

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

As Engrossed: H3/16/09

A Bill

ACT 628 of 2009

HOUSE BILL 1694

4
5 By: Representative Hyde
6
7

For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR THE REGISTRATION AND REGULATION
10 OF APPRAISAL MANAGEMENT COMPANIES; TO MAKE CONFORMING
11 AMENDMENTS TO THE ARKANSAS APPRAISER LICENSING AND
12 CERTIFICATION ACT, § 17-14-101 ET SEQ.; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15 THE ARKANSAS APPRAISAL MANAGEMENT
16 COMPANY REGISTRATION ACT.
17
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 17, Chapter 14 is amended to add an
23 additional subchapter to read as follows:

SUBCHAPTER 4

APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT

24 17-14-401. Short title.

25 This subchapter shall be known and may be cited as the "Appraisal
26 Management Company Registration Act".
27

28 17-14-402. Definitions.

29 As used in this subchapter:

30 (1) "Appraisal management company" means a person that performs
31 the actions necessary to administer a network of state-licensed appraisers to
32 fulfill requests for appraisal management services on behalf of a client,
33 including without limitation:
34

35 (A) Recruiting appraisers;
36

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1 (B) Contracting with appraisers to perform appraisal
2 services;

3 (C) Negotiating fees with appraisers;

4 (D) Receiving appraisal orders and appraisal reports;

5 (E) Submitting appraisal reports received from appraisers
6 to the company's clients; and

7 (F) Providing related administrative and clerical duties.

8 (2) "Appraisal management services" means conducting business by
9 telephone, by electronic means, by mail, or in person directly or indirectly
10 for compensation or other pecuniary gain or in the expectation of
11 compensation or other pecuniary gain to:

12 (A) Solicit, accept, or offer to accept a request for
13 appraisal services; or

14 (B) Employ or contract with a licensed or certified
15 appraiser to perform appraisal services;

16 (3) "Appraisal services" means the practice of developing an
17 opinion of the value of real property in conformance with the minimum
18 reporting standards under § 17-14-202(b);

19 (4) "Appraiser" means an individual licensed under the Arkansas
20 Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201
21 et seq., and § 17-14-301 et seq., who for a fee or other consideration
22 develops and communicates a real estate appraisal or otherwise gives an
23 opinion of the value of real estate or any interest in real estate;

24 (5) "Appraiser panel" means a group of independent appraisers
25 that have been selected by an appraisal management company to perform
26 appraisal services for the appraisal management company;

27 (6) "Client" means a person that contracts with or otherwise
28 enters into an agreement with an appraisal management company for the
29 performance of appraisal services;

30 (7) "Controlling person" or "managing principal" means an
31 individual employed, appointed, or authorized by an appraisal management
32 company to contract with clients or independent appraisers for the
33 performance of appraisal services;

34 (8) "Person" means an individual, a partnership, a limited
35 liability company, a limited partnership, a corporation, an association, or
36 other organization;

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1 and

2 (9) "Registrant" means an appraisal management company or person
3 that is registered under this subchapter.

4
5 17-14-403. Registration of appraisal management companies required.
6 A person shall not act as an appraisal management company or perform
7 appraisal management services in this state unless registered by the Arkansas
8 Appraiser Licensing and Certification Board.

9
10 17-14-404. Rulemaking authority.

11 (a) The Arkansas Appraiser Licensing and Certification Board may adopt
12 rules to implement, administer, and enforce this subchapter, including
13 without limitation to prescribe:

14 (1) Forms and procedures for submitting information to the
15 board;

16 (2) Standards of practice for a person registered under this
17 subchapter; and

18 (3) Standards for the operation of appraisal management
19 companies.

20
21 17-14-405. Requirements for registration.

22 (a) Before acting or offering to act as an appraisal management
23 company in this state, a person shall make written application to the
24 Arkansas Appraiser Licensing and Certification Board for registration
25 accompanied by the fee and bond established by the board.

26 (b) The application shall include without limitation the following
27 information:

28 (1) The name, business address, and telephone contact
29 information of the person seeking registration;

30 (2)(A) If the applicant is a domestic organization, the
31 information required by § 4-20-105(a) to designate an agent for service of
32 process; or

33 (B)(i) If the applicant is a foreign organization,
34 documentation that the foreign organization is authorized to transact
35 business in this state and has appointed an agent for service of process by
36 submitting a copy of:

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1 (a) The company's filing with the Secretary of
2 State appointing an agent for service of process under § 4-20-112; and

3 (b) A certificate of authority issued by the
4 Secretary of State.

5 (ii) A foreign organization's failure to comply with
6 subdivision (b)(2)(B)(i) of this section may result in rejecting the
7 application;

8 (3) The name, address, and contact information of any person
9 that owns ten percent (10%) or more of the appraisal management company;

10 (4) The name, address, and contact information of a controlling
11 person or a managing principal;

12 (5) A certification that the person:

13 (A) Has a system and process in place to verify that a
14 person being added to the appraiser panel of the appraisal management company
15 holds a license in good standing in this state under the Arkansas Appraiser
16 Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq.,
17 and § 17-14-301 et seq.;

18 (B) Has a system in place to review the work of all
19 independent appraisers that are performing appraisal services for the
20 appraisal management company on a periodic basis to ensure that the appraisal
21 services are being conducted in accordance with the minimum reporting
22 standards under § 17-14-202(b); and

23 (C) Maintains a detailed record of each request for
24 appraisal services that it receives and the independent appraiser that
25 performs the appraisal services for the appraisal management company; and

26 (6) Any other information required by the board.

27 (c) The board shall issue a certificate of registration to an
28 applicant authorizing the applicant to act or offer to act as an appraisal
29 management company in this state upon:

30 (1) Receipt of a properly completed application;

31 (2) Payment of the required fee;

32 (3) Posting of a bond; and

33 (4) A determination by the board that the activities of the
34 applicant will be directed and conducted by persons of good moral character.

35 (d)(1) If the board finds that there is substantial reason to deny the
36 application for registration, the board shall notify the applicant that the

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1 application has been denied and shall afford the applicant an opportunity for
2 a hearing before the board to show cause why the application should not be
3 denied.

4 (2) All proceedings concerning the denial of a certificate of
5 registration shall be governed by the Arkansas Administrative Procedure Act,
6 § 25-15-101 et seq.

7 (e) The acceptance by the board of an application for registration
8 does not constitute the approval of its contents or waive the authority of
9 the board to take disciplinary action under this subchapter.

10
11 17-14-406. Fees and renewals.

12 (a) The Arkansas Appraiser Licensing and Certification Board shall
13 establish by rule a filing fee not to exceed five hundred dollars (\$500) to
14 be paid by each appraisal management company seeking registration under this
15 subchapter.

16 (b)(1) In addition to the filing fee, each applicant for registration
17 shall post with the board and maintain a surety bond in the amount of twenty
18 thousand dollars (\$20,000).

19 (2) The bond shall:

20 (A) Be in the form prescribed by rule of the board; and

21 (B) Accrue to the state for the benefit of a claimant
22 against the registrant to secure the faithful performance of the registrant's
23 obligations under this subchapter.

24 (3) The aggregate liability of the surety shall not exceed the
25 principal sum of the bond.

26 (4) A party having a claim against the registrant may bring suit
27 directly on the surety bond, or the board may bring suit on behalf of the
28 party having a claim against the registrant.

29 (5) Consumer claims are given priority in recovering from the
30 bond.

31 (6) A deposit of cash or security may be accepted in lieu of the
32 surety bond.

33 (7) A claim reducing the face amount of the bond shall be
34 annually restored upon renewal of the registrant's registration.

35 (c)(1) Registrations issued under this subchapter shall be renewed
36 annually beginning twelve (12) months from the date of issuance.

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1 (2)(A) Failure to timely renew a registration shall result in a
2 loss of authority to operate under this subchapter.

3 (B) A request to reinstate a certificate of registration
4 shall be accompanied by payment of a penalty of fifty dollars (\$50) for each
5 month of delinquency.

6
7 17-14-407. Registrant responsibilities and duties.

8 (a) A registrant that is an organization shall:

9 (1) Maintain a registered agent for service of process under the
10 Model Registered Agents Act, § 4-20-101 et seq.; and

11 (2) Provide to the Arkansas Appraiser Licensing and
12 Certification Board the information required by § 4-20-105(a) concerning the
13 organization's agent for service of process and within five (5) business days
14 any changes to the information.

15 (b)(1) A registrant shall maintain or cause to be maintained complete
16 records of requests for appraisal services referred to an appraiser licensed
17 or certified by the board, including without limitation records pertaining to
18 the acceptance of fees from borrowers or clients and payments to appraisers.

19 (2) The board may inspect the records without prior notice
20 periodically or if the board determines that the records are pertinent to an
21 investigation of a complaint against a registrant.

22 (c)(1) A registrant shall designate a controlling person or managing
23 principal responsible for ensuring compliance with this subchapter.

24 (2) The registrant shall file a form with the board certifying:

25 (A) The identity of the controlling person or the managing
26 principal; and

27 (B) The individual's acceptance of the responsibilities of
28 a controlling person or a managing principal.

29 (3) The registrant shall notify the board within thirty (30)
30 days of a change in its controlling person or managing principal.

31 (4) An individual registrant who operates as a sole
32 proprietorship is considered the managing principal under this subchapter.

33 (d)(1) A registrant shall make and keep the accounts, correspondence,
34 memoranda, papers, books, and other records in accordance with rules
35 promulgated by the board.

36 (2) All records shall be retained for five (5) years unless the

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1 board by rule prescribes a different retention period for particular types of
2 records.

3 (e) If the information contained in a document filed with the board is
4 or becomes inaccurate or incomplete in any material respect, the registrant
5 shall promptly file an amendment correcting the information contained in the
6 document.

7 (f) The registrant shall disclose to its client the actual fees paid
8 to an appraiser for appraisal services separately from any other fees or
9 charges for appraisal management services.

10
11 17-14-408. Prohibited activities.

12 (a) An employee, director, officer, or agent of an appraisal
13 management company or any other third party acting as a joint venture partner
14 with or independent contractor for an appraisal management company shall not
15 improperly influence or attempt to improperly influence the development,
16 reporting, result, or review of a real estate appraisal, including without
17 limitation through the use of intimidation, coercion, extortion, bribery,
18 blackmail, threat of nonpayment or withholding payment for appraisal
19 services, or threat of exclusion from future appraisal work.

20 (b) The registrant shall not:

21 (1) Require an appraiser to collect the appraisal fee from a
22 borrower, homeowner, or other third party;

23 (2) Hire, employ, or in any way contract with or pay a real
24 estate broker to perform a broker's price opinion or comparative market
25 analysis unless the broker's price opinion or comparative market analysis
26 will be performed only for listing or selling property that the registrant
27 owns;

28 (3) Require an appraiser to provide the registrant with the
29 appraiser's digital signature or seal;

30 (4) Alter, amend, or change an appraisal report submitted by a
31 licensed or certified appraiser including without limitation by:

32 (A) Removing the appraiser's signature or seal; or

33 (B) Adding or removing information to or from the
34 appraisal report;

35 (5)(A) Allow the removal of an independent appraiser from an
36 appraiser panel without prior written notice to the appraiser.

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(B) Written notice shall include written evidence of:

(i) The appraiser's illegal conduct;

(ii) A violation of the minimum reporting standards under § 17-14-202(b) or other applicable statutes or rules;

(iii) Substandard performance; or

(iv) Otherwise improper or unprofessional behavior;

(6) Enter into contracts or agreements with an independent appraiser for the performance of appraisal services unless the independent appraiser is licensed or certified in good standing with the Arkansas Appraiser Licensing and Certification Board;

(7) 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 before the appraiser completes an appraisal report;

(8)(A) Except as provided in subdivision (b)(8)(B) of this section, provide to an appraiser an anticipated, estimated, encouraged, or desired value for a property or a proposed or target amount to be loaned to the borrower.

(B) A copy of the sales contract for purchase transactions may be provided; or

(9) Commit an act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(c) Subsection (a) of this section does not be prohibit an appraisal management company from requesting that an independent appraiser:

(1) Provide additional information about the basis for a valuation;

(2) Correct objective factual errors in an appraisal report; or

(3) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

17-14-409. Registry of applicants and roster.

(a)(1) The Executive Director of the Arkansas Appraiser Licensing and Certification Board shall keep a register of all applicants for registration.

(2) The register shall indicate:

(A) The date of application;

(B) The applicant's name;

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1 (C) The applicant's business address; and

2 (D) Whether the registration was granted or denied.

3 (3) The register shall be prima facie evidence of all matters
4 contained in the register.

5 (b)(1) The executive director shall keep a current roster showing the
6 name and address of all appraisal management companies registered with the
7 board.

8 (2) The roster shall be kept on file in the office of the board
9 and shall be open for public inspection.

10
11 17-14-410. Disciplinary authority, enforcement, and hearings.

12 (a) The Arkansas Appraiser Licensing and Certification Board may deny,
13 suspend, revoke, or refuse to issue or renew the registration of an appraisal
14 management company under this subchapter or may restrict or limit the
15 activities of an appraisal management company or a person who owns an
16 interest in or participates in the business of an appraisal management
17 company if the board finds that any of the following circumstances apply to
18 the applicant, a registrant, or a partner, member, manager, officer,
19 director, managing principal, controlling person, or a person occupying a
20 similar status or performing similar functions, or a person directly or
21 indirectly controlling the applicant or registrant:

22 (1) The person's application for registration when filed or
23 after filing contained a statement that in light of the circumstances under
24 which it was made is false or misleading with respect to a material fact;

25 (2) The person has violated or failed to comply with this
26 subchapter;

27 (3) The person has pled guilty or nolo contendere to or been
28 found guilty of:

29 (A) A felony; or

30 (B) Within the past ten (10) years:

31 (i) A misdemeanor involving mortgage lending or real
32 estate appraising; or

33 (ii) An offense involving breach of trust, moral
34 turpitude, or fraudulent or dishonest dealing;

35 (4) The person is permanently or temporarily enjoined by a court
36 of competent jurisdiction from engaging in or continuing any conduct or

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practice involving appraisal management services or operating an appraisal management company;

(5) The person is the subject of an order of the board or any other state appraisal management company regulatory agency denying, suspending, or revoking the person's privilege to operate as an appraisal management company;

(6) The person acted as an appraisal management company while not properly licensed by the board; or

(7) The person failed to pay the proper filing or renewal fee under this subchapter.

(b) Upon its own motion or the written complaint of a person and after notice and hearing as prescribed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the board may:

(1) Suspend or revoke the registration of a registrant;

(2) Impose a fine not to exceed one thousand dollars (\$1,000) per violation; or

(3) Take other appropriate disciplinary actions as established by rule of the board.

(c)(1) Before imposing a penalty on a registrant, the board shall:

(A) Notify the registrant in writing of any charges made at least twenty (20) days before the date set for the hearing; and

(B) Afford the registrant an opportunity to be heard in person or by counsel.

(2) The board may make findings of fact and shall deliver or mail the findings to the registrant charged with an offense under this subchapter.

17-14-411. Injunctive relief -- Criminal penalty.

(a) The Arkansas Appraiser Licensing and Certification Board may appear in its own name in a circuit court of competent jurisdiction to obtain injunctive relief to prevent a person from violating this subchapter.

(b) The circuit court may grant a temporary or permanent injunction regardless of whether:

(1) Criminal prosecution has been or may be instituted as a result of the violation of this subchapter; or

(2) The person is the holder of a registration issued by the board.

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1 (c) A violation of this subchapter is a Class D felony.

2
3 17-14-412. Applicability.

4 This subchapter does not apply to:

5 (1) An agency of the federal, state, county, or municipal
6 government;

7 (2) A person authorized to engage in business as a bank, farm
8 credit-system, savings institution, or credit union under the laws of the
9 United States, the State of Arkansas, or any other state;

10 (3) A licensed real estate broker or licensed real estate agent
11 performing activities regulated by the Arkansas Real Estate Commission unless
12 the licensed real estate broker or licensed real estate agent receives
13 compensation or other pecuniary gain in connection with the referral,
14 placement, or execution of a request for appraisal services; or

15 (4) An officer or employee of a government agency, person,
16 licensed real estate broker, or licensed real estate-agent-described in this
17 section when acting within the scope of employment of the officer or
18 employee.

19
20 SECTION 2. Arkansas Code § 17-14-101 is amended to read as follows:

21 17-14-101. Title.

22 ~~This chapter will~~ Section 17-14-101 et seq., § 17-14-201 et seq., and § 17-
23 14-301 et seq. shall be known and may be cited as the "Arkansas Appraiser
24 Licensing and Certification Act".

25
26 SECTION 3. Arkansas Code § 17-14-102 is amended to read as follows:
27 17-14-102. Necessity for registration, license, or certificate.

28 (a) ~~This chapter~~ The Arkansas Appraiser Licensing and Certification
29 Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., is
30 created in response to Title XI of the Financial Institutions Reform,
31 Recovery, and Enforcement Act of 1989 and specifies three (3) classes of
32 appraisers, i.e.,: state-licensed, state-certified residential, and state-
33 certified general appraisers for federally related transactions. A fourth
34 class is created for nonfederally related transactions, which shall be known
35 as "state-registered appraisers".

36 (b) It is the intent of the General Assembly that this law be no more

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1 restrictive than required under the Financial Institutions Reform, Recovery,
2 and Enforcement Act of 1989.

3
4 SECTION 4. The introductory language of Arkansas Code § 17-14-103,
5 concerning definitions for the Arkansas Appraiser Licensing and Certification
6 Act, is amended to read as follows:

7 As used in ~~this chapter~~, the following terms shall have the following
8 meanings the Arkansas Appraiser Licensing and Certification Act, § 17-14-101
9 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.:

10
11 SECTION 5. Arkansas Code § 17-14-103(8), concerning the definition of
12 "Board" under the Arkansas Appraiser Licensing and Certification Act, is
13 amended to read as follows:

14 (8) "Board" means the Arkansas Appraiser Licensing and
15 Certification Board established ~~pursuant to this chapter~~ under the Arkansas
16 Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201
17 et seq., and § 17-14-301 et seq.;

18
19 SECTION 6. Arkansas Code § 17-14-104 is amended to read as follows:
20 17-14-104. Exceptions to registration, licensing, or certification.

21 (a)(1)(A) Except when an interstate transaction or a federally related
22 transaction is involved, ~~this chapter~~ the Arkansas Appraiser Licensing and
23 Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301
24 et seq., does not apply to a real estate broker or sales person licensed by
25 this state who:

26 (i) In the ordinary course of his or her business,
27 gives to a potential seller or third party a written report called a market
28 analysis or a broker's price opinion as to the recommended listing price of
29 real estate or an opinion to a potential purchaser or third party as to the
30 recommended price of real estate; or

31 (ii) Provides testimony regarding an opinion of the
32 value of real property ~~pursuant to~~ under § 28-51-302.

33 (B) A broker's price opinion or a market analysis issued
34 in this state in connection with an interstate transaction or a federally
35 related transaction shall not contain the term "appraisal" or the term
36 "market value".

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1 (C) The prohibition of subdivision (a)(1)(B) of this
2 section ~~is not applicable~~ does not apply to an intrastate, nonfederally
3 related broker's price opinion or market analysis.

4 (2)(A) The listing price, purchase price, market analysis, or
5 broker's price opinion may be treated as an appraisal solely for the purposes
6 of § 28-51-302.

7 (B) A real estate broker who provides testimony regarding
8 an opinion of the value of real property that may be treated as an appraisal
9 for purposes of § 28-51-302 shall nonetheless be exempt from registration as
10 an appraiser ~~pursuant to this chapter~~ under the Arkansas Appraiser Licensing
11 and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-
12 301 et seq.

13 (b)(1)(A) ~~The provisions of this chapter~~ Arkansas Appraiser Licensing
14 and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-
15 301 et seq., shall does not apply to any state, county, or municipal public
16 officer or employee while the officer or employee is performing appraisal or
17 appraisal-related duties as the officer or employee.

18 (B) ~~Any appraisals~~ Appraisals performed by state, county,
19 or municipal officers or employees outside the scope of their employment are
20 subject to the provisions of ~~this chapter~~ the Arkansas Appraiser Licensing
21 and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-
22 301 et seq.

23 (2) ~~This chapter~~ The Arkansas Appraiser Licensing and
24 Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301
25 et seq., shall does not apply to:

26 (A) Persons performing appraisals as officers or staff of
27 a bank, savings and loan, or credit union;

28 (B) Company foresters in the ordinary course of their
29 duties; or

30 (C) Staff appraisers performing ad valorem tax appraisal
31 for county assessors or employees of contractors performing county-wide
32 reappraisals.

33 (c)(1) Except as provided in subsection (b) of this section,
34 appraisers, when providing appraisal reports or appraisal services in
35 nonfederally related transactions, who become licensed or certified by the
36 Arkansas Appraiser Licensing and Certification Board are subject to the

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1 ~~provisions of this chapter~~ Arkansas Appraiser Licensing and Certification
2 Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., in
3 all matters involving appraisal services, including transactions below the
4 federally established threshold.

5 (2) If an appraiser does not make appraisals for any federal
6 agency, any federally insured lending institution, the Federal Housing
7 Administration, the Federal National Mortgage Association, the Federal
8 Deposit Insurance Corporation, the United States Bankruptcy Courts, the
9 Federal Highway Administration, the Federal Aviation Administration, the
10 Department of Veterans Affairs, the Internal Revenue Service, or any other
11 federal or quasi-federal authority, including appraisal work that is
12 distributed via interstate commerce or appraisals involving transactions
13 above the threshold established by a federal financial institutions
14 regulatory agency, the appraiser is only required to be a state-registered
15 appraiser under the ~~provisions of this chapter~~ Arkansas Appraiser Licensing
16 and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-
17 301 et seq.

18 (d) ~~This chapter~~ The Arkansas Appraiser Licensing and Certification
19 Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., shall
20 not preclude any person from testifying as an expert witness in any judicial
21 proceeding in which the value of real estate is in issue unless that person
22 holds himself or herself out as a practicing real estate fee appraiser.

23 (e) Nothing in ~~this chapter~~ the Arkansas Appraiser Licensing and
24 Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301
25 et seq., shall be construed to prohibit prohibits any person who is licensed
26 to practice in this state under any law from engaging in the practice for
27 which he or she is licensed.

28
29 SECTION 7. Arkansas Code § 17-14-105 is amended to read as follows:
30 17-14-105. Right and privileges of licensed or registered appraiser.

31 (a) A state-registered or state-licensed appraiser as defined in § 17-
32 14-103 may appraise real property for compensation if the use of a state-
33 certified appraiser is not required under ~~this chapter~~ the Arkansas Appraiser
34 Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq.,
35 and § 17-14-301 et seq., or by federal or state law, rule, or policy.

36 (b) An appraiser shall not sign an appraisal report or be cited within

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1 the report as having provided "significant real property appraisal
2 assistance" in the development of the appraisal without having been state-
3 registered, state-licensed, or state-certified.

4
5 SECTION 8. Arkansas Code § 17-14-106 is amended to read as follows:
6 17-14-106. Absence of liability.

7 (a) Financial institutions or affiliates hiring the services of
8 appraisers registered, licensed, or certified by the Arkansas Appraiser
9 Licensing and Certification Board in nonfederally related transactions,
10 including transactions below the federally established threshold, shall not
11 be liable to any party asserting damages due to the alleged actions of the
12 appraiser, nor shall the financial institution or affiliate be subject to any
13 requirements to report to the board regarding such transactions other than as
14 may be required by ~~this chapter~~ the Arkansas Appraiser Licensing and
15 Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301
16 et seq., and the regulations rules promulgated by the board.

17 (b) ~~Nothing in this section shall be interpreted to~~ This section does
18 not limit the investigative or subpoena powers of the board.

19
20 SECTION 9. Arkansas Code § 17-14-201(a)(1)(C), concerning the
21 membership of the Arkansas Appraiser Licensing and Certification Board, is
22 amended to read as follows:

23 (C) Additionally, the seven (7) practicing appraiser members
24 shall be representative of the various disciplines found in the appraisal
25 profession, ~~which include, but are not limited to,~~ including without
26 limitation residential appraisal, commercial and industrial appraisal,
27 forestry and timberland appraisal, rural appraisal, and any other appraisal
28 discipline that may be affected by this chapter the Arkansas Appraiser
29 Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq.,
30 and § 17-14-301 et seq.;

31
32 SECTION 10. Arkansas Code § 17-14-203 is amended to read as follows:
33 17-14-203. Powers and duties - In general.

34 In accordance with these general powers and duties, the Arkansas
35 Appraiser Licensing and Certification Board shall:

36 (1) Perform all duties and functions necessary to carry out ~~the~~

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1 ~~provisions of this chapter;~~

2 (2) Receive applications for registering, licensing, and
3 certification;

4 (3) Establish administrative procedures for processing
5 applications;

6 (4)(A) Approve and issue registration, licenses, and
7 certificates to qualified applicants or disapprove applications for
8 registering, licensing, and certification for applicants who do not meet the
9 minimum requirements as prescribed in this chapter.

10 (B) All application materials and records submitted to the
11 board shall be retained by the board;

12 (5) Maintain a roster of the names, addresses, and telephone
13 numbers of all persons licensed and certified under ~~this chapter~~ the Arkansas
14 Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201
15 et seq., and § 17-14-301 et seq., and, in accordance with sections 1103(a)(3)
16 and 1109(a)(1) of Title XI of the Financial Institutions Reform, Recovery,
17 and Enforcement Act of 1989, shall submit this roster annually to the
18 Appraisal Subcommittee. This roster may be published and periodically updated
19 and provided to all interested parties at cost;

20 (6)(A) Establish by ~~regulation~~ rule the minimum examination,
21 education, experience, and continuing education requirements for state-
22 registered, state-licensed, and state-certified appraisers.

23 (B)(i) The criteria for a state-registered appraiser shall
24 be less rigorous than the criteria for a state-licensed appraiser.

25 (ii) The criteria for a state-licensed appraiser
26 shall be less rigorous than the criteria for a state-certified appraiser.
27 However, the criteria will ensure that licensed appraisers have sufficient
28 experience and training to perform appraisals for transactions within and in
29 compliance with Title XI of the Financial Institutions Reform, Recovery, and
30 Enforcement Act of 1989.

31 (C) These ~~regulations~~ rules shall at all times be
32 equivalent to the minimum appraiser-qualification criteria as promulgated by
33 the Appraiser Qualifications Board of the Appraisal Foundation for state-
34 licensed and state-certified appraisers performing federally related
35 transactions.

36 (D) With respect to examinations, these ~~regulations~~ rules

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1 shall at all times require minimum examination contents that are equivalent
2 to the national uniform examination content as promulgated by the Appraiser
3 Qualifications Board of the Appraisal Foundation and shall provide for the
4 selection and utilization of a testing service acceptable to the Appraiser
5 Qualifications Board of the Appraisal Foundation.

6 (E)(i) Every application for registering, licensing, and
7 certification shall be accompanied by an application and examination fee, as
8 applicable, that the Arkansas Appraiser Licensing and Certification Board may
9 establish by regulation.

10 (ii) However, the Arkansas Appraiser Licensing and
11 Certification Board, at its discretion, may direct each applicant to pay the
12 actual cost of the examination fee directly to a testing service engaged by
13 the Arkansas Appraiser Licensing and Certification Board to administer the
14 examination.

15 (F) ~~No~~ The examination fee for registering, licensing, or
16 certification shall not exceed one hundred dollars (\$100).

17 (G) The total annual resident registering, licensing,
18 certification, and application fees established by the Arkansas Appraiser
19 Licensing and Certification Board shall not exceed three hundred dollars
20 (\$300) excluding fees for applicable examination and federal pass-through
21 fees.

22 (H) Courses, schools, seminars, and any other educational
23 programs must be recognized by the Arkansas Appraiser Licensing and
24 Certification Board as acceptable to satisfy registration, licensing, and
25 certification standards and continuing education requirements under ~~this~~
26 chapter the Arkansas Appraiser Licensing and Certification Act, § 17-14-101
27 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.;

28 (7)(A) Establish administrative procedures for disciplinary
29 proceedings conducted ~~pursuant to the provisions of this chapter~~ under the
30 Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., §
31 17-14-201 et seq., and § 17-14-301 et seq.

32 (B) ~~These~~ The administrative procedures shall include provisions
33 for the suspension and revocation of registration, licenses, and certificates
34 and the enforcement of civil penalties concurrent with existing statutes
35 regarding civil procedures;

36 (8) Subpoena and issue subpoena duces tecum and to bring before

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1 it any person in this state, and to take testimony by deposition, in the same
2 manner as prescribed by law in judicial proceedings in the courts of this
3 state or to require production of any records relevant to any inquiry or
4 hearing by the Arkansas Appraiser Licensing and Certification Board;

5 (9) ~~Recommend procedures necessary to assure the ready~~
6 ~~availability to appraisers in the state of adequate and reliable information~~
7 ~~regarding property prices and the terms and conditions of real estate and~~
8 ~~real property transactions and related financing;~~

9 (10) Establish administrative procedures for the setting,
10 charging, and collecting of fees necessary for the operation of the Arkansas
11 Appraiser Licensing and Certification Board and to concurrently collect and
12 submit to the proper agency as prescribed under section 1109(a)(2) of the
13 Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and any
14 other related federal law, any additional fees that may from time to time be
15 required to be paid by appraisers whose practices include the appraisal of
16 properties included in federally related transactions; and

17 (11) Be authorized to adopt and enforce such administrative
18 rules ~~and regulations~~ as may be necessary to comply with state law and
19 federal law with specific reference to Title XI of the Financial Institutions
20 Reform, Recovery, and Enforcement Act of 1989 as it exists today and as it
21 may be amended and adopted by the Appraisal Subcommittee of the Federal
22 Financial Institutions Examination Council.

23
24 SECTION 11. Arkansas Code § 17-14-205 is amended to read as follows:
25 17-14-205. Hearings - Review - Access to records.

26 (a) In fulfilling its duties under ~~this chapter~~ the Arkansas Appraiser
27 Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq.,
28 and § 17-14-301 et seq., the Arkansas Appraiser Licensing and Certification
29 Board shall comply with the Arkansas Administrative Procedure Act, § 25-15-
30 201 et seq., and any person aggrieved by any rule or other actions of the
31 board for which an appeal is not provided for in the Arkansas Administrative
32 Procedure Act, § 25-15-201 et seq., may appeal to the Circuit Court of
33 Pulaski County.

34 (b) Disciplinary hearings conducted by the board for the purpose of
35 determining whether to levy civil penalties under ~~this chapter~~ the Arkansas
36 Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201

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1 et seq., and § 17-14-301 et seq., and for the purpose of determining whether
2 to revoke or suspend any license or certificate issued pursuant to this
3 ~~chapter~~ under the Arkansas Appraiser Licensing and Certification Act, § 17-
4 14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., shall not be
5 deemed open public meetings but shall be executive sessions conducted as
6 provided for in the Freedom of Information Act of 1967, § 25-19-101 et seq.

7 (c) Sample appraisals and other work papers submitted to the board as
8 partial fulfillment of the requirements for licensure or certification under
9 ~~this chapter~~ the Arkansas Appraiser Licensing and Certification Act, § 17-14-
10 101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., shall not be
11 deemed public records under the Freedom of Information Act of 1967, § 25-19-
12 101 et seq.

13
14 SECTION 12. Arkansas Code § 17-14-206 is amended to read as follows:
15 17-14-206. Complaints and disciplinary procedures.

16 (a) Upon its own motion or upon written complaint of any person and
17 after notice and hearing as prescribed by the Arkansas Administrative
18 Procedure Act, § 25-15-201 et seq., the Arkansas Appraiser Licensing and
19 Certification Board may suspend or revoke the registration, license, or
20 certification of any registrant, licensee, or certificate holder and issue a
21 fine up to the amount of one thousand dollars (\$1,000) per violation
22 occurrence or take any other appropriate disciplinary action for:

23 (1) Violation of any provision of ~~this chapter~~ the Arkansas
24 Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201
25 et seq., and § 17-14-301 et seq.;

26 (2) Falsifying any application for licensure or certification or
27 otherwise providing any false information to the board;

28 (3)(A) Conviction in any jurisdiction of any misdemeanor
29 involving moral turpitude or of any felony.

30 (B) A plea of nolo contendere or no contest shall be
31 considered a conviction for the purposes of this section;

32 (4) Any actions demonstrating untrustworthiness, incompetence,
33 dishonesty, gross negligence, material misrepresentation, fraud, or unethical
34 conduct in any dealings subject to ~~this chapter or these regulations~~ the
35 Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., §
36 17-14-201 et seq., and § 17-14-301 et seq.;

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- 1 (5) Adjudication of insanity;
- 2 (6) Use of advertising or solicitation which is false,
- 3 misleading, or is otherwise deemed unprofessional by the board;
- 4 (7) Employing directly or indirectly any unlicensed person to
- 5 perform any actions subject to ~~this chapter~~ the Arkansas Appraiser Licensing
- 6 and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-
- 7 301 et seq.;
- 8 (8) Habitual or excessive use of intoxicants or illegal drugs;
- 9 or
- 10 (9) Failure to meet continuing education requirements within the
- 11 proper time period.

12 (b) Except in cases in which a licensee, registrant, or certificate
 13 holder has obtained a license by false or fraudulent representation, the
 14 board shall not investigate the actions of or conduct any disciplinary
 15 hearing regarding any licensee, registrant, or certificate holder unless the
 16 complaint is filed or the investigation is initiated within three (3) years
 17 from the date of the actions complained of or concerning which an
 18 investigation is initiated.

19
 20 SECTION 13. Arkansas Code § 17-14-301 is amended to read as follows:
 21 17-14-301. Business entities - Eligibility for licensing.

22 A registration, license, or certificate shall not be issued under ~~this~~
 23 ~~chapter~~ the Arkansas Appraiser Licensing and Certification Act, § 17-14-101
 24 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., to a firm,
 25 corporation, partnership, group, or other business entity.

26
 27 SECTION 14. Arkansas Code § 17-14-302 is amended to read as follows:
 28 17-14-302. License required - Membership in other organizations.

29 (a) On or after December 31, 2001, it shall be a Class B misdemeanor
 30 for any individual to perform an appraisal or provide appraisal services as
 31 defined in ~~this chapter~~ the Arkansas Appraiser Licensing and Certification
 32 Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.,
 33 without holding a registration, license, or certificate except as provided in
 34 § 17-14-104.

35 (b) No A person shall not be excluded from obtaining a registration,
 36 license, or certification based solely upon membership or lack of membership

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1 in any particular appraisal organization.

2
3 SECTION 15. Arkansas Code § 17-14-303 is amended to read as follows:

4 17-14-303. Unlicensed persons – Federally and nonfederally related
5 transactions.

6 (a) It ~~shall be~~ is a Class B misdemeanor for any person who is not
7 licensed or certified pursuant to this chapter under the Arkansas Appraiser
8 Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq.,
9 and § 17-14-301 et seq., to perform appraisal services as defined in ~~this~~
10 ~~chapter~~ the Arkansas Appraiser Licensing and Certification Act, § 17-14-101
11 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., in connection with a
12 federally related transaction.

13 (b) An appraiser who does not hold an appraiser's classification that
14 permits the performance of a particular appraisal assignment for use in
15 federally related transactions must include in such an appraisal report a
16 statement that the appraisal may not be eligible for use in a federally
17 related transaction.

18
19 SECTION 16. Arkansas Code § 17-14-304 is amended to read as follows:
20 17-14-304. Use of terms.

21 (a) The terms "certified real property appraiser", "certified real
22 estate appraiser", and "certified appraiser" shall only be used to refer to
23 individuals who hold a current certificate and shall not be used in
24 connection with or as part of the name or signature of an individual, firm,
25 partnership, corporation, group, or other business entity, or anyone other
26 than an individual holder of the certificate.

27 (b) ~~No~~ An appraiser practicing or providing appraisal services in this
28 state as defined in § 17-14-103 may not use the terms "registered",
29 "certified", or "licensed" in conjunction with his or her appraisal practice
30 unless he or she holds a valid registration, license, or certification issued
31 under the ~~provisions of this chapter~~ the Arkansas Appraiser Licensing and
32 Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301
33 et seq.

34 (c) The terms "licensed real estate appraiser", "licensed real
35 property appraiser", ~~or~~ and "licensed appraiser" shall only be used to refer
36 to individuals who hold a current license and shall not be used in connection

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1 with or as part of the name or signature of an individual, firm, corporation,
2 or group or in a manner that may be interpreted as referring to a firm,
3 partnership, corporation, group, or other business entity, or anyone other
4 than an individual holder of the license.

5 (d) No A person other than a state-registered appraiser, state-
6 licensed appraiser, or state-certified appraiser shall not assume or use that
7 title or any title, designation, or abbreviation likely to create the
8 impression of registration, licensing, or certification as an appraiser by
9 this state.

10 (e) A person who is not licensed or certified pursuant to this chapter
11 under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et
12 seq., § 17-14-201 et seq., and § 17-14-301 et seq., shall not describe or
13 refer to any appraisal report, written or oral, or other evaluation of real
14 estate covered under the activities of appraisers by the terms term
15 "registered", "licensed", "certified", or any other similar term that may be
16 construed to imply qualification or competency recognized by the state.

17
18 SECTION 17. Arkansas Code § 17-14-305 is amended to read as follows:

19 17-14-305. Compliance with uniform standards and code of ethics -
20 Seals - Licensing and certification documents.

21 (a)(1) Each state-registered appraiser, each state-licensed appraiser,
22 and each state-certified appraiser shall comply with the Uniform Standards of
23 Professional Appraisal Practice and Code of Ethics adopted by the Arkansas
24 Appraiser Licensing and Certification Board and shall authenticate all
25 written appraisal reports with a seal which shall indicate the registration,
26 license, or certification number.

27 (2) The seal and number shall also be used in all statements of
28 qualifications, contracts, or other instruments used by the registration,
29 license, or certificate holder when reference is made to his or her status as
30 a state-registered appraiser, state-licensed appraiser, or a state-certified
31 appraiser.

32 (b) Registration, license, and certificate documents, licenses,
33 certificates, seals, and pocket cards shall remain the property of the state,
34 and, upon any suspension, revocation, or other termination of a registration,
35 license, or certification pursuant to this chapter under the Arkansas
36 Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et

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1 seq., and § 17-14-301 et seq., the individual holding the related documents
2 shall immediately return the documents to the board.

3
4 SECTION 18. Arkansas Code § 17-14-306 is amended to read as follows:

5 17-14-306. Additional licenses - Nonresidents.

6 (a)(1) Every applicant for registration, licensure, or certification
7 under this chapter the Arkansas Appraiser Licensing and Certification Act, §
8 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., who is not a
9 resident of this state shall submit with the application for registration,
10 licensure, or certification an irrevocable consent that service of process
11 upon him or her may be made by delivery of the process to the Secretary of
12 State if, in an action against the applicant in a court of this state arising
13 out of the applicant's activities as a state-registered appraiser, state-
14 licensed appraiser, or state-certified appraiser, the plaintiff cannot effect
15 personal service upon the applicant.

16 (2) ~~A nonresident of this state who has complied with this~~
17 ~~provision may obtain a license or certification as a state-licensed appraiser~~
18 ~~or a state-certified appraiser by conforming to all of the provisions of this~~
19 ~~chapter complying with the Arkansas Appraiser Licensing and Certification~~
20 ~~Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.,~~
21 ~~relating to state-registered appraisers, state-licensed appraisers, or state-~~
22 ~~certified appraisers, including the payment of a fee.~~

23 (b)(1) If, in the determination by the Arkansas Appraiser Licensing
24 and Certification Board, another state is deemed to have substantially
25 equivalent licensing and certification requirements, an applicant who is
26 licensed or certified under the laws of the other state may obtain a
27 temporary or nonresident license or certificate as a state-licensed appraiser
28 or a state-certified appraiser in this state upon such terms and conditions
29 as may be determined by the board.

30 (2) An appropriate fee is to be charged.

31
32 SECTION 19. Arkansas Code § 17-14-308 is amended to read as follows:
33 17-14-308. Violation of law - Civil penalties, injunctions, venue.

34 (a)(1) It is unlawful for any person not registered, licensed, or
35 certified under this chapter the Arkansas Appraiser Licensing and
36 Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301

Willie A. Helton

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SPEAKER OF THE HOUSE

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1 et seq., to perform any act for which registration, licensure, or
2 certification is required.

3 (2) ~~Any~~ A person acting as an appraiser within the meaning of
4 ~~this chapter the Arkansas Appraiser Licensing and Certification Act, § 17-14-~~
5 ~~101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.,~~ without an
6 appraiser classification and any person who violates any other provision of
7 ~~this chapter the Arkansas Appraiser Licensing and Certification Act, § 17-14-~~
8 ~~101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., shall be is~~ guilty
9 of a misdemeanor.

10 (b)(1) Upon application by the Arkansas Appraiser Licensing and
11 Certification Board, a court may grant an injunction, restraining order, or
12 other order as may be appropriate to enjoin a person from:

13 (A) Offering to engage or engaging in the performance of
14 any acts or practices for which a registration, certificate, or license is
15 required by the Arkansas Appraiser Licensing and Certification Act, § 17-14-
16 101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., upon a showing
17 that the acts or practices were performed or offered to be performed without
18 a registration, license, or certificate; or

19 (B) Engaging in any practice or business authorized by a
20 certificate, license, or registration issued pursuant to under the Arkansas
21 Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201
22 et seq., and § 17-14-301 et seq., upon a showing that the holder presents a
23 substantial probability of serious danger to the health, safety, or welfare
24 of any resident of this state or client of the certificate holder or
25 licensee.

26 (2) Any person co-signing an appraisal with a state-registered,
27 state-licensed, or state-certified appraiser becomes subject to the
28 ~~provisions of this chapter~~ Arkansas Appraiser Licensing and Certification
29 Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

30 (c) Any action brought pursuant to this section shall be commenced in
31 the county in which the conduct occurred, in the county in which the
32 defendant resides, or in Pulaski County.

33 (d) Any actions brought under this section shall be in addition to and
34 not in lieu of any penalty provided by § 17-14-206 and may be brought
35 concurrently with other actions to enforce the ~~provisions of this chapter the~~
36 Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., §

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W. W. W.

As Engrossed: H3/16/09

1 17-14-201 et seq., and § 17-14-301 et seq.

2
3 SECTION 20. Effective date.
4 This act takes effect January 1, 2010.

5 /s/—Hyde.
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William A. Holten

PRESIDENT OF SENATE

APPROVED *[Signature]*
GOVERNOR

3-27-09

SPEAKER OF THE HOUSE

[Signature]