

Act No. 505
Public Acts of 2012
Approved by the Governor
December 27, 2012
Filed with the Secretary of State
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EFFECTIVE DATE: April 1, 2014

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Rep. O'Brien

ENROLLED HOUSE BILL No. 4975

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations and to regulate certain persons and activities relative to those occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to provide immunity from certain civil liability for certain entities and certain related occupations under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 602 (MCL 339.602), as amended by 2007 PA 157, and by adding article 26A.

The People of the State of Michigan enact:

Sec. 602. A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

- (a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.
- (b) Suspension of a license or certificate of registration.
- (c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- (d) Revocation of a license or certificate of registration.
- (e) In the case of a person licensed or registered under this act and except as otherwise provided in this act, an administrative fine to be paid to the department of not more than \$10,000.00.
- (f) Censure.
- (g) Probation.
- (h) A requirement that restitution be made, based on proofs submitted to and findings made by the hearing examiner after a contested case.

ARTICLE 26A

Sec. 2661. As used in this act:

- (a) "Appraisal" means that term as defined in section 2601.
- (b) "Appraisal management company" means a person that provides appraisal management services.
- (c) "Appraisal management services" means to perform any of the following functions for a client or clients:
 - (i) Administering a network of independent contract appraisers to perform real estate appraisal services.
 - (ii) Receiving requests for real estate appraisal services and, for a fee paid by the client, entering into agreements with 1 or more independent appraisers to perform the real estate appraisal services described in the request.

(iii) Acting as a third-party broker or intermediary between persons requesting real estate appraisal services and independent appraisers who agree to provide those services.

(d) "Appraiser" means that term as defined in section 2601.

(e) "Appraiser panel" means a group of independent appraisers who are selected by an appraisal management company to perform real estate appraisal services for the appraisal management company.

(f) "Certified appraiser" means a certified general real estate appraiser, as defined in section 2601, or a certified residential real estate appraiser, as defined in section 2601.

(g) "Client" means a person that contracts with, or otherwise enters into an agreement with, an appraisal management company for the performance of real estate appraisal services.

(h) "Controlling person" means any of the following:

(i) An owner, officer, or director of a corporation, partnership, or other business entity that offers or applies to offer appraisal management services in this state.

(ii) An individual who is employed, appointed, or authorized by an appraisal management company and has the authority to enter into contractual relationships with clients for the performance of appraisal management services and the authority to enter into agreements with independent appraisers for the performance of real estate appraisal services.

(iii) 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.

(i) "Real estate appraisal services" means the practice of developing an opinion of the value of real property in a manner that conforms with the uniform standards of professional appraisal practice.

(j) "Uniform standards of professional appraisal practice" means that term as defined in section 2601.

Sec. 2663. (1) Except as provided in subsection (2), a person shall not do any of the following in this state without a license issued by the department under this article:

(a) Directly or indirectly engage or attempt to engage in business as an appraisal management company.

(b) Directly or indirectly perform or attempt to perform appraisal management services.

(c) Advertise or hold itself out as engaging in or conducting business as an appraisal management company.

(d) Use the term "appraisal management company", "mortgage technology company", or any similar term that tends to indicate the person is licensed under this act.

(2) This article does not apply to any of the following:

(a) A person that exclusively engages individuals on an employer and employee basis to perform real estate appraisal services in the normal course of its business and that is responsible for ensuring that the real estate appraisal services performed by its employees comply with the uniform standards of professional appraisal practice.

(b) A person that in the normal course of business enters into an agreement, whether written or otherwise, with an independent contractor appraiser for that appraiser to perform real estate appraisal services and, when the appraisal is complete, cosigns the report with that independent contractor appraiser.

(c) An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency. As used in this subdivision:

(i) "Federal financial institution regulatory agency" means 1 of the federal financial institution regulatory agencies, as that term is defined in 12 USC 3350.

(ii) "Financial institution" means that term as defined in 12 USC 3350.

Sec. 2665. (1) A person seeking licensure as an appraisal management company under this article shall submit to the department a license application, in the form prescribed by the department, that includes all of the following information:

(a) The applicant's name.

(b) The street address of the applicant's principal place of business. The department shall not accept an application that includes only a post office box as an address.

(c) Telephone contact information concerning the applicant.

(d) The name and contact information for the applicant's agent for service of process in this state.

(e) The name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns 10% or more of the appraisal management applicant.

(f) The name, address, and contact information for any controlling person of the applicant.

(g) A certification that the applicant has the system and process described in section 2673(1) in place.

(h) A certification that the applicant has the system described in section 2673(2) in place.

(i) A certification that the applicant maintains the detailed record of each service request described in section 2673(3).

(j) A completed irrevocable consent to service of process, in the form prescribed by the department, executed on behalf of the applicant.

(k) Any other information that is reasonably required by the department to process the application.

(2) An applicant for licensure under subsection (1) shall include with the application the license fee described in section 38a of the state license fee act, 1979 PA 152, MCL 338.2238a.

Sec. 2667. (1) The department shall not grant a license to a person applying for a license as an appraisal management company under this article unless all of the following are met:

(a) Any individual who owns more than 10% of the applicant meets all of the following:

(i) Has not had a license or certificate to act as an appraiser refused, denied, canceled, or revoked in this state or in any other state, unless that license or certificate was subsequently granted or reinstated.

(ii) Has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony relating to the practice of appraisal or any crime involving fraud, misrepresentation, or moral turpitude.

(iii) Submits to a background investigation, as determined by the department.

(iv) Certifies to the department that he or she has never had a license or certificate to act as an appraiser refused, denied, canceled, or revoked in this state or in any other state, unless that license or certificate was subsequently granted or reinstated.

(b) The applicant designates an individual to act as the primary contact for all communication between the department and the appraisal management company. The individual designated under this subdivision must be an attorney licensed to practice law in any state or territory of the United States who is designated by the appraisal management company or an individual who meets all of the following:

(i) He or she is a controlling person of the applicant.

(ii) He or she certifies to the department that he or she has never had a certificate or a license issued by this state or any other state to act as an appraiser refused, denied, canceled, or revoked, unless that license or certificate was subsequently granted or reinstated.

(iii) He or she has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony relating to the practice of appraisal or any crime involving fraud, misrepresentation, or moral turpitude.

(iv) He or she submits to a background investigation, as determined by the department.

(v) He or she has a valid license as a certified appraiser.

(c) If applicable, the applicant meets subsection (2).

(2) If an application for a license under this article is made by a person whose license under this article was previously denied, suspended, or revoked as a result of disciplinary action for violation of this article or rules promulgated under this article, the department may require, as a condition to licensure of the applicant or the removal of the suspension, that the applicant provide a surety bond to the department that meets all of the following:

(a) Is issued by a bonding company or insurance company authorized to do business in this state.

(b) Expires after the date the license expires.

(c) Is in a principal amount of not more than \$5,000.00. The department shall determine the principal amount of the bond, based on the size of the applicant's operation in this state.

(d) Is in a form satisfactory to the department, is payable to the department for the benefit of Michigan residents, and secures the performance of the obligations of the applicant in connection with the conduct of its business.

(3) If the department orders the filing of a bond under subsection (2), a person injured by an unlawful act or omission of the applicant may bring an action in a proper court on the bond for the amount of the damage suffered as a result to the extent covered by the bond.

Sec. 2669. (1) The department shall not issue a license under this article to a person applying for licensure as an appraisal management company if the person does not meet the requirements of sections 2665 and 2667.

(2) If the department issues a license as an appraisal management company under this article, the department shall provide the licensee a license certificate.

(3) The term of a license under this article is 3 years. The department may grant a shorter term for an initial license under this article so that all licenses issued under this article expire on the same date. The department shall include the expiration date of an appraisal management company's license on its license certificate.

Sec. 2671. (1) An appraisal management company shall ensure that any employee of the appraisal management company, or any other individual working on behalf of the appraisal management company, who is responsible for selecting independent appraisers for the performance of real estate appraisal services for the appraisal management company or review completed appraisals for the appraisal management company is appropriately trained.

(2) An appraisal management company shall ensure that any employee or independent contractor of the company who is responsible for completing standard 3 appraisal reviews, or who performs a standard 3 appraisal review, on its behalf has a valid license as a certified appraiser. As used in this subsection:

(a) "Quality control examination" means an examination of an appraisal review report to determine the report's completeness, including, but not limited to, examining the report for grammatical, typographical, or other similar errors.

(b) "Standard 3 appraisal review" means an appraisal review that meets the requirements of standard 3 of the uniform standards of professional appraisal practice for appraisal reviews. The term does not include a quality control examination.

(3) An appraisal management company that does any of the following is subject to the penalties under article 6:

(a) Employs any individual to perform appraisal services who has had a license or certificate to act as an appraiser in this state or in any other state refused, denied, canceled, surrendered in lieu of revocation, or revoked, unless that license or certificate was subsequently granted or reinstated.

(b) Enters into any independent contractor arrangement, whether in verbal, written, or other form, with any individual to perform appraisal services who has had a license or certificate to act as an appraiser in this state or in any other state refused, denied, canceled, surrendered in lieu of revocation, or revoked, unless that license or certificate was subsequently granted or reinstated.

(c) Enters into a contract or agreement with an independent appraiser for the performance of real estate appraisal services unless that individual is licensed under article 26.

(d) Fails, neglects, or refuses to pay an independent appraiser for an appraisal or valuation assignment within 60 days after the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation to the appraisal management company or its assignee, unless the appraiser breached his or her agreement with the company concerning that assignment or his or her performance of the appraisal or valuation services was substandard.

(e) Alters, modifies, or otherwise changes a completed appraisal report submitted by an independent appraiser.

(f) Procures a license for itself or anyone else by fraud, misrepresentation, or deceit.

(g) Requires an appraiser to indemnify the appraisal management company or hold the appraisal management company harmless for liability, damage, losses, or claims arising out of the services provided by the appraisal management company, if the appraiser did not perform those services.

Sec. 2673. (1) An appraisal management company licensed under this article shall certify to the department on an annual basis, on a form prescribed by the department, that it has a system and process in place to verify that an individual the company is adding to its appraiser panel is licensed under article 26.

(2) An appraisal management company licensed under this article shall certify to the department on an annual basis, on a form prescribed by the department, that it has a system in place to periodically review the work of appraisers who perform real estate appraisal services for it to verify that the real estate appraisal services are being conducted in accordance with the uniform standards of professional appraisal practice.

(3) An appraisal management company licensed under this article shall certify to the department on an annual basis, on a form prescribed by the department, that it maintains a detailed record of each service request that it receives and the identity of the independent appraiser that performs the real estate appraisal services for the appraisal management company. An appraisal management company shall retain the records described in this subsection for at least 5 years.

(4) An appraisal management company licensed under this article shall certify to the department on a biannual basis, on a form prescribed by the department, that it has a system in place to verify that each individual on its appraiser panel has not had his or her license as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in the 24 months preceding the date of the company's certification under this subsection.

Sec. 2675. (1) Except as provided in subsection (2), an employee, director, officer, or agent of an appraisal management company licensed under this article that influences or attempts to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, or bribery or in any other manner, including, but not limited to, any of the following, is subject to the penalties under article 6:

(a) Withholding or threatening to withhold timely payment for an appraisal.

(b) Withholding or threatening to withhold future business for an independent appraiser.

(c) Demoting or terminating or threatening to demote or terminate an independent appraiser.

(d) Promising an independent appraiser, either expressly or by implication, future business, promotions, or increased compensation.

(e) Conditioning a request for an appraisal service or the payment of an appraisal fee or salary or bonus on reaching a particular opinion, conclusion, or valuation or on a preliminary estimate or opinion requested from an independent appraiser.

(f) Requesting that an independent appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time before the independent appraiser's completion of an appraisal service.

(g) Providing to an independent appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount of a loan to a borrower. However, this subdivision does not prohibit providing a copy of a sales contract for a purchase transaction to the appraiser.

(h) Providing an independent appraiser, or a person related to the appraiser, stock or other financial or nonfinancial benefits.

(i) Removing an independent appraiser from an appraiser panel without prior written notice to that appraiser.

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

(2) Subsection (1) does not prohibit, and shall not be construed to prohibit, an appraisal management company from requesting that an independent appraiser do any of the following:

(a) Provide additional information about the basis for a valuation.

(b) Correct objective factual errors in an appraisal report.

(c) Consider additional verifiable information that was not previously known or considered by the appraiser in completing the valuation or appraisal.

Sec. 2677. (1) Beginning 90 days after an appraisal management company first adds the independent appraiser to its appraiser panel, the appraisal management company shall not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an independent appraiser, without doing all of the following:

(a) Within 10 business days after the removal of the appraiser, notifying the appraiser in writing of all of the following, as applicable:

(i) The reasons why the appraiser was removed from the panel.

(ii) If the appraiser was removed from the panel for illegal conduct, a violation of the uniform standards of professional appraisal practice, or a violation of state licensing standards, the nature of the alleged conduct or violation.

(b) Providing an opportunity for the appraiser to respond to the company's notification or notifications under subdivision (a).

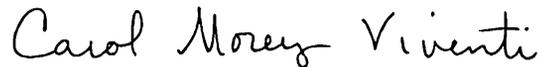
(2) If an appraisal management company removes an independent appraiser from its appraiser panel for alleged illegal conduct, an alleged violation of the uniform standards of professional appraisal practice, or an alleged violation of state licensing standards, the appraiser may file a complaint with the department for a review of the decision of the appraisal management company. In its consideration of the complaint, the department may not make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the alleged conduct or violation.

Enacting section 1. This amendatory act takes effect April 1, 2014.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5271 of the 96th Legislature is enacted into law.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor