

The Commonwealth of Massachusetts

In the Year Two Thousand and Eleven

An Act to Regulate Real Estate Appraisal Management Companies.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 112 of the General Laws, as appearing in the 2008 Official Edition is
2 hereby amended by adding at the end thereof the following 14 new sections:-

3 Section 236. Definitions.

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

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

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

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

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

16 (C) to manage the process of having an appraisal performed, including providing
17 administrative duties such as receiving appraisal orders and appraisal reports, submitting completed

18 appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services
19 provided, and reimbursing appraisers for services performed; or

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

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

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

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

34 "Board", the Massachusetts Board of Registration of Real Estate Appraisers under Section 92 of Chapter
35 13.

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

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

45
46 "Dwelling" means a residential structure that contains one to four units, whether or not that structure is
47 attached to real property. The term includes an individual condominium unit, cooperative unit, mobile
48 home, and trailer, if it is used as the consumer's principal residence.

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

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

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

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

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

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

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

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

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

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

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

76 (2) An appraisal management company that is a subsidiary owned and controlled by a financial
77 institution regulated by a Federal financial institution regulatory agency provided the appraisal
78 management company is in compliance with Section 1124 of the Federal Financial Institutions Reform,

79 Recovery and Enforcement Act of 1989 and any rules promulgated pursuant to the authority granted in
80 said Section 1124.

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

84 Section 238. Rule making authority.

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

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

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

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

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

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

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

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

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

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

121 Section 240. Controlling person.

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

126 Section 241. Employee in charge.

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

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

132 (b) be of good moral character;

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

134 (d) shall be responsible for:

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

137 (2) management of the process of conducting appraisal reviews. Any employee of an appraisal
138 management company or any contractor working on behalf of such company who has any involvement in
139 the performance of an appraisal review of completed appraisals of real property located in Massachusetts

140 shall be licensed or certified in the Commonwealth and in good standing pursuant to the provisions of this
141 Chapter.

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

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

144 The appraisal management company shall file a form with the Board indicating the appraisal
145 management company's designation of controlling person and employee in charge and the individual's
146 acceptance of the responsibility. An appraisal management company shall notify the Board of any change
147 in the appraisal management company's controlling person or employee in charge and shall have 30 days
148 from the date a vacancy occurs in either position to designate a temporary or permanent replacement and,
149 in the event a temporary designation is made, 90 days to appoint a permanent replacement. Any appraisal
150 management company that does not comply with this section shall have the appraisal management
151 company's registration suspended pursuant to Section 246 of Chapter 112 of the General Laws until the
152 appraisal management company complies with this section. An individual operating an appraisal
153 management company as a sole proprietorship shall be a certified general or certified residential appraiser
154 and shall be considered the managing principal for purposes of this Act unless another managing principal
155 is designated.

156 Section 243. Fees and renewals.

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

161 Section 244. Surety Bond.

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

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

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

167 The aggregate liability of the surety shall not exceed the principal sum of the bond. A party
168 having a claim against the registrant may bring suit directly on the surety bond, or the board may bring
169 suit on behalf of the party having a claim against the registrant. A deposit of cash or security may be

170 accepted in lieu of the surety bond. A claim reducing the face amount of the bond shall be annually
171 restored upon renewal of the registrant's registration.

172 Section 245. Prohibited acts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

221 (7) Require a fee appraiser to accept an appraisal assignment if the fee appraiser, in the fee
222 appraiser's own independent professional judgment believes, (i) the fee appraiser does not have the
223 necessary expertise for the assignment, or (ii) knowledge of the geographic area, or (iii) that the time
224 frame does not allow the appraiser the ability to meet all of the fee appraiser's relevant legal or
225 professional obligations.

226 (8) Knowingly fail to compensate fee appraisers at a rate that is customary and reasonable for
227 appraisal services performed in the market area of the property being appraised. Evidence for such fees
228 may be established by objective third-party information, such as the most recently published government
229 agency fee schedule, an academic study, and an independent private sector survey. A fee study or survey,
230 if utilized in determining customary and reasonable fees, shall exclude assignments ordered by known
231 appraisal management companies and shall be conducted annually. For purposes of this paragraph, an

232 academic study may be commissioned by and paid for by one or more appraisal management company or
233 an association representing appraisal management companies provided the terms under which the study is
234 conducted complies with this paragraph and are published within the study results.

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

237 (1) Consider additional appropriate material property information;

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

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

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

249 Section 246. Disciplinary authority.

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

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

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

260 (3) Been convicted of any felony or, within the past 10 years, been convicted of any misdemeanor
261 involving any activity related to the transfer of real property, including, but not limited to mortgage

262 lending or real estate appraisal or any offense involving breach of trust, moral turpitude, or fraudulent or
263 dishonest dealing;

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

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

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

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

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

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

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

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

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

291 (f) The Board shall have the power to issue subpoenas requiring the attendance of persons and the
292 production of papers and records before the Board in any hearing, investigation, inquiry, or other

293 proceeding conducted by the Board. Upon the production of any papers, records, or documents, the Board
294 shall have the power to authorize true copies of the papers, records, or documents to be substituted in the
295 permanent record of the matter in which the papers, records, or documents shall have been introduced in
296 evidence.

297 Section 247. Records.

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

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

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

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

313 Section 248. Penalty; injunctive relief.

314 The Board may appear in its own name in superior court in actions for injunctive relief to prevent
315 any person from violating the provisions of this Act or rules adopted by the Board. The superior court
316 shall have the power to grant these injunctions whether criminal prosecution has been or may be instituted
317 as a result of the violations or whether the person is the holder of a registration issued by the Board under
318 this Act.

319 Section 249. Background Checks

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

321 (1) purposes of initial registration, registration renewal, registration suspension, registration
322 conditioning, registration revocation or termination, or general or specific inquiry or investigation to
323 determine compliance with this chapter, the Board shall have the authority to access, receive and use any

324 books, accounts, records, files, documents, information or evidence including, but not limited to: (i)
325 criminal, civil and administrative history information, including non-conviction data as specified in
326 applicable provisions of the General Laws; and (ii) any other documents, information or evidence the
327 Board deems relevant to the inquiry or investigation regardless of the location, possession, control or
328 custody of such documents, information or evidence; and

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

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

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

337 (2) The date of the crime;

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

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

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

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

344 Section 250 Appraisal Board

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

346 Section 92. There is hereby established a board of real estate appraisers which shall consist of
347 nine members to be appointed by the governor, one of whom shall be members of the general
348 public, in accordance with the provisions of section nine B, one of whom shall be a member of
349 the banking industry, one of whom shall be a licensed real estate broker, one of whom shall
350 represent an appraisal management company, and five of whom shall be real estate appraisers.
351 Each real estate appraiser member of the board appointed after January first, nineteen hundred
352 and ninety-two shall be a state-licensed or state-certified real estate appraiser under the

353 provisions of sections one hundred and seventy-three to one hundred and ninety-five, inclusive,
354 of chapter one hundred and twelve.

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

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

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

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

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

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