

## CHAPTER 82C

### APPRAISAL MANAGEMENT COMPANIES

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#### 82C.01 TITLE.

This chapter shall be known as the Minnesota Appraisal Management Company Licensing and Regulation Act.

**History:** 2010 c 347 art 6 s 9

#### 82C.02 DEFINITIONS.

Subdivision 1. **Terms.** As used in this chapter, the terms in this section have the meanings given them.

Subd. 2. **Appraisal.** In conformance with the Uniform Standards of Professional Appraisal Practice (USPAP), "appraisal" is defined as: (noun) the act or process of developing an opinion of value; an opinion of value; (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services. For purposes of this chapter, all appraisals or assignments that are referred to involve one to four unit single-family properties.

Subd. 3. **Appraisal assignment.** "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, as a disinterested third party in giving an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of named interests in, or aspects of, identified real estate.

Subd. 4. **Appraisal management company.** "Appraisal management company" means a corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that directly or indirectly performs the following appraisal management services:

(1) administers networks of independent contractors and/or employee appraisers to perform residential real estate appraisal assignments for clients;

(2) receives requests for residential real estate appraisal services from clients and, for a fee paid by the client, enters into an agreement with one or more independent appraisers to perform the real estate appraisal services contained in the request; or

(3) serves as a third-party broker of appraisal management services between clients and appraisers.

Subd. 5. **Appraisal management services.** "Appraisal management services" means the process of directly or indirectly performing any of the following functions on behalf of a lender, financial institution, client, or any other person to:

- (1) administer an appraiser panel;
- (2) recruit, qualify, verify licensing or certification, and negotiate fees and service level expectations with persons who are part of an appraiser panel;
- (3) receive an order for an appraisal from one person, and deliver the order for the appraisal to an appraiser that is part of an appraiser panel for completion;
- (4) track and determine the status of orders for appraisals;
- (5) conduct quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal; or
- (6) provide a completed appraisal performed by an appraiser to one or more clients.

Subd. 6. **Appraiser.** "Appraiser" means a person who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective, and who is licensed under chapter 82B.

Subd. 7. **Appraiser panel.** "Appraiser panel" means a network of licensed or certified appraisers who are independent contractors to the appraisal management company that have:

- (1) responded to an invitation, request, or solicitation from an appraisal management company, in any form, to perform appraisals for persons that have ordered appraisals through the appraisal management company, or to perform appraisals for the appraisal management company directly, on a periodic basis, as requested and assigned by the appraisal management company; and
- (2) been selected and approved by an appraisal management company to perform appraisals for any client of the appraisal management company that has ordered an appraisal through the appraisal management company, or to perform appraisals for the appraisal management company directly, on a periodic basis, as assigned by the appraisal management company.

Subd. 8. **Appraisal review.** "Appraisal review" means the act of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment, except that an examination of an appraisal for grammatical, typographical, or other similar errors that do not make a substantive valuation change shall not be an appraisal review.

Subd. 9. **Client.** "Client" means any person or entity that contracts with, or otherwise enters into an agreement with, an appraisal management company for the performance of real estate appraisal services or appraisal management services. For purposes of this chapter, the appraisal management company is the party engaging the independent appraiser and can be the appraiser's client. However, this does not preclude an appraisal management company from acting as a duly authorized agent for a lender.

Subd. 10. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 11. **Controlling person.** "Controlling person" means:

- (1) any owner, officer, or director of an appraisal management company seeking to offer appraisal management services in this state;
- (2) an individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals;

(3) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company; or

(4) an individual who enters into:

(i) contractual relationships with clients for the performance of appraisal management services; and

(ii) agreements with employed and independent appraisers for the performance of real estate appraisal services.

Subd. 12. **Employee.** "Employee" means an individual who is treated as an employee for purposes of compliance with federal income tax laws.

Subd. 13. **Person.** "Person" means a natural person, firm, partnership, limited liability partnership, corporation, association, limited liability company, or other form of business organization and the officers, directors, employees, or agents of that person.

Subd. 14. **USPAP.** "USPAP" means the Uniform Standards of Professional Appraisal Practice as established by the Appraisal Foundation. State and federal regulatory authorities enforce the content of the current or applicable edition of USPAP.

**History:** 2010 c 347 art 6 s 10

### 82C.03 LICENSING.

Subdivision 1. **Requirement.** It is unlawful for a person, corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity to directly or indirectly engage or attempt to engage in business as an appraisal management company, to directly or indirectly engage or attempt to perform appraisal management services, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a license issued by the commissioner under the provisions of this chapter.

Subd. 2. **Owner requirements.** (a) An appraisal management company applying to the commissioner for a license in this state may not be more than ten percent owned by any person that is currently subject to any cease and desist order or injunctive order that would preclude involvement with an appraisal management company, or that has ever:

(1) voluntarily surrendered in lieu of disciplinary action an appraiser certification, registration or license, or an appraisal management company license;

(2) been the subject of a final order revoking or denying an appraiser certification, registration or license, or an appraisal management company license; or

(3) a final order barring involvement in any industry or profession issued by this or another state or federal regulatory agency.

(b) A person that owns more than ten percent of an appraisal management company in this state shall:

(1) be of good moral character, as determined by the commissioner;

(2) submit to a background investigation, as determined by the commissioner; and

(3) certify to the commissioner that the person has never been the subject of an order of certificate, registration or license suspension, revocation, or denial; cease and desist order; injunctive order; or order barring involvement in an industry or profession issued by this or another state or federal regulatory agency.

Subd. 3. **Designated controlling person requirements.** (a) **Designation.** Each appraisal management company applying to the commissioner for a license in this state shall designate a controlling person that will be the main contact for all communication between the commissioner and the appraisal management company.

(b) **Requirements.** In order to serve as a designated controlling person of an appraisal management company, a person must:

(1) certify to the commissioner that the person is not currently subject to any cease and desist order or injunctive order that would preclude involvement with an appraisal management company, and has never been the subject of an order suspending, revoking, or denying a certification, registration, or license for real estate services, or a final order barring involvement in any industry or profession issued by this or another state or federal regulatory agency;

(2) be of good moral character, as determined by the commissioner; and

(3) submit to a background investigation, as determined by the commissioner.

Subd. 4. **Application for license.** Application for an appraisal management company license must be submitted on a form prescribed by the commissioner.

Subd. 5. **Minimum information.** The application must, at a minimum, include the following information:

(1) the name of the entity seeking registration;

(2) the business address or addresses of the entity seeking registration;

(3) telephone contact and e-mail information of the entity seeking registration;

(4) if the entity is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state;

(5) the name, address, and contact information for an individual or corporation, partnership, limited liability company, association, or other business entity that owns ten percent or more of the appraisal management company;

(6) the name, address, and contact information for a controlling person or persons;

(7) a certification that the entity has a system and process in place to verify that a person being added to the employment or appraiser panel of the appraisal management company for appraisal services within this state holds an active appraisal license in this state pursuant to chapter 82B if a license is required to perform appraisals;

(8) a certification that the entity has a system in place to review the work of all employed and independent appraisers that are performing real estate appraisal services for the appraisal management company on a periodic basis to verify that the real estate appraisal assignments are being conducted in accordance with USPAP and chapter 82B;

(9) a certification that the entity maintains a detailed record of each service request that it receives and the independent appraiser that performs the real estate appraisal services for the appraisal management company, pursuant to section 82C.13;

(10) a certification that the employees of the appraisal management company will be appropriately trained and familiar with the appraisal process;

(11) a certification that the appraisal management company has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license in good standing in this state pursuant to chapter 82B; and

(12) an irrevocable Uniform Consent to Service of Process, pursuant to section 82C.07.

Subd. 6. **Effective date of license.** Initial licenses issued under this chapter are effective upon issuance and remain valid, subject to denial, suspension, or revocation under this chapter, until the following August 31.

**History:** 2010 c 347 art 6 s 11

#### **82C.04 TERM OF LICENSE.**

Initial licenses issued under this chapter are valid for a period not to exceed one year. Each initial license must expire on August 31 of the expiration year assigned by the commissioner.

**History:** 2010 c 347 art 6 s 12

#### **82C.05 LICENSE RENEWAL.**

Subdivision 1. **Term.** Licenses renewed under this chapter are valid for a period of 12 months.

Subd. 2. **Timely renewal.** (a) Application for timely renewal of a license is considered timely filed if received by the commissioner before the date of the license expiration.

(b) An application for renewal is considered properly filed if made upon a form prescribed by the commissioner, accompanied by fees prescribed by this chapter, and containing any information the commissioner requires.

(c) A licensee failing to make timely application for renewal of the license is unlicensed until the renewal license has been issued by the commissioner and is received by the licensee.

Subd. 3. **Contents of renewal application.** Application for the renewal of an existing license must contain the information specified in section 82C.03. However, only the requested information having changed from the most recent prior application need be submitted.

Subd. 4. **Cancellation.** A licensee ceasing an activity or activities regulated by this chapter and desiring to no longer be licensed shall so inform the commissioner in writing and, at the same time, surrender the license and all other symbols or indicia of licensure.

**History:** 2010 c 347 art 6 s 13

#### **82C.06 EXEMPTIONS.**

This chapter does not apply to:

(1) a person that exclusively employs appraisers on an employer and employee basis for the performance of appraisals, and:

(i) the employer is responsible for ensuring that the appraisals are performed by employees in accordance with USPAP; and

(ii) the employer accepts all liability associated with the performance of the appraisal by the employee;

(2) a department or unit within a financial institution that is subject to direct regulation by an agency of the United States government, or to regulation by an agency of this state, that receives a request for the performance of an appraisal from one employee of the financial institution, and another employee of the same financial institution assigns the request for the appraisal to an appraiser that is an independent contractor to the institution, except that an appraisal management company that is a wholly owned subsidiary of a financial institution shall

not be considered a department or unit within a financial institution to which the provisions of this chapter do not apply;

(3) a person that enters into an agreement, whether written or otherwise, with an appraiser for the performance of an appraisal, and upon the completion of the appraisal, the report of the appraiser performing the appraisal is signed by both the appraiser who completed the appraisal and the appraiser who requested the completion of the appraisal, except that an appraisal management company may not avoid the requirements of this chapter by requiring that an employee of the appraisal management company that is an appraiser to sign an appraisal that is completed by an appraiser that is part of the appraisal panel of the appraisal management company; or

(4) any governmental agency performing appraisals on behalf of that level of government or any agency performing ad valorem tax appraisals for county assessors.

**History:** 2010 c 347 art 6 s 14

### **82C.07 CONSENT TO SERVICE OF PROCESS.**

Each entity applying for a license as an appraisal management company in this state shall complete an irrevocable Uniform Consent to Service of Process as prescribed by the commissioner.

**History:** 2010 c 347 art 6 s 15

### **82C.08 LICENSING FEES.**

Subdivision 1. **Establishment and retention.** The fees shall be retained by the commissioner for the sole purpose of administering this licensing and regulation program.

Subd. 2. **Amounts.** (a) Each application for initial licensure shall be accompanied by a fee of \$5,000.

(b) Each application for renewal of the license must be received prior to its expiration with the renewal fee of \$2,500.

Subd. 3. **Forfeiture.** All fees are nonrefundable except that an overpayment of a fee must be refunded upon proper application.

**History:** 2010 c 347 art 6 s 16; 2011 c 108 s 48

### **82C.09 INVESTIGATIONS AND SUBPOENAS.**

The commissioner has under this chapter the same powers with respect to chapter 45.027, including the authority to impose a civil penalty not to exceed \$10,000 per violation.

**History:** 2010 c 347 art 6 s 17

### **82C.10 EMPLOYEE REQUIREMENTS.**

An employee of the appraisal management company that has the responsibility to review the work of employed and independent appraisers where the subject properties are located within this state, which include the reviewer's opinion of value or concurrence with the original appraiser's value, must be licensed according to chapter 82B and perform the review assignments in compliance with USPAP and chapter 82B. This requirement does not apply to employees who review appraisals for completeness and compliance in connection with an appraisal management company's internal quality control processes, but who do not perform appraisal reviews that are subject to Standard 3 of USPAP.

**History:** 2010 c 347 art 6 s 18

**82C.11 LIMITATIONS.**

An appraisal management company licensed in this state pursuant to this chapter may enter into contracts or agreements for appraisal assignments in this state only with an employee or independent appraiser holding an active Minnesota real estate appraiser license pursuant to chapter 82B.

**History:** 2010 c 347 art 6 s 19

**82C.12 ADHERENCE TO STANDARDS.**

An appraisal management company must have a system in place to review the work of all employed and independent appraisers that are performing real estate appraisal assignments for the appraisal management company on a periodic basis to verify that the real estate appraisal services are being conducted in accordance with USPAP and chapter 82B. An appraisal management company is required to make referrals directly to state appraiser regulatory authorities when a state licensed or certified appraiser violates USPAP, applicable state law, or engages in other unethical or unprofessional conduct.

**History:** 2010 c 347 art 6 s 20

**82C.13 RECORD KEEPING.**

An appraisal management company must maintain a detailed record of each service request that it receives and the employee appraiser or independent appraiser that performs the appraisal assignment for the appraisal management company.

Records must be kept for a period of at least five years after the appraisal assignment request is sent to the independent appraiser or completion of the appraisal report, whichever period expires later.

**History:** 2010 c 347 art 6 s 21

**82C.14 APPRAISER INDEPENDENCE; PROHIBITIONS.**

(a) It is unlawful for any employee, director, officer, or agent of an appraisal management company licensed in this state pursuant to this chapter to influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, or bribery, including but not limited to:

- (1) withholding or threatening to withhold timely payment for an appraisal;
- (2) withholding or threatening to withhold future business or assignments for an employed or independent appraiser, or demoting or terminating or threatening to demote or terminate an employed or independent appraiser;
- (3) expressly or impliedly promising future business, assignments, promotions, or increased compensation for an employed or independent appraiser;
- (4) conditioning the request for an appraisal assignment on the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an employed or independent appraiser;
- (5) requesting that an employed or independent appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the completion of an appraisal assignment;

(6) providing to an employed or independent appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;

(7) providing to an employed or independent appraiser, or any entity or person related to the appraiser, stock, or other financial or nonfinancial benefits;

(8) allowing the removal of an employed or independent appraiser from a list of qualified appraisers used by any entity, without prior written notice to the appraiser, which notice must include documented evidence of the appraiser's violation of USPAP, chapter 82B, substandard performance, or otherwise improper or unprofessional behavior;

(9) request or require any employed or independent appraiser to provide the appraisal management company or any of its employees, or any of its clients, with the appraiser's digital signature;

(10) alter, amend, or change an appraisal report submitted by an appraiser, to include removing or applying a signature, adding or deleting information from the appraisal report;

(11) require the appraiser to collect the fee from a borrower, homeowner, or other person;

(12) 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, or employees 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;

(13) use an appraiser directly selected or referred by any member of a loan production staff for an individual assignment; or

(14) any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(b) Nothing in paragraph (a) prohibits the appraisal management company from requesting that an independent appraiser:

(1) consider additional appropriate property information;

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

or

(3) correct objective factual errors in an appraisal report.

**History:** 2010 c 347 art 6 s 22

### **82C.15 ADJUDICATION OF DISPUTES BETWEEN AN APPRAISAL MANAGEMENT COMPANY AND AN INDEPENDENT APPRAISER.**

Except within the first 30 days after an independent appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company may not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an independent appraiser without:

(1) notifying the appraiser in writing of the reasons why the appraiser is being removed from the appraiser panel or is not receiving appraisal requests from the appraisal management company;

(2) if the appraiser is being removed from the panel for illegal conduct, having determined that the appraiser has violated USPAP, or chapter 82B, taking into account the nature of the alleged conduct or violation; and



(3) providing an opportunity for the appraiser to respond and appeal the notification of the appraisal management company.

**History:** 2010 c 347 art 6 s 23

### **82C.16 DENIAL, SUSPENSION, OR REVOCATION OF LICENSES.**

Subdivision 1. **Powers of commissioner.** (a) The commissioner may by order take any or all of the following actions:

(1) bar a person from serving as an officer, director, partner, controlling person, or any similar role at an appraisal management company, if such person has ever been the subject of a final order suspending, revoking, or denying a certification, registration, or license as a real estate agent, broker, or appraiser, or a final order barring involvement in any industry or profession issued by this or another state or federal regulatory agency;

(2) deny, suspend, or revoke an appraisal management company license;

(3) censure an appraisal management company license; and

(4) impose a civil penalty as provided for in chapter 45.027.

(b) In order to take the action in paragraph (a), the commissioner must find:

(1) that the order is in the public interest; and

(2) that an officer, director, partner, employee, agent, controlling person or persons, or any person occupying a similar status or performing similar functions, has:

(i) violated any provision of this chapter;

(ii) filed an application for a license that is incomplete in any material respect or contains a statement that, in light of the circumstances under which it is made, is false or misleading with respect to a material fact;

(iii) failed to maintain compliance with the affirmations made under section 80C.03, subdivision 5;

(iv) violated a standard of conduct or engaged in a fraudulent, coercive, deceptive, or dishonest act or practice, whether or not the act or practice involves the appraisal management company;

(v) engaged in an act or practice, whether or not the act or practice involves the business of appraisal management, appraisal assignments, or real estate mortgage related practices, that demonstrates untrustworthiness, financial irresponsibility, or incompetence;

(vi) pled guilty, with or without explicitly admitting guilt, pled nolo contendere, or been convicted of a felony, gross misdemeanor, or a misdemeanor involving moral turpitude;

(vii) paid a civil penalty or been the subject of disciplinary action by the commissioner, or an order of suspension or revocation, cease and desist order, or injunction order, or an order barring involvement in an industry or profession issued by this or any other state or federal regulatory agency or government-sponsored enterprise, or by the secretary of Housing and Urban Development;

(viii) been found by a court of competent jurisdiction to have engaged in conduct evidencing gross negligence, fraud, misrepresentation, or deceit;

(ix) refused to cooperate with an investigation or examination by the commissioner;

(x) failed to pay any fee or assessment imposed by the commissioner; or

(xi) failed to comply with state and federal tax obligations.

Subd. 2. **Orders of the commissioner.** To begin a proceeding under this section, the commissioner shall issue an order requiring the subject of the proceeding to show cause why action should not be taken against the licensee according to this section. The order must be calculated to give reasonable notice of the time and place for the hearing and must state the reasons for entry of the order. The commissioner may by order summarily suspend a license pending a final determination of an order to show cause. If a license is summarily suspended, pending final determination of an order to show cause, a hearing on the merits must be held within 30 days of the issuance of the order of summary suspension. All hearings must be conducted under chapter 14. After the hearing, the commissioner shall enter an order disposing of the matter as the facts require. If the subject of the order fails to appear at a hearing after having been duly notified of it, the subject is considered in default, and the proceeding may be determined against the subject of the order upon consideration of the order to show cause, the allegations of which may be considered to be true.

Subd. 3. **Actions against lapsed license.** If a license lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner may institute a proceeding under this subdivision within two years after the license was last effective and enter a revocation or suspension order as of the last date which the license was in effect, and may impose a civil penalty as provided for in this section or section 45.027.

**History:** 2010 c 347 art 6 s 24