HOUSE DOCKET, NO. 583 FILED ON: 1/13/2015

# HOUSE . . . . . No. 947

## The Commonwealth of Massachusetts

PRESENTED BY:

***John W. Scibak***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to Regulate Appraisal Management Companies.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *John W. Scibak* | *2nd Hampshire* |
| *Bradford R. Hill* | *4th Essex* |
| *David Paul Linsky* | *5th Middlesex* |
| *Thomas J. Calter* | *12th Plymouth* |
| *Jeffrey N. Roy* | *10th Norfolk* |
| *Josh S. Cutler* | *6th Plymouth* |
| *Sean Garballey* | *23rd Middlesex* |
| *James Arciero* | *2nd Middlesex* |
| *Thomas A. Golden, Jr.* | *16th Middlesex* |
| *Sarah K. Peake* | *4th Barnstable* |
| *Carole A. Fiola* | *6th Bristol* |

HOUSE DOCKET, NO. 583 FILED ON: 1/13/2015

# HOUSE . . . . . No. 947

By Mr. Scibak of South Hadley, a petition (accompanied by bill, House, No. 947) of John W. Scibak and others for legislation to regulate real estate appraisal management companies. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *3849* OF 2013-2014.]

## The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court**
**(2015-2016)**

An Act to Regulate 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:*

SECTION 1. Chapter 13 of the General Laws is hereby amended by striking out section 92 and inserting in place thereof the following section:-

Section 92. (a) There is hereby established a board of real estate appraisers which shall consist of 9 members to be appointed by the governor: 2 of whom shall be a member of the general public, in accordance with the provisions of section 9B; 1 of whom shall be a member of the banking industry; 1 of whom shall represent an appraisal management company; and 5 of whom shall be real estate appraisers. Each real estate appraiser who is a member of the board shall be licensed or certified pursuant to sections 173 to 195, inclusive, of chapter 112.

9 (b) The term of each appointed member shall be 3 years. Upon expiration of their terms,
10 members of the board shall continue to hold office until the appointment and qualification of
11 their successors. No person shall serve as a member of the board for more than 2 consecutive
12 terms. The governor may remove a member for cause.

13 (c) Each member of the board shall be paid for expenses actually incurred in the
14 performance of official duties.

15 (d) The board shall annually elect a chairperson from among its members. The director of
16 the department of professional licensure, with approval of the board, shall appoint an executive
17 secretary to serve the board. The department of professional licensure shall employ such other
18 clerical and technical assistants as may be necessary to discharge the official duties of the board.

19 (e) The board shall hold at least 6 meetings each year and may hold special meetings as
20 required at a time and place determined by the board.

21 SECTION 2. Chapter 112 of the General Laws is hereby amended by inserting after
22 section 263 the following 14 sections:-

23 Section 264. The following terms as used in sections 264 to 277, inclusive, shall have the
24 following meanings, unless the context clearly requires otherwise:

25 "Analysis", a study of real estate or real property other than estimating value.

26 "Applicant", a person who applies to be registered as an appraisal management
27 company in the commonwealth.

28 "Appraisal" or "real estate appraisal", written analysis, opinion or conclusion
29 prepared by a real estate appraiser relating to the nature, quality, value or utility of specified

30 interests in, or aspects of, identified real estate; provided, that an “appraisal” may be classified as
31 a valuation or an analysis, or both.

32 “Appraisal assignment”, an engagement for which an appraiser is employed or
33 retained to act, or would be perceived by a third party or the public as acting, as a disinterested
34 third party in rendering an unbiased analysis, opinion or conclusion relating to the value, nature,
35 quality or utility of specified interests in, or aspects of, identified real estate.

36 “Appraisal management company”, in connection with valuing properties collateralizing
37 mortgage loans or mortgages incorporated into a securitization, any external third party
38 authorized either by a creditor of a consumer credit transaction secured by a consumer's principal
39 dwelling, or by an underwriter of or other principal in the secondary mortgage markets, that
40 oversees a network or panel of more than 15 certified or licensed appraisers in Massachusetts or
41 25 or more nationally, excluding those appraisers who do not provide appraisal services for
42 covered transactions, within a given year to

43 (i) recruit, select, and retain appraisers;

44 (ii) contract with licensed and certified appraisers to perform appraisal
45 assignments;

46 (iii) manage the process of having an appraisal performed, including
47 providing administrative duties such as receiving appraisal orders and appraisal reports,
48 submitting completed appraisal reports to creditors and underwriters, collecting fees from
49 creditors and underwriters for services provided, and reimbursing appraisers for services
50 performed; or

51 (iv) review and verify the work of appraisers.

52 Appraisal management company does not include any entity that employs real estate
53 appraisers as employees for the performance of real estate appraisal services in a manner
54 consistent with federal regulations promulgated in accordance with Section 1473 of the Dodd-
55 Frank Wall Street Reform Act.

56 "Appraisal practice", valuation services performed by an individual acting as an
57 appraiser, including, but not limited to, appraisal, appraisal review or appraisal consulting.

58 "Appraisal report", a written report of an appraisal.

59 "Appraisal review", the act or process of developing and communicating an
60 opinion about the quality of another appraiser's work that was performed as part of an appraisal
61 assignment related to the appraiser's data collection, analysis, opinions, conclusions, opinion of
62 value or compliance with the Uniform Standards of Professional Appraisal Practice; provided
63 however, that "appraisal review" shall not include: (i) a general examination for grammatical,
64 typographical or similar errors or (ii) a general examination for completeness including
65 regulatory or client requirements as specified in an agreement that does not communicate an
66 opinion of value.

67 "Appraisal services", the services required to perform an appraisal, including
68 defining the scope of work, inspecting the property, reviewing necessary and appropriate public
69 and private data sources including, but not limited to, multiple listing services, tax assessment
70 records and public land records, developing and rendering an opinion of value and preparing and
71 submitting the appraisal report.

72 “Appraiser” or “real estate appraiser”, a person who develops and communicates real
73 estate appraisals and who holds a current, valid certificate as a state-certified general real estate
74 appraiser, state-certified residential real estate appraiser or state-licensed real estate appraiser
75 pursuant to section 178. An appraiser shall be exempt from section 148B of chapter 149,
76 “Board”, the board of registration of real estate appraisers established by section 92 of chapter
77 13.

78 “Controlling person”, (1) an officer or director of an appraisal management
79 company or an individual who holds a 10 per cent or greater ownership interest in an appraisal
80 management company; (2) an individual employed, appointed or authorized by an appraisal
81 management company who has the authority to enter into a contractual relationship with clients
82 for the performance of appraisal services and who has the authority to enter into agreements with
83 independent appraisers for the completion of appraisals; or (3) an individual who possesses the
84 power to direct or cause the direction of the management or policies or procedures of an
85 appraisal management company.

86 “Covered transaction", an extension of consumer credit that is or will be secured
87 by the consumer's principal dwelling.

88 “Dwelling”, a residential structure that contains 1 to 4 units, whether or not that
89 structure is attached to real property, an individual condominium unit, cooperative unit, mobile
90 home or trailer, if it is used as the consumer’s principal residence.

91 “Employee in charge”, a designated employee of the appraisal management
92 company, who is a certified residential or certified general real estate appraiser in the
93 commonwealth, with the responsibilities and obligations to the board as set forth in section 269.

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

97 “Real estate”, an identified parcel or tract of land including improvements, if
98 any.

99 “Real property”, 1 or more defined interests, benefits and rights inherent in the
100 ownership of real estate.

101 “Registrant”, a real estate appraisal management company registered pursuant to
102 sections 264 to 277, inclusive.

103 “Uniform Standards of Professional Appraisal Practice” or “USPAP” – the entire uniform
104 appraisal standards document titled Uniform Standards of Professional Appraisal Practice
105 (USPAP)

106 “Valuation”, an estimate of the value of real estate or real property.

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

108 Section 265. (a) It shall be unlawful for a person to directly or indirectly engage,
109 or attempt to engage, in business as an appraisal management company, to directly or indirectly
110 engage or attempt to perform appraisal management services or to advertise or hold itself out as
111 engaging in or conducting business as an appraisal management company without first being
112 registered by the board under the provisions of sections 264 to 277, regardless of the person’s
113 use of the term “appraisal management company”, “mortgage technology company”, or any
114 other name.

115 (b) The provisions of sections 264 to 277 shall not apply to:

116 (i) An agency of the federal government or any state or municipal
117 government;

118 (ii) An appraisal management company that is a subsidiary owned and
119 controlled by a financial institution regulated by a federal financial institution regulatory agency
120 provided the appraisal management company is in compliance with section 1124 of the Federal
121 Financial Institutions Reform, Recovery and Enforcement Act of 1989 and any rules
122 promulgated pursuant to the authority granted in said section 1124; or

123 (iii) A licensed real estate broker performing activities in accordance with section 174B;
124 provided, however, that an exempt person does not include a real estate broker who receives
125 compensation of any kind in connection with the referral or placement of an appraisal
126 assignment.

127 (c) An appraiser may not perform appraisal services for real property located in
128 the commonwealth for an appraisal management company that is not registered under sections
129 264 to 277 unless exempt from licensing as provided for in this section. An appraiser, who relies
130 upon the written assurance of the appraisal management company regarding its registration
131 status, shall not be subject to disciplinary action by the Board.

132 Section 266. The board shall have the authority to adopt rules and regulations that are
133 reasonable and necessary to implement, administer, and enforce the provisions of sections 264 to
134 277.

135 Section 267. (a) A person desiring to be registered as an appraisal management company
136 in the commonwealth shall make written application to the board on forms prescribed by the
137 board setting forth the applicant's qualifications for registration. The application shall be
138 accompanied by the applicable fee as determined annually by the secretary of administration and
139 finance pursuant to section 3B of chapter 7 and any other information the board deems necessary
140 pursuant to rules and regulations adopted by the board. Upon receipt of a completed application
141 and set fee the board shall determine that each person who owns more than 10% of an applicant
142 appraisal management company is of good moral character. The board shall then issue to the
143 applicant a certificate of registration authorizing the applicant to act as a real estate appraisal
144 management company in the commonwealth.

145 (b) An application for registration shall include the following certifications from
146 the applicant:

147 (i) A certification that the applicant has a system and process in place to verify
148 that a person being added to the appraiser panel of the appraisal management company for
149 appraisal assignments on real property located in the commonwealth holds a license or
150 certification in good standing in the commonwealth issued pursuant to this chapter;

151 (ii) A certification that the applicant has a system in place to review the work of
152 all real estate appraisers that are performing real estate appraisal services for the appraisal
153 management company on a periodic basis to confirm that the real estate appraisal services are
154 being conducted in accordance with the Uniform Standards of Professional Appraisal Practice;
155 and

156 (iii) A certification that the applicant maintains a detailed record of each service
157 request that it receives, the name of the appraiser that performs the residential real estate
158 appraisal services for the appraisal management company and a complete digital copy of every
159 version of the appraisal report completed by the appraiser.

160 (c) A person who, directly or indirectly owns more than 10 per cent of an
161 applicant for registration, or any officer, controlling person, employee in charge or managing
162 principal of an applicant for registration, shall at a minimum, furnish to the Board information
163 concerning the person's identity, including fingerprints for submission to the Federal Bureau of
164 Investigation, and any governmental agency or entity authorized to receive such information for
165 a state, national and international criminal history background check. A person who, directly or
166 indirectly owns more than 10 per cent of an applicant for registration, or any officer, controlling
167 person, employee in charge or managing principal of an applicant for registration, who has had a
168 license or certificate to act as an appraiser or to engage in any activity related to the transfer of
169 real property refused, denied, canceled or revoked in the commonwealth or in any other state,
170 whether on a temporary or permanent basis or, who is not of good moral character as determined
171 by the board, shall not be eligible for registration.

172 (d) Each applicant for registration shall submit the name and address of the
173 applicant's registered agent located in the commonwealth.

174 (e) A registrant having a good faith belief that a real estate appraiser licensed in
175 the commonwealth has violated applicable law or the Uniform Standards of Professional
176 Appraisal Practice or engaged in unethical conduct shall, within 45 days of identifying such
177 violation, file a complaint with the board.

178 Section 268. An appraisal management company applying to the board for registration in
179 the commonwealth shall designate 1 controlling person that shall be the main contact for all
180 communication between the board and the appraisal management company. The controlling
181 person may also be designated the employee in charge.

182 Section 269. In order to serve as the employee in charge for a registered appraisal
183 management company, a designee shall, in addition to continually holding a valid license issued
184 by a state appraiser licensing authority as a state certified appraiser:

185 (1) not have had a license to practice as an appraiser or to engage in any activity
186 related to the transfer of real property refused, denied, canceled or revoked in the commonwealth
187 or in any other state;

188 (2) be of good moral character;

189 (3) submit to a background investigation; and

190 (4) shall be responsible for:

191 (i) management of the process of selecting appraisers for the
192 performance of real estate appraisal services;

193 (ii) management of the process of conducting appraisal reviews. An
194 employee of an appraisal management company or a contractor working on behalf of such
195 company who has any involvement in the performance of an appraisal review of completed
196 appraisals of real property located in the commonwealth shall be licensed or certified in the
197 commonwealth and in good standing pursuant to the provisions of sections 264 to 277; and.

198 (iii) maintaining required documentation as part of the board file.

199 Section 270. An appraisal management company shall file a form, signed by the
200 designated controlling person or employee in charge, with the board indicating the appraisal
201 management company's designation of controlling person and employee in charge and the
202 individual's acceptance of the responsibility. The board will establish a process, including
203 appropriate timing, for administering any change in controlling person or employee in charge.
204 An appraisal management company that does not comply with this section shall have the
205 appraisal management company's registration suspended pursuant to section 274 until the
206 appraisal management company complies with this section. An individual operating an appraisal
207 management company as a sole proprietorship shall be a certified general or certified residential
208 appraiser and shall be considered the controlling person for purposes of sections 264 to
209 277unless another controlling person is designated.

210 Section 271. The following fees shall be determined annually by the secretary of
211 administration and finance under the provision of section 3B of chapter 7 and shall be collected
212 by the board: (a) application fee; (b) initial registration fee; (c) annual renewal fee; (d) change in
213 controlling person or employee in charge fee; and (e) late renewal fee.

214 Section 272. In addition to the filing fee, each applicant for registration shall post with
215 the board and maintain a surety bond in an amount designated by the board. The bond shall: (i)
216 be in the form prescribed by the board; and (ii) accrue to the commonwealth for the benefit of a
217 claimant against the registrant to secure the faithful performance of the registrant’s obligations
218 pursuant to sections 264 to 277, inclusive.

219 The aggregate liability of the surety shall not exceed the principal sum of the
220 bond. A party having a claim against the registrant may bring suit directly on the surety bond, or

221 the board may bring suit on behalf of the party having a claim against the registrant. A deposit of
222 cash or security may be accepted in lieu of the surety bond. A claim reducing the face amount of
223 the bond shall be annually restored upon renewal of the registrant's registration.

224 Section 273. (a) No employee, director, officer, managing principal or agent of an
225 appraisal management company or any other third party acting as joint venture partner or
226 independent contractor shall influence or attempt to influence the development, reporting, result,
227 or review of a real estate appraisal through coercion, extortion, collusion, compensation,
228 inducement, intimidation, bribery, or in any other manner, including:

229 (1) withholding or threatening to withhold timely payment for a real
230 estate appraisal report except in cases of breach of contract or substandard performance of
231 services;

232 (2) withholding or threatening to withhold future business from a real
233 estate appraiser or demoting or terminating or threatening to demote or terminate a real estate
234 appraiser;

235 (3) expressly or impliedly promising future business, appraisal services,
236 promotions, or increased compensation for a real estate appraiser;

237 (4) conditioning the ordering of a real estate appraisal report or the
238 payment of a real estate appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to
239 be reached or on a preliminary estimate requested from a real estate appraiser;

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

243 (6) providing to a real estate appraiser an anticipated, estimated,
244 encouraged, or desired value for a subject property or a proposed or targeted amount to be loaned
245 to the borrower; provided, however, a real estate appraiser should be provided with a copy of the
246 sales contract for purchase transactions, if available;

247 (7) providing to a real estate appraiser, or any entity or person related to
248 the appraiser, stock or other financial or non-financial benefits;

249 (8) allowing the removal of a real estate appraiser from a list of
250 qualified appraisers used by any entity without prior written notice stating the reason for removal
251 to the appraiser. The notice shall include written evidence if the appraiser is removed from the
252 list for illegal conduct, substandard performance, or otherwise improper or unprofessional
253 behavior or any violation of the Uniform Standards of Professional Appraisal Practice or
254 licensing standards of the commonwealth;

255 (9) any other act or practice that impairs or attempts to impair a real
256 estate appraiser's independence, objectivity, or impartiality; or

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

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

263 (1) alter, modify, or otherwise change a completed appraisal report
264 submitted by a real estate appraiser without the appraiser's written knowledge and consent;

265 (2) alter, modify, or otherwise change a completed appraisal report
266 submitted by a real estate appraiser and shall, in all cases, transmit a "true and exact copy" to the
267 client and any intended users;

268 (3) use an appraisal report submitted by an appraiser for any other
269 transaction;

270 (4) require an appraiser to sign any indemnification agreement that
271 would require the appraiser to defend and hold harmless the appraisal management company or
272 any of its agents, employees, or independent contractors for any liability, damage, losses, or
273 claims arising out of the services performed by the appraisal management company or its agents,
274 employees, or independent contractors and not the services performed by the appraiser. Any
275 indemnity clause not in conformance with this section, in effect as of the date of this Act, shall
276 be null and void;

277 (5) require an appraiser to provide the company with the appraiser's
278 digital signature or seal;

279 (6) prohibit an appraiser from recording the fee the real estate appraiser
280 was paid for the performance of an appraisal assignment within the body of the appraisal report;

281 (7) require an appraiser to accept an appraisal assignment if the appraiser, in the
282 appraiser's own independent professional judgment believes, (i) the appraiser does not have the
283 necessary expertise for the assignment or knowledge of the geographic area; or (ii) that the time
284 frame does not allow the appraiser the ability to meet all of the appraiser's relevant legal or
285 professional obligations, and the appraiser has communicated such belief to the appraisal
286 management company; and

287 (8) knowingly fail to compensate appraisers at a rate that is customary and reasonable for
288 appraisal services in the market area of the property being appraised, consistent with section
289 129E of the Truth in Lending Act and regulations promulgated thereunder.

290 (c) Nothing in this section shall be construed as prohibiting an appraisal
291 management company from requesting that an appraiser:

292 (1) consider additional appropriate material property information;

293 (2) provide further detail, substantiation, or explanation for the real
294 estate appraiser's value conclusion; or

295 (3) correct errors in the real estate appraisal report.

296 (d) An appraisal management company shall not refuse to assign requests or
297 orders for appraisals or reduce the number of assignments or otherwise penalize an appraiser
298 who does not accept an assignment or order in accordance with clause (7) of subsection (b),
299 except that nothing in this section shall require an appraisal management company to offer future
300 appraisal assignments of a particular nature or type to an appraiser who previously indicated a
301 lack of the necessary expertise or geographic knowledge for such assignments, except in the case

302 where the appraiser subsequently demonstrates, to the satisfaction of the appraisal management
303 company, that the appraiser has gained the required experience or geographic knowledge to
304 competently complete the assignments.

305 Section 274. (a) The board may, by order, deny, suspend, revoke, or refuse to issue or
306 renew a registration of an appraisal management company or may restrict or limit activities of a
307 person who owns an interest in or participates in the business of an appraisal management
308 company if the board determines that an applicant, registrant, or any partner, member, manager,
309 officer, director, managing principal, or person occupying a similar status, performing similar
310 functions, or directly or indirectly controlling the applicant or registrant has done any of the
311 following:

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

315 (2) violated or failed to comply with any provision of sections 264 to
316 277 or any rules and regulations adopted by the board;

317 (3) been convicted of any felony or, within the past 5 years, been
318 convicted of any misdemeanor involving any activity related to the transfer of real property,
319 including, but not limited to, mortgage lending or real estate appraisal or any offense involving
320 breach of trust, moral turpitude, or fraudulent or dishonest dealing;

321 (4) been permanently or temporarily enjoined by any court of competent
322 jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the
323 real estate appraisal management business;

324 (5) been the subject of an order of the board or any other state appraiser
325 regulatory agency denying, suspending, or revoking the person's license as a real estate
326 appraiser;

327 (6) acted as an appraisal management company while not properly
328 registered by the board;

329 (7) structured an appraisal assignment or a contract with an appraiser
330 for the purpose of evading the provisions of sections 264 to 277t; or

331 (8) failed to pay the proper filing or renewal fee under sections 264 to
332 277.

333 (b) The board may, by order, impose a civil penalty upon a registrant or any
334 partner, officer, director, managing principal, or other person occupying a similar status or
335 performing similar functions on behalf of a registrant for any violation of sections 264 to 277.
336 The civil penalty shall not exceed $10,000 for each violation.

337 (c) In addition to other powers under sections 264 to 277, upon finding that any
338 action of a person is in violation of sections 264 to 277, the board may order the person to cease
339 from the prohibited action. If the person subject to the order fails to appeal the order of the board
340 or the person appeals the order and the appeal is denied or dismissed and the person continues to
341 engage in the prohibited action in violation of the board's order, the person shall be subject to a
342 civil penalty of not more than $25,000 for each violation of the order. The penalty provision of
343 this section shall be in addition to and not in lieu of any other provision of law applicable to a
344 registrant for the registrant's failure to comply with an order of the board.

345 (d) Unless otherwise provided, all actions and hearings under sections 264 to
346 277 shall be governed by chapter 30A.

347 (e) If the board has reasonable grounds to believe that an appraisal management
348 company has violated the provisions of sections 264 to 277 or that facts exist that would be the
349 basis for an order against an appraisal management company, the board may at any time, either
350 personally or by a person duly designated by the board, investigate or examine the books,
351 accounts, records, and files of any registrant or other person relating to the complaint or matter
352 under investigation.

353 (f) The board shall have the power to issue subpoenas requiring the attendance
354 of persons and the production of papers and records before the board in any hearing,
355 investigation, inquiry, or other proceeding conducted by the board. Upon the production of any
356 papers, records, or documents, the board shall have the power to authorize true copies of the
357 papers, records, or documents to be substituted in the permanent record of the matter in which
358 the papers, records, or documents shall have been introduced in evidence.

359 Section 275.

360 Every registered appraisal management company shall maintain the records
361 related to services provided by the appraisal management company as prescribed in regulations
362 adopted by the board. All records shall be preserved in accordance with the Record Keeping
363 Rule of USPAP unless the board, by regulation, prescribes otherwise for particular types of
364 records.

365 Section 276. The board may appear in its own name in superior court in actions
366 for injunctive relief to prevent any person from violating the provisions of sections 264 to 277 or

367 regulations adopted by the board. The superior court shall have the power to grant these
368 injunctions whether criminal prosecution has been or may be instituted as a result of the
369 violations or whether the person is the holder of a registration issued by the board under sections
370 264 to 277.

371 Section 277. (a) The board shall have the authority to conduct investigations and
372 examinations for:

373 (1) purposes of initial registration, registration renewal, registration suspension,
374 registration conditioning, registration revocation or termination, or general or specific inquiry or
375 investigation to determine compliance with this chapter. The board shall have the authority to
376 access, receive and use any books, accounts, records, files, documents, information or evidence
377 including, but not limited to: (i) criminal, civil and administrative history information, including
378 non-conviction data as specified in applicable provisions of the General Laws; and (ii) any other
379 documents, information or evidence the board deems relevant to the inquiry or investigation
380 regardless of the location, possession, control or custody of such documents, information or
381 evidence; and

382 (2) the purposes of investigating violations or complaints arising under this
383 chapter, or for the purposes of examination, the board may review, investigate, or examine any
384 registrant, individual or person subject to this chapter, in order to carry out the purposes of this
385 chapter.

386 (b) If an applicant, registrant or managing principal's criminal history record
387 check reveals 1 or more convictions, the conviction shall not automatically bar registration,

388 provided the conviction is not related to the financing or transfer of real property. The board
389 shall consider all of the following factors regarding the conviction:

390 (1) the level of seriousness of the crime;

391 (2) the date of the crime;

392 (3) the age of the person at the time of the conviction;

393 (4) the circumstances surrounding the commission of the crime, if
394 known;

395 (5) the nexus between the criminal conduct of the person and the job
396 duties of the position to be filled; and

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

399 This act shall take effect 180 days after its passage.