



AN ACT GENERALLY REVISING LAWS GOVERNING REAL ESTATE APPRAISERS; REVISING DEFINITIONS; PROVIDING FOR REGULATION OF APPRAISAL MANAGEMENT COMPANIES; GOVERNING RELATIONSHIPS BETWEEN APPRAISAL MANAGEMENT COMPANIES AND APPRAISERS; EXPANDING RULEMAKING AUTHORITY OF THE BOARD OF REAL ESTATE APPRAISERS; AND AMENDING SECTIONS 37-54-102 AND 37-54-105, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-54-102, MCA, is amended to read:

"37-54-102. Definitions. Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of Professional Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Appraisal" means the practice of developing an opinion of the value of real property in conformance with the Uniform Standards of Professional Appraisal Practice as developed by the appraisal foundation.

~~(1)~~(2) "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(3) "Appraisal management company" means, in connection with valuation of properties collateralizing mortgage loans or mortgages incorporated into a securitization, an external third party, authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or

other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in this state or 25 or more nationally within a given year.

(4) "Appraisal management services" means the direct or indirect performance of any of the following functions on behalf of a lender, financial institution, client, or other person in conjunction with a consumer credit transaction that is secured by a consumer's principal dwelling:

(a) administering an appraiser panel;

(b) recruiting, retaining, or selecting appraisers to be part of an appraisal panel;

(c) qualifying and verifying licensing or certification, negotiating fees, and verifying service level expectations with appraisers who are part of an appraiser panel;

(d) contracting with appraisers from the appraiser panel to perform appraisal assignments;

(e) receiving an order for an appraisal assignment from one person and delivering the order for the appraisal assignment to an appraiser who is part of an appraiser panel for completion;

(f) managing the process of having an appraisal assignment performed, including performing administrative duties such as receiving appraisal assignment orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed;

(g) tracking and determining the status of orders for appraisal assignments;

(h) conducting quality control examinations of a completed appraisal assignment prior to the delivery of the appraisal report to a client who ordered the appraisal assignment; and

(i) providing a completed appraisal report performed by an appraiser to one or more clients.

(5) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term does not include a quality control examination.

(6) "Appraiser" means an individual who holds a license or certification to complete an appraisal assignment in the state where the real property that is the subject of the appraisal assignment is located.

(7) "Appraiser panel" means a network of licensed or certified appraisers who are independent contractors with respect to an appraisal management company and who have:

(a) responded to an invitation, request, or solicitation from an appraisal management company to:

(i) perform an appraisal assignment for a client that has ordered an appraisal assignment through the

appraisal management company; or

(ii) perform appraisal assignments for the appraisal management company directly on a periodic basis as requested and assigned by the appraisal management company; and

(b) been selected and approved by an appraisal management company to perform appraisal assignments for any client of the company that has ordered an appraisal assignment through the company or to perform appraisal assignments for the appraisal management company directly on a periodic basis as assigned by the appraisal management company.

~~(2)~~(8) "Board" means the board of real estate appraisers provided for in 2-15-1758.

~~(3)~~(9) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(10) "Controlling person" means:

(a) an owner, officer, or director of a corporation, partnership, or other business entity that offers appraisal management services in this state;

(b) an individual employed, appointed, or authorized by an appraisal management company to enter into a contractual relationship with other persons for the performance of appraisal management services and to enter into agreements with appraisers for the performance of appraisal assignments; or

(c) an individual who possesses directly or indirectly the power to direct or cause the direction of the management or policies of an appraisal management company.

~~(4)~~(11) "Department" means the department of labor and industry provided for in 2-15-1701.

~~(5)~~(12) "Licensed real estate appraisal trainee" means a person authorized only to assist a certified real estate appraiser in the performance of an appraisal assignment.

~~(6)~~(13) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201.

(14) "Person" means an individual, firm, partnership, association, corporation, or other business entity.

(15) "Quality control examination" means an examination of an appraisal report for completeness, including grammatical, mathematical, and typographical errors."

Section 2. Section 37-54-105, MCA, is amended to read:

"37-54-105. Powers and duties of board. The board shall:

- (1) adopt rules to implement and administer the provisions of this chapter;
- (2) establish and collect fees commensurate with the costs of processing an application for licensure and certification and renewal of a license or certificate;
- (3) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;
- (4) prescribe the examinations for licensure or certification and determine the acceptable level of performance on examinations;
- (5) receive and review applications for licensure and certification and issue licenses and certificates;
- (6) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;
- (7) retain all applications and other records submitted to it;
- (8) adopt by rule standards of professional appraisal practice in this state;
- (9) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers or registered appraisal management companies; and
- (10) perform other duties necessary to implement this chapter."

Section 3. Appraisal management company registration. (1) (a) It is unlawful for a person to directly or indirectly engage in or attempt to engage in business as an appraisal management company or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state without first obtaining a registration issued by the board.

(b) An applicant for registration as an appraisal management company in this state shall submit an application to the board on forms prescribed by the department.

(c) If a registration process is not in effect on October 1, 2011, an appraisal management company already conducting business in this state may continue to conduct business in accordance with this chapter until 120 days after a registration process becomes available. Upon expiration of the 120-day period, the appraisal management company must be registered as required by this chapter in order to continue to provide or offer to provide appraisal management services in this state.

(2) An application for the registration required by subsection (1) must include the following information:

(a) the name of the person seeking registration and the fictitious name or names, if any, under which the person does business in any state;

(b) the business address of the person seeking registration;

(c) the phone contact information of the person seeking registration;

(d) if the appraisal management company is not a corporation domiciled in this state, the name and contact information for the company's designated contact for service of process in this state;

(e) the name, address, and contact information for one controlling person within the appraisal management company;

(f) a certification that the person has a system and process in place to verify that an individual holds a license in good standing in this state pursuant to 37-54-202 if a license or certification is required to perform appraisal assignments;

(g) a certification that the person requires appraisers completing appraisal assignments at its request to comply with the Uniform Standards of Professional Appraisal Practice, including the requirements for geographic and product competence;

(h) a certification that the person has a system in place to verify that only licensed or certified appraisers are used for federally related transactions;

(i) a certification that the person has a system 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 of 1968, 15 U.S.C. 1601, et seq., including the requirement that the 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 a consumer;

(j) a certification that the person maintains a detailed record of each service request that it receives and the appraiser that performs the appraisal service for the appraisal management company;

(k) an irrevocable uniform consent to service of process; and

(l) any other information required by the board that is reasonably necessary to implement this chapter.

(3) An application for renewal of a registration must include information substantially similar to that required for the initial registration in subsection (2), as determined by the board.

(4) Renewals of registered appraisal management companies must be in accordance with 37-1-141. The

department shall provide notice to an appraisal management company prior to the renewal date.

Section 4. Registration exemptions. (1) The provisions of this chapter do not apply to a person who exclusively employs appraisers on an employer-employee basis for the performance of an appraisal assignment.

(2) An appraisal management company that is a subsidiary owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency is not required to register with the board but shall comply with all provisions of this chapter, as long as the provisions of this chapter do not conflict with federal law related to the operation of an appraisal management company in this state.

Section 5. Owner requirements. (1) An appraisal management company applying for registration in this state may not be more than 10% owned by:

(a) a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated; or

(b) another entity that is more than 10% owned by a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated.

(2) Each person who owns more than 10% of an appraisal management company in this state:

(a) must be of good moral character, as determined by the board; and

(b) shall submit to a background examination as determined by the board.

(3) Each appraisal management company applying for registration in this state shall certify to the board that it has reviewed each entity that directly owns more than 10% of the appraisal management company and that no entity that directly owns more than 10% of the appraisal management company is more than 10% directly owned by any person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state.

Section 6. Contact individual. (1) Each appraisal management company shall designate one individual as the main contact for communication between the board and the appraisal management company. An appraisal management company may designate a controlling person of the company as the contact individual.

- (2) The contact individual designated pursuant to subsection (1):
 - (a) must hold a license or certificate to act as an appraiser in at least one state;
 - (b) must not have had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated;
 - (c) must be of good moral character, as determined by the board; and
 - (d) shall submit to a background examination as determined by the board.

Section 7. Employee requirements. An appraisal management company may not:

- (1) employ a person who may have any responsibility in ordering appraisal reports, providing quality control testing for appraisal reports, or communicating with appraisers regarding any potential appraisal report deficiencies who has had a license or certificate to act as an appraiser in any state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation unless the license or certificate was subsequently granted or reinstated;
- (2) enter into an independent contractor arrangement with a person who has had a license or certificate to act as an appraiser in any state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation unless the license or certificate was subsequently granted or reinstated.

Section 8. Appraisal review. An employee or independent contractor of the appraisal management company that performs an appraisal review for a property located in this state:

- (1) must be an appraiser licensed or certified in this state; and
- (2) shall comply with the review provisions of the Uniform Standards of Professional Appraisal Practice.

Section 9. Mandatory reporting. An appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct shall refer the matter to the board.

Section 10. Limitations. An appraisal management company registered in this state pursuant to this

chapter may not enter into contracts or agreements with an individual for the performance of appraisals unless the company obtains verification that the individual is licensed or certified to perform appraisals pursuant to this chapter. Verification by reference to information published on the website of the appraisal subcommittee of the federal financial institutions examination council must be considered acceptable for purposes of compliance with this section.

Section 11. Certification to board -- appraisal panel members. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that the appraisal management company has a system and process in place to verify that all appraisers on the appraisal panel of the appraisal management company are licensed or certified in this state pursuant to this chapter.

Section 12. Certification to board -- continuing licensure. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that the appraisal management company has a system in place to verify that an appraiser to whom the appraisal management company is making an assignment for the completion of an appraisal has not had a license or certification as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation since the last time that the appraisal management company made an assignment for an appraisal to the appraiser. Verification by reference to information published on the website of the appraisal subcommittee of the federal financial institutions examination council must be considered acceptable for purposes of compliance with this section.

Section 13. Certification -- adherence to standards. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has a system in place to perform on an annual basis an appraisal review of the work of all appraisers who are performing appraisals for the appraisal management company on a periodic basis to validate that the appraisals are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice.

Section 14. Audits. Upon renewal, not less than 10% of the appraisal management companies in this state must be subjected to a random audit. Audited appraisal management companies shall submit the recordkeeping documentation described in [section 15] for the 12-month period prior to renewal and any other

documentation the board requests to validate compliance with this chapter. Any costs incurred by the board during an audit may be attributed to the appraisal management company.

Section 15. Recordkeeping. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has retained the following documentation in accordance with the recordkeeping provisions of the Uniform Standards of Professional Appraisal Practice and applicable state law:

- (1) a full record as prescribed by the board that includes the names of the entities requesting service from the appraisal management company and the corresponding names of the appraisers that performed the appraisal services; and
- (2) all certifications and supporting documentation for board registration and renewals, including audit reports required by this chapter.

Section 16. Appraiser independence -- prohibitions. (1) An employee, director, officer, or agent of an appraisal management company registered in this state may not influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, or bribery or in any other manner, including but not limited to:

- (a) withholding or threatening to withhold timely payment for an appraisal;
- (b) withholding or threatening to withhold future business for an appraisal assignment or demoting or terminating or threatening to demote or terminate an appraiser;
- (c) expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;
- (d) conditioning the request for an appraisal or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate or opinion requested from an appraiser;
- (e) 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 appraiser's completion of an appraisal;
- (f) 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 a purchase transaction may be provided;

(g) providing stock or other financial or nonfinancial benefits to an appraiser or a person related to the appraiser;

(h) allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser; or

(i) performing any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(2) Subsection (1) may not be construed as prohibiting an appraisal management company from requesting that an appraiser:

(a) consider additional appropriate property information that falls within the original scope of work for that appraisal service;

(b) provide additional information about the basis for a valuation; or

(c) correct objective factual errors in an appraisal report.

Section 17. Guaranty of payment. Each appraisal management company registered in this state shall, except in cases of breach of contract, pay an appraiser for the completion of an appraisal or valuation assignment within 60 days of the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

Section 18. Alteration of appraisal report. An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser unless the alteration is mandated by federal laws, guidelines, or provisions. This section does not apply to the conversion of appraisal reports to data streams required by federal lending agencies.

Section 19. Registration. The department shall publish annually a list of appraisal management companies that have registered with the department pursuant to this chapter.

Section 20. Advertising. (1) An appraisal management company registered in this state shall disclose

its registration number on its engagement letter for each appraisal assignment.

(2) An appraiser who completes work for an unregistered or suspended appraisal management company is subject to disciplinary action for unprofessional conduct. An appraiser shall list the appraisal management company's approved registration number in the body of the appraisal report.

Section 21. Unprofessional conduct. An appraisal management company engages in unprofessional conduct if it:

(1) requires an appraiser to modify any aspect of an appraisal report other than those items identified by a quality control examination, including items that are found to be incomplete within the defined scope of work in the original assignment;

(2) requires an appraiser to prepare an appraisal report if the appraiser, in the appraiser's own professional judgment, believes the appraiser does not have the necessary expertise for the specific geographic area and the appraiser has notified the appraisal management company of the issue;

(3) requires an appraiser to prepare an appraisal report under a timeframe that the appraiser, in the appraiser's professional judgment, believes does not allow the appraiser to meet all relevant legal and professional obligations and the appraiser has notified the appraisal management company of the issue;

(4) prohibits or inhibits legal and allowable communication between the appraiser and:

(a) the lender;

(b) a real estate licensee; or

(c) any other person from whom the appraiser, in the appraiser's professional judgment, believes information would be relevant;

(5) requires the appraiser to do anything that does not comply with:

(a) the Uniform Standards of Professional Appraisal Practice; or

(b) assignment conditions and certifications required by the client;

(6) makes any portion of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including but not limited to:

(a) a loan closing; or

(b) a specific dollar amount being achieved by the appraiser in the appraisal report.

Section 22. Codification instruction. [Sections 3 through 21] are intended to be codified as an integral part of Title 37, chapter 54, and the provisions of Title 37, chapter 54, apply to [sections 3 through 21].

- END -

I hereby certify that the within bill,
HB 0188, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 188

INTRODUCED BY C. LONEY, O'HARA, HOLLANDSWORTH, SALOMON, MACLAREN

AN ACT GENERALLY REVISING LAWS GOVERNING REAL ESTATE APPRAISERS; REVISING DEFINITIONS; PROVIDING FOR REGULATION OF APPRAISAL MANAGEMENT COMPANIES; GOVERNING RELATIONSHIPS BETWEEN APPRAISAL MANAGEMENT COMPANIES AND APPRAISERS; EXPANDING RULEMAKING AUTHORITY OF THE BOARD OF REAL ESTATE APPRAISERS; AND AMENDING SECTIONS 37-54-102 AND 37-54-105, MCA.