

HOUSE BILL REPORT

HB 3040

As Reported by House Committee On:
Commerce & Labor
General Government Appropriations

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

Brief Description: Regarding the licensing of appraisal management companies.

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

Brief History:

Committee Activity:

Commerce & Labor: 1/27/10, 2/2/10 [DPS];

General Government Appropriations: 2/4/10, 2/5/10 [DPS(CL)].

Brief Summary of Substitute 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 for adjudication of disputes between appraisal management companies and appraisers.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

Staff: Alison Hellberg (786-7152).

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.

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.

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 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 Substitute 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, adopt 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 who perform appraisals through the AMC.

An application for licensure 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;
- maintains a detailed record of each service request and the appraiser that performs the appraisal; and
- maintains a complete copy of appraisal reports.

Applicants must also maintain a surety bond with Washington as obligee. The surety bond is based on the volume of appraisal orders in the state, but a minimum of \$25,000.

The AMC must include its full legal name on any engagement document issued, as well as on any advertising. It must maintain complete copies of appraisal reports for not less than five years, or for a period of not less than two years after final disposition of a judicial proceeding in which testimony relating to the records was given, whichever is longer.

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 never have been subject to an appraisal license or certificate denial or revocation or any other disciplinary action related to the license or certificate.

Employees.

Anyone working for or 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. Employees completing appraisal reviews must have a minimum of five years of 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 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:
 - (1) during the seven-year period preceding the date of the application for licensing and registration; or
 - (2) 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 state and federal law;
- 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; and
- 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.

Adjudication of Disputes Between an 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 or for performance or administrative reason, without following certain procedures. The AMC must notify the appraiser in writing why the appraiser is being removed. If the appraiser is removed for alleged illegal conduct 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 an opportunity for hearing and review, the Department determines that an appraiser did not commit a violation of law, 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 in relation to the adjudicated complaint, 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;
- knowingly accepting an appraisal from an appraiser who does not have either the geographic competence or necessary expertise to complete the appraisal;
- knowingly 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 reasonable legal or other allowable 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;
- knowingly requiring the appraiser to do anything that violates state and federal laws regulating appraisers;
- 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; or
- violating any other provisions regulating an AMC.

The URBPA also applies to regulation of the AMCs.

Stakeholder Group.

The Department must convene a stakeholder group to determine how fees charged by appraisal management companies and appraisers should be charged and disclosed.

Substitute Bill Compared to Original Bill:

The provisions related to appraiser fees and disclosures are removed. The Department must convene a stakeholder group to determine how fees charged by AMCs and appraisers should be charged and disclosed.

The minimum bonding amount is reduced to \$25,000 from \$30,000, and based on the volume of appraisal orders in the state. The AMCs full legal name must be used on all documents and advertising instead of the unique license number. The requirement that the controlling person in an AMC be a licensed or certified appraiser is removed. An AMC must maintain complete copies of appraisal reports for not less than five years, or for a period of not less than two years after final disposition of a judicial proceeding in which testimony relating to the records was given, whichever is longer. For those persons that the Department must conduct a background investigation on, a procedure for obtaining fingerprint-based background checks is established.

The AMCs may remove appraisers from appraisal panels for sub-standard performance or administrative purposes. The prohibition against retaliatory actions towards an appraiser, who was restored to an appraiser panel, only applies to retaliatory actions related to an adjudicated complaint to the Department.

The exemption for relocation management companies is removed. Certain prohibited activities must be committed "knowingly" to constitute a violation. Reasonable legal or other allowable communication between the appraiser and the lender, real estate licensees, property owners, or person relevant in completing the appraisal is allowed. The failure to cycle through appraisers on an appraiser panel on a regular basis is removed as a prohibited practice.

The Appraisal Management Company Account (Account) is created in the State Treasury. All fees and penalties are deposited into the Account and it is subject to appropriation. An effective date of July 1, 2012, is established. Numerous stylistic, technical, and clarifying changes are made.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect July 1, 2012.

Staff Summary of Public Testimony:

(In support) This is a critically important issue to consumers and appraisers. It is essential to ensure transparency for consumers in the appraisal process. Accurate appraisals are important to any real estate transaction. Because of the Code, there has been an explosion of AMCs. At least 80 percent of appraisals are done through an AMC. This has meant inadequate disclosures and appraisers getting dramatically lower fees for their work. They

have also placed onerous requirements on appraisers, which have led to lower quality appraisals. The AMCs have committed substantial fraud and coercion.

This bill is the result of a multi-party stakeholder process. Six other states have enacted laws regulating AMCs and 20 other states are currently considering them. This bill draws from other states.

(Opposed) This bill has not been well-vetted and several AMCs were not aware of the stakeholder process. No lenders were present at all. The bill appears to be based on model language, but there are some unique aspects. It could result in costs to consumers. There are also some defects in that would make it incredibly difficult for AMCs to continue certain aspects of their businesses. For example, lenders, and not the AMCs, are responsible for the loan settlement documents. These issues are currently being debated in federal legislation.

Persons Testifying: (In support) Stan Sidor, Appraiser Coalition of Washington; and Bob Mitchell, Washington Realtors.

(Opposed) Steve Swartley, Bank of America; Steve Gano, Wells Fargo Bank; Tim O'Brien, Rels Valuation; and Carrie Tellefson, Lender Processing Services.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The substitute bill by Committee on Commerce & Labor be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Darneille, Chair; Takko, Vice Chair; Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Van De Wege and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives McCune, Ranking Minority Member; Klippert and Short.

Staff: Sara del Moral (786-7118).

Summary of Recommendation of Committee On General Government Appropriations Compared to Recommendation of Committee On Commerce & Labor:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect July 1, 2012.

Staff Summary of Public Testimony:

(In support) Real estate licensees are concerned about having a fair evaluation of properties. There would be concrete benefits to this bill, both for consumers and for appraiser independence. Consumers and real estate licensees need a process for fair and accurate evaluation of properties. The fiscal note is for the original bill, not the substitute. The substitute allows more time for implementation. This bill would have minimal impact on state funds, and it does not use the State General Fund.

(With concerns) Appraisal management companies are not opposed to the concept of accountability. We are working on the details with proponents. We are cautiously optimistic that with some amendments, we can agree to this bill.

(Opposed) None.

Persons Testifying: (In support) Stan Sidor, Appraisers' Coalition of Washington; and Bob Mitchell, Washington Realtors.

(With concerns) Carrie Tellefson, Lender Processing Services; and Steve Gano, Wells Fargo Bank, and Key Bank.

Persons Signed In To Testify But Not Testifying: None.