

H. B. 2608

(By Delegates Staggers, Morgan, Swartzmiller,
R. Phillips, Diserio, Romine, Azinger,
Border and Householder)

[Introduced February 22, 2013; referred to the
Committee on Government Organization then the Judiciary.]

A BILL to amend and reenact §30-38-7 and §30-38-9 of the Code of
West Virginia, 1931, as amended; and to amend said code by
adding thereto a new article, designated §30-38A-1, §30-38A-2,
§30-38A-3, §30-38A-4, §30-38A-5, §30-38A-6, §30-38A-7, §30-
38A-8, §30-38A-9, §30-38A-10, §30-38A-11, §30-38A-12, §30-38A-
13, §30-38A-14, §30-38A-15 and §30-38A-16, all relating to
requiring appraisal management companies to be registered with
the West Virginia Real Estate Appraiser Licensing and
Certification Board; updating the duties, powers and rule-
making authority of the board; unlawful acts; applicable law;
definitions; requirements for registration, including written
applications, verifications and background checks; requiring
surety bonds; duties of appraisal management companies;
prohibited acts; disciplinary action; hearing and notice
procedures; and civil penalties.

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

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

8 **ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION**
9 **ACT.**

10 **§30-38-7. General powers and duties.**

11 The board shall:

12 (a) Define by rule the type of educational experience,
13 appraisal experience and equivalent experience that will meet the
14 statutory requirements of this article;

15 (b) Establish examination specifications as prescribed herein
16 and provide for appropriate examinations;

17 (c) Establish registration requirements and procedure for
18 appraisal management companies under the provisions of article
19 thirty-eight-a of this chapter;

20 ~~(c)~~ (d) Approve or disapprove applications for certification
21 and licensure;

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

1 ~~(d)~~ (f) Define by rule continuing education requirements for
2 the renewal of certifications and licenses;

3 ~~(e)~~ (g) Censure, suspend or revoke licenses and certification
4 as provided in this article;

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

7 ~~(f)~~ (i) Hold meetings, hearings and examinations;

8 ~~(g)~~ (j) Establish procedures for submitting, approving and
9 disapproving applications;

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

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

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

18 (n) Maintain accurate records on registrants under the
19 provisions of article thirty-eight-a of this chapter;

20 ~~(j)~~ (o) Issue to each licensed or certified real estate
21 appraiser a pocket card with the appraiser's name and license or
22 certification number. Pocket cards are the property of the State
23 of West Virginia and, upon suspension or revocation of the license

1 to practice pursuant to this article, will be returned immediately
2 to the board;

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

5 ~~(k)~~ (q) Deposit all fees collected by the board to the credit
6 of the West Virginia appraiser licensing and certification board
7 fund established in the office of the State Treasurer. The board
8 shall disburse moneys from the account to pay the cost of board
9 operation. Disbursements from the account may not exceed the
10 moneys credited to it;

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

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

16 **§30-38-9. Rulemaking.**

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

20 (1) Licensure and certification requirements, including
21 requirements for applications, examinations, reciprocity, temporary
22 permits, apprentice permits and reinstatement;

23 (2) Registration requirements, including delinquent and

1 expired registrations, for appraisal management companies under the
2 provisions of article thirty-eight-a of this chapter;

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

5 (4) A fee schedule for registrations for appraisal management
6 companies under the provisions of article thirty-eight-a of this
7 chapter;

8 (5) Surety bond requirements for registrations for appraisal
9 management companies under the provisions of article thirty-eight-a
10 of this chapter;

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

14 ~~(3)~~ (7) Experience, education and continuing education
15 requirements and approval of courses; and

16 ~~(4)~~ (8) Any other purpose to carry out the requirements of
17 this article and article thirty-eight-a of this chapter.

18 (b) The rule governing appraiser qualifications must include
19 requirements which meet or exceed the education, experience and
20 examination requirements issued or endorsed by the appraisal
21 qualifications board of the appraisal foundation.

22 (c) Any rules in effect ~~as of the passage of this article on~~
23 January 1, 2013, will remain in effect until amended, modified,

1 repealed or replaced, except that references to provisions of
2 former enactments of this act are interpreted to mean provisions of
3 this article.

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

5 **§30-38A-1. Unlawful acts.**

6 (a) Commencing January 1, 2014, it is unlawful for any person
7 or firm to perform or offer to perform appraisal management
8 services, or act as an appraisal management company within this
9 state without a registration issued by the West Virginia Real
10 Estate Appraiser Licensing and Certification Board under the
11 provisions of this article.

12 (b) Commencing January 1, 2014, it is unlawful for any person
13 or firm not registered under the provisions of this article to
14 advertise or use a title or description conveying the impression
15 that the person or firm is registered to perform appraisal
16 management services or registered to act as an appraisal management
17 company within this state.

18 **§30-38A-2. Applicable law.**

19 Appraisal management companies and appraisal management
20 services covered under the provisions of this article are subject
21 to the requirements set forth in this article and the rules
22 promulgated hereunder, and the provisions of article one and
23 article thirty-eight of this chapter.

1 §30-38A-3. Definitions.

2 As used in this article, the following words and terms have
3 the following meanings, unless the context clearly indicates
4 otherwise:

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

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

13 (c) "Appraisal Management Company" means a person or firm that
14 performs or provides appraisal management services, directly or
15 indirectly, through any means of communication.

16 (d) "Appraisal management services" means the business of
17 managing the process of having an appraisal performed for
18 compensation or pecuniary gain, including:

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

21 (2) Providing related administrative and clerical duties;

22 (3) Recruiting, selecting or retaining appraisers;

23 (4) Verifying qualifications of appraisers;

- 1 (5) Establishing and administering an appraiser panel;
2 (6) Negotiating fees with appraisers;
3 (7) Receiving appraisal orders from clients;
4 (8) Contracting with appraisers to perform appraisal services;
5 (9) Receiving appraisals from the appraiser;
6 (10) Reviewing or verifying the appraisal received from the
7 appraiser;
8 (11) Tracking and determining the status of orders for
9 appraisals;
10 (12) Conducting quality control of a completed appraisal;
11 (13) Submitting to the client a completed appraisal received
12 from an appraiser;
13 (14) Collecting fees from the clients;
14 (15) Reimbursing appraisers for appraisal services rendered;
15 and
16 (16) Providing software products that are used to select
17 appraisers, order appraisals or perform any other appraisal
18 management services.
19 (e) "Appraisal review" means the act of developing and
20 communicating an opinion about the quality of another appraiser's
21 work that was performed as part of an appraiser assignment. The
22 review does not include an examination of an appraisal for
23 grammatical, typographical or other similar errors that do not make

1 a substantive valuation change.

2 (f) "Appraisal services" means the practice of developing an
3 opinion of the value of real estate in conformity with the minimum
4 USPAP standards.

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

8 (h) "Appraiser panel" means a group of appraisers that perform
9 appraisals for an appraisal management company as independent
10 contractors.

11 (i) "Automated valuation model (AVM)" means a mathematically
12 based computer software program that produces an estimate of market
13 value based on market analysis of location, market conditions, and
14 real estate characteristics from information that was previously
15 and separately collected. The distinguishing feature of an AVM is
16 that it is an estimate of market value produced through
17 mathematical modeling. Credibility of an AVM is dependent on the
18 data used and the skills of the modeler producing the AVM.

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

22 (k) "Client" means a person or firm that contracts or enters
23 into an agreement with an appraisal management company for the

1 performance of an appraisal.

2 (l) "Controlling person" or "Managing principal" means a
3 person authorized by an appraisal management company to contract or
4 enter into agreements with clients and independent appraisers for
5 the performance of appraisal services and has the power to manage
6 the appraisal management company.

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

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

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

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

14 (q) "USPAP" means the Uniform Standards of Professional
15 Appraisal Practice.

16 **§30-38A-4. Registration requirements.**

17 (a) A person or firm performing or offering to perform
18 appraisal management services or acting as an appraisal management
19 company within this state shall be registered with the board by
20 January 1, 2014.

21 (b) A person or firm applying for a registration may not be
22 owned, in whole or in part, directly or indirectly by:

23 (1) A person who has had a license or certificate to act as an

1 appraiser refused, denied, canceled, revoked, suspended or
2 surrendered in this state or any other jurisdiction; or

3 (2) A firm that is owned by a person who has had a license or
4 certificate to act as an appraiser refused, denied, canceled,
5 revoked, suspended or surrendered in this state or any other
6 jurisdiction.

7 (c) The board may issue a registration to perform appraisal
8 management services or act as an appraisal management company to a
9 person or firm that:

10 (1) Makes written application to the board as set out in
11 section five of this article;

12 (2) Submits verifications as set out in section six of this
13 article;

14 (3) Submits national and state criminal background checks as
15 set out in section seven of this article;

16 (4) Posts a surety bond as set out in section eight of this
17 article;

18 (5) Pays the applicable fees as set out in section nine of
19 this article;

20 (6) Has a designated controlling person or managing principal
21 as set out in section ten of this article; and

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

23 (d) The registrations issued under the provisions of this

1 article shall be renewed annually on January 1.

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

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

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

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

13 **§30-38A-5. Written application requirements.**

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

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

19 (2) The name, the street and mailing address and the contact
20 information, including telephone number and e-mail address, of each
21 owner seeking registration;

22 (3) The name, the street and mailing address and the contact
23 information, including telephone number and e-mail address, of the

1 controlling person or managing principal of the firm seeking
2 registration; and

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

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

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

11 (ii) A certificate of authority issued by the Secretary of
12 State.

13 (b) The board shall maintain a list of all applicants for
14 registration that includes the information in the written
15 application.

16 **§30-38A-6. Verification requirements.**

17 (a) The verification for registration shall be in writing, on
18 a form prescribed by the board and signed by the applicant. The
19 verification shall include statements that the applicant:

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

23 (2) Has set requirements to ensure that appraisers are

1 geographically competent and can perform the appraisals assigned;

2 (3) Has set procedures for an appraiser licensed or certified
3 in West Virginia to review the work of the appraisers performing
4 appraisals for the applicant to ensure that the appraisals are
5 being conducted in accordance with the minimum USPAP standards;

6 (4) Will require appraisals to be conducted independently;

7 (5) Will pay reasonable and customary fees to the appraisers;

8 (6) Maintains a detailed record of each request for appraisal
9 it receives from a client and the appraiser that performs the
10 appraisal; and

11 (7) Has submitted any other information required by the board.

12 (b) The applicant and any controlling partner or managing
13 principal or person directly or indirectly controlling the
14 applicant shall submit a written verification, on a form prescribed
15 by the board, that includes statements that:

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

18 (2) The applicant has complied with the requirements of this
19 article;

20 (3) The applicant, each owner and the controlling person or
21 managing principal of the firm seeking registration has not pleaded
22 guilty or nolo contendere to or been convicted of a felony;

23 (4) Within the past ten years, the applicant, each owner and

1 the controlling person or managing principal of the firm seeking
2 registration has not pleaded guilty or nolo contendere to or been
3 convicted of:

4 (A) A misdemeanor involving mortgage lending or real estate
5 appraisals; or

6 (B) An offense involving breach of trust or fraudulent or
7 dishonest dealing;

8 (5) The applicant, each owner and the controlling person or
9 managing principal of the firm seeking registration are of good
10 character and reputation and that none of them has had a license or
11 certificate to act as an appraiser refused, denied, canceled,
12 revoked, suspended or surrendered in this state or any other
13 jurisdiction;

14 (6) The applicant, each owner and the controlling person or
15 managing principal of the firm seeking registration are not
16 permanently or temporarily enjoined by a court of competent
17 jurisdiction from engaging in or continuing any conduct or practice
18 involving appraisals, appraisal management services or operating an
19 appraisal management company;

20 (7) The applicant, each owner and the controlling person or
21 managing principal of the firm seeking registration are not the
22 subject of an order of the board, any state agency that regulates
23 appraisal management companies or any other jurisdiction that

1 denied, suspended or revoked the applicant's or firm's privilege to
2 operate as an appraisal management company;

3 (8) The applicant, each owner and the controlling person or
4 managing principal of the firm seeking registration have not acted
5 as an appraisal management company while not being properly
6 registered by the board; and

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

8 **§30-38A-7. Background check requirements.**

9 (a) The applicant, each owner and the controlling person or
10 managing principal of the firm seeking registration shall obtain
11 national and state criminal background checks.

12 (b) The applicant, each owner and the controlling person or
13 managing principal of the firm seeking registration shall obtain a
14 state criminal background check first and then provide their
15 fingerprints to the West Virginia State Police or a designated
16 vendor for submission to the Federal Bureau of Investigation.

17 (c) The results of the national and state criminal background
18 checks shall be sent to the board.

19 (d) The fees for the national and state criminal background
20 checks cannot exceed the actual costs of processing the request and
21 conducting the checks and are to be paid by the applicant, each
22 owner and the controlling person or managing principal of the firm
23 seeking registration.

1 **§30-38A-8. 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 \$500,000;

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

9 (4) Accrue to the state for the benefit of any claimant
10 against the registrant to secure the faithful performance of the
11 registrant's obligations.

12 (c) A party having a claim against the registrant may bring
13 suit directly against the surety bond or the board may bring suit
14 on behalf of the party having a claim against the registrant.

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

17 (e) If a claim reduces the face amount of the surety bond,
18 then the surety bond amount shall be restored upon renewal of the
19 registrant's annual registration.

20 **§30-38A-9. Fee requirements.**

21 The fees assessed by the board, as established by legislative
22 rule, shall include the annual fee for appraisal management
23 companies to be included in the national registry maintained by the

1 Appraisal Subcommittee of the Federal Financial Institutions
2 Examination Council.

3 **§30-38A-10. Controlling person or managing principal requirements.**

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

9 (b) The controlling person or managing principal shall:

10 (1) Be of good character and reputation;

11 (2) Submit to national and state criminal background checks as
12 set out in section seven of this article;

13 (3) Never have had a license or certificate to act as an
14 appraiser refused, denied, canceled, revoked, suspended or
15 surrendered in this state or any other jurisdiction;

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

21 (5) Never have been the subject of an order of the board, any
22 state agency that regulates appraisal management companies or any
23 other jurisdiction that denied, suspended or revoked the

1 applicant's or firm's privilege to operate as an appraisal
2 management company.

3 **§30-38A-11. Requirements for removal from an appraiser panel.**

4 (a) An appraisal management company may only remove an
5 appraiser from an appraiser panel or refuse to assign appraisals to
6 an appraiser after providing the appraiser thirty days prior
7 written notice stating the reasons for the removal or refusal and
8 providing an opportunity for the appraiser to be heard.

9 (b) An appraiser may only be removed from an appraiser panel
10 or refused appraisal assignments for the following reasons:

11 (1) Illegal conduct;

12 (2) Violating the minimum USPAP standards;

13 (3) Violating applicable statutes or rules that result in a
14 suspension or revocation of an appraiser's license or
15 certification;

16 (4) Substandard or improper performance as determined by the
17 board by rule; or

18 (5) Violating the contract between the appraiser and the
19 appraisal management company.

20 (c) An appraiser that is removed from an appraiser panel or
21 refused appraisal assignments may file a complaint with the board
22 for a review of the appraisal management company's decision.

23 (d) The board shall hold a hearing on the complaint within a

1 reasonable time, not exceeding one year after the complaint was
2 filed.

3 (e) If the board determines after the hearing that an
4 appraisal management company acted improperly then the board shall
5 order the appraisal management company to restore the appraiser to
6 the appraiser panel or assign appraisals to the appraiser.

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

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

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

11 **§30-38A-12. Duties of appraisal management companies.**

12 (a) Each appraisal management company shall:

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

15 (A) Professionally and geographically competent;

16 (B) Licensed or certified under the provisions of article
17 thirty-eight of this chapter; and

18 (C) In good standing in this state;

19 (2) Designate a controlling person or managing principal
20 responsible for ensuring compliance with this article, including
21 filing with the board the following:

22 (A) The name of the controlling person or managing principal;

23 (B) The contact information for the controlling person or

1 managing principal;

2 (C) A verified acceptance of responsibility from the
3 controlling person or managing principal; and

4 (D) A new form when there is a change of the controlling
5 person or managing principal;

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

8 (A) The type of appraisal requested;

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

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

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

14 (4) Ensure that appraisal services are provided in an
15 independent manner, free from inappropriate influence and coercion;

16 (5) Pay an appraiser reasonable and customary fees;

17 (6) Except in cases of breach of contract or substandard
18 performance, pay an appraiser for the completion of an appraisal
19 within sixty days after the appraiser provides the completed
20 appraisal to the appraisal management company;

21 (7) Disclose its registration number on all its instruments
22 and electronic transmissions;

23 (8) Disclose on all contracts, agreements, invoices, purchase

1 orders or other documents, including any amendments, establishing
2 work to be performed for or compensation due from its clients:

3 (A) The name of the appraiser or third party performing the
4 services;

5 (B) A description of the services performed;

6 (C) An itemization of the actual fees paid to an appraiser or
7 third party for services performed; and

8 (D) An itemization of the actual fees charged by the appraisal
9 management company to the client for services;

10 (9) Inform the board, when it has a reasonable basis to
11 believe, that an appraiser has:

12 (A) Failed to comply with USPAP;

13 (B) Violated applicable laws or rules; or

14 (C) Engaged in unethical or unprofessional conduct;

15 (10) Keep accounts, correspondence, memoranda, papers and
16 books, either by paper or electronically, in accordance with
17 administrative procedures established by the board by legislative
18 rule, for a minimum of five years or as long as the board
19 determines by legislative rule; and

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

23 (b) The board may inspect the records of appraisal management

1 companies at any time without prior notice.

2 (c) A sole proprietor of an appraisal management company is
3 considered the controlling person or managing principal.

4 (d) If a disclosure becomes inaccurate for any reason, then a
5 revised or amended disclosure shall be provided by the end of the
6 next business day after the change. The revised or amended
7 disclosure shall be clearly marked as revised or amended and
8 contain sufficient information for the client to identify the
9 original disclosure referenced.

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

13 **§30-38A-13. Unprofessional conduct.**

14 An appraisal management company commits unprofessional conduct
15 if it:

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

19 (2) Requires an appraiser to prepare an appraisal when the
20 appraiser believes, in his or her own professional judgment and
21 notifies the appraisal management company, that the appraiser does
22 not have the necessary expertise for the specific geographic area;

23 (3) Requires an appraiser to prepare an appraisal under a

1 certain time frame that the appraiser believes, in his or her own
2 professional judgment and notifies the appraisal management
3 company, that the appraiser does not have the necessary time to
4 meet all the necessary and relevant legal and professional
5 obligations;

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

9 (5) Requires an appraiser to do anything that does not comply
10 with:

11 (A) The USPAP; or

12 (B) The requests of the client; or

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

16 (A) A loan closing; or

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

18 **§30-38A-14. Prohibited acts.**

19 (a) An appraisal management company or any person acting for
20 an appraisal management company as an owner, director, officer,
21 agent, employee or independent contractor may not:

22 (1) Improperly influence or attempt to improperly influence
23 the development, reporting, result or review of an appraisal;

1 (2) Use intimidation, inducement, coercion, extortion,
2 collusion, bribery, compensation, blackmail, threat of nonpayment,
3 threat of exclusion from future appraisal work or any other means
4 that unduly influences or pressures the appraiser;

5 (3) Withhold payment to an appraiser for appraisal services;

6 (4) Provide payment to an appraiser that is less than what is
7 reasonable and customary;

8 (5) Withhold business from an appraiser without cause;

9 (6) Demote or terminate an appraiser without cause;

10 (7) Expressly or impliedly promise future business, promotions
11 or increased compensation to an appraiser;

12 (8) Knowingly employ a person to a position of responsibility
13 who has had a license or certificate to act as an appraiser
14 refused, denied, canceled, revoked, suspended or surrendered in
15 this state or any other jurisdiction;

16 (9) Knowingly enter into a contract with a person who has had
17 a license or certificate to act as an appraiser refused, denied,
18 canceled, revoked, suspended or surrendered in this state or any
19 other jurisdiction;

20 (10) Knowingly enter into a contract, agreement or other
21 business relationship for the purpose of obtaining real estate
22 appraisal services with a firm that employs or contracts with a
23 person who has had a license or certificate to act as an appraiser

1 refused, denied, canceled, revoked, suspended or surrendered in
2 this state or any other jurisdiction;

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

7 (12) Prohibit an appraiser from stating, in a submitted
8 appraisal, the fee paid by the appraisal management company to the
9 appraiser for the appraisal;

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

13 (14) Require an appraiser to provide the registrant with the
14 appraiser's signature or seal in any form;

15 (15) Alter, amend or change an appraisal submitted by an
16 appraiser;

17 (16) Remove an appraiser's signature or seal from an
18 appraisal;

19 (17) Add information to or remove information from an
20 appraisal with the intent to change the conclusion of the
21 appraisal;

22 (18) Remove an appraiser from an appraiser panel without
23 thirty days prior written notice to the appraiser and an

1 opportunity for the appraiser to be heard;

2 (19) Enter into an agreement or contract for the performance
3 of appraisal services with an appraiser who is not in good standing
4 with the board;

5 (20) Request or require an appraiser to provide an estimated,
6 predetermined or desired valuation in an appraisal;

7 (21) Request or require an appraiser to provide estimated
8 values or comparable sales at any time prior to the appraiser
9 completing an appraisal;

10 (22) Condition a request for an appraisal or the payment of an
11 appraisal fee on:

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

13 (B) A preliminary estimate or opinion requested from an
14 appraiser;

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

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

23 (25) Have a direct or indirect interest, financial or

1 otherwise, in the property or transaction involving the appraisal;

2 (26) Provide to an appraiser or a person related to the
3 appraiser stock or other financial or nonfinancial benefits;

4 (27) Obtain, use or pay for a second or subsequent appraisal
5 or order an automated valuation model, unless:

6 (A) There is a reasonable basis to believe that the initial
7 appraisal was flawed and the basis is clearly and appropriately
8 noted in the file;

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

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

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

15 (28) Commit an act or practice that impairs or attempts to
16 impair an appraiser's independence, objectivity or impartiality.

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

19 (1) Provide additional information about the basis for a
20 valuation;

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

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

1 (4) Consider additional appropriate property information,
2 including the consideration of additional comparable properties to
3 make or support an appraisal.

4 **§30-38A-15. Disciplinary action.**

5 The board may deny, suspend, revoke or refuse to issue or
6 renew the registration of an appraisal management company or may
7 restrict or limit the activities of an appraisal management company
8 or of a person or firm that owns an interest in or participates in
9 the business of an appraisal management company for the following
10 reasons:

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

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

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

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

20 (5) The application for registration contained false or
21 misleading information;

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

1 (7) A person or firm fraudulently or deceptively used a
2 registration;

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

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

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

10 (A) Mortgage lending;

11 (B) Appraisals;

12 (C) Breach of trust; or

13 (D) Fraudulent or dishonest dealing;

14 (11) A person or firm is permanently or temporarily enjoined
15 by a court of competent jurisdiction from engaging in or continuing
16 any conduct or practice involving appraisal management services or
17 operating an appraisal management company;

18 (12) A person or firm is the subject of an order of the board
19 or any other jurisdiction's appraisal management company regulatory
20 agency that denied, suspended, revoked or restricted a person's or
21 firm's privilege to operate as an appraisal management company;

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

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

1 **§30-38A-16. Notice and hearing procedures.**

2 (a) The board, on its own motion or upon receipt of a written
3 complaint, may investigate an appraisal management company, a
4 person or firm associated therewith and a person or firm performing
5 appraisal management services.

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

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

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

12 (1) Suspend, revoke, deny, reprimand, cancel or restrict the
13 registration of a registrant;

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

15 (3) Take other disciplinary action as established by the board
16 by rule.

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

NOTE: The purpose of this bill is to require Appraisal Management Companies to be registered with the West Virginia Real Estate Appraiser Licensing and Certification Board. The bill

updates the duties, powers and rule-making authority of the board and the general and specific regulation of Appraisal Management Companies.

Article 38A is new; therefore, it has been completely underscored.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Committee on Government Organization.