

HOUSE BILL NO. 1080

Introduced by

Industry, Business and Labor Committee

(At the request of the North Dakota Real Estate Appraiser Qualifications and Ethics Board)

1 A BILL for an Act to amend and reenact sections 43-23.5-01, 43-23.5-07, 43-23.5-08, and
2 43-23.5-15 and subsection 6 of section 43-23.5-21 of the North Dakota Century Code, relating
3 to the regulation of appraisal management companies.

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

5 **SECTION 1. AMENDMENT.** Section 43-23.5-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-23.5-01. Definitions.**

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

- 9 1. "Appraisal firm" means any person or entity that exclusively employs persons on an
10 employer and employee basis for the performance of real estate appraisal services in
11 the normal course of its business and the real estate appraisal services being
12 performed are in accordance with the uniform standards of professional appraisal
13 practices.
- 14 2. "Appraisal management company" means, in connection with valuing properties
15 collateralizing mortgage loans or mortgages incorporated into a securitization, any
16 external third party that oversees a network or panel of more than fifteen certified or
17 licensed appraisers in this state or twenty-five or more nationally within a given year,
18 that is authorized either by a creditor of a consumer credit transaction secured by a
19 consumer's principal dwelling or by an underwriter or other principal in the secondary
20 mortgage markets that engages in appraisal management services.
- 21 3. "Appraisal management services" means to, directly or indirectly, perform any of the
22 following functions on behalf of a lender, financial institution, client, or any other
23 person in conjunction with a consumer credit transaction that is secured by a
24 consumer's primary dwelling:

- 1 a. Administer an appraiser panel.
- 2 b. Recruit, retain, or select appraisers.
- 3 c. Qualify, verify licensing or certification, and negotiate fees and service level
- 4 expectations with persons who are part of an appraiser panel.
- 5 d. Contract with appraisers to perform appraisal assignments.
- 6 e. Receive an order for an appraisal from one person, and deliver the order for the
- 7 appraisal to an appraiser that is part of an appraiser panel for completion.
- 8 f. Manage the process of having an appraisal performed, including providing
- 9 administrative duties, such as receiving appraisal orders and reports, submitting
- 10 completed appraisal reports to creditors and underwriters, collecting fees from
- 11 creditors and underwriters for services provided, and reimbursing appraisers for
- 12 services performed.
- 13 g. Track and determine the status of appraisal orders.
- 14 h. Conduct an appraisal review or other quality control of a completed appraisal
- 15 prior to the delivery of the appraisal to the person that ordered the appraisal.
- 16 i. Provide a completed appraisal performed by an appraiser to one or more clients.
- 17 4. "Appraisal review" means the act or process of developing and communicating an
- 18 opinion about the quality of another appraiser's work that was performed as part of an
- 19 appraisal assignment related to the appraiser's data collection, analysis, opinions,
- 20 conclusions, estimate of value, or compliance with the uniform standards of
- 21 professional appraisal practice. This term does not include:
- 22 a. A general examination for grammatical, typographical, or other similar errors.
- 23 b. A general examination for completeness, including regulatory client requirements,
- 24 or both, as specified in the agreement process that does not communicate an
- 25 opinion.
- 26 5. "Appraiser panel" means a network of licensed or certified appraisers who have:
- 27 a. Responded to an invitation, request, or solicitation from an appraisal
- 28 management company, in any form, to perform appraisals for persons that have
- 29 ordered appraisals through the appraisal management company, or to perform
- 30 appraisals for the appraisal management company directly, on a periodic basis,
- 31 as requested and assigned by the appraisal management company.

- 1 b. Been selected and approved by an appraisal management company to perform
2 appraisals for any client of the appraisal management company that has ordered
3 an appraisal through the appraisal management company, or to perform
4 appraisals for the appraisal management company directly, on a periodic basis,
5 as assigned by the appraisal management company.
- 6 6. "Board" means the North Dakota real estate appraiser qualifications and ethics board.
- 7 7. "Controlling person" means:
- 8 a. An officer, director, or owner of greater than a ten percent interest of a
9 corporation, partnership, or other business entity seeking to act as an appraisal
10 management company in this state.
- 11 b. An individual employed, appointed, or authorized by an appraisal management
12 company that has the authority to enter a contractual relationship with other
13 persons for performance of services requiring registration as an appraisal
14 management company and has the authority to enter agreements with appraisers
15 for the performance of appraisals.
- 16 c. An individual who possesses, directly or indirectly, the power to direct or cause
17 the direction of the management or policies of an appraisal management
18 company.
- 19 8. "Federal financial institutions regulatory agencies" includes the board of governors of
20 the federal reserve system, the federal deposit insurance corporation, the office of the
21 comptroller of the currency, and the national credit union administration.
- 22 9. "Federally regulated appraisal management company" means an appraisal
23 management company that is owned and controlled by an insured depository
24 institution, as defined in 12 U.S.C. 1813 and regulated by the office of the comptroller
25 of the currency, the board of governors of the federal reserve system, or the federal
26 deposit insurance corporation.
- 27 10. "Federally related transaction" means any real estate-related financial transaction
28 which a federal financial institutions regulatory agency or the resolution trust
29 corporation engages in, contracts for, or regulates, and requires the services of an
30 appraiser.
- 31 ~~10-11.~~ "Real estate-related financial transaction" means any transaction involving:

- 1 a. The sale, lease, purchase, investment in, or exchange of real property, including
- 2 interests in property or the financing thereof.
- 3 b. The refinancing of real property or interests in real property.
- 4 c. The use of real property or interests in property as security for a loan or
- 5 investment, including mortgage-backed securities.

6 **SECTION 2. AMENDMENT.** Section 43-23.5-07 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **43-23.5-07. Exemptions.**

9 The provisions of this chapter do not apply to:

- 10 1. An appraisal firm.
- 11 2. A federally regulated appraisal management company, or a financial institution,
12 including a department or unit within the institution, that is regulated by an agency of
13 this state or the United States government.
- 14 3. A person that enters an agreement with an appraiser for the performance of an
15 appraisal that upon completion results in a report signed by both the appraiser who
16 completed the appraisal and the appraiser who requested completion of the appraisal.
- 17 4. An appraisal management company with an appraisal panel of fewer than sixteen
18 certified or licensed appraisers in this state or fewer than twenty-five nationally within a
19 given year.
- 20 5. An appraisal management company that is a subsidiary owned and controlled by a
21 financial institution that is subject to appraisal independence standards at least as
22 stringent as those under chapter 43-23.5-21, if regulated by an agency of this state, or
23 the Truth in Lending Act [15 U.S.C. 1601 et seq.], if regulated by the United States
24 government.

25 **SECTION 3. AMENDMENT.** Section 43-23.5-08 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **43-23.5-08. Owner requirements.**

- 28 1. An appraisal management company applying for, holding, or renewing a registration
29 under this chapter may not be, in whole or in part, directly or indirectly, owned by:
 - 30 a. An individual who has had an appraiser license or certification in this state or in
31 any other state refused, denied, canceled, surrendered in lieu of revocation, or

1 revoked, or surrendered in lieu of a pending disciplinary proceeding in any
2 jurisdiction and not subsequently granted or reinstated for a substantive cause, as
3 determined by the board, and the license or certificate was subsequently granted
4 or reinstated.

5 b. An entity that is owned by any individual who has had an appraiser license or
6 certification in this state or any other state refused, denied, canceled,
7 surrendered in lieu of revocation, or revoked, or surrendered in lieu of a pending
8 disciplinary proceeding in any jurisdiction and not subsequently granted or
9 reinstated for a substantive cause, as determined by the board, and the license or
10 certificate was subsequently granted or reinstated.

11 2. Each person that owns more than ten percent of an appraisal management company
12 applying for, holding, or renewing a registration under this chapter:

- 13 a. Must be of good moral character.
14 b. Shall submit to a criminal background investigation for an initial application or as
15 required by the board.

16 3. Each appraisal management company applying for a registration or for renewal of a
17 registration under this chapter shall certify to the board on a form prescribed by the
18 board that the company has reviewed each entity that owns the appraisal
19 management company and that no entity that owns the appraisal management
20 company is owned by any person an individual that has had an appraiser license or
21 certification in this state or any other state refused, denied, canceled, surrendered in
22 lieu of revocation, or revoked, or surrendered in lieu of a pending disciplinary
23 proceeding in any jurisdiction and not subsequently granted or reinstated for a
24 substantive cause, as determined by the board, and the license or certificate was
25 subsequently granted or reinstated.

26 **SECTION 4. AMENDMENT.** Section 43-23.5-15 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **43-23.5-15. Retention of records.**

29 1. Each appraisal management company seeking to be registered or to renew an
30 existing registration in this state shall certify to the board on a form prescribed by the

1 board that the company maintains a detailed record of each service request that the
2 company receives for appraisal of real property located in this state.

3 2. An appraisal management company registered in this state shall retain for five years
4 all records required to be maintained under this chapter as described in rules. This
5 five-year period shall commence on the date of the final action by the appraisal
6 management company for each individual transaction or, if the appraisal management
7 company is notified that the transaction is involved in litigation, the five-year period
8 shall commence on the date the litigation is finally disposed.

9 3. All records required to be maintained by the registered appraisal management
10 company ~~may~~must, upon request by the board, be made available for inspection and
11 copying by the board on reasonable notice to the appraisal management company.

12 **SECTION 5. AMENDMENT.** Subsection 6 of section 43-23.5-21 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 6. ~~Except within the first ninety days after an independent appraiser is added to an~~
15 ~~appraiser page, remove~~Remove an independent appraiser from an appraiser panel
16 without prior written notice to the appraiser, with the prior written notice including
17 evidence of the following, if applicable:

- 18 a. The appraiser's illegal conduct.
19 b. A violation of the uniform standards of professional appraisal practice, this
20 chapter, or the rules adopted by the board.
21 c. Improper or unprofessional conduct.