

1 **SENATE FLOOR VERSION**

2 February 18, 2016

3 SENATE BILL NO. 1456

By: Sharp of the Senate

4 and

5 Mulready of the House

6
7
8 An Act relating to the Oklahoma Appraisal Management
9 Company Regulation Act; amending 59 O.S. 2011,
10 Sections 858-803, 858-804, 858-809, 858-810, 858-811,
11 858-819, 858-820 and 858-828, which relate to
12 definitions, unlawful acts, designation of
13 controlling person, prohibited acts of applicant,
14 influencing appraiser, prohibited acts of management
15 company, and penalties; modifying language; adding
16 definition; modifying references; requiring certain
17 notification of disciplinary actions in other
18 jurisdictions; setting time for certain notification;
19 prohibiting collateral attach on other disciplinary
20 action; authorizing disciplinary action by this
21 state; requiring compliance with federal Truth In
22 Lending Act; and providing an effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. AMENDATORY 59 O.S. 2011, Section 858-803, is
amended to read as follows:

Section 858-803. As used in the Oklahoma Appraisal Management
Company Regulation Act:

1. "Appraisal" means the practice of developing and reporting
an opinion of the value of real property in conformance with the

1 Uniform Standards of Professional Appraisal Practice as promulgated
2 by the Appraisal Standards Board of The Appraisal Foundation;

3 2. "Appraisal management company" or "AMC" means an individual,
4 firm, partnership, association, corporation or limited liability
5 company that performs appraisal management services, regardless of
6 the use of the term appraisal management company, mortgage
7 technology provider, mortgage services provider, lender processing
8 services provider, loan processor, real estate closing services
9 provider, vendor management company or any other term;

10 3. "Appraisal management services" means, directly or
11 indirectly, to perform or attempt to perform any one or more of the
12 following function(s) on behalf of a lender, financial institution,
13 client, or any other person:

- 14 a. administer an appraiser panel,
- 15 b. recruit, qualify, verify licensing or certification,
16 and negotiate fees and service level expectations with
17 persons who are part of an appraiser panel,
- 18 c. receive an order for an appraisal from one entity, and
19 deliver the order for the appraisal to an appraiser
20 that is part of an appraiser panel for completion,
- 21 d. track and determine the status of orders for
22 appraisals,

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- e. conduct quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal, or
- f. provide a completed appraisal performed by an appraiser to one or more clients;

4. "Appraiser" means a person who holds a credential or a valid temporary practice permit issued by the Oklahoma Real Estate Appraiser Board pursuant to the Oklahoma Certified Real Estate Appraisers Act as a State Certified General, State Certified Residential, State Licensed, or Trainee Appraiser entitling that person to perform an appraisal of real property in the State of Oklahoma consistent with the scope of practice identified in the Real Property Appraiser Qualification Criteria promulgated by the Appraiser Qualifications Board of The Appraisal Foundation;

5. "Appraiser panel" means a network of licensed or certified appraisers who have:

- a. responded to an invitation, request, or solicitation from an AMC, in any form, to perform appraisals for persons that have ordered appraisals through the AMC, or to perform appraisals for the AMC directly, on a periodic basis, as requested and assigned by the AMC, and
- b. been selected and approved by an AMC to perform appraisals for any client of the AMC that has ordered

1 an appraisal through the AMC, or to perform appraisals
2 for the AMC directly, on a periodic basis, as assigned
3 by the AMC;

4 6. "Appraisal review" means the act or process of developing
5 and communicating an opinion about the quality of another
6 appraiser's work that was performed as part of an appraisal
7 assignment related to the appraiser's data collection, analysis,
8 opinions, conclusions, estimate of value, or compliance with the
9 Uniform Standards of Professional Appraisal Practice. This term
10 does not include:

11 a. a general examination for grammatical, typographical
12 or other similar errors, or

13 b. a general examination for completeness including
14 regulatory and/or client requirements as specified in
15 the agreement process that does not communicate an
16 opinion;

17 7. "Board" means the Oklahoma Real Estate Appraiser Board;

18 8. "Competent appraiser" means an appraiser that satisfies each
19 provision of the Competency Rule of the Uniform Standards of
20 Professional Appraisal Practice for a specific appraisal assignment
21 that the appraiser has received, or may receive, from an AMC;

22 9. "Credential" means a certificate issued by the Board
23 pursuant to the provisions of the Oklahoma Certified Real Estate
24 Appraisers Act authorizing an individual to act as a Trainee

1 Appraiser, State Licensed Appraiser, Certified Residential Appraiser
2 or State Certified General Appraiser in the State of Oklahoma;

3 10. "Controlling person" means:

4 a. an owner, officer, manager, or director of a
5 corporation, partnership, firm, association, limited
6 liability company, or other business entity seeking to
7 offer appraisal management services in this state,

8 b. an individual employed, appointed, or authorized by an
9 AMC that has the authority to enter into a contractual
10 relationship with other persons for the performance of
11 appraisal management services and has the authority to
12 enter into agreements with appraisers for the
13 performance of appraisals, or

14 c. an individual who possesses, directly or indirectly,
15 the power to direct or cause the direction of the
16 management or policies of an AMC;

17 11. "Person" means an individual, firm, partnership,
18 association, corporation, or any other entity; ~~and~~

19 12. "Truth in Lending Act" or "TILA" means Title 1 of the
20 federal Consumer Credit Protection Act, 15 U.S.C.A. Section 1601 et
21 seq., and regulations promulgated thereto; and

22 13. "Uniform Standards of Professional Appraisal Practice" or
23 "USPAP" means the edition of the Uniform Standards of Professional
24 Appraisal Practice promulgated by the Appraisal Standards Board of

1 The Appraisal Foundation in force as of the date that a report of an
2 appraisal was signed or communicated.

3 SECTION 2. AMENDATORY 59 O.S. 2011, Section 858-804, is
4 amended to read as follows:

5 Section 858-804. A. It is unlawful for a person to directly or
6 indirectly engage or to attempt to engage in business as an AMC, to
7 directly or indirectly perform or to attempt to perform appraisal
8 management services, or to advertise or hold itself out as engaging
9 in or conducting business as an AMC without first obtaining a
10 registration issued by the Oklahoma Real Estate Appraiser Board
11 under the provisions of the Oklahoma Appraisal Management Company
12 Regulation Act.

13 B. The application for the registration required by subsection
14 A of this section shall be on a form approved by the Board and
15 shall, at a minimum, include the following information:

16 1. Legal name and any other trade or business name of the
17 entity seeking registration;

18 2. Mailing and physical addresses of the entity seeking
19 registration;

20 3. Telephone, e-mail, website, and facsimile contact
21 information of the entity seeking registration;

22 4. If the entity is a corporation that is not domiciled in this
23 state, the name and contact information for the entity's agent for
24 service of process in this state;

1 5. If the entity is a corporation, limited liability company,
2 or partnership that is not domiciled in this state, proof that the
3 entity is properly and currently registered with the Office of the
4 Secretary of State;

5 6. The name, mailing and physical addresses, and contact
6 information for any person that owns ten percent (10%) or more of
7 the AMC;

8 7. The name, mailing and physical addresses, and contact
9 information for all named controlling persons;

10 8. A certification that the entity has a system and process in
11 place to verify that a person being added to the appraiser panel of
12 the AMC for appraisal services being performed in Oklahoma holds a
13 credential in good standing in this state pursuant to the Oklahoma
14 Certified Real Estate Appraisers Act and the rules promulgated
15 thereunder if a license or certification is required to perform
16 appraisals, pursuant to Section ~~17~~ 858-817 of this ~~act~~ title;

17 9. A certification that the entity has a system in place to
18 review the work of a statistically significant number of appraisal
19 reports submitted by each appraiser who is performing real estate
20 appraisal services for the AMC within Oklahoma on a periodic basis
21 to validate that the real estate appraisal services are being
22 conducted in accordance with USPAP and the Oklahoma Certified Real
23 Estate Appraisers Act and the rules promulgated thereunder;

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1 10. A certification that the entity maintains a detailed record
2 of each service request that it receives and the appraiser that
3 performs real estate appraisal services for the AMC, pursuant to
4 Section ~~19~~ 858-819 of this ~~act~~ title;

5 11. An irrevocable Uniform Consent to Service of Process,
6 pursuant to Section ~~7~~ 858-807 of this ~~act~~ title; and

7 12. Any other information reasonably required by the Board to
8 evaluate compliance with the application requirements in ~~this act~~
9 the Oklahoma Appraisal Management Company Regulation Act.

10 SECTION 3. AMENDATORY 59 O.S. 2011, Section 858-809, is
11 amended to read as follows:

12 Section 858-809. A. An AMC applying for, holding, or renewing
13 a registration under the Oklahoma Appraisal Management Company
14 Regulation Act shall not be more than ten-percent-owned by:

15 1. A person who has held a credential issued by any appraiser-
16 credentialing jurisdiction to act as an appraiser that was refused,
17 denied, canceled, revoked, suspended or surrendered in lieu of a
18 pending disciplinary proceeding in any jurisdiction and not
19 subsequently granted or reinstated; or

20 2. An entity that is more than ten-percent-owned by any person
21 who has held a credential issued by any appraiser-credentialing
22 jurisdiction to act as an appraiser that was refused, denied,
23 canceled, revoked, or surrendered in lieu of a pending disciplinary
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1 proceeding in any jurisdiction and not subsequently granted or
2 reinstated.

3 B. Each person that owns more than ten percent (10%) of an AMC
4 applying for, holding, or renewing a registration under the Oklahoma
5 Appraisal Management Company Regulation Act shall:

- 6 1. Be of good moral character, as determined by the Board; and
- 7 2. Submit to a background investigation, as determined by the
8 Board.

9 C. Each AMC applying for registration or for renewal of a
10 registration under the Oklahoma Appraisal Management Company
11 Regulation Act shall certify to the Oklahoma Real Estate Appraiser
12 Board on a form prescribed by the Board that it has reviewed each
13 entity that owns more than ten percent (10%) of the AMC and that no
14 entity that owns more than ten percent (10%) of the AMC is more than
15 ten-percent-owned by any person that has had a credential issued by
16 any appraiser-credentialing jurisdiction to act as an appraiser that
17 was refused, denied, cancelled, revoked, suspended or surrendered in
18 lieu of a pending disciplinary proceeding in any jurisdiction and
19 not subsequently granted or reinstated.

20 SECTION 4. AMENDATORY 59 O.S. 2011, Section 858-810, is
21 amended to read as follows:

22 Section 858-810. A. Each AMC applying to the Oklahoma Real
23 Estate Appraiser Board for a registration or for a renewal of a
24 registration in this state shall designate one controlling person

1 that shall serve as the main contact for all communication between
2 the Board and the AMC.

3 B. The controlling person designated pursuant to subsection A
4 of this section shall:

5 1. Remain in good standing with any appraiser-credentialing
6 jurisdictions that the controlling person has credentials with,
7 however, nothing in this section shall require that a designated
8 controlling person hold an appraiser credential in any jurisdiction;

9 2. Have never had a credential issued by any appraiser-
10 credentialing jurisdiction to act as an appraiser refused, denied,
11 canceled, revoked, or surrendered in lieu of a pending disciplinary
12 proceeding in any jurisdiction;

13 3. Be of good moral character, as determined by the Board; ~~and~~

14 4. Submit to a background investigation, as determined by the
15 Board; and

16 5. Notify the Oklahoma Real Estate Appraiser Board of any
17 discipline imposed by any other jurisdiction, state or federal,
18 including, but not limited to, consent agreements or orders, in
19 connection with any real property valuation activity, including, but
20 not limited to, public or private reprimand, censure, financial
21 penalty, probation, restriction on practice, delisting, suspension,
22 revocation, surrender of license or credential, debarment or any
23 other formal or informal resolution, as to the appraisal management
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1 company or any of its individual controlling officers in their
2 capacity as an appraiser.

3 a. discipline imposed by another jurisdiction must be
4 reported in writing within ten (10) calendar days of
5 the certificate holder's receipt of the final order or
6 notice of the discipline imposed, and failure to
7 report shall itself be grounds for discipline.

8 b. the decision of the other jurisdiction that imposed
9 discipline may not be collaterally attacked. The sole
10 issue to be determined by the Board in the
11 disciplinary proceeding in this state shall be the
12 extent of the final discipline to be imposed by the
13 Board, which may be less or more severe than the
14 discipline imposed by the other jurisdiction that
15 imposed discipline.

16 SECTION 5. AMENDATORY 59 O.S. 2011, Section 858-811, is
17 amended to read as follows:

18 Section 858-811. An AMC that applies to the Oklahoma Real
19 Estate Appraiser Board for a registration or to renew a registration
20 to do business in this state as an AMC shall not:

21 1. Employ any person who has had a credential issued by any
22 appraiser-credentialing jurisdiction to act as an appraiser that was
23 refused, denied, canceled, revoked, suspended or surrendered in lieu
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1 of a pending disciplinary proceeding in any jurisdiction and not
2 subsequently reinstated or granted;

3 2. Knowingly enter into any independent contractor arrangement,
4 whether in verbal, written, or other form for the performance of
5 appraisal or appraisal management services, with any person who has
6 had a credential that was issued by any appraiser-credentialing
7 jurisdiction to act as an appraiser refused, denied, canceled,
8 revoked, or surrendered in lieu of a pending disciplinary proceeding
9 in any jurisdiction and not subsequently reinstated or granted; and

10 3. Knowingly enter into any contract, agreement, or other
11 business relationship, whether in verbal, written, or any other
12 form, with any entity that employs, has entered into an independent
13 contract arrangement, or has entered into any contract, agreement,
14 or other business relationship, whether in verbal, written, or any
15 other form for the performance of appraisal or appraisal management
16 services, with any person who has ever had a credential issued by
17 any appraiser-credentialing jurisdiction to act as an appraiser that
18 was refused, denied, canceled, revoked, suspended or surrendered in
19 lieu of a pending disciplinary proceeding in any jurisdiction and
20 not subsequently reinstated or granted.

21 SECTION 6. AMENDATORY 59 O.S. 2011, Section 858-819, is
22 amended to read as follows:

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1 Section 858-819. A. Appraisal management companies shall
2 comply with the appraisal independence requirements of the federal
3 TILA and the regulations promulgated thereto.

4 B. It shall be unlawful and a violation of the Oklahoma
5 Appraisal Management Company Regulation Act for any employee,
6 partner, director, officer, or agent of an AMC to influence or
7 attempt to influence the development, reporting, result, or review
8 of an appraisal through coercion, extortion, collusion,
9 compensation, inducement, intimidation, bribery or in any other
10 manner, including but not limited to:

11 1. Withholding or threatening to withhold timely payment or
12 partial payment for an appraisal with the exception of a substandard
13 or noncompliant appraisal;

14 2. Withholding or threatening to withhold, either expressed or
15 implied, future business from, or demoting or terminating or
16 threatening to demote or terminate an appraiser;

17 3. Promising, either expressed or implied, future business,
18 promotions, or increased compensation for an appraiser;

19 4. Conditioning an assignment of an appraisal or the payment of
20 an appraisal fee or salary or bonus on the opinion, conclusion, or
21 valuation to be reached, or on a preliminary estimate or opinion
22 requested from an appraiser;

23 5. Requesting that an appraiser provide an estimated,
24 predetermined, or desired valuation in an appraisal, or provide

1 estimated values or comparable sales at any time prior to the
2 appraiser's completion of an appraisal;

3 6. Providing to an appraiser an anticipated, estimated,
4 encouraged, or desired value for a subject property or a proposed or
5 target amount to be loaned to the borrower, except that a copy of
6 the sales contract for purchase transactions may be provided;

7 7. Providing to an appraiser, or any entity or individual
8 related to the appraiser, stock or other financial or nonfinancial
9 benefit or thing of value;

10 8. Allowing or directing the removal of an appraiser from an
11 appraiser panel, or the addition of an appraiser to an exclusionary
12 list of disapproved appraisers used by any entity, without prior
13 written notice to such appraiser;

14 9. Any other act or practice that impairs or attempts to impair
15 an appraiser's independence, objectivity, or impartiality;

16 10. Submitting or attempting to submit false, misleading, or
17 inaccurate information in any application for registration or
18 renewal;

19 11. Failing to timely respond to any subpoena or any other
20 request for information;

21 12. Failing to timely obey an administrative order of the
22 Board; or

23 13. Failing to fully cooperate in any investigation.
24

1 ~~B.~~ C. Nothing in subsection ~~A~~ B of this section shall be
2 construed as prohibiting the AMC from requesting that an appraiser:

- 3 1. Provide additional information about the basis for a
4 valuation including consideration of additional comparable data; or
- 5 2. Correct objective factual errors in an appraisal.

6 SECTION 7. AMENDATORY 59 O.S. 2011, Section 858-820, is
7 amended to read as follows:

8 Section 858-820. An AMC shall not perform or attempt to perform
9 any one or more of the following acts:

10 1. Require an appraiser to modify any aspect of an appraisal
11 unless the modification complies with Section ~~19~~ 858-819 of this ~~act~~
12 title;

13 2. Require an appraiser to prepare an appraisal if the
14 appraiser, in the appraiser's own independent professional judgment,
15 believes the appraiser does not have the necessary expertise for the
16 assignment or for the specific geographic area and has notified the
17 AMC and declined the assignment;

18 3. Require an appraiser to prepare an appraisal under a time
19 frame that the appraiser, in the appraiser's own professional
20 judgment, believes does not afford the appraiser the ability to meet
21 all the relevant legal and professional obligations and has notified
22 the AMC and declined the assignment;

23 4. Prohibit or inhibit legal or other allowable communication
24 between the appraiser and:

- 1 a. the lender,
- 2 b. a real estate licensee, or
- 3 c. any other person from whom the appraiser, in the
- 4 appraiser's own professional judgment, believes
- 5 information would be relevant;

6 5. Requires the appraiser to do anything that does not comply
7 with:

- 8 a. USPAP,
- 9 b. the Oklahoma Certified Real Estate Appraisers Act or
- 10 the rules promulgated thereunder, or
- 11 c. any assignment conditions and certifications required
- 12 by the client; or

13 6. Makes any portion of the appraiser's fee or the AMC's fee
14 contingent on a predetermined or favorable outcome, including but
15 not limited to:

- 16 a. a loan closing, or
- 17 b. specific dollar amount being achieved by the appraiser
- 18 in the appraisal.

19 SECTION 8. AMENDATORY 59 O.S. 2011, Section 858-828, is
20 amended to read as follows:

21 Section 858-828. A. The conduct of administrative proceedings
22 shall be in accordance with the Administrative Procedures Act and
23 the Oklahoma Certified Real Estate Appraisers Act and the rules
24 promulgated thereunder for violations of the Oklahoma Appraisal

1 Management Company Regulation Act shall be vested in the Oklahoma
2 Real Estate Appraiser Board, such that the Board, after notice and
3 opportunity for a hearing pursuant to Article II of the
4 Administrative Procedures Act, may issue an order imposing one or
5 more of the following penalties whenever the Board finds, by clear
6 and convincing evidence, that a registrant has violated any
7 provision of the Oklahoma Appraisal Management Company Regulation
8 Act or rules promulgated thereunder:

9 1. Revocation of the registration with or without the right to
10 reapply;

11 2. Suspension of the registrant for a period not to exceed five
12 (5) years;

13 3. Stipulations, limitations, restrictions and conditions
14 relating to conduct of the registrant's appraisal management
15 services practice;

16 4. Censure, including specific redress, if appropriate;

17 5. Reprimand;

18 6. Administrative fines not to exceed Five Thousand Dollars
19 (\$5,000.00) per violation; and

20 7. Payment of costs expended by the Board for any legal fees
21 and costs and monitoring fees, including but not limited to
22 administrative costs, witness fees and attorney fees.

23 B. Payment of fines and costs shall be in accordance with the
24 following:

1 1. All administrative fines and costs shall be paid within
2 thirty (30) days of notifying the registrant's controlling person or
3 the registrant's agent for service of process in this state of the
4 order of the Board imposing the administrative fine, unless the
5 registrant has entered into an agreement with the Board extending
6 the period for payment;

7 2. The registration may be suspended until any fine imposed
8 upon the registrant by the Board is paid;

9 3. Unless the registrant has entered into an agreement with the
10 Board extending the period for payment, if fines and costs are not
11 paid in full by the registrant within thirty (30) days of the
12 notification of the order, the fines and costs shall double and the
13 registrant shall have an additional thirty-day period. If the
14 double fine and costs are not paid within the additional thirty-day
15 period, the registration shall automatically be revoked; and

16 4. All monies received by the Board as a result of the
17 imposition of the administrative fines and costs provided for in
18 this section shall be deposited in the Oklahoma Certified Real
19 Estate Appraisers Revolving Fund created pursuant to Section 858-730
20 of Title 59 of the Oklahoma Statutes.

21 C. Complaint filing procedures shall be in accordance with the
22 following:

23 1. Any complaint filed under the Oklahoma Appraisal Management
24 Company Regulation Act or the rules promulgated thereunder shall be

1 in writing and signed by the person filing same and shall be on a
2 form prescribed by the Board. A complaint may be filed against a
3 registrant directly by the Board, if reasonable cause exists to
4 believe there have been violation(s) of the Oklahoma Appraisal
5 Management Company Regulation Act or rules; and

6 2. The registrant shall be entitled to any hearings or subject
7 to any disciplinary proceedings provided for in the Oklahoma
8 Appraisal Management Company Regulation Act or the rules promulgated
9 thereunder based upon any complaint filed pursuant to this section.

10 D. Written notice of charges shall be provided as follows:

11 1. Before taking any administrative action against any
12 registration, the Oklahoma Real Estate Appraiser Board shall notify
13 the registrant in writing of any charges made at least thirty (30)
14 days prior to the date set for hearing and shall afford the
15 registrant an opportunity to be heard in person or by counsel; and

16 2. The written notice may be served personally or sent by
17 registered or certified mail to the last-known address of either the
18 registrant's controlling person or the registrant's service agent in
19 this state.

20 SECTION 9. This act shall become effective November 1, 2016.

21 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
22 February 18, 2016 - DO PASS

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