

HOUSE No. 4566

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act regulating 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 13 of the General Laws is hereby amended by striking out section
2 92, as appearing in the 2016 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 92. (a) There is hereby established a board of real estate appraisers which shall
5 consist of 9 members to be appointed by the governor: 1 of whom shall be a licensed real estate
6 broker; 1 of whom shall be a member of the general public, in accordance with the provisions of
7 section 9B; 1 of whom shall be a member of the banking industry; 1 of whom shall represent an
8 appraisal management company; and 5 of whom shall be real estate appraisers. Each real estate
9 appraiser who is a member of the board shall be licensed or certified pursuant to sections 173 to
10 195, inclusive, of chapter 112.

11 (b) The term of each appointed member shall be 3 years. Upon expiration of their terms,
12 members of the board shall continue to hold office until the appointment and qualification of

13 their successors. No person shall serve as a member of the board for more than 2 consecutive
14 terms. The governor may remove a member for cause.

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

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

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

23 SECTION 2. Chapter 112 of the General Laws is hereby amended by inserting after
24 section 274 the following 14 sections:-

25 Section 275. The following terms as used in sections 275 to 288, inclusive, shall have the
26 following meanings, unless the context clearly requires otherwise:

27 “Analysis”, a study of real estate or real property other than estimating value.

28 “Applicant”, a person who applies to be registered as an appraisal management company
29 in the commonwealth.

30 “Appraisal” or “real estate appraisal”, written analysis, opinion or conclusion prepared by
31 a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or
32 aspects of, identified real estate; provided, that an “appraisal” may be classified as a valuation or
33 an analysis, or both.

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

“Appraisal management company”, an entity that: (i) provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates; (ii) provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and (iii) within a given 12-month period, oversees an appraiser panel of more than 15 certified or licensed appraisers in the commonwealth or 25 or more certified or licensed appraisers in two or more states; provided further, that an AMC does not include a department or division of an entity that provides appraisal management services to only that entity.

“Appraisal management services”, shall mean 1 or more of the following: (i) recruiting, selecting and retaining appraisers; (ii) contracting with certified or licensed appraisers to perform appraisal assignments; (iii) managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided and paying appraisers for services performed; and (iv) reviewing and verifying the work of appraisers.

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

“Appraisal report”, a written report of an appraisal.

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

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

“Appraiser” or “real estate appraiser”, a person who develops and communicates real estate appraisals and who holds a current, valid certificate as a state-certified general real estate appraiser, state-certified residential real estate appraiser or state-licensed real estate appraiser pursuant to section 178. An appraiser shall be exempt from section 148B of chapter 149.

“Appraiser panel”, a network, list or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC. Appraisers on an AMC’s “appraiser panel” include both appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions and appraisers engaged by the AMC to

perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor if the appraiser is treated as an independent contractor by the AMC for the purpose of Federal income taxation.

“Board”, the board of registration of real estate appraisers established by section 92 of chapter 13.

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

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

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

“Employee in charge”, a designated employee of the appraisal management company, who continually holds a valid license issued by an appraiser licensing authority as a certified appraiser, with the responsibilities and obligations to the board as set forth in section 280.

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

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

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

106 “Registrant”, a real estate appraisal management company registered pursuant to sections
107 275 to 288, inclusive.

108 “Uniform Standards of Professional Appraisal Practice” or “USPAP”, the entire uniform
109 appraisal standards document titled Uniform Standards of Professional Appraisal Practice.

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

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

112 Section 276. (a) It shall be unlawful for a person to directly or indirectly engage, or
113 attempt to engage, in business as an appraisal management company, to directly or indirectly
114 engage or attempt to perform appraisal management services or to advertise or hold itself out as
115 engaging in or conducting business as an appraisal management company without first being
116 registered by the board under the provisions of sections 275 to 288, regardless of the person’s
117 use of the term “appraisal management company”, “mortgage technology company” or any other
118 name.

119 (b) The provisions of sections 275 to 288 shall not apply to:

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

(ii) An appraisal management company that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813 and regulated by the Office of the Comptroller of the Currency, the Board of Governors in the Federal Reserve System, or the Federal Deposit Insurance Corporation; or

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

(c) An appraiser may not perform appraisal services for real property located in the commonwealth for an appraisal management company that is not registered under sections 275 to 288 unless exempt from licensing as provided for in this section. An appraiser, who relies upon the written assurance of the appraisal management company regarding its registration status, shall not be subject to disciplinary action by the board.

Section 277. The board shall have the authority to adopt rules and regulations that are reasonable and necessary to: (i) implement, administer and enforce the provisions of sections 275 to 288 and (ii) comply with federal rules or regulations promulgated pursuant to section 1124 of the Federal Financial Reform, Recovery and Enforcement Act of 1989. The board shall adopt rules and regulations in accordance with federal regulations promulgated pursuant to section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 for the purpose of determining whether an appraiser is deemed part of an AMC's appraiser panel within a 12-month period.

Section 278. (a) A person desiring to be registered as an appraisal management company in the commonwealth shall make written application to the board on forms prescribed by the board setting forth the applicant's qualifications for registration. The application shall be accompanied by the applicable fee as determined annually by the secretary of administration and finance pursuant to section 3B of chapter 7 and any other information the board deems necessary pursuant to rules and regulations adopted by the board. Upon receipt of a completed application and set fee the board shall determine that each person who owns more than 10% of an applicant appraisal management company is of good moral character. The board shall then issue to the applicant a certificate of registration authorizing the applicant to act as a real estate appraisal management company in the commonwealth.

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

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

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

(iii) A certification that the applicant maintains a detailed record of each service request that it receives, the name of the appraiser that performs the residential real estate appraisal

164 services for the appraisal management company and a complete digital copy of every version of
165 the appraisal report completed by the appraiser.

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

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

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

184 Section 279. An appraisal management company applying to the board for registration in
185 the commonwealth shall designate 1 controlling person that shall be the main contact for all

communication between the board and the appraisal management company. The controlling person may also be designated the employee in charge.

Section 280. In order to serve as the employee in charge for a registered appraisal management company, a designee shall, in addition to continually holding a valid license issued by a state appraiser licensing authority as a state certified appraiser:

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

(2) be of good moral character;

(3) submit to a background investigation; and

(4) shall be responsible for:

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

(ii) management of the process of conducting appraisal reviews. An employee of an appraisal management company or a contractor working on behalf of such company who has any involvement in the performance of an appraisal review of completed appraisals of real property located in the commonwealth shall be licensed or certified in the commonwealth and in good standing pursuant to the provisions of sections 275 to 288; and.

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

Section 281. An appraisal management company shall file a form, signed by the designated controlling person or employee in charge, with the board indicating the appraisal management company's designation of controlling person and employee in charge and the individual's acceptance of the responsibility. The board will establish a process, including appropriate timing, for administering any change in controlling person or employee in charge. An appraisal management company that does not comply with this section shall have the appraisal management company's registration suspended pursuant to section 285 until the appraisal management company complies with this section. An individual operating an appraisal management company as a sole proprietorship shall be a certified general or certified residential appraiser and shall be considered the controlling person for purposes of sections 275 to 288 unless another controlling person is designated.

Section 282. The following fees shall be determined annually by the secretary of administration and finance under the provision of section 3B of chapter 7 and shall be collected by the board: (a) application fee; (b) initial registration fee; (c) annual renewal fee; (d) change in controlling person or employee in charge fee; and (e) late renewal fee.

Section 283. In addition to the filing fee, each applicant for registration shall post with the board and maintain a surety bond in an amount designated by the board. The bond shall: (i) be in the form prescribed by the board; and (ii) accrue to the commonwealth for the benefit of a claimant against the registrant to secure the faithful performance of the registrant's obligations pursuant to sections 275 to 288, inclusive.

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

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

Section 284. (a) No employee, director, officer, managing principal or agent of an appraisal management company or any other third party acting as joint venture partner or independent contractor shall influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

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

(ii) withholding or threatening to withhold future business from a real estate appraiser or demoting or terminating or threatening to demote or terminate a real estate appraiser;

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

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

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

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

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

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

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

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

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

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

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

(iii) use an appraisal report submitted by an appraiser for any other transaction;

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

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

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

(vii) require an appraiser to accept an appraisal assignment if the appraiser, in the appraiser's own independent professional judgment believes: (i) the appraiser does not have the necessary expertise for the assignment or knowledge of the geographic area; or (ii) that the time frame does not allow the appraiser the ability to meet all of the appraiser's relevant legal or

287 professional obligations, and the appraiser has communicated such belief to the appraisal
288 management company; or

289 (viii) knowingly fail to compensate appraisers at a rate that is customary and reasonable
290 for appraisal services in the market area of the property being appraised, consistent with section
291 129E of the Truth in Lending Act and regulations promulgated thereunder.

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

294 (i) consider additional appropriate material property information;

295 (ii) provide further detail, substantiation, or explanation for the real estate appraiser's
296 value conclusion; or

297 (iii) correct errors in the real estate appraisal report.

298 (d) An appraisal management company shall not refuse to assign requests or orders for
299 appraisals or reduce the number of assignments or otherwise penalize an appraiser who does not
300 accept an assignment or order in accordance with clause (vii) of subsection (b), except that
301 nothing in this section shall require an appraisal management company to offer future appraisal
302 assignments of a particular nature or type to an appraiser who previously indicated a lack of the
303 necessary expertise or geographic knowledge for such assignments, except in the case where the
304 appraiser subsequently demonstrates, to the satisfaction of the appraisal management company,
305 that the appraiser has gained the required experience or geographic knowledge to competently
306 complete the assignments.

Section 285. (a) The board may, by order, deny, suspend, revoke, or refuse to issue or renew a registration of an appraisal management company or may restrict or limit activities of a person who owns an interest in or participates in the business of an appraisal management company if the board determines that an applicant, registrant, or any partner, member, manager, officer, director, managing principal, or person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant or registrant has done any of the following:

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

(ii) violated or failed to comply with any provision of sections 275 to 288 or any rules and regulations adopted by the board;

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

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

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

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

(vii) structured an appraisal assignment or a contract with an appraiser for the purpose of evading the provisions of sections 275 to 288; or

(viii) failed to pay the proper filing or renewal fee under sections 275 to 288.

(b) The board may, by order, impose a civil penalty upon a registrant or any partner, officer, director, managing principal or other person occupying a similar status or performing similar functions on behalf of a registrant for any violation of sections 275 to 288. The civil penalty shall not exceed \$10,000 for each violation.

(c) In addition to other powers under sections 275 to 288, upon finding that any action of a person is in violation of sections 275 to 288, the board may order the person to cease from the prohibited action. If the person subject to the order fails to appeal the order of the board or the person appeals the order and the appeal is denied or dismissed and the person continues to engage in the prohibited action in violation of the board's order, the person shall be subject to a civil penalty of not more than \$25,000 for each violation of the order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a registrant for the registrant's failure to comply with an order of the board.

(d) Unless otherwise provided, all actions and hearings under sections 275 to 288 shall be governed by chapter 30A.

(e) If the board has reasonable grounds to believe that an appraisal management company has violated the provisions of sections 275 to 288 or that facts exist that would be the basis for an

order against an appraisal management company, the board may at any time, either personally or by a person duly designated by the board, investigate or examine the books, accounts, records and files of any registrant or other person relating to the complaint or matter under investigation.

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

Section 286. Every registered appraisal management company shall maintain the records related to services provided by the appraisal management company as prescribed in regulations adopted by the board. All records shall be preserved in accordance with the Record Keeping Rule of USPAP unless the board, by regulation, prescribes otherwise for particular types of records.

Section 287. The board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of sections 275 to 288 or regulations adopted by the board. The superior court shall have the power to grant these injunctions whether criminal prosecution has been or may be instituted as a result of the violations or whether the person is the holder of a registration issued by the board under sections 275 to 288.

Section 288. (a) The board shall have the authority to conduct investigations and examinations for:

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

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

(b) If an applicant, registrant or managing principal's criminal history record check reveals 1 or more convictions, the conviction shall not automatically bar registration, provided the conviction is not related to the financing or transfer of real property. The board shall consider all of the following factors regarding the conviction:

(i) the level of seriousness of the crime;

(ii) the date of the crime;

(iii) the age of the person at the time of the conviction;

(iv) the circumstances surrounding the commission of the crime, if known;

391 (v) the nexus between the criminal conduct of the person and the job duties of the
392 position to be filled; and

393 (vi) the person's prison, jail, probation, parole, rehabilitation, and employment records
394 since the date the crime was committed.

395 SECTION 3. This act shall take effect 90 days after its passage.