

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

Appraisal Management Companies; Temporary Regulations

[43 Pa.B. 3098]

[Saturday, June 8, 2013]

The State Board of Certified Real Estate Appraisers (Board) adds Subchapter D (relating to appraisal management companies) to read as set forth in Annex A.

Effective Date

The temporary regulations will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The Appraisal Management Company Registration Act (act) (63 P. S. §§ 457.21—457.31) directs the Board to promulgate temporary regulations for the registration of appraisal management companies (AMC). Section 4(b) of the act (63 P. S. § 457.24(b)) authorizes the adoption of temporary regulations which are not subject to sections 201—203 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1203), known as the Commonwealth Documents Law (CDL), or the Regulatory Review Act (71 P. S. §§ 745.1—745.12).

Background and Need for Temporary Regulations

Section 4(b) of the act provides the Board's authority to promulgate temporary regulations to facilitate the prompt implementation of the act. These temporary regulations will expire on February 1, 2015, or upon promulgation of final regulations, whichever occurs first.

Description of the Temporary Regulations

General provisions

Definitions

Section 36.301 (relating to definitions) sets forth definitions for terms used in the temporary regulations. The following terms are defined as provided in the act, the Real Estate Appraisers Certification Act (REACA) (63 P. S. §§ 457.1—457.19) or are standard definitions used in regulations of the various boards under the Bureau of Professional and Occupational Affairs (Bureau): "Bureau," "CHRIA," "compliance person," "conviction," "Department," "exempt company," "key person," "law" and "owner."

"AQB," "The Appraisal Foundation," "FIRREA," "Federally-related transaction," "NRSRO," "non-Federally related transaction," "REARA," "TILA" and "USPAP" are terms and acronyms of general usage in the appraisal industry.

"AVM," "BPO" and "evaluation" are defined according to existing Federal statutes or regulations that govern appraisal practice and the appraisal management industry Nationally. The definition of "comparative market analysis" is consistent with section 201 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. § 455.201).

"Order," "order solicitation," "panel solicitation," "solicit or solicitation" and "supervisor" define particular aspects of appraisal management and appraisal practice. These terms have been developed after consultation with stakeholders and deliberation by the Board.

Some stakeholders questioned if a "relocation company" is an AMC as defined by the act. An explanation in response to that inquiry is included in this preamble. A "relocation company" is generally defined as one which contracts with other firms to arrange the relocation of employees from one city to another. The service generally handles the sale of the employee's home and purchase of a new home.

Section 2 of the act (63 P. S. § 457.22) defines an "appraisal management company" as "a person that provides appraisal management services and acts as a third-party intermediary between a person seeking a valuation of real estate located in this Commonwealth and an appraiser or firm of appraisers." "Appraisal management services" is defined in section 22 of the act to include recruiting appraisers, contracting with appraisers to perform appraisals, negotiating fees with appraisers, receiving appraisal orders and appraisals, submitting appraisals received from appraisers to the client, and providing related administrative and clerical duties.

Although an AMC may also offer relocation services, it is not necessarily true that a relocation company is an AMC. While a relocation company may, in fact, recruit appraisers and order appraisals, in a typical relocation company transaction, the relocation company purchases an employee's home and re-sells the home. Therefore, in this typical type of relocation transaction, the relocation company may engage the services of an appraiser, but it is seeking an appraisal for its own benefit and not for a third party. The purpose of an appraisal in this scenario is to assist the relocation company in determining how much it will pay for the employee's house and how much it may expect to recover upon re-sale. Therefore, the "third-party intermediary" element of the definition of an AMC is not satisfied.

Procedural rules

Section 36.302 (relating to applicability of general rules) makes clear that individuals and other persons may avail themselves of the applicable remedies and procedures available under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Sections 36.303—36.306 provide the procedures for registering AMCs. Section 36.303 (relating to application procedures) memorializes current practices for processing applications used by the Board. Section 36.304 (relating to content of application) provides for the content of applications, including the information provided in section 5(b) of the act (63 P. S. § 457.25(b)). Section 36.305 (relating to expedited review) provides for a procedure for expedited review of certain applications to avoid interruption of business for existing AMCs that began business in this Commonwealth prior to June 8, 2013. Section 36.306 (relating to fees) provides for the initial registration fee and fees for notice of change of corporate organization, letter of good standing, notification of change of key person or compliance person, late fee for reinstatement and the fee for expedited review. The Board has not prescribed a fee for the biennial registration renewal or late fee for renewal since these fees will not be charged or implemented during the effective period of these temporary regulations.

Registration

Qualifications of AMCs, owners, key persons and compliance persons

To perform appraisal management services, a company that is not otherwise exempt under the act shall be registered as an AMC. Registration is conditioned upon the company satisfying certain requirements. Those requirements are in § 36.311 (relating to qualifications for registration as appraisal management company) and include the designation of a compliance person, as well as the establishment of policies that are reasonably designed to prevent conduct or practices that compromise appraiser independence, verify appraiser certification, and qualification and review appraisal services for Uniform Standards of

Professional Appraisal Practice (USPAP) compliance. These requirements are essential standards that shall be met under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) (Pub. L. No. 111-203, 124 Stat. 1376). The Board has not prescribed particular procedures or systems to satisfy these requirements and, therefore, AMCs have latitude to design and implement policies, so long as the policies are reasonably calculated to meet the required Dodd-Frank standards.

In addition, AMCs shall have processes for resolution of consumer complaints and appraiser complaints. The Board intends that "resolution" of consumer and appraiser complaints does not mean that every complaint is resolved to the satisfaction of the complainant. However, the process must be reasonable and afford the complainant the opportunity to have the AMC respond to complaints in a prompt fashion.

Section 36.312 (relating to qualifications of owners and key persons) clarifies sections 8 and 10 of the act (63 P. S. §§ 457.28 and 457.30) as they apply to owners and key persons. Section 8(d) of the act provides that individuals who are disqualified from being real estate appraisers may not be owners, key persons or compliance persons. The regulations clarify that individuals who have been disqualified from certification as real estate appraisers due to disciplinary violations are disqualified from being owners or key persons of an AMC. The absence of requisite education or experience for real estate appraisers is not grounds for disqualification as an owner or key person of an AMC. In addition, under section 10(a)(3) and (4) of the act, persons are disqualified from being owners or key persons if they have been disciplined by the State Real Estate Commission or by the Department of Banking and Securities.

As a condition of doing business, an AMC shall have a compliance person, that is, a person who has been designated with the responsibility to ensure that the AMC adheres to the requirements of the act and the Board's regulations. See section 7(c)(1) of the act (63 P. S. § 457.27(c)(1)). Section 36.313 (relating to qualifications of compliance person) provides for the qualifications of compliance persons. In addition to meeting the requirements for a key person or owner, a compliance person shall also be authorized by the AMC to bind the AMC and submit reports or filings required under the act or applicable Federal consumer protection laws.

Reporting change of information

Section 36.314 (relating to reporting change of information) requires an AMC to report to the Board a change of information regarding ownership, key persons and other information relating to the business. This provision is consistent with section 7(c)(3) of the act, which requires reporting of a change in the compliance person within 30 days.

Temporary authority to do business

Section 36.315 (relating to temporary authority to conduct business) provides for temporary authority to conduct business for an AMC that was conducting business in this Commonwealth before June 8, 2013. So long as an AMC has submitted an application for registration and was conducting business in this Commonwealth on or before June 8, 2013, it may continue to conduct business while its application is pending before the Board. The Board adopted this provision to avoid interruption of business and to provide assurance to existing AMCs that they will not be subject to prosecution during the period when their applications have been submitted but not yet approved by the Board. AMCs that have not yet started operations in this Commonwealth are prohibited from operating until registered.

Renewal of registration

Expiration and renewal

Section 36.321 (relating to expiration of registration) provides for the expiration of AMC registration on the last day of June of each odd-numbered year. This expiration date coincides with the expiration dates for certifications issued by the Board for certified real estate appraisers and certified Pennsylvania evaluators. The Board has not provided for procedures for renewal in these temporary regulations because initial registrations for AMCs will not expire until June 30, 2015. The Board intends to publish a proposed rulemaking in the near future that will include procedures for renewal.

Early termination of registration

Section 36.322 (relating to early termination of registration) provides for early termination of registration. An AMC that becomes an exempt company through acquisition by a bank or other financial institution, or that ceases business within this Commonwealth, may not want to continue obligations to report changes in personnel or other obligations under the act or the Board's regulations. Accordingly, this section provides for a procedure by which the AMC may terminate its registration before the expiration date.

Standards of practice

Sections 36.331—36.337 (relating to standards of practice) cover the standards of practice for appraisal management services under the act. Section 1473 of Dodd-Frank added section 1124 to the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12 U.S.C.A. § 3353) to provide for registration of AMCs. This section provides that an AMC owned and controlled by a Federally-regulated financial institution is not required to register with states, but is otherwise subject to the enforcement of appraisal management service

standards and regulations. Notably, Dodd-Frank provides that states may establish requirements in addition to rules promulgated under Dodd-Frank. See section 1124(b) of FIRREA.

USPAP compliance

Section 36.331 (relating to compliance with USPAP) provides that AMCs shall require appraisals to be performed in compliance with USPAP. This provision is necessary because both State and Federal laws include this requirement. Section 5(1) of REACA (63 P. S. § 457.5(1)) directs the Board to adopt standards of professional appraisal practice. In accordance with this mandate, § 36.51 (relating to compliance with USPAP) requires appraisals performed by licensed real estate appraisers to be USPAP compliant. In addition to this State law, Dodd-Frank also requires USPAP compliance for all appraisals. See section 1124(a)(3) of FIRREA.

In furtherance of USPAP compliance, § 36.331(b) and (c) require AMCs to establish systems for appraisal review to ensure USPAP compliance and prohibit AMCs from using valuation services that violate applicable State and Federal laws. Because appraisal management services include, by definition, contracting for appraisal services and related services and duties, it is necessary that those services be provided in accordance with Federal and State law and in furtherance of the consumer protection objectives of Dodd-Frank, FIRREA, REACA and other laws.

Verification of certification; appraisal reviews

Section 36.332 (relating to verification of appraiser certification) is likewise intended to require that AMCs are providing services that comply with Federal and State law. As the appointed intermediary for a lender, it is the function of the AMC to ensure that the appraiser who performs the appraisal is competent and qualified for each particular assignment.

Appraisal reviews are a specific type of appraisal that is also covered by USPAP under Standard 3. Therefore, the Board promulgated a requirement that appraisal reviews be performed in compliance with USPAP and reiterates the proviso of the act and Dodd-Frank that examination or review of an appraisal report for grammatical or typographical errors, or for completeness, is not an appraisal review for which USPAP compliance is required.

Broker price opinions

Section 36.334 (relating to broker price opinions) pertains to the standards required for the use of broker price opinions (BPO). A BPO is a type of valuation service and has been defined by Dodd-Frank. The definition is in section 1126(b) of FIRREA (12 U.S.C.A. § 3355(b)). The Dodd-Frank definition has been

adopted by the Board for this subchapter and is defined as an estimate prepared by a real estate broker, agent or sales person that details the probable selling price of a 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 automated valuation model, as defined in section 1125(c) of FIRREA (12 U.S.C.A. § 3354(c)). Significantly, Dodd-Frank prohibits the use of BPOs as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by the piece of property. See section 1126(a) of FIRREA. While this Federal prohibition is limited, it does not foreclose states from adopting a higher standard.

BPOs are a type of valuation service that would be rendered by individuals licensed by the State Real Estate Commission. However, BPOs are not recognized by RELRA and are not within the permissible scope of practice authorized by RELRA. Instead, RELRA authorizes a similar, but distinct, type of service which is termed "comparative market analysis." A comparative market analysis (CMA) is defined in section 201 of RELRA as a "written analysis, opinion or conclusion by a contracted buyer's agent, transactional licensee, or an actual or potential seller's agent relating to the probable sale price of a specified piece of real estate in an identified real estate market at a specified time, *offered either for the purpose of determining the asking/offering price for the property by a specific actual or potential consumer or for the purpose of securing a listing agreement with a seller.*" (Emphasis added.) The significant distinction between a BPO and a CMA is that a CMA may only be performed to determine an offering price by an actual or potential buyer, or to secure a listing with a seller.

Given this limitation on CMAs in this Commonwealth, an AMC may not lawfully order or use a BPO as a valuation service. Therefore, the Board promulgated this section to clarify that an AMC may not use a BPO as an evaluation in a non-Federally related transaction.

Recordkeeping

Under § 36.335 (relating to recordkeeping), the Board established minimum recordkeeping requirements. This provision is specifically authorized by section 7(b)(1)(ii) of the act. The recordkeeping requirements set by the Board represent what is necessary for an AMC to fulfill its duties under the act and Dodd-Frank to review and verify the work of appraisers for compliance with USPAP and to ensure appraisal independence.

Subsection (a)(1) sets forth the information that is to be in records relating to each assignment that is ordered. Subsection (a)(2) provides for recordkeeping relating to fee schedules. Subsection (a)(3) provides for the recordkeeping relating to rosters or panels of appraisers.

Subsection (b) establishes a 5-year period for record retention beginning from the date of final action of the assignment or from the final disposition of a court proceeding, whichever is later. This provision is authorized under section 7(b)(2)(iii) of the act. In furtherance of the act's provision that the Board may inspect required records at any time, the Board has prescribed that records be produced for inspection and copying within 30 days of a request.

Solicitation or order of appraisals

Section 36.336 (relating to requirements for solicitation or order of appraisals) establishes minimum standards that an AMC shall meet when it solicits or orders appraisals. The purpose of the provision is to ensure reasonable clarity of the terms and conditions of the appraiser's rights and duties for the assignment. These provisions are required to implement the provisions of Dodd-Frank regarding appraisal independence that prohibit withholding payments of fees, prohibit untimely payment of fees and require that appraisal fees be customary and reasonable under section 129E(b)(4) and (i) of the Truth in Lending Act (TILA) (15 U.S.C.A. § 1639e(b)(4) and (i)). An AMC may satisfy this requirement either by providing the required information with each assignment or in a written agreement when an AMC and an appraiser begin an ongoing relationship.

Duties of compliance person

Section 36.337 (relating to duties of compliance persons) defines and clarifies the responsibility of the compliance person, which is a position required under section 7(c) of the act. This section establishes that an AMC is responsible for the acts and omissions of its compliance person, provides for the general duty of a compliance person to comply with section 8 of the act, pertaining to prohibited activities, and, more specifically, requires a compliance person to report known or suspected violations of TILA (15 U.S.C.A. §§ 1601—1667f), the act or the Board's regulations that relate to appraisal independence.

Disciplinary action

Section 36.341 (relating to prohibited acts) provides that the Board may impose sanctions authorized by the act for violations of the act, the Board's regulations, violations of FIRREA or TILA, or a violation of AMC laws of another jurisdiction.

Section 36.342 (relating to coercive acts or practices) provides greater detail and specificity regarding practices that violate appraiser independence. This section classifies coercive acts or practices into those that require proof of intent to coerce versus those practices that do not require evidence of intent because they are inherently coercive and compromise appraiser independence.

Subsection (a) lists practices that are inherently coercive and compromise appraiser independence. Subsection (b) lists practices that could be considered coercive and which may compromise appraiser independence if those acts are committed with the intent of harassing, retaliating or influencing an appraiser's professional judgment.

Surety bonds and letters of credit

Section 6(b) of the act (63 P. S. § 457.26(b)) requires an AMC to post a surety bond or letter of credit in an amount no less than \$20,000. The security, whether a surety bond or letter of credit, is to accrue or be made payable to the Commonwealth for the benefit of a person suffering damages for a failure of the AMC to perform obligations under the act or an appraiser who has performed an appraisal and has not been paid.

In § 36.351 (relating to requirements for surety bond or letter of credit), the Board adopted standards for the security that have been adopted by other state agencies to ensure that the financial institution or bond company is credit worthy. After consideration, the Board determined that the minimum amount of a surety bond or letter of credit should be \$40,000, as set forth in § 36.352 (relating to amount of surety bond or letter of credit), to ensure that security is sufficient to cover anticipated losses to consumers or appraisers and to ensure that civil penalties levied by the Board, which may be up to \$10,000 per violation, will also be paid. Although this amount is greater than the statutory minimum, particularly in light of the relatively modest cost of a surety bond (typically approximately 2% of the secured amount), the difference between \$20,000 and \$40,000 is minimal compared to the benefit of assuring that affected individuals can be made whole.

The Board relied upon provisions adopted by other agencies in defining the contents of the form of a surety bond or letter of credit in §§ 36.353 and 36.354 (relating to form of surety bond; and form of letter of credit). In addition, in § 36.355 (relating to maintenance of surety bond or letter of credit), the Board detailed requirements that a registrant maintain the amount of a surety bond or letter of credit in the event that a claim is made. Finally, the Board provided for a procedure for making claims against a surety or obligor on a letter of credit in § 36.356 (relating to claims against surety or obligor). The procedures adopted by the Board allow for the Department of State, through the Prosecution Division of the Bureau, to make claims on behalf of consumers or unpaid appraisers, prior to a final adjudication of a violation of the act or the Board's regulations.

Fiscal Impact and Paperwork Requirements

The temporary regulations should not have adverse fiscal impact on the Commonwealth or its political subdivisions. In general, the temporary regulations provide fees that would offset negative fiscal impact upon the Commonwealth. The regulated community will incur costs associated with registration, including

application fees and costs of posting a surety bond or letter of credit. Registered AMCs will also incur costs relating to recordkeeping. The paperwork and application fees are a consequence of compliance with Federal mandates.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations and will do so with respect to these temporary regulations. Because the temporary regulations will expire by February 1, 2015, the Board will reassess the regulations and the effectiveness of the temporary regulations in formulating proposed and final-form rulemakings.

Regulatory Review

These temporary regulations are statutorily exempt from the Regulatory Review Act.

Public Comment

The Board solicited and received extensive comment from the public, including stakeholders in the appraisal and appraisal management industry, in drafting these temporary regulations. The Board will solicit additional input when formulating the proposed and final-form rulemakings.

Findings

The Board finds that:

(1) Under section 4(b) of the act, the temporary regulations are not subject to sections 201—203 of the CDL and the Regulatory Review Act.

(2) The adoption of the temporary regulations is necessary and appropriate for the administration of the act.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 36, are amended by adding §§ 36.301—36.306, 36.311—36.315, 36.321, 36.322, 36.331—36.337, 36.341, 36.342 and 36.351—36.356 to read as set forth in Annex A.

(b) The Board will submit this order and Annex A to the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The order shall take effect upon publication in the *Pennsylvania Bulletin*.

DANIEL A. BRADLEY,
Chairperson

Fiscal Note: 16A-7017. No fiscal impact. The fee schedule is expected to cover all costs associated with these temporary regulations. (8) Recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

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GENERAL PROVISIONS

§ 36.301. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

AQB—The Appraiser Qualifications Board appointed by The Appraisal Foundation, which promulgates education, experience and other criteria for licensing, certification and recertification of qualified appraisers.

AVM—*Automated valuation model*—As defined by section 1125(d) of FIRREA (12 U.S.C.A. § 3354(d)), a computerized model used by mortgage originators

and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

The Appraisal Foundation—The entity identified in section 1121(9) of FIRREA (12 U.S.C.A. § 3350(9)).

Assignment—As defined by USPAP, an agreement between an appraiser and a client to provide a valuation service and the valuation service that is provided as a consequence of an agreement.

BPO—Broker price opinion—As defined by section 1126(b) of FIRREA (12 U.S.C.A. § 3355(b)), an estimate prepared by a real estate broker, agent or sales person that details the probable selling price of a 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.

Bureau—The Bureau of Professional and Occupational Affairs of the Department.

CHRIA—18 Pa.C.S. Chapter 91 (relating to Criminal History Record Information Act).

Comparative market analysis—As defined in section 201 of RELRA (63 P. S. § 455.201), a written analysis, opinion or conclusion by a contracted buyer's agent, transactional licensee, or an actual or potential seller's agent relating to the probable sale price of a specified piece of real estate in an identified real estate market at a specified time, offered either for the purpose of determining the asking/offering price for the property by a specific actual or potential consumer, or for the purpose of securing a listing agreement with a seller.

Compliance person—An individual who is employed, appointed or authorized by an appraisal management company to be responsible for ensuring compliance with the law and this subchapter.

Conviction—

(i) An ascertainment of guilt of the accused and judgment thereon by a court, and includes a disposition of a criminal proceeding under the laws of the Commonwealth, or a similar disposition under the laws of another jurisdiction, by a plea of guilty, guilty but mentally ill or nolo contendere, or a verdict of guilty or guilty but mentally ill.

(ii) The term does not include an adjudication of delinquency under 42 Pa.C.S. Chapter 63 (relating to Juvenile Act).

Department—The Department of State of the Commonwealth.

Evaluation—A valuation permitted by the appraisal regulations of the Office of the Comptroller of the Currency (12 CFR 34.43 (relating to appraisals required; transactions requiring a State certified or licensed appraiser)), the Board of Governors of the Federal Reserve System (12 CFR 225.63 (relating to appraisals required; transactions requiring a State certified or licensed appraiser)), the Federal Deposit Insurance Corporation (12 CFR 323.3 (relating to appraisals required; transactions requiring a State certified or licensed appraiser)), the Office of Thrift Supervision (12 CFR 564.3 (relating to appraisals required; transactions requiring a State certified or licensed appraiser)) and the National Credit Union Administration (12 CFR 722.3 (relating to appraisals required; transactions requiring a State certified or licensed appraiser)) that qualify for the appraisal threshold exemption, business loan exemption or subsequent transaction exemption.

Exempt company—A person that is exempted from registering under the law as set forth in section 1124(c) of FIRREA (12 U.S.C.A. § 3353(c)).

Federally-related transaction—A real estate-related financial transaction which a Federal financial institution regulatory agency or the Resolution Trust Corporation engages in, contracts for or regulates which requires the services of an appraiser.

Key person—A person other than a compliance person who is a director, officer, supervisor, manager or other person performing a similar function in an appraisal management company.

Law—The Appraisal Management Company Registration Act (63 P. S. §§ 457.21—457.31).

NRSRO—A designated Nationally-recognized statistical rating organization of the United States Securities and Exchange Commission or its successor.

Non-Federally related transaction—A real estate-related transaction that is not a Federally-related transaction.

Order—When used in the context of the contractual relationship between an appraiser and an appraisal management company, an agreement between an appraiser and an appraisal management company that pertains to a specified valuation assignment, including a disclosure of the amount of the appraisal fee, the terms and time frame for payment and the appraisal management company registration number.

Order solicitation—An offer to contract with an appraiser to perform an appraisal resulting in an order.

Owner—A person that owns 10% or more of an appraisal management company.

Panel—A network or roster of appraisers used by an appraisal management company.

Panel solicitation—An offer to appoint an appraiser to the panel used by an appraisal management company.

REACA—The Real Estate Appraiser Certification Act (63 P. S. §§ 457.1—457.19).

REARA—*Real Estate Appraisal Reform Amendments*—Title XI of FIRREA (12 U.S.C.A. §§ 3331—3355).

RELRA—The Real Estate Licensing and Registration Act (63 P. S. §§ 455.101—455.902)

Real estate-related financial transaction—A transaction involving one or more of the following:

- (i) Sale, lease, purchase, investment in or exchange of real property, including interests in property or the financing thereof.
- (ii) Refinancing of real property or interests in real property.
- (iii) Use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

Solicit or solicitation—An offer to contract with an appraiser to perform an appraisal or an offer to an appraiser to be included in an appraisal management company's panel of appraisers.

Supervisor—An individual who is an agent of an appraisal management company and who has the authority to do one or more of the following:

- (i) Enter into a contract with clients for the performance of appraisal services.
- (ii) Solicit or enter into an agreement for an assignment with independent appraisers.
- (iii) Direct or cause the direction of the management or policies of the appraisal management company.

TILA—The Truth in Lending Act (15 U.S.C.A. §§ 1601—1667f).

§ 36.302. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) is applicable to the activities of and proceedings before the Board.

§ 36.303. Application procedures.

(a) *Application form.* An applicant for registration as an appraisal management company shall complete and file with the Board an application in a form prescribed by the Board. The form is available on the Board's web site at www.dos.state.pa.us/real and by contacting the Board at Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-4866, ST-APPRAISE@pa.gov.

(b) *Application fee.* The initial application fee for registration as an appraisal management company is nonrefundable, must be in the amount set forth in § 36.306 (relating to fees) and must be in the form of a check or money order made payable to the "Commonwealth of Pennsylvania."

(c) *Filing of application.* An application is filed with the Board on the date that it is received in the office of the Board.

(d) *Approved applications.* If the Board finds that the application is complete, has no basis to believe that the information in the application is not true and correct, and that the information contained therein qualifies the applicant for registration as an appraisal management company, the Board will issue a registration certificate by mail to the address of record set forth in the application.

(e) *Disapproved applications.* If the application is disapproved (provisionally denied), the Board will notify the applicant, in writing, of:

- (1) The reason for provisional denial.
- (2) The applicant's right to appeal the provisional denial in writing and to request a hearing before the Board.
- (3) The applicant's rights under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).
- (4) The failure to appeal the provisional denial to the Board or to request a hearing within 30 days of the date of the notice of provisional denial will result in the provisional denial of the application being deemed final.

(f) *Compliance with new requirements.* An applicant shall comply with requirements for registration that take effect between the applicant's filing of an initial application and the issuance of registration.

§ 36.304. Content of application.

(a) An application for registration as an appraisal management company must include:

(1) Primary information of the appraisal management company, including:

(i) Legal name.

(ii) Mailing address, which will be the address of record.

(iii) Street address, if different from the mailing address.

(iv) Primary telephone number.

(2) Secondary information of the appraisal management company, including:

(i) State or place of incorporation or organization.

(ii) Documentation that the applicant is authorized to transact business in this Commonwealth if the applicant is not an individual and is incorporated or otherwise formed under the laws of a jurisdiction other than the Commonwealth.

(iii) Each fictitious name under which the applicant trades or does business in this Commonwealth.

(iv) Web site address.

(v) Primary electronic mail address.

(vi) Fax number.

(vii) Each state or jurisdiction in which applicant is registered as an appraisal management company.

(viii) If the applicant began offering appraisal management services before June 8, 2013, and if so, the month and year on which the applicant began offering appraisal management services in this Commonwealth.

(ix) Owner information, including for each owner:

(A) Legal name.

(B) Street address.

(C) Telephone number.

(D) Electronic mail address.

(3) Key person information, including for each key person:

(i) Legal name.

(ii) Mailing address.

(iii) Street address, if different from the mailing address.

(iv) Telephone number.

(v) Title or titles and each status that qualifies the person as a key person, including one or more of the following:

(A) Officer.

(B) Director.

(C) Manager, supervisor, or similar function or title.

(vi) Electronic mail address.

(vii) If the key person is an owner.

(4) Compliance person information, including:

(i) Legal name.

(ii) Mailing address, if different from the applicant's mailing address.

(iii) Residential address.

(iv) Telephone number.

(v) Electronic mail address.

(vi) Title or titles.

(vii) Each certificate or license held for the practice of real estate appraising, if any, including the state or jurisdiction of issuance.

(viii) If the compliance person is an owner.

(5) Disciplinary history of the applicant, each owner, key person and the compliance person, including:

(i) Any discipline imposed in this Commonwealth or any other jurisdiction under any law regulating appraisers, appraisal management companies or real estate brokers or salespersons.

(ii) Any discipline imposed in this Commonwealth or any other jurisdiction under any law regulating mortgage brokers or salespersons, the sale of securities, the practice of law or the practice of accounting.

(iii) A verification by each owner or key person subject to penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that the disciplinary history is true and correct.

(6) An official criminal history record information report from the Pennsylvania State Police or other state agency for each state in which the applicant, owner, key person or compliance person has resided for the 5-year period immediately preceding the date of application.

(7) A surety bond or letter of credit in the form and the amount required under §§ 36.351—36.356 (relating to surety bonds and letters of credit).

(b) The individual designated by the applicant as compliance person shall certify that the applicant has:

(1) A system in place to verify that a person being added to an appraiser panel of the applicant or who will otherwise perform appraisals for the applicant of property in this Commonwealth is a certified appraiser and in good standing in this Commonwealth under REACA.

(2) A system in place for the performance of appraisal reviews with respect to the work of appraisers that are performing appraisals for the applicant of property in this Commonwealth to determine if the appraisals are being conducted in conformance with the minimum standards under REACA on a periodic basis and whenever requested by a client.

(3) A system in place to comply with § 36.335 (relating to recordkeeping).

(4) Authorized the compliance person to file the application and verify the contents of the application subject to the penalties of 18 Pa.C.S. §§ 4904 and 4911 (relating to unsworn falsification to authorities; and tampering with public records or information).

(c) The individual designated as the compliance person shall sign the application and verify that the contents of the application are true and correct and is subject to the penalties of 18 Pa.C.S. §§ 4904 and 4911.

§ 36.305. Expedited review.

(a) An applicant who qualifies for temporary authority to conduct business under § 36.315(a) (relating to temporary authority to conduct business) may file a request for expedited review verified by the designated compliance person subject to the conditions in this section.

(b) The applicant shall file a written request with the Board concurrently with the filing of the application which must include the following averments:

(1) Neither the applicant nor any owner or key person is disqualified under section 10(a)(2)—(7) of the law (63 P. S. § 457.30(a)(2)—(7)).

(2) The applicant began offering appraisal management services in this Commonwealth before June 8, 2013.

(3) The applicant requests expedited review of his application to avoid interruption of its authority to conduct business in this Commonwealth.

(4) The applicant acknowledges that if the application is provisionally denied by the Board, he must discontinue offering appraisal management services in this Commonwealth on the date of the provisional denial.

(5) The averments set forth in the request for expedited review are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(c) The applicant shall submit, along with the request, the fee for expedited review in § 36.306 (relating to fees).

(d) Concurrently with the filing of the application, the applicant shall serve copies of the request and the application by mail upon the Legal Office, Prosecution Division, and Legal Office, Counsel Division at the following addresses:

(1) Prosecution Liaison for State Board of Certified Real Estate Appraisers

Department of State
Commonwealth of Pennsylvania
2601 North 3rd Street
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649

(2) Counsel for State Board of Certified Real Estate Appraisers

Department of State
Commonwealth of Pennsylvania

2601 North 3rd Street
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649

(e) The Board's staff will conduct a preliminary review of the expedited application no later than 10 business days after the filing of the application and approve the application or refer the matter to the Board for disposition.

(f) If the application is referred to the Board for disposition, the application will be presented to the Board at its next regularly scheduled meeting, no sooner than 15 business days after the date of application.

§ 36.306. Fees.

The following is the schedule of fees charged by the Board:

Application for initial registration as an
appraisal management company
\$2,000

Notice of change in corporate organization
\$35

Letter of good standing/verification of registration
\$15

Notification of change in key person or
compliance person
\$35

Late fee for reinstatement per month of
delinquency
\$50

Fee for expedited review of application
\$500

REGISTRATION

§ 36.311. Qualifications for registration as appraisal management company.

(a) An appraisal management company is authorized to conduct business in this Commonwealth and to establish and maintain the requirements in this section during a period in which it offers or provides appraisal management services.

(b) An appraisal management company shall have a compliance person.

(c) An appraisal management company shall establish and maintain procedures that provide assurance of compliance with the following standards of appraisal management services:

(1) Prevention of conduct or practices that compromise appraiser independence.

(2) Verification of appraiser certification and qualifications.

(3) Review of appraisal services for compliance with USPAP.

(4) Availability of a process for resolution of consumer complaints.

(5) Availability of a process for resolution of appraiser complaints.

§ 36.312. Qualifications of owners and key persons.

(a) A person who would be disqualified from eligibility to be certified or licensed under the REACA as defined in subsection (b) may not be an owner or a key person.

(b) An individual would be disqualified from eligibility to be certified or licensed under the REACA, as provided in section 8(d)(1) of the law (63 P. S. § 457.28(d)(1)), if he had a license or certificate refused, denied, cancelled, suspended or revoked, or voluntarily surrendered a license or certificate under any of the following provisions of the REACA or CHRIA, or similar provision of another jurisdiction, unless the license or certificate has been subsequently granted or reinstated to the individual:

(1) Section 3 of the REACA (63 P. S. § 457.3).

(2) Section 6(c)(1) of the REACA (63 P. S. § 457.6(c)(1)).

(3) Section 11 of the REACA (63 P. S. § 457.11).

(4) Section 9124(c)(1) or (2) of CHRIA (18 Pa.C.S. § 9124(c)(1) or (2)) (relating to use of records by licensing agencies).

(c) Nothing in the law or this subchapter may be construed as a requirement that an owner or a key person shall possess the education or experience required under the AQB or the REACA for certification or licensure.

(d) A person who has been suspended, revoked or has voluntarily surrendered a license under RELRA, 7 Pa.C.S. Chapter 61 (relating to Mortgage Licensing Act)

or the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.301—456.318), repealed by the act of July 8, 2008 (P. L. 796, No. 56), may not be an owner or key person.

(e) The Board may consider a disqualifying violation described in subsection (b) if the individual's license or certificate has been subsequently reinstated or granted in determining if the individual possesses good moral character as required under section 5(c)(4) of the law (63 P. S. § 457.25(c)(4)).

§ 36.313. Qualifications of compliance person.

(a) In addition to the qualifications in § 36.312 (relating to qualifications of owners and key persons), a compliance person shall hold the qualifications set forth in this section.

(b) A person designated as a compliance person by an appraisal management company shall possess the authority as a matter of law to:

(1) Enter into an agreement with the Board to bind the appraisal management company to comply with requirements of the law, this subchapter and provisions of FIRREA, REACA, REARA or TILA that relate to appraisal standards or appraisal management services.

(2) Sign a report, application, form, notice or other document required to be filed with the Board.

(3) Certify, verify or otherwise attest as required by law to the contents of a document or pleading filed with the Board.

(c) A compliance person may not have a history of:

(1) Conviction as provided in section 10(a)(5) of the law (63 P. S. § 457.30(a)(5)).

(2) Disciplinary action or disposition of an administrative or a civil proceeding as described in section 10(a)(2), (3), (4), (6) or (7) of the law, or a similar provision of a law or regulation of another jurisdiction, resulting in refusal, denial, cancellation, restriction, probation, suspension, voluntary surrender or revocation of the authority or privilege to practice.

(d) An individual who acts as a compliance person will be deemed to have vacated the position upon any of the following conditions:

(1) Death.

(2) Occurrence of a disqualifying condition defined in subsection (c).

(3) Termination of employment or contractual relationship by either the compliance person or the appraisal management company.

(e) During a period of less than 30 days for excused illness, absence or vacation of a compliance person, an appraisal management company may designate another key person to fulfill the duties of compliance person without notice to the Board.

(f) An absence or vacancy in the position of compliance person more than 30 days is cause for suspension of an appraisal management company's authority to conduct business until a compliance person has been designated and notice of the change has been filed with the Board as provided in § 36.314 (relating to reporting change of information.)

§ 36.314. Reporting change of information.

(a) A registrant shall report a vacancy or change in qualifying information as required in this section on forms prescribed by the Board.

(b) A registrant shall report a vacancy or change of compliance person within 30 days of the date that the compliance person terminates.

(c) A registrant shall report a change in the information required under § 36.304 (relating to content of application) within 30 days, including information relating to disciplinary history or criminal history required under § 36.304(a)(5) and (6).

§ 36.315. Temporary authority to conduct business.

(a) An appraisal management company that is not exempt from the law, which began offering appraisal management services in this Commonwealth before June 8, 2013, and has continued to offer appraisal management services in this Commonwealth since then without interruption, may continue to offer appraisal management services after June 8, 2013, without first being registered if:

(1) An application has been filed with the Board.

(2) The appropriate fees have been paid.

(3) The individual who signed the application in the capacity of the compliance person continues to act as compliance person until the application is approved, deemed withdrawn, provisionally denied or denied by final order.

(4) The application has not been:

(i) Deemed withdrawn.

(ii) Provisionally denied.

(iii) Denied by final order.

(iv) Approved.

(b) An appraisal management company that is not exempt from the law, which has not started offering appraisal management services in this Commonwealth by June 8, 2013, may not offer appraisal management services in this Commonwealth until registered.

(c) Authority to conduct business temporarily without registration under subsection (a) terminates on the date that an application has been:

(1) Deemed withdrawn.

(2) Provisionally denied.

(3) Denied by final order.

(4) Approved.

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

RENEWAL OF REGISTRATION

§ 36.321. Expiration of registration.

Registration expires on the last day of June of each odd-numbered year.

§ 36.322. Early termination of registration.

(a) A registrant may terminate registration prior to the expiration of the biennial registration period by filing with the Board a notice in a form prescribed by the Board.

(b) A notice of termination of registration must include:

(1) The date on which the registrant will cease to offer or provide appraisal management services in this Commonwealth.

(2) An acknowledgment that the registrant or his successor remains subject to disciplinary action for acts, errors or omissions occurring before the termination of registration.

(3) The signature of the compliance person.

(4) The mailing address of the registrant.

(5) If the registrant is terminating its existence, documentation of the dissolution, acquisition or merger of the registrant by or with another entity.

(6) If the registrant terminates registration because it has become exempt from registration under the law, documentation in support of the basis for exemption.

(7) An acknowledgment that the surety bond or letter of credit will remain subject to claims in accordance with the procedures in §§ 36.351—36.356 (relating to surety bonds and letters of credit).

(c) The date on which the registrant terminates registration may not be sooner than the date on which the notice is filed with the Board.

(d) The termination of registration by the Board upon filing of a notice will not be construed as an admission by the Board or the Commonwealth that the contents of the notice are true and correct.

(e) The Bureau may at any time after the filing of a notice of termination under this section begin a disciplinary action against a former registrant for a violation of section 3 of the law (63 P. S. § 457.23), pertaining to registration of appraisal management companies.

(f) The surety bond or letter of credit will remain in effect after termination.

STANDARDS OF PRACTICE

§ 36.331. Compliance with USPAP.

(a) An appraisal management company shall require that appraisal assignments be completed in compliance with USPAP.

(b) An appraisal management company shall establish a system to review appraisal assignments which is reasonably calculated to ensure compliance with USPAP by appraisers.

(c) An appraisal management company may not solicit, offer, accept an offer or contract for a valuation service that it knows or has reason to know violates REACA, RELRA, FIRREA, the law or this subchapter.

§ 36.332. Verification of appraiser certification.

An appraisal management company shall establish and maintain a system to verify that appraisals are completed by an appraiser who possesses a class of certification issued by the Board that authorizes appraisal of real property in this Commonwealth that is the subject of the appraisal and which is current and valid.

§ 36.333. Appraisal reviews.

- (a) Appraisal reviews shall be performed in accordance with USPAP.
- (b) An examination of an appraisal report for grammatical or typographical errors or for completeness is not required to comply with USPAP.

§ 36.334. Broker price opinions.

- (a) A BPO may not be used as an evaluation in a non-Federally related transaction.
- (b) A BPO may be used as an evaluation in a Federally-related transaction only if the transaction is exempt from the requirement for an appraisal under FIRREA and an appraisal is not otherwise required by the regulations, guidelines or requirements of any lender, agency or other organization.
- (c) A comparative market analysis is not a BPO for purposes of the law, REACA or this subchapter if performed for one or both of the following purposes:
 - (1) In pursuit of a listing.
 - (2) To determine probable selling price.

§ 36.335. Recordkeeping.

- (a) Each appraisal management company shall maintain the following records:
 - (1) A record of each assignment it has ordered for appraisal of real property in this Commonwealth, including the following:
 - (i) The order between the appraisal management company and the appraiser.
 - (ii) Each appraisal report received from an appraiser, including the original report, revised reports and addenda or other materials furnished subsequent to the delivery of the original report.

(iii) Written communication between the appraiser and the appraisal management company and any other entity involved in the transaction.

(iv) The order engaging another appraiser for the purpose of reviewing the appraisal.

(v) A review of the appraisal performed, including data supporting the selection of the appraisal for review, the original review report, subsequent correspondence between the reviewer and appraisal management company, and each subsequent revised review report.

(vi) Written communications related to obligations under the law or this subchapter between the appraisal management company and its client, including documents supplied to that client.

(vii) A record of fees disbursed to contracted appraisers and the fee received by the appraisal management company from the appraisal management company's client.

(2) Appraiser fee schedules, including:

(i) Fees paid for a defined service.

(ii) Documentation to support that the fee schedule is customary and reasonable and complies with TILA.

(iii) Payment policies, including time for payment of appraisal fees.

(iv) Effective dates of the schedules.

(3) Panels of appraisers used for assignments in this Commonwealth, including:

(i) The name of each appraiser.

(ii) The appraiser's certificate number.

(iii) The date the appraiser was placed on the panel.

(iv) The region or area in which the appraiser's service may be used.

(v) The date and reason for removal if the appraiser is removed from the panel.

(b) An appraisal management company shall maintain the records in subsection (a)(1) for 5 years beginning on the latest of the following:

(1) The date of final action of the assignment.

(2) The date of final disposition of the proceeding if the appraisal management company is notified that the transaction is the subject of a court proceeding or an administrative proceeding by the Board.

(c) An appraisal management company shall produce for inspection and copying by the Board within 30 days any record required to be maintained by the law or this subchapter.

§ 36.336. Requirements for solicitation or order of appraisals.

(a) An appraisal management company shall include in an order or order solicitation for appraisal services:

(1) The fee to be paid to the appraiser for the appraisal assignment.

(2) The terms for time of payment for appraisal services.

(3) The appraisal management company's registration number.

(b) An appraisal management company may satisfy the requirements of subsection (a) by either of the following means:

(1) A legible statement of the required information on an order or solicitation for an appraisal assignment.

(2) A legible reference to an existing written agreement between the appraisal management company and the appraiser that includes the required information.

(c) An appraisal management company shall include in a panel solicitation for appraisal services in this Commonwealth its appraisal management company registration number.

§ 36.337. Duties of compliance persons.

(a) An appraisal management company is subject to disciplinary action under the law and this subchapter for the acts or omissions of a compliance person who fails to perform a duty in this section.

(b) A compliance person shall ensure compliance of an appraisal management company with section 8 of the law (63 P. S. § 457.28).

(c) An appraisal management company, acting through its compliance person, shall report to the Bureau, directly or through another agent of the appraisal management company, a material violation as defined under section 129E(e) of

TILA (15 U.S.C.A. § 1639e(e)) and corresponding regulations regarding appraisal independence requirements.

(d) A compliance person who has a reasonable basis to believe that an appraisal management company, its employee or agent has violated appraisal independence requirements of the law or this subchapter shall report the matter to the Bureau within a reasonable time after formulating the belief that a violation has occurred.

DISCIPLINARY ACTION

§ 36.341. Prohibited acts.

(a) The Board may impose one or more sanctions authorized under the law if the Board finds that an appraisal management company, key person or compliance person violated the law or this chapter.

(b) The following acts, errors or omissions constitute a violation of the standards of conduct of an appraisal management company:

- (1) Violation of a provision of the law or this subchapter.
- (2) Violation of FIRREA or TILA.
- (3) Violation of a statute or regulation of another jurisdiction regulating appraisal management companies.

§ 36.342. Coercive acts or practices.

(a) The following acts constitute a coercive act or practice in violation of the law and this chapter without proof of intent of the appraisal management company or its agent:

- (1) A requirement that the appraiser collect a fee from a borrower.
- (2) A requirement that the appraiser provide access to the appraiser's digital signature.
- (3) A prohibition on the appraiser to report the fee for the appraisal services.
- (4) A prohibition on the appraiser to note or report real property appraisal assistance.
- (5) Nonpayment of, or refusal to pay for, appraisal services rendered for a reason other than the breach of agreement or substandard performance by the appraiser.

(6) A clause or provision in an order requiring an appraiser to indemnify or hold harmless for acts or omissions of a person other than the appraiser.

(7) A clause or provision in an order requiring an appraiser to have a duty to defend the appraisal management company in a civil action or proceeding.

(8) Removal of an appraiser from the panel or roster of appraisers without notice and opportunity for rebuttal.

(9) A request to an appraiser to provide comparable properties for a specified property prior to completion of appraisal report.

(b) The following acts, if committed with the intent to influence or attempt to influence the development, reporting, result or review of an appraisal, constitute a coercive act or practice in violation of the law and this chapter:

(1) A pattern or course of conduct involving repeated review of appraisals that are not performed in accordance with the appraisal management company's policy for appraisal reviews or quality control functions.

(2) A limitation on the time of completion of an appraisal assignment that impairs the credibility of the report. For purposes of this paragraph, a time limitation or deadline established for the purpose of completing the assignment to complete a transaction by a date established by agreement of parties other than the appraisal management company does not constitute a coercive act or practice.

(3) A delay in payment for appraisal services that violates the appraisal management company's policy for payment.

SURETY BONDS AND LETTERS OF CREDIT

§ 36.351. Requirements for surety bond or letter of credit.

(a) A registrant shall maintain a surety bond or letter of credit in the form and amount prescribed in this subchapter.

(b) A surety bond must be in the amount prescribed in § 36.352(a) (relating to amount of surety bond or letter of credit), in the form prescribed by § 36.353 (relating to form of surety bond) and issued by a company authorized to transact surety business in this Commonwealth by the Insurance Department, which possesses a current A. M. Best Rating of A- or better, or a Standard & Poor's insurer's financial strength rating of A or better, or a comparable rating by another NRSRO.

(c) A letter of credit must be in the amount prescribed in § 36.352(b), in the form prescribed by § 36.354 (relating to form of letter of credit) and payable at

an office of a commercial bank in the United States. At the time of issuance of the letter of credit, the issuing bank or its holding company shall have a B/C or better rating or 2.5 or better credit evaluation score by Fitch Ratings, as successor to the rating services of Thomson BankWatch, or the issuing bank shall have a CD or long-term issuer credit rating of BBB or better or a short-term issuer credit rating of A-2 or better by Standard & Poor's or a comparable rating by another NRSRO.

§ 36.352. Amount of surety bond or letter of credit.

(a) A registrant who maintains a surety bond to satisfy the requirements of the law and § 36.351 (relating to requirements for surety bond or letter of credit) shall maintain a bond in the amount of \$40,000.

(b) A registrant who maintains a letter of credit to satisfy the requirements of the law and § 36.351 shall maintain a letter of credit in the amount of \$40,000.

(c) The Board may require additional amount or form of security for the following reasons:

(1) As a penalty for a violation of the law or this subchapter regarding the nonperformance of services or nonpayment of fees, or a violation of a similar law or regulation of another jurisdiction.

(2) A change in the financial strength or rating of the surety or issuer of the letter of credit.

(3) A failure to maintain the bond or letter of credit in the minimum amount required by the law or this sub- chapter, whichever is greater.

§ 36.353. Form of surety bond.

A surety bond held by a registrant to satisfy the requirements of the law and this subchapter must include:

(1) The name and mailing address of the registrant.

(2) The name and title of the compliance person.

(3) The name, mailing address, telephone number and National Association of Insurance Commissioners company code of the surety.

(4) The policy number for the surety bond.

(5) Indemnification for claims that arise or occur during the biennial licensure period during which the bond is issued for the benefit of:

(i) The Commonwealth or the public for nonperformance of obligations under the law or this subchapter that occur during the period of the surety bond.

(ii) An appraiser who has performed an appraisal for the registrant during the period of the surety bond for which the appraiser has not been paid.

(6) An agreement by the surety to notify the Bureau if the surety bond is cancelled or terminated.

§ 36.354. Form of letter of credit.

A letter of credit held by a registrant to satisfy the requirements of the law and this subchapter must include:

(1) A provision that the letter of credit is irrevocable for a term of not less than 1 year and that the letter of credit automatically renews annually unless the letter of credit is specifically nonrenewed by the issuing bank 90 days or more prior to the anniversary date of its issuance and the issuing bank gives at least 90 days prior written notice to the Bureau and the registrant of its intent to terminate the letter of credit at the end of the current term.

(2) A provision that the Department has the right to draw upon the credit before the end of its term and to convert it into a cash collateral bond if the registrant fails to replace the letter of credit with other acceptable bond within 30 days of the bank's notice to terminate the letter of credit.

(3) The letter of credit must name the Department as the beneficiary and be payable to the Department under § 36.356 (relating to claims against surety or obligor).

(4) A letter of credit must be subject to the most recent edition of the *Uniform Customs and Practices for Documentary Credits*, published by the International Chamber of Commerce, and the laws of the Commonwealth, including 13 Pa.C.S. (relating to Uniform Commercial Code).

(5) The Board will not accept letters of credit from a bank that has failed to make or delayed in making payment on a defaulted letter of credit.

§ 36.355. Maintenance of surety bond or letter of credit.

(a) If the rating of a surety or bank that has issued a bond or letter of credit falls below the minimum ratings required under § 36.351(b) and (c) (relating to requirements for surety bond or letter of credit), a registrant shall replace the bond or letter of credit within 45 days from the date of the substandard rating decline with a new bond or letter of credit that satisfies the requirements of § 36.351.

(b) If a bond or letter of credit is not replaced within 45 days of the substandard rating decline, the Department has discretion to draw on the surety bond or letter of credit and deposit the proceeds with the State Treasurer to secure the registrant's liability and to begin proceedings under the law, this subchapter and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) to suspend or revoke the registrant's authority to perform appraisal management services in this Commonwealth.

(c) If a surety or bank makes a payment upon a bond or a letter of credit issued to fulfill the requirements of the law or this subchapter, the registrant shall obtain additional security within 45 days of the date of payment in the form of an additional surety bond or letter of credit in an amount sufficient to maintain the minimum amount required under the law or this subchapter, whichever is greater.

§ 36.356. Claims against surety or obligor.

(a) The Department may make a claim to a surety or obligor to:

(1) Recover unpaid fees for appraisal services.

(2) Obtain payment for civil penalties, costs of investigation or fees payable to the Commonwealth.

(3) Obtain payment for debts arising out of the performance of appraisal management services in this Commonwealth.

(4) Obtain security as provided in § 36.355(b) (relating to maintenance of surety bond or letter of credit).

(b) The Department, in its discretion, will make a claim to a surety or obligor for a purpose in subsection (a) upon one of the following conditions:

(1) The expiration of the period of appeal from the entry of a final order issued by the Board in a proceeding under the 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and a determination by the Department based upon a review of its records that all or part of a civil penalty or costs of investigation levied by that order remain unpaid.

(2) The failure of a registrant to satisfy a written agreement with the Board or the Bureau to pay an amount described in subsection (a).

(3) A determination by the Prosecution Division of the Bureau upon a complaint filed with the Bureau that there is probable cause to believe that a registrant owes a sum certain for unpaid fees, civil penalties, costs of investigation, fees payable to this Commonwealth or debts arising out of the performance of appraisal management services in this Commonwealth.

(4) Violation of § 36.355.

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