STATE OF NEW YORK

9080

IN SENATE

June 15, 2018

Introduced by Sen. HAMILTON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, in relation to registration of real estate appraisal management companies by the department of state

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new article 6-H to read as follows:

ARTICLE 6-H
REAL ESTATE APPRAISAL MANAGEMENT COMPANIES
Section 160-aaaa. Definitions.
160-bbbb. Registration required.
160-cccc. Exemptions.
160-dddd. Forms.
160-eeee. Denial of registration.
160-ffff. Expiration of license.
160-gggg. Fees.
160-hhhh. Owner requirements.
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160-mmmm. Appraiser independence; unlawful acts.
160-nnnn. Mandatory reporting.
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160-rrrr. Disciplinary hearings.
160-ssss. Power to suspend a license.
160-tttt. Investigation.
160-uuuu. Rule-making authority.
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160-wwww. Severability.
160-xxxx. Judicial review.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD14549-09-8

§ 160-aaaa. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Appraisal" or "real estate appraisal" means an analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis.

2. "Appraisal management company" or "AMC" means an individual or business entity that:

(a) provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(b) provides such services in connection with valuing a consumer's real property as security for consumer credit transactions secured by a consumer's principal dwelling; and

(c) within a given year, oversees an appraisal panel of more than fifteen appraisers working in New York state or twenty-five or more appraisers working in two or more states. An AMC shall not include a department or division of an entity that provides appraisal management services only to that entity.

3. "Appraisal management services" means to, directly or indirectly, provide any of the following services on behalf of a lender, financial institution, client, or any other person in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations:

(a) administer an appraiser panel;

(b) recruit, retain or select appraisers;

(c) qualify or 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 for services provided, and reimbursing appraisers for services performed;

(g) track and determine the status of orders for appraisals;

(h) conduct 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; or

(j) compensate appraisers for services rendered.

An individual who hires an appraiser solely for his or her own purposes, shall not be deemed an appraisal management company.

4. "Appraiser" means a person licensed or certified pursuant to article six-E of this chapter.

5. "Appraiser panel" means a network, list or roster of licensed or certified appraisers approved by the appraisal management company to perform appraisals as independent contractors of the appraisal management company.

6. "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. Appraisal reviews

must be performed by a person who is certified as a real estate appraiser pursuant to article six-E of this chapter.

7. "Board" means the state board of real estate appraisal which shall advise the department, as necessary, on implementation of, and enforcement of this article.

8. "Competent appraiser" means an appraiser that satisfies each provision of the competency rule of the uniform standards of professional appraisal practice for a specific appraisal assignment or valuation service that the appraiser has received, or may receive, from an appraisal management company.

9. "Controlling person" means:

(a) an owner, officer or director of an appraisal management company, or an individual who holds an ownership interest of ten percent or more of such company;

(b) an individual employed, appointed or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals; or

(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.

10. "Department" means the New York state department of state.

11. "Hybrid firm or entity" means an entity that hires both real estate appraisers as employees to perform appraisals of real property, and engage independent contractors to perform such appraisals. A hybrid firm or entity shall be treated as an AMC for purposes of state registration if it oversees more than fifteen real estate appraisers completing valuation services in an individual state or twenty-five or more real estate appraisers in two or more states within a given year. The numerical calculation for a hybrid firm or entity should only include real estate appraisers engaged as independent contractors.

12. "Person" means an individual, partnership, corporation, or any other entity recognized under New York state law.

13. "Real estate" means an identified parcel or tract of land, including improvements, if any.

14. "Real property" means the interest, benefits, and rights inherent in the ownership of real estate.

15. "Uniform standards of professional appraisal practice" or "USPAP" means the appraisal standards promulgated by the appraisal standards board of the appraisal foundation.

16. "Secondary mortgage market participant" means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for such mortgage-backed security.

§ 160-bbbb. Registration required. It shall be unlawful for a person to, directly or indirectly, engage or attempt to engage in business as an appraisal management company, or to advertise or hold oneself out as engaging in or conducting business as an appraisal management company without first obtaining a certificate of registration issued by the department under the provisions of this article.

§ 160-cccc. Exemptions. The provisions of this article shall not apply to any person that exclusively employs appraisers for the performance of appraisals or to any appraisal management company that is a wholly-owned

subsidiary of a financial institution, which is regulated by the federal financial institution regulatory agency. The registration provisions of this article shall not apply to the state, any state agency or authority, or any political subdivision of the state that employs appraisers.

§ 160-dddd. Forms. An applicant for a certificate of registration as an appraisal management company shall submit an application on such forms as prescribed by the department.

§ 160-eeee. Denial of registration. The department may investigate the good character of applicants for a certificate of registration under this article and may deny the issuance of such certificate of registration based upon lack of good moral character which may include, but is not limited to, any of the grounds enumerated in this article. For the purposes of this article, a non-substantive ground for denial, revocation, or surrender of an appraiser's license should not be construed as an automatic prohibition.

§ 160-ffff. Expiration of license. A certificate of registration granted by the department pursuant to this article shall be valid for a period of two years from the date upon which it is issued.

§ 160-gggg. Fees. 1. The department shall collect a fee of two hundred fifty dollars for a certificate of registration issued or reissued under the provisions of this article. Additionally, the department shall assess twenty-five dollars for each appraiser added to an appraisal management company's appraiser panel.

2. The department shall collect from each appraisal management company seeking to be registered, the amount determined by the appraisal subcommittee to be a national registry fee for each appraiser, that performs appraisal services within New York on the appraiser panel of an appraisal management company pursuant to Section 1109(a)(4) of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The department may transmit the annual registry fee to the appraisal subcommittee. The department shall provide its roster of appraisal management companies to the appraisal subcommittee. These transmittals shall occur at least annually.

3. Except for changes made on a renewal application, appraisal management companies shall provide the department with notice of a change in the appraisal management's principal address. Change of address notifications shall be accompanied by a fee of ten dollars.

4. Except for changes made on a renewal application, the department shall collect a fee of ten dollars for changing a name on a certificate of registration.

5. In lieu of the fee set forth in subdivision one of this section, the department shall collect a fee of three hundred fifty dollars to reissue a certificate of registration under this article which was submitted after the expiration of the immediately preceding registration term.

§ 160-hhhh. Owner requirements. An appraisal management company applying for a certificate of registration shall not be owned in whole or in part, directly or indirectly, by a person who has had a license, registration or certificate to act as a real estate appraiser denied, revoked, or surrendered in lieu of pending discipline in any state or by a person holding ten percent or more of the company where that person has had a license, registration or certificate to act as a real estate appraiser denied, revoked, or surrendered in lieu of possible discipline in any state.

§ 160-iiii. Controlling persons. 1. Each appraisal management company applying for a certificate of registration shall designate one controlling person who shall be the main contact for all communication between the department and the appraisal management company. Such designated controlling person shall never have had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of possible discipline in any state and shall be of good moral character, as determined by the department. Applicants shall cooperate with any such background investigation conducted by the department.

2. Each person that owns more than ten percent of an appraisal management company shall be of good moral character, as determined by the department. Applicants shall cooperate with any such background investigation conducted by the department.

3. Each appraisal management company applying for a certificate of registration shall certify to the department that it 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 a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of a pending revocation.

§ 160-jjjj. Employee requirements. 1. An appraisal management company that applies for a certificate of registration shall not knowingly employ, utilize, or engage, for any real estate appraisal, valuation service or appraisal review assignment, a person who has had a license or certificate to act as an appraiser in this state or in any other state denied, revoked, or surrendered in lieu of possible discipline, unless such license has been reinstated.

2. Prior to placing an assignment for an appraisal or valuation service with an appraiser on the appraiser panel of an appraisal management company, the appraisal management company shall verify that the appraiser receiving the assignment is a competent appraiser as defined by the USPAP Competency Rule with regards to geographic area and the type of property being appraised. An appraiser is deemed part of an appraisal management company panel as of the earliest date on which: (a) the appraisal management company accepts the appraiser for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or (b) engages the appraiser to perform one or more appraisals on behalf of a creditor for a covered transaction or secondary mortgage market participant in connection with covered transactions.

3. An appraisal management company may not hire, employ or engage, or in any way contract with or pay a person who is not licensed or certified as a real estate appraiser by the department pursuant to article six-E of this chapter, unless the work being performed is a comparative market analysis for the purpose of or intention to list or sell real estate.

4. An appraiser shall be considered part of an appraisal management company's appraiser panel until: (a) the appraisal management company sends a written notice to such appraiser removing such appraiser with an explanation; or (b) receives a written notice from such appraiser asking to be removed or of the death or incapacity of such appraiser.

§ 160-kkkk. Restrictions. An appraisal management company that applies for a certificate of registration shall not knowingly:

1. Employ any person in a position in which the person has the responsibility to order appraisals or valuation services or to review completed appraisals who has had a license, registration or certificate

to act as an appraiser in this state or in any other state, denied, revoked, or surrendered in lieu of a pending revocation, unless such license has been reinstated;

2. Enter into any independent contractor arrangement, whether in verbal, written, or by other form, with any person who has had a license, registration or certificate to act as an appraiser in this state or in any other state, denied, revoked, or surrendered in lieu of a pending revocation, unless such license has been reinstated; and

3. Enter into any contract, agreement, or other business relationship, whether in verbal, written, or other form, with any entity that employs, has entered into an independent contract arrangement, or has entered into any contract, agreement, or other business relationship, whether in verbal, written, or any other form, with any person who has ever had a license, registration or certificate to act as an appraiser in this state or in any other state, denied, revoked, or surrendered in lieu of a pending revocation, unless such license has been reinstated.

§ 160-llll. Recordkeeping. Each appraisal management company shall maintain a detailed record of each service request that it receives and the real estate appraiser that performs such appraisal for the appraisal management company. Records shall be maintained for a period of at least five years after such appraisal is completed or two years after final disposition of a judicial proceeding related to such assignment, whichever period expires later. Appraisal management companies shall make records available to the department upon request. Appraisal management companies shall also allow the department to examine the books and records of the appraisal management company and require it to submit reports, information and documents upon request. Appraisal management companies shall also allow the department to verify that the appraisers on such panel hold a valid license or certification.

§ 160-mmmm. Appraiser independence; unlawful acts. Each appraisal management company shall ensure that real estate appraisals are conducted independently and free from inappropriate influence and coercion. Notwithstanding any other provision of this article, it shall be unlawful for any employee, director, officer, or agent of an appraisal management company registered in this state pursuant to this article to:

1. Compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate, or attempt to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate a person, firm or other entity conducting or involved in an appraisal for the purpose of causing the appraised value assigned under the appraisal or other valuation services to the property to be based on any factor other than the independent judgment of the appraiser;

2. Mischaracterize the appraised value of a property in conjunction with a consumer credit transaction;

3. Seek to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of a consumer credit transaction;

4. Act without just cause to withhold or threaten to withhold timely payment for an appraisal report or for other valuation services rendered with such appraisal report or services provided in accordance with the contract between parties;

5. Act without just cause to withhold or threaten to withhold future business, or to demote or terminate an appraiser without just cause;

6. Expressly or implicitly promise future business, promotions, or increased compensation for an appraiser in exchange for the real estate

appraiser inflating or deflating his or her appraised value of real property;

7. Require a real estate appraiser to indemnify an appraisal management company or hold an appraisal management company harmless for any liability, damage, losses, or claims arising out of the services performed by such appraisal management company, and not the services performed by the appraiser;

8. Condition the request for an appraisal or the payment of an earned fee, salary or bonus, on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;

9. Request that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal;

10. Provide to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided; or

11. Provide to an appraiser, or any entity or person related to the appraiser, stock or any other financial or non-financial benefits in exchange for appraising property in a manner other than that which is within the independent opinion of the appraiser.

Nothing in this section shall be construed as prohibiting the appraisal management company from asking an appraiser to consider additional, appropriate property information, including: additional comparable properties to make or support an appraisal; provide further detail, substantiation, or explanation for the appraiser's value conclusion; or correct errors in the appraisal report.

§ 160-nnnn. Mandatory reporting. An appraisal management company that has a reasonable basis to believe an appraiser within the appraisal management company's appraisal panel is failing to comply with the uniform standards of professional appraisal practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct shall immediately refer such matter to the department.

§ 160-oooo. Unprofessional conduct. 1. Appraisal management companies shall not engage in unprofessional conduct including, but not limited to the following:

(a) Requiring an appraiser to modify any aspect of an appraisal report or valuation service report, unless such modifications are appropriate according to USPAP;

(b) Requiring an appraiser to prepare an appraisal report or valuation service report if such appraiser, in their professional judgment, believes they don't have the necessary expertise for the specific geographic and or specific area type;

(c) Requiring an appraiser to prepare an appraisal report or valuation service under a time frame that such appraiser believes, in their professional judgment, does not afford such appraiser the ability to meet all the relevant legal and professional obligations including USPAP requirements. Notwithstanding the foregoing provisions of this paragraph, all appraisal reports should be completed within a reasonable timeframe and appraisers may not unnecessarily delay completing appraisal assignments;

(d) Prohibiting or inhibiting communication between the appraiser and the lender, a real estate licensee, or any other person from whom such appraiser, in their professional judgment is relevant;

(e) Requiring the appraiser to do anything that does not comply with USPAP, or any assignment conditions and certifications required by the client;

(f) Making any portion of the appraiser's fee or the appraisal management company's fee contingent upon a favorable outcome, including, but not limited to, the closing of a loan, requiring a specific dollar amount be achieved by such appraiser in the appraisal report, making requests for the purpose of facilitating a mortgage loan transaction, setting a broker price opinion, or setting any other real property price or value estimation that does not qualify as an appraisal; or

(g) Each appraisal management company operating in this state shall make payment to an appraiser for the completion of an appraisal or valuation assignment within thirty days of the date on which such appraiser transmits or otherwise provides the completed appraisal or valuation services to the appraisal management company or its assignee;

2. It shall be unlawful for an appraisal management company to:

(a) Knowingly fail to compensate an appraiser at a rate that is reasonable and customary for appraisal or other valuation services being performed in the market area of the property being appraised without the services of an appraisal management company in a manner that is either inconsistent with, or would violate section 1639(e) of the federal Truth in Lending Act (15 USC §1639(e));

(b) Knowingly include any fees for appraisal management services that are performed by the appraisal management company for a lender, client, or other person in the amount that it charges the lender, client, or other person for the actual completion of an appraisal or valuation service by an appraiser that is part of the appraiser panel of the appraisal management company;

(c) Knowingly fail to separate any and all fees charged to a client by the appraisal management company for the actual completion of an appraisal by an appraiser from the fees charged to a lender, client, or any other person by an appraisal management company for appraisal management services;

(d) Knowingly prohibit an appraiser from recording the fee that such appraiser was paid by the appraisal management company for the performance of the appraisal within the appraisal report that is submitted by such appraiser to the appraisal management company;

(e) Knowingly fail to separately state the fees paid to an appraiser for appraisal services and the fees charged by the appraisal management company for services associated with the management of the appraisal process to the client, borrower and any other payer. Appraisal management companies shall provide a copy of the appraiser's invoice with a copy of any appraisal report submitted to a client or a client's representative;

(f) Knowingly allow the removal from rotation of an appraiser from an appraiser panel, without prior written notice to such appraiser with just cause; or

(g) Knowingly obtain, use, or pay for a second or subsequent appraisal or the ordering of an automated valuation model or any other valuation service in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is done pursuant to a bona fide pre- or post-funding appraisal review or quality control process. Nothing in this paragraph shall prohibit an AMC from obtaining additional appraisals if required by a lending program, or if

such additional appraisals are required by applicable local, state, or federal law.

§ 160-pppp. Alteration of appraisal reports. An appraisal management company shall not alter, modify, or otherwise change a completed appraisal or valuation service report submitted by an appraiser by removing such appraiser's signature or seal or by adding information to, or removing information from such report with intent to change the valuation conclusion. An appraisal management company shall not require an appraiser to provide such appraisal management company with such appraiser's digital signature or seal.

§ 160-qqqq. Enforcement. The department may revoke or suspend the license of an appraisal management company, or in lieu thereof may impose a fine, per violation, not to exceed twenty-five thousand dollars if the department finds that the licensee has made a material misstatement in the application for such license, or if such licensee has been found guilty of fraud or fraudulent practices, or for dishonest or misleading advertising, or has demonstrated untrustworthiness or incompetency to act as an appraisal management company, or has violated any provision of this article or a regulation promulgated thereunder. The department shall report any such violations by appraisal management companies to the appraisal subcommittee.

§ 160-rrrr. Disciplinary hearings. The department shall, before revoking or suspending any license or imposing any fine or reprimand on the holder thereof, and at least twenty days prior to the date set for the hearing, notify, in writing, the holder of such license of any charges made and shall afford such licensee an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by personal delivery to the licensee, or by certified mail to the last known business address of such licensee or unlicensed person, or by any method authorized by the civil practice law and rules. The hearing on such charges shall be at such time and place as the department shall prescribe.

§ 160-ssss. Power to suspend a license. In cases where the health, safety, or welfare of the public is endangered, the department shall have the authority to immediately suspend a license pending a hearing before an administrative law judge.

§ 160-tttt. Investigation. The department shall have the power to enforce the provisions of this article and upon complaint of any person, or on its own initiative, to investigate any violation thereof or to investigate the business, business practices and business methods of an appraisal management company, if in the opinion of the department such investigation is warranted. Each such applicant or licensee shall be obliged, on request of the department, to supply such information as may be required concerning his or its business, business practices or business methods, or proposed business practices or methods.

For the purpose of enforcing the provisions of this article, and in making investigations relating to any violation thereof, and for the purpose of investigating the character, competency and integrity of the applicants or licensees hereunder, and for the purpose of investigating the business, business practices and business methods of any applicant or licensee, or of the officers or agents thereof, the department, acting by such officer or person in the department as the secretary of state may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state and require the production of any books, records or papers which he deems relevant to the inquiry and administer an oath to and take testimony of any

person or cause his or her deposition to be taken, except that any applicant or licensee or officer or agent thereof shall not be entitled to fees and/or mileage. A subpoena issued under this section shall be regulated by the civil practice law and rules.

§ 160-uuuu. Rule-making authority. The department may adopt rules not inconsistent with the provisions of this chapter which may be reasonably necessary to implement, administer, and enforce the provisions of this chapter.

§ 160-vvvv. Violations. 1. Any person or company who fails to obtain a certificate of registration required pursuant to this article shall be guilty of a misdemeanor.

2. Criminal actions for failure to obtain a certificate of registration may also be prosecuted by the attorney general, or his or her deputy, in the name of the people of the state, and in any such prosecution the attorney general, or his or her deputy, may exercise all the powers and perform all the duties the district attorney is otherwise authorized to exercise or to perform therein.

§ 160-wwww. Severability. Should the courts of this state declare any provision of this article unconstitutional, or unauthorized, or in conflict with any other section or provision of this article, such decision shall affect only such section or provision so declared to be unconstitutional or unauthorized and shall not affect any other section or part of this article.

§ 160-xxxx. Judicial review. The actions of the department in granting or refusing to grant or to renew a license under this article or in revoking or suspending such a license or imposing any fine or reprimand on the holder thereof or refusing to revoke or suspend such a license or impose any fine or reprimand shall be subject to review by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules at the instance of the applicant for such license, the holder of a license so revoked, suspended, fined, or reprimanded or the person aggrieved.

§ 2. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that the department of state is authorized to propose, adopt, amend and/or repeal any rule or regulation necessary for the implementation of this act immediately.