

FIRST REGULAR SESSION

HOUSE BILL NO. 967

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOBBS.

2347L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 339, RSMo, by adding thereto eleven new sections relating to registration of real estate appraisal management companies, with penalty provisions and an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 339, RSMo, is amended by adding thereto eleven new sections, to
2 be known as sections 339.1000, 339.1005, 339.1010, 339.1015, 339.1020, 339.1025, 339.1030,
3 339.1035, 339.1040, 339.1043, and 339.1045, to read as follows:

**339.1000. Beginning January 1, 2010, it shall be unlawful for any person to act as
2 a real estate appraisal management company, to directly or indirectly engage or assume
3 to engage in the business of real estate appraisal management, or to assume to engage in
4 the business of real estate appraisal management in this state, or to advertise or hold
5 himself or herself out as engaging in or conducting the business of real estate appraisal
6 management in this state without first registering with the division of finance under
7 sections 339.1000 to 339.1045. It shall also be unlawful, with regard to appraisals of any
8 real property where any portion of that property is located within this state, for any person
9 to perform any of the acts listed in this section without first being registered by the division
10 of finance under sections 339.1000 to 339.1045.**

339.1005. As used in sections 339.1000 to 339.1045, the following terms shall mean:

**(1) "Act as a real estate appraisal management company", to act, for compensation
2 or gain, either directly or indirectly, by accepting or offering to accept an appraisal
3 assignment, soliciting or offering to solicit an appraisal assignment, employing or
4 contracting with a licensed or certified real estate appraiser to prepare an appraisal
5**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

6 assignment on behalf of a client, whether such acts are done through contact by telephone,
7 by electronic means, by mail, or in person;

8 (2) "Appraisal management company" or "company", any person who administers
9 a network of certified and licensed appraisers to fulfill real estate appraisal assignments
10 on behalf of mortgage lending institutions, as well as other entities. "Administering a
11 network" includes recruiting appraisers, contracting with appraisers to perform appraisal
12 assignments, negotiating fees with appraisers, providing administrative duties such as
13 receiving appraisal orders and appraisal reports, and submitting appraisal reports
14 received from appraisers to the company's clients;

15 (3) "Appraiser", an individual licensed or certified by the Missouri real estate
16 appraisers commission under this chapter;

17 (4) "Client", any person or entity that contracts with, or otherwise enters into an
18 agreement with an appraisal management company for the performance of residential real
19 estate services;

20 (5) "Division", the division of finance within the department of insurance, financial
21 institutions and professional registration;

22 (6) "Employee", an individual who has an employment relationship acknowledged
23 by both the individual and the company and is treated as an employee for purposes of
24 compliance with the federal income tax laws;

25 (7) "Exempt person", the term includes any of the following:

26 (a) Any agency of the federal government or any state or municipal government;

27 (b) Any person authorized to engage in business as a bank, a farm credit system,
28 savings institution, or a credit union, under the laws of the United States, this state, or any
29 other state;

30 (c) Any licensed real estate broker who is performing those activities subject to the
31 regulation of the Missouri real estate appraisers commission; except that, an exempt person
32 does not include a real estate broker who receives compensation of any kind in connection
33 with the referral or placement of an appraisal assignment;

34 (d) Any officer or employee or an exempt person described in paragraphs (a) to (c)
35 of this subdivision when acting in the scope of employment for the exempt person;

36 (e) Any person who receives, in one calendar year, no more than five appraisal
37 assignments that are referred to an appraiser for a fee;

38 (8) "Person", an individual, partnership, limited liability company, limited
39 partnership, corporation, association, or other group engaged in joint business activities,
40 however organized;

41 (9) "Registrant", an appraisal management company that is registered under
42 sections 339.1000 to 339.1045.

2 339.1010. The division of finance may adopt rules not inconsistent with sections
3 339.1000 to 339.1045 which may be reasonably necessary to implement, administer, and
4 enforce the provisions of sections 339.1000 to 339.1045, including, but not limited to, the
5 authority to:

6 (1) Prescribe forms and procedures for submitting information to the board;

7 (2) Prescribe standards of practice for companies registered under sections
8 339.1000 to 339.1045; and

9 (3) Prescribe standards for the operation of real estate appraisal management
10 companies.

11 339.1015. 1. Prior to acting or offering to act as an appraisal management company
12 in this state, the company shall make written application to the division of finance for the
13 registration of the company accompanied by the fee set forth in section 339.1030. The
14 application shall include an irrevocable appointment of the division of finance to receive
15 service of any lawful process in any proceeding against the company or others arising
16 under sections 339.1000 to 339.1045, and such other information as the division may by
17 rule require.

18 2. An appraisal management company applying for registration in this state may
19 not be owned by any person who has had an appraiser license or certificate refused,
20 denied, canceled or revoked in this state or any other state. Each person that owns more
21 than ten percent of an appraisal management company shall be of good moral character
22 and shall submit to a background investigation, at their own expense, as determined by the
23 division.

24 3. Upon receipt of a properly completed application and fee and upon a
25 determination by the division that the activities of the company will be directed and
conducted by persons of good moral character, the division shall issue to the company a
certificate of registration authorizing the company to act or offer to act as an appraiser
management company in Missouri.

4. In the event the division finds that there is substantial reason to deny the
application for registration, the division shall notify the applicant that such application has
been denied and shall afford the applicant an opportunity for a hearing before the division
to show cause why the application should not be denied.

5. The acceptance by the division of an application for registration shall not
constitute the approval of its contents or waive the authority of the division to take
disciplinary action as provided by sections 339.1000 to 339.1045.

339.1020. 1. Any registrant that has a reasonable basis to believe that a real estate appraiser licensed in this state has violated applicable law or the Uniform Standards of Professional Appraisal Practice (USPAP), or has engaged in unethical conduct, shall promptly file a complaint with the division of finance against the appraiser.

2. The establishment of fees or fee schedules shall be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Actual fees paid for appraisal services shall not be misrepresented to include any hidden charges by the registrant, and only the actual fee paid to the appraiser shall represent the total sum of the appraisal fee.

3. Fees shall be paid to a real estate appraiser within thirty days of the date the appraisal is transmitted by the appraiser to the registrant or to the registrant's client.

4. Every applicant for registration under sections 339.1000 to 339.1045 who is not a resident of this state shall submit with the application an irrevocable consent that service of process in any action against the applicant arising out of the applicant's activities as an appraisal management company may be made by delivery of the process on the director of the division of finance. In addition, each application for registration shall submit the name and address of its registered agent.

5. Each registrant shall maintain or cause to be maintained complete records of appraisal assignment referred to an appraiser licensed or certified by the Missouri real estate appraisers commission, including records pertaining to the acceptance of fees from borrowers or clients and payment to appraisers. The division may inspect such records periodically without prior notice and may also inspect such records whenever the division determines that they are pertinent to an investigation of any specific complaint against a registrant.

6. A registrant shall promptly report to the division any and all changes in the information required to be submitted for the purpose of registration.

339.1025. Each real estate appraisal management company registered under sections 339.1000 to 339.1045 shall designate a managing principal who is responsible to assure that the company operates in compliance with sections 339.1000 to 339.1045. The company shall file a form with the division of any change in its managing principal. Any registrant who does not comply with this provision shall have its registration suspended under section 339.1035 until the registrant complies with this section. Any individual registrant who operates as a sole proprietorship shall be considered a managing principal for the purposes of sections 339.1000 to 339.1045.

339.1030. 1. Each application for registration shall be accompanied by a fee of five thousand dollars. Registrations issued under sections 339.1000 to 339.1045 shall expire on

3 the thirtieth day of June of every year and shall become invalid after the date unless
4 renewed prior to the expiration date by filing an application with and paying to the
5 division the fee of two thousand dollars. As a prerequisite to the renewal of registration,
6 the registrant shall file a statement on a form prescribed by the division. The division may
7 adopt rules establishing a system of renewal in which registrations expire annually with
8 varying expiration dates.

9 2. All registrations reinstated after the expiration dates shall be subject to a late
10 filing fee of ten dollars per month for each month or part thereof that the registration is
11 lapsed, not to exceed sixty dollars. The late filing fee shall be in addition to the required
12 renewal fee. In the event a registrant fails to reinstate the registration within six months
13 after the expiration date, the registration will expire and the registrant shall file a new
14 application for registration. Reinstatement is not retroactive.

15 3. Replacement registration documents may be issued by the division upon payment
16 of fifty dollars by the registrant. Certification by the division of the registration history
17 and appraisal management company registered under sections 339.1000 to 339.1045 shall
18 be made only after the payment of a fee of one hundred dollars to the division.

 339.1035. No employee, director, officer, or agent of a real estate appraisal
2 management company, or any third party acting as joint venture partner, or independent
3 contractor shall influence or attempt to influence the development, reporting, result, or
4 review of an appraisal through coercion, extortion, collusion, compensation, inducement,
5 intimidation, bribery, or in any other manner including but not limited to:

- 6 (1) Withholding or threatening to withhold timely payment for an appraisal report;
- 7 (2) Withholding or threatening to withhold future business for an appraiser, or
8 demoting or terminating or threatening to demote or terminate an appraiser;
- 9 (3) Expressly or impliedly promising future business, promotions, or increased
10 compensation for an appraiser;
- 11 (4) Conditioning the ordering of an appraisal report or the payment of an appraisal
12 fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a
13 preliminary estimate requested from an appraiser;
- 14 (5) Requesting that an appraiser provide an estimated, predetermined, or desired
15 valuation in an appraisal report, or provide estimated values or comparable sales at any
16 time prior to the appraiser's completion of an appraisal report;
- 17 (6) Providing to an appraiser an anticipated, estimated, encouraged, or desired
18 value for a subject property or a proposed or target amount to be loaned to the borrower;
19 except that a copy of the sales contract for purchase transactions may be provided;

20 (7) Providing to an appraiser, or any entity or person related to the appraiser, stock
21 or other financial or nonfinancial benefits;

22 (8) Allowing the removal of an appraiser from a list of qualified appraisers used
23 by any entity, without prior written notice to such appraiser, which notice shall include
24 written evidence of the appraiser's illegal conduct, a violation of the Uniform Standards
25 of Professional Appraisal Practice (USPAP) or state licensing standards, substandard
26 performance, or otherwise improper or unprofessional behavior;

27 (9) Failing to pay when due reasonable fees to an appraiser for appraisal services
28 that are requested from the appraiser in writing by the real estate management company
29 and performed by the appraiser; or

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

32 2. The company shall not:

33 (1) Require an appraiser to collect the appraisal fee from a borrower, homeowner,
34 or other person;

35 (2) Require an appraiser to provide the company with the appraiser's digital
36 signature or seal;

37 (3) Alter, amend, or change an appraisal report submitted by a Missouri licensed
38 or certified appraiser in any fashion, including removing the appraiser's signature or seal,
39 or adding information to or removing information from the report;

40 (4) Transmit an appraisal to the company's client if the appraisal has been altered
41 in any fashion from when it was transmitted to the company; or

42 (5) Require an appraiser to sign any sort of indemnification agreement that would
43 require the appraiser to defend and hold harmless the company, any software provider
44 that the company requires an appraiser to use, or any other company that the company
45 does business with, from any liability, damage, losses or claim.

46 3. Nothing in this section shall be construed as prohibiting a real estate appraisal
47 management company from requesting that an appraiser:

48 (1) Consider additional appropriate property information;

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

51 (3) Correct errors in the appraisal report.

339.1040. 1. The division of finance shall keep a register of all applicants for
2 registration, showing for each the date of application, name, business address, and whether
3 the registration was granted or refused. The register shall be prima facie evidence of all
4 matters received therein.

5 **2. The division of finance shall also keep a current roster showing the name and**
6 **address of all appraisal management companies registered with the division. The roster**
7 **shall be kept on file in the office of the division and be open to public inspection.**

8 **3. On or before the first day of November of each year, the division shall file with**
9 **the secretary of state a copy of the roster of appraisal management companies registered**
10 **with the division and a report containing a complete statement of income received by the**
11 **division in connection with the registration of appraisal management companies for the**
12 **preceding fiscal year ending June thirtieth, attested by the affidavit of the director of the**
13 **division of finance.**

339.1043. A surety bond in the principal sum of one million dollars shall
2 **accompany each registration. The bond shall be in a form satisfactory to the division and**
3 **shall be issued by a bonding company or insurance company authorized to do business in**
4 **this state, to secure the faithful performance of the obligations of the registrant in**
5 **connection with the activities of real estate appraising. A registrant may, in lieu of filing**
6 **the bond required under this section, provide the division with a one million dollar**
7 **irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any financial**
8 **institution.**

339.1045. 1. The division of finance may, by order, deny, suspend, revoke, or refuse
2 **to issue or renew a registration of an appraisal management company under sections**
3 **339.1000 to 339.1045 or may restrict or limit the activities relating to real estate appraisal**
4 **management companies of a person who owns an interest in or participates in the business**
5 **of an appraisal management company, if the division finds that any of the following**
6 **circumstances apply to the applicant, registrant, or any partner, member, manager, officer,**
7 **director, managing principal, or any person occupying a similar status or performing**
8 **similar functions or any person directly or indirectly controlling the applicant or**
9 **registrant:**

10 **(1) The person has filed an application for registration that, as of its effective date**
11 **or as of any date after filing, contained any statement that, in light of the circumstances**
12 **under which it was made, is false or misleading with respect to any material fact;**

13 **(2) The person has violated or failed to comply with any provision of sections**
14 **339.1000 to 339.1045, or any rule adopted by the division;**

15 **(3) The person has been convicted of any felony, or any misdemeanor involving**
16 **mortgage lending or real estate appraisal, or any offense involving breach of trust, moral**
17 **turpitude, or fraudulent or dishonest dealing;**

18 **(4) The person is permanently or temporarily enjoined by any court of competent**
19 **jurisdiction from engaging in or continuing any conduct or practice involving any aspect**
20 **of the real estate appraisal management business;**

21 **(5) The person is the subject of an order of a Missouri real estate appraiser**
22 **regulatory agency denying, suspending, or revoking that person's license as a real estate**
23 **appraiser;**

24 **(6) The person acted as an appraisal management company while not properly**
25 **registered by the division of finance;**

26 **(7) The person failed to pay the proper filing or renewal fee under sections 339.1000**
27 **to 339.1045.**

28 **2. Following a hearing, the division shall also have power to suspend or revoke any**
29 **certificate of registration issued under the provisions of sections 339.1000 to 339.1045 or**
30 **to reprimand or censure any registrant when the registrant has been convicted or has**
31 **entered a plea of guilty or no contest upon which final judgment is entered by a court of**
32 **competent jurisdiction in this state, or any other state, of the criminal offenses of**
33 **embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to**
34 **defraud, or any other offense involving moral turpitude which would reasonably affect the**
35 **registrant's performance in the appraisal management business.**

36 **3. The division of finance may, by order, summarily postpone or suspend the**
37 **registration of an appraisal management company pending final determination of any**
38 **proceeding under this section. Upon entering the order, the division shall promptly notify**
39 **the registrant that the order has been entered and the reasons for the order. The division**
40 **shall calendar a hearing within fifteen days after the division receives a written request for**
41 **a hearing. If a registrant does not request a hearing, the order will remain in effect until**
42 **it is modified or vacated by the division of finance. If a hearing is requested, after notice**
43 **of and opportunity for hearing, the division may modify or vacate the order or extend it**
44 **until final determination.**

45 **4. The division of finance may, by order, impose a civil penalty upon a registrant**
46 **or any partner, officer, director, or other person occupying a similar status or performing**
47 **similar functions on behalf of a registrant for any violation of sections 339.1000 to**
48 **339.1045. The civil penalty shall not exceed ten thousand dollars for each violation of**
49 **sections 339.1000 to 339.1045.**

50 **5. In addition to other powers under sections 339.1000 to 339.1045, upon finding**
51 **that any action of a person is in violation of sections 339.1000 to 339.1045, the division may**
52 **order the person to cease from the prohibited action. If the person subject to the order**
53 **fails to appeal the order of the division, or if the person appeals and the appeal is denied**

54 or dismissed, and the person continues to engage in the prohibited action in violation of the
55 division's order, the person shall be subject to a civil penalty of up to twenty-five thousand
56 dollars for each violation of the order. The penalty provision of this section shall be in
57 addition to and not in lieu of any other provision of law applicable to a registrant for the
58 registrant's failure to comply with an order of the division.

59 **6. When a registrant is accused of any act, omission, or misconduct that would**
60 **subject the registrant to disciplinary action, the registrant, with the consent and approval**
61 **of the division, may surrender its registration and all the rights and privileges pertaining**
62 **to it for a minimum period of five years. A person who surrenders a registration shall not**
63 **be eligible for or submit any application for registration under sections 339.1000 to**
64 **339.1045.**

65 **7. If the division of finance has reasonable grounds to believe that an appraisal**
66 **management company has violated the provisions of sections 339.1000 to 339.1045 or that**
67 **facts exist that would be the basis for an order against an appraisal management company,**
68 **the division may at any time, either personally or by a person duly designated by the**
69 **division, investigate or examine the books, accounts, records, and files of any registrant or**
70 **other person relating to the complaint or matter under investigation. The division may**
71 **require any registrant or other person to submit a criminal history record check and a set**
72 **of that person's fingerprints in connection with any examination or investigation. Refusal**
73 **to submit the requested criminal history record check or a set of fingerprints shall be**
74 **grounds for disciplinary action. The reasonable cost of such investigation or examination**
75 **shall be charged against the registrant.**

76 **8. The division of finance shall have the power to issue subpoenas requiring the**
77 **attendance of persons and the production of papers and records before the division in any**
78 **hearing, investigation, inquiry, or other proceeding conducted by the division. Upon the**
79 **production of any papers, records, or documents, the division shall have the power to**
80 **authorize true copies thereof to be substituted in the permanent record of the matter in**
81 **which the books, records, or documents shall have been introduced in evidence.**

82 **9. The division of finance may from time to time, at the expense of the division,**
83 **conduct routine examinations of the books and records of an appraisal management**
84 **company registered with the division in order to determine the compliance with sections**
85 **339.1000 to 339.1045 and any rules adopted thereunder.**

Section B. Because immediate action is necessary to regulate appraisal management
2 companies, section A of this act is deemed necessary for the immediate preservation of the public
3 health, welfare, peace, and safety, and is hereby declared to be an emergency act within the

4 meaning of the constitution, and section A of this act shall be in full force and effect upon its
5 passage and approval.

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