

1 **Senate Bill No. 346**

2 (By Senators Snyder, Miller, Green, Sypolt, D. Hall and Williams)

3 \_\_\_\_\_  
4 [Introduced February 22, 2013; referred to the Committee on  
5 Government Organization.]

**Interim  
Bill**

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

1 procedures; and civil penalties.

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

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

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

11 **§30-38-7. General powers and duties.**

12 The board shall:

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

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

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

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

23 (e) Approve or disapprove applications for registration under

1 the provisions of article thirty-eight-a of this chapter;

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

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

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

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

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

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

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

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

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

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

1 of West Virginia and, upon suspension or revocation of the license  
2 to practice pursuant to this article, will be returned immediately  
3 to the board;

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

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

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

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

17 **§30-38-9. Rulemaking.**

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

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

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

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

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

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

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

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

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

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

23        (c) Any rules in effect ~~as of the passage of this article on~~ on

1 January 1, 2013, will remain in effect until amended, modified,  
2 repealed or replaced, except that references to provisions of  
3 former enactments of this act are interpreted to mean provisions of  
4 this article.

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

6 **§30-38A-1. Unlawful acts.**

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

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

19 **§30-38A-2. Applicable law.**

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

1 article thirty-eight of this chapter.

2 **§30-38A-3. Definitions.**

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

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

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

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

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

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

22 (2) Providing related administrative and clerical duties;

23 (3) Recruiting, selecting or retaining appraisers;

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



1 grammatical, typographical or other similar errors that do not make  
2 a substantive valuation change.

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

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

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

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

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

23 (k) "Client" means a person or firm that contracts or enters

1 into an agreement with an appraisal management company for the  
2 performance of an appraisal.

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

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

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

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

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

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

17 **§30-38A-4. Registration requirements.**

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

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

1 (1) A person who has had a license or certificate to act as an  
2 appraiser refused, denied, canceled, revoked, suspended or  
3 surrendered in this state or any other jurisdiction; or

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

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

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

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

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

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

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

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

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

1 (d) The registrations issued under the provisions of this  
2 article shall be renewed annually on January 1.

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

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

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

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

14 **§30-38A-5. Written application requirements.**

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

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

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

23 (3) The name, the street and mailing address and the contact

1 information, including telephone number and e-mail address, of the  
2 controlling person or managing principal of the firm seeking  
3 registration; and

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

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

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

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

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

17 **§30-38A-6. Verification requirements.**

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

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

1           (2) Has set requirements to ensure that appraisers are  
2 geographically competent and can perform the appraisals assigned;

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

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

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

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

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

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

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

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

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

1           (4) Within the past ten years, the applicant, each owner and  
2 the controlling person or managing principal of the firm seeking  
3 registration has not pleaded guilty or nolo contendere to or been  
4 convicted of:

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

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

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

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

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

1 appraisal management companies or any other jurisdiction that  
2 denied, suspended or revoked the applicant's or firm's privilege to  
3 operate as an appraisal management company;

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

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

9 **§30-38A-7. Background check requirements.**

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

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

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

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



1 seeking registration.

2 **§30-38A-8. Surety bond requirements and claims.**

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

6 (b) The surety bond shall:

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

8 (2) Not exceed \$500,000;

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

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

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

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

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

21 **§30-38A-9. Fee requirements.**

22 The fees assessed by the board, as established by legislative  
23 rule, shall include the annual fee for appraisal management

1 companies to be included in the national registry maintained by the  
2 Appraisal Subcommittee of the Federal Financial Institutions  
3 Examination Council.

4 **§30-38A-10. Controlling person or managing principal requirements.**

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

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

11 (1) Be of good character and reputation;

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

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

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

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

1 other jurisdiction that denied, suspended or revoked the  
2 applicant's or firm's privilege to operate as an appraisal  
3 management company.

4 **§30-38A-11. Requirements for removal from an appraiser panel.**

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

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

12 (1) Illegal conduct;

13 (2) Violating the minimum USPAP standards;

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

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

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

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

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

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

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

- 10 (1) Reduce the number of appraisals given to the appraiser; or  
11 (2) Penalize the appraiser in any other manner.

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

13 (a) Each appraisal management company shall:

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

16 (A) Professionally and geographically competent;

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

19 (C) In good standing in this state;

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

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

1 (B) The contact information for the controlling person or  
2 managing principal;

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

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

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

9 (A) The type of appraisal requested;

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

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

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

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

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

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

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

1 (8) Disclose on all contracts, agreements, invoices, purchase  
2 orders or other documents, including any amendments, establishing  
3 work to be performed for or compensation due from its clients:

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

6 (B) A description of the services performed;

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

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

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

13 (A) Failed to comply with USPAP;

14 (B) Violated applicable laws or rules; or

15 (C) Engaged in unethical or unprofessional conduct;

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

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

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

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

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

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

14 **§30-38A-13. Unprofessional conduct.**

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

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

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

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

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

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

12 (A) The USPAP; or

13 (B) The requests of the client; or

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

17 (A) A loan closing; or

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

19 **§30-38A-14. Prohibited acts.**

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

23 (1) Improperly influence or attempt to improperly influence



1 the development, reporting, result or review of an appraisal;

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

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

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

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

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

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

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

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

21       (10) Knowingly enter into a contract, agreement or other  
22 business relationship for the purpose of obtaining real estate  
23 appraisal services with a firm that employs or contracts with a

1 person who has had a license or certificate to act as an appraiser  
2 refused, denied, canceled, revoked, suspended or surrendered in  
3 this state or any other jurisdiction;

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

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

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

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

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

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

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

23 (18) Remove an appraiser from an appraiser panel without

1 thirty days prior written notice to the appraiser and an  
2 opportunity for the appraiser to be heard;

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

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

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

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

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

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

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

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

1 (25) Have a direct or indirect interest, financial or  
2 otherwise, in the property or transaction involving the appraisal;

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

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

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

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

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

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

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

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

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

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

23 (3) Provide further detail, substantiation or explanation for

1 the appraiser's conclusion; or

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

5 **§30-38A-15. Disciplinary action.**

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

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

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

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

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

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

23 (6) A person or firm fraudulently or deceptively obtains or

1 attempts to obtain a registration;

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

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

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

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

11       (A) Mortgage lending;

12       (B) Appraisals;

13       (C) Breach of trust; or

14       (D) Fraudulent or dishonest dealing;

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

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

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

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

2 **§30-38A-16. Notice and hearing procedures.**

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

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

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

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

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

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

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

18 (e) The board may obtain injunctive relief in Kanawha County  
19 Circuit Court to prevent a person or firm from violating the  
20 provisions of this article or the rules promulgated hereunder. The  
21 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, strike-throughs and underscoring have been omitted.

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.