

Enrolled
House Bill 3624

Sponsored by Representative HOLVEY; Representatives BUCKLEY, DEMBROW, KENNEMER,
TOMEI, VANORMAN (Presession filed.)

CHAPTER

AN ACT

Relating to appraisal management companies; creating new provisions; amending ORS 705.141; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 8 of this 2010 Act:

(1)(a) "Appraisal management company" means a business entity that:

(A) Performs appraisal management services;

(B) Administers networks of independent contractor appraisers to perform real estate appraisal activity for clients; or

(C) Otherwise serves as a third-party broker of real estate appraisal activity between clients and appraisers.

(b) "Appraisal management company" does not include:

(A) An appraiser who in the normal course of business enters into an agreement with another appraiser for the performance of real estate appraisal activity that the hiring appraiser cannot complete;

(B) An appraiser who in the normal course of business enters into an agreement with another appraiser for the performance of real estate appraisal activity and upon the completion of the activity, jointly signs the appraisal report with the appraiser performing the activity; or

(C) A person who contracts for fewer than 10 appraisals in this state in a calendar year.

(2) "Appraisal management services" means the process of receiving a request for the performance of real estate appraisal activity from a client and, for a fee paid by the client, entering into an agreement with an independent contractor appraiser to perform the real estate appraisal activity contained in the request.

(3) "Appraiser" means a state certified appraiser or state licensed appraiser certified or licensed under ORS 674.310.

(4) "Appraiser panel" means a group of independent contractor appraisers who have been selected by an appraisal management company to perform real estate appraisal activity for the appraisal management company.

(5) "Controlling person" means:

(a) An owner, officer or director of an appraisal management company;

(b) An individual employed, appointed or authorized by an appraisal management company to enter into an agreement with a client for the performance of appraisal management

services or to enter into an agreement with an independent contractor appraiser for the performance of real estate appraisal activity; or

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

(6) "Financial institution" has the meaning given that term in ORS 674.010.

(7) "Real estate appraisal activity" means the activity described in ORS 674.100.

SECTION 2. (1)(a) A person may not provide appraisal management services unless the person is registered as an appraisal management company with the Department of Consumer and Business Services.

(b) Notwithstanding ORS 674.100 (3)(a), an affiliate of a financial institution or insurance company may not provide appraisal management services unless the affiliate is registered as an appraisal management company with the department.

(2) A business entity may apply for registration as an appraisal management company on forms prescribed by rule by the department. The application must include:

(a) The name, address and contact information of the entity;

(b) The name, address and contact information of a controlling person of the entity;

(c) If the entity is not domiciled in this state, the name and contact information for the entity's agent for service of process in this state;

(d) The name, address and contact information of any person that owns 10 percent or more of the entity;

(e) A certification that:

(A) The entity has a system to verify that each appraiser on the entity's appraiser panel is licensed or certified under ORS 674.310 and is competent to perform real estate appraisal activity;

(B) If the entity reviews real estate appraisal activity performed by an appraiser, the review is conducted by another appraiser; and

(C) The entity maintains and retains for at least five years, or as required under ORS 674.150, a detailed record of each appraisal management services request the entity receives and the appraiser who performs the real estate appraisal activity contained in the request;

(f) The surety bond, letter of credit or deposit required by section 3 of this 2010 Act;

(g) Fees in an amount prescribed by rule by the department, which must be sufficient to cover the costs of administering sections 1 to 8 and 9 of this 2010 Act;

(h) A description of the dispute resolution process required by section 7 of this 2010 Act; and

(i) Any other information required by the department by rule.

(3) The department may not issue a registration to a business entity as an appraisal management company unless the department determines that each individual who owns 10 percent or more of the entity and the controlling person identified by the entity in the application:

(a) Are of good moral character; and

(b) Have never had a license, certification or registration to act as an appraiser or appraisal management company refused, denied, canceled or revoked in this state or in any other state.

(4) An appraisal management company registration expires two years after the date of the issuance of the registration. The department shall adopt rules establishing the requirements for renewal or reactivation of a registration. The rules must include a requirement that the appraisal management company must certify that:

(a) The company has a system to verify that each appraiser on the company's appraiser panel is licensed or certified under ORS 674.310 and is competent to perform real estate appraisal activity;

(b) If the company reviews real estate appraisal activity performed by an appraiser, the review is conducted by another appraiser; and

(c) The company maintains and retains for at least five years, or as required under ORS 674.150, a detailed record of each appraisal management services request the company receives and the appraiser who performs the real estate appraisal activity contained in the request.

SECTION 3. (1) An applicant for issuance or renewal of an appraisal management company registration shall file with the Department of Consumer and Business Services a surety bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in the amount of \$25,000.

(2) The surety bond or letter of credit required under subsection (1) of this section must:

(a) Be conditioned that the applicant pays:

(A) All amounts owing to persons who perform real estate appraisal activity for the appraisal management company; and

(B) All amounts adjudged against the appraisal management company by reason of negligent or improper real estate appraisal activity or appraisal management services or breach of contract in performing real estate appraisal activity or appraisal management services; and

(b) Require the surety company to provide written notice to the department by registered or certified mail:

(A) At least 30 days before the surety company cancels or revokes the bond; or

(B) When the surety company pays for a loss under the bond.

(3) In lieu of the surety bond or letter of credit required under subsection (1) of this section, the appraisal management company may file with the department, under the same terms and conditions as when a bond is filed, a deposit in cash or negotiable securities acceptable to the department.

(4) The surety bond, letter of credit or deposit required by this section must be continuously on file with the department in the amount of \$25,000 and is for the exclusive purpose of payment of the obligations listed in subsection (2) of this section. Upon termination or cancellation of the bond, withdrawal of the deposit or reduction of the bond, letter of credit or deposit to less than \$25,000, a registered appraisal management company shall:

(a) File a replacement bond, letter of credit or deposit within the time period established by the department by rule; or

(b) Surrender the company's registration to the department and cease operating as an appraisal management company.

(5) Any person damaged by an appraisal management company's failure to pay an obligation listed in subsection (2) of this section has a right of action under the bond. An action under the bond must be commenced within one year after the appraisal management company fails to pay the amount owing or the amount adjudged against the appraisal management company.

SECTION 4. (1) The Department of Consumer and Business Services shall adopt rules establishing a procedure for auditing an appraisal management company registered under section 2 of this 2010 Act to examine the appraisal management company's compliance with sections 1 to 8 of this 2010 Act.

(2) The department shall audit each appraisal management company registered under section 2 of this 2010 Act at least every two years.

(3) The department shall issue written findings on the results of the audit.

(4) If an appraisal management company fails an audit, the department may impose a civil penalty under section 9 of this 2010 Act.

SECTION 5. (1) An appraisal management company or an employee, controlling person or agent of an appraisal management company may not:

(a) Attempt to influence the development, reporting or review of an appraisal or appraisal review assignment through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery or any other manner, including but not limited to:

(A) Withholding or threatening to withhold timely payment for an appraisal;

(B) Withholding or threatening to withhold future business for an independent contractor appraiser;

(C) Expressly or impliedly promising future business, promotions or increased compensation for an appraiser;

(D) Conditioning the request for real estate appraisal activity or any payment on the opinion, conclusion or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;

(E) Requesting 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 real estate appraisal activity;

(F) Providing 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 a purchase transaction may be provided;

(G) Providing to an appraiser, or any entity or individual related to the appraiser, stock or other financial or nonfinancial benefits;

(H) Allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser;

(I) Obtaining, using or paying for a second or subsequent appraisal or ordering an automated valuation model 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 an appraisal review or quality control process that is completed by an appraiser before or after a loan is funded; or

(J) Any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.

(b) Substantively alter in any way a completed appraisal report submitted by an appraiser.

(2) This section does not prohibit an appraisal management company from requesting, on behalf of a financial institution at the request of a consumer, that an appraiser:

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

(b) Correct objective factual errors in a completed appraisal report; or

(c) Consider the values of other comparable properties.

SECTION 6. Except in the case of breach of contract or substandard performance of real estate appraisal activity, an appraisal management company shall make payment to an independent contractor appraiser for the completion of an appraisal or appraisal review assignment within 60 days after the appraiser provides the completed appraisal report to the appraisal management company.

SECTION 7. The Department of Consumer and Business Services shall adopt rules requiring an appraisal management company to establish a dispute resolution process that allows a person with an interest in a real estate transaction for which an appraisal was arranged by the appraisal management company to dispute the appraisal.

SECTION 8. (1) The Department of Consumer and Business Services may suspend or revoke an appraisal management company registration for a violation of sections 1 to 8 of this 2010 Act or of rules adopted by the department.

(2) The revocation, lapsing or suspension of an appraisal management company registration does not deprive the department of jurisdiction to proceed with any investigation of or any action or disciplinary proceedings against the appraisal management company, or to revise or render null and void an order suspending or revoking the registration.

SECTION 9. (1) In accordance with ORS chapter 183, the Department of Consumer and Business Services may impose a civil penalty not to exceed \$15,000 on a person who violates a provision of sections 1 to 8 of this 2010 Act.

(2) The civil penalty under this section is in addition to and not in lieu of any other penalty or sanction provided by law.

SECTION 10. ORS 705.141 is amended to read:

705.141. For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Consumer and Business Services may require the fingerprints of a person who is applying for a license **or registration**, or renewal of a license **or registration**, under ORS 744.001, 744.059 or 744.326 **or section 2 of this 2010 Act** or a person who:

(1)(a) Is employed or applying for employment by the department; or

(b) Provides services or seeks to provide services to the department as a contractor, vendor or volunteer; and

(2) Is, or will be, working or providing services in a position:

(a) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(b) In which the person has access to information that state or federal laws, rules or regulations prohibit disclosing or define as confidential;

(c) That has payroll functions or in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(d) That has mailroom duties as a primary duty or job function;

(e) In which the person has responsibility for auditing the department;

(f) That has personnel or human resources functions as a primary responsibility;

(g) In which the person has access to Social Security numbers, dates of birth or criminal background information of employees or members of the public; or

(h) In which the person has access to tax or financial information about individuals or business entities.

SECTION 11. Sections 1 to 8 and 9 of this 2010 Act and the amendments to ORS 705.141 by section 10 of this 2010 Act apply to persons who perform appraisal management services as defined in section 1 of this 2010 Act on or after January 1, 2011.

SECTION 12. (1) Sections 1 to 8 and 9 of this 2010 Act and the amendments to ORS 705.141 by section 10 of this 2010 Act become operative on January 1, 2011.

(2) The Department of Consumer and Business Services may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department by sections 1 to 8 and 9 of this 2010 Act and the amendments to ORS 705.141 by section 10 of this 2010 Act.

SECTION 13. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by House February 16, 2010

Repassed by House February 23, 2010

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Chief Clerk of House

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Speaker of House

Passed by Senate February 23, 2010

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President of Senate

Received by Governor:

.....M,....., 2010

Approved:

.....M,....., 2010

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Governor

Filed in Office of Secretary of State:

.....M,....., 2010

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Secretary of State