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SENATE BILL 456

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

John C. Ryan

AN ACT

RELATING TO REAL PROPERTY; ENACTING THE APPRAISAL MANAGEMENT
COMPANY REGISTRATION ACT; PROVIDING FOR REGISTRATION AND
REGULATION OF REAL ESTATE APPRAISAL MANAGEMENT COMPANIES.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 23 of this act may be cited as the "Appraisal
Management Company Registration Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Appraisal Management Company Registration Act:

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

B. "appraisal foundation" means the appraisal

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1 foundation incorporated as an Illinois not-for-profit
2 corporation on November 30, 1987 and to which reference is made
3 in the federal Financial Institutions Examination Council Act
4 of 1978, as amended by Title 11, Real Estate Appraisal Reform
5 Amendments;

6 C. "appraisal management company" means a
7 corporation, partnership, sole proprietorship, subsidiary, unit
8 or other business entity that:

9 (1) administers networks of independent
10 contract appraisers to perform real estate appraisal services
11 for clients;

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

17 (3) otherwise serves as a third-party broker
18 of appraisal management services between clients and
19 appraisers;

20 D. "appraisal management services" means the
21 process of receiving a request for the performance of real
22 estate appraisal services from a client, and for a fee paid by
23 the client, entering into an agreement with one or more
24 independent appraisers to perform the real estate appraisal
25 services contained in the request;

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1 E. "appraiser" means a person who provides an
2 opinion of the market value of real property;

3 F. "appraiser panel" means a group of independent
4 appraisers that have been selected by an appraisal management
5 company to perform real estate appraisal services for the
6 appraisal management company;

7 G. "board" means the real estate appraisers board
8 created pursuant to the Real Estate Appraisers Act;

9 H. "client" means a person or entity that contracts
10 with, or otherwise enters into an agreement with, an appraisal
11 management company for the performance of real estate appraisal
12 services;

13 I. "controlling person" means:

14 (1) an owner, officer or director of a
15 corporation, partnership or other business entity seeking to
16 offer appraisal management services in this state;

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

24 (3) an individual who possesses, directly or
25 indirectly, the power to direct or cause the direction of the

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1 management or policies of an appraisal management company;

2 J. "real estate appraisal services" means the
3 practice of developing an opinion of the value of real property
4 in conformance with the uniform standards of professional
5 appraisal practice published by the appraisal foundation; and

6 K. "uniform standards of professional appraisal
7 practice" means the uniform standards of professional appraisal
8 practice promulgated by the appraisal foundation and adopted by
9 rule pursuant to the Real Estate Appraisers Act.

10 Section 3. [NEW MATERIAL] REGISTRATION REQUIRED.--

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

23 B. The registration required by Subsection A of
24 this section shall include:

25 (1) the name of the entity seeking

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1 registration;

2 (2) the business address of the entity seeking
3 registration;

4 (3) telephone contact information of the
5 entity seeking registration;

6 (4) if the entity seeking registration is not
7 a corporation that is domiciled in this state, the name and
8 contact information for the company's agent for service of
9 process in this state;

10 (5) the name, address and contact information
11 for any individual or any corporation, partnership or other
12 business entity that owns ten percent or more of the appraisal
13 management company;

14 (6) the name, address and contact information
15 for a controlling person;

16 (7) a certification that the entity seeking
17 registration has a system and process in place to verify that a
18 person being added to the appraiser panel of the appraisal
19 management company holds a license or certification in good
20 standing in this state pursuant to the Real Estate Appraisers
21 Act;

22 (8) a certification that the entity seeking
23 registration has a system in place to review the work of all
24 independent appraisers that are performing real estate
25 appraisal services for the appraisal management company on a

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1 periodic basis to ensure that the real estate appraisal
2 services are being conducted in accordance with uniform
3 standards of professional appraisal practice;

4 (9) a certification that the entity maintains
5 a detailed record of each service request that it receives and
6 the independent appraiser that performs the real estate
7 appraisal services for the appraisal management company;

8 (10) an irrevocable consent to service of
9 process; and

10 (11) any other information required by the
11 board.

12 Section 4. [NEW MATERIAL] EXEMPTIONS.--The Appraisal
13 Management Company Registration Act is not applicable to:

14 A. a corporation, partnership, sole proprietorship,
15 subsidiary, unit or other business entity that exclusively
16 employs persons on an employer and employee basis for the
17 performance of real estate appraisal services in the normal
18 course of its business and the entity is responsible for
19 ensuring that the real estate appraisal services being
20 performed by its employees are being performed in accordance
21 with uniform standards of professional appraisal practice;

22 B. an individual, corporation, partnership, sole
23 proprietorship, subsidiary, unit or other business entity that
24 in the normal course of business enters into an agreement,
25 whether written or otherwise, with another independent

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1 contractor appraiser for the performance of real estate
2 appraisal services that the hiring or contracting appraiser
3 cannot complete for any reason, including competency, work
4 load, schedule or geographic location; or

5 C. an individual, corporation, partnership, sole
6 proprietorship, subsidiary, unit or other business entity that
7 in the normal course of business enters into an agreement,
8 whether written or otherwise, with an independent contractor
9 appraiser for the performance of real estate appraisal services
10 and upon the completion of the appraisal, the report of the
11 appraiser performing the real estate appraisal services is
12 co-signed by the appraiser who subcontracted with the
13 independent appraiser for the performance of the real estate
14 appraisal services.

15 Section 5. [NEW MATERIAL] FORMS.--An applicant for
16 registration as an appraisal management company shall submit to
17 the board an application on a form prescribed by the board.

18 Section 6. [NEW MATERIAL] EXPIRATION OF LICENSE.--A
19 registration granted by the board pursuant to the Appraisal
20 Management Company Registration Act shall be valid for one year
21 from the date on which it is issued.

22 Section 7. [NEW MATERIAL] CONSENT TO SERVICE OF
23 PROCESS.--Each entity applying for registration as an appraisal
24 management company shall complete and execute an irrevocable
25 consent to service of process form as prescribed by the board.

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1 Section 8. [NEW MATERIAL] FEE.--The board shall establish
2 the fee for appraisal management company registration by rule
3 to cover the cost of the administration of the Appraisal
4 Management Company Registration Act, but in no case shall the
5 fee be more than five thousand dollars (\$5,000). Registration
6 fees shall be credited to the appraiser fund pursuant to
7 Section 61-30-18 NMSA 1978.

8 Section 9. [NEW MATERIAL] 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;

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 Section 10. [NEW MATERIAL] CONTROLLING PERSON.--Each
25 appraisal management company applying to the board for

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1 registration in this state shall designate one controlling
2 person that will be the main contact for all communication
3 between the board and the appraisal management company.

4 Section 11. [NEW MATERIAL] CONTROLLING PERSON
5 REQUIREMENTS.--In order to serve as a controlling person of an
6 appraisal management company, a person shall:

7 A. certify to the board that the person has never
8 had a certificate or a license issued by the board of this
9 state, or the board of any other state, to act as an appraiser
10 refused, denied, canceled or revoked;

11 B. be of good moral character, as determined by the
12 board; and

13 C. submit to a background investigation, as
14 determined by the board.

15 Section 12. [NEW MATERIAL] EMPLOYEE REQUIREMENTS.--

16 A. Any employee of the appraisal management
17 company, or any person working on behalf of the appraisal
18 management company, that has the responsibility of selecting
19 independent appraisers for the performance of real estate
20 appraisal services for the appraisal management company or the
21 responsibility of reviewing completed appraisals shall be
22 appropriately trained and qualified in the performance of real
23 estate appraisals as determined by the board by rule.

24 B. Any employee of the appraisal management company
25 that has the responsibility to review the work of independent

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1 appraisers shall have demonstrated knowledge of the uniform
2 standards of professional appraisal practice, as determined by
3 the board by rule.

4 Section 13. [NEW MATERIAL] LIMITATIONS.--An appraisal
5 management company registered in this state pursuant to the
6 Appraisal Management Company Registration Act may not enter
7 into contracts or agreements with an independent appraiser for
8 the performance of real estate appraisal services unless that
9 person is licensed or certified in good standing pursuant to
10 the Real Estate Appraisers Act.

11 Section 14. [NEW MATERIAL] PRE-ENGAGEMENT
12 CERTIFICATION.--Each appraisal management company seeking to be
13 registered in this state shall certify to the board on an
14 annual basis on a form prescribed by the board that the
15 appraisal management company has a system and process in place
16 to verify that a person being added to the appraiser panel of
17 the appraisal management company holds a license in good
18 standing in this state pursuant to the Real Estate Appraisers
19 Act.

20 Section 15. [NEW MATERIAL] ADHERENCE TO STANDARDS.--Each
21 appraisal management company seeking to be registered in this
22 state shall certify to the board on an annual basis that it has
23 a system in place to review the work of all independent
24 appraisers that are performing real estate appraisal services
25 for the appraisal management company on a periodic basis to

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1 ensure that the real estate appraisal services are being
2 conducted in accordance with uniform standards of professional
3 appraisal practice.

4 Section 16. [NEW MATERIAL] RECORDKEEPING.--Each appraisal
5 management company seeking to be registered shall certify to
6 the board on an annual basis that it maintains a detailed
7 record of each service request that it receives and the
8 independent appraiser that performs the real estate appraisal
9 services for the appraisal management company.

10 Section 17. [NEW MATERIAL] APPRAISER INDEPENDENCE--
11 PROHIBITIONS.--

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

19 (1) withholding or threatening to withhold
20 timely payment for an appraisal;

21 (2) withholding or threatening to withhold
22 future business for an independent appraiser or demoting or
23 terminating, or threatening to demote or terminate, an
24 independent appraiser;

25 (3) expressly or impliedly promising future

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1 business, promotions or increased compensation for an
2 independent appraiser;

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

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

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

18 (7) providing to an independent appraiser, or
19 any entity or person related to the appraiser, stock or other
20 financial or non-financial benefits;

21 (8) allowing the removal of an independent
22 appraiser from an appraiser panel, without prior written notice
23 to such appraiser;

24 (9) obtaining, using or paying for a second or
25 subsequent appraisal or ordering an automated valuation model

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1 in connection with a mortgage financing transaction unless
2 there is a reasonable basis to believe that the initial
3 appraisal was flawed or tainted and such basis is clearly and
4 appropriately noted in the loan file, or unless such appraisal
5 or automated valuation model is done pursuant to a bona fide
6 pre- or post-funding appraisal review or quality control
7 process; or

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

11 B. Nothing in Subsection A of this section shall be
12 construed as prohibiting the appraisal management company from
13 requesting that an independent appraiser:

14 (1) provide additional information about the
15 basis for a valuation; or

16 (2) correct objective factual errors in an
17 appraisal report.

18 Section 18. [NEW MATERIAL] PAYMENT--NONTAXABLE
19 TRANSACTION CERTIFICATE.--

20 A. Each appraisal management company shall, except
21 in cases of breach of contract or substandard performance of
22 services, make payment to an independent appraiser for the
23 completion of an appraisal or valuation assignment within sixty
24 days of the date on which the independent appraiser transmits
25 or otherwise provides the completed appraisal or valuation

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1 study to the appraisal management company or its assignee.

2 B. An appraisal management company shall provide an
3 appraiser with the appropriate nontaxable transaction
4 certificate pursuant to Section 7-9-48 NMSA 1978.

5 Section 19. [NEW MATERIAL] APPRAISAL REPORTS--
6 ALTERATION--USE.--An appraisal management company shall not:

7 A. alter, modify or otherwise change a completed
8 appraisal report submitted by an independent appraiser without
9 the appraiser's written knowledge and consent; or

10 B. use an appraisal report submitted by an
11 independent appraiser for any other transaction.

12 Section 20. [NEW MATERIAL] ADJUDICATION OF DISPUTES
13 BETWEEN AN APPRAISAL MANAGEMENT COMPANY AND AN INDEPENDENT
14 APPRAISER.--

15 A. Except within the first thirty days after an
16 independent appraiser is first added to the appraiser panel of
17 an appraisal management company, an appraisal management
18 company shall not remove an appraiser from its appraiser panel,
19 or otherwise refuse to assign requests for real estate
20 appraisal services to an independent appraiser without
21 notifying the appraiser in writing of the reasons for the
22 appraiser being removed from the appraiser panel of the
23 appraisal management company. If the appraiser is being
24 removed from the panel for illegal conduct, violation of the
25 uniform standards of professional appraisal practice or a

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1 violation of state licensing standards, the appraisal
2 management company shall provide the independent appraiser the
3 nature of the alleged conduct or violation and provide an
4 opportunity for the appraiser to respond.

5 B. An independent appraiser that is removed from
6 the appraiser panel of an appraisal management company for
7 alleged illegal conduct, violation of the uniform standards of
8 professional appraisal practice or violation of state licensing
9 standards may file a complaint with the board for a review of
10 the decision of the appraisal management company, except that
11 in no case shall the board make any determination regarding the
12 nature of the business relationship between the appraiser and
13 the appraisal management company that is unrelated to the
14 actions specified in Subsection A of this section.

15 C. If an independent appraiser files a complaint
16 against an appraisal management company pursuant to Subsection
17 B of this section, the board shall adjudicate the complaint
18 within one hundred eighty days.

19 D. If after opportunity for hearing and review, the
20 board determines that an independent appraiser did not commit a
21 violation of law, a violation of the uniform standards of
22 professional appraisal practice or a violation of state
23 licensing standards, the board shall order that the appraiser
24 be added to the appraiser panel of the appraisal management
25 company that was the subject of the complaint without

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1 prejudice.

2 Section 21. [NEW MATERIAL] ENFORCEMENT.--The board may
3 censure an appraisal management company, conditionally or
4 unconditionally suspend or revoke any registration issued under
5 the Appraisal Management Company Registration Act, levy fines
6 or impose civil penalties not to exceed twenty-five thousand
7 dollars (\$25,000) per violation if, in the opinion of the
8 board, an appraisal management company is attempting to
9 perform, has performed or has attempted to perform any of the
10 following acts:

11 A. committing any act in violation of the Appraisal
12 Management Company Registration Act;

13 B. violating any rule or regulation adopted by the
14 board in the interest of the public and consistent with the
15 provisions of the Appraisal Management Company Registration
16 Act;

17 C. procuring a registration, license or
18 certification by fraud, misrepresentation or deceit; or

19 D. violating the Real Estate Appraisers Act or the
20 federal Financial Institutions Reform Recovery and Enforcement
21 Act of 1989.

22 Section 22. [NEW MATERIAL] DISCIPLINARY HEARINGS.--The
23 board may conduct adjudicatory proceedings in accordance with
24 the Administrative Procedures Act; provided that:

25 A. before censuring any registrant, or suspending

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1 or revoking any registration, the board shall notify the
2 registrant in writing of any charges made at least twenty days
3 prior to the date set for the hearing and shall afford the
4 registrant an opportunity to be heard in person or by counsel;

5 B. the written notice shall be satisfied by
6 personal service on the controlling person of the registrant or
7 the registrant's agent for service of process in this state or
8 by sending the notice by certified mail, return receipt
9 requested, to the controlling person of the registrant to the
10 registrant's address on file with the board;

11 C. the hearing on the charges shall be at a time
12 and place prescribed by the board; and

13 D. the board may make findings of fact and shall
14 deliver or mail such findings to the registrant charged with an
15 offense under the Appraisal Management Company Registration
16 Act.

17 Section 23. [NEW MATERIAL] RULEMAKING AUTHORITY.--The
18 board may adopt rules that are reasonably necessary to
19 implement, administer and enforce the provisions of the
20 Appraisal Management Company Registration Act, including rules
21 for obtaining copies of appraisals and other documents
22 necessary to audit compliance with the Appraisal Management
23 Company Registration Act.

24 Section 24. Section 61-30-18 NMSA 1978 (being Laws 1990,
25 Chapter 75, Section 18, as amended) is amended to read:

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1 "61-30-18. APPRAISER FUND CREATED--DISPOSITION--METHOD OF
2 PAYMENT.--

3 A. There is created in the state treasury the
4 "appraiser fund" to be administered by the board. All fees
5 received by the board pursuant to the Real Estate Appraisers
6 Act and the Appraisal Management Company Registration Act shall
7 be deposited with the state treasurer to the credit of the
8 appraiser fund. Income earned on investment of the fund shall
9 be credited to the fund.

10 B. Money in the appraiser fund shall be used by the
11 board to meet necessary expenses incurred in the enforcement of
12 the provisions of the Real Estate Appraisers Act and the
13 Appraisal Management Company Registration Act, in carrying out
14 the duties imposed by the Real Estate Appraisers Act and the
15 Appraisal Management Company Registration Act and for the
16 promotion of education and standards for real estate appraisers
17 in this state. Payments out of the appraiser fund shall be on
18 vouchers issued and signed by the person designated by the
19 board upon warrants drawn by the department of finance and
20 administration. All unexpended or unencumbered balances
21 remaining at the end of each fiscal year shall remain in the
22 appraiser fund for use in accordance with the provisions of the
23 Real Estate Appraisers Act and the Appraisal Management Company
24 Registration Act."