CHAPTER 163
FORMERLY
SENATE SUBSTITUTE NO. 1 FOR
SENATE BILL NO. 38
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 24 CHAPTER 40 OF THE DELAWARE CODE RELATING TO THE COUNCIL ON REAL ESTATE APPRAISERS.

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

Section 1. Amend Chapter 40, Title 24 of the Delaware Code by deleting all numbers identifying the definitions and reordering all definitions alphabetically and renumbering them accordingly, and as follows:

§ 4002. Definitions.

"Appraisal Management Company" means a corporation, partnership, sole proprietorship, subsidiary or other business entity that directly or indirectly performs appraisal management services, regardless of the use of the term "appraisal management company", "mortgage technology provider", "lender processing services", "lender services", "loan processor", "mortgage services", "real estate closing services provider", "settlement services provider", "vendor management company" or any other term, and that does any of the following:

(a) Administers an appraiser panel of independent contract appraisers to perform real property appraisal services in this state for clients.

(b) Receives requests for real property appraisal services from clients and, for a fee paid by the client, enters into an agreement with one or more independent appraisers to perform the real property appraisal services contained in the request.

(c) Otherwise serves as a third party liaison of appraisal management services between clients and appraisers.

"Appraisal management services" means the process of receiving a request for the performance of real property appraisal services from a client, and for a fee paid by the client, entering into an agreement with one or more independent appraisers who are part of an appraiser panel to perform the real property appraisal services contained in the request.

"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, but does not include an examination of an appraisal for grammatical, typographical or other similar errors that do not communicate an opinion related to the appraiser's data collection, analysis, opinions, conclusions, estimate of value or compliance with the Uniform Standards of Professional Appraisal Practice.

"Appraiser panel" means a group of independent appraisers that has been selected by an appraisal management company to perform real property appraisal services for the appraisal management company.

"Controlling person" means any of the following:

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

(b) An individual who is employed, appointed or authorized by an appraisal management company and who has the authority to enter into a contractual relationship with clients for the performance of appraisal management services and to enter into agreements with independent appraisers for the performance of real property appraisal services.

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

"FIRREA" shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the act of July 21, 2010.

"Licensed real property appraiser" shall mean a person, who has met the licensing requirements of this chapter and who may appraise non-complex 1 to 4 residential units having a transaction value less than $1,000,000 and complex 1 to 4 residential units having a transaction value of $250,000 or less, and who holds a current, valid

license issued under this chapter. Licensed appraisers can not appraise a property with a market value in excess of $1,000,000."

§4003. Council on Real Estate Appraisers; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(b) The Council shall consist of 9 members, who are residents of this State, and are appointed by the Governor. Four of the 9 members shall be licensed or certified appraisers engaged primarily in the real estate appraisal business or in the appraisal management business, including at least 1 certified general real property appraiser and at least 2 certified residential appraisers. One of the 9 members shall be a certified real estate appraiser also engaged in the real estate brokerage business. One member shall be from the banking community. Three of the 9 members shall be public members. The public members shall not be, nor ever have been, appraisers nor members of the immediate family of an appraiser; shall not have been employed by an appraiser or a company engaged in the practice of appraising; shall not have a material interest in the providing of goods and services to appraisers; nor have been engaged in an activity directly related to appraising. The public members shall be accessible to inquiries, comments and suggestions from the general public.

§ 4006. Powers and duties.

(a) The Council on Real Estate Appraisers shall have authority to:

~~(9) Evaluate certified records to determine whether an applicant for certification or licensure, who previously has been licensed, certified, or registered in another jurisdiction as a appraiser, has engaged in any act or offense that would be grounds for disciplinary action under this chapter and whether there are disciplinary proceedings or unresolved complaints pending against such applicant for such acts or offenses.~~

§ 4011. Reciprocity.

(a) Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Council, the Council shall grant a license to each applicant, who shall present proof of current licensure in good standing in another state, the District of Columbia, or territory of the United States, whose standards for licensure are substantially similar to those of this State.

§4016A Counseling; Letters of Concern.

a. If the Council determines after an investigation that a violation of this chapter or of the rules and regulations enacted pursuant to this chapter warranting formal disciplinary action has not occurred, but that an act or omission of the licensee or certificate holder is a matter of concern and that licensee's or certificate holder's practice may be improved if made aware of the concern, the Council may issue a non-disciplinary confidential letter of concern regarding the licensee's or certificate holder's act or omission.

b. If a person licensed under this chapter receives a total of three letters of concern pursuant to this section, the Council may reasonably require a formal assessment of professional competency to assess the licensee's or certificate holder's ability in order to protect the health and safety of the public. At such hearing, all of the licensee's or certificate holder's letters of concern may be deemed no longer confidential and may be admitted into evidence.

§ 4021. Criminal background checks of new applicants.

An applicant for licensure or certification under sections 4008 or 4009 of this chapter shall submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person.

(2) A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Council shall be the screening point for the receipt of said federal criminal history records.

Section 2. Amend Title 24 of the Delaware Code as follows:

Subchapter IV Appraisal Management Companies

§ 4022 Registration of Appraisal Management Companies.

a. A person shall not directly or indirectly engage or attempt to engage in business as an appraisal management company, directly or indirectly perform or attempt to perform appraisal management services or advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the Council pursuant to this section, regardless of the entity's use of appraisal management company, mortgage technology company or any other name.

b. A person who wishes to be registered as an appraisal management company in this state must file a written application with the Council on a form prepared and furnished by the Council and pay a fee in an amount to be determined by the Division of Professional Regulation. The registration required by subsection (a) shall include:

1. the name, residence address, business address and telephone number of the applicant and the location of each principal office and branch office at which the appraisal management company will conduct business in this state.

2. the name under which the applicant will conduct business as an appraisal management company.

3. the name, residence address, business address and telephone number of each person who will have an interest in the appraisal management company as a principal, partner, officer, director or trustee, specifying the capacity and title of each person.

4. If the person seeking registration is a corporation that is not domiciled in this state, the name and contact information for the company's registered agent for service of process in this state.

5. A certification that the person seeking registration has a system and process in place to verify that a person being added to the appraiser panel for the appraisal management company's appraisal management services in this state holds a license or certification in good standing in this state.

6. A certification that the person seeking registration has a system in place to review the work of all independent appraisers that are performing real property appraisal services for the appraisal management company on a periodic basis to confirm that the real property appraisal services are being conducted in accordance with Uniform Standards of Professional Appraisal Practice.

7. A certification that the person maintains a detailed record of each service request that it receives and the independent appraiser that performs the real property appraisal services for the appraisal management company.

8. A certification that the person seeking registration has a system in place to train those who select individual appraisers for real property services in this state, to ensure that the selectors have appropriate training in placing appraisal assignments.

9. Proof of a surety bond of twenty thousand dollars.

§4023 Exemptions from Registration.

Nothing in this chapter shall apply to:

a. An appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to direct regulation by an agency of the United States government or of this State.

b. A corporation, partnership, sole proprietorship, subsidiary or other business entity that employs real estate appraisers exclusively on an employer and employee basis for the performance of all real property appraisal services in the normal course of its business and that is responsible for ensuring that the real property appraisal services being performed by its employees are being performed in accordance with Uniform Standards of Professional Appraisal Practice and federal and state law.

§ 4024 Registration Form for Appraisal Management Companies.

a. An applicant for initial and renewal registration as an appraisal management company shall submit to the Council an application on a form prescribed by the Council.

b. An initial registration granted by the Council pursuant to this chapter is valid for two years. Registration renewals are renewed biennially.

§ 4025 Owner Requirements for Appraisal Management Companies.

a. An appraisal management company applying for registration may not be more than ten percent owned by a person or have any principal of the company who has had any financial, real estate or mortgage lending industry

license or certificate refused, denied, canceled, revoked or voluntarily surrendered in this state or in any other state, unless such license or certificate was subsequently granted or reinstated. This requirement may be waived by appeal and at the discretion of the Council.

b. Each person that owns more than ten percent of an appraisal management company in this state shall:

1. Submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

i. A report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person.

ii. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Council on Real Estate Appraisers shall be the screening point for the receipt of said federal criminal history records.

iii. An applicant may not be registered until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be registered by the Council unless a waiver is granted pursuant to § 4008(a)(4) of this Chapter. The State Bureau of Identification may release any subsequent criminal history to the Council.

2. Certify to the Council that the person has never had any financial, real estate or mortgage lending industry license or certificate refused, denied, canceled, revoked or voluntarily surrendered in this state or in any other state, unless such license or certificate was subsequently granted or reinstated. This requirement may be waived by appeal and at the discretion of the Council.

§ 4026 Appraisal Management Company Controlling Person.

a. Each appraisal management company applying to the Council for registration in this state shall designate one controlling person that will be the main contact for all communication between the Council and the appraisal management company.

b. To serve as a controlling person of an appraisal management company, a person shall:

1. Certify to the Council that the person has never had any financial, real estate or mortgage lending industry license or certificate issued by this state, or any other state, refused, denied, canceled, revoked or voluntarily surrendered, unless such license or certificate was subsequently granted or reinstated. This requirement may be waived by appeal and at the discretion of the Council.

2. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Council on Real Estate Appraisers shall be the screening point for the receipt of said federal criminal history records.

An applicant may not be registered until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be registered by the Council unless a waiver is granted pursuant to § 4008(a)(4) of this Chapter. The State Bureau of Identification may release any subsequent criminal history to the Council.

§ 4027 Appraisal Management Company Employees.

Any employee of an appraisal management company that performs an appraisal review shall have demonstrated knowledge of the Uniform Standards of Professional Appraisal Practice and hold a valid appraiser license or certification in this or any state.

§ 4028 Agreements with Independent Appraisers; Limitations.

An appraisal management company registered in this state pursuant to this chapter may not enter into contracts or agreements with an independent appraiser for the performance of real property appraisal services in this state unless that person is licensed or certified in good standing with the Council.

§ 4029 Biennial Certification; Renewal.

a. Each appraisal management company registered in this state shall certify to the Council on an biennial basis at the time of renewal, on a form prescribed by the Council and after paying the appropriate fee, that the appraisal management company has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license or certificate in good standing in this state pursuant to the Council.

b. Each appraisal management company registered in this state shall certify to the Council on a biennial basis, at the time of renewal, that it has a system in place to review the quality of appraisals of all independent appraisers that are performing real property appraisal services for the appraisal management company on a periodic basis to confirm that the real property appraisal services are being conducted in accordance with uniform standards of professional appraisal practice.

c. Each appraisal management company registered shall certify to the Council on a biennial basis, at the time of renewal, that it maintains a detailed record of each service request that it receives and the name of the independent appraiser that performs the real property appraisal services for the appraisal management company. An appraisal management company shall maintain a detailed record for the same time period that an appraiser is required to maintain an appraisal record for the same real property appraisal activity.

d. Each appraisal management company registered shall certify to the Council on a biennial basis, at the time of renewal, that it has a system in place to train those who select individual appraisers for real property services in this state, to ensure that the selectors have appropriate training in placing appraisal assignments.

§ 4030 Disclosure of Fees.

The appraisal management company shall not prohibit the appraiser from reporting in the appraisal report the fee paid to the appraiser.

§ 4031 Appraiser Independence; Prohibitions.

a. Any employee, director, officer or agent of an appraisal management company registered pursuant to this chapter shall not influence or attempt to influence the development, reporting or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or any other manner, including:

1. Withholding or threatening to withhold timely payment for an appraisal.

2. Withholding or threatening to withhold future business for an independent appraiser or demoting or terminating, or threatening to demote or terminate, an independent appraiser.

3. Expressly or implicitly promising future business, promotions or increased compensation for an independent appraiser.

4. Conditioning the request for an appraisal service 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 independent appraiser.

5. Requesting that an independent appraiser provide an estimated, predetermined or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the independent appraiser's completion of an appraisal service.

6. Providing to an independent 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 independent appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits.

8. Allowing the removal of an independent appraiser from an appraiser panel, without prior written notice to the appraiser.

9. Obtaining, using or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction, unless such action is required by law or there is a reasonable basis to believe that the initial appraisal was flawed or tainted and the basis is clearly and appropriately noted in the loan file or unless the appraisal or automated valuation model is done pursuant to a bona fide pre-funding or post-funding appraisal review or quality control process.

10. Engaging in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.

b. An appraisal fee offered or paid may not be based on the predetermined appraised value or range of appraised value of the subject property or the amount of the transaction price.

c. Subsections (a) and (b) do not prohibit an appraisal management company from requesting that an independent appraiser either:

1. Provide additional information about the basis for a valuation.

2. Correct objective factual errors in an appraisal report.

3. Consider additional appropriate property information.

§ 4032 Payment.

Except in cases of breach of contract or substandard performance of services, each appraisal management company shall make payment to an independent appraiser for the completion of an appraisal or valuation assignment within forty-five days after the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

§ 4033 Appraisal Reports; Alteration; Use.

An appraisal management company shall not:

1. Alter, modify, revise or otherwise change a completed appraisal report submitted by an independent appraiser, including removing the signature of the appraiser.

2. Use an appraisal report submitted by an independent appraiser for any purpose other than the intended use stated in the report.

§ 4034 Removal of Appraisers from Appraiser Panels.

a. Except within the first sixty days after an independent appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company shall not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real property appraisal services to an independent appraiser, without notifying the appraiser in writing of the reasons for the appraiser being removed from the appraiser panel of the appraisal management company.

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

c. If an independent appraiser files a complaint against an appraisal management company pursuant to subsection (b), the Council shall adjudicate the complaint within a reasonable time.

d. If after opportunity for a hearing and review, the Council determines that an independent appraiser did not commit a violation of law, a violation of the Uniform Standards of Professional Appraisal Practice or a violation of this Chapter, the Council shall order that the appraiser be added to the appraiser panel of the appraisal management company that was the subject of the complaint. The Council shall furnish the appraisal management company with all written documentation and investigation records that support the Council's findings.

§ 4035 Enforcement.

The Council may censure an appraisal management company, conditionally or unconditionally suspend or revoke any registration issued under this chapter or impose civil penalties not to exceed fifteen thousand dollars per violation if, after a hearing, the Council finds that an appraisal management company is attempting to perform, has performed or has attempted to perform any of the following acts:

1. Committing any act in violation of this chapter.

2. Violating any rule adopted by the Council in the interest of the public and consistent with this chapter.

3. Knowingly making or causing to be made to the Council any false representation of material fact.

4. Suppressing or withholding from the Council any information that the applicant possesses and that, if submitted by the applicant, would have rendered the applicant ineligible to be registered pursuant to rules adopted by the Council.

5. Violating the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, the act of July 21, 2010.

§ 4036 Disciplinary Hearing.

a. The Council may conduct disciplinary proceedings in accordance with Title 29, Chapter 101, Subchapter III.

b. The written notice required by Title 29, Chapter 101, Subchapter III shall be satisfied by personal service on the controlling person of the registrant or the registrant's agent for service of process in this state or by sending the notice by certified mail to the controlling person of the registrant to the registrant's address on file with the Council.

§ 4037 Rule Making Authority.

The Council shall adopt rules that are reasonably necessary to implement, administer and enforce this section.

§ 4038 Effective Date

All appraisal management companies operating in this State as of July 1, 2013 must become registered on or before July 1, 2014.

Approved August 06, 2013