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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - REAL ESTATE APPRAISAL
MANAGEMENT COMPANIES

Introduced By: Senators Lombardo, Cote, Picard, and Conley

Date Introduced: March 09, 2017

Referred To: Senate Commerce

(Dept. of Business Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"
2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 20.9

4 REAL ESTATE APPRAISAL MANAGEMENT COMPANIES

5 **5-20.9-1. Legislative purpose.**

6 This legislation provides the department with the statutory authority to develop and
7 implement registration requirements for appraisal management companies (AMCs) in connection
8 with valuing properties collateralizing mortgage loans or mortgages incorporated into a
9 securitization or any external third party authorized either by a creditor of a consumer credit
10 transaction secured by a consumer's principal dwelling or by an underwriter of or other principal
11 in the secondary mortgage markets operating in this state as required by the "Dodd-Frank Wall
12 Street Reform Act (12 U.S.C. §5301 et seq.)."

13 **5-20.9-2. Definitions.**

14 As used in this chapter, the following terms shall have the following meanings:

15 (1) "Appraisal" means an analysis, opinion, or conclusion relating to the nature, quality,
16 value or utility of specified interest in, or aspects of, identified real estate. An appraisal may be
17 classified by subject matter into either a valuation or an analysis, defined as:

18 (i) "Valuation" means an estimate of the value of real estate or real property.

1 (ii) "Analysis" means a study of real estate or real property other than estimating value.

2 (2)(i) "Appraisal management company (AMC)" means, in connection with valuing
3 properties collateralizing mortgage loans or mortgages incorporated into a securitization, any
4 external third party authorized either by a creditor of a consumer credit transaction secured by a
5 consumer's principal dwelling, or by an underwriter of or other principal in the secondary
6 mortgage markets, that oversees a network or panel of more than fifteen (15) certified or licensed
7 appraisers in Rhode Island or twenty-five (25) or more nationally, excluding those appraisers who
8 do not provide appraisal services for covered transactions, within a given year to:

9 (A) Recruit, select, and retain appraisers;

10 (B) Contract with licensed and certified appraisers to perform appraisal assignments;

11 (C) Manage the process of having an appraisal performed, including providing
12 administrative duties such as receiving appraisal orders and appraisal reports, submitting
13 completed appraisal reports to creditors and underwriters, collecting fees from creditors and
14 underwriters for services provided, and reimbursing appraisers for services performed; or

15 (D) Review and verify the work of appraisers.

16 (ii) An "appraisal management company" does not include any entity that employs real
17 estate appraisers as employees for the performance of real estate appraisal services in a manner
18 consistent with federal regulations promulgated in accordance with §1473 of the Dodd-Frank
19 Wall Street Reform Act (12 U.S.C. §5301 et seq.).

20 (3) "Appraiser panel" means a group of independent fee appraisers that have been
21 selected by an appraisal management company to perform residential real estate appraisal
22 services for the appraisal management company.

23 (4) "Board" means the real estate appraisers board established pursuant to the provisions
24 of chapter 20.7 of title 5.

25 (5) "Client" means any person or entity that contracts with, or otherwise enters into an
26 agreement with an appraisal management company for the management of residential real estate
27 appraisal services.

28 (6) "Controlling person" means:

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

31 (ii) An individual employed, appointed, or authorized by an appraisal management
32 company that has the authority to enter into a contractual relationship with clients for the
33 performance of appraisal management services and has the authority to enter into agreements
34 with independent appraisers for the performance of residential real estate appraisal services; or

1 (iii) An individual who possesses, directly or indirectly, the power to direct or cause the
2 direction of the management or policies of an appraisal management company.

3 (7) "Department" means the department of business regulation.

4 (8) "Director" means the director of the department of business regulation.

5 (9) "Independent fee appraiser" means:

6 (i) A natural person who is a state-licensed or state-certified appraiser and receives a fee
7 for performing an appraisal, but who is not an employee of the person engaging the appraiser; or

8 (ii) An organization that, in the ordinary course of business, employs state-licensed or
9 state-certified appraisers to perform appraisals, receives a fee for performing the appraisals and is
10 not subject to §1124 of the federal "Financial Institutions Reform, Recovery and Enforcement
11 Act of 1989" ("FIRREA") (12 U.S.C. §1811 et seq.).

12 (10) "Real estate appraisal services" means the practice of developing an appraisal by a
13 licensed or certified appraiser in conformance with the "Uniform Standards of Professional
14 Appraisal Practice" (USPAP).

15 (11) "USPAP" means the Uniform Standards for Professional Appraisal Practice
16 published by the appraisal foundation.

17 **5-20.9-3. Registration required for appraisal management companies.**

18 (a) It shall be unlawful for any person or entity to act as a real estate appraisal
19 management company, or to directly or indirectly engage in the business of real estate appraisal
20 management in this state, or to advertise or hold themselves out as engaging in the business of
21 real estate appraisal management in this state, without first registering with the department under
22 the provisions of this chapter.

23 (b) A partnership, limited liability partnership, limited liability company, or corporation
24 that acts as an appraisal management company shall register with the department and shall renew
25 the registrations of its members, officers, and directors for each registration period.

26 (c) Appraisal management companies shall provide the following information upon
27 registration:

28 (1) The name and contact information of the entity seeking registration;

29 (2) The name and contact information of the controlling person for the entity;

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

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

1 (d) Contact information shall include the entity's business and mailing address, telephone
2 number, facsimile number, and electronic mail (e-mail) address.

3 (e) An appraisal management company shall certify that the following is true upon its
4 initial registration and upon each renewal of its registration:

5 (1) The registered entity has a system and process in place to verify that a person being
6 added to the appraiser panel of the appraisal management company holds a certification or license
7 in good standing in this state to perform appraisals;

8 (2) The registered entity has a system in place to periodically perform a quality
9 assurance review of the work of independent fee appraisers that are performing real estate
10 appraisal services on its behalf to ensure that appraisal services are being conducted in
11 accordance with USPAP; and

12 (3) The registered entity maintains a detailed record of each service request that it
13 receives for five (5) years.

14 (f) Any person, who directly or indirectly owns more than ten percent (10%) of an
15 applicant for an AMC, or any officer, controlling person, employee in charge or managing
16 principal of the applicant, shall furnish to the department authorization for a state or national
17 criminal history background check. An appraisal management company that has an owner of ten
18 percent (10%), directly or indirectly, or any officer, controlling person, employee in charge of or
19 managing the principal, who has had a license or certificate to act as an appraiser or to engage in
20 any activity related to the transfer of real property refused, denied, canceled or revoked in this
21 state or in any other state, whether on a temporary or permanent basis or, who is not of good
22 moral character as determined by the director, shall not be eligible for licensure.

23 **5-20.9-4. Duties.**

24 (a) Every applicant for registration under this chapter who is not a resident of this state
25 shall submit with the application an irrevocable consent that service of process in any action
26 against the applicant arising out of the applicant's activities as an appraisal management company
27 may be made by delivery of the process on the director. In addition, each application for
28 registration must submit the name and address of its registered agent that is located in this state.

29 (b) Each appraisal management company shall maintain for five (5) years documents,
30 electronic or paper, for each appraisal assignment including acceptance of fees from borrowers or
31 clients and payments to appraisers. The department may inspect these records periodically
32 without prior notice and may also inspect these records whenever the department determines that
33 they are pertinent to an investigation of any specific complaint against an appraisal management
34 company.

1 (c) Each appraisal management company must notify the department in writing of any
2 change of business name or address within ten (10) calendar days.

3 **5-20.9-5. Exemptions.**

4 This chapter shall not be applicable to:

5 (1) An agency of the federal government or any state or municipal government;

6 (2) An appraisal management company that is a subsidiary owned and controlled by a
7 financial institution regulatory agency, provided the appraisal management company is in
8 compliance with §1124 of the "Federal financial Institutions Reform Recovery and Enforcement
9 Act of 1989" ("FFIR") (12 U.S.C. §1811 et seq.) and any rules promulgated pursuant to the
10 authority granted in § 1124 of the FFIR.

11 (3) Any domestic corporation, partnership, sole proprietorship, subsidiary, unit, or other
12 domestic business entity that exclusively employs persons in employer-employee relationships to
13 perform residential real estate appraisal services in accordance with USPAP in the normal course
14 of its business; or

15 (4) Any individual, corporation, partnership, sole proprietorship, subsidiary, unit, or other
16 business entity who in the normal course of business enters into an agreement, whether written or
17 otherwise, with an independent fee appraiser for the performance of residential real estate
18 appraisal services shall, upon the completion of the appraisal, co-sign the report with the
19 independent fee appraiser with whom it subcontracted for the performance of the residential real
20 estate appraisal service.

21 **5-20.9-6. Fees and registration renewals.**

22 (a) The fees for initial registration, renewal and late renewals shall be determined by the
23 director and established by regulation.

24 (b) Every appraisal management company that desires to renew a registration for the next
25 term shall apply for the renewal of the registration upon a form furnished by the director and
26 containing information that is required by this chapter. Renewal of a registration is subject to the
27 same provisions as the initial registration.

28 **5-20.9-7. Expiration of registration.**

29 A registration granted by the department pursuant to this chapter shall be valid for two
30 (2) years from the date on which it is issued.

31 **5-20.9-8. Owner requirements.**

32 (a) An appraisal management company applying for a registration in this state may not be
33 owned or controlled by a person if such person has had a license or certification to act as an
34 appraiser denied or revoked in this state or in any other state, or who is not of good moral

1 character as determined by the director.

2 (b) Every owner or controlling person of an appraisal management company in this state
3 shall certify to the department that such person has never had a license to act as an appraiser
4 denied, suspended or revoked in this state or in any other state.

5 **5-20.9-9. Controlling person and review appraiser employees.**

6 (a) Every appraisal management company applying to the department for a registration in
7 this state shall designate one controlling person that will be the principal contact for all
8 communication between the department and the appraisal management company.

9 (b) Any employee of the appraisal management company that has the responsibility to
10 review the work of independent fee appraisers must have a current USPAP certification.

11 **5-20.9-10. Limitations.**

12 An appraisal management company registered in this state pursuant to this chapter may
13 not enter into contracts or agreements with an independent fee appraiser for the performance of
14 residential real estate appraisal services unless that person is licensed or certified and in good
15 standing pursuant to the chapter 20.7 of title 5.

16 **5-20.9-11. Appraiser independence.**

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

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

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

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

28 (4) Conditioning the request for an appraisal service or the payment of an appraisal fee or
29 salary or bonus on the opinion, conclusion, valuation to be reached, or on a preliminary estimate
30 or opinion requested from an independent appraiser;

31 (5) Requesting that an independent appraiser provide an estimated, predetermined, or
32 desired valuation in an appraisal report, or provide estimated values or comparable sales at any
33 time prior to the independent appraiser's completion of an appraisal service;

34 (6) Providing to an independent appraiser an anticipated, estimated, encouraged, or

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

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

5 (8) Removing an appraiser from a list of qualified appraisers, or adding an appraiser to an
6 exclusionary list of disapproved appraisers, in connection with the influencing or attempting to
7 influence an appraisal. This prohibition does not preclude the management of appraiser lists for
8 bona fide administrative or quality-control reasons based on written policy;

9 (9) Obtaining, using, or paying for a second or subsequent appraisal or ordering an
10 automated valuation model in connection with a mortgage financing transaction unless there is a
11 reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly
12 and appropriately noted in the loan file, or unless such appraisal or automated valuation model is
13 done pursuant to a bona fide per-funding or post-funding appraisal review or quality control
14 process; or

15 (10) Any other act or practice that impairs or attempts to impair an appraiser's
16 independence, objectivity, or impartiality.

17 (b) Nothing in subsection (a) of this sections shall be construed as prohibiting the
18 appraisal management company from requesting that an independent fee appraiser:

19 (1) Consider additional property information;

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

21 (3) Correct objective factual errors in an appraisal report.

22 **5-20.9-12. Prohibitions.**

23 An appraisal management company registered in this state shall not:

24 (1) Require an independent fee appraiser to collect the appraisal fee from a borrower,
25 homeowner, or other person;

26 (2) Require an independent fee appraiser to provide the company with the appraiser's
27 digital signature;

28 (3) Alter, amend, or change an appraisal report submitted by an independent fee appraiser
29 in any fashion, including removing the appraiser's signature or adding information to or removing
30 information from the report;

31 (4) Transmit an appraisal to the appraisal management company's client if the appraisal
32 has been altered in any fashion after it was transmitted to the appraisal management company; or

33 (5) Require an independent fee appraiser to sign any indemnification agreement that
34 would require the independent fee appraiser to defend and hold harmless the appraisal

1 management company or any of its agents, employees, or independent contractors for any
2 liability, damage, losses, or claims arising out of the services performed by the appraisal
3 management company.

4 **5-20.9-13. Adjudication of disputes.**

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

9 (1) Notifying the appraiser in writing of the reasons why the appraiser is being removed
10 from the appraiser panel of the appraisal management company, including the alleged statutory or
11 USPAP violation, if any; and

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

14 **5-20.9-14. Investigations.**

15 (a) If the department has reasonable grounds to believe that an appraisal management
16 company has violated the provisions of this chapter or that facts exist that would be the basis for
17 an order against an appraisal management company, the department may at any time investigate
18 or examine the books, accounts, records, and files of any registrant or other person relating to the
19 complaint or matter under investigation. The department may require any registrant or other
20 person to submit a criminal history record check in connection with any examination or
21 investigation. Refusal to submit the requested criminal history record check shall be grounds for
22 disciplinary action. The reasonable cost of this investigation or examination shall be charged
23 against the registrant.

24 (b) The department shall have the power to issue subpoenas requiring the attendance of
25 persons and the production of papers and records before the department in any hearing,
26 investigation, inquiry, or other proceeding conducted by it. Upon the production of any papers,
27 records, or documents, the department shall have the power to authorize true copies thereof to be
28 substituted in the permanent record of the matter in which the books, records, or documents shall
29 have been introduced in evidence.

30 (c) The department may from time to time conduct routine examinations of the books and
31 records of an appraisal management company registered with the department in order to
32 determine the compliance with this chapter and any rules promulgated thereunder.

33 **5-20.9-15. Enforcement.**

34 The department may censure an appraisal management company, conditionally or

1 unconditionally suspend or revoke any registration issued under this chapter, levy fines or impose
2 civil penalties not to exceed five thousand dollars (\$5,000) per violation, if in the opinion of the
3 department, an appraisal management company is attempting to perform, has performed, or has
4 attempted to perform any of the following acts:

5 (1) The appraisal management company has filed an application for registration that, as
6 of its effective date or as of any date after filing, contained any statement that, in light of the
7 circumstances under which it was made, is false or misleading with respect to any material fact;

8 (2) The appraisal management company has violated or failed to comply with any
9 provision of this chapter, or any rule adopted by the department;

10 (3) The appraisal management company is permanently or temporarily enjoined by any
11 court of competent jurisdiction from engaging in or continuing any conduct or practice involving
12 any aspect of the real estate appraisal management business;

13 (4) The company is the subject of an order of the department or any other state appraiser
14 regulatory agency denying, suspending, or revoking that person's license as a real estate
15 appraiser;

16 (5) The company acted as an appraisal management company while not properly
17 registered with the department; and

18 (6) The company has failed to pay the proper filing or renewal fee under this chapter.

19 **5-20.9-16. Order to cease and desist.**

20 (a) If the director has reason to believe that any person, firm, corporation, or association
21 is conducting any activities requiring registration under this chapter without obtaining registration
22 or, after the denial, suspension or revocation of a registration conducts any activities requiring
23 registration under this chapter, the department may issue an order to that person, firm,
24 corporation, or association commanding them to appear before the department at a hearing to be
25 held no sooner than ten (10) days nor later than twenty (20) days after issuance of that order to
26 show cause why the department should not issue an order to that person to cease and desist from
27 any violations of this chapter.

28 (b) The order to show cause may be served on any person, firm, corporation, or
29 association named in the order in the same manner that a summons in a civil action may be
30 served, or by mailing a copy of the order to that person at any address at which they have done
31 business or at which they live. If, upon that hearing, the department is satisfied that the person is
32 in fact violating any provision of this chapter, the department may order that person, in writing, to
33 cease and desist from that violation.

34 (c) All hearings shall be governed in accordance with chapter 35 of title 42, the

1 administrative procedures act. If that person fails to comply with an order of the department after
2 being afforded a hearing, the superior court has jurisdiction upon complaint of the department to
3 restrain and enjoin that person from violating this chapter.

4 **5-20.9-17. Hearing before revocation or suspension; refusal of certification or**
5 **licensing.**

6 (a) Before refusing to issue a registration or suspending or revoking a registration, the
7 director shall notify the applicant or registrant of their intended action and the grounds for the
8 action. The applicant or registrant may, within twenty (20) days, file with the director a request
9 for a hearing setting out an answer to the grounds specified in the notification. The director shall
10 consider the answer and set a date for the hearing, notifying the applicant or registrant of that date
11 at least twenty (20) days prior to the hearing date.

12 (b) Before refusing to issue a registration or suspending or revoking a registration upon
13 the verified written complaint of any person setting out a cause of action under this chapter, the
14 director shall, in writing, notify the accused applicant or registrant of its receipt of the complaint,
15 enclosing a copy of the complaint. The accused applicant or registrant shall, within twenty (20)
16 days, file with the department its answer to the complaint or complaints.

17 (c) The department shall transmit a copy of the answer to the complainant or
18 complainants and set a time and place for a hearing, which shall be at least twenty (20) days prior
19 to the hearing date.

20 (d) All notices and answers required or authorized to be made or filed under this section
21 shall be satisfied by personal service on the controlling person of the registrant, or the registrant's
22 agent for service of process in this state, or by sending the notice by registered mail to the
23 controlling person of the registrant to the registrant's last known address on file with the
24 department. If served personally, the time runs from the date of service; if served by registered
25 mail from the postmarked date of the letter enclosing the document.

26 (e) The director shall render a decision on any application or complaint within sixty (60)
27 days after the final hearing in the matter and shall immediately notify the parties to the
28 proceedings, in writing, of its rulings, orders, or decisions. If the matter contained in the
29 complaint has been filed or made a part of a case pending in any court in this state, the director
30 may then withhold its decision until the court action has been concluded.

31 (f) Hearings shall be held in accordance with rules promulgated by the department in
32 conformity with the provisions of chapter 35 of title 42, the administrative procedures act
33 ("APA"). Any party aggrieved by a final administrative decision of the director may appeal the
34 decision in accordance with the provisions of the APA.

1 **5-20.9-18. Rulemaking authority.**

2 The department shall create and adopt rules which promote and effectuate the purposes of
3 this chapter.

4 SECTION 2. This act shall take effect 180 days after its passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS - REAL ESTATE APPRAISAL
MANAGEMENT COMPANIES

- 1 This act would provide for the registration and oversight of appraisal management
- 2 companies operating in this state.
- 3 This act would take effect 180 days after its passage.

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