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SENATE BILL 279

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Sander Rue

AN ACT

RELATING TO PROPERTY; AMENDING AND ENACTING SECTIONS OF THE APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT; PROVIDING FOR COMPLIANCE WITH FEDERAL LAW; PROVIDING A DEFINITION OF "APPRAISAL MANAGEMENT COMPANIES"; PROVIDING FOR REGISTRATION STANDARDS, FEES AND COMPLIANCE WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE; PROVIDING FOR AUTOMATED VALUATION MODELS; PROVIDING FOR BROKER PRICE OPINIONS; PROVIDING FOR INDEPENDENCE OF APPRAISALS; PROVIDING FOR CRIMINAL BACKGROUND CHECKS; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 47-14-2 NMSA 1978 (being Laws 2009, Chapter 214, Section 2) is amended to read:

"47-14-2. DEFINITIONS.--As used in the Appraisal Management Company Registration Act:

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1           A. "appraisal" means the act or process of  
2 developing an opinion of the value of real property in  
3 conformance with the uniform standards for professional  
4 appraisal practice published by the appraisal foundation;

5           B. "appraisal foundation" means the appraisal  
6 foundation incorporated as an Illinois not-for-profit  
7 corporation on November 30, 1987 and to which reference is made  
8 in the Federal Financial Institutions Examination Council Act  
9 of 1978, as amended by Title 11, Real Estate Appraisal Reform  
10 Amendments;

11           C. "appraisal management company" means [~~a~~  
12 ~~corporation, partnership, sole proprietorship, subsidiary,~~  
13 ~~limited liability company or other business entity that:~~

14                     ~~(1) contracts with independent appraisers to~~  
15 ~~perform real estate appraisal services for clients;~~

16                     ~~(2) receives requests for real estate~~  
17 ~~appraisal services from clients and, for a fee paid by the~~  
18 ~~client, enters into an agreement with one or more independent~~  
19 ~~appraisers to perform the real estate appraisal services~~  
20 ~~contained in the request; or~~

21                     ~~(3) otherwise serves as a third-party broker~~  
22 ~~of appraisal management services between clients and~~  
23 ~~appraisers] any external third party that oversees a network or~~  
24 ~~panel of certified or licensed appraisers to:~~

25                     (1) recruit, select and retain appraisers;

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1                   (2) contract with appraisers to perform  
2 appraisal assignments;

3                   (3) manage the process of having an appraisal  
4 performed; or

5                   (4) review and verify the work of appraisers;

6           D. "appraisal management services" means the  
7 process of receiving a request for the performance of real  
8 estate appraisal services from a client, and for a fee paid by  
9 the client, entering into an agreement with one or more  
10 independent appraisers to perform the real estate appraisal  
11 services contained in the request;

12           E. "appraiser" means a person who provides an  
13 opinion of the market value of real property and holds a state  
14 license, registration or certified license in good standing;

15           F. "appraiser panel" means a group of independent  
16 appraisers that have been selected and retained by an appraisal  
17 management company to perform real estate appraisal services  
18 for the appraisal management company;

19           G. "automated valuation model" means any  
20 computerized model used by mortgage originators and secondary  
21 market issuers to determine the collateral worth of a mortgage  
22 secured by a consumer's principal dwelling;

23           [~~G.~~] H. "board" means the real estate appraisers  
24 board created pursuant to the Real Estate Appraisers Act;

25           I. "broker price opinion" means an estimate

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1 prepared by a real estate broker, agent or salesperson that  
2 details the probable selling price of a particular piece of  
3 real estate property;

4 [H.] J. "client" means a person or entity that  
5 contracts with, or otherwise enters into an agreement with, an  
6 appraisal management company for the performance of real estate  
7 appraisal services;

8 [F.] K. "controlling person" means:

9 (1) an owner, officer or director of a  
10 corporation, partnership, limited liability company or other  
11 business entity seeking to offer appraisal management services  
12 in this state;

13 (2) an individual employed, appointed or  
14 authorized by an appraisal management company that has the  
15 authority to enter into a contractual relationship with clients  
16 for the performance of appraisal management services and that  
17 has the authority to enter into agreements with independent  
18 appraisers for the performance of real estate appraisal  
19 services; or

20 (3) an individual who possesses, directly or  
21 indirectly, the power to direct or cause the direction of the  
22 management or policies of an appraisal management company;

23 [J.] L. "real estate appraisal services" means the  
24 practice of developing an opinion of the value of real property  
25 in conformance with the uniform standards of professional

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1 appraisal practice published by the appraisal foundation; and  
2 [K-] M. "uniform standards of professional  
3 appraisal practice" means the uniform standards of professional  
4 appraisal practice promulgated by the appraisal foundation and  
5 adopted by rule pursuant to the Real Estate Appraisers Act."

6 SECTION 2. Section 47-14-3 NMSA 1978 (being Laws 2009,  
7 Chapter 214, Section 3, as amended) is amended to read:

8 "47-14-3. REGISTRATION REQUIRED.--

9 A. It is unlawful for a person, corporation,  
10 partnership, sole proprietorship, subsidiary, limited liability  
11 company or any other business entity to, directly or  
12 indirectly, engage or attempt to engage in business as an  
13 appraisal management company, to, directly or indirectly,  
14 engage or attempt to perform appraisal management services or  
15 to advertise or hold itself out as engaging in or conducting  
16 business as an appraisal management company without first  
17 obtaining a certificate of registration issued by the board  
18 under the provisions of the Appraisal Management Company  
19 Registration Act, regardless of the entity's use of the term  
20 "appraisal management company", "mortgage technology company"  
21 or any other name.

22 B. A person, corporation, partnership, sole  
23 proprietorship, subsidiary, limited liability company or any  
24 other business entity seeking the registration required by  
25 Subsection A of this section shall:

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1                   (1) register with and be subject to  
2 supervision by the board;

3                   (2) verify that only licensed or certified  
4 appraisers are used for federally related transactions;

5                   (3) require that appraisals comply with the  
6 uniform standards of professional appraisal practice; and

7                   (4) require that appraisals are conducted  
8 independently and free from inappropriate influence and  
9 coercion pursuant to the appraisal independence standards  
10 established pursuant to the federal Truth in Lending Act.

11                   ~~[B-]~~ C. The registration required by Subsection A  
12 of this section shall include:

13                   (1) the name of the entity seeking  
14 registration;

15                   (2) the business address of the entity seeking  
16 registration;

17                   (3) telephone contact information of the  
18 entity seeking registration;

19                   (4) if the entity seeking registration is not  
20 a corporation that is domiciled in this state, the name and  
21 contact information for the company's agent for service of  
22 process in this state;

23                   (5) the name, address and contact information  
24 for any individual or any corporation, partnership or other  
25 business entity that owns ten percent or more of the appraisal

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1 management company;

2 (6) the name, address and contact information  
3 for a controlling person;

4 (7) a certification that the entity seeking  
5 registration has a system and process in place to verify that  
6 ~~[a person being added to the]~~ an appraiser is selected and  
7 retained for the network or the appraiser panel of the  
8 appraisal management company holds a license or certification  
9 in good standing in this state pursuant to the Real Estate  
10 Appraisers Act;

11 (8) a certification that the entity seeking  
12 registration has a system in place to review, on a periodic  
13 basis, the work of all independent appraisers that are  
14 performing real estate appraisal services for the appraisal  
15 management company ~~[on a periodic basis]~~ to ensure that the  
16 real estate appraisal services are being conducted in  
17 accordance with uniform standards of professional appraisal  
18 practice;

19 (9) a certification that the entity maintains  
20 a detailed record of each service request that it receives and  
21 of the independent appraiser that performs the real estate  
22 appraisal services for the appraisal management company;

23 (10) an irrevocable consent to service of  
24 process;

25 (11) a bond or other equivalent means of

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1 security as required by the Appraisal Management Company  
2 Registration Act; and

3 (12) any other information required by the  
4 board.

5 D. The requirements of Subsection B of this section  
6 shall apply to an appraisal management company that is a  
7 subsidiary owned and controlled by a financial institution  
8 regulated by a federal financial institution regulatory  
9 agency."

10 SECTION 3. Section 47-14-6 NMSA 1978 (being Laws 2009,  
11 Chapter 214, Section 6) is amended to read:

12 "47-14-6. EXPIRATION OF LICENSE.--A registration granted  
13 by the board pursuant to the Appraisal Management Company  
14 Registration Act shall ~~[be valid for one year from the date on~~  
15 ~~which it is issued]~~ expire on September 30 of each year."

16 SECTION 4. Section 47-14-8 NMSA 1978 (being Laws 2009,  
17 Chapter 214, Section 8) is amended to read:

18 "47-14-8. FEE.--

19 A. The board shall establish the fee for appraisal  
20 management company registration by rule to cover the cost of  
21 the administration of the Appraisal Management Company  
22 Registration Act, but in no case shall the fee be more than two  
23 thousand dollars (\$2,000).

24 B. Registration fees shall be credited to the  
25 appraiser fund pursuant to Section 61-30-18 NMSA 1978.

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1           C. An appraisal management company that either has  
2 registered with the board or operates as a subsidiary of a  
3 federally regulated financial institution shall pay to the  
4 board an annual registry as determined by the appraisal  
5 subcommittee."

6           SECTION 5. Section 47-14-9 NMSA 1978 (being Laws 2009,  
7 Chapter 214, Section 9) is amended to read:

8           "47-14-9. OWNER REQUIREMENTS.--

9           A. An appraisal management company applying for  
10 registration may not be owned by a person or have any principal  
11 of the company who has had a license or certificate to act as  
12 an appraiser refused, denied, canceled or revoked in this state  
13 or in any other state.

14           B. Each person that owns, is an officer of or has a  
15 financial interest in an appraisal management company in this  
16 state shall:

17                   (1) be of good moral character, as determined  
18 by the board; and

19                   (2) submit to a background investigation, as  
20 determined by the board. [and

21                   ~~(3) certify to the board that the person has~~  
22 ~~never had a license to act as an appraiser refused, denied,~~  
23 ~~canceled or revoked in this state or in any other state]~~

24           C. An appraisal management company shall not be  
25 registered by the board or included on the national registry if

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1 the company, in whole or in part, directly or indirectly, is  
2 owned by any person who has had an appraiser license or  
3 certificate refused, denied, canceled, surrendered in lieu of  
4 revocation or revoked in any state. A person that owns more  
5 than ten percent of an appraisal management company shall be of  
6 good moral character, as determined by the board, and shall  
7 submit to a background investigation carried out by the board."

8 SECTION 6. Section 47-14-17 NMSA 1978 (being Laws 2009,  
9 Chapter 214, Section 17) is amended to read:

10 "47-14-17. APPRAISER INDEPENDENCE--PROHIBITIONS.--

11 A. Appraisals shall be conducted independently and  
12 free from inappropriate influence and coercion pursuant to the  
13 appraisal independence standards established pursuant to the  
14 federal Truth in Lending Act.

15 ~~[A.]~~ B. It is unlawful for any employee, director,  
16 officer or agent of an appraisal management company registered  
17 pursuant to the Appraisal Management Company Registration Act  
18 to influence or attempt to influence the development, reporting  
19 or review of an appraisal through coercion, extortion,  
20 collusion, compensation, instruction, inducement, intimidation,  
21 bribery or in any other manner, including:

22 (1) withholding or threatening to withhold  
23 timely payment for an appraisal;

24 (2) withholding or threatening to withhold  
25 future business for an independent appraiser or demoting or

1 terminating, or threatening to demote or terminate, an  
2 independent appraiser;

3 (3) expressly or impliedly promising future  
4 business, promotions or increased compensation for an  
5 independent appraiser;

6 (4) conditioning the request for an appraisal  
7 service or the payment of an appraisal fee or salary or bonus  
8 on the opinion, conclusion or valuation to be reached or on a  
9 preliminary estimate or opinion requested from an independent  
10 appraiser;

11 (5) requesting that an independent appraiser  
12 provide an estimated, predetermined or desired valuation in an  
13 appraisal report or provide estimated values of comparable  
14 sales at any time prior to the independent appraiser's  
15 completion of an appraisal service;

16 (6) providing to an independent appraiser an  
17 anticipated, estimated, encouraged or desired value for a  
18 subject property or a proposed or target amount to be loaned to  
19 the borrower, except that a copy of the sales contract for  
20 purchase transactions may be provided;

21 (7) providing to an independent appraiser, or  
22 any entity or person related to the appraiser, stock or other  
23 financial or non-financial benefits;

24 (8) allowing the removal of an independent  
25 appraiser from an appraiser panel, without prior written notice

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1 to such appraiser;

2 (9) obtaining, using or paying for a second or  
3 subsequent appraisal or ordering an automated valuation model  
4 in connection with a mortgage financing transaction unless  
5 there is a reasonable basis to believe that the initial  
6 appraisal was flawed or tainted and such basis is clearly and  
7 appropriately noted in the loan file, or unless such appraisal  
8 or automated valuation model is done pursuant to a bona fide  
9 pre- or post-funding appraisal review or quality control  
10 process; or

11 (10) engaging in any other act or practice  
12 that impairs or attempts to impair an appraiser's independence,  
13 objectivity or impartiality.

14 ~~[B-]~~ C. Nothing in Subsection ~~[A]~~ B of this section  
15 shall be construed as prohibiting the appraisal management  
16 company from requesting that an independent appraiser:

17 (1) provide additional information about the  
18 basis for a valuation; or

19 (2) correct objective factual errors in an  
20 appraisal report.

21 D. The board shall prohibit discrimination.

22 Criteria established by the appraisal management company may  
23 include education achieved, experience, sample appraisals and  
24 references from prior clients. Membership in a nationally  
25 recognized professional appraisal organization may be a

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1 criterion considered, though lack of membership shall not be  
2 the sole bar against consideration for an assignment under  
3 these criteria."

4 SECTION 7. Section 47-14-21 NMSA 1978 (being Laws 2009,  
5 Chapter 214, Section 21) is amended to read:

6 "47-14-21. ENFORCEMENT.--

7 A. The board may censure an appraisal management  
8 company, conditionally or unconditionally suspend or revoke any  
9 registration issued under the Appraisal Management Company  
10 Registration Act, levy fines or impose civil penalties not to  
11 exceed twenty-five thousand dollars (\$25,000) per violation if,  
12 in the opinion of the board, an appraisal management company is  
13 attempting to perform, has performed or has attempted to  
14 perform any of the following acts:

15 [~~A.~~] (1) committing any act in violation of  
16 the Appraisal Management Company Registration Act;

17 [~~B.~~] (2) violating any rule or regulation  
18 adopted by the board in the interest of the public and  
19 consistent with the provisions of the Appraisal Management  
20 Company Registration Act;

21 [~~C.~~] (3) procuring a registration, license or  
22 certification by fraud, misrepresentation or deceit; or

23 [~~D.~~] (4) violating the Real Estate Appraisers  
24 Act or the federal Financial Institutions Reform, Recovery, and  
25 Enforcement Act of 1989.

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1                   B. The board may deny an application for  
2 registration for failure to comply with the minimum  
3 requirements and criteria as set forth by the Appraisal  
4 Management Company Registration Act.

5                   C. Board action relating to the issuance,  
6 suspension or revocation of any registration, license or  
7 certificate shall be governed by the provisions of the Uniform  
8 Licensing Act; provided that the time limitations set forth in  
9 the Uniform Licensing Act shall not apply to the processing of  
10 administrative complaints filed with the board, which shall be  
11 governed by federal statute, regulation or policy."

12                   SECTION 8. A new section of the Appraisal Management  
13 Company Registration Act is enacted to read:

14                   "[NEW MATERIAL] AUTOMATED VALUATION MODELS USED TO  
15 ESTIMATE COLLATERAL VALUE FOR MORTGAGE LENDING PURPOSES.--

16                   A. Automated valuation models shall adhere to  
17 quality control standards designed to:

- 18                                 (1) ensure a high level of confidence in the
- 19 estimates produced by automated valuation models;
- 20                                 (2) protect against the manipulation of data;
- 21                                 (3) seek to avoid conflicts of interest;
- 22                                 (4) require random sample testing and reviews;
- 23 and
- 24                                 (5) account for any other such factor that the
- 25 board determines to be appropriate.

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1           B. The board, in consultation with the staff of the  
2 appraisal subcommittee and the appraisal standards board of the  
3 appraisal foundation, shall promulgate rules to implement the  
4 quality control standards required under this section."

5           **SECTION 9.** A new section of the Appraisal Management  
6 Company Registration Act is enacted to read:

7           "[NEW MATERIAL] **BROKER PRICE OPINIONS.**--In conjunction  
8 with the purchase of a consumer's principal dwelling, broker  
9 price opinions shall not be used as the primary basis to  
10 determine the value of a piece of property for the purpose of a  
11 loan origination of a residential mortgage loan secured by such  
12 piece of property."

13           **SECTION 10.** A new section of the Appraisal Management  
14 Company Registration Act is enacted to read:

15           "[NEW MATERIAL] **CRIMINAL BACKGROUND CHECKS.**--

16           A. The board may adopt rules that provide for  
17 criminal background checks for all licensees to include:

18                   (1) requiring criminal history background  
19 checks of applicants for licensure pursuant to the Appraisal  
20 Management Company Registration Act;

21                   (2) requiring applicants for licensure to be  
22 fingerprinted;

23                   (3) providing for an applicant who has been  
24 denied licensure to inspect or challenge the validity of the  
25 background check record;

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1 (4) establishing a fingerprint and background  
2 check fee not to exceed the current rate as determined by the  
3 department of public safety to be paid by the applicant; and

4 (5) providing for submission of an applicant's  
5 fingerprint cards to the federal bureau of investigation to  
6 conduct a national criminal history background check and to the  
7 department of public safety to conduct a state criminal history  
8 check.

9 B. Arrest record information received from the  
10 department of public safety and the federal bureau of  
11 investigation shall be privileged and shall not be disclosed to  
12 persons not directly involved in the decision affecting the  
13 applicant.

14 C. Electronic live fingerprint scans may be used  
15 when conducting criminal history background checks."