

APPRAISAL MANAGEMENT COMPANY

REGULATION

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: John L. Valentine

Cosponsor: Jack R. Draxler

LONG TITLE

General Description:

This bill enacts the Appraisal Management Company Registration and Regulation Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ grants rulemaking authority to the Real Estate Appraiser Licensing and Certification Board;
- ▶ provides exemptions;
- ▶ requires registration and annual renewal of the registration;
- ▶ imposes operational requirements, including:
 - use of licensed or certified appraisers;
 - monitoring adherence to standards;
 - record keeping;
 - requiring disclosures;
 - imposing requirements of training for certain employees; and
 - prohibiting certain acts or practices;
- ▶ addresses the division's and board's role in enforcement, including immunity;
- ▶ provides for enforcement; and



28 ▶ makes technical and conforming amendments.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **61-2-5**, as last amended by Laws of Utah 2000, Chapter 329

36 ENACTS:

37 **61-2e-101**, Utah Code Annotated 1953

38 **61-2e-102**, Utah Code Annotated 1953

39 **61-2e-103**, Utah Code Annotated 1953

40 **61-2e-104**, Utah Code Annotated 1953

41 **61-2e-201**, Utah Code Annotated 1953

42 **61-2e-202**, Utah Code Annotated 1953

43 **61-2e-203**, Utah Code Annotated 1953

44 **61-2e-204**, Utah Code Annotated 1953

45 **61-2e-301**, Utah Code Annotated 1953

46 **61-2e-302**, Utah Code Annotated 1953

47 **61-2e-303**, Utah Code Annotated 1953

48 **61-2e-304**, Utah Code Annotated 1953

49 **61-2e-305**, Utah Code Annotated 1953

50 **61-2e-306**, Utah Code Annotated 1953

51 **61-2e-307**, Utah Code Annotated 1953

52 **61-2e-401**, Utah Code Annotated 1953

53 **61-2e-402**, Utah Code Annotated 1953

54

55 *Be it enacted by the Legislature of the state of Utah:*

56 Section 1. Section **61-2-5** is amended to read:

57 **61-2-5. Division of Real Estate created -- Functions -- Director appointed --**

58 **Functions.**

59 (1) There is created within the Department of Commerce a Division of Real Estate. It
60 is responsible for the administration and enforcement of:

- 61 (a) this chapter;
- 62 (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
- 63 (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- 64 (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;
- 65 (e) Chapter 2a, Real Estate ~~[Education, Research, and]~~ Recovery Fund Act;
- 66 (f) Chapter 2b, Real Estate Appraiser Licensing and Certification Act; ~~[and]~~
- 67 (g) Chapter 2c, Utah Residential Mortgage Practices Act~~[-];~~ and
- 68 (h) Chapter 2e, Appraisal Management Company Registration and Regulation Act.

69 (2) The division is under the direction and control of a director appointed by the
70 executive director of the department with the approval of the governor. The director holds the
71 office of director at the pleasure of the governor.

72 (3) The director, with the approval of the executive director, may employ personnel
73 necessary to discharge the duties of the division at salaries to be fixed by the director according
74 to standards established by the Department of Administrative Services.

75 (4) On or before October 1 of each year, the director shall, in conjunction with the
76 department, report to the governor and the Legislature concerning the division's work for the
77 preceding fiscal year ending June 30.

78 (5) The director, in conjunction with the executive director, shall prepare and submit to
79 the governor and the Legislature a budget for the fiscal year next following the convening of
80 the Legislature.

81 Section 2. Section **61-2e-101** is enacted to read:

82 **CHAPTER 2e. APPRAISAL MANAGEMENT COMPANY REGISTRATION AND**
83 **REGULATION ACT**

84 **Part 1. General Provisions**

85 **61-2e-101. Title.**

86 This chapter is known as the "Appraisal Management Company Registration and
87 Regulation Act."

88 Section 3. Section **61-2e-102** is enacted to read:

89 **61-2e-102. Definitions.**

90 As used in this chapter:

91 (1) "Applicable appraisal standards" means:

92 (a) the Uniform Standards for Professional Appraisal Practice:

93 (i) published by the Appraisal Foundation; and

94 (ii) as adopted under Section 61-2b-27;

95 (b) Chapter 2b, Real Estate Appraiser Licensing and Certification Act; and

96 (c) rules made by the board under Chapter 2b, Real Estate Appraiser Licensing and
97 Certification Act.

98 (2) "Appraisal" is as defined in Section 61-2b-2.

99 (3) "Appraisal foundation" is as defined in Section 61-2b-2.

100 (4) "Appraisal management company" means an entity that:

101 (a) administers a network of appraisers to perform real estate appraisal activities for
102 one or more clients;

103 (b) (i) receives a request for a real estate appraisal activity from a client; and

104 (ii) for a fee paid by the client, enters into an agreement with one or more appraisers to
105 perform the real estate appraisal activity contained in the request; or

106 (c) otherwise serves as a third-party broker of an appraisal management service
107 between a client and an appraiser.

108 (5) "Appraisal management service" means a process of:

109 (a) receiving a request for the performance of a real estate appraisal activity from a
110 client; and

111 (b) for a fee paid by the client, entering into an agreement with one or more appraisers
112 to perform the real estate appraisal activity contained in the request.

113 (6) "Appraisal report" is as defined in Section 61-2b-2.

114 (7) "Appraiser" means an individual who engages in a real estate appraisal activity.

115 (8) "Appraiser panel" means a group of appraisers that are selected by an appraisal
116 management company to perform real estate appraisal activities for the appraisal management
117 company.

118 (9) "Board" means the Real Estate Appraiser Licensing and Certification Board that is
119 created in Section 61-2b-7.

120 (10) "Client" means a person that enters into an agreement with an appraisal

121 management company for the performance of a real estate appraisal activity.

122 (11) "Controlling person" means:

123 (a) an owner, officer, or director of an entity seeking to offer appraisal management
124 services;

125 (b) an individual employed, appointed, or authorized by an appraisal management
126 company who has the authority to:

127 (i) enter into a contractual relationship with a client for the performance of an appraisal
128 management service; and

129 (ii) enter into an agreement with an appraiser for the performance of a real estate
130 appraisal activity; or

131 (c) an individual who possesses, directly or indirectly, the power to direct or cause the
132 direction of the management or policies of an appraisal management company.

133 (12) "Director" means the director of the division.

134 (13) "Division" means the Division of Real Estate of the Department of Commerce.

135 (14) "Entity" means:

136 (a) a corporation;

137 (b) a partnership;

138 (c) a sole proprietorship;

139 (d) a limited liability company;

140 (e) another business entity; or

141 (f) a subsidiary or unit of an entity described in Subsections (14)(a) through (e).

142 (15) "Person" means an individual or an entity.

143 (16) "Real estate appraisal activity" is as defined in Section 61-2b-2.

144 Section 4. Section **61-2e-103** is enacted to read:

145 **61-2e-103. Rulemaking.**

146 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
147 board may make rules that are:

148 (1) consistent with this chapter; and

149 (2) necessary to implement this chapter.

150 Section 5. Section **61-2e-104** is enacted to read:

151 **61-2e-104. Exemption.**

152 This chapter does not apply to:

153 (1) an entity that:

154 (a) exclusively employs an individual on an employer-employee basis for the
155 performance of a real estate appraisal activity in the normal course of the entity's business; and

156 (b) is responsible for ensuring that the real estate appraisal activity being performed by
157 an employee is performed in accordance with applicable appraisal standards;

158 (2) an individual who:

159 (a) is an appraiser; and

160 (b) in the normal course of business enters into an agreement, whether written or
161 otherwise, with another appraiser for the performance of a real estate appraisal activity that the
162 individual cannot complete for any reason, including:

163 (i) competency;

164 (ii) work load;

165 (iii) schedule; or

166 (iv) geographic location;

167 (3) an individual who:

168 (a) in the normal course of business enters into an agreement, whether written or
169 otherwise, with an appraiser for the performance of a real estate appraisal activity; and

170 (b) under the agreement, cosigns the report of the appraiser performing the real estate
171 appraisal activity upon the completion of the real estate appraisal activity; or

172 (4) an appraisal management company that contracts with one or more appraisers for
173 the performance of fewer than ten appraisals in this state in a calendar year.

174 Section 6. Section **61-2e-201** is enacted to read:

175 **Part 2. Registration**

176 **61-2e-201. Registration required -- Qualification for registration.**

177 (1) Unless registered under this chapter or exempt under Section 61-2e-104, an entity
178 may not with regard to a real estate appraisal activity for real estate located in this state:

179 (a) directly or indirectly engage or attempt to engage in business as an appraisal
180 management company;

181 (b) directly or indirectly engage or attempt to perform an appraisal management
182 service; or

183 (c) advertise or hold itself out as engaging in or conducting business as an appraisal
184 management company.

185 (2) To qualify to be registered as an appraisal management company under this
186 chapter:

187 (a) each individual who owns, directly or indirectly, more than 10% of the appraisal
188 management company shall:

189 (i) be of good moral character, as determined by the board; and

190 (ii) not have had a license or certificate to engage in an act related to a real estate or
191 mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and

192 (b) the appraisal management company shall designate a main contact for
193 communication between the appraisal management company and either the board or division
194 who:

195 (i) is a controlling person;

196 (ii) is of good moral character, as determined by the board; and

197 (iii) has not had a license or certificate to engage in an act related to a real estate or
198 mortgage transaction refused, denied, canceled, or revoked in this state or in another state.

199 (3) This section applies without regard to whether the entity uses the term:

200 (a) "appraisal management company";

201 (b) "mortgage technology company"; or

202 (c) another name.

203 Section 7. Section **61-2e-202** is enacted to read:

204 **61-2e-202. Initial registration process.**

205 (1) (a) To register under this chapter as an appraisal management company, an entity
206 shall:

207 (i) file with the division a registration application in a form prescribed by the division;

208 (ii) pay to the division a fee determined in accordance with Section 63J-1-303;

209 (iii) if the entity is not a resident of this state, submit an irrevocable consent for service
210 of process meeting the requirements of Subsection (3); and

211 (iv) have the application for registration approved by the division.

212 (b) The division shall approve an application if the division finds that the entity:

213 (i) complies with this Subsection (1); and

214 (ii) meets the qualifications under Section 61-2e-201.
215 (c) The division may, upon compliance with Title 63G, Chapter 4, Administrative
216 Procedures Act, deny the issuance of a registration to an applicant on any ground enumerated
217 in this chapter.

218 (2) A registration application shall include the following:

219 (a) the name of the entity seeking registration;

220 (b) a business address of the entity seeking registration;

221 (c) telephone contact information of the entity seeking registration;

222 (d) if the entity is not an entity domiciled in this state, the name and contact
223 information for the entity's agent for service of process in this state;

224 (e) for each individual who owns 10% or more of the entity:

225 (i) the individual's name, address, and contact information;

226 (ii) a statement of whether or not the individual has had a license or certificate to
227 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or
228 revoked in this state or in another state; and

229 (iii) (A) fingerprint cards in a form acceptable to the division at the time the
230 registration application is filed; and

231 (B) consent to a criminal background check by the Utah Bureau of Criminal
232 Identification and the Federal Bureau of Investigation regarding the application;

233 (f) the name, address, and contact information for each controlling person;

234 (g) for the controlling person designated as the contact as required by Section
235 61-2e-201:

236 (i) a statement of whether or not the individual has had a license or certificate to
237 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or
238 revoked in this state or in another state; and

239 (ii) (A) fingerprint cards in a form acceptable to the division at the time the registration
240 application is filed; and

241 (B) consent to a criminal background check by the Utah Bureau of Criminal
242 Identification and the Federal Bureau of Investigation regarding the application;

243 (h) provide an explanation required by:

244 (i) Section 61-2e-301, related to adding an individual to an appraiser panel;

- 245 (ii) Section 61-2e-302, related to the review of the work of an appraiser; and
246 (iii) Section 61-2e-303, related to record keeping; and
247 (i) any other information required by the board.
248 (3) An irrevocable consent for service of process required to be filed under Subsection
249 (1) shall provide that process may be served on the entity by delivering the process to the
250 director if:
251 (a) the service of process is for an action:
252 (i) in a court of this state against an entity; and
253 (ii) arising out of an act governed by this chapter; and
254 (b) a plaintiff cannot, in the exercise of due diligence, obtain personal service upon the
255 entity.

256 Section 8. Section **61-2e-203** is enacted to read:

257 **61-2e-203. Criminal background check -- Conditional registration -- Changes in**
258 **ownership or controlling person.**

259 (1) The division shall request the Department of Public Safety to complete a Federal
260 Bureau of Investigation criminal background check for an individual described in Subsection
261 61-2e-202(1)(e) or (g) through the national criminal history system or any successor system.

262 (2) (a) The entity filing the application under Section 61-2e-202 shall pay the cost of
263 the criminal background check and the fingerprinting.

264 (b) Monies paid to the division by an entity for the cost of a criminal background check
265 are nonlapsing.

266 (3) (a) A registration issued under Section 61-2e-202 is conditional, pending
267 completion of a criminal background check.

268 (b) If a criminal background check discloses that an individual described in Subsection
269 61-2e-202(1)(e) or (g) fails to accurately disclose a criminal history, the registration is
270 immediately and automatically revoked.

271 (c) An entity whose conditional registration is revoked under this Subsection (3) is
272 entitled to a post-revocation hearing conducted in accordance with Title 63G, Chapter 4,
273 Administrative Procedures Act, to challenge the revocation.

274 (d) The board shall decide whether relief from the revocation of a registration under
275 this Subsection (3) will be granted, except that relief from a revocation under this Subsection

276 (3) may be granted only if:

277 (i) the criminal history upon which the revocation is based:

278 (A) did not occur; or

279 (B) is the criminal history of another individual;

280 (ii) (A) the revocation is based on a failure to accurately disclose a criminal history;

281 and

282 (B) the entity has a reasonable good faith belief at the time of application that there is
283 no criminal history to be disclosed; or

284 (iii) the division fails to follow the prescribed procedure for the revocation.

285 (e) If a registration is revoked or a revocation under this Subsection (3) is upheld after
286 a post-revocation hearing, the entity may not apply for a new registration until at least 12
287 months after the day on which the registration is revoked.

288 (4) (a) An appraisal management company shall comply with this Subsection (4) if
289 there is a change in:

290 (i) an individual who owns 10% or more of the entity; or

291 (ii) the controlling person designated as the contact as required by Section 61-2e-201.

292 (b) If there is a change in an individual described in Subsection (4)(a), within 30 days
293 of the day on which the change occurs, the appraisal management company shall file with the
294 division:

295 (i) the individual's name, address, and contact information;

296 (ii) a statement of whether or not the individual has had a license or certificate to
297 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or
298 revoked in this state or in another state; and

299 (iii) (A) fingerprint cards in a form acceptable to the division at the time the
300 registration application is filed; and

301 (B) consent to a criminal background check by the Utah Bureau of Criminal
302 Identification and the Federal Bureau of Investigation regarding the application.

303 Section 9. Section **61-2e-204** is enacted to read:

304 **61-2e-204. Renewal of a registration.**

305 (1) (a) A registration under this chapter expires two years from the day on which the
306 registration is filed.

307 (b) Notwithstanding Subsection (1)(a), the time period of a registration may be
308 extended or shortened by as much as one year to maintain or change a renewal cycle
309 established by rule by the division.

310 (2) To renew a registration under this chapter, before the day on which the registration
311 expires, an appraisal management company shall:

312 (a) file with the division a renewal registration application on a form prescribed by the
313 division; and

314 (b) pay to the division a fee determined in accordance with Section 63J-1-303.

315 (3) A renewal registration application shall include substantially similar information to
316 the information required under Section 61-2e-202, except that for an individual described in
317 Subsection 61-2e-202(1)(e) or (g), the entity is required to report whether the individual has
318 had:

319 (a) (i) a conviction of a criminal offense;

320 (ii) the entry of a plea in abeyance to a criminal offense; or

321 (iii) the potential resolution of a criminal case by:

322 (A) a diversion agreement; or

323 (B) another agreement under which a criminal charge is held in suspense for a period
324 of time;

325 (b) a filing of personal bankruptcy or bankruptcy of a business that transacts the
326 appraisal management services;

327 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
328 license or certification, whether the license or registration is issued by this state or another
329 jurisdiction; or

330 (d) the entry of a cease and desist order or a temporary or permanent injunction:

331 (i) against the individual by a court or government agency; and

332 (ii) on the basis of:

333 (A) conduct or a practice involving the business of appraisal management services; or

334 (B) conduct involving fraud, misrepresentation, or deceit.

335 (4) A registration expires if it is not renewed on or before its expiration date, except
336 that for a period of 30 days after the expiration date, the registration may be reinstated upon
337 compliance with this section, including payment of a renewal fee and a late fee determined by

338 the division and the board.

339 Section 10. Section **61-2e-301** is enacted to read:

340 **Part 3. Operational Requirements**

341 **61-2e-301. Use of licensed or certified appraisers.**

342 (1) An appraisal management company required to be registered under this chapter may
343 not enter into an agreement with an appraiser for the performance of a real estate appraisal
344 activity unless the appraiser is licensed or certified in good standing pursuant to Chapter 2b,
345 Real Estate Appraiser Licensing and Certification Act.

346 (2) (a) An appraisal management company required to be registered under this chapter
347 shall have a system to verify that an individual added to the appraiser panel of the appraisal
348 management company holds a license or certificate in good standing in this state pursuant to
349 Chapter 2b, Real Estate Appraiser Licensing and Certification Act.

350 (b) As part of the registration process under Part 2, Registration, an appraisal
351 management company shall biennially provide an explanation of the system described in
352 Subsection (2)(a) in the form prescribed by the division.

353 Section 11. Section **61-2e-302** is enacted to read:

354 **61-2e-302. Adherence to standards.**

355 (1) An appraisal management company required to be registered under this chapter shall
356 have a system in place to review the work of an appraiser who performs a real estate appraisal
357 activity for the appraisal management company on a periodic basis to ensure that a real estate
358 appraisal activity is conducted in accordance with applicable appraisal standards.

359 (2) As part of the registration process under Part 2, Registration, an appraisal
360 management company shall biennially provide an explanation of the system described in
361 Subsection (1) in the form prescribed by the division.

362 Section 12. Section **61-2e-303** is enacted to read:

363 **61-2e-303. Record keeping.**

364 (1) An appraisal management company required to be registered under this chapter shall
365 maintain a detailed record of the following for the same time period an appraiser is required to
366 maintain an appraisal record for the same real estate appraisal activity:

367 (a) a real estate appraisal activity request that the appraisal management company
368 receives; and

369 (b) the appraiser that performs the real estate appraisal activity described in Subsection
370 (1) for the appraisal management company.

371 (2) As part of the registration process under Part 2, Registration, an appraisal
372 management company shall biennially provide an explanation of its record keeping described
373 in Subsection (1) in the form prescribed by the division.

374 Section 13. Section **61-2e-304** is enacted to read:

375 **61-2e-304. Required disclosure.**

376 (1) Before an appraisal management company may receive monies from a client for a
377 real estate appraisal activity requested by the client, the appraisal management company shall
378 disclose to the client the total compensation that the appraisal management company pays to
379 the appraiser who performs the real estate appraisal activity.

380 (2) The board may define by rule made in accordance with Title 63G, Chapter 3, Utah
381 Administrative Rulemaking Act:

382 (a) what constitutes the total compensation that an appraisal management company
383 pays to an appraiser who performs a real estate appraisal activity, except that the rules shall
384 provide for disclosing this amount:

385 (i) as a dollar amount; or

386 (ii) as a percentage of the total amount charged to a client by an appraisal management
387 company;

388 (b) the method an appraisal management company is required to use in calculating the
389 figures described in Subsection (2)(a); and

390 (c) the form and content of the disclosure required by Subsection (1).

391 Section 14. Section **61-2e-305** is enacted to read:

392 **61-2e-305. Employee requirements.**

393 (1) Subsection (2) applies to an individual who:

394 (a) (i) is an employee of an appraisal management company; or

395 (ii) works on behalf of an appraisal management company; and

396 (b) (i) selects an appraiser for the performance of a real estate appraisal activity for the
397 appraisal management company; or

398 (ii) reviews a completed appraisal.

399 (2) (a) An individual described in Subsection (1) is required to be appropriately trained

400 and qualified in the performance of an appraisal, as determined by the board by rule made in
401 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

402 (b) For purposes of an individual described in Subsection (1) who reviews the work of
403 an appraiser, to comply with this Subsection (2), the individual shall demonstrate knowledge of
404 the applicable appraisal standards, as determined by the board by rule made in accordance with
405 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

406 Section 15. Section **61-2e-306** is enacted to read:

407 **61-2e-306. Removal of appraiser from appraisal panel.**

408 Except within the first 30 days after the day on which an appraiser is first added to the
409 appraiser panel of an appraisal management company, an appraisal management company may
410 not remove the appraiser from its appraiser panel, or otherwise refuse to assign a request for a
411 real estate appraisal activity to an appraiser without:

412 (1) notifying the appraiser in writing of:

413 (a) the reason why the appraiser is being removed from the appraiser panel of the
414 appraisal management company; and

415 (b) the nature of the alleged conduct or violation if the appraiser is being removed from
416 the appraiser panel for:

417 (i) illegal conduct; or

418 (ii) a violation of the applicable appraisal standards; and

419 (2) providing an opportunity for the appraiser to respond to the notification of the

420 appraisal management company.

421 Section 16. Section **61-2e-307** is enacted to read:

422 **61-2e-307. Prohibitions related to an appraiser.**

423 (1) An appraisal management company required to be registered under this chapter, or a
424 controlling person, employee, or agent of the appraisal management company may not
425 influence or attempt to influence the development, reporting, or review of an appraisal through:

426 (a) coercion;

427 (b) extortion;

428 (c) collusion;

429 (d) compensation;

430 (e) instruction;

- 431 (f) inducement;
- 432 (g) intimidation;
- 433 (h) bribery; or
- 434 (i) any other manner ~~§~~→ **that would constitute undue influence** ←~~§~~ .
- 435 (2) A violation of Subsection (1) includes doing one or more of the following for a
- 436 purpose listed in Subsection (1):
- 437 (a) withholding or threatening to withhold timely payment for an appraisal;
- 438 (b) withholding or threatening to withhold future business for an appraiser;
- 439 (c) taking adverse action or threatening to take adverse action against an appraiser
- 440 regarding use of the appraiser for a real estate appraisal activity;
- 441 (d) expressly or by implication promising future business or increased compensation
- 442 for an appraiser;
- 443 (e) conditioning one or more of the following on the opinion, conclusion, or valuation
- 444 to be reached, or on a preliminary estimate or opinion requested from an appraiser:
- 445 (i) a request for a real estate appraisal activity; or
- 446 (ii) the payment of consideration;
- 447 (f) requesting that an appraiser provide at any time before the appraiser's completion of
- 448 a real estate appraisal activity:
- 449 (i) an estimated, predetermined, or desired valuation in an appraisal report; or
- 450 (ii) an estimated value or comparable sale;
- 451 (g) except for a copy of a sales contract for a purchase transaction, providing to an
- 452 appraiser:
- 453 (i) an anticipated, estimated, encouraged, or desired value for a subject property; or
- 454 (ii) a proposed or target amount to be loaned to the borrower;
- 455 (h) providing to an appraiser, or an individual related to the appraiser, stock or other
- 456 financial or non-financial benefits;
- 457 (i) allowing the removal of an appraiser from an appraiser panel, without prior written
- 458 notice to the appraiser as required by Section 61-2e-306;
- 459 (j) obtaining, using, or paying for a subsequent appraisal or ordering an automated
- 460 valuation model in connection with a mortgage financing transaction unless:
- 461 (i) (A) there is a reasonable basis to believe that the initial appraisal does not meet

462 applicable appraisal standards; and

463 (B) the reasonable basis is noted in the loan file; or

464 (ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or

465 post-funding appraisal review or quality control process in accordance with applicable

466 appraisal standards;

467 (k) compensating an appraiser in a manner that the person should reasonably have

468 known would result in the appraiser not conducting a real estate appraisal activity in a manner

469 consistent with applicable appraisal standards;

470 (l) engaging in the business of an appraisal management company under an assumed or

471 fictitious name not properly registered in this state;

472 (m) accepting a contingent fee for performing an appraisal management service if the

473 fee is contingent on:

474 (i) the appraiser report having a predetermined analysis, opinion, or conclusion;

475 (ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or

476 (iii) the consequences resulting from the appraisal assignment; or

477 (n) any other act or practice that impairs or attempts to impair an appraiser's

478 independence, objectivity, or impartiality.

479 (3) This section may not be construed to prohibit an appraisal management company

480 from requesting that an appraiser:

481 (a) provide additional information about the basis for a valuation; or

482 (b) correct an objective factual error in an appraisal report.

483 (4) An appraisal management company required to be registered under this chapter, or

484 a controlling person, employee, or agent of the appraisal management company may not alter,

485 modify, or otherwise change a completed appraisal report submitted by an appraiser.

486 Section 17. Section **61-2e-401** is enacted to read:

487 **Part 4. Enforcement**

488 **61-2e-401. Division authority -- Immunity.**

489 (1) (a) In addition to a power or duty expressly provided in this chapter, the division

490 may:

491 (i) receive and act on a complaint including:

492 (A) taking action designed to obtain voluntary compliance with this chapter; or

493 (B) commencing an administrative or judicial proceeding on the division's own
494 initiative;

495 (ii) investigate an entity required to be registered under this chapter, regardless of
496 whether the entity is located in Utah; and

497 (iii) employ one or more investigators, clerks, or other employees or agents if:

498 (A) approved by the executive director; and

499 (B) within the budget of the division.

500 (b) A failure to respond to a request by the division in an investigation under this
501 chapter is considered to be a separate violation of this chapter, including:

502 (i) failing to respond to a subpoena;

503 (ii) withholding evidence; or

504 (iii) failing to produce a document or record.

505 (2) The division is immune from a civil action or criminal prosecution for initiating or
506 assisting in a lawful investigation of an act or participating in a disciplinary proceeding under
507 this chapter if the division takes the action:

508 (a) without malicious intent; and

509 (b) in the reasonable belief that the action is taken pursuant to the powers and duties
510 vested in the division under this chapter.

511 Section 18. Section **61-2e-402** is enacted to read:

512 **61-2e-402. Enforcement -- Immunity for board.**

513 (1) (a) The board may order disciplinary action against:

514 (i) an entity registered under this chapter;

515 (ii) an entity required to be registered under this chapter; or

516 (iii) a controlling person of an entity described in this Subsection (1)(a).

517 (b) If the board makes a finding described in Subsection (2) pursuant to an adjudicative
518 proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act,
519 the board may:

520 (i) revoke, suspend, or place an entity's registration on probation;

521 (ii) deny an entity's original registration;

522 (iii) deny an entity's renewal registration;

523 (iv) in the case of denial or revocation of a registration, set a waiting period for an

524 applicant to apply for a registration under this chapter;
525 (v) order remedial education;
526 (vi) impose a civil penalty upon a person not to exceed the greater of:
527 (A) \$2,500 for each violation; or
528 (B) the amount of any gain or economic benefit from a violation;
529 (vii) issue a cease and desist order; or
530 (viii) do a combination of Subsections (1)(b)(i) through (vii).
531 (2) Subsection (1) applies if the board finds that a person has engaged in, is attempting
532 to, or has attempted to engage in:
533 (a) an act that violates this chapter;
534 (b) an act that violates a rule made by the board under this chapter;
535 (c) procuring a registration for the person or another person by fraud,
536 misrepresentation, or deceit;
537 (d) paying money or attempting to pay money other than a fee provided for by this
538 chapter to an employee of the division to procure a registration under this chapter;
539 (e) an act or omission in the business of an appraisal management company that
540 constitutes dishonesty, fraud, or misrepresentation;
541 (f) unprofessional conduct as defined by statute or rule; or
542 (g) other conduct that constitutes dishonest dealing.
543 (3) A member of the board is immune from a civil action or criminal prosecution for a
544 disciplinary proceeding under this chapter if:
545 (a) the action is taken without malicious intent; and
546 (b) in the reasonable belief that the action taken was taken pursuant to the powers and
547 duties vested in a member of the board under this chapter.

Legislative Review Note
as of 1-29-09 6:26 AM

Office of Legislative Research and General Counsel

H.B. 152 - Appraisal Management Company Regulation

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will require an additional appropriation from the Commerce Service Fund of \$8,800 in FY 2010 and \$8,800 in FY 2011. It is anticipated that the enactment of this bill will generate sufficient revenue to cover the costs of the implementation of this program.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
Commerce Service Fund	\$0	\$8,800	\$8,800	\$0	\$8,800	\$8,800
Total	\$0	\$8,800	\$8,800	\$0	\$8,800	\$8,800

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Individuals and business may be affected by this change in statute.
