

1 ENGROSSED HOUSE
2 BILL NO. 2546

By: Mulready of the House

3 and

4 Sharp of the Senate
5
6

7 An Act relating to professions and occupations;
8 amending 59 O.S. 2011, Sections 858-803, 858-804,
9 858-809, 858-810, 858-811, 858-819, 858-820 and 858-
10 828, which relate to the Oklahoma Appraisal
11 Management Company Regulation Act; adding definition;
12 modifying registration; modifying qualifications of
13 controlling person; requiring notification of
14 discipline; requiring compliance of federal law;
15 clarifying language; and providing an effective date.

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

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SECTION 1. AMENDATORY 59 O.S. 2011, Section 858-803, is

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amended to read as follows:

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Section 858-803. As used in the Oklahoma Appraisal Management

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Company Regulation Act:

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1. "Appraisal" means the practice of developing and reporting

20

an opinion of the value of real property in conformance with the

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Uniform Standards of Professional Appraisal Practice as promulgated

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by the Appraisal Standards Board of The Appraisal Foundation;

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2. "Appraisal management company" or "AMC" means an individual,

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firm, partnership, association, corporation or limited liability

1 company that performs appraisal management services, regardless of
2 the use of the term appraisal management company, mortgage
3 technology provider, mortgage services provider, lender processing
4 services provider, loan processor, real estate closing services
5 provider, vendor management company or any other term;

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

- 10 a. administer an appraiser panel,
- 11 b. recruit, qualify, verify licensing or certification,
12 and negotiate fees and service level expectations with
13 persons who are part of an appraiser panel,
- 14 c. receive an order for an appraisal from one entity, and
15 deliver the order for the appraisal to an appraiser
16 that is part of an appraiser panel for completion,
- 17 d. track and determine the status of orders for
18 appraisals,
- 19 e. conduct quality control of a completed appraisal prior
20 to the delivery of the appraisal to the person that
21 ordered the appraisal, or
- 22 f. provide a completed appraisal performed by an
23 appraiser to one or more clients;

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

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

12 a. responded to an invitation, request, or solicitation
13 from an AMC, in any form, to perform appraisals for
14 persons that have ordered appraisals through the AMC,
15 or to perform appraisals for the AMC directly, on a
16 periodic basis, as requested and assigned by the AMC,
17 and

18 b. been selected and approved by an AMC to perform
19 appraisals for any client of the AMC that has ordered
20 an appraisal through the AMC, or to perform appraisals
21 for the AMC directly, on a periodic basis, as assigned
22 by the AMC;

23 6. "Appraisal review" means the act or process of developing
24 and communicating an opinion about the quality of another

1 appraiser's work that was performed as part of an appraisal
2 assignment related to the appraiser's data collection, analysis,
3 opinions, conclusions, estimate of value, or compliance with the
4 Uniform Standards of Professional Appraisal Practice. This term
5 does not include:

6 a. a general examination for grammatical, typographical
7 or other similar errors, or

8 b. a general examination for completeness including
9 regulatory and/or client requirements as specified in
10 the agreement process that does not communicate an
11 opinion;

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

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

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

22 10. "Controlling person" means:

23 a. an owner, officer, manager, or director of a
24 corporation, partnership, firm, association, limited

1 liability company, or other business entity seeking to
2 offer appraisal management services in this state,

3 b. an individual employed, appointed, or authorized by an
4 AMC that has the authority to enter into a contractual
5 relationship with other persons for the performance of
6 appraisal management services and has the authority to
7 enter into agreements with appraisers for the
8 performance of appraisals, or

9 c. an individual who possesses, directly or indirectly,
10 the power to direct or cause the direction of the
11 management or policies of an AMC;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 1. Be of good moral character, as determined by the Board; and

1 2. Submit to a background investigation, as determined by the
2 Board.

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

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

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

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

23 1. Remain in good standing with any appraiser-credentialing
24 jurisdictions that the controlling person has credentials with,

1 however, nothing in this section shall require that a designated
2 controlling person hold an appraiser credential in any jurisdiction;

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

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

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

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

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

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

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

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

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

19 2. Knowingly enter into any independent contractor arrangement,
20 whether in verbal, written, or other form for the performance of
21 appraisal or appraisal management services, with any person who has
22 had a credential that was issued by any appraiser-credentialing
23 jurisdiction to act as an appraiser refused, denied, canceled,
24 suspended, revoked, or surrendered in lieu of a pending disciplinary

1 proceeding in any jurisdiction and not subsequently reinstated or
2 granted; and

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

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

16 Section 858-819. A. Appraisal Management Companies shall
17 comply with the appraisal independence requirements of Section
18 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C., Section
19 1639e(a) through (i), and regulations thereunder.

20 B. It shall be unlawful and a violation of the Oklahoma
21 Appraisal Management Company Regulation Act for any employee,
22 partner, director, officer, or agent of an AMC to influence or
23 attempt to influence the development, reporting, result, or review
24 of an appraisal through coercion, extortion, collusion,

1 compensation, inducement, intimidation, bribery or in any other
2 manner, including but not limited to:

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

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

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

11 4. Conditioning an assignment of an appraisal or the payment of
12 an appraisal fee or salary or bonus on the opinion, conclusion, or
13 valuation to be reached, or on a preliminary estimate or opinion
14 requested from an appraiser;

15 5. Requesting that an appraiser provide an estimated,
16 predetermined, or desired valuation in an appraisal, or provide
17 estimated values or comparable sales at any time prior to the
18 appraiser's completion of an appraisal;

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

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

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

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

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

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

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

17 13. Failing to fully cooperate in any investigation.

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

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

22 2. Correct objective factual errors in an appraisal.

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

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

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

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

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

16 4. Prohibit or inhibit legal or other allowable communication
17 between the appraiser and:

- 18 a. the lender,
- 19 b. a real estate licensee, or
- 20 c. any other person from whom the appraiser, in the
21 appraiser's own professional judgment, believes
22 information would be relevant;

23 5. Requires the appraiser to do anything that does not comply
24 with:

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

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

- 9 a. a loan closing, or
- 10 b. specific dollar amount being achieved by the appraiser
- 11 in the appraisal.

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

14 Section 858-828. A. The conduct of administrative proceedings
15 shall be in accordance with the Administrative Procedures Act and
16 the Oklahoma Certified Real Estate Appraisers Act and the rules
17 promulgated thereunder for violations of the Oklahoma Appraisal
18 Management Company Regulation Act shall be vested in the Oklahoma
19 Real Estate Appraiser Board, such that the Board, after notice and
20 opportunity for a hearing pursuant to Article II of the
21 Administrative Procedures Act, may issue an order imposing one or
22 more of the following penalties whenever the Board finds, by clear
23 and convincing evidence, that a registrant has violated any

1 provision of the Oklahoma Appraisal Management Company Regulation
2 Act or rules promulgated thereunder:

3 1. Revocation of the registration with or without the right to
4 reapply;

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

7 3. Stipulations, limitations, restrictions and conditions
8 relating to conduct of the registrant's appraisal management
9 services practice;

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

11 5. Reprimand;

12 6. Administrative fines not to exceed Five Thousand Dollars
13 (\$5,000.00) per violation; and

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

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

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

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

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

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

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

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

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