

COMMITTEE SUBSTITUTE

for

H. B. 2608

(BY DELEGATE(S) STAGGERS, MORGAN, SWARTZMILLER,
R. PHILLIPS, DISERIO, ROMINE, AZINGER, BORDER, AND
HOUSEHOLDER)

(Originating in the Committee on the Judiciary)

[March 29, 2013]

A BILL to amend and reenact §30-38-6, §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, §30-38A-16 and §30-38A-17, all relating to regulating appraisal management companies; requiring appraisal management companies to be registered with the West Virginia Real Estate Appraiser Licensing and Certification Board; adding a member representing appraisal management companies to the board; updating the duties, powers

and rulemaking authority of the board; prohibiting any person or firm from performing or offering to perform appraisal management services without a registration issued by the board; defining certain terms; setting forth requirements for registration, including written applications, verifications and criminal background checks; providing exemptions from registration requirements; requiring surety bonds; setting forth duties of appraisal management companies; authorizing certain fees; requiring appraisal management companies to designate a controlling person; establishing requirements and authorizing complaints for the removal of an appraiser from an appraiser panel; setting forth duties of appraisal management companies; defining what constitutes unprofessional conduct; setting forth prohibited acts; authorizing disciplinary action; providing for hearing and notice procedures; authorizing civil penalties; and authorizing the board to seek injunctive relief.

Be it enacted by the Legislature of West Virginia:

That §30-38-6, §30-38-7 and §30-38-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended 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, §30-38A-16 and §30-38A-17, all to read as follows:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

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

1 (a) The West Virginia real estate appraiser licensing and
2 certification board, which consists of nine members appointed by
3 the governor with the advice and consent of the Senate, is
4 continued.

5 (1) Each member shall be a resident of the state of West
6 Virginia, except the appraisal management company repre-
7 sentative is not required to be a resident of West Virginia.

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

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

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

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

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

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

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

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

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

32 (3) The governor shall, within sixty days following the
33 occurrence of a vacancy on the board, fill the vacancy by
34 appointing a person who meets the requirements of this section
35 for the unexpired term.

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

39 (c) The board shall elect a chairman.

40 (d) A majority of the members of the board constitutes a
41 quorum.

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

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

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

52 (3) A member may disqualify himself or herself from
53 participation in a proceeding for any other cause the member
54 considers sufficient.

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

58 ~~(f)~~ (g) The board may employ staff as necessary to perform
59 the functions of the board, to be paid out of the board fund
60 created by the provisions of this article. Persons employed by
61 any real estate agent, broker, appraiser or lender, or by any
62 partnership, corporation, association or group engaged in any
63 real estate business, may not be employed by the board.

§30-38-7. General powers and duties.

1 The board shall:

2 (a) Define by rule the type of educational experience,
3 appraisal experience and equivalent experience that will meet the
4 statutory requirements of this article;

5 (b) Establish examination specifications as prescribed herein
6 and provide for appropriate examinations;

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

10 ~~(c)~~ (d) Approve or disapprove applications for certification
11 and licensure;

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

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

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

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

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

21 ~~(g)~~ (j) Establish procedures for submitting, approving and
22 disapproving applications;

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

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

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

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

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

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

41 ~~(k)~~ (q) Deposit all fees collected by the board to the credit of
42 the West Virginia appraiser licensing and certification board
43 fund established in the office of the State Treasurer. The board
44 shall disburse moneys from the account to pay the cost of board
45 operation. Disbursements from the account may not exceed the
46 moneys credited to it;

47 ~~(t)~~ (r) Keep records and make reports as required by article
48 one of this chapter; and

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

§30-38-9. Rulemaking.

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

4 (1) Licensure and certification requirements, including
5 requirements for applications, examinations, reciprocity,
6 temporary permits, apprentice permits and reinstatement;

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

10 ~~(2)~~ (3) Fees for licenses, renewals of licenses and other
11 services provided by the board;

12 (4) A fee schedule for registrations of appraisal management
13 companies under the provisions of article thirty-eight-a of this
14 chapter;

15 (5) Surety bond requirements for registrations of appraisal
16 management companies under the provisions of article thirty-
17 eight-a of this chapter;

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

21 ~~(3)~~ (7) Experience, education and continuing education
22 requirements and approval of courses; and

23 ~~(4)~~ (8) Any other purpose to carry out the requirements of
24 this article and article thirty-eight-a of this chapter.

25 (b) The rule governing appraiser qualifications must include
26 requirements which meet or exceed the education, experience
27 and examination requirements issued or endorsed by the
28 appraisal qualifications board of the appraisal foundation.

29 (c) Any rules in effect ~~as of the passage of this article~~ on the
30 effective date of the reenactment of this section during the
31 regular session of the legislature in 2013 will remain in effect
32 until amended, modified, repealed or replaced, except that
33 references to provisions of former enactments of this act are
34 interpreted to mean provisions of this article.

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

§30-38A-1. Unlawful acts.

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

7 (b) Commencing July 1, 2014, it is unlawful for any person
8 or firm not registered under the provisions of this article to
9 advertise or use a title or description conveying the impression
10 that the person or firm is registered to perform appraisal
11 management services or registered to act as an appraisal
12 management company within this state.

§30-38A-2. Applicable law.

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

§30-38A-3. Definitions.

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

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

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

12 (c) “Appraisal Management Company” means a person or
13 firm that performs or provides appraisal management services,
14 directly or indirectly, through the use of software products or
15 online, or by 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 but not limited to any
19 of the following actions:

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;

24 (4) Verifying qualifications of appraisers;

25 (5) Establishing and administering an appraiser panel;

26 (6) Receiving appraisal orders from clients;

27 (7) Contracting and negotiating fees with appraisers to
28 perform appraisal services;

29 (8) Receiving appraisals from the appraiser and submitting
30 completed appraisals to clients;

31 (9) Tracking and determining the status of orders for
32 appraisals;

33 (10) Reviewing, verifying and conducting quality control of
34 a completed appraisal;

35 (11) Collecting fees from the clients; and

36 (12) Compensating appraisers for appraisal services
37 rendered.

38 (e) “Appraisal review” means the act of developing and
39 communicating an opinion about the quality of another
40 appraiser’s work that was performed as part of an appraiser
41 assignment. The review does not include:

42 (1) An examination of an appraisal for grammatical,
43 typographical or other similar errors that do not make a
44 substantive valuation change; or

45 (2) A general examination for compliance including
46 regulatory and/or client requirements as specified in the
47 agreement process that do not communicate an opinion as to the
48 valuation conclusion.

49 (f) “Appraisal services” means the practice of developing an
50 opinion of the value of real estate in conformity with the
51 minimum USPAP standards.

52 (g) “Appraiser” means a person licensed or certified, under
53 the provisions of article thirty-eight of this chapter, to perform
54 an appraisal.

55 (h) “Appraiser panel” means a group of appraisers that
56 perform appraisals for an appraisal management company as
57 independent contractors.

58 (i) “Automated valuation model (AVM)” means a
59 mathematically based computer software program that produces
60 an estimate of market value based on market analysis of location,
61 market conditions, and real estate characteristics from
62 information that was previously and separately collected.

63 (j) “Board” means the West Virginia Real Estate Appraiser
64 Licensing and Certification Board established under the
65 provisions of article thirty-eight of this chapter.

66 (k) “Client” means a person or firm that contracts or enters
67 into an agreement with an appraisal management company for
68 the performance of an appraisal.

69 (l) “Controlling person” means a person authorized by an
70 appraisal management company to contract or enter into
71 agreements with clients and independent appraisers for the
72 performance of appraisal services and who has the power to
73 manage the appraisal management company.

74 (m) “Firm” means a corporation, limited liability company,
75 partnership, sole proprietorship or any other business entity.

76 (n) “Registrant” means a person or firm holding a
77 registration issued by the board under the provisions of this
78 article.

79 (o) “Registration” means a registration issued by the board
80 under the provisions of this article.

81 (p) “State” means the State of West Virginia.

82 (q) “USPAP” means the Uniform Standards of Professional
83 Appraisal Practice.

§30-38A-4. Registration requirements.

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

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

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

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

16 (c) The board may issue a registration to perform appraisal
17 management services or act as an appraisal management
18 company to a person or firm that:

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

21 (2) Submits certifications as set out in section seven of this
22 article;

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

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

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

29 (6) Has a designated controlling person as set out in section
30 eleven of this article; and

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

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

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

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

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

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

§30-38A-5. Exemptions.

1 This article does not apply to:

2 (a) A financial institution, including a department or unit
3 within an institution that is regulated by an agency of this state
4 or the United States government; or

5 (b) An appraisal management company that is a subsidiary
6 wholly owned and controlled by a financial institution regulated
7 by a federal financial institution regulatory agency.

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

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

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

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

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

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

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

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

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

22 (b) The board shall maintain a list of all applicants for
23 registration that includes the information in the written
24 application.

§30-38A-7. Certification requirements.

1 (a) The certification for registration shall be in writing, on a
2 form prescribed by the board and signed by the applicant or
3 controlling person. The certification shall include statements that
4 the applicant:

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

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

11 (3) Has set procedures for an appraiser, licensed or certified
12 in this state or in any state with a minimum of the same

13 certification level for the property type as the appraiser who
14 performed the appraisal, to review the work of the appraisers
15 performing appraisals for the applicant to verify that the
16 appraisals are being conducted in accordance with the minimum
17 USPAP standards;

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

27 (5) Maintains a detailed record of each request for appraisal
28 it receives from a client and the appraiser that performs the
29 appraisal; and

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

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

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

37 (2) The applicant has complied with the requirements of this
38 article;

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

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

47 (A) A misdemeanor involving mortgage lending or real
48 estate appraisals; or

49 (B) An offense involving breach of trust or fraudulent or
50 dishonest dealing;

51 (5) The applicant, each owner of more than ten percent, and
52 the controlling person of the firm seeking registration are of
53 good character and reputation and that none of them has had a
54 license or certificate to act as an appraiser refused, denied,
55 canceled, revoked or surrendered in this state or any other
56 jurisdiction, and the license or certification was not subsequently
57 granted or reinstated;

58 (6) The applicant, each owner of more than ten percent, and
59 the controlling person of the firm seeking registration are not

60 permanently or temporarily enjoined by a court of competent
61 jurisdiction from engaging in or continuing any conduct or
62 practice involving appraisals, appraisal management services or
63 operating an appraisal management company;

64 (7) The applicant, each owner of more than ten percent, and
65 the controlling person of the firm seeking registration are not the
66 subject of an order of the board or any other jurisdiction's
67 agency that regulates appraisal management companies that
68 denied, suspended or revoked the applicant's or firm's privilege
69 to operate as an appraisal management company;

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

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

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

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

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

6 (2) The criminal history record check shall be based on
7 fingerprints submitted to the West Virginia State Police or its

8 assigned agent for forwarding to the Federal Bureau of
9 Investigation.

10 (3) The applicant shall meet all requirements necessary to
11 accomplish the state and national criminal history record check,
12 including:

13 (A) Submitting fingerprints for the purposes set forth in this
14 subsection; and

15 (B) Authorizing the board, the West Virginia State Police
16 and the Federal Bureau of Investigation to use all records
17 submitted and produced for the purpose of screening the
18 applicant for a license.

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

21 (1) To the individual who is the subject of the criminal
22 history record check;

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

25 (3) Pursuant to a court order.

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

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

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

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

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

4 (b) The surety bond shall:

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

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

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

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

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

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

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

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

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

§30-38A-10. Fee requirements.

1 The fees assessed by the board, as established by legislative
2 rule, shall include the annual fee for appraisal management
3 companies to be included in the national registry maintained by
4 the Appraisal Subcommittee of the Federal Financial Institutions
5 Examination Council.

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

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

5 (b) The controlling person shall:

6 (1) Be of good character and reputation;

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

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

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

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

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

1 (a) Except within sixty days from the date an appraiser is
2 first added to the appraiser panel of an appraisal management
3 company, an appraisal management company may only remove
4 an appraiser from an appraiser panel or refuse to assign
5 appraisals to an appraiser after providing the appraiser twenty
6 days prior written notice stating the reasons for the removal or
7 refusal and providing an opportunity for the appraiser to be
8 heard.

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

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

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

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

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

28 (e) If the board determines after the hearing that an appraisal
29 management company acted improperly then the board shall
30 order the appraisal management company to restore the appraiser
31 to the appraiser panel or assign appraisals to the appraiser.

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

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

35 or

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

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

1 (a) Each appraisal management company shall:

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

4 (A) Professionally and geographically competent;

5 (B) Competent to perform the appraisal service being
6 assigned to the appraiser;

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

9 (D) In good standing in this state;

10 (2) Designate a controlling person responsible for ensuring
11 compliance with this article, including filing with the board the
12 following:

13 (A) The name of the controlling person;

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

15 (C) A verified acceptance of responsibility from the
16 controlling person; and

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

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

22 (A) The type of appraisal requested;

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

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

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

28 (4) Ensure that appraisal services are provided in an
29 independent manner, free from inappropriate influence and

30 coercion, as required by appraisal independence standards
31 established under Section 129E of the Truth in Lending Act and
32 the rules and regulations issued pursuant to the Act, including
33 the requirement that fee appraisers be compensated at a
34 customary and reasonable rate when the appraisal management
35 company is providing services for a consumer credit transaction
36 secured by the principal dwelling of a consumer;

37 (5) Except in cases of breach of contract or substandard
38 performance, pay an independent appraiser for the completion of
39 an appraisal within forty-five days after the appraiser provides
40 the completed appraisal to the appraisal management company,
41 unless otherwise agreed to by the parties;

42 (6) Disclose its registration number on all engagement
43 documentation with appraisers;

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

45 (A) For appraisal management services; and

46 (B) To the appraiser for the completion of an appraisal
47 assignment;

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

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

52 (B) Violated applicable laws or rules; or

53 (C) Engaged in unethical or unprofessional conduct;

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

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

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

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

66 (d) If information on a disclosure becomes inaccurate for
67 any reason, then a revised or amended disclosure shall be
68 provided within five business days after the change. The revised
69 or amended disclosure shall be clearly marked as revised or
70 amended and contain sufficient information for the client to
71 identify the original disclosure referenced.

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

§30-38A-14. Unprofessional conduct.

1 An appraisal management company commits unprofessional
2 conduct if it:

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

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

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

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

21 (5) Requests an appraiser to do anything that does not
22 comply with:

23 (A) The USPAP; or

24 (B) The requests of the client; or

25 (6) Makes any portion of the appraiser's fee or the appraisal

26 management company's fee contingent on a favorable outcome,

27 including:

28 (A) A loan closing; or

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

§30-38A-15. Prohibited acts.

1 (a) An appraisal management company or any person acting

2 for an appraisal management company as a controlling person,

3 owner, director, officer, agent, employee or independent

4 contractor may not:

5 (1) Improperly influence or attempt to improperly influence

6 the development, reporting, result or review of an appraisal

7 through:

8 (A) Intimidation, inducement, coercion, extortion, collusion,

9 bribery, compensation, blackmail, threat of exclusion from

10 future appraisal work or any other means that unduly influences

11 or pressures the appraiser;

12 (B) Withholding payment to an appraiser for appraisal

13 services unless for breach of contract; or

14 (C) Expressly or impliedly promise future business,

15 promotions or increased compensation to an appraiser;

16 (2) Knowingly employ a person to a position of

17 responsibility who has had a license or certificate to act as an

18 appraiser refused, denied, canceled, revoked or surrendered in

19 this state or any other jurisdiction, and not subsequently granted
20 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
28 appraisal services with a firm that employs or contracts with a
29 person who has had a license or certificate to act as an appraiser
30 refused, denied, canceled, revoked or surrendered in this state or
31 any other jurisdiction, and not subsequently granted or
32 reinstated;

33 (5) Knowingly fail to separate and disclose any fees charged
34 to a client by the appraisal management company for an
35 appraisal by an appraiser from fees charged to a client by the
36 appraisal management company for appraisal management
37 services;

38 (6) Prohibit an appraiser from stating, in a submitted
39 appraisal, the fee paid by the appraisal management company to
40 the appraiser for the appraisal;

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

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

46 (9) Alter, amend or change an appraisal submitted by an
47 appraiser;

48 (10) Remove an appraiser's signature or seal from an
49 appraisal;

50 (11) Add information to or remove information from an
51 appraisal with the intent to change the conclusion of the
52 appraisal;

53 (12) Remove an appraiser from an appraiser panel without
54 twenty days prior written notice to the appraiser and an
55 opportunity for the appraiser to be heard;

56 (13) Enter into an agreement or contract for the performance
57 of appraisal services with an appraiser who is not in good
58 standing with the board;

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

61 (15) Request or require an appraiser to provide estimated
62 values or comparable sales at any time prior to the appraiser
63 completing an appraisal;

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

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

67 (B) A preliminary estimate or opinion requested from an
68 appraiser;

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

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

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

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

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

83 (A) There is a reasonable basis to believe that the initial
84 appraisal was flawed and the basis is clearly and appropriately
85 noted in the file;

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

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

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

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

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

96 (1) Provide additional information about the basis for a
97 valuation;

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

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

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

§30-38A-16. Disciplinary action.

1 The board may deny, revoke or refuse to issue or renew the
2 registration of an appraisal management company or may restrict
3 or limit the activities of an appraisal management company or of
4 a person or firm that owns an interest in or participates in the

5 business of an appraisal management company for the following
6 reasons:

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

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

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

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

16 (5) The application for registration contained false or
17 misleading information;

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

20 (7) A person or firm fraudulently or deceptively used a
21 registration;

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

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

26 (10) Within the past ten years, a person or firm was found
27 guilty of or pleaded guilty or nolo contendere to a misdemeanor
28 involving;

29 (A) Mortgage lending;

30 (B) Appraisals;

31 (C) Breach of trust; or

32 (D) Fraudulent or dishonest dealing;

33 (11) A person or firm is permanently or temporarily enjoined
34 by a court of competent jurisdiction from engaging in or
35 continuing any conduct or practice involving appraisal
36 management services or operating an appraisal management
37 company;

38 (12) A person or firm is the subject of an order of the board
39 or any other jurisdiction's appraisal management company
40 regulatory agency that denied, revoked or restricted a person's
41 or firm's privilege to operate as an appraisal management
42 company;

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

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

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

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

6 (b) If the board determines after the investigation there are
7 grounds for disciplinary action, the board may hold a hearing
8 after 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) Deny, revoke or refuse to issue or renew the registration
13 of an appraisal management company or restrict or limit the
14 activities of an appraisal management company or of a person or
15 firm that owns an interest in or participates in the business of an
16 appraisal management company;

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

19 (3) Take other disciplinary action as established by the board
20 by rule.

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

