

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2608**

4
5 (By Delegates Staggers, Morgan, Swartzmiller, R. Phillips,

6 Diserio, Romine, Azinger, Border, and Householder)

7 (Originating in the Committee on the Judiciary)

8 [March 29, 2013]

9
10 A BILL to amend and reenact §30-38-6, §30-38-7 and §30-38-9 of the
11 Code of West Virginia, 1931, as amended; and to amend said
12 code by adding thereto a new article, designated §30-38A-1,
13 §30-38A-2, §30-38A-3, §30-38A-4, §30-38A-5, §30-38A-6, §30-
14 38A-7, §30-38A-8, §30-38A-9, §30-38A-10, §30-38A-11, §30-38A-
15 12, §30-38A-13, §30-38A-14, §30-38A-15, §30-38A-16 and §30-
16 38A-17, all relating to regulating appraisal management
17 companies; requiring appraisal management companies to be
18 registered with the West Virginia Real Estate Appraiser
19 Licensing and Certification Board; adding a member
20 representing appraisal management companies to the board;
21 updating the duties, powers and rulemaking authority of the
22 board; prohibiting any person or firm from performing or
23 offering to perform appraisal management services without a
24 registration issued by the board; defining certain terms;
25 setting forth requirements for registration, including written
26 applications, verifications and criminal background checks;
27 providing exemptions from registration requirements; requiring

1 surety bonds; setting forth duties of appraisal management
2 companies; authorizing certain fees; requiring appraisal
3 management companies to designate a controlling person;
4 establishing requirements and authorizing complaints for the
5 removal of an appraiser from an appraiser panel; setting
6 forth duties of appraisal management companies; defining what
7 constitutes unprofessional conduct; setting forth prohibited
8 acts; authorizing disciplinary action; providing for hearing
9 and notice procedures; authorizing civil penalties; and
10 authorizing the board to seek injunctive relief.

11 *Be it enacted by the Legislature of West Virginia:*

12 That §30-38-6, §30-38-7 and §30-38-9 of the Code of West
13 Virginia, 1931, as amended, be amended and reenacted; that said
14 code be amended by adding thereto a new article, designated §30-
15 38A-1, §30-38A-2, §30-38A-3, §30-38A-4, §30-38A-5, §30-38A-6, §30-
16 38A-7, §30-38A-8, §30-38A-9, §30-38A-10, §30-38A-11, §30-38A-12,
17 §30-38A-13, §30-38A-14, §30-38A-15, §30-38A-16 and §30-38A-17, all
18 to read as follows:

19 **ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION**
20 **ACT.**

21 **§30-38-6. Board created; appointments, qualifications, terms,**
22 **oath, removal of members; quorum; meetings; disqualification**
23 **from participation; compensation; records; employing staff.**

24 (a) The West Virginia real estate appraiser licensing and
25 certification board, which consists of nine members appointed by
26 the governor with the advice and consent of the Senate, is
27 continued.

1 (1) Each member shall be a resident of the state of West
2 Virginia, except the appraisal management company representative is
3 not required to be a resident of West Virginia.

4 (2) Four members shall be certified real estate appraisers
5 having at least five years' experience in appraisal as a principal
6 line of work immediately preceding their appointment, and shall
7 remain certified real estate appraisers throughout their terms.

8 (3) Two members shall have at least five years' experience in
9 real estate lending as employees of financial institutions.

10 (4) ~~Three~~ Two members may not be engaged in the practice of
11 real estate appraisal, real estate brokerage or sales or have any
12 financial interest in these practices.

13 (5) One member shall be a representative from an appraisal
14 management company registered under the provisions of article
15 thirty-eight-a of this chapter.

16 (6) No member of the board may concurrently be a member of the
17 West Virginia real estate commission.

18 (7) Not more than two appraiser members may be appointed from
19 each congressional district.

20 (b) Members will be appointed for three-year terms, which are
21 staggered in accordance with the initial appointments under prior
22 enactment of this act.

23 (1) No member may serve for more than three consecutive terms.

24 (2) Before entering upon the performance of his or her duties,
25 each member shall subscribe to the oath required by section five,
26 article four of the constitution of this state.

27 (3) The governor shall, within sixty days following the

1 occurrence of a vacancy on the board, fill the vacancy by
2 appointing a person who meets the requirements of this section for
3 the unexpired term.

4 (4) Any member may be removed by the governor in case of
5 incompetency, neglect of duty, gross immorality or malfeasance in
6 office.

7 (c) The board shall elect a chairman.

8 (d) A majority of the members of the board constitutes a
9 quorum.

10 ~~(d)~~ (e) The board shall meet at least once in each calendar
11 quarter on a date fixed by the board.

12 (1) The board may, upon its own motion, or shall upon the
13 written request of three members of the board, call additional
14 meetings of the board upon at least twenty-four hours' notice.

15 (2) No member ~~shall~~ may participate in a proceeding before the
16 board to which a corporation, partnership or unincorporated
17 association is a party, and of which he or she is or was at any
18 time in the preceding twelve months a director, officer, owner,
19 partner, employee, member or stockholder.

20 (3) A member may disqualify himself or herself from
21 participation in a proceeding for any other cause the member
22 considers sufficient.

23 ~~(e)~~ (f) The appointed members will receive compensation and
24 expense reimbursement in accordance with the provisions of section
25 eleven, article one of this chapter.

26 ~~(f)~~ (g) The board may employ staff as necessary to perform the

1 functions of the board, to be paid out of the board fund created by
2 the provisions of this article. Persons employed by any real estate
3 agent, broker, appraiser or lender, or by any partnership,
4 corporation, association or group engaged in any real estate
5 business, may not be employed by the board.

6 **§30-38-7. General powers and duties.**

7 The board shall:

8 (a) Define by rule the type of educational experience,
9 appraisal experience and equivalent experience that will meet the
10 statutory requirements of this article;

11 (b) Establish examination specifications as prescribed herein
12 and provide for appropriate examinations;

13 (c) Establish registration requirements and procedures for
14 appraisal management companies under the provisions of article
15 thirty-eight-a of this chapter;

16 ~~(d)~~ (d) Approve or disapprove applications for certification
17 and licensure;

18 (e) Approve or disapprove applications for registration under
19 the provisions of article thirty-eight-a of this chapter;

20 ~~(f)~~ (f) Define by rule continuing education requirements for
21 the renewal of certifications and licenses;

22 ~~(g)~~ (g) Censure, suspend or revoke licenses and certification
23 as provided in this article;

24 (h) Suspend or revoke registrations under the provisions of
25 article thirty-eight-a of this chapter;

26 ~~(i)~~ (i) Hold meetings, hearings and examinations;

27 ~~(j)~~ (j) Establish procedures for submitting, approving and

1 disapproving applications;

2 ~~(h)~~ (k) Maintain an accurate registry of the names, ~~and~~
3 addresses and contact information of all persons certified or
4 issued a license to practice under this article;

5 (l) Maintain an accurate registry of the names, addresses and
6 contact information of all persons and firms registered under the
7 provisions of article thirty-eight-a of this chapter;

8 ~~(i)~~ (m) Maintain accurate records on applicants and licensed
9 or certified real estate appraisers;

10 (n) Maintain accurate records on applicants under the
11 provisions of article thirty-eight-a of this chapter;

12 ~~(j)~~ (o) Issue to each licensed or certified real estate
13 appraiser a pocket card with the appraiser's name and license or
14 certification number. Pocket cards are the property of the State
15 of West Virginia and, upon suspension or revocation of the license
16 to practice pursuant to this article, will be returned immediately
17 to the board;

18 (p) Issue registration numbers to registrants under the
19 provisions of article thirty-eight-a of this chapter;

20 ~~(k)~~ (q) Deposit all fees collected by the board to the credit
21 of the West Virginia appraiser licensing and certification board
22 fund established in the office of the State Treasurer. The board
23 shall disburse moneys from the account to pay the cost of board
24 operation. Disbursements from the account may not exceed the
25 moneys credited to it;

26 ~~(l)~~ (r) Keep records and make reports as required by article
27 one of this chapter; and

1 ~~(m)~~ (s) Perform any other functions and duties necessary to
2 carry out the provisions of this article and article thirty-eight-a
3 of this chapter.

4 **§30-38-9. Rulemaking.**

5 (a) The board may propose rules for legislative approval in
6 accordance with the provisions of article three, chapter twenty-
7 nine-a of this code, to provide for:

8 (1) Licensure and certification requirements, including
9 requirements for applications, examinations, reciprocity, temporary
10 permits, apprentice permits and reinstatement;

11 (2) Registration requirements, including delinquent and
12 expired registrations, for appraisal management companies under the
13 provisions of article thirty-eight-a of this chapter;

14 ~~(2)~~ (3) Fees for licenses, renewals of licenses and other
15 services provided by the board;

16 (4) A fee schedule for registrations of appraisal management
17 companies under the provisions of article thirty-eight-a of this
18 chapter;

19 (5) Surety bond requirements for registrations of appraisal
20 management companies under the provisions of article thirty-eight-a
21 of this chapter;

22 (6) Requirements and procedures for appraisal management
23 companies to maintain records under the provisions of article
24 thirty-eight-a of this chapter;

25 ~~(3)~~ (7) Experience, education and continuing education
26 requirements and approval of courses; and

27 ~~(4)~~ (8) Any other purpose to carry out the requirements of

1 this article and article thirty-eight-a of this chapter.

2 (b) The rule governing appraiser qualifications must include
3 requirements which meet or exceed the education, experience and
4 examination requirements issued or endorsed by the appraisal
5 qualifications board of the appraisal foundation.

6 (c) Any rules in effect ~~as of the passage of this article on~~
7 the effective date of the reenactment of this section during the
8 regular session of the legislature in 2013 will remain in effect
9 until amended, modified, repealed or replaced, except that
10 references to provisions of former enactments of this act are
11 interpreted to mean provisions of this article.

12 **ARTICLE 38A. APPRAISAL MANAGEMENT COMPANIES REGISTRATION ACT.**

13 **§30-38A-1. Unlawful acts.**

14 (a) Commencing July 1, 2014, it is unlawful for any person or
15 firm to perform or offer to perform appraisal management services,
16 or act as an appraisal management company within this state without
17 a registration issued by the West Virginia Real Estate Appraiser
18 Licensing and Certification Board under the provisions of this
19 article.

20 (b) Commencing July 1, 2014, it is unlawful for any person or
21 firm not registered under the provisions of this article to
22 advertise or use a title or description conveying the impression
23 that the person or firm is registered to perform appraisal
24 management services or registered to act as an appraisal management
25 company within this state.

26 **§30-38A-2. Applicable law.**

1 Appraisal management companies and appraisal management
2 services covered under the provisions of this article are subject
3 to the requirements set forth in this article and the rules
4 promulgated hereunder, and the provisions of article one and
5 article thirty-eight of this chapter.

6 **§30-38A-3. Definitions.**

7 As used in this article, the following words and terms have
8 the following meanings, unless the context clearly indicates
9 otherwise:

10 (a) "Applicant" means a person or firm making an application
11 for registration under the provisions of this article.

12 (b) "Appraisal" means an analysis, opinion or conclusion
13 prepared by a real estate appraiser relating to the nature,
14 quality, value or utility of specified interests in, or aspects of,
15 identified real estate or identified real property. An appraisal
16 may be classified by the nature of the assignment as a valuation
17 appraisal, an analysis assignment or a review assignment.

18 (c) "Appraisal Management Company" means a person or firm that
19 performs or provides appraisal management services, directly or
20 indirectly, through the use of software products or online, or by
21 any means of communication.

22 (d) "Appraisal management services" means the business of
23 managing the process of having an appraisal performed for
24 compensation or pecuniary gain, including but not limited to any of
25 the following actions:

26 (1) Conducting business directly or indirectly by telephone,
27 electronically, mail or in person;

1 (2) Providing related administrative and clerical duties;
2 (3) Recruiting, selecting or retaining appraisers;
3 (4) Verifying qualifications of appraisers;
4 (5) Establishing and administering an appraiser panel;
5 (6) Receiving appraisal orders from clients;
6 (7) Contracting and negotiating fees with appraisers to
7 perform appraisal services;
8 (8) Receiving appraisals from the appraiser and submitting
9 completed appraisals to clients;
10 (9) Tracking and determining the status of orders for
11 appraisals;
12 (10) Reviewing, verifying and conducting quality control of a
13 completed appraisal;
14 (11) Collecting fees from the clients; and
15 (12) Compensating appraisers for appraisal services rendered.
16 (e) "Appraisal review" means the act of developing and
17 communicating an opinion about the quality of another appraiser's
18 work that was performed as part of an appraiser assignment. The
19 review does not include:
20 (1) An examination of an appraisal for grammatical,
21 typographical or other similar errors that do not make a
22 substantive valuation change; or
23 (2) A general examination for compliance including regulatory
24 and/or client requirements as specified in the agreement process
25 that do not communicate an opinion as to the valuation conclusion.
26 (f) "Appraisal services" means the practice of developing an
27 opinion of the value of real estate in conformity with the minimum

1 USPAP standards.

2 (g) "Appraiser" means a person licensed or certified, under
3 the provisions of article thirty-eight of this chapter, to perform
4 an appraisal.

5 (h) "Appraiser panel" means a group of appraisers that perform
6 appraisals for an appraisal management company as independent
7 contractors.

8 (i) "Automated valuation model (AVM)" means a mathematically
9 based computer software program that produces an estimate of market
10 value based on market analysis of location, market conditions, and
11 real estate characteristics from information that was previously
12 and separately collected.

13 (j) "Board" means the West Virginia Real Estate Appraiser
14 Licensing and Certification Board established under the provisions
15 of article thirty-eight of this chapter.

16 (k) "Client" means a person or firm that contracts or enters
17 into an agreement with an appraisal management company for the
18 performance of an appraisal.

19 (l) "Controlling person" means a person authorized by an
20 appraisal management company to contract or enter into agreements
21 with clients and independent appraisers for the performance of
22 appraisal services and who has the power to manage the appraisal
23 management company.

24 (m) "Firm" means a corporation, limited liability company,
25 partnership, sole proprietorship or any other business entity.

26 (n) "Registrant" means a person or firm holding a registration
27 issued by the board under the provisions of this article.

1 (o) "Registration" means a registration issued by the board
2 under the provisions of this article.

3 (p) "State" means the State of West Virginia.

4 (q) "USPAP" means the Uniform Standards of Professional
5 Appraisal Practice.

6 **§30-38A-4. Registration requirements.**

7 (a) A person or firm performing or offering to perform
8 appraisal management services or acting as an appraisal management
9 company within this state shall be registered with the board by
10 July 1, 2014.

11 (b) A firm applying for a registration may not be more than
12 ten percent owned, directly or indirectly, by:

13 (1) A person who has had a license or certificate to act as an
14 appraiser refused, denied, canceled or revoked in this state or any
15 other jurisdiction, unless the license or certificate was
16 subsequently granted or reinstated; or

17 (2) A firm that is more than ten percent owned by a person who
18 has had a license or certificate to act as an appraiser refused,
19 denied, canceled, revoked or surrendered in this state or any other
20 jurisdiction, unless the license or certificate was subsequently
21 granted or reinstated.

22 (c) The board may issue a registration to perform appraisal
23 management services or act as an appraisal management company to a
24 person or firm that:

25 (1) Makes written application to the board as set out in
26 section six of this article;

27 (2) Submits certifications as set out in section seven of this

1 article;

2 (3) Submits national and state criminal background checks as
3 set out in section eight of this article;

4 (4) Posts a surety bond as set out in section nine of this
5 article;

6 (5) Pays the applicable fees as set out in section ten of this
7 article;

8 (6) Has a designated controlling person as set out in section
9 elevan of this article; and

10 (7) Meets any other requirement set by the board.

11 (d) The registrations issued under the provisions of this
12 article shall be renewed annually on July 1.

13 (e) Registrations not renewed in a timely manner are
14 delinquent. To reinstate a delinquent registration, the registrant
15 must pay a monthly penalty, as set by the board.

16 (f) A registration that has been delinquent for more than
17 three months shall be considered expired and a new application for
18 registration is required.

19 (g) The board shall issue a registration number to each
20 appraisal management company registered in this state.

21 (h) The board shall keep a list of appraisal management
22 company registered in this state and publish the list on its
23 website.

24 **§30-38A-5. Exemptions.**

25 This article does not apply to:

26 (a) A financial institution, including a department or unit
27 within an institution that is regulated by an agency of this state

1 or the United States government; or

2 (b) An appraisal management company that is a subsidiary
3 wholly owned and controlled by a financial institution regulated by
4 a federal financial institution regulatory agency.

5 **§30-38A-6. Written application requirements.**

6 (a) The written application shall be submitted on a form
7 prescribed by the board and shall include:

8 (1) The name, the street and mailing address and the contact
9 information, including telephone number and e-mail address, of the
10 person or firm seeking registration;

11 (2) The name, the street and mailing address and the contact
12 information, including telephone number and e-mail address, of each
13 owner of more than ten percent of the firm seeking registration;

14 (3) The name, the street and mailing address and the contact
15 information, including telephone number and e-mail address, of the
16 controlling person of the firm seeking registration; and

17 (4) (A) If the applicant is a domestic firm, the designation
18 of an agent for service of process; or

19 (B) If the applicant is a foreign firm, documentation that the
20 foreign firm is authorized to do business in West Virginia and that
21 an agent for service of process has been designated and the
22 following has been submitted:

23 (i) A copy of the filing with the Secretary of State's Office
24 appointing an agent for service of process; and

25 (ii) A certificate of authority issued by the Secretary of
26 State.

1 (b) The board shall maintain a list of all applicants for
2 registration that includes the information in the written
3 application.

4 **§30-38A-7. Certification requirements.**

5 (a) The certification for registration shall be in writing, on
6 a form prescribed by the board and signed by the applicant or
7 controlling person. The certification shall include statements
8 that the applicant:

9 (1) Has a process in place to verify that any person used as
10 an appraiser or added to the appraiser panel of the applicant is a
11 licensed or certified appraiser in good standing in West Virginia;

12 (2) Has set requirements to verify that appraisers are
13 geographically competent and can perform the appraisals assigned;

14 (3) Has set procedures for an appraiser, licensed or certified
15 in this state or in any state with a minimum of the same
16 certification level for the property type as the appraiser who
17 performed the appraisal, to review the work of the appraisers
18 performing appraisals for the applicant to verify that the
19 appraisals are being conducted in accordance with the minimum USPAP
20 standards;

21 (4) Will require appraisals to be conducted independently and
22 free from inappropriate influence and coercion as required by the
23 appraisal independence standards established under Section 129E of
24 the Truth in Lending Act and the rules and regulations issued
25 pursuant to the Act, including the requirement that appraisers be
26 compensated at a customary and reasonable rate when the appraisal
27 management company is providing services for a consumer credit

1 transaction secured by the principal dwelling of a consumer;

2 (5) Maintains a detailed record of each request for appraisal
3 it receives from a client and the appraiser that performs the
4 appraisal; and

5 (6) Has submitted any other information required by the board.

6 (b) The applicant, each owner of more than ten percent and any
7 controlling person shall submit a written verification, on a form
8 prescribed by the board, that includes statements that:

9 (1) The written application and verification for registration
10 contain no false or misleading statements;

11 (2) The applicant has complied with the requirements of this
12 article;

13 (3) The applicant, each owner of more than ten percent, and
14 the controlling person of the firm seeking registration has not
15 pleaded guilty or nolo contendere to or been convicted of a felony;

16 (4) Within the past ten years, the applicant, each owner of
17 more than ten percent, and the controlling person of the firm
18 seeking registration has not pleaded guilty or nolo contendere to
19 or been convicted of:

20 (A) A misdemeanor involving mortgage lending or real estate
21 appraisals; or

22 (B) An offense involving breach of trust or fraudulent or
23 dishonest dealing;

24 (5) The applicant, each owner of more than ten percent, and
25 the controlling person of the firm seeking registration are of good
26 character and reputation and that none of them has had a license or
27 certificate to act as an appraiser refused, denied, canceled,

1 revoked or surrendered in this state or any other jurisdiction, and
2 the license or certification was not subsequently granted or
3 reinstated;

4 (6) The applicant, each owner of more than ten percent, and
5 the controlling person of the firm seeking registration are not
6 permanently or temporarily enjoined by a court of competent
7 jurisdiction from engaging in or continuing any conduct or practice
8 involving appraisals, appraisal management services or operating an
9 appraisal management company;

10 (7) The applicant, each owner of more than ten percent, and
11 the controlling person of the firm seeking registration are not the
12 subject of an order of the board or any other jurisdiction's agency
13 that regulates appraisal management companies that denied,
14 suspended or revoked the applicant's or firm's privilege to operate
15 as an appraisal management company;

16 (8) The applicant, each owner of more than ten percent, and
17 the controlling person of the firm seeking registration have not
18 acted as an appraisal management company while not being properly
19 registered by the board; and

20 (9) Set forth any other requirements of the board.

21 **§30-38A-8. Background check requirements.**

22 (a) Upon application, the applicant, each owner of more than
23 ten percent, and the controlling person of the firm seeking
24 registration shall submit to a state and national criminal history
25 record check, as set forth in this section.

26 (1) This requirement is found not to be against public policy.

27 (2) The criminal history record check shall be based on

1 fingerprints submitted to the West Virginia State Police or its
2 assigned agent for forwarding to the Federal Bureau of
3 Investigation.

4 (3) The applicant shall meet all requirements necessary to
5 accomplish the state and national criminal history record check,
6 including:

7 (A) Submitting fingerprints for the purposes set forth in this
8 subsection; and

9 (B) Authorizing the board, the West Virginia State Police and
10 the Federal Bureau of Investigation to use all records submitted
11 and produced for the purpose of screening the applicant for a
12 license.

13 (b) The results of the state and national criminal history
14 record check may not be released to or by a private entity except:

15 (1) To the individual who is the subject of the criminal
16 history record check;

17 (2) With the written authorization of the individual who is
18 the subject of the criminal history record check; or

19 (3) Pursuant to a court order.

20 (c) The criminal history record check and related records are
21 not public records for the purposes of chapter twenty-nine-b of
22 this code.

23 (d) The applicant shall ensure that the criminal history
24 record check is completed as soon as possible after the date of the
25 original application for registration.

26 (e) The applicant shall pay the actual costs of the
27 fingerprinting and criminal history record check.

1 **§30-38A-9. Surety bond requirements and claims.**

2 (a) Each applicant shall post and maintain a surety bond with
3 the board. The aggregate liability of the surety bond may not
4 exceed the principal sum of the surety bond.

5 (b) The surety bond shall:

6 (1) Be established by the board through rules;

7 (2) Not exceed \$100,000;

8 (3) Be in the form prescribed by the board;

9 (4) Be issued by an surety company authorized to do business
10 in West Virginia; and

11 (5) Accrue to the state for the benefit of any claimant
12 against the registrant to secure the faithful performance of the
13 registrant's obligations.

14 (c) The board may bring suit on behalf of the party having a
15 claim against the registrant.

16 (d) Consumer claims shall be given priority in recovering from
17 the surety bond.

18 (e) Claimants may make claim under the bond for up to one year
19 after the applicant ceases doing business in West Virginia.

20 (f) An appropriate deposit of cash or security may be accepted
21 by the board in lieu of the required bond, as determined by the
22 board through legislative rule.

23 **§30-38A-10. Fee requirements.**

24 The fees assessed by the board, as established by legislative
25 rule, shall include the annual fee for appraisal management
26 companies to be included in the national registry maintained by the
27 Appraisal Subcommittee of the Federal Financial Institutions

1 Examination Council.

2 **§30-38A-11. Controlling person requirements.**

3 (a) An appraisal management company shall have a designated
4 controlling person who will ensure compliance with this article and
5 will be the main contact for all communication between the board
6 and the appraisal management company.

7 (b) The controlling person shall:

8 (1) Be of good character and reputation;

9 (2) Submit to national and state criminal background checks as
10 set out in section eight of this article;

11 (3) Never have had a license or certificate to act as an
12 appraiser refused, denied, canceled, revoked or surrendered in this
13 state or any other jurisdiction and not subsequently granted or
14 reinstated;

15 (4) Never have been a part of a firm that was permanently or
16 temporarily enjoined by a court of competent jurisdiction from
17 engaging in or continuing any conduct or practice involving
18 appraisals, appraisal management services or operating an appraisal
19 management company; and

20 (5) Never have been the subject of an order of the board or
21 any other jurisdiction's appraisal management company regulatory
22 agency that denied or revoked the applicant's or firm's privilege
23 to operate as an appraisal management company.

24 **§30-38A-12. Requirements for removal from an appraiser panel.**

25 (a) Except within sixty days from the date an appraiser is
26 first added to the appraiser panel of an appraisal management
27 company, an appraisal management company may only remove an

1 appraiser from an appraiser panel or refuse to assign appraisals to
2 an appraiser after providing the appraiser twenty days prior
3 written notice stating the reasons for the removal or refusal and
4 providing an opportunity for the appraiser to be heard.

5 (b) An appraiser who is removed from an appraiser panel or
6 refused appraisal assignments for an alleged act or omission that
7 would constitute grounds for disciplinary action under the
8 provisions of section twelve, article thirty-eight of this chapter,
9 a violation of the USPAP or a violation of state law or legislative
10 rule may file a complaint with the board for a review of the
11 appraisal management company's decision.

12 (c) The board's review under this subsection is limited to
13 determining whether:

14 (1) The appraisal management company has complied with
15 subsection (a) of this section; and

16 (2) The appraiser has engaged in an act or omission that would
17 constitute grounds for disciplinary action under the provisions of
18 section twelve, article thirty-eight of this code, or has committed
19 a violation of the USPAP or a violation of state law or legislative
20 rule.

21 (d) The board shall hold a hearing on the complaint within a
22 reasonable time, not exceeding one year after the complaint was
23 filed.

24 (e) If the board determines after the hearing that an
25 appraisal management company acted improperly then the board shall
26 order the appraisal management company to restore the appraiser to
27 the appraiser panel or assign appraisals to the appraiser.

1 (f) After the board's order, an appraisal management company
2 may not:

3 (1) Reduce the number of appraisals given to the appraiser; or

4 (2) Penalize the appraiser in any other manner.

5 **§30-38A-13. Duties of appraisal management companies.**

6 (a) Each appraisal management company shall:

7 (1) Verify that an appraiser receiving work or being placed on
8 an appraiser panel is:

9 (A) Professionally and geographically competent;

10 (B) Competent to perform the appraisal service being assigned
11 to the appraiser;

12 (C) Licensed or certified under the provisions of article
13 thirty-eight of this chapter; and

14 (D) In good standing in this state;

15 (2) Designate a controlling person responsible for ensuring
16 compliance with this article, including filing with the board the
17 following:

18 (A) The name of the controlling person;

19 (B) The contact information for the controlling person;

20 (C) A verified acceptance of responsibility from the
21 controlling person; and

22 (D) An updated registration form identifying the current
23 controlling person submitted within ten business days, when there
24 is a change of the controlling person;

25 (3) Maintain complete detailed records of requests for
26 appraisals from clients, including:

27 (A) The type of appraisal requested;

1 (B) The name and license or certification number of the
2 appraiser to whom the appraisal was referred;

3 (C) The fees received from the client; and

4 (D) The fees paid to the appraiser or any third party for
5 services performed;

6 (4) Ensure that appraisal services are provided in an
7 independent manner, free from inappropriate influence and coercion,
8 as required by appraisal independence standards established under
9 Section 129E of the Truth in Lending Act and the rules and
10 regulations issued pursuant to the Act, including the requirement
11 that fee appraisers be compensated at a customary and reasonable
12 rate when the appraisal management company is providing services
13 for a consumer credit transaction secured by the principal dwelling
14 of a consumer;

15 (5) Except in cases of breach of contract or substandard
16 performance, pay an independent appraiser for the completion of an
17 appraisal within forty-five days after the appraiser provides the
18 completed appraisal to the appraisal management company, unless
19 otherwise agreed to by the parties;

20 (6) Disclose its registration number on all engagement
21 documentation with appraisers;

22 (7) Disclose to its clients the fees paid:

23 (A) For appraisal management services; and

24 (B) To the appraiser for the completion of an appraisal
25 assignment;

26 (8) Inform the board, when it has a reasonable basis to
27 believe, that an appraiser has:

1 (A) Failed to comply with USPAP and the failure to comply is
2 likely to significantly affect the opinion of value;

3 (B) Violated applicable laws or rules; or

4 (C) Engaged in unethical or unprofessional conduct;

5 (9) Keep all records, including, but not limited to,
6 appraisals ordered by the appraisal management company, for a
7 minimum of five years after an appraisal is completed or two years
8 after final disposition of a judicial proceeding related to the
9 assignment, whichever period expires later; and

10 (10) Maintain a registered agent for service of process and
11 provide the board with the same information for the agent that is
12 provided to the Secretary of State.

13 (b) The board may inspect the records of appraisal management
14 companies at any time without prior notice.

15 (c) A sole proprietor of an appraisal management company is
16 considered the controlling person.

17 (d) If information on a disclosure becomes inaccurate for any
18 reason, then a revised or amended disclosure shall be provided
19 within five business days after the change. The revised or amended
20 disclosure shall be clearly marked as revised or amended and
21 contain sufficient information for the client to identify the
22 original disclosure referenced.

23 (e) The provisions of this section do not exempt a registrant
24 from any other reporting requirements contained in any federal or
25 state law.

26 **§30-38A-14. Unprofessional conduct.**

27 An appraisal management company commits unprofessional conduct

1 if it:

2 (1) Requires an appraiser to modify an aspect of an appraisal
3 which modification is not related to substandard performance or
4 noncompliance with the terms of a contract or agreement;

5 (2) Requires an appraiser to prepare an appraisal when the
6 appraiser believes, in his or her own professional judgment and
7 notifies the appraisal management company, that the appraiser does
8 not have the necessary expertise for the specific geographic area
9 or is otherwise not competent to perform the appraisal;

10 (3) Requires an appraiser to prepare an appraisal under a
11 certain time frame that the appraiser believes, in his or her own
12 professional judgment and notifies the appraisal management
13 company, that the appraiser does not have the necessary time to
14 meet all the necessary and relevant legal and professional
15 obligations;

16 (4) Prohibits or inhibits communication between an appraiser
17 and any other person from whom the appraiser, in the appraiser's
18 own professional judgment, believes information would be relevant;

19 (5) Requests an appraiser to do anything that does not comply
20 with:

21 (A) The USPAP; or

22 (B) The requests of the client; or

23 (6) Makes any portion of the appraiser's fee or the appraisal
24 management company's fee contingent on a favorable outcome,
25 including:

26 (A) A loan closing; or

27 (B) An appraisal for a specific dollar amount.

1 **§30-38A-15. Prohibited acts.**

2 (a) An appraisal management company or any person acting for
3 an appraisal management company as a controlling person, owner,
4 director, officer, agent, employee or independent contractor may
5 not:

6 (1) Improperly influence or attempt to improperly influence
7 the development, reporting, result or review of an appraisal
8 through:

9 (A) Intimidation, inducement, coercion, extortion, collusion,
10 bribery, compensation, blackmail, threat of exclusion from future
11 appraisal work or any other means that unduly influences or
12 pressures the appraiser;

13 (B) Withholding payment to an appraiser for appraisal services
14 unless for breach of contract; or

15 (C) Expressly or impliedly promise future business, promotions
16 or increased compensation to an appraiser;

17 (2) Knowingly employ a person to a position of responsibility
18 who has had a license or certificate to act as an appraiser
19 refused, denied, canceled, revoked or surrendered in this state or
20 any other jurisdiction, and not subsequently granted or reinstated;

21 (3) Knowingly enter into a contract with a person for the
22 performance of appraisal services who has had a license or
23 certificate to act as an appraiser refused, denied, canceled,
24 revoked or surrendered in this state or any other jurisdiction, and
25 not subsequently granted or reinstated;

26 (4) Knowingly enter into a contract, agreement or other
27 business relationship for the purpose of obtaining real estate

1 appraisal services with a firm that employs or contracts with a
2 person who has had a license or certificate to act as an appraiser
3 refused, denied, canceled, revoked or surrendered in this state or
4 any other jurisdiction, and not subsequently granted or reinstated;

5 (5) Knowingly fail to separate and disclose any fees charged
6 to a client by the appraisal management company for an appraisal by
7 an appraiser from fees charged to a client by the appraisal
8 management company for appraisal management services;

9 (6) Prohibit an appraiser from stating, in a submitted
10 appraisal, the fee paid by the appraisal management company to the
11 appraiser for the appraisal;

12 (7) Request, allow or require an appraiser to collect any
13 portion of the fee, including the appraisal fee, charged by the
14 appraisal management company to the client;

15 (8) Require an appraiser to provide the registrant with the
16 appraiser's signature or seal in any form;

17 (9) Alter, amend or change an appraisal submitted by an
18 appraiser;

19 (10) Remove an appraiser's signature or seal from an
20 appraisal;

21 (11) Add information to or remove information from an
22 appraisal with the intent to change the conclusion of the
23 appraisal;

24 (12) Remove an appraiser from an appraiser panel without
25 twenty days prior written notice to the appraiser and an
26 opportunity for the appraiser to be heard;

27 (13) Enter into an agreement or contract for the performance

1 of appraisal services with an appraiser who is not in good standing
2 with the board;

3 (14) Request or require an appraiser to provide an estimated,
4 predetermined or desired valuation in an appraisal;

5 (15) Request or require an appraiser to provide estimated
6 values or comparable sales at any time prior to the appraiser
7 completing an appraisal;

8 (16) Condition a request for an appraisal or the payment of an
9 appraisal fee on:

10 (A) An opinion, conclusion or valuation reached; or

11 (B) A preliminary estimate or opinion requested from an
12 appraiser;

13 (17) Provide to an appraiser an anticipated, estimated,
14 encouraged or desired value for an appraisal or a proposed or
15 targeted amount to be loaned or borrowed, except that a copy of the
16 sales contract for the purchase transaction may be provided;

17 (18) Require an appraiser to indemnify or hold harmless an
18 appraisal management company for any liability, damage, losses or
19 claims arising out of the services provided by the appraisal
20 management company;

21 (19) Have a direct or indirect interest, financial or
22 otherwise, in the property or transaction involving the appraisal;

23 (20) Provide to an appraiser or a person related to the
24 appraiser stock or other financial or nonfinancial benefits;

25 (21) Obtain, use or pay for a second or subsequent appraisal
26 or order an automated valuation model, unless:

27 (A) There is a reasonable basis to believe that the initial

1 appraisal was flawed and the basis is clearly and appropriately
2 noted in the file;

3 (B) The second or subsequent appraisal, or automated valuation
4 model is done under a bona fide prefunding or post-funding
5 appraisal review or quality control process;

6 (C) The second appraisal is required by law; or

7 (D) The second or subsequent appraisal or automated valuation
8 model is ordered by a client; or

9 (22) Commit an act or practice that impairs or attempts to
10 impair an appraiser's independence, objectivity or impartiality.

11 (b) This section does not prohibit an appraisal management
12 company from requesting that an appraiser:

13 (1) Provide additional information about the basis for a
14 valuation;

15 (2) Correct objective factual errors in an appraisal;

16 (3) Provide further detail, substantiation or explanation for
17 the appraiser's conclusion; or

18 (4) Consider additional appropriate property information,
19 including the consideration of additional comparable properties to
20 make or support an appraisal.

21 **§30-38A-16. Disciplinary action.**

22 The board may deny, revoke or refuse to issue or renew the
23 registration of an appraisal management company or may restrict or
24 limit the activities of an appraisal management company or of a
25 person or firm that owns an interest in or participates in the
26 business of an appraisal management company for the following
27 reasons:

1 (1) A person or firm acted as an appraisal management company
2 or performed appraisal management services without being properly
3 registered with the board;

4 (2) A person or firm did not perform the duties set out in
5 this article;

6 (3) A person or firm engaged in unprofessional conduct as set
7 out in this article;

8 (4) A person or firm engaged in a prohibited act set out in
9 this article;

10 (5) The application for registration contained false or
11 misleading information;

12 (6) A person or firm fraudulently or deceptively obtains or
13 attempts to obtain a registration;

14 (7) A person or firm fraudulently or deceptively used a
15 registration;

16 (8) A person or firm violated the provisions of this article,
17 this code, or the board's rules;

18 (9) A person or firm was found guilty of a felony or pleaded
19 guilty or nolo contendere to a felony;

20 (10) Within the past ten years, a person or firm was found
21 guilty of or pleaded guilty or nolo contendere to a misdemeanor
22 involving:

23 (A) Mortgage lending;

24 (B) Appraisals;

25 (C) Breach of trust; or

26 (D) Fraudulent or dishonest dealing;

27 (11) A person or firm is permanently or temporarily enjoined

1 by a court of competent jurisdiction from engaging in or continuing
2 any conduct or practice involving appraisal management services or
3 operating an appraisal management company;

4 (12) A person or firm is the subject of an order of the board
5 or any other jurisdiction's appraisal management company regulatory
6 agency that denied, revoked or restricted a person's or firm's
7 privilege to operate as an appraisal management company;

8 (13) A person or firm failed to pay the applicable fees; or

9 (14) For any other finding by the board.

10 **§30-38A-17. Notice and hearing procedures.**

11 (a) The board, on its own motion or upon receipt of a written
12 complaint, may investigate an appraisal management company, a
13 person or firm associated with an appraisal management company, and
14 a person or firm performing appraisal management services.

15 (b) If the board determines after the investigation there are
16 grounds for disciplinary action, the board may hold a hearing after
17 giving thirty days' prior notice.

18 (c) The board has the same powers set out in article thirty-
19 eight of this chapter.

20 (d) After notice and a hearing, the board may:

21 (1) Deny, revoke or refuse to issue or renew the registration
22 of an appraisal management company or restrict or limit the
23 activities of an appraisal management company or of a person or
24 firm that owns an interest in or participates in the business of an
25 appraisal management company;

26 (2) Impose a fine not to exceed \$25,000 for each violation; or

27 (3) Take other disciplinary action as established by the board

1 by rule.

2 (e) The board may seek injunctive relief in the Kanawha County
3 Circuit Court to prevent a person or firm from violating the
4 provisions of this article or the rules promulgated hereunder. The
circuit court may grant a temporary or permanent injunction.