

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1730

By: Representative Vaught

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE PROFESSION OF APPRAISER; TO AMEND THE APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE PROFESSION OF APPRAISER; TO AMEND THE APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 17-14-103(22)-(24), concerning definitions pertaining to appraisers, are amended to read as follows:

(22) “State-certified general appraiser” means any individual who has satisfied the requirements for state certification in the State of Arkansas and who is qualified to perform appraisals of all real property types of any monetary size and complexity;

(23) “State-certified residential appraiser” means any individual who has satisfied the requirements for state certification in the State of Arkansas and who is qualified to perform appraisals of all property types up to a monetary size and complexity as prescribed by the ~~Appraisal Subcommittee~~ Appraiser Qualifications Board and the federal financial institutions regulatory agencies;

(24) “State-licensed appraiser” means any individual who has satisfied the requirements for state licensing in the State of Arkansas and who is



qualified to perform appraisals of all property types up to a monetary size and complexity as prescribed by the ~~Appraisal Subcommittee~~ Appraiser Qualifications Board, and the federal financial institutions regulatory agencies;

SECTION 2. Arkansas Code § 17-14-201(b), concerning the membership of the Arkansas Appraiser Licensing and Certification Board, is amended to read as follows:

(b)(1)(A) The Governor shall appoint the members of the board subject to confirmation by the Senate and may remove a member for cause.

(B) The Governor may, at his or her discretion, request additional names to be submitted from organizations mentioned in this subchapter eligible to fill appointments to the board.

(2)(A) The Governor may appoint two (2) appraiser board members from the state at large after consulting the:

(i) State chapters of ~~national~~ nationally recognized real estate appraisal organizations that are members of the Appraisal Foundation or its successor require an individual to have qualified appraisal experience, education, and testing to become a designated member and to adhere to standards of professional practice to maintain the designation; and

(ii) Association of Consulting Foresters of America, Inc., Arkansas Chapter.

(B) At least five (5) real estate appraiser members appointed to the board shall be members in good standing of ~~one (1) of the Appraisal Foundation member organizations~~ a state chapter of a nationally recognized real estate appraisal organization that requires an individual to have qualified appraisal experience, education, and testing to become a designated member and to adhere to standards of professional practice to maintain the designation, or the Association of Consulting Foresters of America, Inc., Arkansas Chapter requiring qualified appraisal experience, education, and testing in order to become a designated member, in addition to adherence to standards of professional practice in order to retain such a designation.

(C) ~~No practicing appraisers~~ A practicing licensed or certified appraiser shall not be denied the opportunity to submit ~~their names~~ his or her name for consideration to fill ~~either of the two (2) at large~~

~~appointments~~ an appointment to ~~this~~ the board based solely upon membership or lack of membership in ~~any~~ a particular appraisal organization.

(3) The Arkansas Bankers Association, the Arkansas Community Bankers Association, the Mortgage Bankers Association of Arkansas, Inc., and the Cornerstone Credit Union League each shall annually submit a list of two (2) names on or before January 15, if a vacancy exists on the board, of each calendar year to the Governor, and the financial member may be appointed from the lists of names provided.

SECTION 3. Arkansas Code § 17-14-203(12)(A), concerning powers and duties of the Arkansas Appraiser Licensing and Certification Board, is amended to read as follows:

(12)(A)(i) Obtain a state criminal background check performed by the Identification Bureau of the Department of Arkansas State Police and a national fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulations for all applicants for a real property appraiser registration, license, or certification to determine if the applicant possesses a background that does not call into question public trust or the applicant's fitness for registration, licensure, or certification.

(ii) Subdivision (12)(A)(i) of this section applies to an application for a state registered appraiser credential, an application to upgrade an existing appraiser credential, an application to reinstate an appraiser credential that has been inactive for more than twelve (12) months, and an application for a new reciprocal appraiser credential.

(iii) Subdivision (12)(A)(i) of this section does not apply to an application for a temporary practice permit.

SECTION 4. Arkansas Code § 17-14-402 is amended to read as follows:
17-14-402. Definitions.

As used in this subchapter:

~~(1) "Appraisal management company" means a person that performs the actions necessary to administer a network of state licensed appraisers to fulfill requests for appraisal management services on behalf of a client, including without limitation:~~

~~(A) Recruiting appraisers;~~

~~(B) Contracting with appraisers to perform appraisal services;~~

~~(C) Negotiating fees with appraisers;~~

~~(D) Receiving appraisal orders and appraisal reports;~~

~~(E) Submitting appraisal reports received from appraisers to the company's clients; and~~

~~(F) Providing related administrative and clerical duties;~~

~~(2) "Appraisal management services" means the conduct of business by telephone, by electronic means, by mail, or in person directly or indirectly for compensation or other pecuniary gain or in the expectation of compensation or other pecuniary gain to:~~

~~(A) Solicit, accept, or offer to accept a request for appraisal services; or~~

~~(B) Employ or contract with a licensed or certified appraiser to perform appraisal services;~~

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company;

(2)(A) "Appraisal management company" means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as securitizations; and

(iii) Within a given twelve (12) month period, oversees an appraiser panel of more than fifteen (15) state-certified or state-licensed appraisers in a state or twenty five (25) or more state-certified or state-licensed appraisers in two (2) or more states.

(B) An appraisal management company does not include a department or division of an entity that provides appraisal management services only to that entity;

(3) "Appraisal Management Company National Registry" means the registry of state-registered appraisal management companies and federally regulated appraisal management companies maintained by the Appraisal Subcommittee;

(4) "Appraisal management services" means one (1) or more of the following activities:

(A) Recruiting, selecting, and retaining appraisers;

(B) Contracting with state-certified or state-licensed appraisers to perform appraisal assignments;

(C) Managing the process of having an appraisal performed, including without limitation providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(D) Reviewing and verifying the work of appraisers;

~~(3)~~(5) “Appraisal services” means the practice of developing an opinion of the value of real property in conformance with the minimum reporting standards under § 17-14-202(b);

(6) “Appraisal Subcommittee” means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council;

~~(4)~~(7) “Appraiser” means an individual licensed under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., who for a fee or other consideration develops and communicates a real estate appraisal or otherwise gives an opinion of the value of real estate or any interest in real estate;

~~(5)~~(8) “Appraiser panel” means a group ~~of independent appraisers that have been selected by an appraisal management company pool,~~ network, list, or roster of licensed or certified appraisers approved to perform appraisal services as independent contractors for the appraisal management company;

(9) “Board” means the Arkansas Appraiser Licensing and Certification Board established under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq;

~~(6)~~(10) “Client” means a person that contracts with or otherwise enters into an agreement with an appraisal management company for the performance of appraisal services;

~~(7)~~(11) “Controlling person” or “managing principal” means an ~~individual employed, appointed, or authorized by an appraisal management company to contract with clients or independent appraisers for the performance of appraisal services;~~

(A) Owner, officer, or director of an appraisal management

company;

(B) Individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and the authority to enter into agreements with appraisers for the performance of appraisals; or

(C) Individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company;

(12) "Covered transaction" means any consumer credit transaction secured by the principal dwelling of the consumer;

(13) "Creditor" means a person that regularly extends consumer credit:

(A) That is subject to a finance charge or is payable by written agreement in more than four (4) installments, not including a down payment, and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract; or

(B)(i) If the person extended credit more than five (5) times for a transaction secured by a dwelling in the preceding calendar year.

(ii) If a person meets the numerical standards under subdivision (13)(B)(i) of this section in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(iii) A person regularly extends consumer credit if, in any twelve-month period, the person originates more than one (1) credit extension that is subject to the requirements of 12 CFR 1026.32 or one (1) or more credit extensions through a mortgage broker;

(14)(A) "Dwelling" means a residential structure that contains one (1) to four (4) units, whether or not that structure is attached to real property.

(B) A dwelling includes an individual condominium unit, cooperative unit, mobile home, and trailer if it is used as a residence.

(C)(i) A consumer can have only one (1) principal dwelling at a time.

(ii) A vacation home or other second home is not a principal dwelling.

(iii) However, if a consumer buys or builds a new dwelling that will become the principal dwelling of the consumer within a year or upon the completion of construction, the new dwelling is considered the principal dwelling under this section;

(15) “Federally regulated appraisal management company” means an appraisal management company that is owned and controlled by an insured depository institution as defined under 12 U.S.C. 1813, and regulated by the United States Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation;

(16) “Federally related transaction regulations” means regulations established by the United States Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, under §§ 1112, 1113, and 1114 of Title XI, 12 U.S.C. 3341-3343;

~~(8)(17)~~ “Person” means an individual, a partnership, a limited liability company, a limited partnership, a corporation, an association, or other organization a natural person or an organization, including without limitation a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit; and

~~(9)(18)~~ “Registrant” means an appraisal management company or person that is registered under this subchapter-;

(19)(A) “Secondary mortgage market participant” means a guarantor or insurer of mortgage-backed securities or an underwriter or issuer of mortgage-backed securities.

(B) Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security;

(20) “States” means the fifty (50) states, the District of Columbia, and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands; and

(21) “Uniform Standards of Professional Appraisal Practice” means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

SECTION 5. Arkansas Code § 17-14-405 is amended to read as follows:
17-14-405. Requirements for registration.

(a)(1) Before acting or offering to act as an appraisal management company in this state, a person shall make written application on the forms provided on the official website of the Arkansas Appraiser Licensing and Certification Board to the ~~Arkansas Appraiser Licensing and Certification Board~~ board for registration accompanied by the fee and bond established by the board.

(2) The same requirements for registration shall apply to the initial application and each subsequent application for renewal.

(b) The initial application or application for renewal shall include without limitation the following information:

(1) The name, business address, and telephone contact information of the person seeking registration;

(2)(A) If the applicant is a domestic organization, the information required by § 4-20-105(a) to designate an agent for service of process; or

(B)(i) If the applicant is a foreign organization, documentation that the foreign organization is authorized to transact business in this state and has appointed an agent for service of process by submitting a copy of:

(a) The company's filing with the Secretary of State appointing an agent for service of process under § 4-20-112; and

(b) A certificate of authority issued by the Secretary of State.

(ii) A foreign organization's failure to comply with subdivision (b)(2)(B)(i) of this section may result in the rejection of the application;

(3)(A) The name, address, and contact information of any person that owns ten percent (10%) or more of the appraisal management company~~+~~.

(B) Any person owning more than ten percent (10%) of an appraisal management company in this state shall:

(i) Be of good moral character, as determined by the board; and

(ii) Submit to a state criminal background check and a national fingerprint-based criminal background check performed by the

Federal Bureau of Investigation in compliance with federal law and regulations;

(4) The name, mailing address, and contact information of a controlling person or a managing principal;

(5)(A) An appraisal management company is not eligible to be registered in this state if the appraisal management company, in whole or in part, directly or indirectly, is owned by a person who has had an appraiser license or certification refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any state for a substantive cause as determined by the board.

(B) An appraisal management company is not barred by subdivision (b)(5)(A) of this section if the license or certification of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the state or states in which the appraiser was licensed or certified;

~~(5)~~(6) A certification that the person:

(A) 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 in good standing in this state under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.;

(B) Has a system in place to review the work of all independent appraisers that are performing appraisal services for the appraisal management company on a periodic basis to ensure that the appraisal services are being conducted in accordance with the minimum reporting standards under § 17-14-202(b); and

(C) Maintains a detailed record of each request for appraisal services that it receives and the independent appraiser that performs the appraisal services for the appraisal management company; ~~and~~

(7) Requires appraisers completing appraisals at its request to comply with the Uniform Standards of Professional Appraisal Practice;

(8) Has a system in place to verify that only licensed or certified appraisers are used for federally related transactions; and

~~(6)~~(9) Any other information required by the board.

(c) The board shall issue ~~a~~ an initial or a renewal certificate of

registration to an applicant authorizing the applicant to act or offer to act as an appraisal management company in this state upon:

- (1) Receipt of a properly completed application;
- (2) Payment of the required fee;
- (3) Posting of a bond; and

(4)(A) Determination by the board that the activities of the applicant will be directed and conducted by persons of good moral character.

(B) The determination of the board under subdivision (c)(4)(A) of this section shall consider the results of all fingerprint-based criminal history reports.

(d)(1) If the board finds that there is substantial reason to deny the application for registration, the board shall notify the applicant that the application has been denied and shall afford the applicant an opportunity for a hearing before the board to show cause why the application should not be denied.

(2) All proceedings concerning the denial of a certificate of registration shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) The acceptance by the board of an application for registration does not constitute the approval of its contents or waive the authority of the board to take disciplinary action under this subchapter.

SECTION 6. Arkansas Code § 17-14-406 is amended to read as follows:
17-14-406. Fees and renewals.

(a)(1) The Arkansas Appraiser Licensing and Certification Board shall establish by rule ~~a filing an application fee for an initial application or an application for renewal~~ not to exceed ~~five hundred dollars (\$500)~~ one thousand five hundred dollars (\$1,500) to be paid by each appraisal management company seeking registration under this subchapter.

(2) The board shall establish by rule and criminal background check a fee not to exceed fifty dollars (\$50.00) to be paid by the appraisal management company for each person owning more than ten percent (10%) of the appraisal management company.

(b)(1) ~~In addition to the filing fee, each~~ Each applicant for registration shall post with the board and maintain a surety bond in the amount of twenty thousand dollars (\$20,000).

(2) The bond shall:

(A) Be in the form prescribed by rule of the board; and

(B) Accrue to the state for the benefit of a claimant

against the registrant to secure the faithful performance of the registrant's obligations under this subchapter.

(3) The aggregate liability of the surety shall not exceed the principal sum of the bond.

(4) A party having a claim against the registrant may bring suit directly on the surety bond, or the board may bring suit on behalf of the party having a claim against the registrant.

(5) Consumer claims are given priority in recovering from the bond.

(6) A deposit of cash or security may be accepted in lieu of the surety bond.

(7) A claim reducing the face amount of the bond shall be annually restored upon renewal of the registrant's registration.

(c)(1)(A) Registrations issued under this subchapter shall be renewed annually beginning twelve (12) months from the date of issuance.

(B) The board may review and renew or refuse renewal of an appraisal management company's renewal application.

(2)(A) Failure to timely renew a registration shall result in a loss of authority to operate under this subchapter.

(B) A request to reinstate a certificate of registration shall be accompanied by payment of the renewal fee and a penalty late fee of fifty dollars (\$50.00) per month for each month or partial month of delinquency.

(d)(1) The board shall collect from each appraisal management company registered under this chapter the Appraisal Management Company National Registry fee required by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(2) The amount and method of calculation of the Appraisal Management Company National Registry fee shall be established by rule of the board.

(e) Notwithstanding § 17-14-412, the board may collect from each federally regulated appraisal management company:

(1) The Appraisal Management Company National Registry fee

required by the subcommittee;

(2) Information regarding the determination of the Appraisal Management Company National Registry fee as required by the subcommittee;

(3) Any other information required by state or federal law.

(f) The Appraisal Management Company National Registry fees collected under this section shall be sent to the Appraisal Subcommittee regularly as required by federal law.

SECTION 7. Arkansas Code § 17-14-408(b), concerning prohibited activities, is amended to add additional subdivisions to read as follows:

(9) An appraisal management company shall not require an:

(A) Employee of the appraisal management company who is an appraiser to sign an appraisal that is completed by another appraiser who contracts with the appraisal management company in order to avoid the requirements of this subchapter;

(B) Appraiser on the appraisal management company's appraiser panel to pay or reimburse the appraisal management company for the Appraisal Management Company National Registry fee.

SECTION 8. Arkansas Code § 17-14-409, concerning registry of applicants and roster, is amended to add an additional subsection to read as follows:

(c)(1) The Arkansas Appraiser Licensing and Certification Board shall submit to the Appraisal Subcommittee all information required to be submitted by subcommittee regulations or guidance concerning appraisal management companies that operate in this state.

(2) Information under subdivision (c)(1) of this section shall include without limitation a roster of registered appraisal management companies, reports of investigations, and disciplinary actions involving appraisal management companies.

SECTION 9. Arkansas Code § 17-14-410(a)(6), concerning disciplinary authority, enforcement, and hearings, is amended to read as follows:

(6) The person acted as an appraisal management company while not properly ~~licensed~~ registered by the board; or

SECTION 10. Arkansas Code § 17-14-412 is amended to read as follows:
17-14-412. Applicability.

This subchapter does not apply to:

- (1) An agency of the federal, state, county, or municipal government;
- (2) A person authorized to engage in business as a bank, farm credit system, savings institution, or credit union under the laws of the United States, the State of Arkansas, or any other state;
- (3) A licensed real estate broker or licensed real estate agent performing activities regulated by the Arkansas Real Estate Commission unless the licensed real estate broker or licensed real estate agent receives compensation or other pecuniary gain in connection with the referral, placement, or execution of a request for appraisal services; ~~or~~
- (4) An officer or employee of a government agency, person, licensed real estate broker, or licensed real estate agent described in this section when acting within the scope of employment of the officer or employee;
- (5) A federally regulated appraisal management company;
- (6) A person who exclusively employs appraisers on an employer and employee basis for the performance of appraisals;
- (7) A person acting as an appraisal firm that at all times during a calendar year employs on an exclusive basis as independent contractors not more than fifteen (15) appraisers for the performance of appraisals;
- (8) A person who enters into an agreement with an appraiser for the performance of an appraisal that on completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal; or
- (9) An appraisal management company operating:
 - (A) Only in this state with an appraiser panel of not more than fifteen (15) appraisers at all times during a calendar year; or
 - (B) In multiple states, including this state, with an appraiser panel of not more than twenty-four (24) appraisers in all states at all times during a calendar year.

SECTION 11. Arkansas Code Title 17, Chapter 14, Subchapter 4, is

amended to add additional sections to read as follows:

17-14-413. Compensation of Appraisers.

(a) An appraisal management company shall:

(1) Except in cases of breach of contract or substandard performance of services, pay an appraiser for the completion of an appraisal or valuation assignment not later than the sixtieth day after the date the appraiser provides the initial appraisal or valuation assignment to the appraisal management company; and

(2) Compensate appraisers at a rate that is reasonable and customary for appraisals being performed in the market area of the property being appraised consistent with the presumptions under federal law.

(b) An appraiser who is aggrieved under this section may file a complaint with the Arkansas Appraiser Licensing and Certification Board against the appraisal management company.

17-14-414. Appraisal Review

Any employee of an appraisal management company or an independent contractor of the appraisal management company who performs a Uniform Standards of Professional Appraisal Practice Standard 3 appraisal review of an appraisal report on a property located in this state shall be an appraiser with the proper level of appraiser credential issued by the Arkansas Appraiser Licensing and Certification Board.

SECTION 12. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Appraiser Licensing and Certification Board is unable to comply with Appraisal Subcommittee policy statement requirements concerning the issuance of out-of-state appraiser temporary practice permits; that timely issuance of these permits is of great importance; and that this act is immediately necessary because the delay in issuing these credentials causes undue stress on both Arkansas taxpayers seeking real estate appraisals and appraisers. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor,

the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.