

1 **SENATE FLOOR VERSION**

2 February 21, 2019

3 SENATE BILL NO. 731

By: Leewright

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5
6 An Act relating to appraisers; amending 59 O.S. 2011,
7 Sections 858-705.1 and 858-724, which relate to
8 duties of the Real Estate Appraiser Board and
9 subpoenas; providing procedure for undeliverable
10 service; modifying name of authority on certain
11 examination standards; amending 59 O.S. 2011,
12 Sections 858-803, as amended by Section 1, Chapter
13 195, O.S.L. 2016, 858-804, as amended by Section 2,
14 Chapter 195, O.S.L. 2016, 858-805, 858-809, as
15 amended by Section 3, Chapter 195, O.S.L. 2016, 858-
16 821, and 858-824 (59 O.S. Supp. 2018, Sections 858-
17 803, 858-804 and 858-809), which relate to the
18 Oklahoma Appraisal Management Company Regulation Act;
19 modifying definitions; clarifying unlawful acts;
20 modifying applicability of act; modifying ownership
21 requirements; prohibiting certain reimbursement;
22 removing certain exception for removal of appraiser
23 from appraiser panel; establishing requirements for
24 federally regulated appraisal management companies;
updating statutory references; providing for
codification; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 858-705.1,
is amended to read as follows:

Section 858-705.1. A. In addition to the seven (7) appointed
members of the Board, the Insurance Commissioner shall serve as ex-
officio Chairperson of the Board, voting only in case of a tie.

1 B. As Chairperson, the Insurance Commissioner, in addition to
2 his duties prescribed by law as Insurance Commissioner on ~~the~~
3 ~~effective date of this act~~ September 1, 1991, shall be required to
4 perform the following duties, for which duties he shall be paid an
5 additional Twelve Thousand Dollars (\$12,000.00) annually, payable
6 monthly from appropriations made to the Insurance Department:

7 1. Keep records of the proceedings of the Board;

8 2. Call special meetings of the Board when in the judgment of
9 the chairperson it is necessary or proper to do so;

10 3. Procure appropriate examination questions and answers which
11 shall meet criteria established by the Appraisal ~~Subcommittee~~
12 Qualifications Board of the Appraisal Foundation and approved by the
13 Board;

14 4. Develop guidelines for administration of and grading of the
15 examinations in accordance with standards promulgated by the
16 Appraisal ~~Subcommittee~~ Qualifications Board of the Appraisal
17 Foundation and approved by the Board;

18 5. Prepare and file ~~a~~ an annual report with the Speaker of the
19 House, the President Pro Tempore of the Senate, and the Governor
20 detailing the number of applicants for the examination and the
21 pass/fail rate;

22 6. Formulate a study to evaluate the number of appraisers
23 licensed or certified by the state on a countywide basis and report
24 to the Speaker of the House, the President Pro Tempore of the

Senate, and the Governor concerning whether there is a shortage of qualified appraisers in the state;

7. Establish and maintain a recordkeeping system approved by the Board to monitor compliance with the continuing education requirements imposed by law;

8. Make recommendations to the Board concerning the establishment of administrative procedures for conducting disciplinary proceedings pursuant to the provisions of ~~this act~~ the Oklahoma Certified Real Estate Appraisers Act;

9. Develop a procedure approved by the Board whereby persons aggrieved by the actions of a licensed or certified appraiser may file complaints with the Board;

10. Annually compile and file a report with the Speaker of the House, President Pro Tempore of the Senate, and the Governor detailing the number of complaints received by the Board, the resulting number of investigations and hearings conducted and the final disposition of these matters;

11. Prepare and file a report with the Speaker of the House, the President Pro Tempore of the Senate, and the Governor evaluating the impact of the voluntary licensure/certification program on future appraisers and recommend whether an appraiser trainee or apprenticeship program should be instituted; and

12. Submit to the Speaker of the House, the President Pro Tempore of the Senate, and the Governor on or before January 1,

1 1994, a report evaluating the impact of the licensure/certification
2 requirements imposed by ~~this act~~ the Oklahoma Certified Real Estate
3 Appraisers Act on the appraiser and banking industry and include in
4 the report any recommendations for amendments to the Oklahoma
5 Certified Real Estate Appraisers Act.

6 SECTION 2. AMENDATORY 59 O.S. 2011, Section 858-724, is
7 amended to read as follows:

8 Section 858-724. A. Before suspending or revoking any
9 certification, the Real Estate Appraiser Board shall notify the
10 appraiser in writing of any charges made at least thirty (30) days
11 prior to the date set for the hearing and shall afford the appraiser
12 an opportunity to be heard in person or by counsel.

13 B. In any proceeding in which the Board is required to serve an
14 order on an individual, the Board may send such material to the
15 individual's address of record with the Board. If the order is
16 returned with a notation by the United States Postal Service
17 indicating that it is undeliverable for any reason, and the records
18 of the Board indicate that the Board has not received any change of
19 address since the order was sent, as required by the rules of the
20 Board, the order and any subsequent material relating to the same
21 matter sent to the most recent address on file with the Board shall
22 be deemed by the court as having been legally served for all
23 purposes. The written notice may be served ~~either~~ personally or
24 ~~sent~~ by registered or certified mail to the last-known business

1 and/or residence address of the appraiser.

2 C. The Board shall have the power to subpoena and issue
3 subpoenas duces tecum and to bring before it any person in this
4 state, or to take testimony by deposition, in the same manner as
5 prescribed by law in judicial proceedings in the courts of this
6 state.

7 SECTION 3. AMENDATORY 59 O.S. 2011, Section 858-803, as
8 amended by Section 1, Chapter 195, O.S.L. 2016 (59 O.S. Supp. 2018,
9 Section 858-803), is amended to read as follows:

10 Section 858-803. As used in the Oklahoma Appraisal Management
11 Company Regulation Act:

12 1. "Affiliate" has the meaning provided in 12 U.S.C. 1841;

13 2. "AMC National Registry" means the registry of state-
14 registered appraisal management companies ("AMCs") and federally-
15 regulated AMCs maintained by the Appraisal Subcommittee;

16 3. "Appraisal" means the practice of developing and
17 reporting an opinion of the value of real property in conformance
18 with the Uniform Standards of Professional Appraisal Practice as
19 promulgated by the Appraisal Standards Board of The Appraisal
20 Foundation;

21 ~~2. 4. "Appraisal management company" or "AMC" means an~~
22 ~~individual, firm, partnership, association, corporation or~~
23 ~~limited liability company that performs appraisal management~~
24 ~~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~~ a person that provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates; provides services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and within a given 12-month period oversees an appraiser panel of more than 15 state certified or state licensed appraisers in Oklahoma or 25 or more state-certified or state licensed appraisers in two or more states. An AMC does not include a department or division of an entity that provides appraisal management services only to that entity;

~~3.~~ 5. "Appraisal management services" means, directly or indirectly, to perform or attempt to perform any one or more 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 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.~~ 6. "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.~~ 7. "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,~~

1 ~~or to perform appraisals for the AMC directly, on a~~
2 ~~periodic basis, as requested and assigned by the AMC,~~
3 ~~and~~

4 ~~b. been selected and approved by an AMC to perform appraisals~~
5 ~~for any client of the AMC that has ordered an appraisal through the~~
6 ~~AMC, or to perform appraisals for the AMC directly, on a periodic~~
7 ~~basis, as assigned by the AMC, list or roster of licensed or~~
8 ~~certified appraisers approved by an AMC to perform appraisals as~~
9 ~~independent contractors for the AMC. Appraisers on an "appraiser~~
10 ~~panel" include appraisers accepted by the AMC for consideration for~~
11 ~~future appraisal assignments in covered transactions or for~~
12 ~~secondary mortgage market participants in connection with covered~~
13 ~~transactions and appraisers engaged by the AMC to perform one or~~
14 ~~more appraisals in covered transactions or for secondary mortgage~~
15 ~~market participants in connection with covered transactions. An~~
16 ~~appraiser is an independent contractor for purposes of this subpart~~
17 ~~if the appraiser is treated as an independent contractor by the AMC~~
18 ~~for purposes of federal income taxation;~~

19 ~~6.~~ 8. "Appraisal review" means the act or process of
20 developing and communicating an opinion about the quality of
21 another appraiser's work that was performed as part of an
22 appraisal assignment related to the appraiser's data collection,
23 analysis, opinions, conclusions, estimate of value, or
24

1 compliance with the Uniform Standards of Professional Appraisal
2 Practice. This term does not include:

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

9 9. "Appraisal Subcommittee" means the Appraisal Subcommittee of
10 the Federal Financial Examinations Council;

11 ~~7.~~ 10. "Board" means the Oklahoma Real Estate Appraiser Board;

12 ~~8.~~ 11. "Competent appraiser" means an appraiser that
13 satisfies each provision of the Competency Rule of the Uniform
14 Standards of Professional Appraisal Practice for a specific
15 appraisal assignment that the appraiser has received, or may
16 receive, from an AMC;

17 12. "Consumer Credit" means credit offered or extended to a
18 consumer primarily for personal, family or household purposes;

19 13. "Covered Transaction" means any consumer credit
20 transaction secured by the consumer's principal dwelling;

21 ~~9.~~ 14. "Credential" means a certificate issued by the Board
22 pursuant to the provisions of the Oklahoma Certified Real Estate
23 Appraisers Act authorizing an individual to act as a Trainee
24

Appraiser, State Licensed Appraiser, Certified Residential Appraiser
or State Certified General Appraiser in the State of Oklahoma;

~~10.~~ 15. "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;

16. "Federally Regulated AMC" means an AMC that is owned and
controlled by an insured depository institution as defined in 12
U.S.C. 1813 and regulated by the Office of the Comptroller of the
Currency, the Board of Governors of the Federal Reserve System, the
Federal Deposit Insurance Corporation or the National Credit Union
Administration pursuant to sections 1112, 1113 and 1114 of Title XI
12 U.S.C. 3341-3343;

1 ~~11.~~ 17. "Person" means an individual, firm, partnership,
2 association, corporation, or any other entity;

3 ~~12.~~ 18. "Truth in Lending Act" or "TILA" means Title I of the
4 Consumer Credit Protection Act (15 U.S.C.A., Section 1601 et seq.),
5 and regulations thereunder; and

6 ~~13.~~ 19. "Uniform Standards of Professional Appraisal Practice"
7 or "USPAP" means the edition of the Uniform Standards of Professional
8 Appraisal Practice promulgated by the Appraisal Standards Board of
9 The Appraisal Foundation in force as of the date that a report of an
10 appraisal was signed or communicated.

11 SECTION 4. AMENDATORY 59 O.S. 2011, Section 858-804, as
12 amended by Section 2, Chapter 195, O.S.L. 2016 (59 O.S. Supp. 2018,
13 Section 858-804), is amended to read as follows:

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

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

- 1 1. Legal name and any other trade or business name of the
2 entity seeking registration;
- 3 2. Mailing and physical addresses of the entity seeking
4 registration;
- 5 3. Telephone, email, website, and facsimile contact information
6 of the entity seeking registration;
- 7 4. If the entity is a corporation that is not domiciled in this
8 state, the name and contact information for the entity's agent for
9 service of process in this state;
- 10 5. If the entity is a corporation, limited liability company,
11 or partnership that is not domiciled in this state, proof that the
12 entity is properly and currently registered with the Office of the
13 Secretary of State;
- 14 6. The name, mailing and physical addresses, and contact
15 information for any person that owns ~~ten percent (10%) or more of the~~
16 AMC;
- 17 7. The name, mailing and physical addresses, and contact
18 information for all named controlling persons;
- 19 8. A certification that the entity has a system and process
20 in place to verify that a person being added to the appraiser
21 panel of the AMC for appraisal services being performed in
22 Oklahoma holds a credential in good standing in this state
23 pursuant to the Oklahoma Certified Real Estate Appraisers Act and
24 the rules promulgated thereunder if a license or certification is

1 required to perform appraisals, pursuant to Section 858-817 of
2 this title;

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

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

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

17 12. Any other information reasonably required by the Board
18 to evaluate compliance with the application requirements in ~~this~~
19 ~~act~~ the Oklahoma Appraisal Management Company Regulation Act.

20 SECTION 5. AMENDATORY 59 O.S. 2011, Section 858-805, is
21 amended to read as follows:

22 Section 858-805. The provisions of the Oklahoma Appraisal
23 Management Company Regulation Act shall not apply to:
24

1 1. A department or unit within a financial institution that
2 is subject to direct regulation by an agency of the United States
3 Government that is a member of the Federal Financial Institutions
4 Examination Council or its successor, or to regulation by an agency
5 of this state, that receives a request for the performance of an
6 appraisal from one employee of the financial institution, and
7 another employee of the same financial institution assigns the
8 request for the appraisal to an appraiser that is an independent
9 contractor to the institution, except that an AMC that is a wholly
10 owned subsidiary of a financial institution shall not be considered
11 a department or unit within a financial institution to which the
12 provisions of the Oklahoma Appraisal Management Company Regulation
13 Act do not apply;

14 2. A person that enters into an agreement, whether written or
15 otherwise, with an appraiser for the performance of an appraisal,
16 and upon the completion of the appraisal, the report of the
17 appraiser performing the appraisal is signed by both the appraiser
18 who completed the appraisal and the appraiser who requested the
19 completion of the appraisal, except that an AMC may not avoid the
20 requirements of the Oklahoma Appraisal Management Company Regulation
21 Act by requiring an employee of the AMC that is an appraiser to sign
22 an appraisal that is completed by an appraiser that is part of the
23 appraisal panel of the AMC; or
24

1 3. An individual or individuals who are state-certified or
2 state-licensed appraisers in good standing credentialed by the
3 Oklahoma Real Estate Appraiser Board and who are actively engaged
4 in the practice of real estate appraising and, as a function of the
5 practice, maintain a list of ~~ten~~ fifteen or fewer employees in
6 Oklahoma or twenty-four or less employees in two or more states who are
7 credentialed appraisers in good standing or independent contractor
8 credentialed appraisers in good standing.

9 SECTION 6. AMENDATORY 59 O.S. 2011, Section 858-809, as
10 amended by Section 3, Chapter 195, O.S.L. 2016 (59 O.S. Supp. 2018,
11 Section 858-809), is amended to read as follows:

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

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

21 2. An entity that is ~~more than ten percent~~ owned by any
22 person who has held a credential issued by any appraiser-
23 credentialing jurisdiction to act as an appraiser that was
24 refused, denied, canceled, suspended, revoked, or surrendered in

1 lieu of a pending disciplinary proceeding in any jurisdiction and
2 not subsequently granted or reinstated.

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

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

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

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

20 SECTION 7. AMENDATORY 59 O.S. 2011, Section 858-821, is
21 amended to read as follows:

22 Section 858-821. A. Each AMC shall, except in bona fide cases
23 of breach of contract or substandard performance of services, make
24 payment to an appraiser for the completion of an appraisal or

1 valuation assignment within sixty (60) days of the date on which the
2 appraiser transmits or otherwise provides the completed appraisal or
3 valuation study to the AMC or its assignee unless a mutually agreed
4 upon alternate arrangement has been previously established.

5 B. Appraisal Management Companies are prohibited from requiring
6 an appraiser to reimburse them for the Appraisal Subcommittee's
7 Appraisal Management Company National Registry fee which may be
8 charged or assessed against them.

9 SECTION 8. AMENDATORY 59 O.S. 2011, Section 858-824, is
10 amended to read as follows:

11 Section 858-824. A. ~~Except within the first thirty (30) days~~
12 ~~after an appraiser is first added to the appraiser panel of an AMC,~~
13 ~~an~~ An AMC shall not remove an appraiser from its appraiser panel, or
14 otherwise refuse to assign requests for real estate appraisal
15 services to an appraiser without:

16 1. Notifying the appraiser in writing of the reasons why the
17 appraiser is being removed from the appraiser panel of the AMC;

18 2. Providing an opportunity for the appraiser to respond to the
19 written notification of the AMC either personally or through legal
20 counsel; and

21 3. If the appraiser is being removed from the panel for
22 illegal conduct, violation of the USPAP, or a violation of the
23 Oklahoma Certified Real Estate Appraisers Act or the rules
24 promulgated thereunder, providing notice to the appraiser and to

1 the Oklahoma Real Estate Appraiser Board detailing allegations of
2 fact and alleged violations of standards or laws.

3 B. An appraiser that is removed from the appraiser panel of
4 an AMC for alleged illegal conduct, violation of the USPAP, or
5 violation of the Oklahoma Certified Real Estate Appraisers Act or
6 the rules promulgated thereunder, may file a complaint with the
7 Board for a review of the decision of the AMC, except that in no
8 case shall the Board make any determination regarding the nature of
9 the business relationship between the appraiser and the AMC which
10 is unrelated to the actions specified in subsection A of this
11 section.

12 C. If an appraiser files a complaint against an AMC pursuant
13 to subsection B of this section, the
14 Board shall adjudicate the complaint within one (1) year.

15 D. If after opportunity for hearing and review, the Board
16 determines that an appraiser did not commit a violation of law, a
17 violation of the USPAP, or a violation of the Oklahoma Certified
18 Real Estate Appraisers Act or the rules promulgated thereunder, the
19 Board shall order that an appraiser be promptly reinstated to the
20 appraiser panel of the AMC that was the subject of the complaint,
21 without prejudice.

22 E. Following the adjudication of a complaint to the Board by
23 an appraiser against an AMC, an AMC may not refuse to make
24 assignments for real estate appraisal services to an appraiser, or

1 reduce the number of assignments, or otherwise penalize the
2 appraiser, if the Board has found that the AMC acted improperly in
3 removing the appraiser from the appraiser panel and ordered the
4 appraiser's reinstatement.

5 SECTION 9. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 858-830 of Title 59, unless
7 there is created a duplication in numbering, reads as follows:

8 A. A federally-regulated appraisal management company (AMC)
9 operating in Oklahoma must report to the Real Estate Appraiser Board
10 the information required to be submitted by the Real Estate
11 Appraiser Board to the Appraisal Subcommittee of the Federal
12 Financial Examinations Council (ASC), pursuant to the ASC's policies
13 regarding the determination of the AMC National Registry fee,
14 including, but not limited to, the collection of the information
15 related to ownership limitations.

16 B. As a state electing to register AMCs for purposes of
17 permitting AMCs to provide appraisal management services relating to
18 covered transactions in Oklahoma, the Real Estate Appraiser Board
19 shall submit to the ASC the information required to be submitted by
20 ASC regulations or guidance concerning AMCs that operate in
21 Oklahoma.

22 C. If the National Registry fee is received by the Real Estate
23 Appraiser Board from a self-identifying AMC, such funds will be
24

1 transmitted by the Real Estate Appraiser Board to the ASC National
2 Registry.

3 SECTION 10. This act shall become effective November 1, 2019.

4 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
5 February 21, 2019 - DO PASS
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