

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 410
Final Reading

Introduced by Utter, 33.

Read first time January 13, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to appraisers; to amend section 76-2223, Revised
2 Statutes Cumulative Supplement, 2010; to adopt the
3 Nebraska Appraisal Management Company Registration Act;
4 to provide a duty for the Real Property Appraiser Board;
5 to adopt updated federal law relating to fees; to provide
6 an operative date; and to repeal the original section.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 20 of this act shall be known
2 and may be cited as the Nebraska Appraisal Management Company
3 Registration Act.

4 Sec. 2. For purposes of the Nebraska Appraisal Management
5 Company Registration Act:

6 (1) Appraisal has the same meaning as in section 76-2204;

7 (2) Appraisal Foundation has the same meaning as in
8 section 76-2205;

9 (3) Appraisal management company means, in connection
10 with valuing real property collateralizing mortgage loans, mortgages,
11 or trust deeds incorporated into a securitization, any external third
12 party that oversees a network or panel of more than fifteen certified
13 or licensed appraisers in this state or twenty-five or more certified
14 or licensed appraisers nationally within a given year and that is
15 authorized, either by a creditor of a consumer credit transaction
16 secured by a consumer's principal dwelling or by an underwriter of or
17 other principal in the secondary mortgage markets:

18 (a) To recruit, select, and retain appraisers;

19 (b) To contract with certified or licensed appraisers to
20 perform real property appraisal activity;

21 (c) To manage the process of having an appraisal
22 performed, including providing administrative duties such as
23 receiving appraisal orders and appraisal reports, submitting
24 completed appraisal reports to creditors and underwriters, collecting
25 fees from creditors and underwriters for appraisal services provided,

- 1 and reimbursing appraisers for appraisal services performed; or
2 (d) To review and verify the work of appraisers;
3 (4) Appraisal practice has the same meaning as in section
4 76-2205.01;
5 (5) Appraisal report has the same meaning as in section
6 76-2206;
7 (6) Appraisal review means the act or process of
8 developing and communicating an opinion about the quality of another
9 appraiser's work that was performed as part of a real property
10 appraisal activity, except that a quality control examination of an
11 appraisal report shall not be an appraisal review;
12 (7) Appraisal services means residential valuation
13 assignments performed by an individual acting as an appraiser,
14 including, but not limited to, appraisal, appraisal review, or
15 consulting services;
16 (8) Appraiser means an individual who holds a license or
17 certification as an appraiser and is expected to perform valuation
18 assignments competently and in a manner that is independent,
19 impartial, and objective;
20 (9) Appraiser panel means a group of licensed or
21 certified independent appraisers that have been selected to perform
22 appraisal services for a third party;
23 (10) Board means the Real Property Appraiser Board;
24 (11) Consulting service has the same meaning as in
25 section 76-2211.01;

1 (12) Controlling person means:

2 (a) An officer or director of, or owner of greater than a
3 ten percent interest in, a corporation, partnership, or other
4 business entity seeking to act or acting as an appraisal management
5 company in this state;

6 (b) An individual employed, appointed, or authorized by
7 an appraisal management company that has the authority to enter into
8 a contractual relationship with other persons for the performance of
9 services requiring registration as an appraisal management company
10 and that has the authority to enter into agreements with appraisers
11 for the performance of appraisals; or

12 (c) An individual who possesses, directly or indirectly,
13 the power to direct or cause the direction of the management or
14 policies of an appraisal management company;

15 (13) Federal financial institution regulatory agency
16 means the Board of Governors of the Federal Reserve System, the
17 Federal Deposit Insurance Corporation, the Office of the Comptroller
18 of the Currency, the Office of Thrift Supervision, the National
19 Credit Union Administration, or the successor of any of such
20 agencies;

21 (14) Federally related transaction means any real estate-
22 related financial transaction which:

23 (a) A federal financial institution regulatory agency or
24 the Resolution Trust Corporation engages in, contracts for, or
25 regulates; and

1 (b) Requires the services of an appraiser;

2 (15) Owned and controlled means direct or indirect
3 ownership or control of more than twenty-five percent of the voting
4 shares of an appraisal management company;

5 (16) Person means an individual, firm, partnership,
6 limited partnership, limited liability company, association,
7 corporation, or other group engaged in joint business activities,
8 however organized;

9 (17) Quality control examination means an examination of
10 an appraisal report for compliance and completeness, including
11 grammatical, typographical, or other similar errors;

12 (18) Real estate has the same meaning as in section
13 76-2214;

14 (19) Real estate-related financial transaction means any
15 transaction involving:

16 (a) The sale, lease, purchase, investment in, or exchange
17 of real property, including interests in real property or the
18 financing thereof;

19 (b) The refinancing of real property or interests in real
20 property; or

21 (c) The use of real property or interests in real
22 property as security for a loan or investment, including mortgage-
23 backed securities;

24 (20) Real property has the same meaning as in section
25 76-2217;

1 (21) Real property appraisal activity has the same
2 meaning as in section 76-2215;

3 (22) Relocation management company means a business
4 entity in which the preponderance of its business services include
5 relocation of employees as an agent or contracted service provider to
6 the employer for the purposes of determining an anticipated sales
7 price for the residence of an employee being relocated by the
8 employer;

9 (23) Uniform Standards of Professional Appraisal Practice
10 has the same meaning as in section 76-2213.01; and

11 (24) Valuation assignment has the same meaning as in
12 section 76-2219.

13 Sec. 3. (1) It is unlawful for a person to directly or
14 indirectly engage in or attempt to engage in business as an appraisal
15 management company or to advertise or hold itself out as engaging in
16 or conducting business as an appraisal management company in this
17 state without first obtaining a registration issued by the board.

18 (2) An application for the registration required by
19 subsection (1) of this section shall include the following
20 information:

21 (a) The name of the person seeking registration and any
22 other name or names, if any, under which it will do business in this
23 state;

24 (b) The business address of the person seeking
25 registration;

1 (c) The telephone contact information of the person
2 seeking registration;

3 (d) If the person seeking registration is not a
4 corporation that is domiciled in this state, the name and contact
5 information for the person's agent for service of process in this
6 state;

7 (e) The name, address, and contact information for any
8 person that owns ten percent or more of the person seeking
9 registration;

10 (f) The name, address, and contact information for one
11 controlling person designated as the main contact for all
12 communication between the person seeking registration and the board;

13 (g) A certification that the person seeking registration
14 has a system and process in place to verify that an appraiser
15 selected to the appraiser panel of the person seeking registration
16 holds a license or certification in good standing in this state
17 pursuant to the Real Property Appraiser Act;

18 (h) A certification that the person seeking registration
19 requires appraisers completing appraisal services at the person's
20 request to comply with the Uniform Standards of Professional
21 Appraisal Practice, including the requirements for geographic and
22 product competence;

23 (i) A certification that the person seeking registration
24 has a system in place to verify that only licensed or certified
25 appraisers are used for federally related transactions;

1 (j) A certification that the person seeking registration
2 has a system in place to require that appraisals are conducted
3 independently and free from inappropriate influence and coercion as
4 required by the appraisal independence standards established under
5 section 129E of the federal Truth in Lending Act, as amended,
6 including the requirements for payment of a reasonable and customary
7 fee to appraisers when the appraisal management company is providing
8 appraisal services for a consumer credit transaction secured by the
9 principal dwelling of a consumer;

10 (k) A certification that the person seeking registration
11 maintains a detailed record of each request for appraisal services
12 that it receives and the appraiser that performs the residential real
13 estate appraisal services for the appraisal management company;

14 (l) If the person seeking registration is a nonresident,
15 an irrevocable consent for service of process, if required pursuant
16 to section 5 of this act; and

17 (m) Any other information required by the board which is
18 reasonably necessary to implement the Nebraska Appraisal Management
19 Company Registration Act.

20 (3) An applicant for registration as an appraisal
21 management company in this state shall submit to the board an
22 application on a form or forms prescribed by the board.

23 (4) An applicant for registration as an appraisal
24 management company in this state shall furnish to the board, at the
25 time of making application, a surety bond in the amount of twenty-

1 five thousand dollars. The surety bond required under this subsection
2 shall be issued by a bonding company or insurance company authorized
3 to do business in this state, and a copy of the bond shall be filed
4 with the board. The bond shall be in favor of the state for the
5 benefit of any person who is damaged by any violation of the Nebraska
6 Appraisal Management Company Registration Act. The bond shall also be
7 in favor of any person damaged by such a violation. Any person
8 claiming against the bond for a violation of the act may maintain an
9 action at law against the appraisal management company and against
10 the surety. The aggregate liability of the surety to all persons
11 damaged by a violation of the act by an appraisal management company
12 shall not exceed the amount of the bond. The bond shall be maintained
13 until one year after the date that the appraisal management company
14 ceases operation in this state.

15 (5) A registration issued pursuant to the Nebraska
16 Appraisal Management Company Registration Act shall be valid for two
17 years after the date on which it is issued. An application for the
18 renewal of a registration shall include substantially similar
19 information required for the initial registration as provided in
20 subsection (2) of this section.

21 Sec. 4. The Nebraska Appraisal Management Company
22 Registration Act does not apply to:

23 (1) A person that exclusively employs persons for the
24 performance of appraisal services. The employer is responsible for
25 ensuring that the appraisal services are performed by employees in

1 accordance with the Uniform Standards of Professional Appraisal
2 Practice;

3 (2) An appraisal management company that is owned and
4 controlled by a financial institution regulated by a federal
5 financial institution regulatory agency;

6 (3) An appraiser that enters into an agreement, written
7 or oral, with an appraiser for the performance of appraisal services
8 if upon the completion of the appraisal services the appraisal report
9 is signed by both the appraiser who completed the appraisal services
10 and the appraiser who requested the appraisal services; or

11 (4) A relocation management company.

12 Sec. 5. Each person seeking registration as an appraisal
13 management company in this state that is not domiciled in this state
14 shall submit an irrevocable consent that service of process upon such
15 person may be made by delivery of the process to the director of the
16 board if the plaintiff cannot, in the exercise of due diligence,
17 effect personal service upon the person in an action against the
18 applicant in a court of this state arising out of the person's
19 activities in this state.

20 Sec. 6. The board shall charge and collect fees for its
21 services under the Nebraska Appraisal Management Company Registration
22 Act as follows: (1) An application fee of no more than three hundred
23 fifty dollars; (2) an initial registration fee of no more than two
24 thousand dollars; (3) a renewal registration fee of no more than one
25 thousand five hundred dollars; and (4) a late renewal fee of twenty-

1 five dollars for each month or portion of a month the fee is late.

2 Sec. 7. (1) An appraisal management company applying for
3 registration in this state shall not:

4 (a) In whole or in part, directly or indirectly, be owned
5 by any person who has had an appraiser license or certificate in this
6 state or in any other state refused, denied, canceled, surrendered in
7 lieu of revocation, or revoked; and

8 (b) Be more than ten percent owned by a person who is not
9 of good moral character, which for purposes of this section shall
10 require that such person has not been convicted of, or entered a plea
11 of nolo contendere to, a felony relating to the appraisal practice or
12 any crime involving fraud, misrepresentation, or moral turpitude.

13 (2) For purposes of subdivision (1)(b) of this section,
14 each individual owner of more than ten percent of an appraisal
15 management company shall, at the time an application for registration
16 as an appraisal management company is made, submit two copies of
17 legible ink-rolled fingerprint cards or equivalent electronic
18 fingerprint submissions to the board for delivery to the Nebraska
19 State Patrol in a form approved by both the Nebraska State Patrol and
20 the Federal Bureau of Investigation. The board shall pay the Nebraska
21 State Patrol the costs associated with conducting a fingerprint-based
22 national criminal history record check through the Nebraska State
23 Patrol and the Federal Bureau of Investigation with such record check
24 to be carried out by the board.

25 Sec. 8. An appraisal management company that applies to

1 the board for a registration to do business in this state as an
2 appraisal management company shall not:

3 (1) Knowingly employ any individual to perform appraisal
4 services who has had a license or certificate to act as an appraiser
5 in this state or in any other state refused, denied, canceled,
6 surrendered in lieu of revocation, or revoked;

7 (2) Knowingly enter into any independent contractor
8 arrangement to perform appraisal services, whether in verbal,
9 written, or other form, with any individual who has had a license or
10 certificate to act as an appraiser in this state or in any other
11 state refused, denied, canceled, surrendered in lieu of revocation,
12 or revoked; or

13 (3) Knowingly prohibit an appraiser from including within
14 the body of an appraisal report that is submitted by the appraiser to
15 the appraisal management company or its assignee the fee that the
16 appraiser was paid by the appraisal management company for the
17 performance of the appraisal report.

18 Sec. 9. Prior to assigning appraisal orders, an appraisal
19 management company shall have a system in place to verify that an
20 appraiser being added to the appraiser panel holds the appropriate
21 appraiser license or certification in good standing.

22 Sec. 10. Any employee of or independent contractor to an
23 appraisal management company that performs a Uniform Standards of
24 Professional Appraisal Practice standard 3 appraisal review shall be
25 an appraiser with the proper level of licensure in this state.

1 Quality control examinations are exempt from this requirement as they
2 are not considered a standard 3 review.

3 Sec. 11. Each appraisal management company seeking to be
4 registered in this state shall certify to the board on a biennial
5 basis on a form prescribed by the board that the appraisal management
6 company has a system in place to verify that an appraiser on the
7 appraiser panel has not had a license or certification as an
8 appraiser refused, denied, canceled, revoked, or surrendered in lieu
9 of a pending revocation in any state in the previous twenty-four
10 months.

11 Sec. 12. Each appraisal management company seeking to be
12 registered in this state shall certify to the board on a biennial
13 basis that it maintains a detailed record of each appraisal service
14 request that it receives and of the appraiser who performs the
15 appraisal services for the appraisal management company. Record
16 retention requirements are for a period of five years after appraisal
17 services are completed or two years after final disposition of a
18 judicial proceeding related to the real property appraisal activity,
19 whichever period expires later.

20 Sec. 13. An appraisal management company may not alter,
21 modify, or otherwise change a completed appraisal report submitted by
22 an appraiser without the appraiser's written consent.

23 Sec. 14. (1) The board shall issue a unique registration
24 number to each appraisal management company that is registered in
25 this state.

1 (2) The board shall maintain a published list of the
2 appraisal management companies that have registered with the board
3 pursuant to the Nebraska Appraisal Management Company Registration
4 Act and have been issued a registration number pursuant to subsection
5 (1) of this section.

6 (3) An appraisal management company registered in this
7 state shall disclose the registration number provided to it by the
8 board on the engagement documents presented to the appraiser.

9 Sec. 15. (1) Each appraisal management company registered
10 in this state, except in cases of noncompliance with the conditions
11 of the engagement, shall make payment of fees to an appraiser for the
12 completion of an appraisal or valuation assignment within sixty days
13 after the date on which the appraiser transmits or otherwise provides
14 the completed appraisal report or valuation assignment to the
15 appraisal management company or its assignee.

16 (2) Except within the first ninety days after an
17 appraiser is first added to the appraiser panel of an appraisal
18 management company, an appraisal management company may not remove
19 the appraiser from the appraiser panel of the appraisal management
20 company or otherwise refuse to assign requests for appraisal services
21 to an appraiser on the appraiser panel without:

22 (a) Notifying the appraiser in writing of the reasons why
23 the appraiser is being removed from the appraiser panel of the
24 appraisal management company; and

25 (b) Providing an opportunity for the appraiser to respond

1 to the notification from the appraisal management company.

2 (3) An appraiser who is removed from the appraiser panel
3 of an appraisal management company may file a complaint with the
4 board for a review of the decision of the appraisal management
5 company. The scope of the board's review in any such case is limited
6 to determining that the appraisal management company has complied
7 with subsection (2) of this section and whether a violation of the
8 Real Property Appraiser Act has occurred.

9 (4) If an appraiser files a complaint against an
10 appraisal management company pursuant to subsection (3) of this
11 section, the board shall adjudicate the complaint within one hundred
12 eighty days after the filing of the complaint.

13 (5) If, after opportunity for hearing and review, the
14 board determines that an appraisal management company acted
15 improperly in removing the appraiser from the appraiser panel, the
16 board shall:

17 (a) Provide written findings to the involved parties;

18 (b) Provide an opportunity for the appraisal management
19 company and the appraiser to respond to the findings; and

20 (c) Make recommendations for action.

21 Sec. 16. (1) To the extent permitted by any applicable
22 federal legislation or regulation, the board may censure an appraisal
23 management company, conditionally or unconditionally suspend or
24 revoke the registration issued to the appraisal management company
25 under the Nebraska Appraisal Management Company Registration Act, or

1 levy fines or impose civil penalties not to exceed five thousand
2 dollars for a first offense and not to exceed ten thousand dollars
3 for a second or subsequent offense, if the board determines that an
4 appraisal management company is attempting to perform, has performed,
5 or has attempted to perform any of the following:

6 (a) A material violation of the act;

7 (b) A violation of any rule or regulation adopted and
8 promulgated by the board; or

9 (c) Procurement of a registration for itself or any other
10 person by fraud, misrepresentation, or deceit.

11 (2) In order to promote voluntary compliance, encourage
12 appraisal management companies to correct errors promptly, and ensure
13 a fair and consistent approach to enforcement, the board shall
14 endeavor to impose fines or civil penalties that are reasonable in
15 light of the nature, extent, and severity of the violation. The board
16 shall also take action against an appraisal management company's
17 registration only after less severe sanctions have proven
18 insufficient to ensure behavior consistent with the Nebraska
19 Appraisal Management Company Registration Act. When deciding whether
20 to impose a sanction permitted by subsection (1) of this section,
21 determining the sanction that is most appropriate in a specific
22 instance, or making any other discretionary decision regarding the
23 enforcement of the act, the board shall consider whether an appraisal
24 management company:

25 (a) Has an effective program reasonably designed to

1 ensure compliance with the act;

2 (b) Has taken prompt and appropriate steps to correct and
3 prevent the recurrence of any detected violations; and

4 (c) Has independently reported to the board any
5 significant violations or potential violations of the act prior to an
6 imminent threat of disclosure or investigation and within a
7 reasonably prompt time after becoming aware of the occurrence of such
8 violations.

9 Sec. 17. (1) The board shall conduct disciplinary
10 hearings for any violation of the Nebraska Appraisal Management
11 Company Registration Act in accordance with the Administrative
12 Procedure Act.

13 (2) Before the board may censure, suspend, or revoke the
14 registration of, or levy a fine or civil penalty against, a
15 registered appraisal management company, the board shall notify the
16 company in writing of any charges made under the Nebraska Appraisal
17 Management Company Registration Act at least twenty days prior to the
18 date set for the hearing and shall permit the appraisal management
19 company an opportunity to be heard in person or by counsel. The
20 notice shall be satisfied by personal service on the controlling
21 person of the company or agent for service of process in this state
22 or by sending the notice by certified mail, return receipt requested,
23 to the address of the controlling person of the company that is on
24 file with the board.

25 (3) Any hearing pursuant to this section shall be heard

1 by a hearing officer at a time and place prescribed by the board. The
2 hearing officer may make findings of fact and shall deliver such
3 findings to the board. The board shall take such disciplinary action
4 as it deems appropriate, subject to the limitations contained within
5 section 16 of this act.

6 Sec. 18. The board may adopt and promulgate rules and
7 regulations not inconsistent with the Nebraska Appraisal Management
8 Company Registration Act which may be reasonably necessary to
9 implement, administer, and enforce the provisions of the act.

10 Sec. 19. The board shall collect all fees and other
11 revenue pursuant to the Nebraska Appraisal Management Company
12 Registration Act and shall remit such fees and revenue to the State
13 Treasurer for credit to the Appraisal Management Company Fund, which
14 is hereby created. The fund shall be used to implement, administer,
15 and enforce the act. Any money in the fund available for investment
16 shall be invested by the state investment officer pursuant to the
17 Nebraska Capital Expansion Act and the Nebraska State Funds
18 Investment Act.

19 Sec. 20. An appraisal management company that has a
20 reasonable basis to believe that an appraiser has failed to comply
21 with applicable laws or the Uniform Standards of Professional
22 Appraisal Practice shall refer the matter to the board if the failure
23 to comply is material.

24 Sec. 21. Section 76-2223, Revised Statutes Cumulative
25 Supplement, 2010, is amended to read:

1 76-2223 (1) The Real Property Appraiser Board shall
2 administer and enforce the Real Property Appraiser Act and may:

3 ~~(1)~~ (a) Receive applications for credentialing under the
4 act, process such applications and regulate the issuance of
5 credentials to qualified applicants, and maintain a directory of the
6 names and addresses of persons who receive credentials under the act;

7 ~~(2)~~ (b) Hold meetings, public hearings, informal
8 conferences, and administrative hearings, prepare or cause to be
9 prepared specifications for all appraiser classifications, solicit
10 bids and enter into contracts with one or more testing services, and
11 administer or contract for the administration of examinations
12 approved by the Appraiser Qualifications Board in such places and at
13 such times as deemed appropriate;

14 ~~(3)~~ (c) Develop the specifications for credentialing
15 examinations, including timing, location, and security necessary to
16 maintain the integrity of the examinations;

17 ~~(4)~~ (d) Review the procedures and criteria of a
18 contracted testing service to ensure that the testing meets with the
19 approval of the Appraiser Qualifications Board;

20 ~~(5)~~ (e) Collect all fees required or permitted by the
21 act. The Real Property Appraiser Board shall remit all such receipts
22 to the State Treasurer for credit to the Real Property Appraiser
23 Fund. In addition, the board may collect and transmit to the
24 appropriate federal authority any fees established under the
25 Financial Institutions Reform, Recovery, and Enforcement Act of 1989,

1 as the act existed on January 1, ~~2010~~ 2011;

2 ~~(6)~~ (f) Establish appropriate administrative procedures
3 for disciplinary proceedings conducted pursuant to the Real Property
4 Appraiser Act;

5 ~~(7)~~ (g) Issue subpoenas to compel the attendance of
6 witnesses and the production of books, documents, records, and other
7 papers, administer oaths, and take testimony and require submission
8 of and receive evidence concerning all matters within its
9 jurisdiction. In case of disobedience of a subpoena, the Real
10 Property Appraiser Board may make application to the district court
11 of Lancaster County to require the attendance and testimony of
12 witnesses and the production of documentary evidence. If any person
13 fails to obey an order of the court, he or she may be punished by the
14 court as for contempt thereof;

15 ~~(8)~~ (h) Deny, censure, suspend, or revoke an application
16 or credential if it finds that the applicant or credential holder has
17 committed any of the acts or omissions set forth in section 76-2238
18 or otherwise violated the act. Any disciplinary matter may be
19 resolved through informal disposition pursuant to section 84-913;

20 ~~(9)~~ (i) Take appropriate disciplinary action against a
21 credential holder if the Real Property Appraiser Board determines
22 that a credential holder has violated any provision of the act or the
23 Uniform Standards of Professional Appraisal Practice;

24 ~~(10)~~ (j) Enter into consent decrees and issue cease and
25 desist orders upon a determination that a violation of the act has

1 occurred;

2 ~~(11)~~(k) Promote research and conduct studies relating to
3 the profession of real property appraisal, sponsor real property
4 appraisal educational activities, and incur, collect fees for, and
5 pay the necessary expenses in connection with activities which shall
6 be open to all credential holders;

7 ~~(12)~~(l) Establish and adopt minimum standards for
8 appraisals as required under section 76-2237;

9 ~~(13)~~(m) Adopt and promulgate rules and regulations to
10 carry out the act. The rules and regulations may include provisions
11 establishing minimum standards for schools, courses, and instructors.
12 The rules and regulations shall be adopted pursuant to the
13 Administrative Procedure Act; and

14 ~~(14)~~(n) Do all other things necessary to carry out the
15 Real Property Appraiser Act.

16 (2) The Real Property Appraiser Board shall also
17 administer and enforce the Nebraska Appraisal Management Company
18 Registration Act.

19 Sec. 22. This act becomes operative on January 1, 2012.

20 Sec. 23. Original section 76-2223, Revised Statutes
21 Cumulative Supplement, 2010, is repealed.