

**WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Real Estate Appraisal Licensing & Certification Board TITLE NUMBER: 190

CITE AUTHORITY: W. Va. Code §§ 30-38-7, 30-38-9, 30-38-1, 30-38A-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

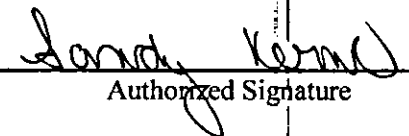
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Requirements for Registration and Renewal of Appraisal Management Companies

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 190
LEGISLATIVE RULE
WEST VIRGINIA REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD

SERIES 5
REQUIREMENTS FOR REGISTRATION AND RENEWAL
OF APPRAISAL MANAGEMENT COMPANIES

§190-5-1. General.

1.1. Scope. -- This legislative rule establishes the requirements for an appraisal management company to be registered and to perform appraisal management services in the state of West Virginia. It further establishes procedures and requirements for registration renewals and regulation of Appraisal Management Companies.

1.2. Authority. -- W. Va. Code §§ 30-38-7, 30-38-9, 30-38-1, 30-38A-1 *et seq.*

1.3. Filing Date. --

1.4. Effective Date. --

§190-5-2. Definitions.

As used in this rule, the words or terms have the same meaning as the definitions provided in W.Va. Code § 30-38A-1.

2.1. Broker price opinion" or "BPO" means an estimate prepared by a real estate broker, agent or sales person that details the probably selling price of particular piece of real estate property and provides a varying level of detail about the property's condition, market and neighborhood, and information on comparable sales, but does not include an AVM, as defined by section 1126(b) of FIRREA ((12 U.S.C.A. § 3355 (b))).

2.2. "Completed appraisal" means delivery of the signed appraisal report that is in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) to the appraisal management company.

2.3. "National Registry" means a database, maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, containing selected information about the Nation's State certified and licensed real estate appraisers.

2.4. "Truth in Lending Act" or "TILA" means the Truth in Lending Act of 1968 (15 U.S.C. 1631 et seq.) and any amendments thereto. It is an act to safeguard the consumer in connection with the utilization of credit by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit; by restricting the garnishment of wages; and by creating the National Commission of Consumer Finance to study and make recommendations on the need for further regulation of the consumer finance industry; and for other purposes.

§190-5-3. Registration Requirements.

3.1. Every person or firm who desires to be registered as an appraisal management company in this State shall comply with the provisions of W. Va. Code § 30-38A-1 *et seq.* and submit a written application on a form prescribed by the board setting forth the following:

3.1.a. The legal name of the applicant, the name under which the applicant will do business in West Virginia, the physical and mailing address, telephone number, website, facsimile, and email address of the appraisal management company;

3.1.b. The name, the physical and mailing address and the contact information, including telephone number and e-mail address, of the controlling person of the appraisal management company seeking registration;

3.1.c. The name, the physical and mailing address and the contact information, including telephone number and e-mail address, of an individual that will be the initial point of contact or register agent for all communications with the board, if it is not the controlling person;

3.1.d. If the applicant is a domestic firm, the designation of an agent for service of process; or if the applicant is a foreign firm, documentation that the foreign firm is authorized to do business in this State and that an agent for service of process has been designated and the following has been submitted:

3.1.d.1. A copy of the filing with the Secretary of State's Office appointing an agent for service of process;

3.1.e. A certificate of authority issued by the Secretary of State;

3.1.f. Every appraisal management company shall file with the board a copy of the annual report required to be filed with the Secretary of State under W. Va. Code § 59-1-2a on or before the 30th day of June on an annual basis; and

3.1.g. Each application for registration shall be accompanied by the fees required pursuant to W. Va. Code § 30-38A-10 and this rule. The board shall reject and return to the applicant any application which is incomplete or not accompanied by the required fees.

3.2. Every person or firm seeking to be registered as an appraisal management company in this State shall certify on a form prescribed by the board the following:

3.2.a. That the appraisal management company has written policies and procedures demonstrating compliance with W. Va. Code § 30-38A-7 et seq., and such policies and procedures shall be provided to the board upon request;

3.2.b. That the appraisal management company will have a system in place to require appraisals are conducted independently and without inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the Truth in Lending Act and the rules and regulations issued pursuant to the Appraisal Act;

3.2.c. That the appraisal management company requires the appraisers completing appraisals at the company's request to comply with USPAP;

3.2.d. That the appraisal management company shall not compensate an employee, a real estate broker or real estate agent to perform a BPO or comparative market analysis pursuant to W.Va. Code § 30-38-1;

3.2.e. That the appraisal management company shall maintain records required records per WV Code § 30-38A-13 for a minimum period of five years, or at least two years after final disposition of any judicial proceeding related to the assignment, whichever period expires last;

3.2.f. That the appraisal management company provide proof of valid and sufficient surety bond as required by W. Va. Code § 30-38A-9; and

3.2.g. That individuals required by W.Va. Code §30-38A-8 shall submit to required state and national criminal history record checks.

§190-5-4. Exemptions to Registration Requirement.

This rule does not apply to a financial institution, including a department or unit within an institution that is regulated by an agency of this state or the United States government; or an appraisal management company that is a subsidiary wholly owned and controlled by a financial institution regulated by a federal financial institution regulatory agency.

§190-5-5. Surety Bond Requirements.

5.1. All appraisal management companies must maintain surety bonds that confirm to W. Va. Code § 30-38A-9 to secure the faithful performance of its obligations.

5.2. Be in conformance with all relevant West Virginia statutory requirements.

5.3. The applicant or appraisal management company shall post with the board at the time of application a \$50,000 surety bond. The board may in its discretion accept an appropriate deposit of cash or security in lieu of a surety bond.

5.4. Any claims reducing the face amount of the bond, cash or securities shall be restored to \$50,000 within ten (10) business days of being drawn down.

5.5. The board shall be notified immediately, if the surety bond is cancelled or terminated.

5.6. The appraisal management company shall notify the board in writing of any claims made on the bond, cash or securities.

5.7. The surety bond shall remain in place for no less than one year after the appraisal management ceases operations in this state.

5.8. Claims against a surety bond:

5.8.a. The surety accrues to the state for the benefit of a claimant against the appraisal management company.

5.8.b. The board may bring suit on behalf of the party having a claim against the appraisal management company.

5.8.c. Consumer claims shall be given priority in recovering from the surety bond.

5.8.d. Claimants may make claims under the bond up to one year after the appraisal management company ceases to do business in this state.

§190-5-6. Renewal and Reinstatement.

6.1. Renewals.

6.1.a. Registrations are renewed for the period from July 1 to June 30 of the following year.

6.1.b. The board shall send a renewal notice to the controlling person identified by the appraisal management company by May 1 of each year.

6.1.c. Failure to receive a renewal notice from the board shall not relieve the appraisal management company of the responsibility to timely apply for renewal.

6.1.d. A holder of an appraisal management company registration desiring the renewal of such registration shall apply in writing upon the form provided by the board and shall forward the renewal fee. Forms are available upon request to the board.

6.1.e. Any company who acts or holds itself out as a registered appraisal management company while its appraisal management company registration is delinquent or expired is subject to disciplinary action and penalties as prescribed in W. Va. Code § 30-38A-16 and these rules.

6.1.f. Fees for renewals or reinstatement shall not be refundable.

6.2. Delinquent Registrations.

6.2.a. Registrations not renewed in a timely manner are delinquent. Registration renewals are due 30 days prior to June 30 of the renewal licensing year. Renewals received after that date will be subject to a delinquent license fee pursuant to W.Va. Code §30-38A-4 and Subdivision 6.2.b. of this rule.

6.2.b. Delinquent renewal fees are two hundred fifty dollars (\$250) per month for each delinquent month.

6.2.c. Delinquent registrations may be reinstated within three months after expiration upon proper application and payment to the board of the renewal fee of two thousand dollars (\$2,000) and appropriate delinquent fee(s).

6.3. Expired Registrations and Reinstatement of an Expired Registration.

6.3.a. A registration that has been delinquent for more than three months shall be considered expired and a new application for registration is required.

6.3.b. Reinstatement of an expired registration is not retroactive.

§190-5-7. Schedule of Fees.

7.1. All fees for registration and application are non-refundable.

7.2. The fees charged by the board are as follows:

7.2.a. Application fee of five hundred dollars (\$500);

7.2.b. Registration fee of two thousand dollars (\$2,000);

7.2.c. Registration renewal fee of two thousand dollars (\$2,000);

7.2.d. Delinquent renewal fee of two hundred fifty dollars (\$250) per month for each delinquent month;

7.2.e. Change of address or business name fee of one hundred dollars (\$100);

- 7.2.f. Change of contact person fee of one hundred dollars (\$100);
- 7.2.g. Change of controlling person fee of one hundred dollars (\$100);
- 7.2.h. Change of 50% ownership application fee of two hundred dollars (\$200);
- 7.2.i. Certificate of good standing: twenty five dollars (\$25);
- 7.2.j. Copy fees: fifty cents (\$.50) per page;
- 7.2.k. A duplicate wall registration certificate: twenty five dollars (\$25); and

7.3. The board shall collect from each appraisal management company an annual registry fee established by the Appraisal Subcommittee and shall annually submit the registry fees to the Federal Financial Institutions Examination Council.

7.4. Payment of application fees shall be made by certified check, bank check or money order payable to the board.

7.5. The board shall deposit all fees and revenues collected pursuant to this rule in a special fund that the board shall use solely for the purposes of administration and enforcement of its duties pursuant to W.Va. Code §§ 30-1-10 and 30-38A-1 et seq.

7.6. In the event that the board asks an applicant to provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the board's request, the board shall cancel the applicant's application and the application fee shall be retained by the board.

§190-5-8. Responsibilities and Duties of Appraisal Management Companies.

An appraisal management company registered under the provisions of this article shall:

8.1. Have a system in place to verify that any appraiser being added to its appraiser panel to appraise properties in West Virginia is licensed or certified and in good standing by this state. The appraisal management company shall verify the status of the appraiser by:

8.1.a. Contacting the West Virginia Real Estate Appraiser Licensing and Certification Board; or

8.1.b. Utilizing the National Registry of the Appraisal Subcommittee.

8.2. Require each appraiser being added to the panel to certify in writing the appraiser's areas of geographic competency, the types of properties the appraiser is competent to appraise, and the methodologies the appraiser is competent to perform;

8.2.a. An appraisal management company shall require the appraiser to update this information annually.

8.3. Have a system in place to review the work of utilized appraisers who perform appraisal services for the appraisal management company in this state to validate that the services were conducted in conformity with the USPAP;

8.3.a. An appraisal management company is not required to review all appraisals performed by each appraiser, but may choose a representative sample of each appraiser's reports.

8.3.b. An appraisal management company shall review each appraiser's work at least once a year and shall keep records of such reviews for a period of five (5) years from the date they are done.

8.3.c. Any employee or independent contractor appraiser of an appraisal management company that performs an appraisal review shall:

8.3.c.1. Be licensed in this state or any state;

8.3.c.2. At a minimum hold the same certification level for the property type as the appraiser who performed the appraisal;

8.3.c.3. Verify the work of the appraisers performing appraisals for the appraisal management company is being conducted in accordance with the minimum USPAP standards;

8.3.c.4. Inform the board, when there is reasonable belief, that an appraiser is in violation of the laws, rules, or uniform standards regarding appraisers, including but not limited to grounds for disciplinary action as prescribed in W. Va. Code § 30-38-12.

8.4. Designate a controlling person, who will be responsible for compliance with W. Va. Code § 30-38A-13 and the provisions of this rule, and notify the board, in writing within ten (10) business days, of any change in its controlling person;

8.5. Maintain a registered agent for service of process and provide the board with the same information for the agent that is provided to the Secretary of State; and notify the board, in writing, within ten (10) business days, of change of a registered agent;

8.6. Disclose to its client the actual fees paid to an appraiser for appraisal services, separate from any other fees or charges for appraisal management services, and make the information available to the board upon request;

8.7. Inform the board in writing within ten (10) business days of the effective date to any change to:

8.7.a. Business name;

8.7.b. Any change of physical and mailing address, change of company name, telephone number, website, facsimile, or email address;

8.7.c. Change of owner who is an employee of or consultant for the appraisal management company and contact information for said person.

§190-5-9. Retention of Records.

An appraisal management company registered under the provisions of W. Va. Code § 30-38A-1 *et seq.*, and this rule shall retain the following records:

9.1. A detailed record of each service request that it receives for appraisals of real property located in this state, which shall include, but is not limited to, the following:

9.1.a. Letter of engagement with the appraiser;

9.1.b. Appraisal report received from the appraiser, including the original report, any revised reports, and any addenda or other material furnished subsequent to the delivery of the original report;

9.1.c. Any and all assignment related correspondence sent to and received from the appraiser;

9.1.d. Letter of engagement with any independent review appraiser for the purpose of reviewing the requested appraisal if an appraisal review assignment is commissioned by the AMC;

9.1.e. Review of the requested appraisal, including the original review report, any and all correspondence sent to and received from the reviewing appraiser, and each subsequent revised review report;

9.1.f. Requests received from the client, all documentation supplied to that client, and any and all correspondence sent to and received from the client; and

9.1.g. Fees paid to utilized appraisers and the fees received from the client;

9.2. Copies of all appraiser fee schedules maintained and used by the appraisal management company including:

9.2.a. Beginning and ending effective dates of the schedules;

9.2. b. Fees paid for a defined service;

9.2.c. Documentation to support that the fee schedule is customary and reasonable and complies with TILA.

9.2.d. Copies of rosters of appraiser fee panels used for assignments, including the name of the appraiser, each appraiser's West Virginia credential number, the date the appraiser was placed on the panel and the date and reason the appraiser was removed from the panel.

9.3. Records must be retained for a minimum of five years. However if, within the five-year period, an appraisal or report is involved in an investigation, litigation, or state or federal review,

the records must be retained for two years after the date of the final disposition of that investigation, litigation, or state or federal review whichever is later. Records may be retained as a photocopy or electronic copy type of media.

9.4. The board may inspect the records of appraisal management companies at any time without prior notice, provided that such inspection is conducted within the normal business hours of the AMC.

§190-5-10. Payment of Fees to Appraisers

10.1. Except in cases of breach of contract or substandard performance, appraisal management companies shall pay an independent appraiser for the completion of an appraisal within forty five (45) days after the appraiser provides the completed appraisal to the appraisal management company unless otherwise agreed to by the parties.

10.1.a. Subsequent request by the appraisal management company to the appraiser for additional support of valuation or correction of factual and objective data shall not extend the payment date beyond the 45 days from initial delivery of assigned appraisal.

10.2. If an appraisal management company decides that it will not pay a fee to an appraiser for an appraisal, the appraisal management company shall notify the appraiser in writing of the reason for non-payment within thirty (30) days after the appraiser transmits the appraisal to the appraisal management company. The notice shall state the address of the subject property of the appraisal, the name of the appraiser(s) signing the report, and the reason why the fee shall not be paid.

10.3. In cases where the appraisal management company does not pay the appraiser for an appraisal, the appraisal shall not be utilized by the appraisal management company for any purpose.

§190-5-11. Temporary Authority to Conduct Business.

11.1. An appraisal management company that is not exempt from W.Va. Code §30-38A, which began offering appraisal management services in this state before July 1, 2014, and has continued to offer appraisal management services in this state since then without interruption, may continue to offer appraisal management services after July 1, 2014, without first being registered if:

11.1.a. An application has been filed with the Board;

11.1.b. The appropriate fees have been paid;

11.1.c. The individual who signed the application in the capacity of the controlling person continues to act as controlling person until the application is approved, deemed withdrawn, provisionally denied or denied by final order;

11.1.d. The application has not been:

- 11.1.d.1. Deemed withdrawn;
- 11.1.d.2. Provisionally denied;
- 11.1.d.3. Denied by final order;
- 11.1.d.4. Approved;

11.2. An appraisal management company that is not exempt from, W.Va. Code §30-38A, which has not started offering appraisal management services in this state by July 1, 2014, may not offer appraisal management services in this state until registered.

11.3. Authority to conduct business temporarily without registration under this section terminates on the date that an application has been:

- 11.3.a. Deemed withdrawn;
- 11.3.b. Provisionally denied;
- 11.3.c. Denied by final order;
- 11.3.d. Approved.

11.4. For purposes of this section, an appraisal management company has continued to offer appraisal management services in this state without interruption if it has made at least one appraisal assignment in each calendar month for real property in this state and has maintained records required under this subchapter for each appraisal assignment made.

