

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 466

BY SENATOR MAYNARD

[Introduced February 26, 2021; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §30-38-4, §30-38-6, and §30-38-17 of the Code of West Virginia,
 2 1931, as amended; and to amend and reenact §30-38A-3, §30-38A-4, §30-38A-8, and §30-
 3 38A-10 of said code, all relating to expanding and clarifying the definition of “appraisal
 4 management company” for purposes of the Real Estate Appraiser Licensing and
 5 Certification Act, as well as the Appraisal Management Companies Registration Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT

§30-38-4. Classifications of licensure and certification; authority of appraisers; classification and license or certificate number required on all documents; corporations.

1 (a) The three classifications of real estate appraisers are state licensed residential real
 2 estate appraiser, state certified residential real estate appraiser and state certified general real
 3 estate appraiser.

4 (b) A state licensed residential real estate appraiser is authorized to conduct appraisals of:
 5 (1) Complex residential real estate of one to four units having a value of less than \$250,000; (2)
 6 noncomplex residential real estate of one to four units having a value of less than \$1 million; and
 7 (3) nonresidential real estate having a value of less than \$100,000.

8 (c) A state certified residential real estate appraiser is authorized to conduct appraisals of
 9 residential real estate of one to four units without regard to value or complexity, and nonresidential
 10 real estate when the value is less than \$100,000.

11 (d) A state certified general real estate appraiser is authorized to conduct appraisals of all
 12 types of real estate.

13 (e) The board is authorized to establish by legislative rule other classifications of appraiser
 14 licensing not prohibited by applicable federal law.

15 (f) An appraiser shall indicate his or her classification and license or certificate number, as
 16 it appears on an issued license, on all appraisals, statements of qualification, contracts and other
 17 instruments, including advertising media.

18 (g) A license or certificate may not be issued under the provisions of this article to a
19 corporation, partnership, firm or group.

20 (h) Nothing contained in this article prohibits any person licensed or certified under this
21 article from engaging in the practice of real estate appraising as a professional corporation in
22 accordance with the provisions of the professional service corporation act of this state.

**§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 certification board, which consists
2 of nine members appointed by the Governor with the advice and consent of the Senate, is
3 continued.

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

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

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

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

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

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

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

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

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

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

24 (3) The Governor shall, within sixty days following the occurrence of a vacancy on the board,
25 fill the vacancy by appointing a person who meets the requirements of this section for the unexpired
26 term.

27 (4) Any member may be removed by the Governor in case of incompetency, neglect of duty,
28 gross immorality or malfeasance in office.

29 (c) The board shall elect a chairman.

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

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

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

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

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

39 (f) The appointed members will receive compensation and expense reimbursement in
40 accordance with the provisions of section eleven, article one of this chapter.

41 (g) The board may employ staff as necessary to perform the functions of the board, to be
42 paid out of the board fund created by the provisions of this article. Persons employed by any real
43 estate agent, broker, appraiser or lender, or by any partnership, corporation, association or group
44 engaged in any real estate business, may not be employed by the board. The board may hire a

45 licensed or certified appraiser whose license status is inactive and/or who is not employed by any
46 of the prohibited employers listed.

§30-38-17. Standards of professional appraisal practice.

1 Each real estate appraiser licensed or certified under this act shall comply with generally
2 accepted standards of professional appraisal practice and generally accepted ethical rules to be
3 observed by a real estate appraiser. Generally accepted standards of professional appraisal
4 practice are currently evidenced by the uniform standards of professional appraisal practice
5 promulgated by the appraisal foundation. The board may, after a public hearing or public comment
6 period held in accordance with provisions of ~~article three, chapter twenty-nine-a of this code~~ §29A-
7 3-1 et seq., adopt revised versions or make modifications of or additions to the uniform standards
8 of professional appraisal practice.

ARTICLE 38A. APPRAISAL MANAGEMENT COMPANIES REGISTRATION ACT.

§30-38A-3. Definitions.

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

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

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

9 (c) "Appraisal Management Company" ~~means a person or firm that performs or provides~~
10 ~~appraisal management services, directly or indirectly, through the use of software products or~~
11 ~~online, or by any means of communication~~ means any external third party authorized either by a
12 creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an
13 underwriter of or other principal in the secondary mortgage markets; a person or firm that performs

14 or provides appraisal management services, directly or indirectly, through the use of software
15 products or on-line or by any means of communication and oversees a network or panel of more
16 than 15 certified or licensed appraisers in a state or 254 or more nationally within a given year.

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

- 20 (1) Conducting business directly or indirectly by telephone, 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;
- 24 (5) Establishing and administering an appraiser panel;
- 25 (6) Receiving appraisal orders from clients;
- 26 (7) Contracting and negotiating fees with appraisers to perform appraisal services;
- 27 (8) Receiving appraisals from the appraiser and submitting completed appraisals to clients;
- 28 (9) Tracking and determining the status of orders for appraisals;
- 29 (10) Reviewing, verifying and conducting quality control of a completed appraisal;
- 30 (11) Collecting fees from the clients; and
- 31 (12) Compensating appraisers for appraisal services rendered.

32 (e) "Appraisal review" means the act of developing and communicating an opinion about the
33 quality of another appraiser's work that was performed as part of an appraiser assignment. The
34 review does not include:

- 35 (1) An examination of an appraisal for grammatical, typographical, or other similar errors
36 that do not make a substantive valuation change; or
- 37 (2) A general examination for compliance including regulatory and/or client requirements as
38 specified in the agreement process that do not communicate an opinion as to the valuation
39 conclusion.

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

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

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

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

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

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

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

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

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

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

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

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

§30-38A-4. Registration requirements.

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

4 (b) A firm applying for a registration may not be owned, directly or indirectly by: ~~any~~
5 ~~employee or consultant who is~~

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

9 (2) A firm that employs a person who has had a license or certificate to act as an appraiser
10 refused, denied, canceled, revoked, or surrendered in this state or any other jurisdiction, unless the
11 license or certificate was subsequently granted or reinstated.

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

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

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

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

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

19 (5) Pays the applicable fees as set out in section ~~ten~~ 10 of this article;

20 (6) Has a designated controlling person as set out in section ~~eleven~~ 11 of this article; and

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

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

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

26 (f) A registration that has been delinquent for more than three months shall be considered

27 expired and a new application for registration is required.

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

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

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

1 (a) Upon application, the applicant, each owner who ~~is an employee of or consultant for~~
2 ~~the applicant~~ owns more than 10 percent, and the controlling person of the firm seeking
3 registration shall submit to a state and national criminal history record check, as set forth in this
4 section.

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

6 (2) The criminal history record check shall be based on fingerprints submitted to the West
7 Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

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

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

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

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

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

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

19 (3) Pursuant to a court order.

20 (c) The criminal history record check and related records are not public records for the

21 purposes of chapter twenty-nine-b of this code.

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

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

§30-38A-10. Fee requirements.

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

NOTE: The purpose of this bill is to expand and clarify the definition of appraisal management companies for the purposes of The Real Estate Appraiser Licensing and Certification Act, as well as the Appraisal Management Companies Registration Act.

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