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BILL



ANALYSIS

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House Bill 4975 (Substitute H-2 as passed by the House)  
House Bill 5271 (Substitute H-2 as passed by the House)  
Sponsor: Representative Margaret O'Brien  
House Committee: Banking and Financial Services  
Senate Committee: Banking and Financial Institutions

Date Completed: 5-16-12

### **CONTENT**

**House Bill 4975 (H-2)** would add Article 26A to the Occupational Code to provide for the registration of appraisal management companies. The bill would do the following:

- Prohibit a person from engaging in business as an appraisal management company, or performing appraisal management services, without registering with the Department of Licensing and Regulatory Affairs (LARA).
- Establish criteria for a person who owned more than 10% of an applicant for registration.
- Prohibit an appraisal management company from entering into a contract with an independent contractor who was not a licensed real estate appraiser.
- Require a company to ensure that its employees who selected independent appraisers were appropriately trained.
- Require a company to ensure that employees and contractors performing Standard 3 appraisal reviews were licensed appraisers.
- Require a company to certify to LARA that it had certain verification systems in place.
- Prohibit a company from changing a completed appraisal report submitted by an independent appraiser.
- Prohibit an employee, officer, director, or agent of a registered

company from influencing or attempting to influence the development, reporting, or review of an appraiser.

- Establish procedures for a company to remove an appraiser from its appraiser panel, and allow the appraiser to file a complaint with LARA.

**House Bill 5271 (H-2)** would amend the State License Fee Act to establish the following fees for a person registered or seeking registration as a State registered appraisal management company:

- \$500 application processing fee.
- \$250 annual registration fee.

The bills are tie-barred and would take effect on April 1, 2013.

A detailed description of House Bill 4975 (H-2) follows.

#### Registration Requirement

Except as provided below, the bill would prohibit a person from doing any of the following in Michigan without registering with, and obtaining a certificate of registration from, LARA:

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

- Directly or indirectly performing or attempting to perform appraisal management services.
- Advertising or holding itself out as engaging in or conducting business as an appraisal management company.
- In the conduct or name of its business, using the term "appraisal management company", "mortgage technology company", or any similar term that would tend to indicate the person was registered under the Code.

The bill would define "appraisal management company" as a person that provides appraisal management services. "Appraisal management services" would mean the performance of any of the following functions for a client or clients:

- Administering a network of independent contract appraisers to perform real estate appraisal services.
- 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 services described in the request.
- Acting as a third-party broker or intermediary between people requesting real estate appraisal services and independent appraisers who agree to provide the services.

The bill would define "real estate appraisal services" as 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.

#### Scope of Article 26A

Article 26A 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 services performed by the employees comply with the uniform standards of professional appraisal practice.

Article 26A also would not apply to a person that in the normal course of business enters into an agreement 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 appraiser.

In addition, Article 26A would not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency.

#### Registration Application

A person registering as an appraisal management company in Michigan would have to submit a registration application to LARA. The application would have to include all of the following:

- The applicant's name.
- The street address of the applicant's principal place of business.
- Telephone contact information for the applicant.
- If the applicant were not a corporation 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 or any corporation, partnership, or other business entity owning 10% or more of the appraisal management applicant.
- The name, address, and contact information for any controlling person of the applicant.
- A certification that the applicant had in place a system for verifying that an individual the company was adding to its appraisal panel was a licensed appraiser.
- A certification that the applicant had in place a system for periodically reviewing the work of appraisers to verify that services were being conducted according to the uniform practices.
- A certification that the applicant maintained a detailed record of each service request.
- A completed irrevocable consent to service of process.
- Any other information that LARA reasonably required to process the application.

An applicant for registration would have to include the registration fee described in Section 38a of the State License Fee Act (the section that House Bill 5271 (H-2) would amend).

#### Registration Criteria

The Department could not grant registration to an applicant under Article 26A unless all of the conditions described below were met.

Any individual who owned more than 10% of the applicant would have to meet all of the following:

- Had not had a license or certification to act as an appraiser refused, denied, canceled, or revoked in Michigan or any other state, unless that license or certificate were subsequently granted or reinstated.
- Had not been convicted of, or pleaded guilty or no contest to, a felony relating to the practice of appraisal or any crime involving fraud, misrepresentation, or moral turpitude.
- Submitted to a background investigation, as determined by LARA.

The applicant would have to designate an individual to act as the primary contact for all communication between LARA and the appraiser management company. The individual would have to be a licensed attorney designated by the company or an individual who was a controlling person of the applicant, had a valid license as a certified appraiser, and met the criteria listed above for an individual who owned more than 10% of the applicant.

#### Certificate of Registration

If LARA granted registration to an applicant, the Department would have to give the registrant a certificate of registration.

The Department would have to determine the term of a registration, and include the expiration date of a company's registration on its certificate.

#### Employees & Independent Contractors

An appraisal management company would have to ensure that any of its employees, or any other individual working on behalf of the company, who was responsible for selecting independent appraisers to perform real estate appraisal services or review completed appraisals for the company, was appropriately trained.

The company also would have to ensure that any employee or independent contractor who was responsible for completing Standard 3 appraisal reviews, or who performed a Standard 3 appraisal review, on its behalf, had a valid license as a certified appraiser.

("Standard 3 appraisal review" would mean an appraisal review that meets the requirements of Standard 3 of the uniform standards of professional appraisal practice for appraisal reviews. The term would not include a "quality control examination", which would be an examination of an appraisal review report to determine its completeness.)

An appraisal management company could not knowingly employ, or enter into an independent contractor arrangement with, an individual to perform appraisal services if he or she had a license or certificate to act as an appraiser in this or any other state refused, denied, canceled, surrendered in lieu of revocation, or revoked, unless that license or certification were subsequently granted or reinstated.

An appraisal management company also could not do the following:

- Enter into a contract or agreement with an independent contractor for the performance of real estate appraisal services unless the individual were licensed under Article 26 of the Code (which governs real estate appraisers).
- Alter, modify, or otherwise change a completed appraisal report submitted by an independent appraiser.
- Procure a license for itself or anyone else by fraud, misrepresentation, or deceit.
- Require an appraiser to indemnify the company or hold it harmless for liability, damage, losses, or claims arising out of the services the company provided, if the appraiser did not perform those services.

In addition, an appraisal management company could not fail, neglect, or refuse to pay an independent appraiser for an appraisal or valuation assignment within 60 days after the date on which the appraiser transmitted or otherwise provided the completed appraisal or valuation study to the company or its assignee, unless the appraiser breached his or her agreement with the company concerning that assignment or his or her performance of the appraisal or valuation services was substandard.

#### Verification Systems

A registered appraisal management company would have to certify to LARA

annually that it had a system and process in place to verify that an individual the company was adding to its appraisal panel was licensed under Article 26.

A registered company also would have to certify to LARA annually that it had a system in place to periodically review the work of appraisers who performed real estate appraisal services for it, to verify that the services were being conducted according to the uniform standards of professional appraisal practice.

A registered company would have to certify to LARA annually that it maintained a detailed record of each service request that it received and the identity of the independent appraiser who performed the real estate appraisal services for the company. The company would have to retain these records for at least five years.

A registered company would have to certify to LARA biannually that it had a system in place to verify that each individual on its appraiser panel had not had his or her appraiser license refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in the 24 months before this certification.

(The bill would define "appraisal panel" as a group of independent appraisers who are selected by an appraisal management company to perform real estate appraisal services for the company.)

#### Prohibited Influential Activities

An employee, director, officer, or agent of a registered appraisal management company would be prohibited from influencing or attempting to influence the development, reporting, or review of an appraiser through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, or bribery, or in any other manner, including any of the following:

- Withholding or threatening to withhold timely payment for an appraisal.
- Withholding or threatening to withhold future business for an independent appraiser.
- Demoting or terminating an independent appraiser, or threatening to do so.
- Promising an independent appraiser, expressly or by implication, future

business, promotions, or increased compensation.

- Conditioning a request for an appraisal service or the payment of an appraisal fee or salary or bonus on reaching a particular opinion, conclusion, or validation, or on a preliminary estimate or opinion requested from an independent appraiser.
- Requesting an independent appraiser to provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time before the appraiser completed an appraisal service.
- Giving an independent appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount of a loan to a borrower (although this would not prohibit giving the appraiser a copy of a sales contract for a purchase transaction).
- Giving an independent appraiser, or a person related to the appraiser, stock or other financial or nonfinancial benefits.
- Removing an independent appraiser from an appraisal panel without prior written notice to the appraiser.
- Doing any other act or practice that impaired or attempted to impair an appraiser's independence, objectivity, or impartiality.

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

#### Removal of Appraiser from Panel

Beginning 90 days after an appraisal management company first added an independent appraiser to its appraiser panel, the company could not remove the appraiser from the panel, or otherwise refuse to assign requests for real estate appraisal services to the appraiser, without notifying him or her in writing of 1) the reasons why he or she was removed, and 2) if the appraiser were removed for illegal conduct, a violation of the uniform standards, or a violation of State licensing standards, the nature of the alleged conduct or violation. The notification would have to be given within 10 days after

the appraiser was removed from the panel. The company also would have to provide an opportunity for the appraiser to respond to the notification.

registration fees would be sufficient to cover the additional regulatory costs to LARA.

Fiscal Analyst: Josh Sefton

If a company removed an independent appraiser from its panel for alleged illegal conduct, an alleged violation of the uniform standards, or an alleged violation of State licensing standards, the appraiser could file a complaint with LARA for a review of the company's decision. In considering the complaint, LARA could not make any determination about the nature of the business relationship between the appraiser and the company that was unrelated to the alleged conduct or violation.

If LARA, after its investigation of the complaint and after giving the appraiser and the company an opportunity for hearing and review, determined that the appraiser did not commit a violation of law, the uniform standards, or State licensing standards, the Department would have to order the company to add the appraiser to its appraiser panel.

After the adjudication of the complaint, if LARA found that the company acted improperly in removing the appraiser from its panel, the company could not refuse to make assignments for real estate appraisal services to the appraiser, reduce the number of his or her assignments, or otherwise penalize the appraiser.

Proposed MCL 339.2661-339.2677 (H.B. 4975)

Proposed MCL 338.2238 (H.B. 5271)

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs. Under the bills, entities engaging in appraisal management activities would be subject to State registration. These companies would have to pay a \$500 application fee and a \$250 annual registration fee, which would generate an unknown amount of revenue for LARA. The bills also would generate extra work for LARA in regulating appraisal management companies. It is unknown whether the new revenue generated by the application and

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.