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# **2013 AMC LEGISLATIVE UPDATE**

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- Some passages have been edited for time and/or space considerations as well as relevancy. Please consult your state's AMC laws for further clarification.
- This Webinar is not designed or intended to be the basis for a legal opinion or legal advice, but instead should be used only for educational purposes.

**ENACTED**

- SECTION 1. **Arkansas Code § 17-14-408(b)**, concerning the activities of appraisal management companies, is amended to read as follows:
- (b) ~~The~~ A registrant shall not:
- (1) Require an appraiser to collect the appraisal fee from a borrower, homeowner, or other third party;
- ~~(2) Hire, employ, or in any way contract with or pay a real estate broker to perform a broker's price opinion or comparative market analysis unless the broker's price opinion or comparative market analysis will be performed only for listing or selling property that the registrant owns;~~
- (Stricken language removed from present law)

- Creation and establishment in the State Treasury of an AMC recovery fund.
- Upon registration and renewal, each AMC will be charged an added fee **\$300** (up to **\$800**/year) and the money will be placed in the AMC recovery fund.
- At the end of the fiscal year, any money left in the fund (including interest) will be kept in the fund.

- Fee charged to each AMC varies based on amount of money in the fund and the number of AMCs in KY.
- Some AMCs submitted the same surety bond to multiple states.
- If an AMC closed or went bankrupt, the AMC might choose to cancel the bond.
- Out of state appraisers sought recovery from the KY bond.

- **Provides restitution to licensed or certified appraisers from Kentucky who suffer financial loss provided:**
- A. The loss occurs as a result of an **AMC** which is **no longer registered** with the board (voluntarily or involuntarily);
- B. The appraiser has **received final judgment** from the appropriate court in Kentucky and
- C. if there is **no other viable alternative** for full restitution (as determined by the board) available.



- The board shall determine appropriate fund distribution for each appraiser based on proven appraisal fees owed by the AMC in question.
- Also entitled to “Reasonable and appropriate” court costs necessary to receive the court’s final judgment.

- If the amount in question exceeds the fund's balance, the board will:
- A. Disburse as much as possible and satisfy in full all claims and
- B. If there is more than one appraiser seeking payment, distribute funds in proportion to the amount owed to all.

- Section 3. KRS 324A.150 is amended to read as follows:
- (1) "AMC" means a person who performs the actions necessary to administer a network of state-licensed appraisers to fulfill requests for appraisal management services on behalf of a client, *whether directly or through the use of software products or online...*

- “AMC” means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party that oversees a network or panel of more than **15 certified or licensed appraisers in this state or 25 or more nationally within a given year**, that is authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter or other principal in the secondary mortgage markets that engages in appraisal management services.

# NORTH DAKOTA

- An AMC registered in this state shall retain for **5 years all records** required to be maintained under this chapter as described in rules. This 5 year period shall commence on the **date of the final action by the AMC for each individual transaction or**, if the AMC is notified that the transaction is involved in litigation, the 5 year period shall commence on the **date the litigation is finally disposed.**

- An AMC shall, except in bona fide cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment within **45** days of the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation assignment to the company or its assignee unless a mutually agreed-upon alternate arrangement has been previously established.

# NORTH DAKOTA

- The board may charge the AMC reasonable fees to help offset costs of operating the board. The board shall establish fees by rule.
- The board may require by rule a surety bond of not more than **25,000 dollars** .

- Except within the **first ninety days** after an independent appraiser is added to an appraiser page, remove an independent appraiser from an appraiser panel without prior written notice to the appraiser, with the prior written notice including evidence of the following, if applicable:
  - a. The appraiser's illegal conduct.
  - b. A violation of USPAP, this chapter, or the rules adopted by the board.
  - c. Improper or unprofessional conduct.



# NORTH DAKOTA

- **EFFECTIVE DATE.** Notwithstanding any other provision of this Act, an AMC conducting business in this state on or before **January 1, 2014**, may continue to conduct business in this state without registering pursuant to this Act until 60 days after the date rules implementing the registration process created by the board take effect.

- In an effort to preclude discrimination, criteria shall be established by the AMC and may include education achieved, experience, sample appraisals and references from prior clients.
- Membership in a nationally recognized professional appraisal organization may be a criterion considered, though lack of membership shall not be the sole bar against consideration for an assignment under these criteria.

## CRIMINAL BACKGROUND CHECKS

A. The board may adopt rules that provide for criminal background checks for all licensees to include:

- (1) requiring criminal history background checks of applicants for licensure pursuant to the AMC Registration Act;
  - (2) requiring applicants for licensure to be fingerprinted;
  - (3) providing for an applicant who has been denied licensure to inspect or challenge the validity of the background check record;
  - (4) establishing a fingerprint and background check fee not to exceed the current rate as determined by the department of public safety to be paid by the applicant;
- and

(5) providing for submission of an applicant's fingerprint cards to the FBI to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check.

B. **Arrest record information** received from the department of public safety and the FBI shall be **privileged** and **shall not be disclosed** to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks.

- (d) Each applicant for registration, or for renewal of registration, as an appraisal management company shall pay a fee of five hundred dollars (**\$500.00**) to be deposited in the Appraisal Management Company Recovery Fund. (YEARLY)

- **SECTION 12.** Article 2 of Chapter 93E of the General Statutes is amended by adding a new section to read:
- **"§ 93E-2-12. Appraisal Management Company Recovery Fund.**
- (a) The Appraisal Management Company Recovery Fund is established as a special account of the Board. The Fund shall consist of fees collected from appraisal management company applications for registration and renewals pursuant to G.S. 93E-2-6(d).
- (b) The Board shall administer the Fund. The sole purpose of the Fund is to provide restitution to a North Carolina trainee or licensed or certified appraiser who has suffered a monetary loss as the result of the failure of an appraisal management company to pay appraisal fees owed. The Board shall adopt rules governing procedures for:
  - (1) Applying to the Board for restitution for unpaid appraisal fees.
  - (2) Processing applications.
  - (3) Granting requests for recovery of unpaid appraisal fees.
  - (4) Subrogation or assignment of the rights of any applicant who receives a distribution from the Fund.

# New Legislation- North Carolina

- (c) The Board may use money in the Fund only to:
- (1) Provide restitution to a North Carolina trainee or licensed or certified appraiser who has suffered a monetary loss as the result of the failure of an appraisal management company to pay an appraisal fee.
- (2) Purchase insurance to cover the payment of restitution for unpaid appraisal fees when the Board deems it appropriate to do so.
- (3) Invest amounts in the Fund that are not currently needed to pay claims and maintain adequate reserves in the manner in which the State law allows fiduciaries to invest funds.
- (4) Pay the expenses of the Board in administering the Fund.

- (d) A North Carolina trainee or licensed or certified appraiser shall be entitled to restitution from the Fund in the following circumstances if no viable alternative for restitution is available as determined by the Board:
  - (1) The appraisal management company that owes the appraisal fees has filed for bankruptcy protection, either voluntarily or involuntarily;
  - (2) The North Carolina trainee or licensed or certified appraiser has obtained a judgment against the appraisal management company for the appraisal fee owed and the judgment remains unsatisfied; or
  - (3) **The amount of the appraisal fee due is less than two thousand dollars (\$2,000).**



- (e) The amount to be paid from the Fund to the North Carolina trainee or licensed or certified appraiser shall not exceed the actual amount of appraisal fees that are proven to be owed to the applicant by the appraisal management company and, as determined by the Board, reasonable and appropriate court costs associated with obtaining a final judgment against the appraisal management company in favor of the applicant. If the amount of restitution to be paid to any one or more applicants at any time exceeds the balance in the fund, the Board shall:
  - (1) Distribute as much of the restitution amount as possible, which shall be deemed to satisfy in full any claim the applicant has on payments from the Fund; and
  - (2) In the case of distributions to more than one applicant, provide for a pro rata distribution of the available Fund balance, which shall be deemed to satisfy in full any claim the applicants have on payments from the Fund.

- (f) The Board may suspend collection of the fees imposed by G.S. 93E-2-6(d) for any year if the balance of the Fund exceeds four hundred thousand dollars (\$400,000) and the Board determines that the amount in the Fund is sufficient to meet likely disbursements from the Fund for that year. The Board shall resume collection of fees if the balance falls below four hundred thousand dollars (\$400,000). The Board shall submit annually a report to the State Treasurer accounting for all monies credited to and expended from the Fund.
- (g) The Board is subrogated to an applicant who receives restitution from the Fund in the amount disbursed and may bring an action against the appraisal management company that failed to pay the appraisal fees owed. If an applicant receives payment from the Fund for an appraisal fee and subsequently receives payment for that same appraisal, the applicant shall reimburse the Fund the amount the applicant has received from the fund."

# Did you know?

## • Criminal Penalty: Arkansas

- It is unlawful for an AMC or a person not registered under A.C.A. §17-14-401 et seq. to perform any act for which registration is required.
- The Circuit Court has the option of granting a temporary or permanent injunction regardless of whether any criminal prosecution has been or may be instituted as a result of the violation or the individual or company is a holder of a registration issued by the Board.
- A violation of A.C.A. §17-14-401 et seq. is a **class D felony**.
- A class D felony in Arkansas could result in **up to 6 years in a state penitentiary and/or a \$10,000 fine**. Please verify this information is correct and current and do not rely solely on it as the basis for making any important decision.

# Did you know?

- **California Registration Requirements**
- Applicants for a Certificate of Registration shall have an appropriate knowledge of the English language, including reading, writing and spelling, and of arithmetic computations common to real estate and appraisal practice.

# Did you know?

## • California- Unfit to Practice

- A crime or act shall be deemed to be substantially related to the qualifications, functions or duties of an appraiser if, to a substantial degree, it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his/her license. The crimes or acts include, but are not limited to, the following:
  - Crimes or Acts involving the use of fraud, deceit or dishonesty for profit or gain;
  - Taking, appropriating or retaining the funds or property of another;
  - Evasion of a lawful debt or obligation, including but not limited to tax obligations;
  - **Driving under the influence** of alcohol or drugs, **while conducting business related to real estate appraisals**; conviction of felony driving under the influence of alcohol or drugs; **or conviction of two or more misdemeanor driving under the influence** of alcohol or drugs **within any three year period**, whether or not while conducting business.