

An Act

ENROLLED HOUSE
BILL NO. 2546

By: Mulready of the House

and

Sharp of the Senate

An Act relating to professions and occupations; amending 59 O.S. 2011, Sections 858-803, 858-804, 858-809, 858-810, 858-811, 858-819, 858-820 and 858-828, which relate to the Oklahoma Appraisal Management Company Regulation Act; adding definition; modifying registration; modifying qualifications of controlling person; requiring notification of discipline; requiring compliance with federal law; clarifying language; and providing an effective date.

SUBJECT: Oklahoma Appraisal Management Company Regulation Act

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

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

2. "Appraisal management company" or "AMC" means an individual, firm, partnership, association, corporation or limited liability company that performs appraisal management services, regardless of the use of the term appraisal management company, mortgage technology provider, mortgage services provider, lender processing

services provider, loan processor, real estate closing services provider, vendor management company or any other term;

3. "Appraisal management services" means, directly or indirectly, to perform or attempt to perform any one or more of the following function(s) 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 persons who are part of an appraiser panel,
- c. receive an order for an appraisal from one entity, 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, 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 an appraisal through the AMC, or to perform appraisals for the AMC directly, on a periodic basis, as assigned by the AMC;

6. "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 related to the appraiser's data collection, analysis, opinions, conclusions, estimate of value, or compliance with the Uniform Standards of Professional Appraisal Practice. This term does not include:

- a. a general examination for grammatical, typographical or other similar errors, or
- b. a general examination for completeness including regulatory and/or client requirements as specified in the agreement process that does not communicate an opinion;

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

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

9. "Credential" means a certificate issued by the Board pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act authorizing an individual to act as a Trainee Appraiser, State Licensed Appraiser, Certified Residential Appraiser or State Certified General Appraiser in the State of Oklahoma;

10. "Controlling person" means:

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

- b. an individual employed, appointed, or authorized by an AMC 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 AMC;

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

12. "Truth in Lending Act" or "TILA" means Title I of the Consumer Credit Protection Act (15 U.S.C.A., Section 1601 et seq.), and regulations thereunder; and

13. "Uniform Standards of Professional Appraisal Practice" or "USPAP" means the edition of the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of The Appraisal Foundation in force as of the date that a report of an appraisal was signed or communicated.

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

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

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

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

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

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

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

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

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

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

8. 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 AMC for appraisal services being performed in Oklahoma holds a credential in good standing in this state pursuant to the Oklahoma Certified Real Estate Appraisers Act and the rules promulgated thereunder if a license or certification is required to perform appraisals, pursuant to Section ~~17~~ 858-817 of this ~~act~~ title;

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

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

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

12. Any other information reasonably required by the Board to evaluate compliance with the application requirements in this act.

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

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

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

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

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

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

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

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

Section 858-810. A. Each AMC applying to the Oklahoma Real Estate Appraiser Board for a registration or for a renewal of a registration in this state shall designate one controlling person that shall serve as the main contact for all communication between the Board and the AMC.

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

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

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

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

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

5. Notify the Oklahoma Real Estate Appraiser Board of any discipline imposed by any other jurisdiction, whether state or federal, including but not limited to consent agreements or orders, in connection with any real property valuation activity including, but not limited to, public or private reprimand, censure, financial penalty, probation, restriction on practice, delisting, suspension, revocation, surrender of license or credential, debarment or any other formal or informal resolution as to the Appraisal Management Company or any of its individual controlling officers in their capacity as an appraiser.

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

- b. The decision of the other jurisdiction that imposed discipline may not be collaterally attacked. The sole issue to be determined by the Board in the disciplinary proceeding in this state shall be the extent of the final discipline to be imposed by the Board which may be less or more severe than the discipline imposed by the other jurisdiction that imposed discipline.

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

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

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

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

3. Knowingly enter into any contract, agreement, or other business relationship, 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 for the performance of appraisal or appraisal management services, with any person who has ever had a credential issued by any appraiser-credentialing jurisdiction to act as an appraiser that was refused, denied, canceled, suspended, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted.

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

Section 858-819. A. Appraisal Management Companies shall comply with the appraisal independence requirements of Section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C., Section 1639e(a) through (i), and regulations thereunder.

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

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

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

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

4. Conditioning an assignment of 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, 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 individual related to the appraiser, stock or other financial or nonfinancial benefit or thing of value;

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

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

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

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

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

13. Failing to fully cooperate in any investigation.

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

1. Provide additional information about the basis for a valuation including consideration of additional comparable data; or

2. Correct objective factual errors in an appraisal.

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

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

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

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 and 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. Requires the appraiser to do anything that does not comply with:

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

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

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

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

1. Revocation of the registration with or without the right to reapply;
2. Suspension of the registrant for a period not to exceed five (5) years;
3. Stipulations, limitations, restrictions and conditions relating to conduct of the registrant's appraisal management services practice;
4. Censure, including specific redress, if appropriate;
5. Reprimand;
6. Administrative fines not to exceed Five Thousand Dollars (\$5,000.00) per violation; and
7. Payment of costs expended by the Board for any legal fees and costs and monitoring fees, including but not limited to administrative costs, witness fees and attorney fees.

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

1. All administrative fines and costs shall be paid within thirty (30) days of notifying the registrant's controlling person or the registrant's agent for service of process in this state of the order of the Board imposing the administrative fine, unless the registrant has entered into an agreement with the Board extending the period for payment;
2. The registration may be suspended until any fine imposed upon the registrant by the Board is paid;
3. Unless the registrant has entered into an agreement with the Board extending the period for payment, if fines and costs are not paid in full by the registrant within thirty (30) days of the

notification of the order, the fines and costs shall double and the registrant shall have an additional thirty-day period. If the double fine and costs are not paid within the additional thirty-day period, the registration shall automatically be revoked; and

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

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

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

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

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

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

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

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

Passed the House of Representatives the 24th day of February, 2016.

Lee R. Dwyer
Presiding Officer of the House of Representatives

Passed the Senate the 20th day of April, 2016.

A. J. Saffin
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 21st

day of April, 20 16, at 3:23 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 26th

day of April, 20 16, at 2:10 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 26th

day of April, 20 16, at 3:24 o'clock P. M.

By: Chris Benz