
Commerce & Labor Committee

HB 3040

Brief Description: Regarding the licensing of appraisal management companies.

Sponsors: Representatives Conway, Wood, Appleton, Rolfes, Sells, Sullivan and Finn.

Brief Summary of Bill

- Establishes a licensing requirement for businesses engaged in appraisal management services, which includes bonding requirements and restrictions on owners, controlling persons, and employees of appraisal management companies.
- Directs the Department of Licensing to administer the provisions.
- Provides requirements for appraiser fees and disclosures, and adjudication of disputes between appraisal management companies and appraisers.

Hearing Date: 1/27/10

Staff: Alison Hellberg (786-7152).

Background:

An appraisal management company (AMC) is a business entity that administers a network of appraisers to complete real estate appraisal assignments on behalf of other entities. An AMC's functions include recruiting appraisers, negotiating fees, and administering appraisal orders.

The Home Valuation Code of Conduct (Code) became effective on May 1, 2009, and stems from a settlement agreement between Freddie Mac, the Federal Housing Finance Agency, and the New York State Attorney General with the goal of enhancing the independence and accuracy of the appraisal process. Among other provisions, the Code establishes appraiser independence safeguards, and requirements for lenders related to improper influences on appraisers.

Real estate appraisers evaluate the value of real property. The Department of Licensing (Department) certifies and licenses real estate appraisers. The standards of practice for Washington licensed or certified real estate appraisers is the Uniform Standards of Professional

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Appraisal Practice (USPAP). The USPAP is published by the Appraisal Standards Board of the Appraisal Foundation, which is a non-profit organization that establishes standards related to appraisals and appraisers.

The Department regulates many businesses and professions under specific licensing laws. Each business and profession is under either the disciplinary authority of the Director of the Department, or a board or commission charged with regulating that particular profession. The Uniform Regulation of Business and Professions Act (URBPA) provides consolidated disciplinary procedures for these licensed businesses and professions.

Summary of Bill:

Licensing.

A person in business as an AMC or engaging in appraisal management services must obtain a license from the Department. The Department is given authority to adopt rules, set fees, carry out these provisions, and investigate violations. A person or entity acting as an AMC without being licensed is guilty of a misdemeanor.

An "AMC" is defined as an entity that 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, or vendor management company, or any other term.

"Appraisal management services" means to perform any of the following functions on behalf of a lender, financial institution, mortgage broker, loan originator, or any other person:

- administer an appraiser panel;
- recruit, qualify, verify licensing or certification, and negotiate fees and service level expectations with persons who are part of an appraiser panel;
- receive an order for an appraisal from one person, or entity, and deliver the order for the appraisal to an appraiser for completion;
- track and determine the status of appraisal orders;
- conduct quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal; and
- provide a completed appraisal to one or more persons that have ordered an appraisal.

An "appraiser panel" is defined as a network of licensed or certified appraisers who are independent contractors of an AMC that have been approved by the AMC, to perform appraisals for persons that have ordered appraisals through the AMC.

An application for licensing must include certain information about the entity, controlling persons, and the company's agent for service of process in Washington, and certification that the entity:

- has a system and process in place to verify that members of the appraiser panel are properly licensed or certified;
- has a system in place to review the work of all appraisers performing real estate appraisal services for the AMC to ensure that the real estate appraisal services are being conducted in accordance with the USPAP;

- maintains a detailed record of each service request that it receives and the appraiser that performs the real estate appraisal services; and
- maintains a complete copy of the appraisal report performed as a part of any request.

Applicants must also maintain a surety bond with Washington as obligee. The surety bond is based on the annual dollar amount of loans originated, but a minimum of \$30,000. The amount of the bond must be consistent with the bonds required for consumer loan licenses under rules established by the Department of Financial Institutions.

The Department must assign each licensed AMC a unique license number. The AMC must include this number on any engagement document issued as well as on any advertising. An AMC must also maintain detailed records of each service request that it receives and appraisals performed. It must maintain a complete copy of the completed appraisal report for a minimum period of five years, seven years if the property or the appraisal becomes involved in any litigation. The appraisals must be provided to the Department upon demand.

Owners.

A person that owns more than 10 percent of an AMC must be of good moral character and submit to a background investigation. An AMC may not be more than 10 percent owned by a person who has had an appraiser's license or certificate denied, canceled, or revoked; or an entity that is more than 10 percent owned by a person who has had an appraiser's license or certificate denied, canceled, or revoked.

Controlling persons.

An AMC is required to designate one controlling person to be the main contact for all communication with the Department and the AMC. A controlling person must be of good moral character and submit to a background investigation. A controlling person must be a licensed or certified appraiser and never have been subject to a disciplinary action or any license or certificate denial or revocation.

Employees.

Anyone working for or on behalf of an AMC, that has any involvement in the ordering of appraisal services, actual performance of appraisal services, or review and analysis of completed appraisals, must be a licensed or certified appraiser in the state where the property is located, and must have geographic and product competence according to the USPAP. Employees completing appraisal reviews must have a minimum of five years' appraisal experience.

An AMC may not employ any person who:

- has ever been subject to a disciplinary action or any license or certificate denial or revocation;
- has been subject to disciplinary action by certain federal agencies dealing with mortgage lending;
- is under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant's integrity, competence or fitness to meet the responsibilities of an approved mortgagee;

- is subject to unresolved findings contained in a federal Department of Housing and Urban Development or other governmental audit, investigation, or review;
- is engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;
- has been convicted of, or who has pled guilty or nolo contendere to, a felony related to participation in the real estate or mortgage loan industry:
 - during the seven-year period preceding the date of the application for licensing and registration; or
 - at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;
- is in violation of federal and state provisions regulating mortgage brokers; or
- is in violation of any other requirement as established by the Department.

Exemptions.

The provisions regulating an AMC do not apply to:

- an employer that exclusively employs persons for the performance of appraisals, and the employer is responsible for ensuring that the appraisals are performed by employees in accordance with the USPAP;
- a unit within a financial institution, regulated by the state or federal government, that receives a request for the performance of an appraisal from one employee of the financial institution, and another employee of the same financial institution assigns the request for the appraisal to an appraiser that is part of an appraiser panel;
- an appraiser that enters into an agreement with another appraiser for the performance of an appraisal, and upon completion of the appraisal, the report of the appraiser performing the appraisal is signed by both the appraiser who completed the appraisal and the appraiser who requested the completion of the appraisal; and
- a relocation management company.

Appraiser Fees and Disclosures.

An AMC must disclose to the Department any appraiser fee schedule that it uses. Appraisal fees must be set by open bid process, and be based upon the complexity of the appraisal performed. An appraisal fee may not be paid by an AMC based on the appraised value of a property, a range of value of a property, a predetermined value estimate, or the amount of the transaction value. An AMC requesting a bid from an appraiser must request that the appraiser provide the amount of the fee, and the estimated time in which the appraisal will be completed. The AMC may not set predetermined limits on fees or delivery timelines in the appraisal order request. If, prior to completing the appraisal report, issues arise that add to the complexity, the appraiser may request a modification to the original fee. The fee retained by the AMC may not exceed 25 percent of the amount paid to the appraiser.

All loan settlement documents that itemize borrower costs must clearly indicate the fee paid to the appraiser and separately indicate the fee paid to the AMC. Appraisers may not be prohibited by the lender, AMC, or other third party, from recording or publishing the fee the appraiser was paid or discussing the fee with the homeowner, borrower, or other parties to the transaction. Appraisers must also indicate in the appraisal report, the name of the AMC and the name of the intended user of the report, including a lender. Appraisers may not be prohibited from naming the AMC as the client.

An AMC may not include a hold harmless provision in the contract with a client or require the appraiser to indemnify the AMC against liability. The AMC and the appraiser are jointly and severally liable to the client.

Adjudication of Disputes Between and AMC and an Appraiser.

An AMC may not remove an appraiser from an appraiser panel, unless it is within the first 30 days of the appraiser's inclusion on the panel, without following certain procedures. The AMC must notify the appraiser in writing why the appraiser is being removed. An appraiser must have an opportunity to respond to the notification. If the appraiser is removed for alleged illegal conduct or a violation of the USPAP, or a violation of state licensing provisions, the appraiser may file a complaint with the Department for a review of the decision. The Department may investigate the complaint.

If after opportunity for hearing and review, the Department determines that an appraiser did not commit a violation of law of the USPAP, the Department must order that an appraiser be restored to the appraiser panel without prejudice. Following the adjudication of a complaint, an AMC may not refuse to make assignments to an appraiser, reduce the number of assignments, or otherwise penalize the appraiser, if the Department found that the AMC acted improperly in removing the appraiser.

The Department may not make any determination regarding the nature of the business relationship between the appraiser and the AMC.

Disciplinary actions.

In addition to unprofessional conduct described in the URBPA, the Department may take disciplinary action against an AMC for the following conduct, acts, or conditions:

- failing to meet the minimum licensing qualifications;
- paying money other than the fees to any employee of the Department to procure state licensure;
- failing to pay appraisers no later than 30 days after the loan closing documents or 45 days after completion of the appraisal service, whichever comes first, unless otherwise agreed, or unless the appraiser has been notified in writing that a bona fide dispute exists regarding the performance or quality of the appraisal service;
- failing to pay appraisers even if AMC is not paid by its client;
- coercing, extorting, colluding, compensating, instructing, inducing, intimidating, or bribing an appraiser;
- altering a completed appraisal report submitted by an appraiser;
- copying and using the appraiser's signature for any purpose or in any other report;
- extracting, copying, or using only a portion of the appraisal report without reference to the entire report;
- prohibiting or attempting to prohibit the inclusion of the signature on an appraisal report of a state-registered appraisal trainee if the report is also signed by the supervisory appraiser;
- prohibiting the appraiser from referencing the appraisal fee, the AMC fee, the AMC name or identity, or the client's or lender's name or identity in the appraisal report;
- failing to disclose to the appraiser the total fee or compensation paid to the AMC;
- accepting an appraisal from an appraiser who does not have either the geographic competence or necessary expertise to complete the appraisal;

- requiring an appraiser to prepare an appraisal report under such a limited time frame that the appraiser believes does not afford the appraiser the ability to meet all relevant legal and professional obligations or provide a credible opinion of value for the property being appraised;
- requiring, or attempting to require, an appraiser to modify an appraisal report except as permitted in situations where an AMC requests that an appraiser provide more information or correct objective factual errors;
- prohibiting or inhibiting communication between the appraiser and the lender, a real estate licensee, a property owner, or any other party from whom the appraiser believes information would be relevant in completing the appraisal;
- requiring the appraiser to do anything that violates or does not comply with the USPAP or with any allowable conditions or certifications required by the client;
- prohibiting the transfer of an appraisal from one lender to another lender if the lenders are allowed to transfer an appraisal under applicable federal law;
- failing to regularly cycle through on a rotating basis the appraisers who are on the approved appraiser panel of the appraisal management company; or
- violating any other provisions regulating an AMC.

Appropriation: None.

Fiscal Note: Requested on January 20, 2010.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.