HOUSE DOCKET, NO. 1625 FILED ON: 1/17/2013

HOUSE . . . . . No. 992

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas M. Stanley

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 real estate appraisal management companies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas M. Stanley	*9th Middlesex*
Danielle W. Gregoire	*4th Middlesex*
Sarah K. Peake	*4th Barnstable*
David Paul Linsky	*5th Middlesex*
Randy Hunt	*5th Barnstable*

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HOUSE . . . . . No. 992

By Mr. Stanley of Waltham, a petition (accompanied by bill, House, No. 992) of Thomas M. Stanley and others for legislation to regulate real estate appraisal management companies. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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:

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

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

Section 92. There is hereby established a board of real estate appraisers which shall consist of nine members to be appointed by the governor, one of whom shall be members of the general public, in accordance with the provisions of section nine B, one of whom shall be a member of the banking industry, one of whom shall be a licensed real estate broker, one of whom shall represent an appraisal management company, and five of whom shall be real estate appraisers licensed or certified under the provisions of sections one hundred and seventy-three to one hundred and ninety-five, inclusive, of chapter one hundred and twelve. One real estate appraiser member of the board shall be a state-certified residential real estate appraiser and one real estate appraiser member shall be a state-certified general real estate appraiser. The term of each appointed member shall be three years.

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

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

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

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

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

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

Section 236. Definitions.

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

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

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

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

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

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

`(D) to review and verify 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.

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

59 “Appraisal services" means the services required to perform an appraisal, including
60 defining the scope of work, inspecting the property, reviewing necessary and appropriate public
61 and private data sources (for example, multiple listing services, tax assessment records and
62 public land records), developing and rendering an opinion of value, and preparing and submitting
63 the appraisal report.

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

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

74 “Covered transaction" means an extension of consumer credit that is or will be secured by
75 the consumer's principal dwelling.

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

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

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

85 “Fee Appraiser means: (A) a natural person who is a state-licensed or state-certified
86 appraiser and receives a fee for performing an appraisal, but who is not an employee of the

87 person engaging the appraiser; or (B) an organization that, in the ordinary course of business,
88 employs state-licensed or state-certified appraisers to perform appraisals, receives a fee for
89 performing the appraisals and is not subject to Section 1124 of the federal Financial Institutions
90 Reform, Recovery and Enforcement Act of 1989. A fee appraiser, as defined in (A) above, shall
91 be exempt from the provisions of Massachusetts General Law Chapter 149, Section 148B. ”

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

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

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

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

98 Section 237. Registration required of real estate appraisal management companies;
99 exceptions.

100 (a) It shall be unlawful for a person, as defined herein, to directly or indirectly engage or
101 attempt to engage in business as an appraisal management company, to directly or indirectly
102 engage or attempt to perform appraisal management services or to advertise or hold itself out as
103 engaging in or conducting business as an appraisal management company without first being
104 registered by the Board under the provisions of this Act, regardless of the person’s use of the
105 term “appraisal management company”, “mortgage technology company”, or any other name.

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

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

108 (2) An appraisal management company that is a subsidiary owned and controlled by a
109 financial institution regulated by a Federal financial institution regulatory agency provided the
110 appraisal management company is in compliance with Section 1124 of the Federal Financial
111 Institutions Reform, Recovery and Enforcement Act of 1989 and any rules promulgated pursuant
112 to the authority granted in said Section 1124;

113 (3) Any licensed real estate broker performing activities in accordance with Section
114 174B. of Chapter 112 of the General Laws. However, an exempt person does not include a real
115 estate broker who receives compensation of any kind in connection with the referral or
116 placement of an appraisal assignment.

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

120 Section 238. Rule making authority.

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

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

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

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

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

140 (2) A certification that the applicant maintains a detailed record of each service request
141 that it receives and the fee appraiser that performs the residential real estate appraisal services for
142 the appraisal management company.

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

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

152 (e) Any registrant having a good faith belief that a real estate appraiser licensed in the
153 Commonwealth has violated applicable law or the Uniform Standards of Professional Appraisal

154 Practice (USPAP) or engaged in unethical conduct shall promptly file a complaint with the
155 Board.

156 Section 240. Controlling person.

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

161 Section 241. Employee in charge.

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

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

168 (b) be of good moral character;

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

170 (d) shall be responsible for:

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

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

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

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

180 The appraisal management company shall file a form with the Board indicating the
181 appraisal management company's designation of controlling person and employee in charge and
182 the individual's acceptance of the responsibility. An appraisal management company shall notify
183 the Board of any change in the appraisal management company's controlling person or employee
184 in charge and shall have 30 days from the date a vacancy occurs in either position to designate a
185 temporary or permanent replacement and, in the event a temporary designation is made, 90 days

186 to appoint a permanent replacement. Any appraisal management company that does not comply
187 with this section shall have the appraisal management company's registration suspended pursuant
188 to Section 246 of Chapter 112 of the General Laws until the appraisal management company
189 complies with this section. An individual operating an appraisal management company as a sole
190 proprietorship shall be a certified general or certified residential appraiser and shall be
191 considered the managing principal for purposes of this Act unless another managing principal is
192 designated.

193 Section 243. Fees and renewals.

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

198 Section 244. Surety Bond.

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

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

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

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

209 Section 245. Prohibited acts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

267 (8) Knowingly fail to compensate fee appraisers at a rate that is customary and reasonable
268 for appraisal services in the market area of the property being appraised, consistent with Section
269 129E of the Truth in Lending Act and regulations promulgated thereunder.

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

272 (1) Consider additional appropriate material property information;

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

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

276 (d) An appraisal management company shall not refuse to assign requests or orders for
277 appraisals or reduce the number of assignments or otherwise penalize a fee appraiser who does
278 not accept an assignment or order in accordance with Section 245(b) 7 of this Act, except that
279 nothing in this section shall require an appraisal management company to offer future appraisal
280 assignments of a particular nature or type to a fee appraiser who previously indicated a lack of
281 the necessary expertise or geographic knowledge for such assignments, except in the case where
282 the fee appraiser subsequently demonstrates, to the satisfaction of the appraisal management
283 company, that they have gained the required experience or geographic knowledge to competently
284 complete the assignments.

285 Section 246. Disciplinary authority.

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

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

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

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

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

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

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

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

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

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

316 (c) In addition to other powers under this Act, upon finding that any action of a person is
317 in violation of this Act, the Board may order the person to cease from the prohibited action. If the
318 person subject to the order fails to appeal the order of the Board or the person appeals the order
319 and the appeal is denied or dismissed and the person continues to engage in the prohibited action

320 in violation of the Board's order, the person shall be subject to a civil penalty of not more than
321 $25,000 for each violation of the order. The penalty provision of this section shall be in addition
322 to and not in lieu of any other provision of law applicable to a registrant for the registrant's
323 failure to comply with an order of the Board.

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

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

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

337 Section 247. Records.

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

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

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

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

353 Section 248. Penalty; injunctive relief.

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 this Act or rules 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 this Act.

Section 249. Background Checks

(a) The Board shall have the authority to conduct investigations and examinations for:

(1) 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

(2) 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 licensee, 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 one or more convictions, the conviction shall not automatically bar registration, provided the conviction is not related to the transfer of real property. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime;

(2) The date of the crime;

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

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

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

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