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## DAR File No. 33923

This rule was published in the September 1, 2010, issue (Vol. 2010, No. 17) of the Utah State Bulletin.

### Commerce, Real Estate

## Rule R162-2e

### Appraisal Management Company Administrative Rules

#### Notice of Proposed Rule

(New Rule)

DAR File No.: 33923

Filed: 08/12/2010 08:36:06 AM

#### RULE ANALYSIS

##### Purpose of the rule or reason for the change:

The existing rules are renumbered and reorganized to reflect a statutory numbering scheme and to mirror the organization of Title 61, Chapter 2e. Definitions are proposed to clarify language in the statute and rules. In response to questions from the industry, rules are created to help guide appraisal management companies (AMCs) in satisfying the statutory requirement that they provide the Division with an explanation of the systems they use: 1) to ensure the use of licensed or certified appraisers; 2) to verify that appraisals adhere to applicable standards; and 3) to evidence that they keep adequate records. Additionally, a rule is proposed to require that AMCs register with the Division in the name of the legal entity rather than obtaining unique registrations for each "dba" or other trade name. Finally, a rule is proposed to outline specific information that an AMC must provide to an appraiser at the time the assignment is offered.

##### Summary of the rule or change:

The terms "affiliation," "AMC," "client," "competency statement," "day," "select," and "USPAP" are defined. An AMC must register in the name of the legal entity under which it conducts business and inform the Division of any dbas or trade names being used, but does not need to obtain a unique registration for each name. To register, an AMC must put into place a system wherein the AMC verifies: 1) that an appraiser who is added to the panel is licensed or certified; and 2) that an appraiser who is given an assignment remains licensed/certified in good standing. At this time, the rule does not mandate how this system must operate. To register, an AMC must have in place a system whereby the AMC: 1) verifies that an assignment is completed by the appraiser or appraisal firm to which it is assigned; and 2) ensures that an assignment offer includes information sufficient to inform the appraiser to determine whether he or she can competently complete the assignment. This information includes property identification, assignment conditions, and scope of work requirements. To register, an AMC must have in place a system for tracking the client on each assignment, as well as the appraiser or appraisal entity that accepts each assignment. AMCs must also provide the Division with information about the format in which records are kept, how electronic records are backed up, where the records are kept, and the name of the records custodian.

##### State statutory or constitutional authorization for this rule:

- Section 61-2e-102
- Section 61-2e-103
- Section 61-2e-201
- Section 61-2e-301
- Section 61-2e-302
- Section 61-2e-303
- Section 61-2e-304
- Section 61-2e-401

##### Anticipated cost or savings to:

###### the state budget:

These rules interpret specific statutory requirements but do not create new programs that the state will have to oversee and enforce. No impact to the state budget is anticipated.

###### local governments:

Local governments do not act as AMCs and, therefore, do not register with the Division. Local governments do not enforce the rules governing AMCs. These rules have no effect on local governments. No impact to the budgets of local governments is anticipated.

###### small businesses:

By statute, small AMC businesses must create systems: 1) to verify the use of qualified appraisers; 2) to ensure adherence to standards; and 3) to keep records. These rules simply provide minimum standards for these systems. Any financial impact was therefore contemplated by the legislature when the statute was enacted.

###### persons other than small businesses, businesses, or local governmental entities:

The AMC rules govern businesses only. No other persons are affected, therefore, there is no financial impact anticipated for other persons.

##### Compliance costs for affected persons:

By statute, AMCs must create systems for verifying the use of qualified appraisers, ensuring adherence to

standards, and keeping records. The cost of creating those systems was contemplated by the legislature. An AMC seeking registration will be able to tailor its system to meet the minimum standards with no costs beyond those incurred in the initial creation of a system. Currently registered AMCs, which already have systems in place, will need to review those systems and might need to make adjustments to comply with the minimum standards set forth in these rules. The cost of doing so should not require new staff or resources. If there are any costs, the Division anticipates that they will be minimal.

**Comments by the department head on the fiscal impact the rule may have on businesses:**

This filing renumbers the Division rules to mirror the statutory numbering scheme, provides a general definition section and new provisions with guidance to licensees in meeting their various statutory requirements. As indicated in the rule summary, there will be no impact to businesses beyond those already addressed by the Legislature in passing the Act.

Francine Giani, Executive Director

**The full text of this rule may be inspected, during regular business hours, at the Division of Administrative Rules, or at:**

Commerce  
Real Estate  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316

**Direct questions regarding this rule to:**

- Jennie Jonsson at the above address, by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at [jjonsson@utah.gov](mailto:jjonsson@utah.gov)

**Interested persons may present their views on this rule by submitting written comments to the address above no later than 5:00 p.m. on:**

10/01/2010

**This rule may become effective on:**

10/08/2010

**Authorized by:**

Deanna Sabey, Director

**RULE TEXT**

**R162. Commerce, Real Estate.**

**R162-2e. Appraisal Management Company Administrative Rules.**

**R162-2e-101. Title.**

This chapter is known as the "Appraisal Management Company Administrative Rules."

**R162-2e-102. Definitions.**

(1) "Affiliation" means a business association:

(a) between:

(i) two individuals registered, licensed, or certified under Section 61-2b; or

(ii) an individual registered, licensed, or certified under Section 61-2b and:

(A) an appraisal entity; or

(B) a government agency;

(b) for the purpose of providing an appraisal service; and

(c) regardless of whether an employment relationship exists between the parties.

(2) The acronym "AMC" stands for appraisal management company.

(3) As used in Subsection R162-2e-201(3)(c)(ii), "business day" means a day other than:

(a) a Saturday;

(b) a Sunday;

(c) a state or federal holiday; or

(d) any other day when the division is closed for business.

(4) "Client" is defined in Section 61-2e-102(10).

(5) "Competency statement" means a statement provided by the AMC to the appraiser that, at a minimum, requires the appraiser to attest that the appraiser:

(a) is competent according to USPAP standards;

(b) recognizes and agrees to comply with:

(i) laws and regulations that apply to the appraiser and to the assignment;

(ii) assignment conditions; and

(iii) the scope of work outlined by the client; and

(c) has access, either independently or through an affiliation pursuant to Subsection (1), to the records necessary to complete a credible appraisal, including:

(i) multiple listing service data; and

(ii) county records.

(6) "Select" means:

(a) for purposes of composing the AMC appraiser panel, to review and evaluate the qualifications of an appraiser who applies to be included on the AMC's appraiser panel; and

(b) for purposes of assigning an appraisal activity to an appraiser:

(i) to choose from the AMC's appraiser panel an individual appraiser or appraisal entity to complete an assignment; or

(ii) to compile, from among the appraisers included in the AMC's appraiser panel, an electronic distribution list of appraisers to whom an assignment will be offered through e-mail.

(7) The acronym "USPAP" stands for Uniform Standards of Professional Appraisal Practice.

**R162-2e-201. Registration Required - Qualification for Registration.**

- (1) The division may not register or renew the registration of an AMC that fails to:
  - (a) comply with any provision of Utah Code Title 61, Chapter 2e, "Appraisal Management Company Registration and Regulation Act"; or
  - (b) comply with any provision of these rules.
- (2) The division shall schedule a hearing before the board for an AMC that:
  - (a)(i) applies for registration or renewal of registration;
  - (ii) has a control person who discloses, or the division finds through its own research, an issue that might affect the control person's moral character; and
  - (iii) the division determines that the board should be aware of the issue; or
- (b) fails to provide an adequate explanation for the AMC's:
  - (i) plan to ensure the use of licensed appraisers in good standing;
  - (ii) plan to ensure the integrity of the appraisal review process; or
  - (iii) plan for record keeping.
- (3)(a) An AMC shall register with the division in the name of the legal entity under which it conducts the business of appraisal management in Utah and in other states.
  - (b) An AMC shall notify the division of a dba, trade name, or assumed business name under which the registered legal entity operates in Utah:
    - (i) at the time of registration; or
    - (ii) if applicable, immediately upon beginning to operate under such dba, trade name, or assumed business name.
  - (c) If an AMC changes its registered name, a dba, a trade name, or an assumed business name, the AMC shall notify the division:
    - (i) in writing; and
    - (ii) within ten business days of making the change.

**R162-2e-301. Use of Licensed or Certified Appraisers.**

- Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide to the division a statement signed by its designated controlling person that explains the AMC's system for verifying that:
- (1) an appraiser who is added to the panel is licensed or certified; and
  - (2) an appraiser who is assigned to complete a real estate appraisal remains licensed or certified in good standing.

**R162-2e-302. Adherence to Standards.**

- Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide a statement to the division, signed by its designated controlling person, certifying that the AMC verifies that each appraisal assignment offered to an appraiser acting as an independent contractor is:
- (1) signed by an appraiser who is included in the AMC's panel at the time the assignment is offered; and
  - (2) includes the information outlined in Subsection 304(1)(b)-(c).

**R162-2e-303. Recordkeeping.**

- An AMC's statement of recordkeeping required upon registration with the division and biennially thereafter shall be signed by its designated controlling person and shall describe:
- (1) its system for maintaining a record of:
    - (a)(i) the name of the appraiser who accepts each assignment and signs the corresponding appraisal report; and
    - (ii) if an assignment is accepted by an appraisal entity, the name of the entity that accepts the assignment; and
  - (b) the client that requested the appraisal report;
  - (2) the format in which the records required to be kept under Section 61-2e-303(1) are maintained;
  - (3) an explanation of the system through which the AMC backs up any records kept as required by Section 61-2e-303(1) that are maintained in an electronic format;
  - (4) the location where the records are kept; and
  - (5) the name of the records custodian.

**R162-2e-304. Required Disclosure.**

- In addition to the disclosures required by Section 61-2e-304, an AMC shall:
- (1) at the time an assignment is offered, disclose to the appraiser:
    - (a) the total amount that the appraiser may expect to earn from the assignment, disclosed as a dollar amount;
    - (b)(i) the property address;
    - (ii) the legal description; or
    - (iii) equivalent information that would allow the appraiser to determine whether the appraiser has been involved with any service regarding the subject property within the three years preceding the date on which the assignment is offered;
  - (c) the assignment conditions and scope of work requirements in sufficient detail to allow the appraiser to determine whether the appraiser is competent to complete the assignment; and
  - (d) any known deadlines within which the assignment must be completed;
- (2) at or before the time the appraiser accepts an assignment, obtain the appraiser's acknowledgment as to the AMC's competency statement;
- (3) before requiring the appraiser to submit a completed report, disclose to the appraiser:
    - (a) the total fee that will be collected by the AMC for the assignment; and
    - (b) the total amount that the AMC will retain from the fee charged, disclosed as a dollar amount;
- and

(4) direct the appraiser who performs the real estate appraisal activity to disclose in the body of the appraisal report:

(a) the total compensation, stated as a dollar amount, paid to the appraiser or, if the appraiser is employed by an appraisal company, to the appraiser's employer; and

(b) the total compensation retained by the AMC in connection with the real estate appraisal activity, stated as a dollar amount.

#### **R162-2e-305. Employee Requirements.**

(1) An AMC seeking registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has taken and passed the 15-hour national USPAP course.

(2) An AMC seeking renewal of the company's registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has completed the seven-hour national USPAP update course.

#### **R162-2e-401. Unprofessional Conduct.**

(1) An AMC commits unprofessional conduct if the AMC :

(a) requires an appraiser to modify any aspect of the appraisal report, unless the modification complies with Section 61-2e-307;

(b) unless first prohibited by the client or applicable law, prohibits or inhibits an appraiser from contacting:

(i) the client;

(ii) a person licensed under Section 61-2c or Section 61-2f; or

(iii) any other person with whom the appraiser reasonably needs to communicate in order to obtain information necessary to complete a credible appraisal report;

(c) requires the appraiser to do anything that does not comply with:

(i) USPAP; or

(ii) assignment conditions and certifications required by the client;

(d) makes any portion of the appraiser's fee or the AMC's fee contingent on a favorable outcome, including but not limited to:

(i) a loan closing; or

(ii) a specific dollar amount being achieved by the appraiser in the appraisal report; or

(e) requests, for the purpose of facilitating a mortgage loan transaction,

(i) a broker price opinion; or

(ii) any other real property price or value estimation that does not qualify as an appraisal.

(2) An AMC commits unprofessional conduct and creates a violation by the appraiser of R162-107.1.6 if the AMC requires the appraiser to:

(a) accept full payment; and

(b) remit a portion of the full payment back to the AMC.

**KEY: appraisal management company, conduct, registration**

**Date of Enactment or Last Substantive Amendment: 2010**

**Authorizing, and Implemented or Interpreted Law: 61-2e-102; 61-2e-103; 61-2e-304; 61-2e-305**

#### **Additional Information**

The Portable Document Format (PDF) version of the Bulletin is the official version. The PDF version of this issue is available at <http://www.rules.utah.gov/publicat/bull-pdf/2010/b20100901.pdf>. The HTML edition of the Bulletin is a convenience copy. Any discrepancy between the PDF version and HTML version is resolved in favor of the PDF version.

Text to be deleted is struck through and surrounded by brackets (e.g., [example]). Text to be added is underlined (e.g., example). Older browsers may not depict some or any of these attributes on the screen or when the document is printed.

For questions regarding the *content* or *application* of this rule, please contact Jennie Jonsson at the above address, by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at [jonsson@utah.gov](mailto:jonsson@utah.gov). For questions about the *rulemaking process*, please [contact](#) the Division of Administrative Rules.

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