

HOUSE No. 4751

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act to Regulate Real Estate Appraisal Management Companies..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 112 of the General Laws, as appearing in the 2008 Official Edition
2 is hereby amended by adding at the end thereof the following 14 new sections:-

3 Section 236. Definitions.

4 (a) As used in sections 237 through 249, inclusive, the following words shall have
5 the following meanings, unless the context clearly requires otherwise:

6 “Applicant”, a person who applies to be registered as an appraisal management company
7 in the Commonwealth.

8 “Appraisal management company”, a person that administers a network of certified and
9 licensed appraisers in the Commonwealth and acts as a conduit to fulfill 1 to 4 family residential
10 real estate appraisal assignments on behalf of mortgage lending institutions and other entities.
11 For purposes of this definition, the phrase 'administers a network' includes recruiting appraisers,
12 contracting with appraisers to perform appraisal assignments, negotiating fees with appraisers,

13 providing administrative duties, such as receiving appraisal orders and appraisal reports,
14 reviewing, and transmitting appraisal reports received from appraisers to the company's clients.

15 “Appraisal practice”, valuation services performed by an individual acting as an
16 appraiser, including but not limited to appraisal, appraisal review, or appraisal consulting.

17 “Board”, the Massachusetts Board of Registration of Real Estate Appraisers under
18 Section 92 of Chapter 13.

19 “Controlling person”, means one or more of the following: (1) an officer or director of
20 an appraisal management company, or an individual who holds a 10 percent or greater ownership
21 interest in an appraisal management company; (2) an individual employed, appointed, or
22 authorized by an appraisal management company that has the authority to enter into a contractual
23 relationship with clients for the performance of appraisal services and that has the authority to
24 enter into agreements with independent appraisers for the completion of appraisals; or (3) an
25 individual who possesses the power to direct or cause the direction of the management or
26 policies of an appraisal management company.

27 “Employee”, an individual who has an employment relationship with a person
28 acknowledged by both the individual and the person, and who is treated as an employee for
29 purposes of compliance with federal income tax laws.

30 “Employee in Charge” or “(EIC)”, a designated employee of the appraisal management
31 company, who is a state certified appraiser, with the responsibilities and obligations to the board
32 as set forth in section 241.

33 “Person”, an individual, sole proprietorship, partnership, limited liability company,
34 limited partnership, corporation, association, or other group engaged in joint business activities,
35 however organized.

36 “Registrant”, a real estate appraisal management company registered under this Act.

37 “Valuation Services”, services pertaining to all aspects of property value

38 (b) The definitions contained in section 173 of Chapter 112, Section 173 also apply.

39 Section 237. Registration required of real estate appraisal management companies;
40 exceptions.

41 (a) It shall be unlawful for any person in the Commonwealth without first registering with
42 the Board under the provisions of this Act to:

43 (1) directly or indirectly engage or assume to engage in the business of real estate
44 appraisal management,

45 (2) advertise or make representation that the person is engaging in or conducting the
46 business of real estate appraisal management in the Commonwealth, or

47 (3) in any way act as or provide the services of an appraisal management company.

48 (b) It shall be unlawful for a person, as defined herein, to directly or indirectly engage or
49 attempt to engage in business as an appraisal management company, to directly or indirectly
50 engage or attempt to perform appraisal management services or to advertise or hold itself out as
51 engaging in or conducting business as an appraisal management company without first being

52 registered by the Board under the provisions of this Act, regardless of the person’s use of the
53 term “appraisal management company”, “mortgage technology company”, or any other name.

54 (c) The provisions of this Act shall not apply to:

55 (1) Any agency of the federal government or any State or municipal government;

56 (2) Any person authorized to engage in business as a bank, farm credit system, savings
57 institution, or credit union, under the laws of the United States, or of the Commonwealth, except
58 that an affiliated business, subsidiary, or joint venture of a bank, farm credit system, savings
59 institution or credit union shall not be exempt from this Act;

60 (3) Any licensed real estate broker performing activities in accordance with Section
61 174B. of Chapter 112 of the General Laws. However, an exempt person does not include a real
62 estate broker who receives compensation of any kind in connection with the referral or
63 placement of an appraisal assignment;

64 (4) Any person that exclusively employs persons on an employer/employee basis
65 for the performance of real estate appraisal services in the normal course of its business and such
66 entity is responsible for ensuring that the real estate appraisal services being performed by its
67 employees are being performed in accordance with Uniform Standards of Professional Appraisal
68 Practice;

69 (5) Any person engaged in appraisal practice that has as its primary business the
70 development of appraisals in Massachusetts in accordance with the Uniform Standards of
71 Professional Appraisal Practice; or

72 (6) Any person engaged in appraisal practice that has as its primary business the
73 development of appraisals in Massachusetts, but that in the normal course of business
74 enters into an agreement with an independent contract appraiser for the performance of
75 appraisals that the contracting entity cannot complete because of workload, the location or
76 type of property.

77 Section 238. Rule making authority.

78 (a) The Board shall have the authority to adopt rules consistent with the provisions of this
79 Act and the General Laws of the Commonwealth that are reasonable and necessary to
80 implement, administer, and enforce the provisions of this Act, including the authority to:

81 (1) Prescribe forms and procedures for submitting information to the Board;

82 (2) Prescribe standards of practice for a person registered under this Act; and

83 (3) Prescribe standards for the operation, professional liability, error and omission and
84 other insurance coverages, of real estate appraisal management companies.

85 Section 239. Qualifications for registration; duties of registrants.

86 (a) Any person desiring to be registered as an appraisal management company in the
87 Commonwealth shall make written application to the Board on forms prescribed by the Board
88 setting forth the applicant's qualifications for registration. The application shall be accompanied
89 by the applicable fee under Section 6 of this Act, and any other information the Board deems
90 necessary pursuant to rules adopted by the Board. Upon receipt of a properly completed
91 application and fee and upon a determination by the Board that the applicant is of good moral

92 character, the Board shall issue to the applicant a certificate of registration authorizing the
93 applicant to act as a real estate appraisal management company in the Commonwealth.

94 (b) An application for registration under this Act must include the following certifications
95 from the applicant:

96 (1) A certification that the applicant has a system and process in place to verify that a
97 person being added to the appraiser panel of the appraisal management company holds a license
98 in good standing in the Commonwealth issued pursuant to this Chapter;

99 (2) A certification that the applicant has a system in place to review the work of all
100 independent appraisers that are performing real estate appraisal services for the appraisal
101 management company on a periodic basis to ensure that the real estate appraisal services are
102 being conducted in accordance with the Uniform Standards of Professional Appraisal
103 Practice;

104 (3) A certification that the applicant maintains a detailed record of each service request
105 that it receives and the independent appraiser that performs the residential real estate appraisal
106 services for the appraisal management company; and

107 (4) A certification that the applicant has a system in place to verify that the lender/client
108 with whom they are conducting business is qualified to conduct business in the Commonwealth
109 of Massachusetts.

110 (c)(i) A person who, directly or indirectly owns more than 10 percent of an applicant for
111 registration, or (ii) any officer, controlling person, employee in charge or managing principal of
112 an applicant for registration, who has had a license or certificate to act as an appraiser or to

113 engage in any activity related to the transfer of real property refused, denied, canceled or revoked
114 in this state or in any other state, whether on a temporary or permanent basis or, who is not of
115 good moral character as determined by the Board, shall not be eligible for registration under this
116 Act.

117 (d) Each applicant for registration under this Act shall submit the name and address of the
118 applicant's registered agent located in the Commonwealth.

119 (e) Any registrant having a good faith belief that a real estate appraiser licensed in the
120 Commonwealth has violated applicable law or the Uniform Standards of Professional Appraisal
121 Practice (USPAP) or engaged in unethical conduct shall promptly file a complaint with the
122 Board.

123 (f) Fees shall be paid to a real estate appraiser in accordance with any contract between
124 the registrant and the appraiser, but in no case later than 60 days of the date the appraisal is
125 transmitted by the real estate appraiser to the registrant or the registrant's client. Appraisers are
126 not to be prohibited by a lender, AMC or other third party, from recording the fee the appraiser
127 was paid for the performance of the appraisal in the appraisal report. Appraisers are to be
128 compensated at a rate that is customary and reasonable for appraisal services performed in the
129 market area of the property being appraised taking into account specific assignment conditions.
130 The fee for the actual completion of an appraisal may not include a fee for management of the
131 appraisal process or any activity other than the performance of the appraisal. Any management
132 fees charged by an AMC or other third party must be for actual services related to ordering,
133 processing or reviewing of appraisals performed. AMC and other third party fees must not

134 exceed what is customary and reasonable for such services provided in the market area of the
135 property being appraised.

136 Section 240. Controlling person.

137 Each appraisal management company applying to the board for registration in this state
138 shall designate one controlling person that will be the main contact for all communication
139 between the board and the appraisal management company. The controlling person may also be
140 designated the employee in charge.

141 Section 241. Employee in charge.

142 In order to serve as the employee in charge for a registered AMC, a designee shall, in
143 addition to continually holding a valid license issued by a state appraiser licensing authority as a
144 state certified appraiser:

145 (a) not have had a license to practice as an appraiser or to engage in any activity related to
146 the transfer of real property refused, denied, canceled or revoked in this state or in any other
147 state;

148 (b) be of good moral character;

149 (c) submit to a state background investigation; and

150 (d) shall be responsible for:

151 (1) the selecting of appraisers for the performance of real estate appraisal services;

152 (2) have the responsibility of reviewing completed appraisals as part of the board file:

153 (2)(i) shall ensure clerical review is conducted on all appraisals completed within the renewal

154 period; (2)(ii) shall randomly select a statistically significant number, but not less than five
155 percent, all fractions rounded up, of outsource appraisal reviews on appraisals completed within
156 the renewal period; (2)(iii) outsource appraisal reviews shall be completed by an appraiser with
157 licensure equal to or greater than that of appraiser that is being reviewed.

158 (3) maintaining required documentation as part of the board file.

159 The controlling person may also be designated the employee in charge.

160 Section 242. Vacancy in controlling person or employee in charge.

161 The appraisal management company shall file a form with the Board indicating the
162 appraisal management company's designation of controlling person and employee in charge and
163 the individual's acceptance of the responsibility. An appraisal management company shall notify
164 the Board of any change in the appraisal management company's controlling person or employee
165 in charge and shall have 30 days from the date a vacancy occurs in either position to designate a
166 temporary or permanent replacement and, in the event a temporary designation is made, 90 days
167 to appoint a permanent replacement. Any appraisal management company that does not comply
168 with this section shall have the appraisal management company's registration suspended pursuant
169 to Section 8 of this Act until the appraisal management company complies with this section. An
170 individual operating an appraisal management company as a sole proprietorship shall be a
171 certified general or certified residential appraiser and shall be considered the managing principal
172 for purposes of this Act unless another managing principal is designated.

173 Section 243. Fees and renewals.

174 The following fees shall be determined annually by the commissioner of administration
175 under the provision of section three B of chapter seven and shall be collected by the board: (a)
176 application fee; (b) initial license fee; (c) annual renewal fee; (d) change in managing principal;
177 and (e) late renewal fee.

178 Section 244. Surety Bond.

179 In addition to the filing fee, each applicant for registration shall post with the board and
180 maintain a surety bond in the amount of twenty thousand dollars (\$20,000). The bond shall:

181 Be in the form prescribed by rule of the board; and

182 (2) Accrue to the state for the benefit of a claimant against the registrant to secure the
183 faithful performance of the registrant's obligations under this Act.

184 The aggregate liability of the surety shall not exceed the principal sum of the bond. A
185 party having a claim against the registrant may bring suit directly on the surety bond, or the
186 board may bring suit on behalf of the party having a claim against the registrant. Consumer
187 claims are given priority in recovering from the bond. A deposit of cash or security may be
188 accepted in lieu of the surety bond. A claim reducing the face amount of the bond shall be
189 annually restored upon renewal of the registrant's registration.

190 Section 245. Prohibited acts.

191 (a) No employee, director, officer, managing principal or agent of an appraisal
192 management company or any other third party acting as joint venture partner or independent
193 contractor shall influence or attempt to influence the development, reporting, result, or review of

194 a real estate appraisal through coercion, extortion, collusion, compensation, inducement,
195 intimidation, bribery, or in any other manner, including:

196 (1) Withholding or threatening to withhold timely payment for a real estate appraisal
197 report;

198 (2) Withholding or threatening to withhold future business from a real estate appraiser or
199 demoting or terminating or threatening to demote or terminate a real estate appraiser;

200 (3) Expressly or impliedly promising future business, promotions, or increased
201 compensation for a real estate appraiser;

202 (4) Conditioning the ordering of a real estate appraisal report or the payment of a real
203 estate appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on
204 a preliminary estimate requested from a real estate appraiser;

205 (5) Requesting that a real estate appraiser provide an estimated, predetermined, or desired
206 valuation in a real estate appraisal report or provide estimated values or comparable sales at any
207 time before the appraiser's completion of the appraisal report;

208 (6) Providing to a real estate appraiser an anticipated, estimated, encouraged, or desired
209 value for a subject property or a proposed or targeted amount to be loaned to the borrower;
210 provided, however, a real estate appraiser should be provided with a copy of the sales contract
211 for purchase transactions;

212 (7) Providing to a real estate appraiser, or any entity or person related to the appraiser,
213 stock or other financial or non-financial benefits;

214 (8) Allowing the removal of a real estate appraiser from a list of qualified appraisers used
215 by any entity without prior written notice to the appraiser. The notice shall include written
216 evidence of the appraiser's illegal conduct, substandard performance, or otherwise improper or
217 unprofessional behavior or any violation of the Uniform Standards of Professional Appraisal
218 Practice (USPAP) or State licensing standards;

219 (9) Engaging an appraiser who is not qualified to appraise the type of real property and
220 property interests in accordance with the USPAP Competency Rule, including geographic
221 competency;

222 (10) Any other act or practice that impairs or attempts to impair a real estate appraiser's
223 independence, objectivity, or impartiality; or

224 (11) Requesting or requiring a real estate appraiser to collect a fee from, or be
225 compensated by, the borrower, homeowner, real estate agent, mortgage broker or any other third
226 party in the provision of real estate appraisal services.

227 (b) No employee, director, officer, managing principal or agent of an appraisal
228 management company or any other third party acting as joint venture partner or independent
229 contractor shall influence or attempt to influence the development, reporting, result, or review of
230 a real estate appraisal through coercion, extortion, collusion, compensation, inducement,
231 intimidation, bribery, or in any other manner, including:

232 (1) Alter, modify, or otherwise change a completed appraisal report submitted by an
233 independent appraiser without the appraiser's written knowledge and consent;

234 (2) Alter, modify, or otherwise change a completed appraisal report submitted by an
235 independent appraiser and must, in all cases, transmit a "true and exact copy" to the client and
236 any intended users;

237 (3) Use an appraisal report submitted by an independent appraiser for any other
238 transaction;

239 (4) Require an appraiser to sign any sort of indemnification agreement that would
240 require the appraiser to defend and hold harmless the company, any software provider that the
241 company requires an appraiser to use, or any other company that the company does business with
242 from any liability, damage, losses, or claim; or

243 (5) Require an appraiser to provide the company with the appraiser's digital signature or
244 seal.

245 (c) Nothing in this section shall be construed as prohibiting an appraisal management
246 company from requesting that a real estate appraiser:

247 (1) Consider additional appropriate material property information;

248 (2) Provide further detail, substantiation, or explanation for the real estate appraiser's
249 value conclusion; or

250 (3) Correct errors in the real estate appraisal report.

251 Section 246. Disciplinary authority.

252 (a) The Board may, by order, deny, suspend, revoke, or refuse to issue or renew a
253 registration of an appraisal management company under this Act or may restrict or limit

254 activities of a person who owns an interest in or participates in the business of an appraisal
255 management company if the Board determines that an applicant, registrant, or any partner,
256 member, manager, officer, director, managing principal, or person occupying a similar status,
257 performing similar functions, or directly or indirectly controlling the applicant or registrant has
258 done any of the following:

259 (1) Filed an application for registration that, as of its effective date or as of any date after
260 filing, contained any statement that, in light of the circumstances under which it was made, is
261 false or misleading with respect to any material fact;

262 (2) Violated or failed to comply with any provision of this Act or any rules adopted by
263 the Board;

264 (3) Been convicted of any felony or, within the past 10 years, been convicted of any
265 misdemeanor involving any activity related to the transfer of real property, including, but not
266 limited to mortgage lending or real estate appraisal or any offense involving breach of trust,
267 moral turpitude, or fraudulent or dishonest dealing;

268 (4) Been permanently or temporarily enjoined by any court of competent jurisdiction
269 from engaging in or continuing any conduct or practice involving any aspect of the real estate
270 appraisal management business;

271 (5) Been the subject of an order of the Board or any other state appraiser regulatory
272 agency denying, suspending, or revoking the person's license as a real estate appraiser;

273 (6) Acted as an appraisal management company while not properly licensed by the
274 Board;

275 (7) Structured an appraisal assignment or a contract with an independent appraiser for the
276 purpose of evading the provisions of this Act; or

277 (8) Failed to pay the proper filing or renewal fee under this Act.

278 (b) The Board may, by order, impose a civil penalty upon a registrant or any partner,
279 officer, director, managing principal, or other person occupying a similar status or performing
280 similar functions on behalf of a registrant for any violation of this Act. The civil penalty shall not
281 exceed \$10,000 for each violation of this Act.

282 (c) In addition to other powers under this Act, upon finding that any action of a person is
283 in violation of this Act, the Board may order the person to cease from the prohibited action. If the
284 person subject to the order fails to appeal the order of the Board or the person appeals the order
285 and the appeal is denied or dismissed and the person continues to engage in the prohibited action
286 in violation of the Board's order, the person shall be subject to a civil penalty of not more than
287 \$25,000 for each violation of the order. The penalty provision of this section shall be in addition
288 to and not in lieu of any other provision of law applicable to a registrant for the registrant's
289 failure to comply with an order of the Board.

290 (d) Unless otherwise provided, all actions and hearings under this Act shall be governed
291 by Chapter 30A.

292 (e) If the Board has reasonable grounds to believe that an appraisal management
293 company has violated the provisions of this Act or that facts exist that would be the basis for an
294 order against an appraisal management company, the Board may at any time, either personally or
295 by a person duly designated by the Board, investigate or examine the books, accounts, records,
296 and files of any registrant or other person relating to the complaint or matter under investigation.

297 (f) The Board shall have the power to issue subpoenas requiring the attendance of persons
298 and the production of papers and records before the Board in any hearing, investigation, inquiry,
299 or other proceeding conducted by the Board. Upon the production of any papers, records, or
300 documents, the Board shall have the power to authorize true copies of the papers, records, or
301 documents to be substituted in the permanent record of the matter in which the papers, records,
302 or documents shall have been introduced in evidence.

303 (g) The Board may conduct routine examinations of the books and records of an appraisal
304 management company registered with the Board in order to determine the appraisal management
305 company's compliance with this Act and any rules adopted by the Board under the authority of
306 section 238. An appraisal management company shall maintain in the Commonwealth all books
307 and records related to real estate appraisal management services. An appraisal management
308 company shall pay any expenses incurred by the Board resulting from the Board's examination
309 of the appraisal management company's books and records.

310 Section 247. Records.

311 (a) The Board shall maintain a list of all applicants for registration under this Act that
312 includes for each applicant the date of application, the name and primary business location of the
313 applicant, and whether the registration was granted or refused.

314 (b) The Board shall maintain a current roster showing the names and places of business
315 of all registered appraisal management companies that lists the appraisal management
316 companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of
317 the Board; (ii) contain information regarding all orders or other action taken against the
318 company, its officers, and other persons; and (iii) be open to public inspection.

319 (c) Every registered appraisal management company shall maintain the accounts,
320 correspondence, memoranda, papers, books, and other records related to services provided by the
321 appraisal management company as prescribed in rules adopted by the Board. All records shall be
322 preserved for five years unless the Board, by rule, prescribes otherwise for particular types of
323 records.

324 (d) If the information contained in any document filed with the Board is or becomes
325 inaccurate or incomplete in any material respect, the appraisal management company shall
326 promptly file a correcting amendment to the information contained in the document.

327 Section 248. Penalty; injunctive relief.

328 The Board may appear in its own name in superior court in actions for injunctive
329 relief to prevent any person from violating the provisions of this Act or rules adopted by the
330 Board. The superior court shall have the power to grant these injunctions whether criminal
331 prosecution has been or may be instituted as a result of the violations or whether the person is the
332 holder of a registration issued by the Board under this Act.

333 Section 249. Background Checks

334 (a) The Board shall have the authority to conduct investigations and examinations for: (1)
335 purposes of initial registration, registration renewal, registration suspension, registration
336 conditioning, registration revocation or termination, or general or specific inquiry or
337 investigation to determine compliance with this chapter, the Board shall have the authority to
338 access, receive and use any books, accounts, records, files, documents, information or evidence
339 including, but not limited to: (i) criminal, civil and administrative history information, including
340 non-conviction data as specified in applicable provisions of the General Laws; (ii) personal

341 history and experience information including independent credit reports obtained from a
342 consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and (iii)
343 any other documents, information or evidence the Board deems relevant to the inquiry or
344 investigation regardless of the location, possession, control or custody of such documents,
345 information or evidence; and (2) the purposes of investigating violations or complaints arising
346 under this chapter, or for the purposes of examination, the Board may review, investigate, or
347 examine any licensee, individual or person subject to this chapter, in order to carry out the
348 purposes of this chapter.

349 (b) If an applicant, registrant or managing principal's criminal history record
350 check reveals one or more convictions, the conviction shall not automatically bar registration,
351 provided the conviction is not related to the transfer of real property. The Board shall consider all
352 of the following factors regarding the conviction:

353 (1) The level of seriousness of the crime;

354 (2) The date of the crime;

355 (3) The age of the person at the time of the conviction;

356 (4) The circumstances surrounding the commission of the crime, if known;

357 (5) The nexus between the criminal conduct of the person and the job duties of the
358 position to be filled; and

359 (6) The person's prison, jail, probation, parole, rehabilitation, and employment records
360 since the date the crime was committed.