

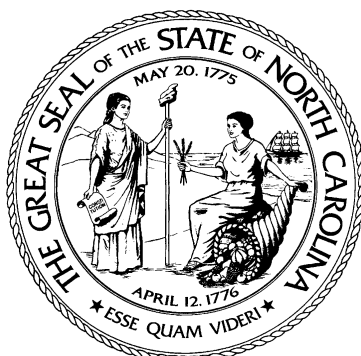
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Final Assessment Report

For

REAL ESTATE APPRAISAL MANAGEMENT COMPANIES LICENSURE/FEEES

Senate Bill 829/House Bill 716



LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

June 25, 2009

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensure of Community Association Managers Licensure Act. This report constitutes both the preliminary and final assessment report.

Representative Earline W. Parmon

**LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
(2009-2010)**

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PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

- 1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.
- 2) Whether the profession possesses qualities that distinguish it from ordinary labor.
- 3) Whether practice of the profession requires specialized skill or training.
- 4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.
- 5) Whether the public can effectively be protected by other means.
- 6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues an assessment report on its findings and recommendations. The recommendation in the report is not binding upon other committees considering the proposal.

**SENATE BILL 829/HOUSE BILL 716
REAL ESTATE APPRAISAL MANAGEMENT COMPANIES**

LICENSURE/FEEES

BACKGROUND¹

Current Standards.

Licensing and regulation of real estate appraisers began in North Carolina in 1991 as a result of the federal savings and loan bailout in the late 1980s. Originally the North Carolina Real Estate Commission regulated appraisers, but the North Carolina Appraisal Board was established in 1994 by the General Assembly as a consumer protection board. Since that time, the Appraisal Board has enacted rules and expanded its function to remain in compliance with federal guidelines and industry standards. The Board now licenses approximately 4600 registered trainee and licensed appraisers. Consumers are protected in two ways; by making sure appraisers meet minimum qualifications for licensure, and by receiving and investigating complaints against its licensees, taking appropriate disciplinary action when necessary.

The Appraisal Board is seeking to license appraisal management companies (AMCs). AMCs act as a third party entity for the ordering of appraisals and are an integral part of mortgage financing in this state, but there currently is no regulation of these companies in any form. AMCs are undergoing rapid growth and expansion due to changes on the federal level. Most lenders will use AMCs to order appraisals in the future. Although lenders and appraisers are regulated, AMCs operate outside of these professions, yet have a tremendous

¹ **Source:** *Response to Questionnaire for the Legislative Committee for New Licensing Boards.* A copy of the questionnaire is attached to this report.

impact on both. Regulation and the establishment of rules to enforce laws are necessary to protect consumers in financial transactions and also to ensure that appraisers can act independently without undue pressure.

LICENSING REQUIREMENTS

§ 93E-2-1. Registration required of real estate appraisal management companies; exceptions.

Beginning January 1, 2010, it shall be unlawful for any person in this State to act as a real estate appraisal management company, directly or indirectly engage or assume to engage in the business of real estate appraisal management, or advertise or hold himself or herself out as engaging in or conducting the business of real estate appraisal management in this State, without first registering with the Board under the provisions of this Article. It shall also be unlawful, with regard to appraisals of any real property where any portion of that property is located within this State, for any person to perform any of the acts listed in this section without first being registered by the Board under the provisions of this Article.

The provisions of this Article shall not apply to:

- Any agency of the federal government or any State or municipal government.
- Any person authorized to engage in business as a bank, farm credit system, savings institution, or credit union, under the laws of the United States, this State, or any other state.
- Any licensed real estate broker performing activities in accordance with Article 1 of Chapter 93E of the General Statutes. However, an exempt person does not include a real estate broker who receives compensation of any kind in connection with the referral or placement of an appraisal assignment.
- Any officer or employee of an exempt person described in this subdivision when acting in the scope of employment for the exempt person.

§ 93E-2-2. Definitions.

The following definitions apply in this Article:

- Act as a real estate appraisal management company. – To act for compensation or gain, or with the expectation of compensation or gain, either directly or indirectly, by (i) accepting or offering to accept an appraisal assignment, (ii) soliciting or offering to solicit an appraisal assignment, or (iii) employing or contracting with a licensed or certified real estate appraiser to prepare an appraisal assignment on behalf of a client, whether acting through contact by telephone, electronic means, mail, or in person.
- Appraisal management company. – A company that administers a network of certified and licensed appraisers to fulfill real estate appraisal assignments on behalf of mortgage lending institutions and other entities. For purposes of this definition, the phrase 'administers a network' includes recruiting appraisers, contracting with appraisers to perform appraisal assignments, negotiating fees with appraisers, providing administrative duties, such as receiving appraisal orders and appraisal reports, and submitting appraisal reports received from appraisers to the company's clients.
- Board. – The North Carolina Appraisal Board under Article 1 of Chapter 93E of the General Statutes.
- Employee. – An individual who has an employment relationship acknowledged by both the individual and the company and is treated as an employee for purposes of compliance with federal income tax laws.

- Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.
- Registrant. – A real estate appraisal management company registered pursuant to this Article.

The definitions contained in G.S. 93E-1-4 also apply in this Article.

§ 93E-2-3. Rule-making authority.

The Board shall have the authority to adopt rules not inconsistent with the provisions of this Article and the General Statutes of North Carolina that are reasonably necessary to implement, administer, and enforce the provisions of this Article, including the authority to:

- Prescribe forms and procedures for submitting information to the Board.
- Prescribe standards of practice for companies registered under this Article.
- Prescribe standards for the operation of real estate appraisal management companies.

§ 93E-2-4. Qualifications for registration; duties of registrants

Any person desiring to be registered as an appraisal management company in this State shall make written application to the Board on forms prescribed by the Board setting forth the applicant's qualifications for registration. The application shall be accompanied by the applicable fee under G.S. 93E-2-6, and any other information the Board deems necessary pursuant to rules adopted by the Board. Upon receipt of a properly completed application and fee and upon a determination by the Board that the applicant is of good moral character, the Board shall issue to the applicant a certificate of registration authorizing the applicant to act as a real estate appraisal management company in this State.

Each applicant for registration under this Article shall submit the name and address of the applicant's registered agent located in this State. An applicant for registration under this Article that is not a resident of this State shall submit with the application for registration an irrevocable consent that service of process in any action against the applicant arising out of the applicant's activities as an appraisal management company may be made by service of process on the Executive Director of the Board.

Any registrant having a good faith belief that a real estate appraiser licensed in this State has violated applicable law or the Uniform Standards of Professional Appraisal Practice (USPAP) or engaged in unethical conduct shall promptly file a complaint with the Board.

Fees shall be paid to a real estate appraiser based on Federal Deposit Insurance Corporation (FDIC) appraisal management company protocol within 30 days of the date the appraisal is transmitted by the real estate appraiser to the registrant or the registrant's client. Fees shall be paid directly to the real estate appraiser from the lender and not from the registrant. The registrant shall charge a direct fee to the lender for services provided without any fee splits.

§ 93E-2-5. Managing principals.

Each appraisal management company registered under this Article shall designate a managing principal who is responsible for ensuring the company operates in compliance with this Article. The managing principal shall be a certified general real estate appraiser certified under Article 1 of this Chapter. The appraisal management company shall file a form with the Board indicating the appraisal management company's designation of managing principal and the individual's acceptance of the responsibility. An appraisal management company shall notify the Board of any change in the appraisal management company's managing principal. Any appraisal management company that does not comply

with this section shall have the appraisal management company's registration suspended pursuant to G.S. 93E-2-8 until the appraisal management company complies with this section. An individual operating an appraisal management company as a sole proprietorship shall be considered the managing principal for purposes of this Article.

§ 93E-2-6. Fees and renewals.

Each application for registration as an appraisal management company under this Article shall be accompanied by a fee of five thousand dollars (\$5,000). Registration issued under this Article shall expire on June 30 of each year and shall become invalid after that date unless renewed before the expiration date by filing an application with and paying to the Board a fee of two thousand five hundred dollars (\$2,500).

All registrations reinstated after the expiration date are subject to a late filing fee of twenty dollars (\$20.00) a month for each month or part thereof that the registration is lapsed, not to exceed one hundred twenty dollars (\$120.00). The late filing fee shall be in addition to the required renewal fee. In the event a registrant fails to reinstate the registration within six months after the expiration date, the registration shall expire and the registrant shall be required to file a new application for registration. Reinstatement of a registration shall not be retroactive.

The Board may issue a replacement registration to the registrant upon payment of fifty dollars (\$50.00) to the Board. The Board may certify the registration history of an appraisal management company registered under this Article upon payment of a fee of one hundred dollars (\$100.00) to the Board.

§ 93E-2-7. Prohibited acts.

No employee, director, officer, or agent of an appraisal management company or any other third party acting as joint venture partner or independent contractor shall influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

- Withholding or threatening to withhold timely payment for a real estate appraisal report.
- Withholding or threatening to withhold future business from a real estate appraiser or demoting or terminating or threatening to demote or terminate a real estate appraiser.
- Expressly or impliedly promising future business, promotions, or increased compensation for a real estate appraiser.
- Conditioning the ordering of a real estate appraisal report or the payment of a real estate appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate requested from a real estate appraiser.
- Requesting that a real estate appraiser provide an estimated, predetermined, or desired valuation in a real estate appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of the appraisal report.
- Providing to a real estate appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or targeted amount to be loaned to the

borrower. However, a real estate appraiser may be provided with a copy of the sales contract for purchase transactions.

- Providing to a real estate appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits.
- Allowing the removal of a real estate appraiser from a list of qualified appraisers used by any entity without prior written notice to the appraiser. The notice shall include written evidence of the appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior or any violation of the Uniform Standards of Professional Appraisal Practice (USPAP) or State licensing standards.
- Any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, or impartiality.
- Requesting or requiring a real estate appraiser to collect a fee from the borrower, homeowner, or any other person in the provision of real estate appraisal services.

Nothing in this section shall be construed as prohibiting an appraisal management company from requesting that a real estate appraiser:

- Consider additional appropriate property information.
- Provide further detail, substantiation, or explanation for the real estate appraiser's value conclusion.
- Correct errors in the real estate appraisal report.

§ 93E-2-8. Disciplinary authority.

The Board may, by order, deny, suspend, revoke, or refuse to issue or renew a registration of an appraisal management company under this Article or may restrict or limit activities of a person who owns an interest in or participates in the business of an appraisal management company if the Board determines that an applicant, registrant, or any partner,

member, manager, officer, director, managing principal, or person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant or registrant has done any of the following:

- Filed an application for registration that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.
- Violated or failed to comply with any provision of this Article or any rules adopted by the Board.
- Been convicted of any felony or, within the past 10 years, been convicted of any misdemeanor involving mortgage lending or real estate appraisal or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.
- Been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the real estate appraisal management business.
- Been the subject of an order of the Board or any other state appraiser regulatory agency denying, suspending, or revoking the person's license as a real estate appraiser.
- Acted as an appraisal management company while not properly licensed by the Board.
- Failed to pay the proper filing or renewal fee under this Article.

The Board may, by order, summarily postpone or suspend the registration of an appraisal management company pending final determination of any proceeding under this section. Upon entering the order, the Board shall promptly notify the registrant that the order has been entered and the reasons for the order. The Board shall calendar a hearing

within 15 days after the Board receives a written request for a hearing. If a registrant does not request a hearing, the order shall remain in effect until the order is modified or vacated by the Board. If a hearing is requested, after notice of and opportunity for hearing, the Board may modify or vacate the order or extend the order until the Board makes its final determination.

The Board may, by order, impose a civil penalty upon a registrant or any partner, officer, director, managing principal, or other person occupying a similar status or performing similar functions on behalf of a registrant for any violation of this Article. The civil penalty shall not exceed ten thousand dollars (\$10,000) for each violation of this Article.

In addition to other powers under this Article, upon finding that any action of a person is in violation of this Article, the Board may order the person to cease from the prohibited action. If the person subject to the order fails to appeal the order of the Board or the person appeals the order and the appeal is denied or dismissed and the person continues to engage in the prohibited action in violation of the Board's order, the person shall be subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a registrant for the registrant's failure to comply with an order of the Board.

Unless otherwise provided, all actions and hearings under this Article shall be governed by Article 3A of Chapter 150B of the General Statutes.

When a registrant is accused of any act, omission, or misconduct that would subject the registrant to disciplinary action, the registrant, with the consent and approval of the Board, may surrender the registrant's registration and all the rights and privileges pertaining to the registrant for a minimum period of five years. A person who surrenders a registration shall

not be eligible for or submit any application for registration during the period the registration is surrendered.

If the Board has reasonable grounds to believe that an appraisal management company has violated the provisions of this Article or that facts exist that would be the basis for an order against an appraisal management company, the Board may at any time, either personally or by a person duly designated by the Board, investigate or examine the books, accounts, records, and files of any registrant or other person relating to the complaint or matter under investigation. The Board may require any registrant or other person to submit a criminal history record check and a set of that person's fingerprints in connection with any examination or investigation. Refusal to submit the requested criminal history record check or a set of fingerprints shall be grounds for disciplinary action. The reasonable cost of the investigation or examination shall be charged against the registrant.

The Board shall have the power to issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, inquiry, or other proceeding conducted by the Board. Upon the production of any papers, records, or documents, the Board shall have the power to authorize true copies of the papers, records, or documents to be substituted in the permanent record of the matter in which the books, records, or documents shall have been introduced in evidence.

The Board may conduct routine examinations of the books and records of an appraisal management company registered with the Board in order to determine the appraisal management company's compliance with this Article and any rules adopted by the Board pursuant to the authority of G.S. 93E-2-3. An appraisal management company shall maintain in this State all books and records related to real estate appraisal management services. An

appraisal management company shall pay any expenses incurred by the Board resulting from the Board's examination of the appraisal management company's books and records.

§ 93E-2-9. Records.

The Board shall maintain a list of all applicants for registration under this Article that includes for each applicant the date of application, the name and primary business location of the applicant, and whether the registration was granted or refused.

The Board shall maintain a current roster showing the names and places of business of all registered appraisal management companies that lists the appraisal management companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of the Board; (ii) contain information regarding all orders or other action taken against the company, its officers, and other persons; and (iii) be open to public inspection.

Every registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company as prescribed in rules adopted by the Board. All records shall be preserved for five years unless the Board, by rule, prescribes otherwise for particular types of records.

If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall promptly file a correcting amendment to the information contained in the document.

§ 93E-2-10. Penalty; injunctive relief.

Any person violating the provisions of this Article shall be guilty of a Class I felony.

The Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Article or rules adopted by the Board. The superior court shall have the power to grant these injunctions whether

criminal prosecution has been or may be instituted as a result of the violations or whether the person is the holder of a registration issued by the Board under this Article.

§ 93E-2-11. Criminal history record checks of applicants or registrants for registration as appraisal management companies.

Definitions. – The following definitions shall apply in this section:

- Applicant. – A person applying for registration as an appraisal management company pursuant to G.S. 93E-2-4.
- Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for registration to act as a real estate appraisal management company. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders;

Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

The Board may require that an applicant for registration as an appraisal management company or a registrant consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny registration to an applicant or registrant. The Board shall ensure that the State and national criminal history of an applicant or registrant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or registrant to be checked, a form signed by the applicant or registrant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice in accordance with G.S. 114-19.26. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

If an applicant or registrant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not

automatically bar registration. The Board shall consider all of the following factors regarding the conviction:

- The level of seriousness of the crime.
- The date of the crime.
- The age of the person at the time of the conviction.
- The circumstances surrounding the commission of the crime, if known.
- The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
- The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant or registrant's criminal history disqualifies the applicant or registrant for registration, the Board may deny registration of the applicant or registrant. The Board may disclose to the applicant or registrant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant or registrant. The applicant or registrant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying registration to

an applicant or registrant based on information provided in the applicant or registrant's criminal history record check."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

§ 114-19.26. Criminal history record checks of applicants or registrants for registration as real estate appraisal management companies.

The Department of Justice may provide to the North Carolina Appraisal Board from the State and National Repositories of Criminal Histories the criminal history of any applicant or registrant for registration under Article 2 of Chapter 93E of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or registrant, a form signed by the applicant or registrant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant or registrant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by the Department to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. Pursuant to G.S. 93E-2-1(b), as enacted in Section 1 of this act, a real estate appraisal management company established under federal law shall not be required to pay the initial registration fees required by G.S. 93E-2-6, enacted in Section 1 of this act.

However, the real estate appraisal management company established under federal law shall be required to pay registration fees associated with subsequent registration renewal.

SECTION 4. This act is effective when it becomes law.

FINDINGS AND RECOMMENDATIONS
REAL ESTATE APPRAISAL MANAGEMENT COMPANIES
LICENSURE/FEES

Findings. The Legislative Committee on New Licensing Boards finds that the sponsors have met the six criteria by which the Committee judges licensure proposals. Specifically, the Committee finds that:

1. The unregulated practice of real estate appraisers can substantially harm or endanger the consumers without proper oversight, training and certification. Real estate appraisers are a major contributor in the processing of real estate loans and are not regulated in North Carolina. The vast majority of consumers who pay for and rely on appraisals, such as borrowers seeking home loans, do not even know that these real estate appraisal management companies exist. The consumer has no control over how an appraisal is ordered by a lender and usually believes that the appraisal is ordered directly by the lender. Regulation is needed to provide more effective means of monitoring the activities of appraisal management companies and protecting the integrity of the appraisal process.
2. The profession possesses qualities that distinguish it from ordinary labor due to real estate appraisers being entrusted with many thousands of dollars collected from property owners for appraisals, determining property values and those evaluations impact on future real estate transactions, financial markets and lending procedures, and the real estate and mortgage industry proper. Currently there are no requirements whatsoever for someone to start an appraisal management company in North Carolina.
3. Thus, real estate appraisal management company personnel require specialized skills or training to perform their duties to the best of their ability.
4. A substantial majority of the public does not have the knowledge or experience to evaluate the competence of real estate appraisal management companies.
5. The public cannot be as efficiently protected by other means.
6. Licensure would not have a substantial adverse economic impact upon the recipient of real estate appraisals.

Recommendation. The Legislative Committee on New Licensing Boards recommends that the practice of real estate appraisal management companies be performed by licensed professionals. The assessment report constitutes both the preliminary and final assessment report for the licensure of community association managers. The report is based on the proposed licensing as set out in House Bill 716 and Senate Bill 829, the response to the Committee's questionnaire (Attachment), and testimony before the Committee on June 25, 2009.

ATTACHMENT

*Response to Questionnaire for the
Legislative Committee on New Licensing
Boards*

QUESTIONS FOR THE LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

- **In what ways has the marketplace failed to regulate adequately the profession or occupation?**

There were very few Appraisal Management Companies (AMCs) until Fannie Mae and Freddie Mac announced that they would adopt the Home Valuation Code of Conduct. The Home Valuation Code of Conduct prohibits mortgage brokers from ordering appraisals and mandates that lenders have either a separate department to order appraisals or use third party companies to select appraisers. A high percentage of lenders have chosen to use AMCs rather than to restructure their operations. Since that time, the number of AMCs has risen dramatically. Appraisers, mortgage brokers, lenders and banks are heavily regulated. AMCs, however, although they are a major factor in the production of loans, are not regulated in North Carolina. The vast majority of consumers who pay for and rely on appraisals, such as borrowers seeking home loans, do not even know that these groups exist. The consumer has no control over how an appraisal is ordered by a lender and usually believes that the appraisal is ordered directly by the lender. Regulation is needed to provide more effective means of monitoring the activities of AMCs and protecting the mortgagee.

- **Have there been any complaints about the unregulated profession or occupation?**

The North Carolina Appraisal Board receives telephone calls and email inquiries on a daily basis from appraisers and consumers complaining about AMCs. Appraisers are being pressured by these companies to work for reduced fees, produce appraisal reports in

unreasonably short time periods, to appraise properties for predetermined values, and to continually make changes to the appraisal long after the assignment has ended. It is sometimes difficult for appraisers to obtain payment for their services.

There is currently no mechanism in place to maintain a record of complaints about AMCs since they are not regulated by any entity, so specific contact information for these complainants is not available.

- **In what ways has the public health, safety or welfare sustained harm or is in imminent danger of harm because of the lack of state regulation?**

Many AMCs do not understand that appraisers must follow certain standards of practice when performing assignments, and routinely ask appraisers to violate these standards. Criminal background checks are not required for the owners or employees of these companies, and a person convicted of felonies such as embezzlement and fraud can form one with impunity. There have been documented cases where appraisers who had their licenses suspended or revoked have formed AMCs as there is no oversight or regulation. The majority of AMCs seem more interested in satisfying their clients (the lender) than in receiving a true, unbiased opinion of value. As a result, appraisals done for these AMCs run a higher risk of harm to the public. Inaccurate appraisals have resulted in faulty lending decisions, such as allowing a buyer to qualify for a mortgage loan when there is insufficient collateral in the property.

- **Is there potential for substantial harm or danger by the profession or occupation to the public health, safety, or welfare? How can this potential for substantial harm or danger be recognized?**

The harm already exists and has been recognized by various state and federal authorities.

- **Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process?**

As of June 15, 2009, four states have adopted laws to regulate AMCs (Utah, New Mexico, Arkansas and Nevada) and several other states have such laws pending in their legislatures. On the federal level, HR 1728 (the Mortgage Reform and Anti-Predatory Lending Act, introduced by Brad Miller from North Carolina) has passed the U. S. House of Representatives and is pending in the Senate. This bill, if passed, would, among other major reforms, require state appraisal boards to regulate Appraisal Management Companies. The federal legislation would also leave most of the rules and details of regulation to the states.

- **What will be the economic advantage of licensing to the public?**

Licensing will insure that consumers will receive appraised values that have not been inflated due to pressure from AMCs. Licensing will require AMCs which will provide the state with critical information to take action when necessary. There is currently no central database for this information.

- **What will be the economic disadvantage of licensing to the public?**

There is little likelihood of any economic disadvantage to the public. AMCs are becoming more prevalent in the industry due to the creation of the Home Valuation Code of Conduct. There is a more than adequate supply of AMCs to cover the needs of the public.

- **What will be the economic advantages of licensing to the practitioners?**

Since the advent of the HVCC, many unqualified AMCs have sprung up overnight. Licensing will protect the ethical, professional AMCs who provide quality services, as unqualified companies that are looking for a quick profit may not want to subject themselves

to registration and conduct requirements, thereby raising the standards for the industry and protecting the consuming public. As a result, professional AMCs will operate in a fair and competitive market place.

- **What will be the economic disadvantages of licensing to the practitioners?**

There will be an initial registration fee and an annual renewal fee. These fees are minimal compared to the income of the AMCs and will cover all assignments in the state, regardless of number of appraisals ordered. There is no continuing education requirement.

- **Please give other potential benefits to the public of licensing that outweigh the potential harmful effects of licensure such as a decrease in the availability of practitioners and higher costs to the public.**

Homeowners will have more accurate valuation of their residences, and lenders will have more accurate valuation of their collateral. There is the potential for fewer foreclosures, which will protect banks and consumers. As there is very little likelihood of a decrease in availability of practitioners or appreciably higher costs to the public, the benefits clearly outweigh any such effects.

- **Please detail the specific specialized skills or training that distinguish the occupation or profession from ordinary labor.**

Currently there are no requirements whatsoever for someone to start an AMC. An AMC operates between two highly specialized areas, lending and appraising, and its practices impact both professions. AMCs need to be staffed by professionals who understand both areas, which requires a high degree of knowledge of financial markets and valuation services.

- **What are other qualities of the profession or occupation that distinguish it from ordinary labor?**

Since the services of an AMC are so important to the financial interests of lenders and consumers, the AMC must conduct itself with honesty and integrity. A high degree of trust and an understanding of confidentiality and due diligence are required to protect the public interest. Appraising real property is also a specialized field that requires training, continuing education and licensure.

- **Will licensing requirements cover all practicing members of the occupation or profession? If any practitioners will be exempt, what is the rationale for the exemption?**

There are some exemptions under the proposed legislation, including real estate agents only acting as an agent for a buyer or seller in the transaction and in-house bank departments. All of those exempt from licensing requirements are already regulated by federal and state authorities.

- **What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?**

Although there are currently around 300 known AMCs operating across the nation, it is difficult to know how many will become licensed in this state. It is anticipated that approximately 25 to 50 AMCs will register within the first year. Projections are that approximately half of appraisals for mortgage financing will be ordered from an AMC. It would be impossible to estimate the number of appraisals ordered each year, although there are currently over 4000 trainees and appraisers licensed by the Appraisal Board.

- **What kind of knowledge or experience does the public need to evaluate the services offered by the practitioner?**

The general public does not know that these companies exist or that AMC's receive a portion of the appraisal fee, and they do not select the AMC utilized by a lender. The lenders who hire the AMC's will have the ability to evaluate the stability of the AMC's and their reputation as well as know who owns the AMC. Lenders will also be certain the AMC is only using licensed independent appraisers and can be confident the appraisals have been completely accurately without change by the AMC.

- **Does the occupation group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service?**

The only known organization is The Appraisal Vendor Management Association (TAVMA). This is a purely voluntary trade organization that does not have a certification program and does not have an established code of ethics.
