- 1 SB320
- 2 129338-6
- 3 By Senator Holley
- 4 RFD: Governmental Affairs
- 5 First Read: 05-APR-11

1	SB320
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4	ENROLLED, An Act,
5	Relating to real estate appraisal management
6	companies; to rename the Alabama Real Estate Appraisers Act
7	the Alabama Real Estate Appraisers and Appraisal Management
8	Company Registration Act; to designate existing Chapter 27A,
9	consisting of Sections 34-27A-1 to 34-27A-29, inclusive, of
10	Title 34, Code of Alabama 1975, as Article 1 and add Article
11	2, consisting of Sections 34-27A-50 to 34-27A-63, inclusive,
12	to Chapter 27A of Title 34, Code of Alabama 1975, and amend
13	Sections 34-27A-1, 34-27A-2, and 34-27A-4, Code of Alabama
14	1975, to provide for the registration of real estate appraisal
15	management companies by the State of Alabama Real Estate
16	Appraisers Board; and to include a representative of an
17	appraisal management company on the board.
18	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
19	Section 1. An article heading is added before
20	Section 34-27A-1 of the Code of Alabama 1975, to read as
21	follows:
22	ARTICLE 1. REAL ESTATE APPRAISERS.
23	Section 2. Sections 34-27A-1, 34-27A-2, and 34-27A-4
24	of the Code of Alabama 1975, are amended to read as follows:
25	"§34-27A-1.

1	"This chapter shall be known and may be cited as the
2	"Alabama Real Estate Appraisers and Appraisal Management
3	Company Registration and Regulation Act."

"\$34-27A-2.

2.1

"The following terms as used in this chapter shall have the following meanings:

- "(1) APPRAISAL. The act or process of developing an opinion of value of real property; an opinion of the value of real property; of or pertaining to appraising real property and related functions such as appraisal practice or appraisal services.
- "(2) APPRAISAL MANAGEMENT COMPANY. An external third party including, but not limited to, a corporation, partnership, sole proprietorship, subsidiary, or limited liability company, authorized either by a creditor of a consumer credit transaction secured by the principal dwelling of a consumer or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than four certified or licensed appraisers in a state or 25 or more nationally in a given year, that perform appraisal management services.
- "(3) APPRAISAL MANAGEMENT SERVICES. To directly or indirectly perform any of the following functions for a fee on behalf of a lender, financial institution, or any other entity:

1	"a. Recruit, select, and retain appraisers.
2	"b. Contract with licensed and certified appraisers
3	to perform appraisal assignments.
4	"c. Manage the process of having an appraisal
5	performed, including providing administrative duties such as
6	receiving appraisal orders and appraisal reports, submitting
7	completed appraisal reports to creditors and underwriters,
8	collecting fees from creditors and underwriters for services
9	provided, and reimbursing appraisers for services performed.
10	"d. Review and verify the work of appraisers.
11	"(4) APPRAISAL SUBCOMMITTEE. The appraisal
12	subcommittee of the Federal Financial Institutions Examination
13	Council.
14	"(5) APPRAISAL FOUNDATION. The Appraisal Foundation
15	incorporated as an Illinois not-for-profit corporation on
16	November 30, 1987.
17	"(6) APPRAISAL REPORT. Any communication, written or
18	oral, of an appraisal.
19	"(7) APPRAISER. A person who holds a license or
20	certification to complete a real estate appraisal in the state
21	where real property that is the subject of the appraisal is
22	located.
23	"(8) APPRAISER INDEPENDENCE. The ability of an
24	appraiser to provide an appraisal or appraisal review services
25	in exchange for a customary and reasonable fee without

L	coercion, extortion, co	ollusion, inducement,	intimidation,
2	bribery, or any other a	action by a regulated	party intended to
3	influence the opinion re	endered by an apprais	er.

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- "(9) APPRAISER PANEL. A network of licensed or certified appraisers who are independent contractors of an appraisal management company.
- "(10) APPRAISAL REVIEW. The act of developing and communicating an opinion about the quality of the work of another appraiser that was performed as part of an appraisal assignment, except that an examination of an appraisal for grammatical, typographical, or other similar errors that do not make a substantive valuation change is not an appraisal review.
- "(11) BOARD. The State of Alabama Real Estate
 Appraisers Board established pursuant to this chapter.
- "(12) CERTIFIED APPRAISAL or CERTIFIED APPRAISAL
 REPORT. An appraisal or appraisal report given or signed and
 certified as such by a licensed real property appraiser other
 than a trainee or registered real property appraiser. When
 identifying an appraisal or appraisal report as "certified,"
 the real property appraiser shall indicate which type of
 license is held. A certified appraisal or appraisal report
 represents to the public that it meets the appraisal standards
 defined in this chapter.

1	"(13) EXECUTIVE DIRECTOR. The chief administrative
2	employee of the board.
3	"(14) EXPERIENCE POINTS. The allowable credit for
4	appraisal of particular types of properties.
5	"(15) FEDERALLY RELATED TRANSACTION. Any real
6	estate-related financial transaction which:
7	"a. A federal financial institutions regulatory
8	agency or the resolution trust corporation engages in,
9	contracts for, or regulates; and
10	"b. Requires the services of an appraiser.
11	"(16) FEDERAL FINANCIAL INSTITUTIONS REGULATORY
12	AGENCIES. The Board of Governors of the Federal Reserve
13	System, the Federal Deposit Insurance Corporation, the Office
14	of the Comptroller of the Currency, the Office of Thrift
15	Supervision, and the National Credit Union Administration.
16	"(17) FINANCIAL INSTITUTION. An insured depository
17	institution as defined in Section 3 of the Federal Deposit
18	Insurance Act or an insured credit union as defined in Section
19	101 of the Federal Credit Union Act.
20	"(18) GEOGRAPHIC COMPETENCY. The familiarity of an
21	appraiser with a market or a geographic area applicable to the
22	problem to be addressed in an appraisal or an appraisal review
23	assignment.

1	"(19) PRINCIPAL CONTACT. An individual employed,
2	appointed, or authorized by an appraisal management company to
3	serve as the principal contact for the board.
4	"(20) REAL ESTATE. An identified parcel or tract of
5	land, including improvements, if any.
6	"(21) REAL ESTATE APPRAISAL SERVICES. The practice
7	of accepting an assignment to develop and report an opinion on
8	the value of real property in conformance with the Uniform
9	Standards of Professional Appraisal Practice published by the
10	Appraisal Foundation.
11	"(22) REAL ESTATE-RELATED FINANCIAL TRANSACTION. Any
12	transaction involving any of the following:
13	"a. The sale, lease, purchase, investment in, or
14	exchange of real property, including interests in property, or
15	the financing thereof.
16	"b. The refinancing of real property or interests in
17	real property.
18	"c. The use of real property or interests in
19	property as security for a loan or investment, including
20	mortgage-backed securities.
21	"(23) REAL PROPERTY. One or more defined interests,
22	benefits, and rights inherent in the ownership of real estate.
23	"(24) UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL
24	PRACTICE (USPAP). Standards promulgated by the Appraisal

Foundation and adopted by rule pursuant to this chapter.

1 "\$34-27A-4.

2	"There is established the Alabama Real Estate
3	Appraisers Board. The board shall consist of nine members, one
4	of whom shall be a qualified individual from the general
5	public, seven of whom shall be real property appraisers, and,
6	beginning on October 1, 2011, one of whom shall be a
7	representative of an appraisal management company. Each member
8	of the board, except for the representative of the appraisal
9	management company, shall be a citizen of this state and no
10	less than two of the nine board members shall be of a minority
11	race. The overall membership of the board shall be inclusive
12	and reflect the racial, gender, geographic, urban/rural, and
13	economic diversity of the state. The Governor shall appoint
14	the members of the Real Estate Appraisers Board. One appraiser
15	member shall be appointed from each United States
16	Congressional District in this state. The term of each board
17	member shall be three years; except that, of the members first
18	appointed, three shall serve three years, three shall serve
19	two years, and three shall serve for one year. The
20	representative of the appraisal management company, whose term
21	begins on October 1, 2011, shall be selected from a list of
22	three candidates submitted to the Governor by the Real Estate
23	Valuation Advocacy Association, or its successor organization.
24	This member shall serve a term of three years. Notwithstanding
25	the foregoing, and notwithstanding the method of electing a

1	chairperson specified below, if the Financial Institutions
2	Reform, Recovery and Enforcement Act of 1989, Pub. L. No.
3	101-73, Title XI - Real Estate Appraisal Reform Amendments and
4	any amendment thereto or regulations issued thereunder -
5	prohibit the board from consisting of a majority of real
6	property appraisers, or require a different method of
7	selecting a chairperson; then the board shall promptly come
8	into compliance with the federal law and at least one
9	representative of an appraisal management company shall hold a
10	position on the board. The board may not exceed a total of
11	nine members, and the chairperson shall be selected as
12	required by Pub. L. No. 101-73 and regulations thereunder. In
13	such event, the existing appraiser members with the shortest
14	remaining terms shall vacate their positions as necessary to
15	achieve the composition of the new board, and if it becomes
16	necessary to vacate a position held by two or more appraiser
17	members with equivalent terms, the Governor shall determine
18	which appraiser member shall vacate the position, but no hold
19	over terms shall extend for more than 180 days. Upon
20	expiration of their terms, members of the board shall continue
21	to hold office until the appointment and qualifications of
22	their successors and confirmation by the state Senate. No
23	person shall serve as a member of the board for more than two
24	consecutive terms. The appointing authority may remove a board
25	member for misconduct, incapacity, incompetence, or neglect of

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duty after the board member so charged has been served with a written statement of charges and has been given an opportunity to be heard. Absence from any three consecutive meetings without cause acceptable to the Governor and the board shall be deemed cause for removal. The public members of the board and spouses of the members shall not be engaged in the practice of real property appraising. The board shall meet at least once each calendar quarter to conduct its business. Places of future meetings shall be decided by the vote of the members at meetings. Written notice shall be given to each member of the time and place of each meeting of the board at least 10 days before the scheduled date of the meetings. The members of the board shall elect a chairperson from among the members to preside at board meetings. A quorum of the board shall consist of five board members with at least four of such members being appraiser members. Each member of the board shall receive compensation to be set by the board in an amount not to exceed three hundred dollars (\$300) per month for attendance of board meetings. In addition, each member of the board shall be entitled to a per diem allowance on board meeting days as authorized by the board, not to exceed the current per diem allowance for state employees, except that no out-of-state travel or mileage reimbursement for travel beyond Alabama borders shall be made for attendance at board meetings. The board shall be independent, separate, and

1	distinct from any agency, person, or other state official
2	whose responsibilities include licensing real estate brokers,
3	real estate salesmen, or real estate companies."

Section 3. Article 2, consisting of Sections 34-27A-50 to 34-27A-64, inclusive, is added to Chapter 27A of Title 34, Code of Alabama 1975, to read as follows:

ARTICLE 2. REAL ESTATE APPRAISAL MANAGEMENT COMPANIES.

9 \$34-27A-50.

2.1

- (a) It is unlawful for any person or entity to engage in or attempt to engage in business as an appraisal management company, perform appraisal management services, or advertise or hold itself out as engaging in or conducting business as an appraisal management company without first being registered by the board pursuant to this article.
- (b) In the event a registration process is unavailable on the effective date of the act adding this section, an appraisal management company already conducting business in the state may continue to conduct business in accordance with this article for 120 days after a registration process is available.

\$34-27A-51.

(a) Application for registration under this article shall be made in writing to the board on forms prescribed by the board and shall include all of the following:

(1)	The	name	of	the	applicant.

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- 2 (2) The business, physical, and email address of the applicant.
- 4 (3) A telephone number and other contact information 5 for the applicant.
 - (4) If the applicant is a not an Alabama domestic corporation, the name and contact information for the registered agent of the applicant for service of process in this state.
 - (5) The name, address, and contact information of a principal contact for the applicant.
 - (6) Certification that the applicant verifies that any person added to an appraiser panel of the applicant, for the purpose of appraising property within the state, holds a license in good standing in this state pursuant to Article 1.
 - (7) Certification that the applicant requires that all appraisers shall have geographic competency to perform an appraisal assignment.
 - (8) Certification that the applicant reviews the work of all appraisers that are performing real estate appraisal services for the applicant on a periodic basis to verify that the real estate appraisal services are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice and Article 1.

(9) Certification that the applicant maintains
records of each service request that it receives and
identification of the appraiser that performs the real estate
appraisal services for the applicant.

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- in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under Section 129E of the Truth in Lending Act, including the requirement that fee appraisers be compensated at a customary and reasonable rate when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of the consumer.
- (11) An irrevocable uniform consent to service of process.
- (12) Any other information required by the board and reasonably necessary to complete registration.
- (b) Upon receipt of a properly completed application for registration, the board shall issue to the applicant a certificate of registration authorizing the applicant to do business as a real estate appraisal management company in this state.
- (c) Registration granted by the board pursuant to this article shall be valid for one year from the date on which it is issued.

1 \$34-27A-52.

2.1

- (a) An appraisal management company applying for registration in this state may not be owned, in whole or in part, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any state. For the purposes of this subsection, indirect ownership does not include stock ownership in a publicly traded corporation. Additionally, each person who owns more than 10 percent of an appraisal management company shall, if required by the board, submit to a background investigation.
- (b) An appraisal management company applying for registration in this state may not employ for the purposes of appraisal review, analysis, or performance evaluation any person who has ever had a registration, license, or certificate to act as an appraiser in this or any other state refused, denied, canceled, or revoked unless a registration, license, or certificate has subsequently been issued or reinstated by the state in which the appraisal registration, license, or certificate had been refused, denied, canceled, or revoked.
- (c) An employee of an appraisal management company, or any contractor working in any capacity on behalf of an appraisal management company, that has any involvement in the actual performance of appraisal services, or the review and

analysis of completed appraisals in Alabama shall be an appraiser certified in Alabama. The license classification shall qualify the employee to perform all applicable job functions.

\$34-27A-53.

2.1

An appraisal management company applying for registration in this state shall designate one principal contact for all communication between the board and the appraisal management company.

\$34-27A-54.

The board may adopt rules not inconsistent with this article which are reasonably necessary to implement, administer, and enforce this article. The requirements for an appraisal management company may be revised as necessary to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, and regulations issued thereto, or any subsequent amendments or regulations issued thereto. The board may revise any appraisal management company requirements permitted by this section by rule adopted pursuant to the Alabama Administrative Procedure Act.

§34-27A-55.

(a) The board shall establish by rule fees to be charged to an appraisal management company in an amount sufficient to sustain administration of this article. The board may also establish a late filing fee and other fees

deemed necessary by the board for the proper administration of this article.

- (b) In addition to the application fee and late filing fee, where applicable, an applicant for registration shall post with the board a surety bond in the amount of twenty-five thousand dollars (\$25,000). The bond shall be annually maintained on renewal. The bond shall be in a form prescribed by the board by rule and shall accrue to the state for the benefit of a claimant against the registrant to secure the faithful performance of obligations under this article. The aggregate liability of the surety may not exceed the principal sum of the bond.
- (c) An appropriate deposit of cash or security may be accepted by the board in lieu of the required bond. The face amount of the bond shall annually be restored upon renewal of registration. Annual renewal of registration shall occur before the expiration date of the registration. Failure to timely renew registration shall result in loss of authority to operate an appraisal management company in this state. Request for reinstatement after expiration shall be accompanied by the annual registration fee and any late filing fee established by board rule.

\$34-27A-56.

2.1

(a) The board shall issue a unique registration number to each appraisal management company and shall annually

1	publish a	list of	registered	appraisal	management	companies
2	and their	corresp	onding regis	stration n	umbers.	

(b) Each appraisal management company shall include its registration number on all engagement letters for appraisals in Alabama.

6 \$34-27A-57.

2.1

An appraisal management company shall do all of the following:

- (1) Annually certify to the board, on a form prescribed by the board, that the appraisal management company verifies that any person added to the appraiser panel of the appraisal management company, for the purpose of completing appraisals in this state, is licensed or certified in good standing pursuant to Article 1.
- (2) Annually certify to the board, on a form prescribed by the board, that the appraisal management company periodically reviews the work of all appraisers performing appraisals and appraisal reviews for the appraisal management company to verify that the appraisals are being conducted in accordance with Uniform Standards of Professional Appraisal Practice.
- (3) Annually certify to the board, on a form prescribed by the board, that the appraisal management company requires appraisers who receive assignments for appraisals and appraisal review have geographic competency.

(4) Maintain a detailed record of each service
request received and each appraiser assigned to perform the
appraisal. A copy of the record shall be retained for at least
five years after the date the appraisal management company
forwards the appraisal to the client.

\$34-27A-58.

2.1

- (a) Before placing an assignment with an appraiser, an appraisal management company shall require that the appraiser confirm in writing or via electronic means that the appraiser receiving the assignment is a competent appraiser for the performance of the appraisal being assigned.
- (b) An appraisal management company operating in this state, except in cases of a mutually agreed upon payment date, breach of contract, or performance of services that violates Uniform Standards of Professional Appraisal Practice or any published standards of best practices, shall make payment to an appraiser for the completion of an appraisal or valuation assignment within 45 days after the date the appraisal management company, or an assignee, receives a completed appraisal or valuation study.

§34-27A-59.

An appraisal management company may not remove an appraiser from an appraiser panel without:

(1) Providing written notice to the appraiser of the reasons for removal.

1	(2) Providing written notice of the nature of any
2	alleged illegal conduct or violation of Uniform Standards of
3	Professional Appraisal Practice or state licensing standards
4	if such is the reason for removal.

- (3) Providing an opportunity for the appraiser to respond to the written notice.
- 7 \$34-27A-60.

2.1

- (a) It is unlawful for any employee, director, officer, or agent of an appraisal management company to influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or in any other manner including, but not limited to, any of the following:
- (1) Withholding or threatening to withhold timely payment for an appraisal, unless the appraisal is found to be of substandard quality or noncompliant with the scope of the assignment as defined in the engagement letter.
- (2) Withholding or threatening to withhold payment for an appraisal if the loan transaction is not completed.
- (3) Withholding or threatening to withhold future business of, or demoting or terminating the services of, or threatening to demote or terminate the services of an appraiser.

1		(4)	Promising	g fi	uture	e business,	promotions,	or
2	increased	comp	pensation	to	an a	appraiser.		

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- (5) Conditioning the request for an appraisal, or the payment of an appraisal fee or salary or bonus, on the opinion, conclusion, or valuation to be reached by an appraiser, or on a preliminary estimate or opinion requested from an appraiser.
- (6) Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the completion of an appraisal.
- (7) Providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property, or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.
- (8) Providing to an appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits.
- (9) Any other act or practice that impairs or attempts to impair the independence, objectivity, or impartiality of an appraiser.
- (b) Nothing in subsection (a) shall be construed as prohibiting an appraisal management company from requesting that an appraiser do any of the following:

1			(1)	Provide	additional	information	regarding	the
2	basis	for	a v	aluation				

- 3 (2) Correct objective factual errors in an appraisal 4 report.
 - (3) Consider additional verifiable information not previously known or considered by the appraiser in completing an assignment.
 - (c) An appraisal management company may not alter, modify, or otherwise change an appraisal report submitted by an appraiser unless required by federal or state guidelines.
 - (d) Any registrant having a good faith belief that a real estate appraiser licensed in this state has violated applicable law or the Uniform Standards of Professional Appraisal Practice, and the violation has had a material impact on the valuation, or has engaged in unethical conduct, shall file a complaint with the board.

\$34-27A-61.

2.1

The board may censure, conditionally or unconditionally suspend registration, revoke registration, levy fines, or impose civil penalties not exceeding twenty-five thousand dollars (\$25,000) against any appraisal management company that the board determines is attempting to or has performed any of the following:

(1) An act in violation of this article.

L		(2)	Α	viol	lation	of	any	rule	adop	ted	by	the	board	in
2	the	interest	of	the	public	c an	nd co	onsist	tent	with	th	nis	articl	e.

(3) The procurement of registration through fraud, misrepresentation, or deceit.

\$34-27A-62.

2.1

- (a) The board shall conduct adjudicatory proceedings for any violation of this article in accordance with the Administrative Procedure Act. Adjudicatory proceedings shall include, but not be limited to, all of the following due process protections:
- (1) Before censuring, suspending, or revoking registration under this article, the board shall notify the registrant in writing of any charges at least 20 days before the date set for hearing and shall afford the registrant an opportunity to be heard in person or by counsel.
- (2) The written notice shall be served by certified mail, return receipt requested, to the principal contact at the address of the registrant on file with the board.
- (3) The hearing on the charges shall be at a time and place prescribed by the board, in accordance with the Administrative Procedure Act.
- (4) The hearing may be conducted before a hearing officer designated by the board who shall make findings of fact, conclusions of law, and enter an adjudicatory disposition.

1	(5) The board shall deliver or mail any findings of	-
2	fact, conclusions of law, and adjudicatory dispositions to the	ıe
3	registrant.	

- (b) Nothing in this section shall prevent the resolution of a pending matter through an alternative dispute resolution process or informal settlement process adopted by the board.
- 8 \$34-27A-63.

- 9 This article does not apply to:
 - (1) A financial institution that is regulated by a federal financial institution regulatory agency or a department, division, or unit thereof. An appraisal management company that is a wholly owned subsidiary of a financial institution may not be considered a department, division, or unit within a financial institution.
 - (2) A person who enters into an agreement with an appraiser for the performance of an appraisal and, upon the completion of the appraisal, the report of the appraiser performing the appraisal is signed by both the appraiser who completed the appraisal and the person who requested the completion of the appraisal.
- Section 4. This act shall become effective on

 October 1, 2011, following its passage and approval by the

 Governor, or its otherwise becoming law.

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4	President and Presiding Officer of the Senate
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6	Speaker of the House of Representatives
7 8 9 10 11 12 13	SB320 Senate 24-MAY-11 I hereby certify that the within Act originated in and passed the Senate, as amended. Patrick Harris Secretary
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16 17 18	House of Representatives Passed: 09-JUN-11
19	
20 21	By: Senator Holley