

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 829*

Short Title: Regulation of Appraisal Management Companies. (Public)

Sponsors: Senator Jenkins.

Referred to: Commerce.

March 25, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE REAL ESTATE APPRAISAL MANAGEMENT COMPANIES.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Chapter 93E of the General Statutes is amended by adding a new
5 Article to read:

6 "Article 2.

7 "Real Estate Appraisal Management Companies.

8 **"§ 93E-2-1. Registration required of real estate appraisal management companies;**
9 **exceptions.**

10 (a) Beginning January 1, 2010, it shall be unlawful for any person in this State to act as
11 a real estate appraisal management company, directly or indirectly engage or assume to engage
12 in the business of real estate appraisal management, or advertise or hold himself or herself out
13 as engaging in or conducting the business of real estate appraisal management in this State,
14 without first registering with the Board under the provisions of this Article. It shall also be
15 unlawful, with regard to appraisals of any real property where any portion of that property is
16 located within this State, for any person to perform any of the acts listed in this section without
17 first being registered by the Board under the provisions of this Article.

18 (b) The provisions of this Article shall not apply to:

19 (1) Any agency of the federal government or any State or municipal
20 government.

21 (2) Any person authorized to engage in business as a bank, farm credit system,
22 savings institution, or credit union, under the laws of the United States, this
23 State, or any other state.

24 (3) Any licensed real estate broker performing activities in accordance with
25 Article 1 of Chapter 93E of the General Statutes. However, an exempt
26 person does not include a real estate broker who receives compensation of
27 any kind in connection with the referral or placement of an appraisal
28 assignment.

29 (4) Any officer or employee of an exempt person described in this subdivision
30 when acting in the scope of employment for the exempt person.

31 **"§ 93E-2-2. Definitions.**

32 (a) The following definitions apply in this Article:

33 (1) Act as a real estate appraisal management company. – To act for
34 compensation or gain, or with the expectation of compensation or gain,
35 either directly or indirectly, by (i) accepting or offering to accept an
36 appraisal assignment, (ii) soliciting or offering to solicit an appraisal
37 assignment, or (iii) employing or contracting with a licensed or certified real



1 estate appraiser to prepare an appraisal assignment on behalf of a client,
2 whether acting through contact by telephone, electronic means, mail, or in
3 person.

4 (2) Appraisal management company. – A company that administers a network
5 of certified and licensed appraisers to fulfill real estate appraisal assignments
6 on behalf of mortgage lending institutions and other entities. For purposes of
7 this definition, the phrase 'administers a network' includes recruiting
8 appraisers, contracting with appraisers to perform appraisal assignments,
9 negotiating fees with appraisers, providing administrative duties, such as
10 receiving appraisal orders and appraisal reports, and submitting appraisal
11 reports received from appraisers to the company's clients.

12 (3) Board. – The North Carolina Appraisal Board under Article 1 of Chapter
13 93E of the General Statutes.

14 (4) Employee. – An individual who has an employment relationship
15 acknowledged by both the individual and the company and is treated as an
16 employee for purposes of compliance with federal income tax laws.

17 (5) Person. – An individual, partnership, limited liability company, limited
18 partnership, corporation, association, or other group engaged in joint
19 business activities, however organized.

20 (6) Registrant. – A real estate appraisal management company registered
21 pursuant to this Article.

22 (b) The definitions contained in G.S. 93E-1-4 also apply in this Article.

23 **"§ 93E-2-3. Rule-making authority.**

24 The Board shall have the authority to adopt rules not inconsistent with the provisions of this
25 Article and the General Statutes of North Carolina that are reasonably necessary to implement,
26 administer, and enforce the provisions of this Article, including the authority to:

27 (1) Prescribe forms and procedures for submitting information to the Board.

28 (2) Prescribe standards of practice for companies registered under this Article.

29 (3) Prescribe standards for the operation of real estate appraisal management
30 companies.

31 **"§ 93E-2-4. Qualifications for registration; duties of registrants.**

32 (a) Any person desiring to be registered as an appraisal management company in this
33 State shall make written application to the Board on forms prescribed by the Board setting forth
34 the applicant's qualifications for registration. The application shall be accompanied by the
35 applicable fee under G.S. 93E-2-6, and any other information the Board deems necessary
36 pursuant to rules adopted by the Board. Upon receipt of a properly completed application and
37 fee and upon a determination by the Board that the applicant is of good moral character, the
38 Board shall issue to the applicant a certificate of registration authorizing the applicant to act as
39 a real estate appraisal management company in this State.

40 (b) Each applicant for registration under this Article shall submit the name and address
41 of the applicant's registered agent located in this State. An applicant for registration under this
42 Article that is not a resident of this State shall submit with the application for registration an
43 irrevocable consent that service of process in any action against the applicant arising out of the
44 applicant's activities as an appraisal management company may be made by service of process
45 on the Executive Director of the Board.

46 (c) Any registrant having a good faith belief that a real estate appraiser licensed in this
47 State has violated applicable law or the Uniform Standards of Professional Appraisal Practice
48 (USPAP) or engaged in unethical conduct shall promptly file a complaint with the Board.

49 (d) Fees shall be paid to a real estate appraiser based on Federal Deposit Insurance
50 Corporation (FDIC) appraisal management company protocol within 30 days of the date the
51 appraisal is transmitted by the real estate appraiser to the registrant or the registrant's client.

1 Fees shall be paid directly to the real estate appraiser from the lender and not from the
2 registrant. The registrant shall charge a direct fee to the lender for services provided without
3 any fee splits.

4 **"§ 93E-2-5. Managing principals.**

5 Each appraisal management company registered under this Article shall designate a
6 managing principal who is responsible for ensuring the company operates in compliance with
7 this Article. The managing principal shall be a certified general real estate appraiser certified
8 under Article 1 of this Chapter. The appraisal management company shall file a form with the
9 Board indicating the appraisal management company's designation of managing principal and
10 the individual's acceptance of the responsibility. An appraisal management company shall
11 notify the Board of any change in the appraisal management company's managing principal.
12 Any appraisal management company that does not comply with this section shall have the
13 appraisal management company's registration suspended pursuant to G.S. 93E-2-8 until the
14 appraisal management company complies with this section. An individual operating an
15 appraisal management company as a sole proprietorship shall be considered the managing
16 principal for purposes of this Article.

17 **"§ 93E-2-6. Fees and renewals.**

18 (a) Each application for registration as an appraisal management company under this
19 Article shall be accompanied by a fee of five thousand dollars (\$5,000). Registration issued
20 under this Article shall expire on June 30 of each year and shall become invalid after that date
21 unless renewed before the expiration date by filing an application with and paying to the Board
22 a fee of two thousand five hundred dollars (\$2,500).

23 (b) All registrations reinstated after the expiration date are subject to a late filing fee of
24 twenty dollars (\$20.00) a month for each month or part thereof that the registration is lapsed,
25 not to exceed one hundred twenty dollars (\$120.00). The late filing fee shall be in addition to
26 the required renewal fee. In the event a registrant fails to reinstate the registration within six
27 months after the expiration date, the registration shall expire and the registrant shall be required
28 to file a new application for registration. Reinstatement of a registration shall not be retroactive.

29 (c) The Board may issue a replacement registration to the registrant upon payment of
30 fifty dollars (\$50.00) to the Board. The Board may certify the registration history of an
31 appraisal management company registered under this Article upon payment of a fee of one
32 hundred dollars (\$100.00) to the Board.

33 **"§ 93E-2-7. Prohibited acts.**

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

- 39 (1) Withholding or threatening to withhold timely payment for a real estate
40 appraisal report.
- 41 (2) Withholding or threatening to withhold future business from a real estate
42 appraiser or demoting or terminating or threatening to demote or terminate a
43 real estate appraiser.
- 44 (3) Expressly or impliedly promising future business, promotions, or increased
45 compensation for a real estate appraiser.
- 46 (4) Conditioning the ordering of a real estate appraisal report or the payment of
47 a real estate appraisal fee, salary, or bonus on the opinion, conclusion, or
48 valuation to be reached or on a preliminary estimate requested from a real
49 estate appraiser.
- 50 (5) Requesting that a real estate appraiser provide an estimated, predetermined,
51 or desired valuation in a real estate appraisal report or provide estimated

- 1 values or comparable sales at any time before the appraiser's completion of
2 the appraisal report.
- 3 (6) Providing to a real estate appraiser an anticipated, estimated, encouraged, or
4 desired value for a subject property or a proposed or targeted amount to be
5 loaned to the borrower. However, a real estate appraiser may be provided
6 with a copy of the sales contract for purchase transactions.
- 7 (7) Providing to a real estate appraiser, or any entity or person related to the
8 appraiser, stock or other financial or nonfinancial benefits.
- 9 (8) Allowing the removal of a real estate appraiser from a list of qualified
10 appraisers used by any entity without prior written notice to the appraiser.
11 The notice shall include written evidence of the appraiser's illegal conduct,
12 substandard performance, or otherwise improper or unprofessional behavior
13 or any violation of the Uniform Standards of Professional Appraisal Practice
14 (USPAP) or State licensing standards.
- 15 (9) Any other act or practice that impairs or attempts to impair a real estate
16 appraiser's independence, objectivity, or impartiality.
- 17 (10) Requesting or requiring a real estate appraiser to collect a fee from the
18 borrower, homeowner, or any other person in the provision of real estate
19 appraisal services.
- 20 (b) Nothing in this section shall be construed as prohibiting an appraisal management
21 company from requesting that a real estate appraiser:
- 22 (1) Consider additional appropriate property information.
- 23 (2) Provide further detail, substantiation, or explanation for the real estate
24 appraiser's value conclusion.
- 25 (3) Correct errors in the real estate appraisal report.

26 **"§ 93E-2-8. Disciplinary authority.**

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

- 34 (1) Filed an application for registration that, as of its effective date or as of any
35 date after filing, contained any statement that, in light of the circumstances
36 under which it was made, is false or misleading with respect to any material
37 fact.
- 38 (2) Violated or failed to comply with any provision of this Article or any rules
39 adopted by the Board.
- 40 (3) Been convicted of any felony or, within the past 10 years, been convicted of
41 any misdemeanor involving mortgage lending or real estate appraisal or any
42 offense involving breach of trust, moral turpitude, or fraudulent or dishonest
43 dealing.
- 44 (4) Been permanently or temporarily enjoined by any court of competent
45 jurisdiction from engaging in or continuing any conduct or practice
46 involving any aspect of the real estate appraisal management business.
- 47 (5) Been the subject of an order of the Board or any other state appraiser
48 regulatory agency denying, suspending, or revoking the person's license as a
49 real estate appraiser.
- 50 (6) Acted as an appraisal management company while not properly licensed by
51 the Board.

1 (7) Failed to pay the proper filing or renewal fee under this Article.

2 (b) The Board may, by order, summarily postpone or suspend the registration of an
3 appraisal management company pending final determination of any proceeding under this
4 section. Upon entering the order, the Board shall promptly notify the registrant that the order
5 has been entered and the reasons for the order. The Board shall calendar a hearing within 15
6 days after the Board receives a written request for a hearing. If a registrant does not request a
7 hearing, the order shall remain in effect until the order is modified or vacated by the Board. If a
8 hearing is requested, after notice of and opportunity for hearing, the Board may modify or
9 vacate the order or extend the order until the Board makes its final determination.

10 (c) The Board may, by order, impose a civil penalty upon a registrant or any partner,
11 officer, director, managing principal, or other person occupying a similar status or performing
12 similar functions on behalf of a registrant for any violation of this Article. The civil penalty
13 shall not exceed ten thousand dollars (\$10,000) for each violation of this Article.

14 (d) In addition to other powers under this Article, upon finding that any action of a
15 person is in violation of this Article, the Board may order the person to cease from the
16 prohibited action. If the person subject to the order fails to appeal the order of the Board or the
17 person appeals the order and the appeal is denied or dismissed and the person continues to
18 engage in the prohibited action in violation of the Board's order, the person shall be subject to a
19 civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the order.
20 The penalty provision of this section shall be in addition to and not in lieu of any other
21 provision of law applicable to a registrant for the registrant's failure to comply with an order of
22 the Board.

23 (e) Unless otherwise provided, all actions and hearings under this Article shall be
24 governed by Article 3A of Chapter 150B of the General Statutes.

25 (f) When a registrant is accused of any act, omission, or misconduct that would subject
26 the registrant to disciplinary action, the registrant, with the consent and approval of the Board,
27 may surrender the registrant's registration and all the rights and privileges pertaining to the
28 registrant for a minimum period of five years. A person who surrenders a registration shall not
29 be eligible for or submit any application for registration during the period the registration is
30 surrendered.

31 (g) If the Board has reasonable grounds to believe that an appraisal management
32 company has violated the provisions of this Article or that facts exist that would be the basis for
33 an order against an appraisal management company, the Board may at any time, either
34 personally or by a person duly designated by the Board, investigate or examine the books,
35 accounts, records, and files of any registrant or other person relating to the complaint or matter
36 under investigation. The Board may require any registrant or other person to submit a criminal
37 history record check and a set of that person's fingerprints in connection with any examination
38 or investigation. Refusal to submit the requested criminal history record check or a set of
39 fingerprints shall be grounds for disciplinary action. The reasonable cost of the investigation or
40 examination shall be charged against the registrant.

41 (h) The Board shall have the power to issue subpoenas requiring the attendance of
42 persons and the production of papers and records before the Board in any hearing,
43 investigation, inquiry, or other proceeding conducted by the Board. Upon the production of any
44 papers, records, or documents, the Board shall have the power to authorize true copies of the
45 papers, records, or documents to be substituted in the permanent record of the matter in which
46 the books, records, or documents shall have been introduced in evidence.

47 (i) The Board may conduct routine examinations of the books and records of an
48 appraisal management company registered with the Board in order to determine the appraisal
49 management company's compliance with this Article and any rules adopted by the Board
50 pursuant to the authority of G.S. 93E-2-3. An appraisal management company shall maintain in
51 this State all books and records related to real estate appraisal management services. An

1 appraisal management company shall pay any expenses incurred by the Board resulting from
2 the Board's examination of the appraisal management company's books and records.

3 **"§ 93E-2-9. Records.**

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

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

12 (c) Every registered appraisal management company shall maintain the accounts,
13 correspondence, memoranda, papers, books, and other records related to services provided by
14 the appraisal management company as prescribed in rules adopted by the Board. All records
15 shall be preserved for five years unless the Board, by rule, prescribes otherwise for particular
16 types of records.

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

20 **"§ 93E-2-10. Penalty; injunctive relief.**

21 (a) Any person violating the provisions of this Article shall be guilty of a Class I felony.

22 (b) The Board may appear in its own name in superior court in actions for injunctive
23 relief to prevent any person from violating the provisions of this Article or rules adopted by the
24 Board. The superior court shall have the power to grant these injunctions whether criminal
25 prosecution has been or may be instituted as a result of the violations or whether the person is
26 the holder of a registration issued by the Board under this Article.

27 **"§ 93E-2-11. Criminal history record checks of applicants or registrants for registration**
28 **as appraisal management companies.**

29 (a) Definitions. – The following definitions shall apply in this section:

30 (1) Applicant. – A person applying for registration as an appraisal management
31 company pursuant to G.S. 93E-2-4.

32 (2) Criminal history. – A history of conviction of a state or federal crime,
33 whether a misdemeanor or felony, that bears on an applicant's fitness for
34 registration to act as a real estate appraisal management company. The
35 crimes include the criminal offenses set forth in any of the following Articles
36 of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing
37 Monetary Substitutes; Article 5A, Endangering Executive and Legislative
38 Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses;
39 Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13,
40 Malicious Injury or Damage by Use of Explosive or Incendiary Device or
41 Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson
42 and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,
43 Embezzlement; Article 19, False Pretenses and Cheats; Article 19A,
44 Obtaining Property or Services by False or Fraudulent Use of Credit Device
45 or Other Means; Article 19B, Financial Transaction Card Crime Act; Article
46 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public
47 Morality and Decency; Article 26A, Adult Establishments; Article 27,
48 Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct
49 in Public Office; Article 35, Offenses Against the Public Peace; Article 36A,
50 Riots and Civil Disorders; Article 39, Protection of Minors; Article 40,
51 Protection of the Family; Article 59, Public Intoxication; and Article 60,

1 Computer-Related Crime. The crimes also include possession or sale of
2 drugs in violation of the North Carolina Controlled Substances Act in Article
3 5 of Chapter 90 of the General Statutes and alcohol-related offenses
4 including sale to underage persons in violation of G.S. 18B-302 or driving
5 while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In
6 addition to the North Carolina crimes listed in this subdivision, such crimes
7 also include similar crimes under federal law or under the laws of other
8 states.

9 (b) The Board may require that an applicant for registration as an appraisal management
10 company or a registrant consent to a criminal history record check. Refusal to consent to a
11 criminal history record check may constitute grounds for the Board to deny registration to an
12 applicant or registrant. The Board shall ensure that the State and national criminal history of an
13 applicant or registrant is checked. The Board shall be responsible for providing to the North
14 Carolina Department of Justice the fingerprints of the applicant or registrant to be checked, a
15 form signed by the applicant or registrant consenting to the criminal record check and the use
16 of fingerprints and other identifying information required by the State or National Repositories
17 of Criminal Histories, and any additional information required by the Department of Justice in
18 accordance with G.S. 114-19.26. The Board shall keep all information obtained pursuant to this
19 section confidential. The Board shall collect any fees required by the Department of Justice and
20 shall remit the fees to the Department of Justice for expenses associated with conducting the
21 criminal history record check.

22 (c) If an applicant or registrant's criminal history record check reveals one or more
23 convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically
24 bar registration. The Board shall consider all of the following factors regarding the conviction:

- 25 (1) The level of seriousness of the crime.
- 26 (2) The date of the crime.
- 27 (3) The age of the person at the time of the conviction.
- 28 (4) The circumstances surrounding the commission of the crime, if known.
- 29 (5) The nexus between the criminal conduct of the person and the job duties of
30 the position to be filled.
- 31 (6) The person's prison, jail, probation, parole, rehabilitation, and employment
32 records since the date the crime was committed.
- 33 (7) The subsequent commission by the person of a crime listed in subdivision
34 (a)(2) of this section.

35 If, after reviewing these factors, the Board determines that the applicant or registrant's criminal
36 history disqualifies the applicant or registrant for registration, the Board may deny registration
37 of the applicant or registrant. The Board may disclose to the applicant or registrant information
38 contained in the criminal history record check that is relevant to the denial. The Board shall not
39 provide a copy of the criminal history record check to the applicant or registrant. The applicant
40 or registrant shall have the right to appear before the Board to appeal the Board's decision.
41 However, an appearance before the full Board shall constitute an exhaustion of administrative
42 remedies in accordance with Chapter 150B of the General Statutes.

43 (d) Limited Immunity. – The Board, its officers, and employees, acting in good faith
44 and in compliance with this section, shall be immune from civil liability for denying
45 registration to an applicant or registrant based on information provided in the applicant or
46 registrant's criminal history record check."

47 **SECTION 2.** Article 4 of Chapter 114 of the General Statutes is amended by
48 adding a new section to read:

49 "§ 114-19.26. Criminal history record checks of applicants or registrants for registration
50 as real estate appraisal management companies.

1 The Department of Justice may provide to the North Carolina Appraisal Board from the
2 State and National Repositories of Criminal Histories the criminal history of any applicant or
3 registrant for registration under Article 2 of Chapter 93E of the General Statutes. Along with
4 the request, the Board shall provide to the Department of Justice the fingerprints of the
5 applicant or registrant, a form signed by the applicant or registrant consenting to the criminal
6 record check and use of fingerprints and other identifying information required by the State and
7 National Repositories, and any additional information required by the Department of Justice.
8 The applicant or registrant's fingerprints shall be forwarded to the State Bureau of Investigation
9 for a search of the State's criminal history record file, and the State Bureau of Investigation
10 shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal
11 history record check. The Board shall keep all information obtained pursuant to this section
12 confidential. The Department of Justice may charge a fee to offset the cost incurred by the
13 Department to conduct a criminal record check under this section. The fee shall not exceed the
14 actual cost of locating, editing, researching, and retrieving the information."

15 **SECTION 3.** Pursuant to G.S. 93E-2-1(b), as enacted in Section 1 of this act, a real
16 estate appraisal management company established under federal law shall not be required to
17 pay the initial registration fees required by G.S. 93E-2-6, enacted in Section 1 of this act.
18 However, the real estate appraisal management company established under federal law shall be
19 required to pay registration fees associated with subsequent registration renewal.

20 **SECTION 4.** This act is effective when it becomes law.