

ONE HUNDRED FIFTH LEGISLATURE - FIRST SESSION - 2017

COMMITTEE STATEMENT

LB17

Hearing Date: Tuesday January 24, 2017
Committee On: Banking, Commerce and Insurance
Introducer: Craighead
One Liner: Change and eliminate provisions of the Real Property Appraiser Act and the Nebraska Appraisal Management Company Registration Act

Roll Call Vote - Final Committee Action:

Advanced to General File

Vote Results:

Aye: 8 Senators Baker, Brewer, Craighead, Kolterman, Lindstrom, McCollister, Schumacher, Williams

Nay:

Absent:

Present Not Voting:

Verbal Testimony:

Proponents:

Senator Joni Craighead
Tyler Kohtz
Bob Hallstrom

Representing:

Introducer
NE Real Property Appraiser Board
NE Bankers Association

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

The purpose of LB17 is to update the Nebraska Appraisal Management Company Registration Act (AMC Act) for compliance with: Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI); the AMC Final Rule adopted by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Consumer Financial Protection Bureau, and the Federal Housing Finance Agency; and the requirements of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC). The AMC Final Rule was adopted on June 9, 2015, with an effective date of August 10, 2015, to implement the minimum requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act, which added a new Section 1124 to Title XI, to be applied by participating states in the registration and supervision of appraisal management companies (AMC). The AMC Final Rule also implements the minimum requirements in the Dodd-Frank Act for AMCs that are subsidiaries owned and controlled by an insured depository institution and regulated by a Federal financial institutions regulatory agency, and implements the requirement for states to report to the ASC the information required by the ASC to administer the new national registry of AMCs. Participating states have until August 10, 2018 to implement these changes. This bill also includes minor changes to address administration of the AMC Act, and to harmonize the AMC Act with the Nebraska Real Property Appraiser Act (Appraiser Act). Finally, this bill includes one change to the Appraiser Act to maintain compliance with Title XI and the Real Property Appraiser Qualifications Criteria effective on July 1, 2016 as promulgated by The Appraisal Foundation, the source of appraisal standards and qualifications as authorized by the U.S. Congress. If the State of Nebraska is found to not be in compliance with Title XI by the Appraisal Subcommittee, the Appraisal

Subcommittee may remove all Nebraska credentialed appraisers from the Federal Registry, resulting in no appraisers qualified to appraise real property in connection with federally related transactions, which is approximately 80 percent of all mortgage loan activity, or remove all Nebraska registered AMCs from the Federal Registry, which would halt all mortgage loan activity within the state in which AMCs are utilized. Nebraska currently has 695 certified or licensed real property appraisers, and 101 AMCs conducting business in the State.

The following AMC Act language changes are included in LB17:

Definitions were added for affiliate; appraisal management services; appraiser panel; consumer credit; covered transaction; creditor; dwelling; federally regulated appraisal management company; independent contractor; and secondary mortgage market participant. These definitions mirror those found in the AMC Final Rule.

Definitions were added for AMC National Registry; AMC Final Rule; Appraisal Subcommittee; AMC appraiser; assignment; credential; contact person; Financial Institutions Reform, Recovery, and Enforcement Act of 1989; jurisdiction; and registration. These definitions clarify terms used throughout the AMC Act.

The definition for appraisal management company was changed to mirror the definition used in the AMC Final Rule.

The definition of board was changed to reference the definition found in the Appraiser Act.

The definition of person was changed to reference the definition found in the Appraiser Act.

The definition federal financial institutions regulatory agency was changed to federal agencies to reference only those federal agencies responsible for the AMC Final Rule, and prevent confusion with the Federal Financial Institutions Examination Council Regulatory Agencies.

The definition of valuation assignment was replaced with valuation services. The term valuation services is used throughout LB17, but valuation assignment has been removed.

The definitions for Appraisal Foundation; appraisal review; appraisal services; appraiser; controlling person; federally related transaction; owned and controlled; quality control examination; real estate related financial transaction; and relocation management company are removed.

Section 4 modifies section 76-3203 to provide authority to the board to request the information necessary to administer and enforce the AMC Act in an application for registration or renewal of a registration; the specific individual application requirements are removed. Additional requirements are also placed on AMCs to safeguard the interests of the public, such as, an AMC shall have a good reputation for honesty, trustworthiness, integrity, and competence to perform appraisal management services, and not have had a final civil or criminal judgment entered against them for fraud, dishonesty, breach of trust, or misrepresentation involving real estate, financial services, or appraisal management services within a five-year period immediately preceding the date of application. Authority is also included in this section to allow the board to collect and transmit information required by Title XI, the AMC Final Rule, or any policy or rule established by the Appraisal Subcommittee. Finally, the renewal requirements for an AMC are better defined.

Section 5 defines the appraiser panel inclusion requirements for an AMC appraiser, and appraiser panel removal and notification requirements for both an AMC and AMC appraiser. Section 4 also establishes that an AMC appraiser shall be free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the federal Truth in Lending Act, as such section existed on January 1, 2017, including the requirements for payment of a reasonable and customary fee to AMC appraisers when the AMC is engaged in providing appraisal management services. This language was previously included as a certification under section 76-3203. Finally, an AMC shall select an AMC appraiser from its appraiser panel for an assignment who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the assignment for the particular market and property type.

Section 6 establishes the reporting requirements for federally regulated AMCs, and grants authority to the board to collect and transmit information and fees required by Title XI, the AMC Final Rule, or any policy or rule established by the Appraisal Subcommittee. Finally, this section includes clarification regarding application of the AMC Act to Federally Regulated AMCs.

Section 7 modifies section 76-3204 to establish that the AMC Act does not apply to a department or division of a person that provides Appraisal Management Services only to itself, or a person that provides appraisal management services, but does not meet the requirement established by subdivision (5)(c) of section 76-3202. Current subdivisions (1), (2), and (3) in this section are removed due to these issues being addressed within the definition of appraisal management company, appraisal management services, appraiser panel, and the newly added language to this section.

Section 9 grants the board authority to collect and transmit to the Appraisal Subcommittee any fees established by the Appraisal Subcommittee under Title XI, the AMC Final Rule, and any policy or rule established by the Appraisal Subcommittee required for inclusion on the AMC National Registry.

Section 10 clarifies the ownership requirements found in section 76-3207 to mirror the AMC Final Rule.

Section 11 removes subsections (1) and (2) of section 76-3208 as these issues are addressed within the added language in section 2 and section 4. Language is added in this section to ensure that AMCs only conduct business in this state under the legal or trade name included in the application as approved by the board for issuance or renewal of a registration, and added language also prevents an AMC from requiring an AMC appraiser to indemnify an AMC or hold an AMC harmless for any liability, damage, losses, or claims arising out of the appraisal management services provided by the AMC.

Section 12 modifies section 76-3210 for clarification as to whom the uniform standards of professional appraisal practice apply to under the AMC Act.

Section 13 modifies section 76-3212 to include the language found in the AMC Final Rule regarding the examination of books and records, and the requirement for an AMC to submit reports, information, and documents upon request, as part of the record keeping requirements for an AMC.

Section 16 modifies section 76-3215 to harmonize with the language changes throughout LB17. In addition, subsections (2), (3), (4), and (5) are removed as their subject is now addressed in Section 4.

Section 17 clarifies the board's authority to issue cease and desist orders for persons directly or indirectly engaging in or attempting to engage in business as AMCs, or advertising as engaging in or conducting business as AMCs, without first obtaining registration issued by the board or by meeting the requirements as a federally regulated AMC. This language is modeled after language in the Appraiser Act. Finally, this section provides authority to the board to report any violation of appraisal related laws or rules and regulations, along with any disciplinary action taken against an AMC, to the Appraisal Subcommittee.

Section 18 adds language to ensure that costs incurred for administrative hearing, including fees of counsel, the hearing officer, court reports, investigators, and witnesses, shall be taxed as costs in such action as the board may direct. This language is the same as found in the Appraiser Act.

Sections 19 and 20 clarify the Attorney General's authority within the AMC Act.

Minor language changes are also made throughout the AMC Act to harmonize and clean up the language within the AMC Act, and to also harmonize the AMC Act with the Appraiser Act.

The following appraiser act language changes are included in LB17:

The Appraiser Qualifications Board of The Appraisal Foundation adopted changes to the three-year Supervisory Appraiser jurisdictional requirement found in the Real Property Appraiser Qualifications Criteria. Effective July 1, 2016,

while Supervisory Appraisers must still be certified appraisers in good standing for a minimum of three years prior to supervising, they no longer need to be certified and in good standing in the jurisdiction in which the Trainee Real Property Appraiser practices for a minimum period of time. Section 1 amends section 76-2228.02 ensure that a person credentialed as a certified real property appraiser in Nebraska or who holds the equivalent in another jurisdiction for a period of three years is eligible for approval as a supervisory appraiser.

Brett Lindstrom, Chairperson