

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 466

BY SENATOR MAYNARD

[Originating in the Committee on Government

Organization; reported on March 5, 2021]

1 A BILL to amend and reenact §30-38-3, §30-38-4, §30-38-6, §30-38-11, and §30-38-17 of the
2 Code of West Virginia, 1931, as amended; and to amend and reenact §30-38A-3, §30-
3 38A-4, §30-38A-8, and §30-38A-10 of said code, all relating to real estate appraisal;
4 clarifying requirement that classification and license or certification number be shown on
5 documents; authorizing real estate appraisal licensing and certification board to hire
6 certain persons; clarifying definition of “appraisal management company” for purposes of
7 Appraisal Management Companies Registration Act; expanding list of individuals
8 prohibited from owning registered appraisal management companies; requiring owners of
9 more than 10 percent of appraisal management company to submit to background check;
10 and making technical changes throughout.

Be it enacted by the Legislature of West Virginia:

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

§30-38-3. Definitions.

1 As used in this article, the following terms have the following meanings:

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

6 (b) “Analysis assignment” means an analysis, opinion, or conclusion prepared by a real
7 estate appraiser that relates to the nature, quality, or utility of identified real estate or identified
8 real property.

9 (c) “Appraisal foundation” means the appraisal foundation established on November 30,
10 1987, as a not-for-profit corporation under the laws of Illinois.

11 (d) "Appraisal report" means any communication, written or oral, of an appraisal. An
12 appraisal report may be classified by the nature of the assignment as a "valuation report",
13 "analysis report", or "review report". For ~~the~~ purposes of this article, the testimony of an appraiser
14 dealing with the appraiser's analyses, conclusions, or opinions concerning identified real estate
15 or identified real property is considered an oral appraisal report.

16 (e) "Board" means the real estate appraiser licensing and certification board established
17 by the provisions of this article.

18 (f) "Certified appraisal report" means a written appraisal report that is certified by a state
19 licensed or certified real estate appraiser. When a real estate appraiser identifies an appraisal
20 report as "certified", the real estate appraiser must indicate the type of licensure or certification he
21 or she holds. By certifying an appraisal report, a state licensed residential real estate appraiser,
22 a state certified general real estate appraiser, or a state certified residential real estate appraiser,
23 represents to the public that the report meets the appraisal standards established by this article.

24 (g) "Certified real estate appraiser" means a person who holds a current, valid certification
25 as a state certified residential real estate appraiser or a state certified general real estate appraiser
26 issued to him or her under the provisions of this article.

27 (h) "Complex appraisal" means an appraisal that: (1) For nonresidential property, relies on
28 all three approaches to value, being the cost approach, the income approach, and the sales
29 comparison approach, or does not have the characteristics of a noncomplex appraisal; and (2)
30 for residential property, relies to any significant degree on at least two of the three approaches to
31 value, with one approach being the sales comparison approach, ~~or does not have the~~
32 ~~characteristics of a noncomplex appraisal~~ or one in which the property to be appraised, the form
33 of ownership, or the market conditions are atypical.

34 (i) "Cost approach" means an approach to valuing real estate ~~which~~ that requires an
35 appraiser to: (1) Develop an opinion of site value by an appropriate appraisal method or technique;
36 (2) analyze comparable cost data as are available to estimate the cost new of the improvements

37 if any; and (3) analyze comparable data as are available to estimate the difference between the
38 cost new and the present worth of the improvements, also called accrued depreciation.

39 (j) "Income approach" means an approach to valuing real estate ~~which~~ that requires an
40 appraiser to: (1) Analyze comparable rental data as are available to estimate the market rental of
41 the property; (2) analyze comparable operating expense data as are available to estimate the
42 operating expenses of the property; (3) analyze comparable data as are available to estimate
43 rates of capitalization or rates of discount; and (4) base projections of future rent and expenses
44 on reasonably clear and appropriate evidence.

45 (k) "Licensed real estate appraiser" means a person who holds a current, valid license as
46 a state licensed residential real estate appraiser issued to him or her under the provisions of this
47 article.

48 (l) "Noncomplex appraisal" means an appraisal for which: (1) There is an active market of
49 essentially identical properties; (2) adequate data is available to the appraiser; (3) adjustments to
50 comparable sales are not large in the aggregate, specifically not exceeding the trading range
51 found in the market of essentially identical properties; and (4) for residential properties, the
52 contract sales price falls within the market norm or median sales price for homes or lots within the
53 same area.

54 (m) "Real estate" means an identified parcel or tract of land, including improvements, if
55 any.

56 (n) "Real estate appraisal activity" means the act or process of making an appraisal of real
57 estate or real property and preparing an appraisal report.

58 (o) "Real estate appraiser" means a person who engages in real estate appraisal activity
59 for a fee or other valuable consideration.

60 (p) "Real property interests" means one or more defined interests, benefits, or rights
61 inherent in the ownership of real estate.

62 (q) "Review assignment" means an analysis, opinion, or conclusion prepared by a real
63 estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation
64 appraisal or an analysis assignment.

65 (r) "Sales comparison approach" means an approach to valuing real estate ~~which~~ that
66 requires an appraiser to analyze such comparable sales data as are available to indicate a value
67 conclusion.

68 (s) "Valuation appraisal" means an analysis, opinion, or conclusion prepared by a real
69 estate appraiser that estimates the value of an identified parcel of real estate or identified real
70 property at a particular point in time.

**§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
5 of: (1) Complex residential real estate of one to four units having a value of less than \$250,000;
6 (2) noncomplex residential real estate of one to four units having a value of less than \$1 million;
7 and (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 §30-38A-1 *et seq.* of this code.

15 (6) No member of the board may concurrently be a member of the West Virginia Real
16 Estate 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
20 with 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
23 subscribe to the oath required by section five, article IV of the constitution of this state.

24 (3) The Governor shall, within 60 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
26 unexpired term.

27 (4) Any member may be removed by the Governor in case of incompetency, neglect of
28 duty, 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
32 board.

33 (1) The board may, upon its own motion, or shall upon the written request of three
34 members of the board, call additional meetings of the board upon at least 24 hours' notice.

35 (2) No member may participate in a proceeding before the board to which a corporation,
36 partnership, or unincorporated association is a party, and of which he or she is or was at any time
37 in the preceding 12 months a director, officer, owner, partner, employee, member, or stockholder.

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

40 (f) The appointed members will receive compensation and expense reimbursement in
41 accordance with the provisions of §30-1-11 of this code.

42 (g) The board may employ staff as necessary to perform the functions of the board, to be
43 paid out of the board fund created by the provisions of this article. Persons employed by any real
44 estate agent, broker, appraiser, or lender, or by any partnership, corporation, association, or
45 group engaged in any real estate business, may not be employed by the board. The board may
46 hire a licensed or certified appraiser whose license status is inactive or who is not employed by
47 any of the prohibited employers listed.

§30-38-11. Applications for license or certification; renewals.

1 (a) An individual who desires to engage in real estate appraisal activity in this state shall
2 make application for a license, in writing, in a form as the board may prescribe. In addition to any
3 other information required, the applicant's Social Security number will be recorded on the
4 application.

5 (b) To assist the board in determining whether grounds exist to deny the issuance of a
6 license to an applicant, the board may require the fingerprinting of every applicant for an original
7 license.

8 (c) The payment of the appropriate fee must accompany all applications for original
9 certification and renewal of certification and all applications to take an examination.

10 (d) At the time of filing an application for original certification or for renewal of certification,
11 each applicant shall sign a pledge to comply with the standards of professional appraisal practice
12 and the ethical rules to be observed by an appraiser. Each applicant shall also certify that he or
13 she understands the types of misconduct, as set forth in this article, for which disciplinary
14 proceedings may be initiated.

15 (e) To obtain a renewal of license or certification under this article, the holder of a current
16 license or certification shall make application and pay the prescribed fee to the board no earlier

17 than 120 days nor later than 30 days prior to the expiration date of the current license or
18 certification. Each application for renewal must be accompanied by evidence in the form
19 prescribed by the board that the applicant has completed the continuing education requirements
20 for renewal specified in this article and the board's rules.

21 (f) If the board determines that an applicant for renewal has failed to meet the requirements
22 for renewal of license or certification through mistake, misunderstanding, or circumstances
23 beyond the control of the applicant, the board may extend the term of the applicant's license or
24 certification for a period not to exceed six months upon payment by the applicant of a prescribed
25 fee for the extension. If the applicant for renewal of license or certification satisfies the
26 requirements for renewal during the extension period, the beginning date of his or her renewal
27 license or certificate shall be the day following the expiration of the certificate previously held by
28 the applicant.

29 (g) If a state licensed or certified real estate appraiser under this article fails to renew his
30 or her license or certification prior to its expiration or within any period of extension granted by the
31 board pursuant to this article, the applicant may obtain a renewal of his or her license or
32 certification by satisfying all of the requirements for renewal and filing an application for renewal,
33 accompanied by a late renewal fee, within two years of the date that his or her license or
34 certification expired.

35 (h) The board may deny the issuance or renewal of a license or certification for any reason
36 enumerated in this article or in the rules of the board, or for any reason for which it may refuse an
37 initial license or certification.

§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
6 appraiser relating to the nature, quality, value, or utility of specified interests in, or aspects of,
7 identified real estate or identified real property. An appraisal may be classified by the nature of
8 the assignment as 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 a person or firm that provides appraisal
12 management services to creditors or to secondary mortgage market participants, including
13 affiliates; provides such services in connection with valuing a consumer's principal dwelling as
14 security for a consumer credit transaction or incorporating such transactions into securitizations;
15 and within a given 12-month period oversees an appraiser panel of more than 15 state certified
16 or state licensed appraisers in a state or 25 or more state certified or state licensed appraisers in
17 two or more states.

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

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

23 (2) Providing related administrative and clerical duties;

24 (3) Recruiting, selecting, or retaining appraisers;

25 (4) Verifying qualifications of appraisers;

26 (5) Establishing and administering an appraiser panel;

27 (6) Receiving appraisal orders from clients;

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

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

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

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

33 (11) Collecting fees from the clients; and

34 (12) Compensating appraisers for appraisal services rendered.

35 (e) "Appraisal review" means the act of developing and communicating an opinion about
36 the quality of another appraiser's work that was performed as part of an appraiser assignment.

37 The review does not include:

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

40 (2) A general examination for compliance including regulatory ~~and/or~~ or client
41 requirements as specified in the agreement process that do not communicate an opinion as to
42 the valuation conclusion.

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

45 (g) "Appraiser" means a person licensed or certified, under the provisions of §30-38-1 *et*
46 *seq.* of this code, to perform an appraisal.

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

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

53 (j) "Board" means the West Virginia Real Estate Appraiser Licensing and Certification
54 Board established under the provisions of §30-38-1 *et seq.* of this code.

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

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

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

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

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

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

67 (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
3 by 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
11 the license or certificate was subsequently granted or reinstated.

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

14 (1) Makes written application to the board as set out in §30-38A-6 of this code;

15 (2) Submits certifications as set out in §30-38A-7 of this code;

16 (3) Submits national and state criminal background checks as set out in §30-38A-8 of this
17 code;

18 (4) Posts a surety bond as set out in §30-38A-9 of this code;

19 (5) Pays the applicable fees as set out in §30-38A-10 of this code;

20 (6) Has a designated controlling person as set out in §30-38A-11 of this code; 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
23 on 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 29B 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.