



SPONSOR: Sen. Peterson & Rep. Hudson
Sen. Sokola

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 38

AN ACT TO AMEND TITLE 24 CHAPTER 40 OF THE DELAWARE CODE RELATING TO THE COUNCIL ON REAL ESTATE APPRAISERS.

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

1 Section 1. Amend Chapter 40, Title 24 of the Delaware Code by deleting all numbers identifying the definitions
2 and reordering all definitions alphabetically and renumbering them accordingly, and by making insertions as shown by
3 underlining and deletions as shown by strikethrough as follows:

4 § 4002. Definitions.

5 "Appraisal Management Company" means a corporation, partnership, sole proprietorship, subsidiary or other
6 business entity that directly or indirectly performs appraisal management services, regardless of the use of the term
7 "appraisal management company", "mortgage technology provider", "lender processing services", "lender services", "loan
8 processor", "mortgage services", "real estate closing services provider", "settlement services provider", "vendor
9 management company" or any other term, and that does any of the following:

10 (a) Administers an appraiser panel of independent contract appraisers to perform real property appraisal services in
11 this state for clients.

12 (b) Receives requests for real property appraisal services from clients and, for a fee paid by the client, enters into
13 an agreement with one or more independent appraisers to perform the real property appraisal services contained in the
14 request.

15 (c) Otherwise serves as a third party liaison of appraisal management services between clients and appraisers.

16 "Appraisal management services" means the process of receiving a request for the performance of real property
17 appraisal services from a client, and for a fee paid by the client, entering into an agreement with one or more independent
18 appraisers who are part of an appraiser panel to perform the real property appraisal services contained in the request.

19 "Appraisal review" means the act or process of developing and communicating an opinion about the quality of
20 another appraiser's work that was performed as part of an appraisal assignment, but does not include an examination of an
21 appraisal for grammatical, typographical or other similar errors that do not communicate an opinion related to the
22 appraiser's data collection, analysis, opinions, conclusions, estimate of value or compliance with the Uniform Standards of
23 Professional Appraisal Practice.

24 "Appraiser panel" means a group of independent appraisers that has been selected by an appraisal management
25 company to perform real property appraisal services for the appraisal management company.

26 "Controlling person" means any of the following:

27 (a) An owner, officer or director of a corporation, partnership or other business entity seeking to offer appraisal
28 management services in this state.

29 (b) An individual who is employed, appointed or authorized by an appraisal management company and who has
30 the authority to enter into a contractual relationship with clients for the performance of appraisal management services and
31 to enter into agreements with independent appraisers for the performance of real property appraisal services.

32 (c) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the
33 management or policies of an appraisal management company.

34 "FIRREA" shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the act of
35 ~~August 9, 1989 (Pub. L. 101-73, 103 Stat. 183)~~ July 21, 2010.

36 "Licensed real property appraiser" shall mean a person, who has met the licensing requirements of this chapter and
37 who may appraise non-complex 1 to 4 residential units having a transaction value less than \$1,000,000 and complex 1 to 4
38 residential units having a transaction value of \$250,000 or less, and who holds a current, valid license issued under this
39 chapter. Licensed appraisers can not appraise a property with a market value in excess of \$1,000,000."

40 §4003. Council on Real Estate Appraisers; appointments; composition; qualifications; term; vacancies; suspension or
41 removal; unexcused absences; compensation.

42 (b) The Council shall consist of 9 members, who are residents of this State, and are appointed by the Governor.
43 Four of the 9 members shall be licensed or certified appraisers engaged primarily in the real estate appraisal business or in
44 the appraisal management business, including at least 1 certified general real property appraiser and at least 2 certified
45 residential appraisers. One of the 9 members shall be a certified real estate appraiser also engaged in the real estate
46 brokerage business. One member shall be from the banking community. Three of the 9 members shall be public members.
47 The public members shall not be, nor ever have been, appraisers nor members of the immediate family of an appraiser;
48 shall not have been employed by an appraiser or a company engaged in the practice of appraising; shall not have a material
49 interest in the providing of goods and services to appraisers; nor have been engaged in an activity directly related to
50 appraising. The public members shall be accessible to inquiries, comments and suggestions from the general public.

51 § 4006. Powers and duties.

52 (a) The Council on Real Estate Appraisers shall have authority to:

53 ~~(9) Evaluate certified records to determine whether an applicant for certification or licensure, who~~
54 ~~previously has been licensed, certified, or registered in another jurisdiction as a appraiser, has engaged in any act or offense~~
55 ~~that would be grounds for disciplinary action under this chapter and whether there are disciplinary proceedings or~~
56 ~~unresolved complaints pending against such applicant for such acts or offenses.~~

57 § 4011. Reciprocity.

58 (a) Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided
59 by the Council, the Council shall grant a license to each applicant, who shall present proof of current licensure in good
60 standing in another state, the District of Columbia, or territory of the United States, whose standards for licensure are
61 substantially similar to those of this State. ~~A license in "good standing" is defined in § 4008 (a)(2), (3), (4), and (5) of this~~
62 ~~title.~~

63 §4016A Counseling; Letters of Concern.

64 a. If the Council determines after an investigation that a violation of this chapter or of the rules and regulations
65 enacted pursuant to this chapter warranting formal disciplinary action has not occurred, but that an act or omission of the
66 licensee or certificate holder is a matter of concern and that licensee's or certificate holder's practice may be improved if
67 made aware of the concern, the Council may issue a non-disciplinary confidential letter of concern regarding the licensee's
68 or certificate holder's act or omission.

69 b. If a person licensed under this chapter receives a total of three letters of concern pursuant to this section, the
70 Council may reasonably require a formal assessment of professional competency to assess the licensee's or certificate
71 holder's ability in order to protect the health and safety of the public. At such hearing, all of the licensee's or certificate
72 holder's letters of concern may be deemed no longer confidential and may be admitted into evidence.

73 § 4021. Criminal background checks of new applicants.

74 An applicant for licensure or certification under sections 4008 or 4009 of this chapter shall submit, at the applicant's
75 expense, fingerprints and other necessary information in order to obtain the following:

76 (1) A report of the individual's entire criminal history record from the State Bureau of Identification or a statement
77 from the State Bureau of Identification that the State Central Repository contains no such information relating to that
78 person.

79 (2) A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of
80 Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be
81 the intermediary for purposes of this section and the Council shall be the screening point for the receipt of said federal
82 criminal history records.

83 Section 2. Amend Title 24 of the Delaware Code by making additions as shown by underlining and deletions as
84 shown by strikethrough as follows:

85 Subchapter IV Appraisal Management Companies

86 § 4022 Registration of Appraisal Management Companies.

87 a. A person shall not directly or indirectly engage or attempt to engage in business as an appraisal management
88 company, directly or indirectly perform or attempt to perform appraisal management services or advertise or hold itself out
89 as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by
90 the Council pursuant to this section, regardless of the entity's use of appraisal management company, mortgage technology
91 company or any other name.

92 b. A person who wishes to be registered as an appraisal management company in this state must file a written
93 application with the Council on a form prepared and furnished by the Council and pay a fee in an amount to be determined
94 by the Division of Professional Regulation. The registration required by subsection (a) shall include:

95 1. the name, residence address, business address and telephone number of the applicant and the location of
96 each principal office and branch office at which the appraisal management company will conduct business in this state.

97 2. the name under which the applicant will conduct business as an appraisal management company.

98 3. the name, residence address, business address and telephone number of each person who will have an
99 interest in the appraisal management company as a principal, partner, officer, director or trustee, specifying the capacity and
100 title of each person.

101 4. If the person seeking registration is a corporation that is not domiciled in this state, the name and contact
102 information for the company's registered agent for service of process in this state.

103 5. A certification that the person seeking registration has a system and process in place to verify that a person
104 being added to the appraiser panel for the appraisal management company's appraisal management services in this state
105 holds a license or certification in good standing in this state.

106 6. A certification that the person seeking registration has a system in place to review the work of all
107 independent appraisers that are performing real property appraisal services for the appraisal management company on a
108 periodic basis to confirm that the real property appraisal services are being conducted in accordance with Uniform
109 Standards of Professional Appraisal Practice.

110 7. A certification that the person maintains a detailed record of each service request that it receives and the
111 independent appraiser that performs the real property appraisal services for the appraisal management company.

112 8. A certification that the person seeking registration has a system in place to train those who select individual
113 appraisers for real property services in this state, to ensure that the selectors have appropriate training in placing appraisal
114 assignments.

115 9. Proof of a surety bond of twenty thousand dollars.

116 §4023 Exemptions from Registration.

117 Nothing in this chapter shall apply to:

118 a. An appraisal management company that is a subsidiary owned and controlled by a financial institution that is
119 subject to direct regulation by an agency of the United States government or of this State.

120 b. A corporation, partnership, sole proprietorship, subsidiary or other business entity that employs real estate
121 appraisers exclusively on an employer and employee basis for the performance of all real property appraisal services in the
122 normal course of its business and that is responsible for ensuring that the real property appraisal services being performed
123 by its employees are being performed in accordance with Uniform Standards of Professional Appraisal Practice and federal
124 and state law.

125 § 4024 Registration Form for Appraisal Management Companies.

126 a. An applicant for initial and renewal registration as an appraisal management company shall submit to the
127 Council an application on a form prescribed by the Council.

128 b. An initial registration granted by the Council pursuant to this chapter is valid for two years. Registration
129 renewals are renewed biennially.

130 § 4025 Owner Requirements for Appraisal Management Companies.

131 a. An appraisal management company applying for registration may not be more than ten percent owned by a
132 person or have any principal of the company who has had any financial, real estate or mortgage lending industry license or
133 certificate refused, denied, canceled, revoked or voluntarily surrendered in this state or in any other state, unless such
134 license or certificate was subsequently granted or reinstated. This requirement may be waived by appeal and at the
135 discretion of the Council.

136 b. Each person that owns more than ten percent of an appraisal management company in this state shall:

137 1. Submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the
138 following:

139 i. A report of the applicant's entire criminal history record from the State Bureau of Identification or a
140 statement from the State Bureau of Identification that the State Central Repository contains no such information relating to
141 that person.

142 ii. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of
143 Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be
144 the intermediary for purposes of this section and the Council on Real Estate Appraisers shall be the screening point for the
145 receipt of said federal criminal history records.

146 iii. An applicant may not be registered until the applicant's criminal history reports have been produced. An
147 applicant whose record shows a prior criminal conviction may not be registered by the Council unless a waiver is granted
148 pursuant to § 4008(a)(4) of this Chapter. The State Bureau of Identification may release any subsequent criminal history to
149 the Council.

150 2. Certify to the Council that the person has never had any financial, real estate or mortgage lending industry
151 license or certificate refused, denied, canceled, revoked or voluntarily surrendered in this state or in any other state, unless
152 such license or certificate was subsequently granted or reinstated. This requirement may be waived by appeal and at the
153 discretion of the Council.

154 § 4026 Appraisal Management Company Controlling Person.

155 a. Each appraisal management company applying to the Council for registration in this state shall designate one
156 controlling person that will be the main contact for all communication between the Council and the appraisal management
157 company.

158 b. To serve as a controlling person of an appraisal management company, a person shall:

159 1. Certify to the Council that the person has never had any financial, real estate or mortgage lending industry
160 license or certificate issued by this state, or any other state, refused, denied, canceled, revoked or voluntarily surrendered.
161 This requirement may be waived by appeal and at the discretion of the Council.

162 2. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of
163 Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be
164 the intermediary for purposes of this section and the Council on Real Estate Appraisers shall be the screening point for the
165 receipt of said federal criminal history records.

166 An applicant may not be registered until the applicant's criminal history reports have been produced. An applicant
167 whose record shows a prior criminal conviction may not be registered by the Council unless a waiver is granted pursuant to
168 § 4008(a)(4) of this Chapter. The State Bureau of Identification may release any subsequent criminal history to the Council.
169 § 4027 Appraisal Management Company Employees.

170 Any employee of an appraisal management company that performs an appraisal review shall have demonstrated knowledge
171 of the Uniform Standards of Professional Appraisal Practice and hold a valid appraiser license or certification in this or any
172 state.

173 § 4028 Agreements with Independent Appraisers; Limitations.

174 An appraisal management company registered in this state pursuant to this chapter may not enter into contracts or
175 agreements with an independent appraiser for the performance of real property appraisal services in this state unless that
176 person is licensed or certified in good standing with the Council.

177 § 4029 Biennial Certification; Renewal.

178 a. Each appraisal management company registered in this state shall certify to the Council on a biennial basis at
179 the time of renewal, on a form prescribed by the Council and after paying the appropriate fee, that the appraisal
180 management company has a system and process in place to verify that a person being added to the appraiser panel of the
181 appraisal management company holds a license or certificate in good standing in this state pursuant to the Council.

182 b. Each appraisal management company registered in this state shall certify to the Council on a biennial basis, at
183 the time of renewal, that it has a system in place to review the quality of appraisals of all independent appraisers that are
184 performing real property appraisal services for the appraisal management company on a periodic basis to confirm that the
185 real property appraisal services are being conducted in accordance with uniform standards of professional appraisal
186 practice.

187 c. Each appraisal management company registered shall certify to the Council on a biennial basis, at the time of
188 renewal, that it maintains a detailed record of each service request that it receives and the name of the independent appraiser
189 that performs the real property appraisal services for the appraisal management company. An appraisal management
190 company shall maintain a detailed record for the same time period that an appraiser is required to maintain an appraisal
191 record for the same real property appraisal activity.

192 d. Each appraisal management company registered shall certify to the Council on a biennial basis, at the time of
193 renewal, that it has a system in place to train those who select individual appraisers for real property services in this state, to
194 ensure that the selectors have appropriate training in placing appraisal assignments.

195 § 4030 Disclosure of Fees.

196 The appraisal management company shall not prohibit the appraiser from reporting in the appraisal report the fee paid to the
197 appraiser.

198 § 4031 Appraiser Independence; Prohibitions.

199 a. Any employee, director, officer or agent of an appraisal management company registered pursuant to this
200 chapter shall not influence or attempt to influence the development, reporting or review of an appraisal through coercion,
201 extortion, collusion, compensation, inducement, intimidation, bribery or any other manner, including:

202 1. Withholding or threatening to withhold timely payment for an appraisal.

203 2. Withholding or threatening to withhold future business for an independent appraiser or demoting or
204 terminating, or threatening to demote or terminate, an independent appraiser.

205 3. Expressly or implicitly promising future business, promotions or increased compensation for an
206 independent appraiser.

207 4. Conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on
208 the opinion, conclusion or valuation to be reached or on a preliminary estimate or opinion requested from an independent
209 appraiser.

210 5. Requesting that an independent appraiser provide an estimated, predetermined or desired valuation in an
211 appraisal report or provide estimated values or comparable sales at any time before the independent appraiser's completion
212 of an appraisal service.

213 6. Providing to an independent appraiser an anticipated, estimated, encouraged or desired value for a subject
214 property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase
215 transactions may be provided.

216 7. Providing to an independent appraiser, or any entity or person related to the appraiser, stock or other
217 financial or nonfinancial benefits.

218 8. Allowing the removal of an independent appraiser from an appraiser panel, without prior written notice to
219 the appraiser.

220 9. Obtaining, using or paying for a second or subsequent appraisal or ordering an automated valuation model
221 in connection with a mortgage financing transaction, unless such action is required by law or there is a reasonable basis to
222 believe that the initial appraisal was flawed or tainted and the basis is clearly and appropriately noted in the loan file or
223 unless the appraisal or automated valuation model is done pursuant to a bona fide pre-funding or post-funding appraisal
224 review or quality control process.

225 10. Engaging in any other act or practice that impairs or attempts to impair an appraiser's independence,
226 objectivity or impartiality.

227 b. An appraisal fee offered or paid may not be based on the predetermined appraised value or range of appraised
228 value of the subject property or the amount of the transaction price.

229 c. Subsections (a) and (b) do not prohibit an appraisal management company from requesting that an independent
230 appraiser either:

231 1. Provide additional information about the basis for a valuation.

232 2. Correct objective factual errors in an appraisal report.

233 3. Consider additional appropriate property information.

234 § 4032 Payment.

235 Except in cases of breach of contract or substandard performance of services, each appraisal management company shall
236 make payment to an independent appraiser for the completion of an appraisal or valuation assignment within forty-five days
237 after the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation
238 study to the appraisal management company or its assignee.

239 § 4033 Appraisal Reports; Alteration; Use.

240 An appraisal management company shall not:

241 1. Alter, modify, revise or otherwise change a completed appraisal report submitted by an independent appraiser,
242 including removing the signature of the appraiser.

243 2. Use an appraisal report submitted by an independent appraiser for any purpose other than the intended use stated
244 in the report.

245 § 4034 Removal of Appraisers from Appraiser Panels.

246 a. Except within the first sixty days after an independent appraiser is first added to the appraiser panel of an
247 appraisal management company, an appraisal management company shall not remove an appraiser from its appraiser panel,
248 or otherwise refuse to assign requests for real property appraisal services to an independent appraiser, without notifying the
249 appraiser in writing of the reasons for the appraiser being removed from the appraiser panel of the appraisal management
250 company.

251 b. An independent appraiser that is removed from the appraiser panel of an appraisal management company for
252 alleged illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice or violation of state licensing
253 standards may file a complaint with the Council for a review of the decision of the appraisal management company, except
254 that in no case shall the Council make any determination regarding the nature of the business relationship between the
255 appraiser and the appraisal management company that is unrelated to the actions specified in subsection (a).

256 c. If an independent appraiser files a complaint against an appraisal management company pursuant to subsection
257 (b), the Council shall adjudicate the complaint within a reasonable time.

258 d. If after opportunity for a hearing and review, the Council determines that an independent appraiser did not
259 commit a violation of law, a violation of the Uniform Standards of Professional Appraisal Practice or a violation of this
260 Chapter, the Council shall order that the appraiser be added to the appraiser panel of the appraisal management company
261 that was the subject of the complaint. The Council shall furnish the appraisal management company with all written
262 documentation and investigation records that support the Council's findings.

263 § 4035 Enforcement.

264 The Council may censure an appraisal management company, conditionally or unconditionally suspend or revoke any
265 registration issued under this chapter or impose civil penalties not to exceed fifteen thousand dollars per violation if, after a
266 hearing, the Council finds that an appraisal management company is attempting to perform, has performed or has attempted
267 to perform any of the following acts:

268 1. Committing any act in violation of this chapter.

269 2. Violating any rule adopted by the Council in the interest of the public and consistent with this chapter.

270 3. Knowingly making or causing to be made to the Council any false representation of material fact.

271 4. Suppressing or withholding from the Council any information that the applicant possesses and that, if submitted
272 by the applicant, would have rendered the applicant ineligible to be registered pursuant to rules adopted by the Council.

273 5. Violating the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, the act of July 21,
274 2010.

275 § 4036 Disciplinary Hearing.

276 a. The Council may conduct disciplinary proceedings in accordance with Title 29, Chapter 101, Subchapter III.

277 b. The written notice required by Title 29, Chapter 101, Subchapter III shall be satisfied by personal service on the
278 controlling person of the registrant or the registrant's agent for service of process in this state or by sending the notice by
279 certified mail to the controlling person of the registrant to the registrant's address on file with the Council.

280 § 4037 Rule Making Authority.

281 The Council shall adopt rules that are reasonably necessary to implement, administer and enforce this section.

282 § 4038 Effective Date

283 All appraisal management companies operating in this State as of July 1, 2013 must become registered on or before July 1,
284 2014.

285

286

SYNOPSIS

This Substitute Bill clarifies that a licensed appraiser cannot appraise a property in Delaware with a market value in excess of one million dollars. Only a certified residential or general certified appraiser may appraise properties with this market value. This change is necessary, and was recommended by the federal Appraisal Sub-Committee in order for Delaware law to comply with the AQB mandatory changes. Additionally, this section defines new terms to the chapter that are added by the creation within this bill.

It further removes the power to examine disciplinary records of foreign jurisdictions for new applicants. The AQB requires applicants deemed to be in “good standing” be granted licensure in Delaware and thus, this power is surplusage. This change is necessary to comply with the Dodd-Frank Act.

The substitute also clarifies that reciprocal applicants will be deemed to be in “good standing” by their home

licensure state without the additions imposed on new applicants. This change is necessary to comply with the Dodd-Frank Act.

It requires all new applicants provide criminal background checks at their own expense. This change will be required by the Dodd-Frank Act in 2015.

Further, it creates regulation of Appraisal Management Companies which are cropping up all over the country, working as the middle man between mortgage companies and real estate appraisers. These middle men are necessary as Federal law bars mortgage companies from contacting real estate appraisers directly. However, Appraisal Management Companies are completely unregulated in this State. This bill brings Appraisal Management Companies under the jurisdiction of the Council on Real Estate Appraisers, sets standards for obtaining registration, requires principals of Appraisal Management Companies to submit to a criminal background check and prohibits the Appraisal Management Company from keeping the mortgage company the fee amount paid to the appraiser.

Finally, it empowers the Council to issue a letter of concern to a licensee who the Council finds did not violate a statute or rule, but who could benefit from having the Council's concern pointed out to her/him. Letters of concern are non-disciplinary, but any one licensee who receives three may be called before the Council for a competency assessment.

Author: Senator Peterson