential appraiser or certified general appraiser.

"Appraiser panel." A group of appraisers that have been selected by an appraisal management company to perform appraisals for the appraisal management company.

"Board." The State Board of Certified Real Estate Appraisers within the Bureau of Professional and Occupational Affairs in the Department of State.

"Client." A person that contracts with or otherwise enters into an agreement with an appraisal management company for the performance of appraisal management services.

"Compliance person." An individual who is employed, appointed or authorized by an appraisal management company to be responsible for ensuring compliance with this act.

"Exempt company." A person that is exempted from registering under this act under section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 103 Stat. 183).

"Key person." A person other than a compliance person who is a director, officer, supervisor, manager or other person performing a similar function in an appraisal management company.

"Mortgage Bankers and Brokers and Consumer Equity Protection Act." The act of December 22, 1989 (P.L.687, No.90), known as the Mortgage Bankers and Brokers and Consumer Equity Protection Act.

"REACA." The act of July 10, 1990 (P.L.404, No.98), known as the Real Estate Appraisers Certification Act.

"Registrant." An appraisal management company that is registered under this act.

"RELRA." The act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

Section 3. Registration of appraisal management companies required.

Except as provided in section 11, a person who is not an exempt company or a registrant may not:

(1) Act as an appraisal management company in this Commonwealth.

(2) Hold out as an appraisal management company in this Commonwealth.

(3) Advertise or hold out as engaging in or conducting the business of an appraisal management company in this Commonwealth.

Section 4. Powers of board.

(a) Regulations.—The board shall have the powers necessary to implement, administer and enforce this act, including the power to adopt rules and regulations consistent with this act.

(b) Temporary regulations.—In order to facilitate the prompt implementation of this act, regulations promulgated by the board shall be deemed temporary regulations which shall expire no later than three years following the effective date of this section. The board may promulgate temporary regulations which shall not be subject to:

(1) Sections 201, 202 and 203 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(2) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(c) Expiration.—The authority provided to the board to adopt temporary regulations under subsection (b) shall expire three years from the effective date of this section. Regulations adopted after that date shall be promulgated as provided by law.

Section 5. Requirements for registration.

(a) Application.—Before acting or offering to act as an appraisal management company in this Commonwealth, a person that is not an exempt

company shall make written application to the board for registration accompanied by the required fee and bond or letter of credit.

(b) Required information.—The application shall contain such information as the board shall require, including the following information:

(1) The name, business street address, telephone number and other contact information of the applicant.

(2) If the applicant is not an individual and is incorporated or otherwise formed under the laws of a jurisdiction other than this Commonwealth, documentation that the applicant is authorized to transact business in this Commonwealth.

(3) The name, street address, telephone number and other contact information of any person that owns 10% or more of the applicant.

(4) The name, street address, telephone number and other contact information of the applicant's compliance person.

(5) A certification that the applicant:

(i) Has a system in place to verify that a person being added to an appraiser panel of the applicant or who will otherwise perform appraisals for the applicant of property located in this Commonwealth is a certified appraiser and in good standing in this Commonwealth under REACA.

(ii) Has a system in place for the performance of appraisal reviews with respect to the work of all appraisers that are performing appraisals for the applicant of property located in this Commonwealth to determine whether the appraisals are being conducted in conformance with the minimum standards under REACA both on a periodic basis and whenever requested by a client.

(iii) Maintains a detailed record of each request for an appraisal that it receives, the appraiser assigned to perform the appraisal, the fees received from the client for the appraisal and the fees paid to the appraiser.

(6) Any discipline imposed on the applicant in this Commonwealth or any other state under any law regulating appraisers, appraisal management companies or real estate brokers or salespersons.

(7) Any criminal conviction of the applicant during the previous ten years in this Commonwealth or any other state or federal jurisdiction.

(8) Any other information required by rules and regulations of the board.

(c) Requirements for registration.—The board shall register an applicant as an appraisal management company in this Commonwealth upon:

(1) Receipt of a properly completed application.

(2) Payment of the required fee.

(3) Posting of the required bond or letter of credit.

(4) A determination by the board that the activities of the applicant will be directed and conducted by persons of good moral character as defined in the rules and regulations of the board.

(d) Denial of application.—

(1) If the board finds that there is reason to deny the application for registration, the board shall notify the applicant that the application has

been denied and shall afford the applicant an opportunity for a hearing before the board to show cause why the application should not be denied.

(2) All proceedings concerning the denial of an application for registration shall be governed by 2 Pa.C.S. (relating to administrative law and procedure).

(e) Construction.—The acceptance by the board of an application for registration does not constitute the approval of its contents or waive the authority of the board to take disciplinary action under this act.

Section 6. Fees and renewals.

(a) Filing fees.—The fee to file an application for registration or renewal of a registration under this act shall be \$1,000 or such other amounts as are set by the rules and regulations of the board.

(b) Bond or letter of credit.—

(1) In addition to the filing fee, each applicant for registration shall either comply with:

- (i) paragraph (2) regarding the posting of a bond; or
- (ii) paragraph (3) regarding the posting of a letter of credit.

(2) The requirements for posting a bond shall be:

(i) The bond shall be in the amount of \$20,000 or any other amount as set by the rules and regulations of the board.

(ii) The bond shall be in the form prescribed by the rules and regulations of the board.

(iii) The bond shall accrue to the Commonwealth for the benefit of:

(A) a claimant against the registrant to secure the faithful performance of the registrant's obligations under this act; or

(B) An appraiser who has performed an appraisal for the registrant for which the appraiser has not been paid.

(iv) The aggregate liability of the surety shall not exceed the principal sum of the bond.

(v) A party having a claim against the registrant may bring suit directly on the surety bond or the board may bring suit on behalf of the party having a claim against the registrant.

(vi) The amount of the bond shall be restored to the full amount required within 15 days after the payment of any claim on the bond.

(3) The requirements for posting a letter of credit shall be:

(i) The letter of credit shall be in the amount of \$20,000 or any other amount as set by the rules and regulations of the board.

(ii) The letter of credit shall be irrevocable and in a form approved by the board. The letter of credit shall be payable to the Bureau of Professional and Occupational Affairs in the Department of State.

(iii) The letter of credit shall be for the use and the benefit of:

(A) a person suffering damages for failure of the registrant to perform its obligations under this act; or

(B) An appraiser who has performed an appraisal for the registrant for which the appraiser has not been paid.

(iv) A person described under subparagraph (iii) may file with the bureau a complaint against the registrant and request a draw upon the

registrant's letter of credit. Upon receipt of a complaint, the bureau shall notify the registrant and investigate the complaint. Upon determination by the bureau that the registrant is liable to the complainant, the bureau may, after providing notice to the registrant, draw upon the irrevocable letter of credit to satisfy the complaint.

(v) Upon a draw against a letter of credit, the registrant must provide a new letter of credit in the amount required under subparagraph (i).

(c) Renewal.—

(1) Registrations under this act shall be renewed on a biennial basis for persons in good standing.

(2) Failure to timely renew a registration shall result in a loss of authority to operate under this act.

(3) A request to reinstate a registration shall be accompanied by payment of a penalty of \$50 for each month of delinquency.

(4) The contents of an application for renewal shall be prescribed by the rules and regulations of the board.

Section 7. Responsibilities and duties of appraisal management companies.

(a) Conduct of reviews.—All appraisal reviews in this Commonwealth must be conducted for an appraisal management company by:

(1) a certified appraiser in good standing in this Commonwealth; or

(2) a certified or licensed appraiser in good standing in another state.

(b) Records.—

(1) An appraisal management company shall maintain or cause to be maintained:

(i) in the case of a registrant, complete records of its compliance with the certifications required under section 5(b)(5); and

(ii) in the case of registrants and exempt companies, such accounts, correspondence, memoranda, papers, books and other records as shall be required by the rules and regulations of the board.

(2) The records must be retained for:

(i) five years after their preparation;

(ii) two years after final disposition of any judicial proceeding that involves the actions of the appraisal management company that are the subject of the records; or

(iii) such other period as shall be required by the rules and regulations of the board with respect to a particular class or type of records.

(3) The board may inspect the records required under paragraph (1) at any time.

(c) Compliance person.—

(1) An appraisal management company shall at all times have a compliance person.

(2) A registrant shall file a certification with the board in a form approved by the board certifying:

(i) The identity of its compliance person.

(ii) The individual's acceptance of the responsibilities of a compliance person.

(3) A registrant shall notify the board within 30 days of a change in its compliance person.

(4) An individual registrant who operates as a sole proprietorship is considered the compliance person under this act.

(d) Updating of board records.—If the information contained in a document filed with the board is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file an amendment correcting the information contained in the document.

(e) Disclosure.—An appraisal management company shall disclose to its lender the fees paid for an appraisal separately from any other fees or charges for appraisal management services.

(f) Notice of discipline.—A registrant must notify the board in writing within 30 days after its occurrence of any denial, revocation or suspension of its designation, registration, certificate or license under any law of any jurisdiction other than this Commonwealth regulating appraisal management companies, the imposition of any other form of discipline under any such law or the commencement of a disciplinary or enforcement action against the registrant under any such law.

(g) Provision of sales contract.—Whenever an appraisal management company requests an appraiser to perform an appraisal, the appraisal management company must make a reasonable effort to provide in a timely manner to the appraiser a copy of the contract for the sale of the property, if available, along with legal descriptions and any other documents pertinent to the assignment.

Section 8. Prohibited activities.

(a) Improper influence.—An employee, key person, compliance person or agent of an appraisal management company shall not improperly influence or attempt to improperly influence the development, reporting, result or review of an appraisal, including, without limitation, through the use of intimidation, coercion, extortion, bribery, blackmail, threat of nonpayment or withholding payment for an appraisal or threat of exclusion from future appraisal work.

(b) Other prohibitions.—A registrant or exempt company shall not:

(1) Hire, employ or in any way contract with or pay a person who is not an appraiser and who holds a license under the RELRA to perform a valuation of real estate unless it is a comparative market analysis as defined in section 201 of the RELRA.

(2) Require an appraiser to provide the registrant or exempt company with the appraiser's digital signature or seal.

(3) Alter, amend or change an appraisal submitted by an appraiser, including, without limitation, by:

(i) removing the appraiser's signature or seal; or

(ii) adding or removing information to or from the appraisal.

(4) Remove an appraiser from an appraiser panel without prior written notice to the appraiser. The notice must include evidence of:

(i) illegal or unlawful conduct by the appraiser;

(ii) a violation of the minimum reporting standards under the REACA or other applicable statute or regulation;

- (iii) failure to satisfy minimum standards required by the appraisal management company or any contract between the appraiser and the appraisal management company;
 - (iv) otherwise improper or unprofessional behavior; or
 - (v) a legitimate business reason for the removal that is not related to the appraiser's performance.
- (5) Enter into a contract or agreement with an appraiser for the performance of appraisals unless the appraiser is certified and in good standing with the board.
- (6) Request that an appraiser provide:
- (i) an estimated, predetermined or desired valuation in an appraisal; or
 - (ii) estimated values or comparable sales at any time before the appraiser completes an appraisal.
- (7) Except as provided in section 7(g), provide to an appraiser:
- (i) an anticipated, estimated, encouraged or desired value for a property; or
 - (ii) a proposed or target amount to be loaned to the borrower.
- (8) Commit an act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality or solicit an appraiser to violate this act or the RELRA or REACA.
- (9) Prohibit an appraiser from recording the fee the appraiser was paid for the performance of an appraisal in the appraisal report.
- (c) Construction.—Subsection (a) does not prohibit an appraisal management company from requesting that an appraiser:
- (1) Correct objective factual errors in an appraisal.
 - (2) Provide additional detail, substantiation or explanation for the appraiser's value conclusion, including, without limitation, the applicability of additional comparables as presented.
- (d) Owners and employees.—
- (1) Except as provided in paragraph (2), a person that has been denied registration under this act or a similar law of another jurisdiction or that would be disqualified from eligibility to be certified or licensed under the REACA may not be:
 - (i) a key person or compliance person; or
 - (ii) directly involved in the provision of appraisal services by an appraisal management company as an employee or in any other capacity.
 - (2) Paragraph (1) shall cease to apply at such time as a person is subsequently registered under this act or becomes eligible to be certified or licensed under the REACA.
- Section 9. Registry of applicants and roster.
- (a) Registry.—The board shall keep a register of all applicants for registration showing:
- (1) The date of application.
 - (2) The applicant's name.
 - (3) The applicant's business street address.
 - (4) Whether the registration was granted or denied.

(b) Roster.—The board shall keep a current roster showing for each registrant registered at any time with the board:

- (1) Its last known name and street address.
- (2) An identification number.

(c) Availability of records.—The register and roster shall be kept on file in the office of the board and shall be open for public inspection. The board shall also post the roster on its Internet website.

Section 10. Disciplinary measures.

(a) Authority of board.—The board may impose disciplinary action as set forth in subsection (b) upon an applicant, registrant, exempt company, person acting as an appraisal management company, person holding out as an appraisal management company or person advertising or holding out as engaging in or conducting the business of an appraisal management company, for any of the following causes:

(1) The appraisal management company's application for registration or renewal of registration when filed contained a statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact.

(2) The applicant, registrant, exempt company, its compliance person or key person has violated or failed to comply with:

(i) This act or the regulations or guidelines promulgated by the board for the administration and enforcement of this act.

(ii) The REACA or the regulations or guidelines promulgated by the board for the administration and enforcement of the REACA.

(3) The State Real Estate Commission has found the applicant, registrant, exempt company, compliance person or key person in violation of the RELRA or the regulations to administer and effectuate the purposes of the RELRA.

(4) The Department of Banking or a court of competent jurisdiction has found the applicant, registrant, exempt company, compliance person or key person in violation of the provisions of 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry licensing and consumer protection) or the Mortgage Bankers and Brokers and Consumer Equity Protection Act.

(5) The applicant, registrant, exempt company, compliance person or key person has been convicted of:

(i) A felony.

(ii) Within the past ten years, a misdemeanor involving mortgage lending or real estate appraising, breach of trust, moral turpitude or fraudulent or dishonest dealing.

(6) The applicant, registrant, exempt company, compliance person or key person is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisal management services or operating an appraisal management company.

(7) The applicant, registrant, exempt company, compliance person or key person is the subject of an order of the board or any other state appraisal management company regulatory agency denying, suspending or revoking the person's privilege to operate as an appraisal management company, or other disciplinary actions by an agency of another jurisdic-

tion responsible for regulating appraisers, mortgage brokers, real estate salespersons or real estate brokers.

(8) The person was not an exempt company or registrant and:

(i) Acted as an appraisal management company.

(ii) Held out as an appraisal management company within this Commonwealth.

(iii) Advertised or held out as engaging in or conducting the business of an appraisal management company.

(b) Board action.—When the board finds any of the causes listed in subsection (a) supported by substantial evidence the board may:

(1) Deny, suspend, revoke or refuse to issue or renew the registration of an appraisal management company under this act.

(2) Restrict, reprimand, limit or suspend enforcement of its findings and place the appraisal management company on probation with the right to vacate the probation for noncompliance.

(3) In lieu of imposing a sanction authorized by paragraph (1), the board may order the removal, replacement or restriction of a compliance person or a key person found to have committed any of the violations of subsection (a) as a condition of approving, renewing or retaining an applicant's or registrant's registration.

(4) In lieu of imposing a sanction authorized by paragraph (1), the board may order a person found to have committed any of the violations of subsection (a) and that owns an interest in or participates in the business of an appraisal management company to divest partially or wholly of such interest or participation as a condition of granting, renewing or retaining an applicant's or registrant's registration.

(5) Levy a civil penalty or costs of investigation under subsection (d) or the act of July 2, 1993, (P.L.345, No.48), entitled "An act empowering the General Counsel or his designee to issue subpoenas for certain licensing board activities; providing for hearing examiners in the Bureau of Professional and Occupational Affairs; providing additional powers to the Commissioner of Professional and Occupational Affairs; and further providing for civil penalties and license suspension."

(6) Require a surety bond or letter of credit in addition to the requirements of section 6(b) and regulations of the board promulgated pursuant to that subsection.

(c) Criminal penalties.—A person that violates this act commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of up to \$1,000 or to imprisonment for not more than 90 days, or both.

(d) Civil penalty.—In addition to any other civil remedy or criminal penalty provided for in this act, the board may levy a civil penalty of up to \$10,000 on any person that violates any provision of this act or any person that acts as an appraisal management company, holds out as an appraisal management company in this Commonwealth or advertises or holds out as engaging in or conducting the business of an appraisal management company at a time when the person is not an exempt company or registered under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in 2 Pa.C.S.

(relating to administrative law and procedure). All civil penalties imposed in accordance with this section shall be paid into the Professional Licensure Augmentation Account.

(e) Procedures.—The investigation and prosecution of disciplinary proceedings under this section shall be conducted by the board under the provisions of the REACA.

Section 11. Application.

This act shall not apply to:

(1) An appraiser who:

(i) in the normal course of business enters into an agreement, whether written or otherwise, with an appraiser for the performance of an appraisal; and

(ii) under the agreement cosigns the appraisal upon its completion.

(2) A person authorized to engage in business as a banking institution, credit union or savings association organized under the laws of this Commonwealth or any other jurisdiction and whose employees perform appraisals for the person or arrange for the performance of appraisals for the person by an independent contractor to the person.

Section 12. Effective date.

This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) This section.

(ii) Section 4.

(2) The remainder of this act shall take effect on the earlier of:

(i) Sixty days after the effective date of temporary regulations promulgated under section 4(b) that provide for registration of appraisal management companies; or

(ii) One hundred eighty days after the effective date of this section.

APPROVED—The 2nd day of February, A.D. 2012

TOM CORBETT