

2013 North Dakota Laws Ch. 325 (H.B. 1389)

NORTH DAKOTA 2013 SESSION LAW SERVICE

REGULAR SESSION OF THE 63RD LEGISLATIVE ASSEMBLY

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Ch. 325 (H.B. No. 1389)

West's No. 278

APPRAISAL MANAGEMENT COMPANIES, BACKGROUND CHECKS

AN ACT to create and enact chapter 43–23.5 of the North Dakota Century Code, relating to appraisal management company regulation; to amend and reenact the new subdivision to subsection 2 of section 12–60–24 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2110, as approved by the sixty-third legislative assembly, relating to criminal history background checks; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. The new subdivision to subsection 2 of section 12–60–24 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2110, as approved by the sixty-third legislative assembly, is amended and reenacted as follows:

<< ND ST 12–60–24 >>

The North Dakota real estate appraiser qualifications and ethics board for applicants for permits **or registration** or permittees, registrants, owners, or controlling persons under ~~chapter~~ **chapters** 43–23.3 and 43–23.5, except that criminal history record checks for permittees, **registrants, owners, or controlling persons** need not be made unless required by the board.

SECTION 2. Chapter 43–23.5 of the North Dakota Century Code is created and enacted as follows:

<< ND ST 43–23.5–01 >>

§ 43–23.5–01 Definitions

As used in this chapter, unless the context otherwise requires:

1. “Appraisal firm” means any person or entity that exclusively employs persons on an employer and employee basis for the performance of real estate appraisal services in the normal course of its business and the real estate appraisal services being performed are in accordance with the uniform standards of professional appraisal practices.
2. “Appraisal management company” means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party that oversees a network or panel of more than fifteen certified or licensed appraisers in this state or twenty-five or more nationally within a given year, that is authorized either by

a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter or other principal in the secondary mortgage markets that engages in appraisal management services.

3. "Appraisal management services" means to, directly or indirectly, perform any of the following functions on behalf of a lender, financial institution, client, or any other person in conjunction with a consumer credit transaction that is secured by a consumer's primary dwelling:

- a. Administer an appraiser panel.
- b. Recruit, retain, or select appraisers.
- c. Qualify, verify licensing or certification, and negotiate fees and service level expectations with persons who are part of an appraiser panel.
- d. Contract with appraisers to perform appraisal assignments.
- e. Receive an order for an appraisal from one person, and deliver the order for the appraisal to an appraiser that is part of an appraiser panel for completion.
- f. Manage the process of having an appraisal performed, including providing administrative duties, such as receiving appraisal orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed.
- g. Track and determine the status of appraisal orders.
- h. Conduct an appraisal review or other quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal.
- i. Provide a completed appraisal performed by an appraiser to one or more clients.

4. "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment related to the appraiser's data collection, analysis, opinions, conclusions, estimate of value, or compliance with the uniform standards of professional appraisal practice. This term does not include:

- a. A general examination for grammatical, typographical, or other similar errors.
- b. A general examination for completeness, including regulatory and/or client requirements as specified in the agreement process that does not communicate an opinion.

5. "Appraiser panel" means a network of licensed or certified appraisers who have:

- a. Responded to an invitation, request, or solicitation from an appraisal management company, in any form, to perform appraisals for persons that have ordered appraisals through the appraisal management company, or to perform appraisals for the appraisal management company directly, on a periodic basis, as requested and assigned by the appraisal management company.
- b. Been selected and approved by an appraisal management company to perform appraisals for any client of the appraisal management company that has ordered an appraisal through the appraisal management company, or to perform appraisals for the appraisal management company directly, on a periodic basis, as assigned by the appraisal management company.

6. "Board" means the North Dakota real estate appraiser qualifications and ethics board.

7. "Controlling person" means:

- a. An officer, director, or owner of greater than a ten percent interest of a corporation, partnership, or other business entity seeking to act as an appraisal management company in this state.
- b. An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter a contractual relationship with other persons for performance of services requiring registration as an appraisal management company and has the authority to enter agreements with appraisers for the performance of appraisals.
- c. An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

8. "Federal financial institutions regulatory agencies" includes the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of the comptroller of the currency, and the national credit union administration.

9. "Federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency or the resolution trust corporation engages in, contracts for, or regulates, and requires the services of an appraiser.

10. "Real estate-related financial transaction" means any transaction involving:

- a. The sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof.
- b. The refinancing of real property or interests in real property.
- c. The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

<< ND ST 43-23.5-02 >>

§ 43-23.5-02 Rulemaking authority

The board shall have the authority to adopt rules that are reasonably necessary to implement, administer, and enforce the provisions of this chapter.

<< ND ST 43-23.5-03 >>

§ 43-23.5-03 Registration required

It is unlawful for a person to directly or indirectly engage or to attempt to engage in business as an appraisal management company, to directly or indirectly perform or to attempt to perform appraisal management services, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the board.

<< ND ST 43-23.5-04 >>

§ 43-23.5-04 Registration process

An applicant for registration as an appraisal management company shall submit to the board an application on forms prescribed by the board and pay a fee established by the board.

The forms shall require information necessary to determine eligibility for registration.

<< ND ST 43-23.5-05 >>

§ 43-23.5-05 Consent to service of process

An applicant for registration as an appraisal management company that is not domiciled in this state shall complete an irrevocable consent to service of process, as prescribed by the secretary of state.

<< ND ST 43-23.5-06 >>

§ 43-23.5-06 Expiration of registration

Registrations will expire on September thirtieth of each year. The expiration date of the registration must appear on the registration and no other notice of its expiration need be given to the registrant.

<< ND ST 43-23.5-07 >>

§ 43-23.5-07 Exemptions

The provisions of this chapter shall not apply to:

1. An appraisal firm.
2. A financial institution, including a department or unit within the institution, that is regulated by an agency of this state or the United States government.
3. A person who enters an agreement with an appraiser for the performance of an appraisal that upon completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal.
4. An appraisal management company with an appraisal panel of not more than fifteen certified or licensed appraisers in this state or twenty-five or more nationally within a given year.
5. An appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to appraisal independence standards at least as stringent as those under chapter 43-23.5-21, if regulated by an agency of this state, or the Truth in Lending Act [15 U.S.C. Section 1601 et seq.], if regulated by the United States government.

<< ND ST 43-23.5-08 >>

§ 43-23.5-08 Owner requirements

1. An appraisal management company applying for, holding, or renewing a registration under this chapter shall not be more than ten percent owned by:
 - a. A person who has had an appraiser license or certification in this state or in any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently granted or reinstated.
 - b. An entity that is more than ten percent owned by any person who has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently granted or reinstated.
2. Each person that owns more than ten percent of an appraisal management company applying for, holding, or renewing a registration under this chapter shall:

a. Be of good moral character.

b. Submit to a criminal background investigation for an initial application or as required by the board.

3. Each appraisal management company applying for a registration or for renewal of a registration under this chapter shall certify to the board on a form prescribed by the board that the company has reviewed each entity that owns more than ten percent of the appraisal management company and that no entity that owns more than ten percent of the appraisal management company is more than ten percent owned by any person that has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently granted or reinstated.

<< ND ST 43-23.5-09 >>

§ 43-23.5-09 Controlling person

An appraisal management company applying for a registration or for renewal of a registration in this state shall designate one controlling person that shall serve as the main contact for all communication between the board and the company. The controlling person shall:

1. Remain in good standing in this state or in any other state that the controlling person holds a licensure or certification permit from; however, nothing in this chapter shall require that a designated controlling person hold an appraiser license or certification in any jurisdiction.

2. Have never had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted.

3. Be of good moral character.

4. Submit to a criminal background investigation for an initial application or as required by the board.

<< ND ST 43-23.5-10 >>

§ 43-23.5-10 Employee requirements

An appraisal management company that applies to the board for a registration or to renew a registration to do business in this state as an appraisal management company may not:

1. Knowingly employ any person for the performance of appraisal or appraisal management services who has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted.

2. Knowingly enter any independent contractor arrangement, whether in verbal, written, or other form, for the performance of appraisal or appraisal management services, with any person that has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted.

3. Knowingly enter any contract, agreement, or other business relationship, whether in verbal, written, or any other form, with any entity that employs, has entered an independent contract arrangement, or has entered any contract, agreement, or other business relationship, whether in verbal, written, or any other form, for the performance of appraisal or appraisal management services, with any person that has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted.

<< ND ST 43-23.5-11 >>

§ 43-23.5-11 Appraiser engagement

Before or at the time of placing an assignment with an appraiser on the appraiser panel of an appraisal management company, the appraisal management company shall verify that the appraiser receiving the assignment holds a permit in good standing in this state.

<< ND ST 43-23.5-12 >>

§ 43-23.5-12 Appraisal review

Any employee of, or independent contractor to, the appraisal management company that performs an appraisal review for a property located in this state must be:

1. A certified or licensed appraiser in good standing in this state.
2. A certified or licensed appraiser in good standing in another state.

<< ND ST 43-23.5-13 >>

§ 43-23.5-13 Verification of licensure or certification

1. An appraisal management company registered in this state may not enter any contract or agreement with an appraiser for the performance of appraisals unless the company verifies that the appraiser is licensed or certified in good standing in this state.
2. An appraisal management company seeking to be registered in this state or to renew a registration in this state shall certify to the board on a form prescribed by the board that the company has a system and process in place to verify that an individual being added to the appraiser panel of the company for appraisal services holds a permit in good standing in this state.

<< ND ST 43-23.5-14 >>

§ 43-23.5-14 Appraisal management company certification of appraisal review system

Each appraisal management company seeking to be registered or to renew a registration in this state shall certify to the board on a form prescribed by the board that the company has a system in place to perform an appraisal review of the work product of a statistically significant number of appraisal reports submitted by independent appraisers performing appraisals for the appraisal management company on a periodic basis to validate that the appraisals are being conducted in accordance with the uniform standards of professional appraisal practice, and chapter 43-23.3, and the rules adopted under this chapter. An appraisal management company shall report to the board the results of any appraisal reviews in which an appraisal is found to be substantially noncompliant with the uniform standards of professional appraisal practice.

<< ND ST 43-23.5-15 >>

§ 43-23.5-15 Retention of records

1. Each appraisal management company seeking to be registered or to renew an existing registration in this state shall certify to the board on a form prescribed by the board that the company maintains a detailed record of each service request that the company receives for appraisal of real property located in this state.
2. An appraisal management company registered in this state shall retain for five years all records required to be maintained under this chapter as described in rules. This five-year period shall commence on the date of the final action by the appraisal

management company for each individual transaction or, if the appraisal management company is notified that the transaction is involved in litigation, the five-year period shall commence on the date the litigation is finally disposed.

3. All records required to be maintained by the registered appraisal management company may be made available for inspection and copying by the board on reasonable notice to the appraisal management company.

<< ND ST 43-23.5-16 >>

§ 43-23.5-16 Fee disclosure system requirement

1. An appraisal management company registered in this state shall disclose to its clients the fees paid for appraisal management services and the fees paid to the independent appraiser for the completion of an appraisal assignment.

2. An appraisal management company registered in this state shall not prohibit an independent appraiser that is part of an appraiser panel from recording the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal within the communication of the appraisal.

<< ND ST 43-23.5-17 >>

§ 43-23.5-17 Requirement of appraisal management company's payment to appraiser

1. An appraisal management company shall, except in bona fide cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment within forty-five days of the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation assignment to the company or its assignee unless a mutually agreed-upon alternate arrangement has been previously established.

2. An appraisal management company seeking to be registered or to renew an existing registration in this state shall certify that the company will require appraisals to be conducted independently as required by the appraisal independence standards under section 129E of the Truth in Lending Act, including the requirements of payment or a reasonable and customary fee to independent appraisers when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer.

<< ND ST 43-23.5-18 >>

§ 43-23.5-18 Appraisal management company registration numbers

1. The board shall issue a registration number to each appraisal management company that is registered in this state.

2. The board shall maintain a list of the appraisal management companies that are registered with the board.

3. An appraisal management company registered in this state shall place its registration number on engagement documents utilized by the appraisal management company for procurement of appraisal services in this state.

<< ND ST 43-23.5-19 >>

§ 43-23.5-19 Fees—Bonds

1. The board may charge the appraisal management company reasonable fees to help offset costs of operating the board. The board shall establish fees by rule.

2. The board may require by rule a surety bond of not more than twenty-five thousand dollars.

<< ND ST 43-23.5-20 >>

§ 43-23.5-20 Mandatory reporting

An appraisal management company that has a reasonable basis to believe an appraiser has failed to comply with applicable laws or rules or has substantially violated the uniform standards of professional appraisal practice shall refer the matter to the board.

<< ND ST 43-23.5-21 >>

§ 43-23.5-21 Prohibited conduct

A violation of this section may constitute grounds for discipline against an appraisal management company registered in this state. However, an appraisal management company may request an appraiser provide additional information about the basis for a valuation, correct objective factual errors in an appraisal report, or consider additional appropriate property information. No employee, director, officer, agent, independent contractor, or other third party acting on behalf of an appraisal management company may:

1. Procure or attempt to procure a registration by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for registration, or through fraud or misrepresentation.
2. Willfully violate this chapter or rules of the board.
3. Improperly influence or attempt to improperly influence the development, reporting, result, or a review of an appraisal through intimidation, coercion, extortion, bribery, or any other manner, including:
 - a. Withholding payment for appraisal services.
 - b. Threatening to exclude an appraiser from future work or threatening to demote or terminate in order to improperly obtain a desired result.
 - c. Conditioning payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached.
 - d. Requesting an appraiser to report a predetermined opinion, conclusion, or valuation or the desired valuation of any person or entity.
4. Require an appraiser to provide the appraisal management company with the appraiser's digital signature or seal.
5. Alter, amend, or change an appraisal report submitted by an appraiser without the appraiser's knowledge and written consent.
6. Except within the first ninety days after an independent appraiser is added to an appraiser page, remove an independent appraiser from an appraiser panel without prior written notice to the appraiser, with the prior written notice including evidence of the following, if applicable:
 - a. The appraiser's illegal conduct.
 - b. A violation of the uniform standards of professional appraisal practice, this chapter, or the rules adopted by the board.
 - c. Improper or unprofessional conduct.
7. Require an appraiser to sign any indemnification agreement that would require the appraiser to defend and hold harmless the appraisal management company or any of its agents or employees for any liability, damage, losses, or claims arising out

of the services performed by the appraisal management company or its agents, employees, or independent contractors and not the services performed by the appraiser.

8. Prohibit lawful communications between the appraiser and any other person who the appraiser, in the appraiser's professional judgment, believes possesses information that would be relevant.

9. Engage in any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, and impartiality.

10. Submit or attempt to submit false, misleading, or inaccurate information in any application for registration or renewal.

11. Fail to timely respond to any subpoena or any other request for information.

12. Fail to timely obey an administrative order of the board.

13. Fail to fully cooperate in any investigation.

<< ND ST 43-23.5-22 >>

§ 43-23.5-22 Disciplinary proceedings

The board may deny, suspend, revoke, impose a monetary penalty, issue a letter of reprimand, refuse to issue or renew the registration of an appraisal management company, or take other disciplinary action when:

1. The applicant or any partner has, within twelve months preceding the date of the application, violated any provision of this chapter.

2. The applicant is not of good moral character.

3. The applicant has been the holder of a registration revoked or suspended for cause, or surrendered in lieu of disciplinary proceedings.

4. The applicant, in the case of an application for renewal of any registration, would not be eligible for such registration on a first application.

5. The issuance of the registration applied for would result in a violation of any provision of this chapter or the rules adopted by the board.

6. In the conduct of affairs under the registration, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering the registrant unfit to carry on appraisal management services or making continuance in the business detrimental to the public interest, or that the licensee is no longer in good faith carrying on appraisal management services, and for this conduct is found by the board to be a source of detriment, injury, or loss to the public.

7. Committed any act in violation of this chapter.

8. Violated any rule or regulation adopted by the board in the interest of the public and consistent with the provisions of this chapter.

9. Procured a registration or a renewal of a registration for the appraisal management company or committed any other act by fraud, misrepresentation, or deceit.

<< ND ST 43-23.5-23 >>

§ 43-23.5-23 Criminal history background checks

The board shall require an applicant for registration under section 43-23.5-03, an owner under section 43-23.5-08, or a controlling person under section 43-23.5-09 to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or the regulated individual.

<< ND ST 43-23.5-24 >>

§ 43-23.5-24 Penalty

Any person who performs appraisal management services without a certificate of registration as required by this chapter is guilty of a class A misdemeanor.

SECTION 3. EFFECTIVE DATE. Notwithstanding any other provision of this Act, an appraisal management company conducting business in this state on or before January 1, 2014, may continue to conduct business in this state without registering pursuant to this Act until sixty days after the date rules implementing the registration process created by the board take effect.

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