LAWS OF ALASKA

2018

Source
HCS CSSB 155(L&C) am H

Chapter No.

AN ACT

Relating to the registration and regulation of real estate appraisal management companies; relating to the establishment of fees by the Department of Commerce, Community, and Economic Development; relating to the Board of Certified Real Estate Appraisers; relating to real estate appraisers; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

Relating to the registration and regulation of real estate appraisal management companies; relating to the establishment of fees by the Department of Commerce, Community, and Economic Development; relating to the Board of Certified Real Estate Appraisers; relating to real estate appraisers; and providing for an effective date.

*** Section 1.** AS 08.01.065(c) is amended to read:

(c) Except as provided in **<u>(f) - (j)</u>** [(f) - (i)] of this section, the department shall establish fee levels under (a) of this section so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation. The department shall annually review each fee level to determine whether the regulatory costs of each occupation are approximately equal to fee collections related to that occupation. If the review indicates that an occupation's fee collections and regulatory costs are not approximately equal, the department shall calculate fee adjustments and adopt regulations under (a) of this section to implement the adjustments. In January of each year, the department shall report on all fee levels and revisions for the previous year under this subsection to the office of management and budget. If a board regulates an occupation covered by this chapter, the department shall consider the board's recommendations concerning the occupation's fee levels and regulatory costs before revising fee schedules to comply with this subsection. In this subsection, "regulatory costs" means costs of the department that are attributable to regulation of an occupation plus

(1) all expenses of the board that regulates the occupation if the board regulates only one occupation;

(2) the expenses of a board that are attributable to the occupation if the board regulates more than one occupation.

* **Sec. 2.** AS 08.01.065 is amended by adding a new subsection to read:

(j) The department shall establish for real estate appraisal management companies registered under AS 08.87 a registry fee in an amount that equals the amount determined by the federal Appraisal Subcommittee established under 12 U.S.C. 3310 as a national registry fee for each real estate appraiser of the appraiser panel of a real estate appraisal management company under 12 U.S.C. 3338 (Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989), as amended by 12 U.S.C. 5301 - 5641 (Dodd-Frank Wall Street Reform and Consumer Protection Act); the department may annually remit fees paid under this subsection to the Appraisal Subcommittee for participation in the national registry for real estate appraisal management companies.

* **Sec. 3.** AS 08.87.020 is amended to read:

Sec. 08.87.020. Powers and duties of board. In addition to the powers and duties conferred on the board by AS 08.01, the board shall

(1) establish the examination specifications for certification as a general real estate appraiser, as a residential real estate appraiser, and as an institutional real estate appraiser;

(2) adopt rules of professional conduct to establish and maintain a high standard of integrity in the real estate appraisal profession; [AND]

(3) adopt regulations necessary to carry out the purposes of this

chapter, including regulations

(A) necessary to comply with the requirements of

(i) 12 U.S.C. 3331 - 3355 [12 U.S.C. 3331 - 3351] (Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989), as amended by 12 U.S.C. 5301 - 5641 (Dodd-Frank Wall Street Reform and Consumer Protection Act); the regulations adopted by the board under AS 08.87.110, 08.87.120, **08.87.135, 08.87.220,** and 08.87.310 may not be more stringent than the corresponding minimum requirements for receiving approval of the state's program of certification of real estate appraisers **and registration of real estate appraisal management companies** under **12 U.S.C. 3331 - 3355** [12 U.S.C. 3331 - 3351] or other federal law**; and**

(ii) 15 U.S.C. 1639e (Truth in Lending Act);

(B) establishing registration procedures and standards for a real estate appraisal management company; and

(C) establishing the standards for the real estate appraisal management company's appraiser panel, including panel size and member qualifications; and

(4) report relevant information regarding a real estate appraisal management company's operations, including a disciplinary action under this chapter or a violation of state or federal law, to the Appraisal Subcommittee established under 12 U.S.C. 3310.

*** Sec. 4.** AS 08.87.020 is amended by adding a new subsection to read:

(b) The board may

(1) examine the records of a real estate appraisal management company operating in the state;

(2) require a real estate appraisal management company to submit reports, information, and documents to the board;

(3) investigate alleged violations of this chapter;

(4) conduct background investigations as provided in AS 08.87.135(c).

*** Sec. 5.** AS 08.87 is amended by adding new sections to read:

Article 2A. Real Estate Appraisal Management Companies.

Sec. 08.87.130. Registration required. (a) A person shall register as a real estate appraisal management company with the board to perform appraisal management services if the person

(1) provides an appraisal management service

(A) to a creditor or secondary mortgage market participant, including an affiliate; and

(B) in connection with valuing a borrower's principal dwelling as security for a consumer credit transaction or incorporating consumer credit transactions into a securitization; and

(2) oversees an appraiser panel.

(b) A person is guilty of a class B misdemeanor if the person engages in business as or holds out as a real estate appraisal management company, or performs or attempts to perform appraisal management services, at a time when the

(1) person does not hold a registration issued by the board; or

(2) registration issued by the board to the person is suspended, revoked, lapsed, or surrendered.

Sec. 08.87.135. Requirements for registration of real estate appraisal management companies. (a) The board shall register a real estate appraisal management company operating in the state if the company applies on a form approved by the board, pays the fee required under AS 08.01.065, and presents evidence satisfactory to the board that the company

(1) has designated a controlling person who will be the main point of contact between the board and the company and who meets the requirements under (b) of this section;

(2) has, if the company is not a corporation that is domiciled in this state, filed with the department a written consent to service of process on a resident of this state for any court action arising from an activity regulated under this chapter or 12 U.S.C. 3331 - 3355 and provided the name and contact information for the company's agent for service of process in this state;

(3) requires a real estate appraiser to comply with the Uniform

Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation when completing appraisals at the company's request;

(4) engages only appraisers who are certified under this chapter;

(5) has a process to verify that a person who is assigned to serve on an appraiser panel of the company

(A) is certified under this chapter and maintains a certification in good standing; and

(B) is qualified to conduct federally related transactions under federal law; in this subparagraph, "federally related transaction" means a real estate related transaction that involves an insured depository institution regulated by the United States Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration and requires the services of a real estate appraiser under the interagency appraisal rules;

(6) conducts appraisals independently and free from inappropriate influence and coercion as required under 12 U.S.C. 3353;

(7) is not directly or indirectly owned in whole or in part by a person that has had a certificate to act as a real estate appraiser denied, cancelled, suspended, revoked, put on probation, or surrendered in lieu of a pending revocation in any state unless the person has later had a certificate to act as a real estate appraiser granted or reinstated by the same state;

(8) has posted a surety bond in an amount required by the board, not to exceed $50,000; and

(9) is owned by persons who meet the requirements under (c) of this section.

(b) A controlling person designated under (a) of this section

(1) must be actively certified in a state as a real estate appraiser at all times that the person is designated as a controlling person;

(2) may not have had a certificate to act as a real estate appraiser denied, cancelled, suspended, revoked, put on probation, or surrendered in lieu of a

pending revocation in any state unless the person has later had the certificate to act as a real estate appraiser granted or reinstated; and

(3) must be of good moral character.

(c) A person who owns at least 10 percent of a real estate appraisal management company required to be registered under this chapter must be of good moral character as determined by the board and shall submit to a background investigation conducted by the board.

(d) The board shall provide a copy of a registration under this section to the Appraisal Subcommittee established under 12 U.S.C. 3310 on a form approved by the subcommittee.

(e) A registration under this section is valid for two years and may be renewed upon proof of continued compliance with the requirements under (a) - (c) of this section.

Sec. 08.87.140. Mandatory reporting. A real estate appraisal management company or a controlling person, employee, director, officer, or agent of a real estate appraisal management company that has reasonable cause to believe that a real estate appraiser has failed to comply with the Uniform Standards of Professional Appraisal Practice as adopted under 12 U.S.C. 3339 in a manner that materially affects a valuation appraisal shall report the noncompliance to the board and to the Appraisal Subcommittee established under 12 U.S.C. 3310.

Sec. 08.87.142. Statement of fees. (a) When reporting to a borrower, an appraisal management company shall separately state the fees

(1) paid to an appraiser for the completion of an appraisal; and

(2) charged to the borrower for appraisal management services by the appraisal management company.

(b) An appraisal management company may not include any fees for appraisal services listed in (a)(1) of this section as charges for an appraisal management service listed in (a)(2) of this section.

Sec. 08.87.145. Retention of records and inspection. A registered real estate appraisal management company or a real estate appraisal management company that has applied for registration shall allow the board to inspect and shall retain, for not less than the later of either five years after the date a file is submitted to the company or two years after final disposition of a related judicial proceeding,

(1) copies of all records related to requests for the company's appraisal management services and the real estate appraisers who perform the appraisals;

(2) a written record of all substantive communications between a real estate appraisal management company registered under this chapter and a real estate appraiser relating to an appraisal or participation in an appraiser panel.

Sec. 08.87.150. Reporting requirements for federally regulated real estate appraisal management companies. (a) A real estate appraisal management company that is owned and controlled by an insured depository institution as defined in 12 U.S.C. 1813 and regulated by the United States Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, shall annually submit to the board information that the board is required to submit to the Appraisal Subcommittee established under 12 U.S.C. 3310, including a

(1) report of intent to operate in the state; and

(2) disclosure of whether the company is directly or indirectly owned in whole or in part by any person that has had a certificate to act as a real estate appraiser denied, cancelled, suspended, revoked, put on probation, or surrendered in lieu of a pending revocation in any state.

(b) If a person has had disciplinary action taken against the person under (a)(2) of this section, the board shall collect information related to whether the certificate to act as a real estate appraiser was denied, cancelled, suspended, revoked, put on probation, or surrendered in lieu of a pending revocation for a substantive cause and whether the person has later had the certificate to act as a real estate appraiser reinstated by the same state.

Sec. 08.87.155. Exemptions. AS 08.87.130 - 08.87.150, 08.87.215, and 08.87.220 do not apply to a

(1) person who is employed by a department or division of an entity that provides appraisal management services only to that entity;

(2) real estate appraisal management company that is

(A) owned and controlled by an insured depository institution; and

(B) regulated by the Consumer Financial Protection Bureau, the Federal Housing Finance Agency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the United States Comptroller of the Currency, or the National Credit Union Administration; or

(3) real estate appraiser who enters into an agreement with another real estate appraiser for the performance of an appraisal that upon completion results in a report signed by both the real estate appraiser who completed the appraisal and the real estate appraiser who requested completion of the appraisal.

*** Sec. 6.** AS 08.87 is amended by adding new sections to article 3 to read:

Sec. 08.87.215. Prohibited practices; real estate appraisal management companies. (a) A real estate appraisal management company may not, while registered in the state, retain or enter into a business relationship with an employee, contractor, or agent whose certificate to act as a real estate appraiser is denied, cancelled, suspended, revoked, put on probation, or surrendered in lieu of a pending revocation in any state unless the employee, contractor, or agent has later had a certificate to act as a real estate appraiser granted or reinstated by the same state.

(b) A real estate appraisal management company or a controlling person, employee, director, officer, or agent of a real estate appraisal management company may not

(1) seek to influence a real estate appraiser through intimidation, coercion, extortion, or bribery;

(2) condition payment of an appraisal fee on a real estate appraiser's opinion, conclusion, or valuation;

(3) request that a real estate appraiser report a predetermined opinion, conclusion, or valuation;

(4) alter, amend, or change an appraisal report submitted by a real estate appraiser without the real estate appraiser's written consent;

(5) require a real estate appraiser to sign an indemnification agreement for a claim that does not arise from a service performed by the real estate appraiser;

(6) prohibit an appraiser from recording in the body of the report submitted by the appraiser to the appraisal management company the fee that the appraiser was paid by the company for the performance of the appraisal;

(7) prohibit lawful communication between a real estate appraiser and any other person who the real estate appraiser determines possesses information relevant to the appraisal;

(8) engage in an act or practice with intent to impair a real estate appraiser's independence, objectivity, and impartiality;

(9) knowingly make a false statement, submit false information, or fail to provide complete information in response to a question in an application for registration or renewal of a registration; or

(10) violate this chapter or a regulation adopted under this chapter.

Sec. 08.87.220. Disciplinary proceedings; real estate appraisal management companies. The board may take disciplinary action under AS 08.01.075 or suspend or revoke a registration of a real estate appraisal management company if it finds that the

(1) company or a controlling person, employee, director, officer, or agent of a real estate appraisal management company has violated a provision of this chapter or a regulation adopted by the board under this chapter;

(2) company or a controlling person of the company has had a certificate to act as a real estate appraiser or a registration as a real estate appraisal management company denied, cancelled, suspended, revoked, put on probation, or surrendered in lieu of a pending revocation in any state;

(3) company fails to comply with the Uniform Standards of Professional Appraisal Practice under 12 U.S.C. 3339;

(4) company performs appraisal management services in a manner that causes injury or loss to the public;

(5) company has ceased to operate in the state as a real estate appraisal management company; or

(6) company used fraud, deception, misrepresentation, or bribery in securing a registration under this chapter.

*** Sec. 7.** AS 08.87.900 is amended by adding new paragraphs to read:

(14) "appraisal management services" includes the performance of any of the following functions on behalf of a lender, financial institution, or other person:

(A) administration of an appraiser panel;

(B) recruitment, retention, or selection of real estate appraisers for the performance of appraisal services;

(C) contracting with real estate appraisers to perform appraisals;

(D) review of a completed appraisal before the delivery of the appraisal or review assignment to the person that ordered the appraisal;

(15) "appraiser panel" means a group of licensed or certified real estate appraisers who perform appraisals as independent contractors for a real estate appraisal management company;

(16) "borrower" means a person who applies for a mortgage loan;

(17) "company" means a real estate appraisal management company required to register under AS 08.87.130 that performs appraisal management services;

(18) "controlling person" means a person who

(A) owns more than 10 percent of a real estate appraisal management company;

(B) is an officer or director of a real estate appraisal management company;

(C) is employed and authorized by a real estate appraisal management company to enter into a contractual relationship with another person for the performance of appraisal management services or with a real estate appraiser to perform an appraisal; or

(D) has the authority to direct the management or policies of a real estate appraisal management company;

(19) "principal dwelling" means a residential structure or mobile home that contains one to four units but does not include a vacation or second home unless the borrower buys or builds a new dwelling that will become the primary location that the borrower inhabits within a year after the purchase or completion of construction.

*** Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) This Act applies to a person offering or engaged in providing appraisal management services for an appraisal on or after the effective date of secs. 1 - 7 of this Act. In this subsection, "appraisal management services" has the meaning given in AS 08.87.900.

(b) Notwithstanding the effective date of sec. 5 this Act, the Department of Commerce, Community, and Economic Development and the Board of Certified Real Estate Appraisers may not enforce the registration requirement under AS 08.87.130, added by sec. 5 of this Act, until March 1, 2019.

*** Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Commerce, Community, and Economic Development and the Board of Certified Real Estate Appraisers may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by the regulation.

*** Sec. 10.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).

*** Sec. 11.** Except as provided in sec. 10 of this Act, this Act takes effect January 1, 2019.