

SENATE BILL REPORT

ESHB 3040

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 25, 2010

Title: An act relating to the licensing of appraisal management companies.

Brief Description: Regarding the licensing of appraisal management companies.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Wood, Appleton, Rolfes, Sells, Sullivan and Finn).

Brief History: Passed House: 2/16/10, 98-0.

Committee Activity: Labor, Commerce & Consumer Protection: 2/23/10, 2/25/10 [DPA].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass as amended.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Honeyford and King.

Staff: Mac Nicholson (786-7445)

Background: An appraisal management company (AMC) is a business entity that administers a panel 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.

Real estate appraisers evaluate the value of real property. The Department of Licensing (DOL) certifies and licenses real estate appraisers.

DOL regulates many businesses and professions under specific licensing laws. Each business and profession is under either the disciplinary authority of the Director of DOL, 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 (Recommended Amendments): Starting July 1, 2011, an entity must have a license to engage in business as an AMC, to perform appraisal management services, or to advertise or hold itself out as engaging in business as an AMC.

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.

An AMC is an entity that performs appraisal management services.

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 a network of appraisers who are independent contractors of an AMC that have applied to or responded to a solicitation to perform appraisals as assigned by the AMC, and have been selected by the AMC to perform appraisals on a periodic basis.

Application Requirements. An entity seeking an AMC license, or renewal of a license, must apply to DOL. A license is valid for two years and must be renewed on or before the expiration date. Applications must provide specific information, including the name of the entity seeking licensure, a business address, contact information, and a statement confirming that the company must comply with applicable rules and that the company understands the penalties for misconduct. Applications must also include the following certifications:

- that the entity has a system and process in place to verify that individuals added to the appraiser panel hold the appropriate license or certificate;
- that the entity has a system in place to review the work of appraisers and a policy to require appraisal services are being conducted in accordance with state and federal law;
- that the entity maintains a detailed record of each service request and the appraiser that performs the appraisal services;
- that the entity maintains a complete copy of each appraisal report for a minimum of five years, or two years after final disposition of any judicial proceeding related to the appraisal; and
- that the AMC maintains a detailed record of each service request and the appraiser that performs the appraisal.

Applicants must file and maintain a surety bond of at least \$25,000 for the use and benefit of the state and of any person or persons who may have a cause of action against the applicant.

Applicants headquartered outside the state must submit an irrevocable consent to service of process upon the director of DOL, if an individual cannot, in the exercise of due diligence, obtain personal service upon the AMC.

Owner Requirements. An AMC cannot be more than 10 percent owned by an entity that is: (1) directly controlled by a person who has had an appraiser license or certificate refused or revoked; or (2) an entity that is more than 10 percent owned by a person who has had an

appraiser license or certificate refused or revoked in any state. Each person that owns more than 10 percent of an AMC must: (a) not have had an appraiser license or certificate refused, denied, canceled, or revoked in any state; (b) be of good moral character as determined by DOL; and (c) submit to a background investigation.

Each AMC must certify to DOL that it has reviewed each individual or entity that owns more than 10 percent of the AMC and that no person or entity is prohibited from owning an AMC.

Controlling Person. An AMC must designate one controlling person to be the main contact for all communication between DOL and the AMC. The controlling person must have never had an appraiser license or certificate surrendered in lieu of disciplinary action or revoked, be of good moral character, and submit to a background investigation. The AMC must notify DOL within 14 days of a change in the AMC's controlling person.

Appraiser Requirements. An AMC may not knowingly contract with or employ an appraiser that:

- has had an appraiser license or certificate surrendered, refused, or revoked in any state;
- has been convicted of an offense that reflects adversely upon the person's integrity, competence, or fitness to meet the responsibilities of an appraiser;
- has been convicted of or pled guilty to a felony related to fraud, dishonesty, money laundering, or participation in the real estate or mortgage loan industry; or
- has been in violation of the Mortgage Broker Practices Act or the Consumer Loan Act.

An AMC may not knowingly enter into any independent contractor arrangement for appraisal services with any person, nor enter into any contract for appraisal services with any entity that employs any individual, who has had an appraiser license or certificate surrendered or revoked. Any employee or contractor working on behalf of an AMC that has any involvement in the performance of an appraisal must be a state licensed or certified appraiser.

Exemptions. The following are exempt from the provisions of the legislation:

- departments and/or units within a financial institution that receive an appraisal request from one employee of the institution and another employee of the same institution assigns the request to an appraiser that is part of an appraiser panel, provided the institution is subject to state or federal regulation;
- appraisers that enter into agreements with other appraisers for an appraisal where the appraisal report is signed by both appraisers.

Disputes Between AMCs and Appraisers. After an initial 30-day window, an AMC cannot remove an appraiser from its appraiser panel or refuse to assign requests for appraisal services without providing notice and an opportunity for the appraiser to respond. An appraiser that is removed may file a complaint with DOL for a review of the decision. DOL may investigate the complaint within 180 days and issue an order that the appraiser be restored to the panel if DOL determines the appraiser did not commit a violation of law or licensing standards.

General. AMCs are subject to the URBPA, and are subject to disciplinary action for unprofessional conduct as provided in the URBPA, and for engaging in prohibited activities specified in the legislation.

DOL is granted rulemaking authority to implement the legislation, including establishing fees and issuing licenses.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Amendments): The striking amendment provides that the license is valid for two years and must be renewed on or before the expiration date; adds language clarifying the record-keeping requirements; adds language clarifying the prohibitions on ownership of AMCs; removes language regarding the ability of a person to appeal a final decision of the director to deny, suspend, or revoke an appraiser license; and adds language making the appraisal management account subject to allotment procedures but not requiring an appropriation for expenditures.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2011.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: PRO: Real estate licensees need the ability to rely upon accurate appraisal services and products. This legislation is needed for consumer protection and to ensure appraiser independence. The bill would prevent appraisal management companies business abuses, including not paying appraisers for their work and being owned by appraisers who have lost their licenses. This bill has been a work in progress and needs a little more work by interested stakeholders.

Persons Testifying: PRO: Bob Mitchell, Washington Realtors; Stan Sidor, TK Bentler, Appraiser's Coalition of Washington; Carrie Tellefson, Lender Processing Services.