



Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Natalie E. Tennant
Secretary of State
State of West Virginia

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.com

July 10, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WV Real Estate Appraiser Licensing and Certification Board

RULE: New Rule, 190CSR5, Requirements for Registration and Renewal of Appraisal Management Companies

DATE FILED AS AN EMERGENCY RULE: June 6, 2014

DECISION NO. 15-14

FILED
2014 JUL 10 P 3:24
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 15-14)

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RULE: New Rule, 190CSR5
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- par. 1 The WV Real Estate Appraiser Licensing and Certification Board (Board) has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Board filed this emergency rule with supporting documents with the Secretary of State June 6, 2014 and with the LRMRC June 6, 2014.
- par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §30-38A-2 reads:

§30-38A-2. Applicable law.

Appraisal management companies and appraisal management services covered under the provisions of this article are subject to the requirements set forth in this article and the rules promulgated hereunder, and the provisions of article one and article thirty-eight of this chapter.

par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Board are as follows:

Statutory Authority:

- "Minimum Requirements for Appraisal Management Companies," Federal Register; April 9, 2014
- "Sunrise Report, Appraisal Management Companies;" West Virginia legislative Auditor, Performance and Research Division; July 2012
- "Title XI of FIRREA, Real Estate Appraisal Reform {12 U.S.C. 3331-3351} as Amended by the Dodd Frank Reform Act (Unofficial Appraisal Subcommittee Staff "Redlined" Version); October 26,2010
- W.Va. Code§§ 30-38-7, 30-38-9, 30-38A-1 et seq.

The Dodd Frank Act was signed into law on July 21, 2010, adding a new section to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). This new section, Section 1124, established minimum requirements to be applied by States in the registration and supervision of appraisal management companies (AMCs). It also gave authority to establish an AMC National Registry.

Section 11 24 called for six agencies (the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, the Federal Housing Finance Agency and the National Credit Union Administration) to jointly issue rules implementing these minimum requirements. States would then have thirty- six months after the effective date to implement the minimum requirements. Proposed rules were issued by the Agencies in the April 9, 2014 Federal Register.

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) provided appraiser regulatory boards throughout the United States an "Unofficial Appraisal Subcommittee Staff 'Red lined' Version Title XI of FIRREA, Real Estate Appraisal Reform {12 U.S.C. 3331-3351} as Amended by the Dodd Frank Reform Act." (October 26, 2010) Appraiser regulatory boards were "officially" notified of upcoming requirements to register and regulate AMCs.

On November 30, 2011, the West Virginia Real Estate Appraiser Licensing and Certification Board submitted a Sunrise Review Application to the Joint Standing Committee on Government Organization requesting licensure of AMCs in order to comply with the upcoming federal law.

The July 2012 Sunrise Report by the West Virginia Legislative Auditor's Performance Evaluation and Research Division recommended that the Legislature establish registration of AMCs by the Board in order to comply with federal law. (The Legislative Auditor's report includes a discussion regarding the distinctions between the three regulatory designations- registration, certification and licensure.)

W. Va. Code § 30-38A, the Appraisal Management Companies Registration Act, was passed by the 2013 West Virginia Legislature, giving the Board further authority to promulgate rules under this act. (W.Va. Code § 30-38-7 of the West Virginia Real Estate Appraiser Licensing and Certification Act was amended to include powers and duties related to appraisal management companies during the same legislative session.

W. Va. Code § 30-38A-1 makes it unlawful for appraisal management companies to operate in West Virginia after July 1, 2014 without a registration issued by this Board. Federally-related (mortgage) transactions secured by the consumer's principal dwelling utilize AMCs in the mortgage loan process. Most mortgages made in the United States are federally-related transactions. The inability of AMCs to operate in West Virginia would substantially harm the mortgage industry and consumers in West Virginia.

par. 13

It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare", "time limit" and "prevent substantial harm to the public interest.

par. 14

This decision shall be cited as Emergency Rule Decision 15-14 or ERD 15-14 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV Real Estate Licensing and Certification Board, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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