

1 SENATE BILL 55

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO REAL PROPERTY; AMENDING THE APPRAISAL MANAGEMENT  
12 COMPANY REGISTRATION ACT; AMENDING DEFINITIONS; ADDRESSING  
13 APPRAISER INDEPENDENCE; ADDRESSING EXEMPTIONS; CHANGING  
14 EMPLOYEE REQUIREMENTS.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "47-14-2. DEFINITIONS.--As used in the Appraisal  
20 Management Company Registration Act:

21 A. "appraisal" means the act or process of  
22 developing an opinion of the value of real property in  
23 conformance with the uniform standards for professional  
24 appraisal practice [~~published~~] as developed by the appraisal  
25 foundation [B. ~~"appraisal foundation" means the appraisal~~

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1 ~~foundation incorporated as an Illinois~~, a not-for-profit  
2 corporation [~~on November 30, 1987 and~~] to which reference is  
3 made in the federal Financial Institutions [~~Examination Council~~  
4 ~~Act of 1978, as amended by Title 11, Real Estate Appraisal~~  
5 ~~Reform Amendments~~] Reform, Recovery, and Enforcement Act of  
6 1989;

7 [G.] B. "appraisal management company" means [a  
8 corporation, partnership, sole proprietorship, subsidiary,  
9 limited liability company or other business entity that:

10 (1) ~~contracts with independent appraisers to~~  
11 ~~perform real estate appraisal services 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] an external third party that, within a calendar  
20 year and in connection with valuing properties that  
21 collateralize mortgage loans or mortgages incorporated into a  
22 securitization, oversees a network or panel of fifteen or more  
23 certified or licensed appraisers in New Mexico, or twenty-five  
24 or more certified or licensed appraisers nationally, and that  
25 is authorized either by the creditor in a consumer credit~~

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1 transaction secured by the consumer's principal dwelling or by  
2 an underwriter of or other principal in the secondary mortgage  
3 markets, to perform the following services:

4 (1) recruit, select and retain appraisers;

5 (2) contract with licensed and certified  
6 appraisers to perform appraisal assignments;

7 (3) manage the process of having an appraisal  
8 performed, including providing administrative duties such as  
9 receiving appraisal orders and appraisal reports, submitting  
10 completed appraisal reports to creditors and underwriters,  
11 collecting fees from creditors and underwriters for services  
12 provided and reimbursing appraisers for services performed; or

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

14 ~~[D.] C. "appraisal [management services" means the~~  
15 ~~process of receiving a request for the performance of real~~  
16 ~~estate appraisal services from a client, and for a fee paid by~~  
17 ~~the client, entering into an agreement with one or more~~  
18 ~~independent appraisers to perform the real estate appraisal~~  
19 ~~services contained in the request] review" means the act or~~  
20 process of developing and communicating an opinion about the  
21 quality of another appraiser's work that was performed as part  
22 of an appraisal assignment, provided that a quality control  
23 examination of an appraisal that examines for compliance and  
24 completeness, or a review only for clerical errors, is not an  
25 "appraisal review";

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1           ~~[E.]~~ D. "appraiser" means ~~[a person who provides an~~  
2 ~~opinion of the market value of real property]~~ an individual who  
3 holds a license or certification as an appraiser and is  
4 expected to perform valuation services competently and in a  
5 manner that is independent, impartial and objective;

6           ~~[F.]~~ E. "appraiser panel" means a group of licensed  
7 or certified independent appraisers that ~~[have]~~ has been  
8 selected ~~[by an appraisal management company]~~ to perform real  
9 estate appraisal services for ~~[the appraisal management~~  
10 ~~company]~~ a third party;

11           ~~[G.]~~ F. "board" means the real estate appraisers  
12 board created pursuant to the Real Estate Appraisers Act;

13           ~~[H.]~~ "client" means ~~a person or entity that~~  
14 ~~contracts with, or otherwise enters into an agreement with, an~~  
15 ~~appraisal management company for the performance of real estate~~  
16 ~~appraisal services;~~

17           ~~[I.]~~ G. "controlling person" means:

18                   (1) an owner of more than a ten percent  
19 interest in, or an officer or director of, a corporation,  
20 partnership, limited liability company or other business entity  
21 seeking to ~~[offer]~~ act as an appraisal management ~~[services]~~  
22 company in this state;

23                   (2) an individual employed, appointed or  
24 authorized by an appraisal management company, ~~[that]~~ who has  
25 the authority to enter into a contractual relationship with

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1 [clients] other persons for the performance of [~~appraisal~~  
2 ~~management~~] services required to be performed by a registered  
3 appraisal management company and that has the authority to  
4 enter into agreements with [~~independent~~] appraisers for the  
5 performance of [~~real estate appraisal services~~] appraisals; or

6 (3) an individual who possesses, directly or  
7 indirectly, the power to direct or cause the direction of the  
8 management or policies of an appraisal management company;

9 [~~J. "real estate appraisal services" means the~~  
10 ~~practice of developing an opinion of the value of real property~~  
11 ~~in conformance with the uniform standards of professional~~  
12 ~~appraisal practice published by the appraisal foundation;~~] and

13 [~~K.~~] H. "uniform standards of professional  
14 appraisal practice" means the [uniform standards of  
15 professional appraisal practice promulgated by the appraisal  
16 foundation and adopted by rule pursuant to the Real Estate  
17 Appraisers Act] current standards of the appraisal profession  
18 developed for appraisers and users of appraisal services by the  
19 appraisal standards board of the appraisal foundation, a not-  
20 for-profit corporation to which reference is made in the  
21 federal Financial Institutions Reform, Recovery, and  
22 Enforcement Act of 1989."

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

25 "47-14-3. REGISTRATION REQUIRED.--

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

14           B. The registration required by Subsection A of  
15 this section shall include:

- 16                   (1) the name of the entity seeking  
17 registration;
- 18                   (2) the business address of the entity seeking  
19 registration;
- 20                   (3) telephone contact information of the  
21 entity seeking registration;
- 22                   (4) if the entity seeking registration is not  
23 a corporation that is domiciled in this state, the name and  
24 contact information for the company's agent for service of  
25 process in this state;

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1 (5) the name, address and contact information  
2 for any individual or any corporation, partnership or other  
3 business entity that owns ten percent or more of the appraisal  
4 management company;

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

7 (7) a certification that the entity seeking  
8 registration has a system and process in place to verify that a  
9 person being added to the appraiser panel of the appraisal  
10 management company holds a license or certification in good  
11 standing in this state pursuant to the Real Estate Appraisers  
12 Act;

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

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

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

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1 (11) a bond or other equivalent means of  
2 security as required by the Appraisal Management Company  
3 Registration Act; ~~[and]~~

4 (12) a certification that the entity has a  
5 system in place to require that appraisals are conducted  
6 independently and free from inappropriate influence and  
7 coercion, as required by the appraisal independence standards  
8 established in Section 129E of the federal Truth in Lending Act  
9 (2010), including the requirements for payment of a reasonable  
10 and customary fee to appraisers when the appraisal management  
11 company is providing services for a consumer credit transaction  
12 secured by the principal dwelling of a consumer; and

13 [~~(12)~~] (13) any other information required by  
14 the board."

15 SECTION 3. Section 47-14-4 NMSA 1978 (being Laws 2009,  
16 Chapter 214, Section 4) is amended to read:

17 "47-14-4. EXEMPTIONS.--The Appraisal Management Company  
18 Registration Act is not applicable to:

19 A. a corporation, partnership, sole proprietorship,  
20 subsidiary, limited liability company or other business entity  
21 that employs persons on an employer and employee basis  
22 exclusively for the performance of real estate appraisal  
23 services in the normal course of its business and [~~the entity~~  
24 ~~is responsible for ensuring~~] that maintains a bond in an amount  
25 equal to the bond required for a registered appraisal

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1 management company to ensure that the real estate appraisal  
2 services being performed by its employees are being performed  
3 in accordance with uniform standards of professional appraisal  
4 practice. The bond shall be provided to the board on an annual  
5 basis with a form attesting to the compliance with this section  
6 and exemption from the Appraisal Management Company  
7 Registration Act;

8 ~~[B. an individual who in the normal course of the~~  
9 ~~individual's business enters into an agreement, whether written~~  
10 ~~or otherwise, with another independent contractor appraiser for~~  
11 ~~the performance of real estate appraisal services that the~~  
12 ~~hiring or contracting appraiser cannot complete for any reason,~~  
13 ~~including competency, work load, schedule or geographic~~  
14 ~~location; or~~

15 G.] B. an individual, corporation, partnership,  
16 sole proprietorship, subsidiary, limited liability company or  
17 other business entity that in the normal course of business  
18 enters into an agreement, whether written or otherwise, with an  
19 independent contractor appraiser for the performance of real  
20 estate appraisal services and upon the completion of the  
21 appraisal, the report of the appraiser performing the real  
22 estate appraisal services is co-signed by the appraiser who  
23 ~~[subcontracted]~~ entered into the agreement with the independent  
24 appraiser for the performance of the real estate appraisal  
25 services; or

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1                    C. an appraisal management company that is owned  
2                    and controlled by a federally regulated lender."

3                    SECTION 4. Section 47-14-12 NMSA 1978 (being Laws 2009,  
4 Chapter 214, Section 12, as amended) is amended to read:

5                    "47-14-12. EMPLOYEE REQUIREMENTS.--

6                    A. ~~[Any]~~ An employee of ~~[the]~~ an appraisal  
7 management company or ~~[any]~~ a person working on behalf of ~~[the]~~  
8 an appraisal management company ~~[that has the responsibility of~~  
9 ~~selecting independent appraisers for the performance of real~~  
10 ~~estate appraisal services for the appraisal management company~~  
11 ~~or]~~ who has the responsibility of reviewing completed  
12 appraisals shall have geographic and product competence and be  
13 appropriately trained and qualified in the performance of real  
14 estate appraisals as determined by the board by rule.

15                    B. ~~[Any]~~ An employee of the appraisal management  
16 company ~~[that]~~ who has the responsibility to ~~[review]~~ conduct  
17 appraisal reviews of the work of independent appraisers shall  
18 have demonstrated knowledge of the uniform standards of  
19 professional appraisal practice, as determined by the board by  
20 rule."

21                    SECTION 5. Section 47-14-17 NMSA 1978 (being Laws 2009,  
22 Chapter 214, Section 17) is amended to read:

23                    "47-14-17. APPRAISER INDEPENDENCE--PROHIBITIONS.--

24                    A. It is unlawful for any employee, director,  
25 officer or agent of an appraisal management company registered

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1 pursuant to the Appraisal Management Company Registration Act  
2 to influence or attempt to influence the development, reporting  
3 or review of an appraisal through coercion, extortion,  
4 collusion, [~~compensation, instruction~~] inducement,  
5 intimidation, bribery or in any other manner, including:

6 (1) withholding or threatening to withhold  
7 timely payment for an appraisal, unless that appraisal is found  
8 to be substandard or not complying with the conditions of  
9 engagement;

10 (2) withholding or threatening to withhold  
11 future business for an independent appraiser or demoting or  
12 terminating, or threatening to demote or terminate, an  
13 independent appraiser;

14 (3) expressly or [~~impliedly~~] implicitly  
15 promising future business, promotions or increased compensation  
16 for an independent appraiser;

17 (4) conditioning the request for an appraisal  
18 service or the payment of an appraisal fee or salary or bonus  
19 on the opinion, conclusion or valuation to be reached or on a  
20 preliminary estimate or opinion requested from an independent  
21 appraiser;

22 (5) requesting that an independent appraiser  
23 provide an estimated, predetermined or desired valuation in an  
24 appraisal report or provide estimated values of comparable  
25 sales at any time prior to the independent appraiser's

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1 completion of an appraisal service;

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

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

10 (8) allowing the removal of an independent  
11 appraiser from an appraiser panel, without prior written notice  
12 to such appraiser;

13 ~~[(9) obtaining, using or paying for a second~~  
14 ~~or subsequent appraisal or ordering an automated valuation~~  
15 ~~model in connection with a mortgage financing transaction~~  
16 ~~unless there is a reasonable basis to believe that the initial~~  
17 ~~appraisal was flawed or tainted and such basis is clearly and~~  
18 ~~appropriately noted in the loan file, or unless such appraisal~~  
19 ~~or automated valuation model is done pursuant to a bona fide~~  
20 ~~pre- or post-funding appraisal review or quality control~~  
21 ~~process;] or~~

22 [~~(10)~~] (9) engaging in any other act or  
23 practice that impairs or attempts to impair an appraiser's  
24 independence, objectivity or impartiality.

25 B. Nothing in Subsection A of this section shall be

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1 construed as prohibiting the appraisal management company from  
2 requesting that an independent appraiser:

3 (1) provide additional information about the  
4 basis for a valuation; or

5 (2) correct objective factual errors in an  
6 appraisal report."

7 SECTION 6. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2011.

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