

ARTICLE 20:77

APPRAISAL MANAGEMENT COMPANIES

Chapter

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CHAPTER 20:77:01

GENERAL PROVISIONS

Section

- 20:77:01:01 Definitions.

20:77:01.01 Definitions. Terms used in this article mean:

(1) “Appraisal management services,” the act or process to:

(a) Recruit, select, and retain appraisers;

(b) Contract with licensed or certified appraisers to perform appraisal assignments;

(c) Manage the process of having an appraisal performed, including providing administrative duties including, but not limited to:

(i) Receiving appraisal orders and appraisal reports;

(ii) Submitting completed appraisal reports to creditors and underwriters;

(iii) Collecting fees from creditors and underwriters for services provided; and

(iv) Reimbursing appraisers for services performed;

(d) Review and verify the work of appraisers for compliance with the Uniform Standards of Professional Appraisal Practice;

(2) “Appraisal review,” an act or process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal assignment related to the appraiser’s data collection, analysis, opinions, conclusions, estimate of value, or compliance with the Uniform Standards of Professional Appraisal Practice. The term does not include:

(a) a general examination for grammatical, typographical or other similar errors, or

(b) a general examination for completeness including regulatory and/or client requirements as specified in the agreement process that does not communicate an opinion.

(3) “Appraisal Subcommittee,” the Appraisal Subcommittee of the Federal Financial Institutions Examination Council;

(4) “Appraiser,” a person who has been issued a state-certified general, state-certified residential, state-licensed, or state-registered appraiser license or certificate by the State of South Dakota;

(5) “Certificate of Registration,” the certificate verifying the registration of any person or entity approved as an appraisal management company by the State of South Dakota;

(6) “Controlling person or managing principal,” one or more of the following:

(a) an officer or director of an appraisal management company, or an individual that holds 10% or greater ownership interest in an appraisal management company;

(b) an individual employed, appointed or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for performance of appraisal services and that has the authority to enter into agreements with independent appraisers for the completion of appraisals; and/or

(c) an individual who possesses the power to direct or cause the direction of the management or policies of an appraisal management company;

(7) “Department,” the Department of Labor and Regulation;

(8) “Designated officer,” means a controlling person or managing principal authorized by the governing structure of the appraisal management company to act on behalf of the company for purposes of application for, and compliance with, requirements of this article and responsible for the supervision and control of activities conducted on behalf of the appraisal management company; and

(9) “Financial institutions,” institutions regulated by the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, and National Credit Union Administration;

(10) “FIRREA,” the Financial Institution Reform Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (1989), 12 U.S.C. § 3310, et seq;

(11) “Real estate,” as defined in SDCL 36-21A-11;

(12) “Secretary,” the secretary of the Department of Labor and Regulation;

(13) “TILA,” means Truth in Lending Act of 1968 (15 U.S.C. 1631 et seq.) and any amendments thereto.

(14) “Uniform standards,” Uniform Standards of Professional Appraisal Practice as incorporated in § 20:14:06:01;

Source:

General Authority: SDCL 36-21D-4(2).

Law Implemented: SDCL 36-21D-4(2).

CHAPTER 20:77:02

ADMINISTRATION

Section

20:77:02:01 Roster of appraisal management companies.

20:77:02:02 Notice of change of address.

20:77:02:03 Notice of change of designated officer.

20:77:02:04 Notice of change of controlling person or managing principal.

20:77:02:01. Roster of appraisal management companies. The secretary shall maintain a roster of appraisal management companies registered under the provisions of

this article. The secretary shall transmit the roster to the Appraisal Subcommittee as required by FIRREA.

Source:

General Authority: SDCL 36-21D-4(9).

Law Implemented: SDCL 36-21D-1, 36-21D-4(9).

20:77:02:02. Notice of change of address. Each appraisal management company registered under the provisions of this article shall immediately give written notice of any change of physical and mailing address, change of company name, telephone number, website, facsimile or email address to the secretary.

Source:

General Authority: SDCL 36-21D-4(9).

Law Implemented: SDCL 36-21D-1, 36-21D-4(9).

20:77:02:03. Notice of change of designated officer. Each appraisal management company registered under the provisions of this article shall immediately give written notice of change of designated officer of the appraisal management company to the secretary.

Source:

General Authority: SDCL 36-21D-4(9).

Law Implemented: SDCL 36-21D-1, 36-21D-4(9).

20:77:02:04. Notice of change of controlling person or managing principal.

Each appraisal management company registered under the provisions of this article shall immediately give written notice of change of controlling person or management principal of the appraisal management company to the secretary.

Source:

General Authority: SDCL 36-21D-4(9).

Law Implemented: SDCL 36-21D-1, 36-21D-4(9).

CHAPTER 20:77:03

APPLICATION PROCEDURE

Section

20:77:03:01 Application for registration.

20:77:03:02 Nonresident consent to service of process.

20:77:03:03 Term of registration.

20:77:03:04 Registration renewal.

20:77:03:05 Late renewal.

20:77:03:01. Application for registration. An appraisal management company desiring to provide appraisal management services in South Dakota shall apply in writing for a certificate of registration on a form approved by the secretary. An application is only valid for 90 days. The secretary may extend the time for an application upon the written request of the applicant or to allow the applicant reasonable time to comply with the department's request for information or records. The registration fee prescribed in § 20:77:04:01 shall accompany the application form. The application form shall contain the following:

- (1) Legal name and any trade or business name of the appraisal management company;
- (2) Business contact information;
- (3) Name and contact information of controlling person or managing principal;
- (4) Name and contact information of the designated officer;

(5) Name and contact information of any individual(s) authorized by the appraisal management company to contract with clients or independent appraisers for performance of appraisals; and

(6) An affidavit by the applicant signed before a notary public.

NOTE: Contact information includes, but is not limited to: Mailing and physical address, telephone and facsimile number, email, and website address.

Source:

General Authority: SDCL 36-21D-4(1)(4).

Law Implemented: SDCL 36-21D-1, 36-21D-4(1)(4).

20:77:03:02. Nonresident consent to service of process. The controlling person or managing principal of an appraisal management company applying for registration under this article who is not a resident of this state shall submit with the application an irrevocable consent that service of process upon the controlling person or managing principal may be made by delivery of the process to the secretary of the Department of Labor and Regulation. This method of process may be used in an action against the applicant in a court of this state arising out of the applicant's activities as an appraisal management company in this state if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the controlling person or managing principal.

Source:

General Authority: SDCL 36-21D-4(1)(4).

Law Implemented: SDCL 36-21D-1, 36-21D-4(1)(4).

20:77:03:03 Term of registration. The secretary shall issue a certificate of registration to an applicant who qualifies in accordance with this article. Any registration issued under this article expires on December 31 of each year, unless revoked or suspended.

Source:

General Authority: SDCL 36-21D-4(1)(4).

Law Implemented: SDCL 36-21D-1, 36-21D-4(1)(4).

20:77:03:04. Registration renewal. To renew any current valid certificate of registration the holder of the registration must file an application on a form approved by the secretary and pay the renewal fee prescribed in § 20:77:04:02 to the secretary by November 15 of each year.

Source:

General Authority: SDCL 36-21D-4(1)(4)(5).

Law Implemented: SDCL 36-21D-1, 36-21D-4(1)(4)(5).

20:77:03:05. Late renewal. If renewal of a certificate of registration is not accomplished within the period prescribed in § 20:77:03:04, the applicant may renew the certificate within three months following its expiration by satisfying all of the requirements for renewal, including paying the renewal fee prescribed in § 20:77:04:02, and paying the applicable late renewal fee prescribed in § 20:77:04:03.

Source:

General Authority: SDCL 36-21D-4(1)(4)(5).

Law Implemented: SDCL 36-21D-1, 36-21D-4(1)(4)(5).

CHAPTER 20:77:04

FEE SCHEDULE

Section

20:77:04:01 Registration fees.

20:77:04:02 Renewal fees.

20:77:04:03 Late renewal fees.

20:77:04:04 Refund of fees.

20:77:04:01. Registration fees. Registration fees are \$1000.

Source:

General Authority: SDCL 36-21D-5.

Law Implemented: SDCL 36-21D-5(1).

20:77:04:02. Renewal fees. Renewal fees are \$750.

Source:

General Authority: SDCL 36-21D-5.

Law Implemented: SDCL 36-21D-5(2).

20:77:04:03. Late renewal fee. The late renewal fee is \$50 for each month or fraction of a month that has passed since the first day of January, not to exceed \$150.

Source:

General Authority: SDCL 36-21D-5.

Law Implemented: SDCL 36-21D-5(3).

20:77:04:04. Refund of fees. Fees are nonrefundable.

Source:

General Authority: SDCL 36-21D-5.

Law Implemented: SDCL 36-21D-5.

CHAPTER 20:77:05

RESPONSIBILITIES AND DUTIES

Section

20:77:05:01 Responsibility and duties.

20:77:05:01. Responsibilities and duties. An appraisal management company registered under the provisions of this article shall:

(1) Have a system in place to verify that utilized appraisers are licensed or certified and in good standing by this state;

(2) Require each utilized appraiser who performs appraisals in this state to certify in writing the area of geographic competency and the specific appraisal assignments competent to appraise;

(3) Have a system in place to review the work of utilized appraisers who perform appraisal services to ensure that the services are conducted in conformity with the uniform standards;

(4) Have a system in place to verify that any employee of, or independent contractor to, the appraisal management company that is utilized to perform an appraisal review, of utilized appraisers who perform an appraisal assignment for a property located in South Dakota, to be licensed or certified in good standing by this state;

(5) File a complaint with the department against an appraiser if there is evidence that the appraiser is in violation of the laws, rules or uniform standards regarding appraisers, including but not limited to grounds for disciplinary action as prescribed in ARSD 20:14:11:03;

(6) Authorize a designated officer, who will be responsible for accepting the responsibilities for compliance with SDCL 36-21D and the provisions of this article, and notify the department immediately of any change in its designated officer;

(7) Maintain with the department the name and address of a registered agent for service of process; and notify the department immediately of any change to the information on file;

(8) Disclose to its client the actual fees paid to an appraiser for appraisal services, separate from any other fees or charges for appraisal management services, and make the information available to the department upon request; and

(9) Disclose its certificate of registration number within its engagement document with each utilized appraiser.

Source:

General Authority: SDCL 36-21D-4(3).

Law Implemented: SDCL 36-21D-1, 36-21D-2(2)(4), 36-21D-4(3).

CHAPTER 20:77:06

RECORDS

Section

20:77:06:01 Retention of records.

20:77:06:02 Inspection and copying.

20:77:06:01. Retention of records. An appraisal management company registered under the provisions of this article shall retain the following records:

(1) A detailed record of each service request that it receives for appraisals of real property located in South Dakota, which shall include, but is not limited to, the following:

(a) letter of engagement with the utilized appraiser;

(b) appraisal report received from the utilized appraiser, including the original report, any revised reports, and any addenda or other material furnished subsequent to the delivery of the original report;

(c) any and all correspondence sent to and received from the utilized appraiser;

(d) letter of engagement with the utilized reviewing appraiser for the purpose of reviewing the requested appraisal;

(e) review of the requested appraisal, including the original review report, any and all correspondence sent to and received from the utilized reviewing appraiser, and each subsequent revised review report;

(f) requests received from the client, all documentation supplied to that client, and any and all correspondence sent to and received from the client; and

(g) fees paid to utilized appraisers and the fees received from the client; and

(2) The registered appraisal management company's appraiser fee schedules, with beginning and ending effective dates, which is developed, maintained and is currently being used;

Records must be retained for a minimum of five years. However, if, within the five-year period, an appraisal or report is involved in an investigation, litigation, or state or federal review, the five-year period for the retention of the records begins on the date of the final disposition of that investigation, litigation, or state or federal review.

Source:

General Authority: SDCL 36-21D-4(8).

Law Implemented: SDCL 36-21D-1, 36-21D-4(3)(8).

20:77:06:02. Inspection and copying. An appraisal management company registered under the provisions of this article shall make all records required to be

maintained or records deemed to be pertinent to an investigation of a complaint under this article available for inspection and copying upon request of the department.

Source:

General Authority: SDCL 36-21D-4.

Law Implemented: SDCL 36-21D-1, 36-21D-4(3)(8)(10)(11).

CHAPTER 20:77:07

COMPLAINTS, INVESTIGATIONS, AND DISCIPLINE

Section

20:77:07:01 Complaints and investigations.

20:77:07:02 Disciplinary actions.

20:77:07:03 Grounds for disciplinary action.

20:77:07:01. Complaints and investigations. The department shall upon written and signed complaint or referral or may, upon the secretary's own motion, initiate an investigation of any registration holder or applicant for registration.

Source:

General Authority: SDCL 36-21D-4(6)(7)(10)(11).

Law Implemented: SDCL 36-21D-1, 36-21D-4(6)(7)(10)(11).

20:77:07:02. Disciplinary actions. The secretary may, in compliance with SDCL ch. 1-26, either fine, deny, suspend, censure, reprimand, or revoke a registration required by SDCL ch. 36-21D on any of the grounds for disciplinary action provided in this article. In addition, the secretary may enter into consent agreements to contractually resolve disciplinary actions.

Source:

General Authority: SDCL 36-21D-4(7).

Law Implemented: SDCL 36-21D-1, 36-21D-4(7), 36-21D-8, 36-21D-9.

20:77:07:03. Grounds for disciplinary actions. The grounds for disciplinary action are:

(1) Prohibiting an appraiser from reporting the fee paid to the appraiser in the body of the appraisal report. However, a registered appraisal management company may require an appraiser to present any such disclosure in a specified format and location;

(2) Using an appraisal report submitted by an independent appraiser, or any data or information contained therein, for any purpose other than its intended use without the appraiser's or the intended end user's written consent, except as necessary to comply with regulatory mandates or legal requirements;

(3) Failing to meet the requirements for registration established pursuant to this article;

(4) Procuring or attempting to procure registration under this article by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the department or procuring or attempting to procure a registration through fraud or misrepresentation;

(5) Paying money or other valuable consideration other than the fees provided for by this article to any employee of the department to procure a registration;

(6) Any act which constitutes dishonesty, fraud, or misrepresentation;

(7) Having the designated officer, controlling person or managing principal pleading guilty or nolo contendere to or being found guilty of a felony; pleading guilty or nolo contendere to or being convicted of a misdemeanor involving mortgage lending or

real estate appraising; or having committed an offense involving breach of trust, moral turpitude, fraudulent or dishonest dealings;

(8) Having the designated officer, controlling person or managing principal registered, licensed or certified as an appraiser in this state or another state or jurisdiction disciplined with suspension, denial, censure, reprimand, voluntary surrender in lieu of disciplinary action, or revocation of the certificate or license;

(9) Having an investigation or disciplinary action of the designated officer or controlling person or managing principal by any agency of the State of South Dakota or another state or jurisdiction;

(10) Being permanently or temporarily prohibited by a court of competent jurisdiction from engaging in or continuing to conduct any practice involving appraisal management services or operating an appraisal management company;

(11) Violating any provision of this article or SDCL 36-21D;

(12) Being disciplined with suspension, denial, censure, reprimand, or revocation of a registration by another state or jurisdiction;

(13) Submitting fraudulent documents to another state or jurisdiction to become registered;

(14) Having an investigation or disciplinary action by any agency of the State of South Dakota or another state or jurisdiction;

(15) Failing to comply with a final order of the secretary;

(16) Voluntary surrender of a registration in lieu of disciplinary action by another state or jurisdiction;

(17) Altering, modifying or otherwise changing a completed requested appraisal report without written consent from the utilized appraiser who prepared the appraisal report; or

(18) Being sanctioned for failing to compensate utilized appraisers with reasonable and customary fees as required by TILA.

Source:

General Authority: SDCL 36-21D-4(7).

Law Implemented: SDCL 36-21D-1, 36-21D-4(7), 36-21D-10.