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PUBLIC CHAPTER NO. 963

HOUSE BILL NO. 3191

By Representatives Mumpower, Casada, Yokley

Substituted for: Senate Bill No. 3155

By Senator Overbey

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 39, relative to the Tennessee Appraisal Management Company Registration and Regulation Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 39, is amended by adding Sections 2 through 31 as a new part thereto:

SECTION 2. This part shall be known and may be cited as the "Tennessee Appraisal Management Company Registration and Regulation Act".

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Appraisal" means the act or process of developing an opinion of value of identified real estate. That opinion of value may be numerically expressed either as a specific amount, as a range of numbers or as a relationship to a previous value opinion or other numerical benchmark. The term "appraisal" does not include any opinion of value referred to as evaluations under § 62-39-104;

(2) "Appraisal management company" or "AMC" means an individual or business entity that utilizes an appraisal panel and performs, directly or indirectly, appraisal management services;

(3) "Appraisal management services" means to, directly or indirectly, perform any of the following functions on behalf of a lender, financial institution, client, or any other person:

(A) Administer an appraiser panel;

(B) Recruit, qualify, verify licensing or certification, and negotiate fees and service level expectations with appraisers who are part of an appraiser panel;

(C) Receive an order for an appraisal from one (1) person, and deliver the order for the appraisal to an appraiser that is part of an appraiser panel for completion;

(D) Track and determine the status of orders for appraisals;

(E) Conduct quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal; and

(F) Provide a completed appraisal performed by an appraiser to one (1) or more persons who have ordered an appraisal;

(4) "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, except that an examination of an appraisal for grammatical, typographical, or other similar errors shall not be an appraisal review;

(5) "Appraiser" means an individual who holds a license as defined in § 62-39-102(15) or certification as defined in § 62-39-102(14);

(6) "Appraiser panel" means a network of licensed or certified appraisers that have:

(A) Responded to an invitation, request, or solicitation from an appraisal management company, in any form, to perform appraisals for persons that have ordered appraisals through the appraisal management company or to perform appraisals for the appraisal management company directly; and

(B) Been selected and approved by an appraisal management company to perform appraisals for any client of the appraisal management company that has ordered an appraisal through the appraisal management company or to perform appraisals for the appraisal management company directly;

(7) "Commission" means the real estate appraiser commission created by § 62-39-201;

(8) "Controlling person" means:

(A) An owner, officer or director of a corporation, partnership or other business entity seeking to offer appraisal management services in this state;

(B) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals; 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;

(9) "USPAP" means the Uniform Standards of Professional Appraisal Practice;

SECTION 4.

(a) No person shall directly or indirectly engage or attempt to engage in business as an appraisal management company, to directly or indirectly engage or attempt to perform appraisal management services, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the commission under this part.

(b) The registration required by subsection (a) shall, at a minimum, include the following:

(1) Name of the entity seeking registration;

(2) Business address of the entity seeking registration which must be located and maintained within this state;

(3) Phone contact information of the entity seeking registration;

(4) If the entity is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state;

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

(6) The name, address, and contact information for a designated controlling person to be the primary communication source for the commission;

(7) A certification that the entity has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company for appraisal services to be performed in Tennessee holds a license or certification in good standing in Tennessee pursuant to part 3 of this chapter, if a license or certification is required to perform appraisals, pursuant to Section 16 of this act;

(8) A certification that the entity has a system in place to review the work of all appraisers who are performing real estate appraisal services in Tennessee for the appraisal management company on a periodic basis to validate that the real estate appraisal services are being conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP), pursuant to Section 17 of this act;

(9) A certification that the entity maintains a detailed record of each service request that it receives for appraisal services within the state of Tennessee and the appraiser who performs the real estate appraisal

services for the appraisal management company, pursuant to Section 18 of this act;

(10) An irrevocable Uniform Consent to Service of Process, pursuant to Section 8 of this act; and

(11) Any other reasonable information required by the commission to complete the registration process.

SECTION 5.

This act shall not apply to:

(1) A national or state bank, federal, or state savings institution that is subject to direct regulation or supervision by an agency of the United States government, or by the department of financial institutions, that receives a request for the performance of an appraisal from one (1) employee of the financial institution, and another employee of the same financial institution assigns the request for the appraisal to an appraiser who is an independent contractor to the institution. An entity exempt as provided in this subdivision shall file a notice with the commission which contains the information required in Section 4 of this act.

(2) An appraiser that enters into an agreement, whether written or otherwise, 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 appraiser who requested the completion of the appraisal.

(3) Any state agency or local municipality that orders appraisals for ad valorem tax purposes or any other business on behalf of the state of Tennessee.

(4) Any person licensed to practice law in this state, a court-appointed personal representative or a trustee who orders an appraisal in connection with a bona fide client relationship when such person directly contracts with an independent appraiser.

(5) A certified public accountant or CPA firm regulated under title 62, chapter 1, part 1.

SECTION 6. An applicant for a registration as an appraisal management company shall submit to the commission an application containing information required in Section 4 (b) on a form prescribed by the commission.

SECTION 7. Registration shall be valid for two (2) years from its issuance.

SECTION 8. Each entity applying for a registration as an appraisal management company in Tennessee shall complete an irrevocable Uniform Consent to Service of Process, as prescribed by the commission.

SECTION 9.

(a) The commission shall establish by rule and regulation the fee to be paid by each appraisal management company seeking registration under this part, such that the sum of the fees paid by all appraisal management companies seeking registration under this section shall be sufficient for the administration of this part. The commission shall charge and collect fees to be utilized to fund activities that may be necessary to carry out this chapter.

(b) Each applicant for registration shall post with the commission and maintain on renewal a surety bond in the amount of twenty thousand dollars (\$20,000). The details of the bond shall be prescribed by rule and regulation of the commission, however, the bond may not be used to assist appraisers in collection efforts of credit extended by the appraiser.

SECTION 10.

(a) An appraisal management company applying for a registration in Tennessee shall not be more than ten percent (10%) owned by:

(1) 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;

(2) An entity that is more than ten percent (10%) 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; or

(b) Each person who owns more than ten percent (10%) of an appraisal management company in this state shall:

(1) Be of good moral character, as determined by the commission; and

(2) Submit to a background investigation, as determined by the commission.

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

(d) Each appraisal management company shall notify the commission within thirty (30) days of a change in its controlling principal, agent of record, or ownership composition.

SECTION 11.

(a) Each appraisal management company applying to the commission for a registration in this state shall designate one (1) controlling person who will be the main contact for all communication between the commission and the appraisal management company.

(b) The designated controlling person pursuant to subsection (a) shall:

(1) Have never 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;

(2) Be of good moral character, as determined by the commission; and

(3) Submit to a background investigation, as determined by the commission.

SECTION 12.

(a) An appraisal management company that applies to the commission for registration to do business in this state as an appraisal management company or a financial institution qualified under Section 5 (1) shall not:

(1) Employ any person directly involved in appraisal management services who has had a license or certificate to act as an appraiser in Tennessee or in any other state, refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation;

(2) Knowingly enter into any independent contractor arrangement, whether in verbal, written, or other form, with any person who has had a license or certificate to act as an appraiser in Tennessee or in any other state, refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation;

(3) Knowingly enter into any contract, agreement, or other business relationship directly involved with the performance of real estates appraisal or appraisal management services, whether in verbal, written, or any other form, with any entity that employs, has entered into an independent contract arrangement, or has entered into any contract, agreement, or other business relationship, whether in verbal, written, or any other form, with any person who has ever had a license or certificate to act as an appraiser in Tennessee or in any other state, refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation.

SECTION 13. Prior to placing an assignment, for real estate appraisal services within the state of Tennessee, with an appraiser on the appraiser panel of an appraisal management company, the appraisal management company shall have a system in place to verify that the appraiser receiving the assignment holds a credential in good

standing in the state of Tennessee. Letters of engagement shall include instructions to the appraiser to decline the assignment in the event the appraiser is not geographically competent or the assignment falls outside the appraiser's scope of practice restrictions.

SECTION 14. Any employee or independent contractor of the appraisal management company who performs an appraisal review services on an appraisal done on real property located within Tennessee must be an individual who holds a license as defined in § 62-39-102(15) or certification as defined in § 62-39-102(14). Letters of engagement shall include instructions to the appraiser to decline the appraisal review assignment in the event the appraiser is not geographically competent or the assignment falls outside the appraiser's scope of practice restrictions.

SECTION 15. Each appraisal management company seeking to be registered shall certify to the commission on a biannual basis on a form prescribed by the commission that the appraisal management company has a system and process in place to verify that an individual being added to the appraiser panel for appraisal services within Tennessee of the appraisal management company holds a license in good standing in this state pursuant to this chapter.

SECTION 16. Each appraisal management company seeking to be registered shall certify to the commission on a biannual basis on a form prescribed by the commission that the appraisal management company has a system in place to verify that an individual to whom the appraisal management company is making assignments for the completion of appraisals has not had a license or certification as an appraiser refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation on a regular basis.

SECTION 17. Each registered appraisal management company shall certify to the commission on a biannual basis that it has a system in place to perform an appraisal review on a periodic basis of the work of all appraisers who are performing appraisals in Tennessee for the appraisal management company to validate that the appraisals are being conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP). An AMC shall report to the commission the results of any appraisal reviews in which an appraisal is found to be substantially non-compliant with USPAP or state/federal laws pertaining to appraisals.

SECTION 18. Each appraisal management company seeking to be registered shall certify to the commission biannually that it maintains a detailed record of each service request for appraisal services within the state of Tennessee and that it receives and of each appraiser who performs an appraisal for the appraisal management company in the state of Tennessee.

SECTION 19.

(a) An appraisal management company shall not prohibit an appraiser who is part of an appraiser panel from recording the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal within the appraisal report that is submitted by the appraiser to the appraisal management company.

(b) An appraisal management company shall separately state to the client, the fees paid to an appraiser for appraisal services and the fees charged by the appraisal management company for services associated with the management of the appraisal process, including procurement of the appraiser's services.

SECTION 20.

(a) No employee, director, officer, or agent of an appraisal management company shall influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, inducement, intimidation, bribery or in any other manner, including but not limited to:

(1) Withholding or threatening to withhold timely payment for an appraisal, except in cases of substandard performance or non-compliance with conditions of engagement;

(2) Withholding or threatening to withhold future business, or demoting, terminating or threatening to demote or terminate an appraiser;

(3) Expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;

(4) 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, or on a preliminary estimate or opinion requested from an appraiser;

(5) 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;

(6) 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;

(7) Providing to an appraiser, or any entity or person related to the appraiser, stock or other financial or non-financial benefits;

(8) Allowing the removal of an appraiser from an appraiser panel, without prior written notice to such appraiser;

(9) Any other act or practice that knowingly impairs or attempts to impair an appraiser's independence, objectivity, or impartiality;

(10) Requiring an appraiser to collect an appraisal fee on behalf of the appraisal management company from the borrower, homeowner, or other third party;

(11) Requiring an appraiser to indemnify an appraisal management company or hold an appraisal management company harmless for any liability, damage, losses or claims arising out of the services performed by the appraisal management company, and not the services performed by the appraiser.

(B) Nothing in subsection (a) shall prohibit the appraisal management company from requesting that an appraiser:

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

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

(iii) Provide additional information within the appraisal regarding additional sales provided through an established dispute process.

SECTION 21. An appraisal management company shall not:

(1) Require an appraiser to modify any aspect of an appraisal report unless the modification complies with Section 20 of this act;

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

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

(4) Prohibit or inhibit legal or other 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 own professional judgment, believes information would be relevant;

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

(A) USPAP;

(B) The State Licensing and Certified Real Estate Appraisers Law, compiled in § 62-39-101 et seq, or the rules promulgated thereunder; or

(C) Any assignment conditions and certifications required by the client;

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

(A) A loan closing; or

(B) Specific dollar amount being achieved by the appraiser in the appraisal.

SECTION 22.

Each appraisal management company shall, except in cases of breach of contract or substandard performance of services, make payment to an appraiser for the completion of an appraisal or valuation assignment within sixty (60) days (unless a mutually agreed upon alternate payment schedule exists) from when the appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

SECTION 23.

(a) An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser by:

(1) Permanently removing the appraiser's signature or seal; or

(2) Adding information to, or removing information from, the appraisal report with an intent to change the valuation conclusion.

(b) No registered appraisal management company may require an appraiser to provide the appraisal management company with the appraiser's digital signature or seal. Nothing in this subsection (b) shall prohibit an appraiser from voluntarily providing such appraiser's digital signature to another person.

SECTION 24.

(a) The commission shall issue a unique registration number to each appraisal management company.

(b) The commission shall publish a list of the appraisal management companies that have registered pursuant to this part and have been issued a registration number.

(c) An appraisal management company shall be required to disclose the registration number on each engagement letter utilized in assigning an appraisal request for real estate appraisal assignments within the state of Tennessee.

SECTION 25.

(a) Except within the first thirty (30) days after an appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company may not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an appraiser without:

(1) Notifying the appraiser in writing of the reasons why the appraiser is being removed from the appraiser panel of the appraisal management company;

(2) If the appraiser is being removed from the panel for illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice (USPAP), or a violation of state licensing standards, describing the nature of the alleged conduct or violation; and

(3) Providing an opportunity for the appraiser to respond to the notification of the appraisal management company.

(b) An appraiser who is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice (USPAP), or violation of state licensing standards, may file a complaint with the commission for a review of the decision of the appraisal management company, except that in no case shall the commission make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company which is unrelated to the actions specified in subsection (a).

(c) If after notice and an opportunity for hearing and review, the commission determines that an appraiser did not commit a violation of law, a violation of the Uniform Standards of Professional Appraisal Practice (USPAP), or a violation of state licensing standards, the commission shall order that such appraiser be added to the appraiser panel of the appraisal management company.

(d) If the commission has found that the appraisal management company acted improperly in removing the appraiser from the appraiser panel, an appraisal management company may not refuse to make assignments for real estate appraisal services to an appraiser, or reduce the number of assignments, or otherwise penalize the appraiser.

SECTION 26.

(a) The commission may censure an appraisal management company, conditionally or unconditionally suspend or revoke any registration issued under this part or impose administrative fines not to exceed the maximum allowable amount defined by the state of Tennessee, if an appraisal management company is:

- (1) Knowingly committing any act in violation of this part;
- (2) Violating any rule or regulation adopted by the commission; or
- (3) Procuring a license by fraud, misrepresentation, or deceit.

SECTION 27.

The conduct of adjudicatory proceedings in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for violations of this section is vested in the commission, provided:

- (1) Before censuring any registrant, or suspending or revoking any registration, the commission shall notify the registrant in writing of any charges made at least twenty (20) days before the hearing and shall afford the registrant an opportunity to be heard in person or by counsel; and
- (2) Written notice shall be satisfied by personal service on the controlling person of the registrant, or the registrant's agent for service of process in this state, or by sending the notice by certified mail, return receipt requested to the controlling person of the registrant to the registrant's address on file with the commission.

SECTION 28. Tennessee Code Annotated, Section 62-39-201, is amended by deleting subsection (a)(2) in its entirety and substituting instead the following:

(a)(2) The commission shall consist of nine (9) members, one (1) of whom shall be a public member, one (1) of whom shall be a full-time educator of appraisal-related education with the State's universities, colleges and junior colleges, and one (1) of whom shall be from an appraisal management company or financial institution providing appraisal services in Tennessee.

SECTION 29.

(a) For purposes of making appointments to meet the revised board composition provided for in Section 28 of this act, appointments to fill vacant positions shall be made as follows:

- (1) First, a person from a qualified appraisal management company or financial institution providing appraisal services in Tennessee;
- (2) Second, a person who is public member;
- (3) Thereafter, qualified appraisers.

(b) This Act shall not affect the terms of the current members of the commission, but all appointments after July 1, 2011, shall be made so as to meet the requirements established in Section 28, as terms expire and vacancies occur.

SECTION 30. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 31. For Sections 28 and 29 and for purposes of promulgating rules and regulations, this act shall take effect upon becoming law, and for all other sections and for purposes of registration, this act shall take effect on July 1, 2011, the public welfare requiring it.

PASSED: May 13, 2010


KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES


RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 26th day of May 2010


PHIL BREDESEN, GOVERNOR