

**HOUSE . . . . . No. 4117**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Twelve**  
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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” means, in connection with valuing properties  
9 collateralizing mortgage loans or mortgages incorporated into a securitization, any external third  
10 party authorized either by a creditor of a consumer credit transaction secured by a consumer's  
11 principal dwelling or by an underwriter of or other principal in the secondary mortgage markets,  
12 that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25

13 or more nationally, excluding those appraisers who do not provide appraisal services for Covered  
14 Transactions, within a given year--

15                    (A) to recruit, select, and retain appraisers;

16                    (B) to contract with licensed and certified appraisers to perform appraisal  
17 assignments;

18                    (C) to manage the process of having an appraisal performed, including  
19 providing administrative duties such as receiving appraisal orders and appraisal reports,  
20 submitting completed appraisal reports to creditors and underwriters, collecting fees from  
21 creditors and underwriters for services provided, and reimbursing appraisers for services  
22 performed; or

23                    (D) to review and verify the work of appraisers.'

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

26            “Appraisal review”, the act or process of developing and communicating an opinion  
27 about the quality of another appraiser’s work that was performed as part of an appraisal  
28 assignment related to the appraiser’s data collection, analysis, opinions, conclusions, opinion of  
29 value, or compliance with the Uniform Standards of Professional Appraisal Practice. The term  
30 does not include: (i) a general examination for grammatical, typographical or similar errors, or  
31 (ii) a general examination for completeness including regulatory and/or client requirements as  
32 specified in an agreement process that does not communicate an opinion of value.

33           “Appraisal services” means the services required to perform an appraisal, including  
34 defining the scope of work, inspecting the property, reviewing necessary and appropriate public  
35 and private data sources (for example, multiple listing services, tax assessment records and  
36 public land records), developing and rendering an opinion of value, and preparing and submitting  
37 the appraisal report.

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

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

48           “Covered transaction” means an extension of consumer credit that is or will be secured by  
49 the consumer's principal dwelling.

50           “Dwelling” means a residential structure that contains one to four units, whether or not  
51 that structure is attached to real property. The term includes an individual condominium unit,  
52 cooperative unit, mobile home, and trailer, if it is used as the consumer’s principal residence.

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

56 “Employee in Charge” or “(EIC)”, a designated employee of the appraisal management  
57 company, who is a state certified appraiser in at least one state, with the responsibilities and  
58 obligations to the board as set forth in section 241.

59 “Fee Appraiser means: (A) a natural person who is a state-licensed or state-certified  
60 appraiser and receives a fee for performing an appraisal, but who is not an employee of the  
61 person engaging the appraiser; or (B) an organization that, in the ordinary course of business,  
62 employs state-licensed or state-certified appraisers to perform appraisals, receives a fee for  
63 performing the appraisals and is not subject to Section 1124 of the federal Financial Institutions  
64 Reform, Recovery and Enforcement Act of 1989. A fee appraiser, as defined in (A) above, shall  
65 be exempt from the provisions of Massachusetts General Law Chapter 149, Section 148B. ”

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

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

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

71 (b) The definitions contained in section 173 of Chapter 112 also apply.

72 Section 237. Registration required of real estate appraisal management companies;  
73 exceptions.

74 (a) It shall be unlawful for a person, as defined herein, to directly or indirectly engage or  
75 attempt to engage in business as an appraisal management company, to directly or indirectly  
76 engage or attempt to perform appraisal management services or to advertise or hold itself out as  
77 engaging in or conducting business as an appraisal management company without first being  
78 registered by the Board under the provisions of this Act, regardless of the person's use of the  
79 term "appraisal management company", "mortgage technology company", or any other name.

80 (b) The provisions of this Act shall not apply to:

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

82 (2) An appraisal management company that is a subsidiary owned and controlled by a  
83 financial institution regulated by a Federal financial institution regulatory agency provided the  
84 appraisal management company is in compliance with Section 1124 of the Federal Financial  
85 Institutions Reform, Recovery and Enforcement Act of 1989 and any rules promulgated pursuant  
86 to the authority granted in said Section 1124.

87 (d) A fee appraiser may not perform appraisal services for real property located in  
88 Massachusetts for an appraisal management company that is not registered under this Act unless  
89 exempt from licensing as provided for in this section

90 Section 238. Rule making authority.

91 (a) The Board shall have the authority to adopt rules consistent with the provisions of this  
92 Act and the General Laws of the Commonwealth that are reasonable and necessary to  
93 implement, administer, and enforce the provisions of this Act.

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

95 (a) Any person desiring to be registered as an appraisal management company in the  
96 Commonwealth shall make written application to the Board on forms prescribed by the Board  
97 setting forth the applicant's qualifications for registration. The application shall be accompanied  
98 by the applicable fee under Section 243 of Chapter 112 of the General Laws, and any other  
99 information the Board deems necessary pursuant to rules adopted by the Board. Upon receipt of  
100 a properly completed application and fee and upon a determination by the Board that the  
101 applicant is of good moral character, the Board shall issue to the applicant a certificate of  
102 registration authorizing the applicant to act as a real estate appraisal management company in the  
103 Commonwealth.

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

106 (1) A certification that the applicant has a system and process in place to verify that a  
107 person being added to the appraiser panel of the appraisal management company for appraisal  
108 assignments on real property located in Massachusetts holds a license or certification in good  
109 standing in the Commonwealth issued pursuant to this Chapter;

110 (2) A certification that the applicant has a system in place to review the work of all fee  
111 appraisers that are performing real estate appraisal services for the appraisal management  
112 company on a periodic basis to confirm that the real estate appraisal services are being conducted  
113 in accordance with the Uniform Standards of Professional Appraisal Practice; and

114 (3) A certification that the applicant maintains a detailed record of each service request  
115 that it receives and the fee appraiser that performs the residential real estate appraisal services for  
116 the appraisal management company.

117 (c)(i) A person who, directly or indirectly owns more than 10 percent of an applicant for  
118 registration, or (ii) any officer, controlling person, employee in charge or managing principal of  
119 an applicant for registration, who has had a license or certificate to act as an appraiser or to  
120 engage in any activity related to the transfer of real property refused, denied, canceled or revoked  
121 in this state or in any other state, whether on a temporary or permanent basis or, who is not of  
122 good moral character as determined by the Board, shall not be eligible for registration under this  
123 Act.

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

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

130 Section 240. Controlling person.

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

135 Section 241. Employee in charge.

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

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

142 (b) be of good moral character;

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

144 (d) shall be responsible for:

145 (1) management of the process of selecting appraisers for the performance of real estate  
146 appraisal services;

147 (2) management of the process of conducting appraisal reviews. Any employee of an  
148 appraisal management company or any contractor working on behalf of such company who has  
149 any involvement in the performance of an appraisal review of completed appraisals of real  
150 property located in Massachusetts shall be licensed or certified in the Commonwealth and in  
151 good standing pursuant to the provisions of this Chapter.

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

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

154 The appraisal management company shall file a form with the Board indicating the  
155 appraisal management company's designation of controlling person and employee in charge and

156 the individual's acceptance of the responsibility. An appraisal management company shall notify  
157 the Board of any change in the appraisal management company's controlling person or employee  
158 in charge and shall have 30 days from the date a vacancy occurs in either position to designate a  
159 temporary or permanent replacement and, in the event a temporary designation is made, 90 days  
160 to appoint a permanent replacement. Any appraisal management company that does not comply  
161 with this section shall have the appraisal management company's registration suspended pursuant  
162 to Section 246 of Chapter 112 of the General Laws until the appraisal management company  
163 complies with this section. An individual operating an appraisal management company as a sole  
164 proprietorship shall be a certified general or certified residential appraiser and shall be  
165 considered the managing principal for purposes of this Act unless another managing principal is  
166 designated.

167 Section 243. Fees and renewals.

168 The following fees shall be determined annually by the commissioner of administration  
169 and finance under the provision of section three B of chapter seven and shall be collected by the  
170 board: (a) application fee; (b) initial license fee; (c) annual renewal fee; (d) change in controlling  
171 person or employee in charge; and (e) late renewal fee.

172 Section 244. Surety Bond.

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

175 (1) Be in the form prescribed by rule of the board; and

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

178 The aggregate liability of the surety shall not exceed the principal sum of the bond. A  
179 party having a claim against the registrant may bring suit directly on the surety bond, or the  
180 board may bring suit on behalf of the party having a claim against the registrant. A deposit of  
181 cash or security may be accepted in lieu of the surety bond. A claim reducing the face amount of  
182 the bond shall be annually restored upon renewal of the registrant's registration.

183 Section 245. Prohibited acts.

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

189 (1) Withholding or threatening to withhold timely payment for a real estate appraisal  
190 report except in cases of breach of contract or substandard performance of services;

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

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

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

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

201 (6) Providing to a real estate appraiser an anticipated, estimated, encouraged, or desired  
202 value for a subject property or a proposed or targeted amount to be loaned to the borrower;  
203 provided, however, a real estate appraiser should be provided with a copy of the sales contract  
204 for purchase transactions, if available;

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

207 (8) Allowing the removal of a real estate appraiser from a list of qualified appraisers used  
208 by any entity without prior written notice stating the reason for removal to the appraiser. The  
209 notice shall include written evidence if the appraiser is removed from the list for illegal conduct,  
210 substandard performance, or otherwise improper or unprofessional behavior or any violation of  
211 the Uniform Standards of Professional Appraisal Practice (USPAP) or State licensing standards;

212 (9) Any other act or practice that impairs or attempts to impair a real estate appraiser's  
213 independence, objectivity, or impartiality; or

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

217 (b) No employee, director, officer, managing principal or agent of an appraisal  
218 management company or any other third party acting as joint venture partner or independent  
219 contractor shall:

220 (1) Alter, modify, or otherwise change a completed appraisal report submitted by a fee  
221 appraiser without the appraiser's written knowledge and consent;

222 (2) Alter, modify, or otherwise change a completed appraisal report submitted by a fee  
223 appraiser and must, in all cases, transmit a "true and exact copy" to the client and any intended  
224 users;

225 (3) Use an appraisal report submitted by a fee appraiser for any other transaction;

226 (4) Require a fee appraiser to sign any indemnification agreement that would require  
227 the fee appraiser to defend and hold harmless the appraisal management company or any of its  
228 agents, employees, or independent contractors for any liability, damage, losses, or claims arising  
229 out of the services performed by the appraisal management company or its agents, employees, or  
230 independent contractors and not the services performed by the fee appraiser;

231 (5) Require a fee appraiser to provide the company with the appraiser's digital signature  
232 or seal;

233 (6) Prohibit a fee appraiser from recording the fee the fee appraiser was paid for the  
234 performance of an appraisal assignment within the body of the appraisal report;

235 (7) Require a fee appraiser to accept an appraisal assignment if the fee appraiser, in the  
236 fee appraiser's own independent professional judgment believes, (i) the fee appraiser does not  
237 have the necessary expertise for the assignment, or (ii) knowledge of the geographic area; or (iii)  
238 that the time frame does not allow the appraiser the ability to meet all of the fee appraiser's  
239 relevant legal or professional obligations, and the fee appraiser has communicated such belief to  
240 the appraisal management company.

241 (8) Knowingly fail to compensate fee appraisers at a rate that is customary and reasonable  
242 for appraisal services in the market area of the property being appraised, consistent with Section  
243 129E of the Truth in Lending Act and regulations promulgated thereunder.

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

246 (1) Consider additional appropriate material property information;

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

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

250 (d) An appraisal management company shall not refuse to assign requests or orders for  
251 appraisals or reduce the number of assignments or otherwise penalize a fee appraiser who does  
252 not accept an assignment or order in accordance with Section 245(b) 7 of this Act, except that  
253 nothing in this section shall require an appraisal management company to offer future appraisal  
254 assignments of a particular nature or type to a fee appraiser who previously indicated a lack of  
255 the necessary expertise or geographic knowledge for such assignments, except in the case where

256 the fee appraiser subsequently demonstrates, to the satisfaction of the appraisal management  
257 company, that they have gained the required experience or geographic knowledge to competently  
258 complete the assignments.

259 Section 246. Disciplinary authority.

260 (a) The Board may, by order, deny, suspend, revoke, or refuse to issue or renew a  
261 registration of an appraisal management company under this Act or may restrict or limit  
262 activities of a person who owns an interest in or participates in the business of an appraisal  
263 management company if the Board determines that an applicant, registrant, or any partner,  
264 member, manager, officer, director, managing principal, or person occupying a similar status,  
265 performing similar functions, or directly or indirectly controlling the applicant or registrant has  
266 done any of the following:

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

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

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

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

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

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

283 (7) Structured an appraisal assignment or a contract with a fee appraiser for the purpose  
284 of evading the provisions of this Act; or

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

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

290 (c) In addition to other powers under this Act, upon finding that any action of a person is  
291 in violation of this Act, the Board may order the person to cease from the prohibited action. If the  
292 person subject to the order fails to appeal the order of the Board or the person appeals the order  
293 and the appeal is denied or dismissed and the person continues to engage in the prohibited action  
294 in violation of the Board's order, the person shall be subject to a civil penalty of not more than  
295 \$25,000 for each violation of the order. The penalty provision of this section shall be in addition

296 to and not in lieu of any other provision of law applicable to a registrant for the registrant's  
297 failure to comply with an order of the Board.

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

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

305 (f) The Board shall have the power to issue subpoenas requiring the attendance of persons  
306 and the production of papers and records before the Board in any hearing, investigation, inquiry,  
307 or other proceeding conducted by the Board. Upon the production of any papers, records, or  
308 documents, the Board shall have the power to authorize true copies of the papers, records, or  
309 documents to be substituted in the permanent record of the matter in which the papers, records,  
310 or documents shall have been introduced in evidence.

311 Section 247. Records.

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

315 (b) The Board shall maintain a current roster showing the names and places of business  
316 of all registered appraisal management companies that lists the appraisal management

317 companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of  
318 the Board; (ii) contain information regarding all orders or other action taken against the  
319 company, its officers, and other persons; and (iii) be open to public inspection.

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

335 (1) purposes of initial registration, registration renewal, registration suspension,  
336 registration 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; and (ii) any other  
341 documents, information or evidence the Board deems relevant to the inquiry or investigation  
342 regardless of the location, possession, control or custody of such documents, information or  
343 evidence; and

344 (2) the purposes of investigating violations or complaints arising under this chapter, or for  
345 the purposes of examination, the Board may review, investigate, or examine any licensee,  
346 individual or person subject to this chapter, in order to carry out the purposes of this chapter.

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

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

352 (2) The date of the crime;

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

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

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

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

359 Section 250 Appraisal Board

360 Chapter 13, Section 92 of the General Laws is hereby amended as follows:

361 Section 92. There is hereby established a board of real estate appraisers which shall  
362 consist of nine members to be appointed by the governor, one of whom shall be members of the  
363 general public, in accordance with the provisions of section nine B, one of whom shall be a  
364 member of the banking industry, one of whom shall be a licensed real estate broker, one of  
365 whom shall represent an appraisal management company, and five of whom shall be real estate  
366 appraisers. Each real estate appraiser member of the board appointed after January first, nineteen  
367 hundred and ninety-two shall be a state-licensed or state-certified real estate appraiser under the  
368 provisions of sections one hundred and seventy-three to one hundred and ninety-five, inclusive,  
369 of chapter one hundred and twelve.

370 The term of each appointed member shall be three years.

371 Upon expiration of their terms, members of the board shall continue to hold office until  
372 the appointment and qualification of their successors. No person shall serve as a member of the  
373 board for more than two consecutive terms. The appointing authority may remove a member for  
374 cause.

375 Each member of the board shall be paid for expenses actually incurred in the performance  
376 of official duties.

377 The board shall annually elect a chairperson from among its members.

378 The board shall hold at least six meetings each year and may hold special meetings as  
379 required at a time and place determined by the board.

380           The director of the department of professional licensure, with approval of the board, shall  
381   appoint an executive secretary to serve the board. The department of professional licensure shall  
382   employ such other clerical and technical assistants as may be necessary to discharge the official  
383   duties of the board.