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**HOUSE BILL NO. 408**

Offered January 13, 2010

Prefiled January 12, 2010

*A BILL to amend and reenact §§ 6.1-2.23 and 54.1-2013 of the Code of Virginia and to amend the Code of Virginia by adding in Title 54.1 a chapter numbered 20.2, consisting of sections numbered 54.1-2020 through 54.1-2026, relating to the regulation of appraisal management companies by the Real Estate Appraiser Board.*

Patron—Oder

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 6.1-2.23 and 54.1-2013 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 54.1 a chapter numbered 20.2, consisting of sections numbered 54.1-2020 through 54.1-2026, as follows:**

§ 6.1-2.23. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.

A. All funds deposited with the settlement agent in connection with an escrow, settlement or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in this Commonwealth no later than the close of the second business day, in accordance with the following requirements:

1. The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; ~~and~~

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted; *and*

3. *The settlement statement shall reflect the fees paid for an appraisal as defined in § 54.1-2009 and any fees separately paid to an appraisal management company as defined in § 54.1-2021.*

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other than the settlement agent shall be disbursed in accordance with § 6.1-2.13, except:

1. Title insurance premiums payable to title insurers under § 38.2-1813 or to title insurance agents. Such title insurance premiums payable to title insurers and agents may be (i) held in the settlement agent's settlement escrow account, identified and itemized by file name or file number, as a file with a balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred within two business days into a separate title insurance premium escrow account, which account shall be identified as such and be separate from the business or personal funds of the settlement agent. These transferred title insurance premium funds shall be itemized and identified within the separate title insurance premium escrow account. All title insurance premiums payable to title insurers by title insurance agents serving as settlement agents shall be paid in the ordinary course of business as required by subsection A of § 38.2-1813; and

2. Escrows held by the settlement agent pursuant to written instruction or agreement. A settlement statement that has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

C. A settlement agent may not retain any interest received on funds deposited in connection with any escrow, settlement, or closing; provided, however, that an attorney settlement agent shall maintain escrow accounts in accordance with applicable rules of the Virginia State Bar and the Supreme Court of Virginia.

D. Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided all parties consent to such recordation.

E. All settlement statements for transactions related to real estate governed by this chapter shall be in writing and identify, by name and business address, the settlement agent.

F. Nothing in this section is intended to amend, alter or supersede other sections of this chapter, or the laws of this Commonwealth or the United States, regarding the duties and obligations of the

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59 settlement agent in maintaining escrow accounts.

60 § 54.1-2013. General powers of Real Estate Appraiser Board; regulations; educational requirements  
61 for licensure.

62 The Board shall have all of the powers of a regulatory board under Chapter 2 (§ 54.1-200 et seq.) of  
63 this title. The Board may do all things necessary and convenient for carrying into effect the provisions  
64 of this chapter and all things required or expected of a state appraiser certifying and licensing agency  
65 under Title 11 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C.  
66 § 3331 et seq.). The Board shall promulgate necessary regulations. The Director shall have the authority  
67 to promulgate initial emergency regulations upon the enactment of this chapter as necessary to comply  
68 with applicable federal requirements, provided that within twelve months from the effective date of such  
69 emergency regulations, the Board promulgates the regulations in accordance with the Administrative  
70 Process Act (§ 2.2-4000 et seq.).

71 The Board shall include in its regulations educational and experience requirements as conditions for  
72 licensure, provisions for the supervision of appraiser practices, provisions for the enforcement of  
73 standards of professional appraiser practice, and provisions for the disposition of referrals of improper  
74 appraiser conduct from any person or any federal agency or instrumentality except that, until December  
75 31, 1992, the Board shall issue transitional licenses to applicants who have satisfied the educational  
76 requirements as conditions for licensure and have passed the applicable examination required by the  
77 Board but either lack or are not able to verify the experience requirements imposed by the Board. Such  
78 transitionally licensed persons must satisfy the experience requirements, within two years of having been  
79 issued a transitional license as a condition to remaining licensed under this chapter. Each transitional  
80 license shall indicate clearly its transitional nature, period of validity and a nonextendible termination  
81 date. This paragraph shall not be construed to limit the powers and authority of the Board.

82 The Board may set different education and experience requirements for licensed residential real estate  
83 appraisers, certified residential real estate appraisers, and certified general real estate appraisers. All  
84 applicants for licensure under this chapter shall meet applicable educational and experience requirements  
85 prior to licensure.

86 Applicants for licensure as a certified residential real estate appraiser or a certified general real estate  
87 appraiser shall successfully complete an examination administered or approved by the Board prior to  
88 licensure. The Board may set different examination requirements for certified residential real estate  
89 appraisers and certified general real estate appraisers. The Board may require that licensed residential  
90 real estate appraisers successfully complete an examination administered or approved by the Board prior  
91 to licensure or prior to the renewal of an initial license.

92 All regulations established by the Board shall satisfy any minimum criteria that are necessary in  
93 order that the federal financial institution's regulatory agencies recognize and accept licenses for licensed  
94 residential real estate appraisers, certified residential real estate appraisers, and certified general real  
95 estate appraisers issued by the Board. *The regulations established by the Board shall include a*  
96 *requirement that any licensee having a good faith belief that a real estate appraiser licensed Virginia*  
97 *has violated applicable law or the Uniform Standards of Professional Appraisal Practice or engaged in*  
98 *unethical conduct shall promptly file a complaint with the Board.*

99 CHAPTER 20.2.

## 100 REAL ESTATE APPRAISAL MANAGEMENT COMPANIES.

101 § 54.1-2020. Applicability.

102 *Beginning July 1, 2010, it shall be unlawful for any person or entity in the Commonwealth to do any*  
103 *of the following: (i) directly or indirectly engage or attempt to engage in business as an appraisal*  
104 *management company; (ii) advertise or make a representation that the person or entity is engaging in*  
105 *or conducting business as an appraisal management company; or (iii) in any way act as or provide the*  
106 *services of an appraisal management company.*

107 § 54.1-2021. Definitions.

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

109 "Appraisal management company" means a person or entity that (i) administers a network of  
110 independent contract appraisers, receives requests for appraisals from clients and receives a fee paid by  
111 the client for the appraisals; and (ii) enters into an agreement with one or more independent appraisers  
112 in its network to perform the appraisals contained in the request.

113 "Board" means the Virginia Real Estate Appraiser Board.

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

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

119 § 54.1-2022. Exemptions.

120 The provisions of this chapter shall not apply to:

1. Any agency of the federal government or any agency of the Commonwealth or local government;

2. Any person or entity that exclusively employs persons on an employer and employee basis for the performance of appraisals in the normal course of its business and the entity is responsible for ensuring that the appraisals are being performed in accordance with this chapter and with the Uniform Standards of Professional Appraisal Practice;

3. Any person or entity that has as its primary business the development of appraisals in the Commonwealth in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1 and with the Uniform Standards of Professional Appraisal Practice;

4. Any person or entity that has as its primary business, the development of appraisals in the Commonwealth, but that in the normal course of business enters into an agreement with an independent contract appraiser for the performance of appraisals that the contracting entity cannot complete either because of the location or type of property in question;

5. Any licensed real estate broker performing activities in accordance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; and

6. Any officer or employee of an exempt entity described in this chapter when acting in the scope of employment for the exempt entity.

§ 54.1-2023. Appraisal management companies; license required; payment of fees.

A. Beginning July 1, 2012, the Board shall issue a license to a person or entity 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 the requirements required by the Board;
2. Certified to the Board the following information and such other information as may be required by the Board, regarding the person or entity seeking licensure:
  - a. Name of the person or entity;
  - b. Business address of the person or entity;
  - c. Phone contact information for the person or entity, and e-mail 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. The name, address, and contact information for any person or any entity that owns 10 percent or more of the appraisal management company;
  - f. 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.) of Title 54.1;
  - g. That any person or entity that owns 10 percent or more of the appraisal management company has never had a license to act as an appraiser refused, denied, cancelled, or revoked by the Commonwealth or any other state;
  - h. That any person or entity that owns 10 percent or more of the appraisal management company has never had a criminal conviction involving a felony or moral turpitude in the Commonwealth or any other state;
  - i. The entity has a system in place to review the work of all independent appraisers that may perform real estate appraisal services for the appraisal management company on a periodic basis to ensure that the real estate appraisal services are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice; and
  - j. The entity maintains a detailed record of (i) each service request it receives and (ii) the independent appraiser that performs the residential real estate appraisal services for the appraisal management company.

B. Any licensee having a good faith belief that a real estate appraiser licensed in the Commonwealth has violated applicable law or the Uniform Standards of Professional Appraisal Practice or engaged in unethical conduct shall promptly file a complaint with the Board.

C. Fees shall be paid to a real estate appraiser based on Federal Deposit Insurance Corporation (FDIC) appraisal management company protocol within 30 days of the date the appraisal is transmitted by the real estate appraiser to the licensee or the licensee's client. Fees shall be paid directly to the real estate appraiser from the lender and not from the licensee. The licensee shall charge a direct fee to the lender for services provided without any fee splits. Such fees shall be disclosed on the settlement statement in accordance with § 6.1-2.23. The fees paid to a real estate appraiser shall also be disclosed in the appraisal report and if an appraisal management company is involved in the transaction, disclose the name and license number of the appraisal management company, and any fees paid to the appraisal management company.

D. An appraisal management company shall not enter into any contracts or agreements with an independent appraiser for the performance of residential real estate appraisal services unless the independent appraiser is licensed to provide that service under § 54.1-2017 and as otherwise provided

182 in Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

183 § 54.1-2024. Prohibited Acts.

184 A. No employee, director, officer, or agent of an appraisal management company or any other third  
185 party acting as joint venture partner or independent contractor shall influence or attempt to influence  
186 the development, reporting, result, or review of a real estate appraisal through coercion, extortion,  
187 collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

188 1. Withholding or threatening to withhold timely payment for a real estate appraisal report;

189 2. Withholding or threatening to withhold future business from a real estate appraiser or demoting  
190 or terminating or threatening to demote or terminate a real estate appraiser;

191 3. Expressly or impliedly promising future business, promotions, or increased compensation for a  
192 real estate appraiser;

193 4. Conditioning the ordering of a real estate appraisal report or the payment of a real estate  
194 appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a  
195 preliminary estimate requested from a real estate appraiser;

196 5. Requesting that a real estate appraiser provide an estimated, predetermined, or desired valuation  
197 in a real estate appraisal report or provide estimated values or comparable sales at any time before the  
198 appraiser's completion of the appraisal report;

199 6. Providing to a real estate appraiser an anticipated, estimated, encouraged, or desired value for a  
200 subject property or a proposed or targeted amount to be loaned to the borrower. However, a real estate  
201 appraiser may be provided with a copy of the sales contract for purchase transactions;

202 7. Allowing the removal of a real estate appraiser from a list of qualified appraisers used by any  
203 entity without prior written notice to the appraiser. The notice shall include written evidence of the  
204 appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior  
205 or any violation of the Uniform Standards of Professional Appraisal Practice or licensing standards for  
206 appraisers in the Commonwealth;

207 8. Any other act or practice that impairs or attempts to impair a real estate appraiser's  
208 independence, objectivity, or impartiality;

209 9. Requesting or requiring a real estate appraiser to collect a fee from the borrower, homeowner, or  
210 any other person in the provision of real estate appraisal services.

211 10. Alter, modify, or otherwise change a completed appraisal report submitted by an independent  
212 appraiser without the appraiser's written knowledge and consent;

213 11. Use an appraisal report submitted by an independent appraiser for any other transaction,  
214 purpose or use other than for that which the appraisal was prepared;

215 12. Require an appraiser to sign any indemnification agreement that would require the appraiser to  
216 defend and hold harmless the company, any software provider that the company requires an appraiser  
217 to use, or any other company that the company does business with from any liability, damage, losses, or  
218 claim; or

219 13. Require an appraiser to provide the company with the appraiser's digital signature or seal.

220 B. Nothing in this section shall be construed as prohibiting an appraisal management company from  
221 requesting that a real estate appraiser:

222 1. Consider additional appropriate property information;

223 2. Provide further detail, substantiation, or explanation for the real estate appraiser's value  
224 conclusion; or

225 3. Correct errors in the real estate appraisal report.

226 § 54.1-2025. Violations.

227 Any violation of this chapter shall be deemed to be a violation of § 54.1-111.

228 § 54.1-2026. Criminal record checks.

229 The Board shall perform such criminal record checks as authorized in § 54.1-204 as necessary to  
230 determine that any person or entity that owns 10 percent or more of the appraisal management  
231 company has never had a criminal conviction involving a felony or moral turpitude in the  
232 Commonwealth or any other state.

233 2. That the Director of the Department of Professional and Occupational Regulation shall  
234 promulgate regulations to implement the provisions of this act to be effective within 280 days of its  
235 enactment.