

RULE

Office of the Governor Real Estate Appraisers Board

Appraisal Management Companies
(LAC 46:LXVII.Chapters 301-309)

Under the authority of the newly enacted Appraisal Management Company Licensing and Regulation Act, R.S. 37:3415.1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Appraisers Board has enacted LAC 46:LXVII, Professional and Occupational Standards, Real Estate, Subpart 3, Appraisal Management Companies, Chapters 301-309. These rules shall serve as an extension of the herein cited statute, which became effective January 1, 2011.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXVII. Real Estate

Subpart 3. Appraisal Management Companies

Chapter 301. Authority

§30101. Adoption; Powers of the Board

A. The rules and regulations of the Louisiana Real Estate Appraisers Board pertaining to the licensing and regulation of appraisal management companies have been adopted pursuant to and in compliance with R.S. 37:3415.1 et seq. Any violation of these rules and regulations shall be sufficient cause for any disciplinary action permitted by law.

B. The board shall have the full power and authority to:

1. regulate the issuance of appraisal management company licenses;
2. censure appraisal management company licensees; and
3. suspend or revoke appraisal management company licensees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2406 (August 2011).

Chapter 303. Forms and Applications

§30301. Initial License Applications

A. Applications for initial licensing as an appraisal management company shall be in such forms and detail as prescribed by the board. Applicants shall submit all documentation

requested on the application and shall adhere to any directions and deadlines prescribed therein.

B. Applications for initial licensing as an appraisal management company shall include, at a minimum, the following information:

1. the name, business address, telephone number, and the email address of the applicant;
2. the name, address, and contact information of each individual or entity that has any interest in the appraisal management company;
3. the name, address, and contact information of the controlling person, as defined by R.S. 37:3415.2;
4. the designation of an agent for service of process.

C. Applications for initial licensing as an appraisal management company shall include, at a minimum, the following certifications.

1. The applicant has a system in place to verify that all Louisiana appraisers on the panel of the appraisal management company are Certified Residential or Certified General Appraisers.
2. The applicant has a system in place to review the work of all independent appraisers performing appraisal services.
 - a. The appraisal services shall be conducted in conformity with the Uniform Standards of Professional Appraisal Practice.
3. The applicant will maintain a record of each request for appraisal services applicable to Louisiana properties, as well as the name of the independent appraiser that performs appraisal services, and the fee paid to the appraiser for each assignment.
4. The designated controlling person has accepted the responsibilities attendant to acting as such.
5. The applicant can attest to the good moral character of the individuals that are directed to manage the appraisal management company business.

D. Applications for initial licensing as an appraisal management company shall be submitted, at a minimum, with the following documentation:

1. a license history verification from each jurisdiction in which the applicant is currently licensed or has been licensed as an appraisal management company;
2. a copy of any trade name and trademark registration issued by the Louisiana Secretary of State for use by the applicant;
3. a copy of the resolution or other document executed by a principal of the appraisal management company designating a controlling person;

4. a copy of any corporation, partnership, or limited liability company registration certificate issued to the applicant by the Louisiana Secretary of State.

E. When an applicant has made a false statement of material fact on an initial license application or in any related document submitted therein, such false statement may in itself be grounds for refusal of an initial license.

F. If the board denies an application for initial licensing, the applicant shall be notified in writing and shall be afforded an opportunity for a hearing before the board to show cause as to why the application should not be denied.

G. If the board determines that an applicant has satisfactorily met the prescribed requirements for initial licensing, a Louisiana appraisal management company license shall be issued to the applicant.

H. Initial licenses shall be issued for a period of 12 months and shall expire one year from the date the initial license is issued. Conducting any activity authorized by the license after the date of expiration shall be deemed a violation of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2407 (August 2011).

§30303. License Renewal Applications

A. Each appraisal management company license shall be renewed annually. Timely submission of a renewal application shall rest solely with the licensee.

B. The renewal application shall be in such form and detail as prescribed by the board and shall be accompanied by all documentation requested therein. Applicants for a renewal license shall adhere to all directions and deadlines prescribed within the application.

C. When an applicant has made a false statement of material fact on a license renewal application, or in any related document submitted therein, such false statement may in itself be grounds for refusal of a renewal license.

D. A licensee that fails to renew by the expiration date of the annual license shall be prohibited from operating as an appraisal management company in Louisiana until such time that the license has been renewed and any further requirements of the board have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2407 (August 2011).

Chapter 305. Responsibilities and Duties

§30501. Record Keeping

A. Licensees shall maintain the following records in a complete and accurate manner:

1. all requests for appraisal services that have been referred to state certified real estate appraisers by the appraisal management company;
2. the amount of fees collected from borrowers or clients by the appraisal management company;
3. all payments made by the appraisal management company to any state licensed real estate appraiser;
4. any and all related documents, correspondence, accounts, reports, papers, books, or records.

B. All records shall be kept properly indexed and readily available to the board for review upon request and without prior notice. Duly authorized representatives of the board shall be authorized to inspect such records at the offices of licensees between the hours of 9 a.m. and 4 p.m., Saturdays, Sundays, and legal holidays excluded, and to subpoena any of the said records.

C. All records specified in this Chapter shall be retained for a period of five years; however, records that are used in a judicial proceeding, in which the appraiser provided testimony related to the appraisal assignment, shall be retained for at least two years after disposition, whichever period expires last.

D. At any time that a document or information on file with the board becomes inaccurate or incomplete, the appraisal management company shall notify the board in writing within five days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2407 (August 2011).

Chapter 307. Prohibited Activities

§30701. Improper Influence

A. Licensees shall not permit an agent, or anyone acting on behalf of the licensee, to engage in any of the following activities:

1. requiring the appraiser to collect the appraisal fee from a borrower, homeowner or third party;
2. requiring the appraiser to provide the appraisal management company with the appraiser's digital signature or seal;

3. altering, amending, or changing an appraisal report submitted by a licensed or certified appraiser by removing the appraiser's signature or seal or by adding or removing information to or from the appraisal report;

4. removing an independent appraiser from the appraisal management company's panel without prior written notice that includes supporting evidence that:

a. the appraiser has acted illegally;

b. the appraiser has violated the Uniform Standards of Professional Appraisal Practice, or other applicable state statutes or rules; or

c. the appraiser has had substandard performances or otherwise acted in an improper or unprofessional manner.

5. entering into agreements with independent appraisers, unless the appraisers are licensed as a Residential Certified Real Estate Appraiser or General Certified Real Estate Appraiser and in good standing with the Louisiana Real Estate Appraisers Board;

6. requesting an appraiser to provide an estimated, predetermined, or desired value in an appraisal report or to provide estimated values or comparable sales at any time before the appraisal report is completed;

7. committing an act or practice that impairs, or attempts to impair, an appraiser's independence, objectivity or impartiality; or

8. making referrals to Louisiana appraisers for appraisal services during any period in which the appraisal management company license has expired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2408 (August 2011).

§30703. Exemptions to Prohibited Activities

A. It shall not be deemed a prohibitive activity to:

1. provide an appraiser with a copy of the sales contract for a purchase transaction;

2. request additional information from an independent appraiser about the basis for a valuation;

3. request that an independent appraiser correct factual errors in an appraisal report; or

4. request that an independent appraiser provide further substantiation, detail, or explanation for the appraiser's value conclusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2408 (August 2011).

Chapter 309. Disciplinary Authority; Enforcement and Hearings

§30901. Causes for Censure, Suspension, Revocation, or Denial of a License

A. The Louisiana Real Estate Appraisers Board may censure, deny, suspend, or revoke an appraisal management company license, or may restrict or limit the activities of an appraisal management company or a person who owns an interest in or participates in the business of the appraisal management company, if the board finds that any of the following circumstances apply.

1. The application for licensing is found to contain statements that, in light of the circumstances under which they were made, are false or misleading with respect to a material fact.

2. The licensee has failed to comply with the rules and regulations of the board and/or the Louisiana Appraisal Management Company Licensing and Regulation Act.

3. The licensee's controlling principal has pled or been found guilty to a felony or within the past ten years has pled guilty or been convicted of a misdemeanor involving mortgage lending or real estate appraising or has committed an offense involving breach of trust, moral turpitude, fraudulent or dishonest dealings.

4. The licensee is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing to conduct any practice involving appraisal management services or operation of an appraisal management company.

5. The licensee is the subject of an order by the board denying, suspending, or revoking the licensee's privilege to operate as an appraisal management company in Louisiana.

6. The licensee acted as an appraisal management company while not properly licensed by the board.

B. Every licensee shall cooperate fully with and answer all questions propounded by the board personnel conducting an investigation.

C. Every licensee shall produce any document, book, or record in its possession or under its control, concerning any matter under investigation.

D. As a result of an investigation, when it appears that violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or rules and regulations of the board may have been committed by a licensee, the violations may be adjudicated through informal or formal adjudicatory proceedings.

1. Informal Adjudicatory Proceedings

a. The complaint may be concluded informally without a public hearing on the recommendation of the hearing examiner and the concurrence of the executive director.

b. An informal hearing may be conducted only when there is an admission by the respondent that the violations(s) were committed as alleged.

c. A preliminary notice of adjudication shall be issued to advise the respondent of the violation(s) alleged and to advise the respondent that the matter can be resolved informally should the respondent desire to admit to committing the act(s) specified and submits a written request that the matter be resolved informally.

d. A hearing officer shall be appointed by the executive director to conduct an informal hearing with the respondent.

e. The informal hearing shall be attended by the hearing examiner and, if necessary, the case investigator, or in the absence of the case investigator, a designated representative. The hearing examiner shall inform the hearing officer of the administrative, jurisdictional, and other matters relevant to the proceedings.

f. Following an admission by the respondent that the violations were committed as alleged, the hearing officer may enter into a recommended stipulations and consent order to include the imposition of any sanctions authorized by the Louisiana Appraisal Management Company Licensing and Regulation Act.

g. No evidence will be presented, no witnesses will be called and no formal transcript of the proceedings will be prepared by the board.

h. In the written document the respondent must stipulate to having committed the act(s) in violation of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board, accept the sanctions recommended by the hearing officer, and waive any rights to request a rehearing, reopening, or reconsideration by the board, and the right to judicial appeal of the consent order.

i. At the informal hearing, the respondent shall admit to having committed the act(s) specified, accept the sanctions recommended by the hearing officer, and waive the specified appellate rights, or the alleged violations shall be referred to a formal adjudicatory hearing.

j. If the respondent does execute a stipulation and consent order, the executive director shall submit the document to the board at the next regular meeting for approval and for authorization to allow the executive director to execute the consent order in the name of the board.

k. Any consent order executed as a result of an informal hearing shall be effective on the date approved by the board.

2. Formal Adjudicatory Proceedings

a. All formal public adjudicatory hearings shall be conducted under the auspices of R.S. 37:3415.20 and the Administrative Procedure Act.

b. Board members who have provided technical assistance in any matter adjudicated at a formal adjudicatory proceeding shall recuse themselves and not participate in any portion of the proceedings.

c. The order issued by the board pursuant to any formal public adjudicatory proceeding shall become effective on the eleventh day following the date the order is issued by the board and entered into the record at the proceedings.

d. If a request for rehearing, reopening, or reconsideration of the order of the board is timely filed and denied by the board, the order shall become final on mailing of the notice of the board's final decision on the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2408 (August 2011).

§30903. Appellate Proceedings

A. Rehearings

1. An order of the board shall be subject to rehearing, reopening, or reconsideration by the board on receipt of a written request from a respondent. An application for rehearing, reopening, or reconsideration must be postmarked or received at the office of the board within 10 days from the date of entry of the order rendered by the board.

2. The date of entry is the date the order is issued by the board and entered into the record at the formal adjudicatory proceedings.

3. The request shall be reviewed by the board attorney for compliance with the Administrative Procedure Act. A finding by the board attorney that the request does not establish grounds for rehearing, reopening or reconsideration shall result in a denial of the request.

B. Judicial Review

1. Proceedings for judicial review of an order issued by the board may be instituted by filing a Petition for Judicial Review in the Nineteenth Judicial District Court in the Parish of East Baton Rouge.

2. In the event a request for rehearing, reopening or reconsideration has been filed with the board, the party making the request shall have 30 days from the final decision on the request within which to file a Petition for Judicial Review.

3. If a request for rehearing, reopening or reconsideration is not filed with the board, the Petition for Judicial Review must be filed in the Nineteenth Judicial District Court within 30 days after the mailing of the order of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2409 (August 2011).

§30905. Costs of Adjudicatory Proceedings

A. On a finding that a respondent has committed the violation(s) as alleged in any formal or informal adjudicatory proceeding, the respondent may be assessed the administrative costs of the proceeding as determined by the board. Payment of these costs shall be a condition of satisfying any order issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2410 (August 2011).

§30907. Stay of Enforcement

A. The filing of a petition for judicial review does not itself stay enforcement of an order issued by the board. A stay of enforcement will be granted only when directed by the court conducting a judicial review of adjudication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Real Estate Appraisers Board, LR 37:2410 (August 2011).