

Legislative Analysis



APPRAISAL MANAGEMENT COMPANIES & REGISTRATION FEES

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House Bill 4975 (Substitute H-2)

House Bill 5271 (Substitute H-2)

Sponsor: Rep. Margaret O'Brien

Committee: Banking and Financial Services

Complete to 3-27-12

A SUMMARY OF HOUSE BILLS 4975 & 4271 AS REPORTED FROM COMMITTEE

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

House Bill 5271 would amend the State License Fee Act (MCL 338.2201 et al) to specify that the fees for a person registered or seeking registration as a state appraisal management company under the new Article 26A of the Occupational Code would as follows: (a) application processing fee, \$500; (b) registration fee \$250 per year.

The bills are is tie-barred to each other meaning that neither would take effect unless both are enacted. The effective date of the bills is April 1, 2013.

The following is detailed description of House Bill 4975.

Definitions

Under the bill, "Appraisal Management Company" would be defined to mean a person that provides appraisal management services. "Appraisal Management Services" would mean to perform any of the following functions for a client: a) administering a network of independent contract appraisers to perform real estate appraisal services; (b) receiving requests for real estate appraisal services and, for a fee paid by the client, entering into an agreement with one or more independent appraisers to perform the real estate appraisal services described in the request; or (c) acting as a third-party broker or intermediary between persons requesting real estate appraisal services and independent appraiser who agreed to provide those services. The bill would define "real estate appraisal services" to mean the practice of developing an opinion of the value of real property in a manner that conforms with the uniform standards of professional appraisal practice.

Required Registration

With some exceptions, a person could not do any of the following without registering with, and obtaining a certificate of registration from, the Department of Licensing and Regulatory Affairs (LARA):

- Directly or indirectly engage or attempt to engage in business as an appraisal management company.

- Directly or indirectly perform or attempt to perform appraisal management services.
- Advertise or hold itself out as engaging in or conducting business as an appraisal management company.
- In the conduct or name of its business, use the term "appraisal management company," "mortgage technology company," or any similar term that tends to indicate the person is registered.

Exemptions

The registration requirement would not apply to:

- A person that exclusively engages individuals on an employer and employee basis to perform real estate appraisal services in the normal course of its business and that is responsible for ensuring that the real estate appraisal services performed by its employees comply with the uniform standards of professional appraisal practice.
- A person that in the normal course of business enters into an agreement, whether written or otherwise, with an independent contractor appraiser for that appraiser to perform real estate appraisal services and, when the appraisal is complete, cosigns the report with that independent contractor appraiser.
- An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal regulatory agency.

Registration Application Process

A person registering as an appraisal management company in this state would be required to submit to the department a registration application that includes all of the following:

- The applicant's name; the street address of the applicant's principal place of business; and telephone contact information.
- If the applicant is not a corporation that domiciled in Michigan, the name and contact information for the applicant's agent for service of process in this state.
- The name, address and contact information for any individual, corporation, partnership, or other business entity that owns ten percent or more of the appraisal management applicant.
- The name, address, and contact information for any controlling person of the applicant.
- Certification that the applicant has the required systems and processes in place.
- Certification that the applicant maintains the detailed record of each service request as required.
- A completed irrevocable consent to service of process executed on behalf of the applicant and in the form prescribed by the department.
- Any other information reasonably requested by the department to process the application.
- The required registration fee.

Registration Requirements

The department could not grant registration to a person applying for registration as an appraisal management company unless all of the following conditions are met:

- any individual who owns more than 10 percent of the applicant meets all of the following:
 - Has not had a license or certificate to act as an appraiser refused, denied, canceled, or revoked in Michigan or in any other state, unless that license or certificate was subsequently granted or reinstated.
 - Has not been convicted or, or entered a plea of guilty or nolo contendere to, a felony relating to the practice of appraisal or any crime involving fraud, misrepresentation, or moral turpitude.
 - Submits to a background investigation as determined by the department.
 - Certifies to the department that he or she has never had a license to act as an appraiser refused, denied, canceled, or revoked in Michigan or any other state, unless that license or certificate was subsequently granted or reinstated.
- The applicant designates an individual to act as the primary contact for all communication between the department and the appraisal management company. The individual designated must be a licensed attorney designated by the appraisal management company or an individual who meets all of the following: (a) is a controlling person of the applicant; (b) certifies to the department that he or she has never had a certificate or license issued by this state or any other state to act as an appraiser refused, denied, canceled, or revoked unless that license or certificate was subsequently granted or reinstated; (c) has not been convicted or, or entered a plea of guilty or nolo contendere to a felony relating to the practice of appraisal or any crime involving fraud, misrepresentation, or moral turpitude; (d) submits to a background investigation as determined by the department; (e) has a valid license as a certified appraiser.

Appraisal Management Company Assurances

An appraisal management company would be required to ensure that any employee, or other individual working on its behalf, who is responsible for selecting independent appraisers for the performance of real estate appraisal services is appropriately trained. A company would also have to ensure that any employee or independent contractor of the company who is responsible for performing Standard 3 appraisal reviews has a valid license as a certified appraiser.

Prohibitions

The bill would prohibit an appraisal management company from knowingly:

- Employing any individual to perform appraisal services who has had a license or certificate to act as an appraiser, in this state, refused, denied, canceled, surrendered in lieu of revocation, or revoked, unless that license or certificate was subsequently granted or reinstated.

- Entering into any independent contractor arrangement, whether verbal, written, or other form, with any individual to perform appraisal services who has had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of revocation, or revoked unless that license or certificate was subsequently granted or reinstated.
- Enter into a contract or agreement with an independent appraiser for the performance of real estate appraisal services unless that individual is licensed under Article 26 of the code;
- Fail, neglect or refuse to pay an independent appraiser for an appraisal or valuation assignment within 60 days after the date the appraiser transmits or provides the completed appraisal to the appraisal management company or its assignee, unless he or she breached an agreement with the company concerning that assignment or his or her performance of the appraisal service was substandard.
- Alter, modify, or otherwise change a completed appraisal report.
- Procure a license by fraud, misrepresentation, or deceit.
- Require an appraiser to indemnify the appraisal management company or hold it harmless for liability, damage, losses, or claims arising out of the services provided by the appraisal management company, if the appraiser did not perform those services.

Annual Certification

An appraisal management company registered under the new article would be required to certify to the department, annually, on a form prescribed by the department all of the following:

- It has a system and process in place to verify that an individual the company is adding to its appraiser panel is licensed under Article 26.
- It has a system in place to periodically review the work of appraisers who perform real estate appraisal services for it to verify that those services are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice.
- That it maintains a detailed record of each service request that it receives and the identity of the independent appraiser that performs the appraisal services for the appraisal management company. The appraisal management company would need to retain the records for at least five years.
- That it has a system in place to verify that each individual on its appraiser panel has not had a license refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in the 24 months preceding the date of the company's certification.

Undue or Improper Influence

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

- Withholding or threatening to withhold timely payment for an appraisal.

- Withholding or threatening to withhold future business from an independent appraiser.
- Demoting or terminating or threatening to demote or to terminate an appraiser.
- Promising future business, promotions, or increased compensation, expressly or by implication.
- Conditioning a request for an appraisal or payment of an appraisal fee, salary or bonus on reaching a particular opinion, conclusion, or valuation or on a preliminary estimate requested from an appraiser.
- Requesting that an independent 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 independent appraiser an anticipated, estimated, encouraged, or desired value for a property or a proposed or target amount of a loan to a borrower. However, an appraiser could be provided with a copy of the sales contract in a purchase transaction;
- Providing an independent appraiser, or a person related to the appraiser, stock or other financial or nonfinancial benefits.
- Removing an appraiser from an appraiser panel without prior written notice to the appraiser.
- Engaging in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

These provisions do not prohibit, and are not to be construed to prohibit, an appraisal management company from requesting that an independent appraiser provide additional information about the basis for a valuation or that the appraiser correct objective factual errors in an appraisal report.

Notification of Removal from Appraisal Management Panel

Beginning 90 days after an appraisal management company first adds the independent appraiser to its panel, the appraisal management company could not remove an appraiser from its panel or otherwise refuse to assign requests for real estate appraisal services to an independent appraiser without (1) notifying the appraiser in writing within 10 business days after the removal and (2) providing an opportunity for the appraiser to respond to the notification or notifications. The written notification would have to tell the appraiser of the reasons for the removal from the panel and if the removal was for alleged illegal conduct, an alleged violation of the Uniform Standards of Professional Appraisal Practice, or an alleged violation of state licensing standards, the nature of the alleged conduct or violation.

Appraiser Complaint and Appeal

If an appraisal management company removes an independent appraiser from its panel for alleged illegal conduct, an alleged violation of the uniform standards of professional appraisal practice, or an alleged violation of state licensing standards, the appraiser could file a complaint with the department for a review of the decision. In its consideration of the complaint, the department could not make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the alleged conduct or violation.

If the department, after its investigation and after providing the independent appraiser and the appraisal management company an opportunity for hearing and review, determines that an appraiser did not commit a violation of law, a violation of the uniform standards or professional appraisal practices, or a violation of state licensing standards, the department would order the appraisal management company to add the appraiser to its appraiser panel.

If the department finds that the appraisal management company acted improperly in removing the appraiser, the appraisal management company could not refuse to make assignments for real estate appraisal services to the appraiser, reduce the number of assignments, or otherwise penalize the appraiser.

FISCAL IMPACT:

House Bill 4975 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.

POSITIONS:

A representative of Michigan Banking Association testified in support of the bills. (3-21-12)

A representative of Michigan Association of Realtors testified in support of House Bill 4975 (3-21-12)

The Department of Licensing and Regulatory Affairs is neutral on the bills. (3-21-12)

Title Services, Inc. is neutral on House Bill 4975. (3-21-12)

Legislative Analyst: E. Best
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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.