

SENATE FILE NO. SF0071

Appraisal management company regulation-2.

Sponsored by: Senator(s) Scott

A BILL

for

1 AN ACT relating to professions; providing for registration
 2 and regulation of appraisal management companies; providing
 3 for rules and regulations; providing definitions; providing
 4 penalties; providing for criminal history background
 5 checks; amending membership of board of real estate
 6 appraisers; providing an appropriation; and providing for
 7 an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 33-39-201 through 33-39-219 are
 12 created to read:

13

14

ARTICLE 2

15

APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION

16

ACT

17

1 **33-39-201. Short title.**

2

3 This article shall be known as the "Wyoming Appraisal
4 Management Company Registration and Regulation Act."

5

6 **33-39-202. Definitions.**

7

8 (a) As used in this article:

9

10 (i) "Appraisal" or "real estate appraisal" means
11 as defined in W.S. 33-39-102(a)(i);

12

13 (ii) "Appraisal firm" means a corporation,
14 limited liability company, sole proprietorship or other
15 entity that performs appraisal services and is one hundred
16 percent (100%) owned and controlled by a person or persons
17 certified as an appraiser in this state;

18

19 (iii) "Appraisal management company" means, in
20 connection with valuing properties collateralizing mortgage
21 loans or mortgages incorporated in a securitization, an
22 external third party authorized either by a creditor of a
23 consumer credit transaction secured by real estate or by an
24 underwriter of or other principal in the secondary mortgage

1 markets that directly or indirectly performs appraisal
2 management services;

3

4 (iv) "Appraisal management service" means to
5 directly or indirectly perform any of the following acts:

6

7 (A) Administering an appraisal panel;

8

9 (B) Recruiting, retaining or selecting an
10 appraiser to perform an appraisal for a third party client;

11

12 (C) Contracting with an appraiser to
13 perform an appraisal assignment for a third party client;

14

15 (D) Providing a completed appraisal
16 performed by an appraiser to one (1) or more third party
17 clients; or

18

19 (E) Managing the process of having an
20 appraisal performed, including:

21

22 (I) Receiving and assigning appraisal
23 orders and reports;

24

1 (II) Tracking and determining the
2 status of orders for appraisals;

3

4 (III) Conducting quality control of a
5 completed appraisal before delivery of the appraisal to the
6 person who ordered the appraisal;

7

8 (IV) Collecting fees from creditors
9 and underwriters for services provided; or

10

11 (V) Compensating appraisers for
12 services performed.

13

14 (v) "Appraisal review" means the act or process
15 of developing and communicating an opinion about the
16 quality of another appraiser's work that was performed as
17 part of an appraisal assignment related to the appraiser's
18 data collection, analysis, opinions, conclusions, estimate
19 of value or compliance with the Uniform Standards of
20 Professional Appraisal Practice. "Appraisal review" does
21 not include:

22

23 (A) A general examination for grammatical,
24 typographical or other similar errors; or

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(B) A general examination for completeness including regulatory or client requirements as specified in the agreement process that do not communicate an opinion.

(vi) "Appraiser" means a person who holds a certification as an appraiser in this state in compliance with W.S. 33-39-101 through 33-39-130;

(vii) "Appraiser panel" means a group of independent appraisers selected by an appraisal management company to perform real estate appraisal services for the appraisal management company;

(viii) "Board" means the Wyoming certified real estate appraiser board;

(ix) "Client" means any person or entity that contracts with, or otherwise enters into an agreement with, an appraisal management company for the performance of appraisal management services and real estate appraisal services;

(x) "Contact person" means:

1

2 (A) The owner of more than a ten percent
3 (10%) interest of, or an officer or director of a
4 corporation, partnership or other business entity seeking
5 to offer appraisal management services in this state;

6

7 (B) An individual employed, appointed or
8 authorized by an appraisal management company that has the
9 authority to enter into a contractual relationship with
10 clients for the performance of appraisal management
11 services and has the authority to enter into agreements
12 with independent appraisers for the performance of real
13 estate appraisal services; or

14

15 (C) An individual who possesses, directly
16 or indirectly, the power to direct or cause the direction
17 of the management or policies of an appraisal management
18 company.

19

20 (xi) "In good standing" means maintaining an
21 active certification in this state pursuant to the
22 Certified Real Estate Appraiser Act, which certification is
23 not subject to any disciplinary or probationary
24 restrictions;

1

2 (xii) "Real estate appraisal services" means the
3 practice of developing a supportable opinion or conclusion
4 relating to the nature, quality, value or utility of
5 specified interests in, or aspects of, identified real
6 estate;

7

8 (xiii) "Uniform standards for professional
9 appraisal practice" means as defined in W.S.
10 33-39-102(a)(xvi).

11

12 **33-39-203. Registration required.**

13

14 (a) No person or entity shall engage in the business
15 or act in the capacity of an appraisal management company
16 regarding property located in this state without an active
17 Wyoming registration therefore. Unless exempted from this
18 article, any single act described within the definition of
19 "appraisal management services" is sufficient to constitute
20 "engaging in the business" within the meaning of this
21 article. Any person who engages in the business or acts in
22 the capacity of an appraisal management company regarding
23 property located in this state, with or without a Wyoming
24 appraisal management company registration, has thereby

1 submitted to the jurisdiction of the state of Wyoming and
2 to the administrative jurisdiction of the board, and shall
3 be subject to all penalties and remedies available under
4 Wyoming law for any violation of this article.

5

6 (b) It is unlawful for a person to directly or
7 indirectly engage or attempt to engage in business as an
8 appraisal management company, to directly or indirectly
9 engage or attempt to perform appraisal management services,
10 or to advertise or hold itself out as engaging in or
11 conducting business as an appraisal management company
12 regarding property located in this state without first
13 obtaining a registration issued by the board under the
14 provisions of this article, regardless of the entity's use
15 of the term "appraisal management company", "mortgage
16 technology company" or any other name.

17

18 (c) The registration application required by
19 subsection (a) of this section shall, at a minimum, include
20 the following information:

21

22 (i) The name, business address and phone contact
23 information of the person seeking registration;

24

1 (ii) If the person is not domiciled in this
2 state, the name and contact information for the person's
3 agent for service of process in this state;

4
5 (iii) The name, address and contact information
6 for any individual or any corporation, partnership or other
7 business entity that owns ten percent (10%) or more of the
8 appraisal management company;

9
10 (iv) The name, address and contact information
11 for the designated contact person;

12
13 (v) A certification that the appraisal
14 management company complies with this article; and

15
16 (vi) Any other information reasonably required
17 by the board for the registration required by subsection
18 (a) of this section.

19

20 **33-39-204. Exemptions.**

21

22 (a) This article shall not apply to:

23

1 (i) Any person that exclusively employs persons
2 on an employer and employee basis for the performance of
3 real estate appraisal services in the normal course of its
4 business and the employer is responsible for ensuring that
5 the real estate appraisal services being performed by its
6 employees are being performed in accordance with Uniform
7 Standards of Professional Appraisal Practices;

8
9 (ii) A department or unit within a financial
10 institution that is regulated by a federal financial
11 institution regulatory agency, or is regulated by an agency
12 of this state, that receives a request for the performance
13 of an appraisal from one (1) employee of the financial
14 institution, and another employee of the same financial
15 institution assigns the request for the appraisal to an
16 appraiser who is an independent contractor to the
17 institution; and

18
19 (iii) An appraisal management company that is a
20 subsidiary owned and controlled by a financial institution
21 regulated by a federal financial institution regulatory
22 agency.

23
24 **33-39-205. Forms.**

1

2 An applicant for registration as an appraisal management
3 company in this state shall submit to the board an
4 application on a form as prescribed by the board.

5

6 **33-39-206. Expiration of registration.**

7

8 A registration granted by the board pursuant to this
9 article shall be valid for one (1) year from the date on
10 which it is issued.

11

12 **33-39-207. Fees.**

13

14 Pursuant to W.S. 33-1-201, the board shall establish fees
15 for original registrations, renewals and certifications.
16 The fees shall be used to pay the expense of maintaining
17 and operating the office of the board and the enforcement
18 of this article.

19

20 **33-39-208. Owner requirements.**

21

22 (a) No appraisal management company shall be eligible
23 for registration in this state if the company has more than
24 ten percent (10%) ownership by any person who has had a

1 license or certificate to act as an appraiser refused,
2 denied, cancelled, revoked or surrendered in lieu of
3 revocation in this state or in any other state unless the
4 certificate or license has been reinstated.

5

6 (b) Each person who owns more than ten percent (10%)
7 of an appraisal management company performing appraisal
8 management services regarding real estate located in this
9 state shall:

10

11 (i) Have not been convicted of or pleaded guilty
12 or nolo contendere to any felony involving theft,
13 dishonesty or breach of trust;

14

15 (ii) Submit fingerprints and other information
16 necessary for a criminal history record background check as
17 provided under W.S. 7-19-201; and

18

19 (iii) Certify to the board that the person has
20 never had a certificate or license to act as an appraiser
21 refused, denied, cancelled, revoked or surrendered in lieu
22 of revocation in this state or in any other state unless
23 the certificate or license has been reinstated.

24

1 **33-39-209. Designated contact person.**

2

3 Each appraisal management company applying to the board for
4 registration in this state shall designate one (1) contact
5 person who will be the main contact for all communication
6 between the board and the appraisal management company.

7

8 **33-39-210. Designated contact person; requirements.**

9

10 (a) In order to serve as a contact person of an
11 appraisal management company, a person shall:

12

13 (i) Certify to the board that the person has
14 never had a certificate or a license issued by the board of
15 this state, or the board of any other state, to act as an
16 appraiser refused, denied, cancelled, revoked or
17 surrendered in lieu of revocation unless such certificate
18 or license was subsequently granted or reinstated;

19

20 (ii) Have not been convicted of or pleaded
21 guilty or nolo contendere to any felony involving theft,
22 dishonesty or breach of trust; and

23

1 (iii) Submit fingerprints and other information
2 necessary for a criminal history record background check as
3 provided under W.S. 7-19-201.

4

5 **33-39-211. Limitations.**

6

7 An appraisal management company registered in this state
8 pursuant to this article shall not enter into any contract
9 or agreement with an independent appraiser for the
10 performance of real estate appraisal services unless the
11 appraiser holds an appraiser certificate in good standing.

12

13 **33-39-212. Pre-engagement certification.**

14

15 Each appraisal management company seeking to be registered
16 or renew a registration in this state shall certify to the
17 board on an annual basis on a form prescribed by the board
18 that the appraisal management company has a system and
19 process in place to verify that a person being added to the
20 appraiser panel of the appraisal management company holds
21 an appraiser certificate in good standing.

22

23 **33-39-213. Recordkeeping.**

24

1 Each appraisal management company shall certify to the
2 board on an annual basis that it maintains a detailed
3 record of each service request it receives and the name of
4 the independent appraiser who performs the real estate
5 appraisal services for the appraisal management company for
6 a period of five (5) years from the final appraisal
7 submission to the client, or two (2) years after final
8 disposition of a judicial proceeding related to the
9 assignment, whichever period expires later.

10

11 **33-39-214. Appraiser independence; prohibitions.**

12

13 (a) It shall be unlawful for any employee, director,
14 officer or agent of an appraisal management company
15 registered in this state to influence or attempt to
16 influence the development, reporting or review of an
17 appraisal through coercion, extortion, collusion,
18 compensation, instruction, inducement, intimidation,
19 bribery or in any other manner, including but not limited
20 to:

21

22 (i) Withholding or threatening to withhold
23 timely payment for an appraisal, except in cases of breach
24 of contract or substandard performance of services;

1

2 (ii) Withholding or threatening to withhold
3 future business for an independent appraiser or demoting or
4 terminating or threatening to demote or terminate an
5 independent appraiser;

6

7 (iii) Expressly or impliedly promising future
8 business, promotions or increased compensation for an
9 independent appraiser;

10

11 (iv) Conditioning the request for an appraisal
12 service or the payment of an appraisal fee or salary or
13 bonus on the opinion, conclusion or valuation to be
14 reached, or on a preliminary estimate or opinion requested
15 from an independent appraiser;

16

17 (v) Requesting that an independent appraiser
18 provide an estimated, predetermined or desired valuation in
19 an appraisal report, or provide estimated values or
20 comparable sales at any time prior to the independent
21 appraiser's completion of an appraisal service;

22

23 (vi) Providing to an independent appraiser an
24 anticipated, estimated, encouraged or desired value for a

1 subject property or a proposed or target amount to be
2 loaned to the borrower, except that a copy of the sales
3 contract for purchase transactions may be provided;

4

5 (vii) Providing to an independent appraiser, or
6 any entity or person related to the appraiser, stock or
7 other financial or nonfinancial benefits.

8

9 (b) It shall be unlawful for an appraisal management
10 company to:

11

12 (i) Allow the removal of an independent
13 appraiser from an appraiser panel, without prior written
14 notice to the appraiser;

15

16 (ii) Obtain, use or pay for a second or
17 subsequent appraisal or order an automated valuation model
18 in connection with a mortgage financing transaction unless:

19

20 (A) The action is required by law;

21

22 (B) There is a reasonable basis to believe
23 that the initial appraisal was flawed or tainted and the

1 basis is clearly and appropriately noted in the loan file;
2 or

3

4 (C) The appraisal or automated valuation
5 model is done pursuant to a bona fide prefunding or post-
6 funding appraisal review or quality control process.

7

8 (iii) Require an appraiser to prepare an
9 appraisal if the appraiser, in the judgment of the
10 appraiser, does not have the necessary expertise for the
11 specific geographic area and the appraiser has notified the
12 company of this belief and declined the assignment;

13

14 (iv) Require an appraiser to prepare an
15 appraisal under a schedule that the appraiser, in the
16 judgment of the appraiser, believes does not afford the
17 appraiser the ability to meet all the relevant legal and
18 professional obligations if the appraiser has notified the
19 company of this belief and declined the assignment;

20

21 (v) Use, obtain or request the digital signature
22 or seal of the appraiser;

23

1 (vi) Alter, modify or otherwise change any
2 aspect of an appraisal report without the agreement of the
3 appraiser that the modification is appropriate unless
4 required by applicable law;

5

6 (vii) Engage in any act or practice that does
7 not comply with the Uniform Standards of Professional
8 Appraisal Practice or any assignment conditions and
9 certifications required by the client;

10

11 (viii) Engage in any other act or practice that
12 impairs or attempts to impair the independence, objectivity
13 or impartiality of an appraiser;

14

15 (ix) Require an appraiser to enter into an
16 agreement to not serve on the panel of another appraisal
17 management company;

18

19 (x) Require an appraiser to indemnify or hold
20 harmless the appraisal management company against liability
21 other than those liabilities, damages, losses or claims
22 arising out of the services performed by the appraiser,
23 including performance or nonperformance of the appraiser's

1 duties and obligations, whether as a result of negligence
2 or willful conduct.

3

4 (c) Nothing in subsection (a) or (b) of this section
5 shall be construed as prohibiting the appraisal management
6 company from requesting that an independent appraiser:

7

8 (i) Provide additional information about the
9 basis for a valuation;

10

11 (ii) Correct objective factual errors in an
12 appraisal report; or

13

14 (iii) Consider additional appropriate property
15 information.

16

17 **33-39-215. Compensation of appraisers.**

18

19 An appraisal management company shall have a system in
20 place to require that appraisals are conducted
21 independently and free from inappropriate influence and
22 coercion as required by the appraisal independence
23 standards established under Section 129E of the Truth In
24 Lending Act, 16 U.S.C. 1601 et seq., or subsequent similar

1 federal enactment, including the requirement that fee
2 appraisers be compensated at a customary and reasonable
3 rate, consistent with presumptions of compliance under
4 federal law, when the appraisal management company is
5 providing services for a consumer credit transaction
6 secured by real estate.

7

8 **33-39-216. Statement of fees.**

9

10 (a) In reporting to a client, an appraisal management
11 company shall separately state the fees:

12

13 (i) Paid to an appraiser for the completion of
14 an appraisal service; and

15

16 (ii) Charged by the appraisal management company
17 for appraisal management services.

18

19 (b) An appraisal management company shall not:

20

21 (i) Prohibit an appraiser from recording the fee
22 that the appraiser was paid by the appraisal management
23 company for completing the appraisal service in the body of

1 the report that is submitted by the appraiser to the
2 appraisal management company; or

3

4 (ii) Include any fees for appraisal management
5 services performed by the appraisal management company in
6 the amount the company reports as charges for the actual
7 completion of an appraisal service by an appraiser.

8

9 **33-39-217. Mandatory reporting.**

10

11 An appraisal management company that has a reasonable basis
12 to believe an appraiser is failing to comply with the
13 Uniform Standards of Professional Appraisal Practice, is
14 violating applicable laws, or is otherwise engaging in
15 unethical or unprofessional conduct, in a manner that
16 materially affects the value conclusion contained in an
17 appraisal report, shall file a complaint with the board
18 pursuant to W.S. 33-39-123.

19

20 **33-39-218. Disciplinary proceedings.**

21

22 (a) The board shall upon a written sworn complaint or
23 may upon its own motion investigate the actions of any
24 appraisal management company, censure the company, place

1 the company on probation and set the terms of the
2 probation, suspend or revoke any registration issued under
3 this article for any of the following:

4

5 (i) Procuring a registration pursuant to this
6 article by knowingly making a false statement, submitting
7 false information, refusing to provide complete information
8 in response to a question in an application for a
9 registration or through any form of fraud or
10 misrepresentation;

11

12 (ii) Being convicted of a felony, but this
13 discipline shall be limited to probation, suspension or
14 revocation of a registration;

15

16 (iii) Making any substantial misrepresentation,
17 false promises or false or fraudulent representation;

18

19 (iv) Violating any provision of this article or
20 rule or regulation of the board;

21

22 (v) Being negligent or incompetent, as defined
23 in the Uniform Standards of Professional Appraisal

1 Practice, in reviewing an appraisal, in preparing an
2 appraisal report or in communicating an appraisal report.

3

4 (b) Upon receipt from the department of family
5 services of a certified copy of an order from a court to
6 withhold, suspend or otherwise restrict a registration
7 issued by the board, the board shall notify the party named
8 in the court order of the withholding, suspension or
9 restriction of the registration in accordance with the
10 terms of the court order. No appeal under the Wyoming
11 Administrative Procedure Act shall be allowed for a
12 registration withheld, suspended or restricted under this
13 subsection.

14

15 (c) The board may assess to a registered appraisal
16 management company, an applicant for registration as an
17 appraisal management company, or an unregistered appraisal
18 management company performing appraisal management services
19 in this state all or part of the actual expenses of a
20 contested case proceeding resulting in the discipline or
21 censure of the registrant, suspension or revocation of the
22 registrant's certificate of registration, the denial of a
23 certificate of registration to the applicant or the
24 discipline or censure of an unregistered appraisal

1 management company performing appraisal management services
2 in this state.

3

4 **33-39-219. Hearing.**

5

6 The hearing on any charge of violation of W.S. 33-39-218
7 shall be at a time and place prescribed by the board and in
8 accordance with the provisions of the Wyoming
9 Administrative Procedure Act.

10

11 **Section 2.** W.S. 7-19-106(a) (xviii), 7-19-201(a) (xi),
12 33-39-104(a) and 33-39-105(a) by creating a new paragraph
13 (x) are amended to read:

14

15 **7-19-106. Access to, and dissemination of,**
16 **information.**

17

18 (a) Criminal history record information shall be
19 disseminated by criminal justice agencies in this state,
20 whether directly or through any intermediary, only to:

21

22 (xviii) The certified real estate appraiser
23 board for purposes of permitting or registration under
24 title 33, chapter 39;

1

2 **7-19-201. State or national criminal history record**
3 **information.**

4

5 (a) The following persons shall be required to submit
6 to fingerprinting in order to obtain state and national
7 criminal history record information:

8

9 (xi) Persons applying for a permit under W.S.
10 33-39-109 or a registration under W.S. 33-39-208 or
11 33-39-210;

12

13 **33-39-104. Board of certified real estate appraisers.**

14

15 (a) There is hereby established as an adjunct to the
16 Wyoming real estate commission the certified real estate
17 appraiser board which shall consist of ~~five (5)~~ six (6)
18 members, one (1) of whom shall be a public member, one (1)
19 of whom shall be a member of the banking industry, one (1)
20 of whom shall be an owner or representative of an appraisal
21 management company and three (3) of whom shall be certified
22 real estate appraisers. The director of the real estate
23 commission will serve as an ex officio member.

24

1 **33-39-105. Powers of the board; rulemaking authority.**

2

3 (a) The board shall:

4

5 (x) Implement, administer and enforce, and
6 promulgate rules and regulations that are necessary to
7 implement, administer and enforce the provisions of the
8 Wyoming Appraisal Management Company Registration and
9 Regulation Act, W.S. 33-39-201 through 33-39-219.

10

11 **Section 3.** There is appropriated sixty thousand
12 dollars (\$60,000.00) from the real estate appraiser board
13 administration fund to the board of real estate appraisers.
14 This appropriation shall be for the period beginning with
15 the effective date of this act and ending June 30, 2014.
16 This appropriation shall only be expended for the purpose
17 of this act. Notwithstanding any other provision of law,
18 this appropriation shall not be transferred or expended for
19 any other purpose and any unexpended, unobligated funds
20 remaining from this appropriation shall revert as provided
21 by law on June 30, 2014.

22

23 **Section 4.** Notwithstanding any other provision of
24 this act, an appraisal management company conducting

1 business in this state on or before July 1, 2013 may
2 continue to conduct business in this state without
3 registering pursuant to W.S. 33-39-203 created by this act
4 until sixty (60) days after the date rules implementing the
5 registration process created by the Wyoming certified real
6 estate appraiser board pursuant to W.S. 33-39-203 take
7 effect.

8

9 **Section 5.** This act is effective July 1, 2013.

10

11

(END)