

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 230

An Act to amend and reenact §§ 54.1-2020 and 54.1-2021.1 of the Code of Virginia, relating to professions and occupations; appraisal management companies.

[S 979]

Approved March 9, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2020 and 54.1-2021.1 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2020. Definitions.

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

"Appraisal management company" means a person or entity that (i) administers a network of independent contract appraisers, receives requests for appraisals from clients, and receives a fee paid by the client for the appraisals and (ii) enters into an agreement with one or more independent appraisers in its network to perform the appraisals contained in the request provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates; (ii) provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and (iii) within a 12-month calendar year, oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state or 25 or more state-certified or state-licensed appraisers in two or more states. "Appraisal management company" does not include a department or division of an entity that provides appraisal management services only to that entity.

"Appraisal management services" means one or more of the following: (i) recruiting, selecting, and retaining appraisers; (ii) contracting with state-certified or state-licensed appraisers to perform appraisal assignments; (iii) managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary mortgage market participants, collecting fees from creditors and secondary mortgage market participants for services provided, and paying appraisers for services performed; and (iv) reviewing and verifying the work of appraisers.

"Appraisal services" means acting as an appraiser to provide an appraisal or appraisal review.

"Appraiser" means a person licensed or certified under § 54.1-2017 and as otherwise provided in Chapter 20.1 (§ 54.1-2009 et seq.).

"Appraiser panel" means a network, list, or roster of licensed or certified appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company. Appraisers on an appraisal management company's appraiser panel include both appraisers accepted by the appraisal management company for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions and appraisers engaged by the appraisal management company to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor for purposes of this chapter if the appraiser is treated as an independent contractor by the appraisal management company for purposes of federal income taxation.

"Board" means the Virginia Real Estate Appraiser Board.

"Employee" means an individual who has an employment relationship acknowledged by both the individual and the company and is treated as an employee for purposes of compliance with federal income tax laws.

"Uniform Standards of Professional Appraisal Practice" means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

B. The definitions contained in § 54.1-2009 shall be applicable except to the extent inconsistent with the definitions contained in this chapter.

§ 54.1-2021.1. Appraisal management companies; license required; posting of bond or letter of credit.

A. No person shall engage in business as an appraisal management company without a license issued by the Board.

B. The Board may issue a license to do business as an appraisal management company in the Commonwealth to any applicant who has submitted a complete application and provides satisfactory evidence that he has successfully:

1. Completed all requirements established by the Board that are consistent with this chapter and are reasonably necessary to implement, administer, and enforce the provisions of this chapter; and

2. Certified to the Board the following information, and such other information as may be reasonably required by the Board, regarding the person or entity seeking licensure:

- a. The name of the person or entity;
- b. The business address of the person or entity;
- c. Phone contact information for the person or entity, and email address;
- d. If the entity is not an entity domiciled in the Commonwealth, the name and contact information for the entity's agent for service of process in the Commonwealth;
- e. If the entity is not an entity domiciled in the Commonwealth, proof that the entity is properly and currently registered with the Virginia State Corporation Commission;
- f. The name, address, and contact information for any person or any entity that owns 10 percent or more of the appraisal management company;
- g. The name, address, and contact information for a responsible person for the appraisal management company located in the Commonwealth, who shall be a person or entity licensed under Chapter 20.1 (§ 54.1-2009 et seq.);
- h. That any person or entity that owns ~~10 percent or more~~ *any part* of the appraisal management company has never had a license to act as an appraiser refused, denied, canceled, *surrendered in lieu of revocation*, or revoked by the Commonwealth or any other state;
- i. That the entity has a system in place to review the work of all appraisers that may perform appraisal services for the appraisal management company on a periodic basis to ensure that the appraisal services are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice;
- j. That the entity maintains a detailed record of the following: (i) each request for an appraisal service that the appraisal management company receives; (ii) the name of each independent appraiser that performs the appraisal; (iii) the physical address or legal identification of the subject property; (iv) the name of the appraisal management company's client for the appraisal; (v) the amount paid to the appraiser; and (vi) the amount paid to the appraisal management company; and
- k. That the entity has a system in place to ensure compliance with § 129E of the Truth in Lending Act (15 U.S.C. § 1601 et seq.).

C. Any person that owns 10 percent or more of an appraisal management company and any controlling person of an appraisal management company seeking to be licensed pursuant to this chapter shall be of good moral character, as determined by the Board, and shall submit to a background investigation, as determined by the Board.

D. In addition to the filing fee, each applicant for licensure shall post either a bond or a letter of credit as follows:

1. If a bond is posted, the bond shall (i) be in the amount of \$100,000 or any other amount as set by regulation of the Board, (ii) be in a form prescribed by regulation of the Board, and (iii) accrue to the Commonwealth for the benefit of (a) a claimant against the licensee to secure the faithful performance of the licensee's obligations under this chapter or (b) an appraiser who has performed an appraisal for the licensee for which the appraiser has not been paid. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond. When a claimant or an appraiser is awarded a final judgment in a court of competent jurisdiction against a licensee of this section for the licensee's failure to faithfully perform its obligations under this chapter or failure to pay an appraiser who performed an appraisal, the claimant or the appraiser may file a claim with the Board for a directive ordering payment from the bond issuer of the amount of the judgment, court costs and reasonable attorney fees as awarded by the court. Such claim shall be filed with the Board no later than 12 months after the judgment becomes final. Upon receipt of the claim against the licensee, the Board may cause its own investigation to be conducted. The amount of the bond shall be restored by the licensee to the full amount required within 15 days after the payment of any claim on the bond. If the licensee fails to restore the full amount of the bond, the Board shall immediately revoke the license of the licensee whose conduct resulted in payment from the bond.

2. If a letter of credit is posted, the letter of credit shall (i) be in the amount of \$100,000 or any other amount as set by regulation of the Board, (ii) be irrevocable and in a form approved by the Board, payable to the Department of Professional Occupational Regulation, and (iii) be for the use and the benefit of (a) a claimant against the licensee to secure the faithful performance of the licensee's obligations under this chapter or (b) an appraiser who has performed an appraisal for the licensee for which the appraiser has not been paid. The aggregate liability on the letter of credit shall not exceed the principal sum of the letter of credit. When a claimant or an appraiser is awarded a final judgment in a court of competent jurisdiction against a licensee of this section for the licensee's failure to faithfully perform its obligations under this chapter or failure to pay an appraiser who performed an appraisal, the claimant or the appraiser may file a claim with the Board for a directive ordering payment from the issuer of the letter of credit of the amount of the judgment, court costs and reasonable attorney fees as awarded by the court. Such claim shall be filed with the Board no later than 12 months after the judgment becomes final. Upon receipt of the claim against the licensee, the Board may cause its own

investigation to be conducted. Upon a draw against a letter of credit, the licensee shall provide a new letter of credit in the amount required by this subdivision within 15 days after payment of any claim on the letter of credit. If the licensee fails to restore the full amount of the letter of credit, the Board shall immediately revoke the license of the licensee whose conduct resulted in payment from the bond.