

Sixty-third  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1389

Introduced by

Representatives Wieland, Beadle, Hanson, Larson, Louser, Streyle

Senators Heckaman, J. Lee

1 A BILL for an Act to create and enact chapter 43-23.5 of the North Dakota Century Code,  
2 relating to appraisal management company regulation; to amend and reenact the new  
3 subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code as created  
4 by section 1 of Senate Bill No. 2110, as approved by the sixty-third legislative assembly, relating  
5 to criminal history background checks; to provide a penalty; and to provide an effective date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** The new subdivision to subsection 2 of section 12-60-24 of the  
8 North Dakota Century Code as created by section 1 of Senate Bill No. 2110, as approved by the  
9 sixty-third legislative assembly, is amended and reenacted as follows:

10 The North Dakota real estate appraiser qualifications and ethics board for  
11 applicants for permits or registration or permittees, registrants, owners, or  
12 controlling persons under ~~chapter~~chapters 43-23.3 and 43-23.5, except that  
13 criminal history record checks for permittees, registrants, owners, or  
14 controlling persons need not be made unless required by the board.

15 **SECTION 2.** Chapter 43-23.5 of the North Dakota Century Code is created and enacted as  
16 follows:

17 **43-23.5-01. Definitions.**

18 As used in this chapter, unless the context otherwise requires:

- 19 1. "Appraisal firm" means any person or entity that exclusively employs persons on an  
20 employer and employee basis for the performance of real estate appraisal services in  
21 the normal course of its business and the real estate appraisal services being  
22 performed are in accordance with the uniform standards of professional appraisal  
23 practices.

- 1           2. "Appraisal management company" means, in connection with valuing properties  
2           collateralizing mortgage loans or mortgages incorporated into a securitization, any  
3           external third party that oversees a network or panel of more than fifteen certified or  
4           licensed appraisers in this state or twenty-five or more nationally within a given year,  
5           that is authorized either by a creditor of a consumer credit transaction secured by a  
6           consumer's principal dwelling or by an underwriter or other principal in the secondary  
7           mortgage markets that engages in appraisal management services.
- 8           3. "Appraisal management services" means to, directly or indirectly, perform any of the  
9           following functions on behalf of a lender, financial institution, client, or any other  
10           person in conjunction with a consumer credit transaction that is secured by a  
11           consumer's primary dwelling:
- 12           a. Administer an appraiser panel.  
13           b. Recruit, retain, or select appraisers.  
14           c. Qualify, verify licensing or certification, and negotiate fees and service level  
15           expectations with persons who are part of an appraiser panel.  
16           d. Contract with appraisers to perform appraisal assignments.  
17           e. Receive an order for an appraisal from one person, and deliver the order for the  
18           appraisal to an appraiser that is part of an appraiser panel for completion.  
19           f. Manage the process of having an appraisal performed, including providing  
20           administrative duties, such as receiving appraisal orders and reports, submitting  
21           completed appraisal reports to creditors and underwriters, collecting fees from  
22           creditors and underwriters for services provided, and reimbursing appraisers for  
23           services performed.  
24           g. Track and determine the status of appraisal orders.  
25           h. Conduct an appraisal review or other quality control of a completed appraisal  
26           prior to the delivery of the appraisal to the person that ordered the appraisal.  
27           i. Provide a completed appraisal performed by an appraiser to one or more clients.
- 28           4. "Appraisal review" means the act or process of developing and communicating an  
29           opinion about the quality of another appraiser's work that was performed as part of an  
30           appraisal assignment related to the appraiser's data collection, analysis, opinions,

1 conclusions, estimate of value, or compliance with the uniform standards of  
2 professional appraisal practice. This term does not include:

3 a. A general examination for grammatical, typographical, or other similar errors.

4 b. A general examination for completeness, including regulatory and/or client  
5 requirements as specified in the agreement process that does not communicate an  
6 opinion.

7 5. "Appraiser panel" means a network of licensed or certified appraisers who have:

8 a. Responded to an invitation, request, or solicitation from an appraisal  
9 management company, in any form, to perform appraisals for persons that have  
10 ordered appraisals through the appraisal management company, or to perform  
11 appraisals for the appraisal management company directly, on a periodic basis,  
12 as requested and assigned by the appraisal management company.

13 b. Been selected and approved by an appraisal management company to perform  
14 appraisals for any client of the appraisal management company that has ordered  
15 an appraisal through the appraisal management company, or to perform  
16 appraisals for the appraisal management company directly, on a periodic basis,  
17 as assigned by the appraisal management company.

18 6. "Board" means the North Dakota real estate appraiser qualifications and ethics board.

19 7. "Controlling person" means:

20 a. An officer, director, or owner of greater than a ten percent interest of a  
21 corporation, partnership, or other business entity seeking to act as an appraisal  
22 management company in this state.

23 b. An individual employed, appointed, or authorized by an appraisal management  
24 company that has the authority to enter a contractual relationship with other  
25 persons for performance of services requiring registration as an appraisal  
26 management company and has the authority to enter agreements with appraisers  
27 for the performance of appraisals.

28 c. An individual who possesses, directly or indirectly, the power to direct or cause  
29 the direction of the management or policies of an appraisal management  
30 company.

1       8. "Federal financial institutions regulatory agencies" includes the board of governors of  
2       the federal reserve system, the federal deposit insurance corporation, the office of the  
3       comptroller of the currency, and the national credit union administration.

4       9. "Federally related transaction" means any real estate-related financial transaction  
5       which a federal financial institutions regulatory agency or the resolution trust  
6       corporation engages in, contracts for, or regulates, and requires the services of an  
7       appraiser.

8       10. "Real estate-related financial transaction" means any transaction involving:

9           a. The sale, lease, purchase, investment in, or exchange of real property, including  
10          interests in property or the financing thereof.

11          b. The refinancing of real property or interests in real property.

12          c. The use of real property or interests in property as security for a loan or  
13          investment, including mortgage-backed securities.

14       **43-23.5-02. Rulemaking authority.**

15       The board shall have the authority to adopt rules that are reasonably necessary to  
16       implement, administer, and enforce the provisions of this chapter.

17       **43-23.5-03. Registration required.**

18       It is unlawful for a person to directly or indirectly engage or to attempt to engage in business  
19       as an appraisal management company, to directly or indirectly perform or to attempt to perform  
20       appraisal management services, or to advertise or hold itself out as engaging in or conducting  
21       business as an appraisal management company without first obtaining a registration issued by  
22       the board.

23       **43-23.5-04. Registration process.**

24       An applicant for registration as an appraisal management company shall submit to the  
25       board an application on forms prescribed by the board and pay a fee established by the board.  
26       The forms shall require information necessary to determine eligibility for registration.

27       **43-23.5-05. Consent to service of process.**

28       An applicant for registration as an appraisal management company that is not domiciled in  
29       this state shall complete an irrevocable consent to service of process, as prescribed by the  
30       secretary of state.

1       **43-23.5-06. Expiration of registration.**

2       Registrations will expire on September thirtieth of each year. The expiration date of the  
3 registration must appear on the registration and no other notice of its expiration need be given  
4 to the registrant.

5       **43-23.5-07. Exemptions.**

6       The provisions of this chapter shall not apply to:

- 7       1. An appraisal firm.
- 8       2. A financial institution, including a department or unit within the institution, that is  
9 regulated by an agency of this state or the United States government.
- 10      3. A person who enters an agreement with an appraiser for the performance of an  
11 appraisal that upon completion results in a report signed by both the appraiser who  
12 completed the appraisal and the appraiser who requested completion of the appraisal.
- 13      4. An appraisal management company with an appraisal panel of not more than fifteen  
14 certified or licensed appraisers in this state or twenty-five or more nationally within a  
15 given year.
- 16      5. An appraisal management company that is a subsidiary owned and controlled by a  
17 financial institution that is subject to appraisal independence standards at least as  
18 stringent as those under chapter 43-23.5-21, if regulated by an agency of this state, or  
19 the Truth in Lending Act [15 U.S.C. Section 1601 et seq.], if regulated by the United  
20 States government.

21      **43-23.5-08. Owner requirements.**

- 22      1. An appraisal management company applying for, holding, or renewing a registration  
23 under this chapter shall not be more than ten percent owned by:
  - 24      a. A person who has had an appraiser license or certification in this state or in any  
25 other state refused, denied, canceled, revoked, or surrendered in lieu of a  
26 pending disciplinary proceeding in any jurisdiction and not subsequently granted  
27 or reinstated.
  - 28      b. An entity that is more than ten percent owned by any person who has had an  
29 appraiser license or certification in this state or any other state refused, denied,  
30 canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in  
31 any jurisdiction and not subsequently granted or reinstated.

- 1       2. Each person that owns more than ten percent of an appraisal management company  
2       applying for, holding, or renewing a registration under this chapter shall:  
3       a. Be of good moral character.  
4       b. Submit to a criminal background investigation for an initial application or as  
5       required by the board.  
6       3. Each appraisal management company applying for a registration or for renewal of a  
7       registration under this chapter shall certify to the board on a form prescribed by the  
8       board that the company has reviewed each entity that owns more than ten percent of  
9       the appraisal management company and that no entity that owns more than ten  
10      percent of the appraisal management company is more than ten percent owned by  
11      any person that has had an appraiser license or certification in this state or any other  
12      state refused, denied, canceled, revoked, or surrendered in lieu of a pending  
13      disciplinary proceeding in any jurisdiction and not subsequently granted or reinstated.

14      **43-23.5-09. Controlling person.**

15      An appraisal management company applying for a registration or for renewal of a  
16      registration in this state shall designate one controlling person that shall serve as the main  
17      contact for all communication between the board and the company. The controlling person shall:

- 18      1. Remain in good standing in this state or in any other state that the controlling person  
19      holds a licensure or certification permit from; however, nothing in this chapter shall  
20      require that a designated controlling person hold an appraiser license or certification in  
21      any jurisdiction.  
22      2. Have never had an appraiser license or certification in this state or any other state  
23      refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary  
24      proceeding in any jurisdiction and not subsequently reinstated or granted.  
25      3. Be of good moral character.  
26      4. Submit to a criminal background investigation for an initial application or as required  
27      by the board.

28      **43-23.5-10. Employee requirements.**

29      An appraisal management company that applies to the board for a registration or to renew a  
30      registration to do business in this state as an appraisal management company may not:

- 1       1. Knowingly employ any person for the performance of appraisal or appraisal  
2           management services who has had an appraiser license or certification in this state or  
3           any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending  
4           disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted.
- 5       2. Knowingly enter any independent contractor arrangement, whether in verbal, written,  
6           or other form, for the performance of appraisal or appraisal management services,  
7           with any person that has had an appraiser license or certification in this state or any  
8           other state refused, denied, canceled, revoked, or surrendered in lieu of a pending  
9           disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted.
- 10      3. Knowingly enter any contract, agreement, or other business relationship, whether in  
11           verbal, written, or any other form, with any entity that employs, has entered an  
12           independent contract arrangement, or has entered any contract, agreement, or other  
13           business relationship, whether in verbal, written, or any other form, for the  
14           performance of appraisal or appraisal management services, with any person that has  
15           had an appraiser license or certification in this state or any other state refused, denied,  
16           canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any  
17           jurisdiction and not subsequently reinstated or granted.

18       **43-23.5-11. Appraiser engagement.**

19       Before or at the time of placing an assignment with an appraiser on the appraiser panel of  
20       an appraisal management company, the appraisal management company shall verify that the  
21       appraiser receiving the assignment holds a permit in good standing in this state.

22       **43-23.5-12. Appraisal review.**

23       Any employee of, or independent contractor to, the appraisal management company that  
24       performs an appraisal review for a property located in this state must be:

- 25           1. A certified or licensed appraiser in good standing in this state.
- 26           2. A certified or licensed appraiser in good standing in another state.

27       **43-23.5-13. Verification of licensure or certification.**

- 28           1. An appraisal management company registered in this state may not enter any contract  
29           or agreement with an appraiser for the performance of appraisals unless the company  
30           verifies that the appraiser is licensed or certified in good standing in this state.

1       2. An appraisal management company seeking to be registered in this state or to renew  
2       a registration in this state shall certify to the board on a form prescribed by the board  
3       that the company has a system and process in place to verify that an individual being  
4       added to the appraiser panel of the company for appraisal services holds a permit in  
5       good standing in this state.

6       **43-23.5-14. Appraisal management company certification of appraisal review system.**

7       Each appraisal management company seeking to be registered or to renew a registration in  
8       this state shall certify to the board on a form prescribed by the board that the company has a  
9       system in place to perform an appraisal review of the work product of a statistically significant  
10      number of appraisal reports submitted by independent appraisers performing appraisals for the  
11      appraisal management company on a periodic basis to validate that the appraisals are being  
12      conducted in accordance with the uniform standards of professional appraisal practice, and  
13      chapter 43-23.3, and the rules adopted under this chapter. An appraisal management company  
14      shall report to the board the results of any appraisal reviews in which an appraisal is found to be  
15      substantially noncompliant with the uniform standards of professional appraisal practice.

16      **43-23.5-15. Retention of records.**

- 17      1. Each appraisal management company seeking to be registered or to renew an  
18      existing registration in this state shall certify to the board on a form prescribed by the  
19      board that the company maintains a detailed record of each service request that the  
20      company receives for appraisal of real property located in this state.
- 21      2. An appraisal management company registered in this state shall retain for five years  
22      all records required to be maintained under this chapter as described in rules. This  
23      five-year period shall commence on the date of the final action by the appraisal  
24      management company for each individual transaction or, if the appraisal management  
25      company is notified that the transaction is involved in litigation, the five-year period  
26      shall commence on the date the litigation is finally disposed.
- 27      3. All records required to be maintained by the registered appraisal management  
28      company may be made available for inspection and copying by the board on  
29      reasonable notice to the appraisal management company.

1       **43-23.5-16. Fee disclosure system requirement.**

2       1. An appraisal management company registered in this state shall disclose to its clients  
3       the fees paid for appraisal management services and the fees paid to the independent  
4       appraiser for the completion of an appraisal assignment.

5       2. An appraisal management company registered in this state shall not prohibit an  
6       independent appraiser that is part of an appraiser panel from recording the fee that the  
7       appraiser was paid by the appraisal management company for the performance of the  
8       appraisal within the communication of the appraisal.

9       **43-23.5-17. Requirement of appraisal management company's payment to appraiser.**

10      1. An appraisal management company shall, except in bona fide cases of breach of  
11      contract or substandard performance of services, make payment to an independent  
12      appraiser for the completion of an appraisal or valuation assignment within forty-five  
13      days of the date on which the appraiser transmits or otherwise provides the completed  
14      appraisal or valuation assignment to the company or its assignee unless a mutually  
15      agreed-upon alternate arrangement has been previously established.

16      2. An appraisal management company seeking to be registered or to renew an existing  
17      registration in this state shall certify that the company will require appraisals to be  
18      conducted independently as required by the appraisal independence standards under  
19      section 129E of the Truth in Lending Act, including the requirements of payment or a  
20      reasonable and customary fee to independent appraisers when the appraisal  
21      management company is providing services for a consumer credit transaction secured  
22      by the principal dwelling of a consumer.

23      **43-23.5-18. Appraisal management company registration numbers.**

24      1. The board shall issue a registration number to each appraisal management company  
25      that is registered in this state.

26      2. The board shall maintain a list of the appraisal management companies that are  
27      registered with the board.

28      3. An appraisal management company registered in this state shall place its registration  
29      number on engagement documents utilized by the appraisal management company  
30      for procurement of appraisal services in this state.

1        **43-23.5-19. Fees - Bonds.**

2        1.    The board may charge the appraisal management company reasonable fees to help  
3        offset costs of operating the board. The board shall establish fees by rule.

4        2.    The board may require by rule a surety bond of not more than twenty-five thousand  
5        dollars.

6        **43-23.5-20. Mandatory reporting.**

7        An appraisal management company that has a reasonable basis to believe an appraiser  
8        has failed to comply with applicable laws or rules or has substantially violated the uniform  
9        standards of professional appraisal practice shall refer the matter to the board.

10       **43-23.5-21. Prohibited conduct.**

11       A violation of this section may constitute grounds for discipline against an appraisal  
12       management company registered in this state. However, an appraisal management company  
13       may request an appraiser provide additional information about the basis for a valuation, correct  
14       objective factual errors in an appraisal report, or consider additional appropriate property  
15       information. No employee, director, officer, agent, independent contractor, or other third party  
16       acting on behalf of an appraisal management company may:

- 17       1.    Procure or attempt to procure a registration by knowingly making a false statement,  
18       submitting false information, refusing to provide complete information in response to a  
19       question in an application for registration, or through fraud or misrepresentation.
- 20       2.    Willfully violate this chapter or rules of the board.
- 21       3.    Improperly influence or attempt to improperly influence the development, reporting,  
22       result, or a review of an appraisal through intimidation, coercion, extortion, bribery, or  
23       any other manner, including:
- 24       a.    Withholding payment for appraisal services.
- 25       b.    Threatening to exclude an appraiser from future work or threatening to demote or  
26       terminate in order to improperly obtain a desired result.
- 27       c.    Conditioning payment of an appraisal fee upon the opinion, conclusion, or  
28       valuation to be reached.
- 29       d.    Requesting an appraiser to report a predetermined opinion, conclusion, or  
30       valuation or the desired valuation of any person or entity.

- 1       4.   Require an appraiser to provide the appraisal management company with the  
2       appraiser's digital signature or seal.
- 3       5.   Alter, amend, or change an appraisal report submitted by an appraiser without the  
4       appraiser's knowledge and written consent.
- 5       6.   Except within the first ninety days after an independent appraiser is added to an  
6       appraiser page, remove an independent appraiser from an appraiser panel without  
7       prior written notice to the appraiser, with the prior written notice including evidence of  
8       the following, if applicable:
  - 9       a.   The appraiser's illegal conduct.
  - 10      b.   A violation of the uniform standards of professional appraisal practice, this  
11      chapter, or the rules adopted by the board.
  - 12      c.   Improper or unprofessional conduct.
- 13      7.   Require an appraiser to sign any indemnification agreement that would require the  
14      appraiser to defend and hold harmless the appraisal management company or any of  
15      its agents or employees for any liability, damage, losses, or claims arising out of the  
16      services performed by the appraisal management company or its agents, employees,  
17      or independent contractors and not the services performed by the appraiser.
- 18      8.   Prohibit lawful communications between the appraiser and any other person who the  
19      appraiser, in the appraiser's professional judgment, believes possesses information  
20      that would be relevant.
- 21      9.   Engage in any other act or practice that impairs or attempts to impair a real estate  
22      appraiser's independence, objectivity, and impartiality.
- 23      10.  Submit or attempt to submit false, misleading, or inaccurate information in any  
24      application for registration or renewal.
- 25      11.  Fail to timely respond to any subpoena or any other request for information.
- 26      12.  Fail to timely obey an administrative order of the board.
- 27      13.  Fail to fully cooperate in any investigation.

28       **43-23.5-22. Disciplinary proceedings.**

29       The board may deny, suspend, revoke, impose a monetary penalty, issue a letter of  
30       reprimand, refuse to issue or renew the registration of an appraisal management company, or  
31       take other disciplinary action when:

- 1       1. The applicant or any partner has, within twelve months preceding the date of the
- 2           application, violated any provision of this chapter.
- 3       2. The applicant is not of good moral character.
- 4       3. The applicant has been the holder of a registration revoked or suspended for cause, or
- 5           surrendered in lieu of disciplinary proceedings.
- 6       4. The applicant, in the case of an application for renewal of any registration, would not
- 7           be eligible for such registration on a first application.
- 8       5. The issuance of the registration applied for would result in a violation of any provision
- 9           of this chapter or the rules adopted by the board.
- 10      6. In the conduct of affairs under the registration, demonstrated incompetency, or
- 11           untrustworthiness, or conduct or practices rendering the registrant unfit to carry on
- 12           appraisal management services or making continuance in the business detrimental to
- 13           the public interest, or that the licensee is no longer in good faith carrying on appraisal
- 14           management services, and for this conduct is found by the board to be a source of
- 15           detriment, injury, or loss to the public.
- 16      7. Committed any act in violation of this chapter.
- 17      8. Violated any rule or regulation adopted by the board in the interest of the public and
- 18           consistent with the provisions of this chapter.
- 19      9. Procured a registration or a renewal of a registration for the appraisal management
- 20           company or committed any other act by fraud, misrepresentation, or deceit.

21       **43-23.5-23. Criminal history background checks.**

22       The board shall require an applicant for registration under section 43-23.5-03, an owner  
23 under section 43-23.5-08, or a controlling person under section 43-23.5-09 to submit to a  
24 statewide and nationwide criminal history record check. The nationwide criminal history record  
25 check must be conducted in the manner provided in section 12-60-24. All costs associated with  
26 obtaining a background check are the responsibility of the applicant or the regulated individual.

27       **43-23.5-24. Penalty.**

28       Any person who performs appraisal management services without a certificate of  
29 registration as required by this chapter is guilty of a class A misdemeanor.

30       **SECTION 3. EFFECTIVE DATE.** Notwithstanding any other provision of this Act, an  
31 appraisal management company conducting business in this state on or before January 1,

Sixty-third  
Legislative Assembly

- 1 2014, may continue to conduct business in this state without registering pursuant to this Act
- 2 until sixty days after the date rules implementing the registration process created by the board
- 3 take effect.