

Legislative Analysis



APPRAISAL MANAGEMENT COMPANIES

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House Bill 4975

Sponsor: Rep. Margaret O'Brien

1st Committee: Regulatory Reform

2nd Committee: Banking and Financial Services

Complete to 12-12-11

A SUMMARY OF HOUSE BILL 4975 AS INTRODUCED 9-14-11

House Bill 4975 would amend the Occupational Code (MCL 339.101 et. al.) by adding a new Article 26A to define, to regulate, and to set penalties for appraisal management companies.

Under the bill, "Appraisal Management Company" or "Company" would be defined to mean a person that does both of the following: (a) administers a network of independent appraisers, receives request for appraisals from clients, and receives a fee paid by the client for the appraisals; and (b) enters into an agreement with one or more independent appraisers in its network to perform the appraisals contained in the request from the network or independent appraiser. An "independent appraiser" would be defined to mean an appraiser who is not an employee of an appraisal management company.

The bill contains the following provisions.

****** An appraisal management company could 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 a licensed real estate appraiser.

****** An appraisal management company could not prohibit an appraiser from disclosing in an appraisal the actual fees charged for appraisal services and must also comply with applicable requirements of federal law, including any requirements established by the federal Department of Housing and Urban Development.

****** An employee, director, officer or agent of an appraisal management company could not influence, attempt to influence the development, reporting, result or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including any of the following:

- Withholding or threatening to withhold timely payment for an appraisal, or to withhold future business from an appraiser by demoting, terminating or threatening to demote or to terminate an appraiser.
- Promising future business, promotions, or increased compensation.

- Conditioning an order for an appraisal or payment of an appraisal fee, salary or bonus on the opinion, conclusion, or valuation to be reached on a preliminary estimate requested from an appraiser.
- Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal, or provide estimated values or comparable sales at any time before completing the appraisal.
- Providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or targeted amount of a loan to a borrower. However, an appraiser could be provided with a copy of the sales contract in a purchase transaction;
- Allowing the removal of an appraiser from a list of qualified appraisers without prior written notice to the appraiser that includes written evidence of the appraiser's illegal conduct, substandard performance, or improper or unprofessional behavior, or any violation of the uniform standards of professional appraisal practices under the bill.
- Engaging in any other act or practice that impairs an appraiser's independence, objectivity, or impartiality.
- Requesting or requiring an appraiser to collect a fee from a borrower, homeowner, or any other person for providing appraisal services.
- Altering, modifying, or changing a completed appraisal submitted by an independent appraiser without the appraiser's written knowledge or consent.
- Using, or having the appraisal management company use, an appraisal submitted by an independent appraiser for any other transaction, purpose, or use other than for the purpose prepared. This subdivision would not prohibit an appraisal management company from providing a copy of the appraisal to a federal agency in the normal course of business or providing a copy of it as required by law.
- Requiring an appraiser to sign an indemnification agreement that would require the appraiser to indemnify and hold harmless the appraisal management company or any of its agents, employees, or independent contractors for any liability, damage, losses, or claims arising out of the services performed by the company or its agents, employees, or independent contractors and not the services performed by the appraiser.
- Requiring the appraiser to provide the company with appraiser's digital signature or seal.

The bill would not prohibit an appraisal management company from requesting that an appraiser do any of the following in connection with the development, reporting, result or review of an appraisal: (a) consider additional appropriate information about the real property; (b) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or (c) correct errors in the appraisal.

Penalties

A person that violates the bill's provisions would be subject to the penalties defined in Article 6 of the Code. That section allows for the placement of limitations on a license; the suspension, revocation, or denial of a license; administrative fines; censure; probation; and restitution.

Exemptions

The bill would not apply to the following:

- An agency of the federal government, or a department or agency of the state or a political subdivision (e.g., local government).
- A person that exclusively employs individuals as an employer or employee for performing appraisals in the normal course of its business and is responsible for ensuring that the performance of those appraisals meet the bill's requirements, and the uniform standards of professional appraisal practice.
- A person that has as its primary business the development of appraisals that meet the requirements of the uniform standards of professional appraisal practice.
- A person that has a primary business the development of appraisals but that in the normal course of business entered into an agreement with an independent contract appraiser to perform appraisals that the contracting entity cannot complete either because of location or type of real property in question.
- A real estate broker licensed under and performing activities authorized by Article 25 of the Occupational Code. (That article regulates real estate brokers and salespersons.)
- An officer or employee of a person previously described if acting in the scope of employment with that person.

FISCAL IMPACT:

House Bill 4975, as introduced, will have a fiscal impact on the Department of Licensing and Regulatory Affairs by indeterminately increasing costs for the Bureau of Commercial Services (BCS). HB 4975 would establish additional regulations (compatible with federal requirements under the Dodd-Frank Act of 2010) pertaining to real estate appraisals under the Occupational Code, which is administered and enforced by the BCS. Enforcement of regulations pertaining to real estate appraisers is supported by licensure fees paid by individual appraisers and, if necessary, fees paid under other occupational regulations.

The Michigan Association of Realtors estimates that there are between 50 and 100 appraisal management companies currently operating in the state.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.