

PROPOSED DRAFT

Corrected version 6/17/09

Section I – General - Creation, Purpose and Authority

The Arkansas General Assembly created, by passage of HB1694, an act to provide for registration and regulation of appraisal management companies by amending A.C.A. 17-14-101 (The Arkansas Appraiser Licensing & Certification Act). Act 628 of 2009 effectively added a subchapter 4 titled The Appraisal Management Company Registration Act to the existing appraiser Licensing & Certification Board Statutes. The purpose and intent of this act is to give the Arkansas Appraiser Licensing & Certification Board statutory authority to develop and implement rules and regulations resulting in the registration and government oversight of individuals or companies offering to or providing appraisal management services in Arkansas.

The Arkansas Appraiser Licensing Board and its staff has been charged by statute the overall responsibilities of administering the act in accordance with any and all officially promulgated rules and regulations. It is the legislative intent of Act 628 to insure that no person (individual, company, or organization) shall act as an appraisal management company or offer to perform appraisal management services in this state unless registered by the Arkansas Appraiser Licensing and Certification Board on or after January 1, 2010.

Section II – General Definitions

A. The following words and terms when used in these regulations will have the following meanings:

1. “Act 628” – the Arkansas Appraisal Management Company Registration Act of 2009 which amended Arkansas Statute A.C.A. 17-14-101 et. Seq. by adding a Subchapter 4.

2. “Appraisal Management Company” means a person that performs the actions necessary to administer a network of state-licensed appraisers to fulfill requests for appraisal management services on behalf of a client including but not limited to recruiting appraisers; contracting with appraisers to perform appraisal services; negotiating fees with appraisers; receiving appraisal orders and appraisal reports; submitting appraisal reports received from appraisers to the company’s clients and providing related administrative and clerical duties.
3. “Appraisal Management Services” means conducting business by telephone, by electronic means, by mail, or in person directly or indirectly for compensation or other pecuniary gain or in the expectation of compensation or other pecuniary gain to solicit, accept, or offer to accept a request for appraisal services or employ or contract with a licensed or certified appraisers to perform appraisal services for a third party.
4. “Appraisal services” means the practice of developing an opinion of the value of real property in conformance with the minimum reporting standards under 17-14-202(b).
5. “Appraiser” means an individual licensed under the Arkansas Appraiser Licensing and Certification Act, 17-14-101 et seq. 17-14-201 et seq., and 17-14-301 et seq. who for a fee or other consideration develops and communicates a real estate appraisal or otherwise gives an opinion of the value of real estate or any interest in real estate;
6. “Appraiser Panel” means a group of independent appraisers that have been selected by an appraisal management company to perform appraisal services for the appraisal management company;
7. “Client” means a person that contracts with or otherwise enters into an agreement with an appraisal management company for the performance of appraisal services;
8. “Controlling person or managing principal” means an individual employed, appointed, or authorized by an appraisal management company to contract with clients or independent appraisers for the performance of appraisal services;
9. “Person” means an individual, a partnership, a limited liability company, a limited partnership, a corporation, an association, or other organization;
10. “Registrant” means an appraisal management company or person that is registered under this subchapter.

Section III – General - Application and Certification Requirements for Registration

A. An appraisal management company or person providing appraisal management services in Arkansas prior to January 1, 2010 must become registered prior to that date or

cease to provide appraisal services as of December 31, 2009. An appraisal management company shall before acting or offering to act in this state after January 1, 2010 shall become registered with the Appraiser Licensing & Certification Board.

B. To apply for registration with the Board, an appraisal management company shall submit a written application on the forms provided by the Board and accompanied by certifications that include, but are not limited to the following information. (*See appendix A for instructions*):

1. The name, business address, telephone contact, and the e-mail address of the person (entity) seeking registration plus the designation of an agent for service of process as follows;

a. An in-state appraisal management company or person, (Domestic) shall designate an agent for service of process pursuant to A.C.A. 4-20-105 (a). (*See appendix A for instruction.*)

b. A foreign appraisal management company (Non-resident) shall provide either a certificate of authority issued by the Secretary of State or a copy of the company's filing with the Secretary of State appointing an agent for service of process. (*See Appendix A for instructions.*)

2. The applicant shall provide the name, address, and contact information of any individual/entity that owns 10% or more of the appraisal management company.

3. The applicant shall also provide on the application the name, address, and contact information of any individual(s) authorized by the appraisal management company to contract with clients or independent appraisers for the performance of appraisals.

4. The application shall be accompanied with a surety bond in the form shown in the appendix in the amount of \$20,000, cash or securities may, with the Board's approval, be deposited in lieu of a Bond. (See Assignment and Escrow Agreement)

5. They shall submit with the application a filing fee as stipulated on the form.

6. The initial application for registration shall include the following certifications: (*See Appendix for forms.*)

a. That the AMC or person has a system in place to verify that all Arkansas appraisers within the network are license or credentialed.

b. The applicant shall also provide a certification that the company has in place a system to review the work of all independent appraisers performing appraisal services and that the services are conducted in conformity with the Uniform Standards of Professional Appraisal Practice.

c. A certification stipulating that the applicant has and will maintain a record of each request for appraisal services applicable to Arkansas properties, as well as, the name of the independent appraiser that performs appraisal services and the fee paid to the appraiser for each assignment.

d. The applicant shall provide a certification as to the designated controlling person or principal and that individual's acceptance of the responsibilities attendant to acting as the managing principal.

e. The applicant shall also attest to the good moral character of those individual(s) that are directed to manage the company's business.

C. If the Board determines there to be substantial reason to deny the application for registration, the applicant shall be notified of that fact and be afforded an opportunity for

a hearing before the board to show cause as to why the application should not be denied. The proceedings concerning denial of an application for registration shall be governed by the Administrative Procedures Act, A.C.A. 25-15-101 et. Seq.

D. Upon a determination by the Arkansas Appraiser Licensing and Certification Board that an applicant for appraisal management company registration has satisfactorily met the Board's requirements, a certificate of registration shall be granted.

SECTION IV – Application, Renewal Fees and Surety Bond.

A. A filing fee of not more than \$500 may be required, however the amount to be remitted will be that stated on the current years' application form.

B. In addition to the stipulated Filing Fee, the applicant shall post with the Board at the time of application, a \$20,000 surety bond, the cash equivalent or securities.

1. The Bond must be on a form similar to that included in appendix A;

2. The Bond shall accrue to the state for the benefit of a claimant against the registrant to secure the faithful performance of the registrant's obligations.

3. Any claims reducing the face amount of the bond, cash or securities are to be restored at the time of annual renewal of the registration.

C. Initial registrations are issued for a period of twelve (12) months and a renewal statement will be forwarded to each registrant at least thirty (30) days prior to expiration.

The renewal statement will include, but not limited to the amount of renewal fees required, the amount that may be necessary to restore the face amount of the surety bond or securities, and any changes regarding the registrant's managing or controlling principals or officers' address. The statement will also request verification or

documentation of any legal actions or complaints by other states, The Home Valuation Code of Conduct or by any other federal agency against a managing principal.

D. Failure by a registrant to timely renew shall result in the loss of authority to operate as an appraisal management company in Arkansas until a request for reinstatement has been processed by the Board and a penalty payment of \$50 for each month or partial month of delinquency has been paid.

SECTION V – Registrant Responsibilities and Duties

A. Pursuant to Act 628, an appraisal management company having been issued a “Certificate of Registration” under these rules shall be responsible for complying with the following:

1. Shall maintain with the Board the name and address of a registered agent for service of process; and shall furnish the Board within five business days of any changes to the information on file.

2. An appraisal management company or individual shall maintain a complete record of all request for appraisal services referred to state licensed or certified appraisers, the amount of fees collected from borrowers or clients, as well as payments to the appraisers and shall make such information available to the Board upon request.

3. The registrant is required to make available to the Board, without prior notice, any and all records that are required to be kept or records deemed by the Board to be pertinent to an investigation of a complaint against a registrant.

4. The registered AMC shall designate a controlling person or managing principal responsible for ensuring compliance with the Registration Act and these rules and shall file with the Board a certification identifying the managing or controlling principals

and that individual's certification accepting these responsibilities.

5. A registrant shall notify the Board within thirty days of any change in its designated controlling person or managing principal.

6. All records required to be maintained under these rules shall be retained for a period of five years unless a shorter retention period is prescribed by these or subsequent rules for particular types of records. Records that are used in a judicial proceeding in which the appraiser provided testimony related to the assignment, should be retained for at least two (2) years after disposition depending on which period expires last.

7. In addition to the records required above, the Board may, by additional rule, require a registrant to keep accounts, correspondence, memorandum, paper and books or other records.

8. At any time a document filed with the Board becomes inaccurate or incomplete the registrant shall promptly file an amendment correcting that information.

9. Pursuant to A.C.A. 17-14-401 et seq., a registrant shall disclose not only to its client, but the borrower the actual fees paid to an appraiser for appraisal services, separately from any other fees or charges for appraisal management services and, upon request, will make that information available to the Board.

SECTION VI – Board Registry and Roster

In addition to the records required by Section IV to be maintained by the registrant, the Executive Director of the Arkansas Appraiser Licensing Board shall keep a register of all applicants which shall include, at a minimum, the date on which the application was received, the applicant's name and business address and the date in which a "certificate

of registration” was granted or denied.

The Board’s Executive Director shall also maintain a roster of all appraisal management companies registered with the Board.

SECTION VII – Prohibited Activities

A. A registrant operating in Arkansas pursuant to the Appraisal Management Company Registration Act of 2009 and these rules shall not allow an employee, director, officer or agent to improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal including without limitation to the use of intimidation, coercion, extortion, bribe, or blackmail threat for withholding payment of appraisal services or threat of exclusion of future appraisal work.

B. In addition to the foregoing prohibitions, the registrant shall not permit any employee, agent, third party or controlling principal to engage in any of the following activities.

1. The registrant shall not require the appraiser to collect the appraisal fee from a borrower, homeowner or third party;

2. The registrant shall not hire an employee or in any way contract with or pay a real estate broker to perform a broker’s price opinion or comparative market analysis unless the broker’s price opinion or comparative market analysis is to be performed only for listing or selling property that the registrant owns.

3. The appraiser shall not be required to provide the registrant with the appraiser’s digital signature or seal.

4. The registrant shall not alter, amend, or change an appraisal report submitted by a licensed or certified appraiser by removing the appraiser’s signature or seal or by adding

or removing information to or from the appraisal report.

5. The registrant shall not allow the removal of an independent appraiser from the registrants' panel without prior written notice that includes evidence which supports the fact that the appraiser has acted illegally, violated the minimum reporting standards or other applicable State Statutes or Rules and has had substandard performances or otherwise acted in an improper or unprofessional manner.

6. An appraisal management company shall not enter into agreements with independent appraisers unless the appraisers are licensed and certified and in good standing with the Arkansas Appraiser Licensing and Certification Board.

7. The registrant shall not request an appraiser to provide an estimated predetermined or desired valuation in an appraisal report or provide estimated values of comparable sales or proposed target amount at any time before the appraisal report is completed.

8. A registrant shall not commit an act or practice that impairs or attempt to impair an appraiser's independence, objectivity or impartiality.

9. An AMC shall not make referrals to Arkansas appraisers for appraisal services during any period in which a "certificate of registration" has expired.

C. A violation of the foregoing prohibited activities are grounds on which the Board may file its own complaint against the appraisal management company or on which any party may make a written complaint.

SECTION VIII – Exemptions to Prohibited Activities

A. It shall not be deemed a prohibitive activity (as outlined in Section VII (7) of these Rules) when an appraiser is provided a copy of the sales contract for a purchase

transaction.

B. An appraisal management company shall not be prohibited from requesting from an independent appraiser (1) additional information about the basis for a valuation, (2) to correct factual errors in an appraisal report or (3) to provide further substantiation, detail or explanation for the appraiser's value conclusion.

SECTION IX – Disciplinary Authority, Enforcement and Hearings.

In addition to the registering of Appraisal Management Companies, the Arkansas Appraiser Licensing and Certification Board has been granted authority to consider and prosecute complaints against registrants for practices that are alleged to be in violation of state law and/or these rules and regulations.

A. The Arkansas Appraiser Licensing Board may deny, suspend, revoke, or refuse to issue a renewal registration of an appraisal management company or may restrict or limit the activities of said company or a person who owns an interest in or participates in the business of the appraisal management company, if the board finds that any of the following circumstances apply to the applicant, registrant, a partner, a member, a manager or officer, director, managing principal, controlling person, or person occupying a similar status or performing similar functions or a person indirectly controlling the registrant.

1. The application for registration is found to contain statements that in light of the circumstances under which it was made is false or misleading.
2. The registrant has violated or failed to comply with these rules and state statutes;
3. The Appraisal Management Company or controlling principal has pled or been found guilty or nolo contendere of a felony within the past ten years or within the past ten

years has a misdemeanor involving mortgage lending or real estate appraising or has committed an offense involving breach of trust, moral turpitude, fraudulent or dishonest dealings.

4. The registrant is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct of practice involving appraisal management services or operating an appraisal management company.

5. The registrant is the subject of an order by the Board or appraisal management company regulatory agency denying, suspending, or revoking the registrant's privilege to operate as an appraisal management company in that jurisdiction.

6. The applicant acted as an appraisal management company while not properly licensed by this board.

7. The applicant failed to pay the proper filing or renewal fees at the appropriate time.

8. Upon receipt of a written complaint or its own motion the Board shall proceed in processing a complaint as follows:

1. First, establish that the issue raised in the complaint is within the Board's jurisdiction;

2. A written notice and a copy of the complaint shall be provided the registrant advising of the allegations and a request made of the respondent to submit a response within twenty (20) days;

3. Upon timely receipt of the registrant's response or a lack thereof, an investigation is initiated and a report is subsequently provided to a Probable Cause Panel consisting of two board members who will determine if the complaint should be

dismissed, resolved at the level of an informal conference, or warrants a full Board (administrative procedures act) hearing. Their recommendation shall be considered by the board before any further action is taken.

b. Subsequent to ratification of a Probable Cause Panel recommendation by the Board, the respondent is advised of the status of the complaint and the direction in which it is being processed.

C. Upon the Board's recommendation that a complaint be referred for a full board Hearing, it shall proceed as prescribed under the "Arkansas Administrative Procedures Act" (A.C.A. 25-15-201 et seq.) and the Board may suspend or revoke the registration of an AMC; or Impose a fine not to exceed \$1,000 per violation; or take any other appropriate disciplinary action as determined appropriate by the Board.

(a) Prior to the Board imposing any penalty to the registrant, the Board shall first notify the registrant in writing (via an Order and Notice of Hearing) at least twenty days before any hearing of the charges made; and

(b) The board shall afford the registrant an opportunity to be heard in person or by counsel.

(c) Upon the Board making a Findings of Fact and Conclusion of Law, the Order shall be delivered by mail to the registrant.

(d) The Board is granted the option of resolving complaints against appraisal management companies without a formal hearing if deemed appropriate by an action of the Board.

SECTION X – Injunctive Relief – Criminal Penalty

It is unlawful for an appraisal management company or a person not registered under

A.C.A. 17-14-401 et seq. to perform any act for which registration is required. In order for the Appraiser Licensing & Certification Board to fulfill its legislated responsibilities, it may appear in its own name before a Circuit Court of competent jurisdiction to obtain injunctive relief to prevent a person from violating any provision of this Act. The Circuit Court has the option of granting a temporary or permanent injunction regardless of whether any criminal prosecution has been or may be instituted as a result of the violation or the individual or company is a holder of a registration issued by the Board.

A violation of A.C.A. 17-14-401 et seq. is a class D felony.

SECTION XI – Applicability

A. Act 628 of 2009 clearly sets forth the following specific entities and conditions for which an appraisal management company registration is not required. These rules of registration shall not apply to:

1. An agency of the federal, state, county, or municipal government;
2. A person authorized to engage in business as a bank, farm credit system, savings institution, or credit union under the laws of the United States, the State of Arkansas, or any other state;
3. A licensed real estate broker or licensed real estate agent performing activities regulated by the Arkansas Real Estate Commission unless the licensed real estate broker or licensed real estate agent receives compensation or other pecuniary gain in connection with the referral, placement, or execution of a request for appraisal services; or
4. An officer or employee of a government agency, person, licensed real estate broker, or licensed real estate agent described in this section when acting within the scope of employment of the officer or employee.

SECTION XII –

These rules and regulations shall become effective on the 10th day following their filing with the Secretary of State and only then subsequent to a public hearing by the Appraiser Licensing & Certification Board, approval by the Arkansas Legislative Council and final adoption by the Arkansas Appraiser Licensing Board.