**South Carolina General Assembly**

119th Session, 2011-2012

**H. 3717**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Sandifer, Bales, Neilson and Limehouse

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Introduced in the House on February 22, 2011

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Appraisal Management Companies Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/22/2011 House Introduced and read first time ([House Journal‑page 14](file:///h:\hj%20archive\2011\02-22-11.docx))

2/22/2011 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 14](file:///h:\hj%20archive\2011\02-22-11.docx))

3/3/2011 House Member(s) request name added as sponsor: Limehouse

**VERSIONS OF THIS BILL**

[2/22/2011](file:///p:\pprever\2011-12\3717_20110222.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 60, TITLE 40 SO AS TO ENACT THE “APPRAISAL MANAGEMENT COMPANY ACT”, TO CREATE THE SOUTH CAROLINA REAL ESTATE APPRAISAL MANAGEMENT SERVICES BOARD, TO PROVIDE THE PURPOSE OF THE BOARD, TO DEFINE CERTAIN TERMS, TO PROHIBIT THE PROVISION OF APPRAISAL MANAGEMENT SERVICES BY AN ENTITY UNLESS REGISTERED WITH THE BOARD AND TO SPECIFY REQUIREMENTS FOR THIS REGISTRATION AND ITS RENEWAL, TO SPECIFY EXEMPTIONS FROM THIS CHAPTER, TO PROVIDE OWNERSHIP LIMITS ON OWNERS AND CONTROLLING PERSONS, TO PROVIDE TRAINING REQUIREMENTS FOR CERTAIN EMPLOYEES OF AN APPRAISAL MANAGEMENT COMPANY, TO IMPOSE CERTAIN RECORD KEEPING AND REPORTING REQUIREMENTS FOR AN APPRAISAL MANAGEMENT COMPANY, TO PROHIBIT CERTAIN PERSONS RELATED TO AN APPRAISAL MANAGEMENT COMPANY FROM EXERTING OR ATTEMPTING TO EXERT CERTAIN INFLUENCE ON AN APPRAISAL, TO IMPOSE CERTAIN REQUIREMENTS CONCERNING THE PAYMENT BY AN APPRAISAL MANAGEMENT OF A COMPLETED APPRAISAL OR VALUATION STUDY, TO RESTRICT THE CONDUCT OF AN APPRAISAL MANAGEMENT COMPANY WITH RESPECT TO THE MODIFICATION OR USE OF A COMPLETED APPRAISAL REPORT, TO RESTRICT THE ABILITY OF AN APPRAISAL MANAGEMENT COMPANY TO CHANGE THE COMPOSITION OF AN APPRAISER PANEL AND PROVIDE A PROCEDURE FOR A VIOLATION, TO PROVIDE THE BOARD MAY CENSURE AN APPRAISAL MANAGEMENT COMPANY IN CERTAIN CIRCUMSTANCES, TO ENABLE THE BOARD TO CONDUCT ADJUDICATORY PROCEEDINGS SUBJECT TO CERTAIN RESTRICTIONS; TO DESIGNATE SECTIONS 40‑60‑5 THROUGH 40‑60‑230 AS ARTICLE 1 OF CHAPTER 60, TITLE 40, ENTITLED “REAL ESTATE APPRAISERS”, AND TO RETITLE CHAPTER 60, TITLE 40 AS “REAL ESTATE APPRAISAL PROFESSIONALS ACT”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 60, Title 40 of the 1976 Code is amended by adding:

“Article 3

Real Estate Appraisal Management Companies

Section 40‑60‑310. This article may be cited as the ‘Appraisal Management Company Registration Act’.

Section 40‑60‑320. There is created the South Carolina Real Estate Appraisal Management Services Board to regulate real estate appraisal management companies and protect the interest of the public with respect to real estate appraisal management services in this State.

Section 40‑60‑330. For purposes of this article:

(1) ‘Appraisal’ means the act or process of developing an opinion of the value of real property in conformance with the uniform standards for professional appraisal practice published by the appraisal foundation.

(2) ‘Appraisal foundation’ means the appraisal foundation incorporated as an Illinois not‑for‑profit corporation on November 30, 1987 and to which reference is made in the federal Financial Institutions Examination Council Act of 1978, as amended by Title 11, Real Estate Appraisal Reform Amendments.

(3) ‘Appraisal management company’ means a corporation, partnership, sole proprietorship, subsidiary, limited liability company, or other business entity in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into securitization authorized by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter that contracts with a network or panel of more than fifteen state certified and licensed independent appraisers in this state, or twenty‑five or more nationally within a given year to perform real estate appraisal services for clients, including:

(a) recruiting, selecting, and retaining appraisers;

(b) contracting with licensed and certified appraisers to perform appraisal assignments;

(c) managing the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; and

(d) reviewing and verifying the work of appraisers.

(4) ‘Appraisal management services’ means the process of receiving a request for the performance of real estate appraisal services from a client and for a fee paid by the client entering into an agreement with one or more independent appraisers to perform the real estate appraisal services contained in the request.

(5) ‘Independent appraiser’ means a person who holds a state license or certification as a real estate appraiser to perform valuation services pursuant to the South Carolina Real Estate Appraisers Act to develop and communicate an opinion of value of real property or an interest in real estate.

(6) ‘Appraiser panel’ means a group of independent appraisers selected by an appraisal management company to perform real estate appraisal services for the appraisal management company.

(7) ‘Board’ means the South Carolina real estate appraiser’s board created pursuant to the Real Estate Appraisers Act.

(8) ‘Client’ means a person or entity that contracts with, or otherwise enters into an agreement with, an appraisal management company for the performance of real estate appraisal services.

(9) ‘Controlling person’ means:

(a) an owner, officer, or director of a corporation, partnership, limited liability company, or other business entity seeking to offer appraisal management services in this state;

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

(c) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(10) ‘Real estate appraisal services’ means the practice of developing an opinion of the value of real property in conformance with the uniform standards of professional appraisal practice published by the appraisal foundation.

(11) ‘Uniform Standards of Professional Appraisal Practice’ means the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

Section 40‑60‑340. (A) A person may not directly or indirectly engage or to attempt to engage in business as an appraisal management company, to directly or indirectly engage or to attempt to perform appraisal management services, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the board under the provisions of this chapter.

(B) Registration required by subsection (A) must include:

(1) the name of the entity seeking registration;

(2) the business address of the entity seeking registration;

(3) contact information of the entity seeking registration;

(4) if the entity seeking registration is not a corporation that is domiciled in this state, the name and contact information for the company’s agent for service of process in this State;

(5) the contact information for an individual, corporation, partnership, or other business entity that owns ten percent or more of the appraisal management company;

(6) the name, address, and contact information for a controlling person;

(7) certification that the entity seeking registration has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license or certification in good standing in this state pursuant to the South Carolina Real Estate Appraisers Act;

(8) certification that the entity seeking registration has a system in place to review the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company on a periodic basis to ensure that the real estate appraisal services are being conducted pursuant to uniform standards of professional appraisal practice;

(9) certification that the entity maintains a detailed record of each service request that it receives and the independent appraiser that performs the real estate appraisal services for the appraisal management company;

(10) an irrevocable consent to service of process;

(11) a surety bond or other equivalent means of security as required by the act;

(12) authorization for the board to conduct a criminal background check of all controlling persons and an individual who owns ten percent or more of the appraisal management company; and

(13) other information reasonably required by the board.

Section 40‑60‑350. The provisions of this article are not applicable to:

(1) a person or entity that exclusively employs appraisers on an employer and employee basis for the performance of appraisals;

(2) a department or unit within a financial institution subject to direct regulation by an agency of the United States Government or an agency of this State and that receives a request for the performance of an appraisal from one employee of the financial institution, and another employee of the same financial institution assigns the request for the appraisal to an appraiser that is an independent contractor to the institution, except that an appraisal management company that is a subsidiary owned or controlled by a financial institution may not be considered a department or unit within a financial institution to which the provisions of this chapter do not apply;

(3) a person that enters into an agreement, whether written or otherwise, with an appraiser for the performance of an appraisal, and upon the completion of the appraisal, the report of the appraiser performing the appraisal is signed by both the appraiser who completed the appraisal and the appraiser who requested the completion of the appraisal, except that an appraisal management company may not avoid the requirements of this chapter by requiring that an employee of the appraisal management company who is an appraiser to sign an appraisal that is completed by an appraiser who is part of the appraisal panel of the appraisal management company;

(4) an appraisal management company that orders ten or fewer appraisals in this state in a calendar year; and

(5) an appraisal management company that maintains an appraiser panel that consists of:

(a) fifteen or fewer appraisers who are independent contractors within the State; or

(b) twenty‑five or fewer appraisers nationally.

Section 40‑60‑360. An applicant for registration as an appraisal management company shall submit to the board an application on a form prescribed by the board.

Section 40‑60‑370. (A) An initial registration granted by the board pursuant to this article is valid from the date of issuance through expiration unless renewed pursuant to subsection (B).

(B) An entity actively registered under this article must renew biennially before June thirtieth.

(C) Failure to renew registration by the renewal date must result in loss of authority to operate under this article.

(D) A request to reinstate registration within twelve months of expiration must be accompanied by a payment penalty of one hundred dollars for each month of delinquency.

(E) A registration expired for more than twelve months must be canceled.

Section 40‑60‑380. An entity applying for registration as an appraisal management company shall complete and execute an irrevocable consent to service of process form as prescribed by the board.

Section 40‑60‑390. The board shall establish the fee for appraisal management company registration by rule to cover the cost of the administration of this article. The fee must not be less than three thousand dollars in the first year and one thousand five hundred dollars for a subsequent year.

Section 40‑60‑400. (A) An applicant for registration as an appraisal management company may not:

(1) have a principal, officer, or director who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation in this State or in another state; or

(2) have five percent or more of its ownership owned by a:

(a) person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation in this State or in another state; or

(b) company that has a principal, officer, or director who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation in this State or in another state.

(B) A person who owns, is an officer of, or has a financial interest in an appraisal management company in this State must:

(1) be of good moral character, as determined by the board;

(2) submit to a background investigation, as determined by the board; and

(3) certify to the board he has never had a license or certification to act as an appraiser refused, denied, canceled, or revoked in this State or another state.

Section 40‑60‑410. An appraisal management company applying to the board for registration in this State shall designate one controlling person that will be the main contact for all communication between the board and the appraisal management company.

Section 40‑60‑420. (A) In order to serve as a controlling person of an appraisal management company, a person shall:

(1) certify to the board that he has never had a certificate or a license issued by the appropriate board of this State or another state to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation;

(2) hold an active license or certificate to act as an appraiser in at least one state;

(3) be of good moral character as determined by the board; and

(4) submit to a background investigation as determined by the board.

(B) The registrant shall notify the board within ten days of a change in its controlling person or managing principle.

Section 40‑60‑430. (A) An employee of the appraisal management company or a person working on behalf of the appraisal management company who has the responsibility of selecting independent appraisers for the performance of real estate appraisal services for the appraisal management company or the responsibility of reviewing completed appraisals must be appropriately trained and qualified in the performance of real estate appraisals as determined by the board.

(B) An employee of the appraisal management company who has the responsibility to review the work of independent appraisers shall have demonstrated knowledge of the uniform standards of professional appraisal practice as determined by the board.

(C) An appraisal management company that applies to the board for a registration to do business in this State as an appraisal management company shall not:

(1) knowingly employ a person in a position in which the person has the responsibility to order appraisals or to review completed appraisals who has had a license or certificate to act as an appraiser in this State or in another state, refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation;

(2) knowingly enter into an independent contractor arrangement, whether in verbal, written, or other form, with a person who has had a license or certificate to act as an appraiser in this State or in another state, refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation; and

(3) knowingly enter into a contract, agreement, or other business relationship, whether in verbal, written, or another form, with an entity that employs, has entered into an independent contract arrangement, or has entered into a contract, agreement, or other business relationship, whether in verbal, written, or another form, with a person who has ever had a license or certificate to act as an appraiser in this State or in another state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation.

Section 40‑60‑440. An employee of, or independent contractor to, the appraisal management company that performs an appraisal review must be an appraiser who has demonstrated knowledge of the Uniform Standards of Professional Appraisal Practice (USPAP) as determined by the board.

Section 40‑60‑450. An appraisal management company registered in this State pursuant to this article shall not enter into contracts or agreements with an independent appraiser for the performance of real estate appraisal services unless the person performing the appraisal services is licensed or certified in good standing pursuant to this article.

Section 40‑60‑460. An appraisal management company seeking to be registered shall certify to the board on an annual basis that it maintains a detailed record of each service request that it receives; and that the independent appraiser that performs the real estate appraisal services for the appraisal management company maintains those records, including, but not limited to, the work file, for no less than five years after preparation or at least two years after final disposition of a judicial proceeding in which the appraiser or the appraisal management company provided testimony related to the assignment, whichever period expires last.

Section 40‑60‑470. (A) It is unlawful for an employee, director, officer, or agent of an appraisal management company registered pursuant to this article to influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or in another manner, including:

(1) Withholding or threatening to withhold timely payment for an appraisal.

(2) Withholding or threatening to withhold future business for an independent appraiser or demoting, or threatening to demote or terminate an independent appraiser.

(3) Expressly or impliedly promising future business, promotions, or increased compensation for an independent appraiser.

(4) Conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate or opinion requested from an independent appraiser.

(5) Requesting that an independent appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values of comparable sales at any time prior to the independent appraiser’s completion of an appraisal service.

(6) Providing to an independent appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.

(7) Providing to an independent appraiser or an entity or person related to the appraiser stock or other financial or nonfinancial benefits.

(8) Allowing the removal of an independent appraiser from an appraiser panel without prior written notice to such appraiser. Written notice must include evidence of:

(a) the appraiser’s illegal conduct;

(b) a violation of the minimum reporting standards;

(c) substandard performance; or

(d) otherwise improper or unprofessional behavior.

(9) Obtaining, using or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and this basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is done pursuant to a bona fide prefunding or postfunding appraisal review or quality control process.

(10) Engaging in another act or practice that impairs or attempts to impair the independence, objectivity or impartiality of an appraiser.

(11) Requiring an appraiser to indemnify an appraisal management company or hold an appraisal management company harmless for liability, damages, losses, or claims arising out of the services performed by the appraisal management company and not the services performed by the appraiser.

(12) Allowing an independent appraiser to file a complaint for alleged abuses of above prohibitions or other issues of misconduct. The board must handle this complaint like those of independent appraisers.

(B) Nothing in subsection (A) may be construed as prohibiting the appraisal management company from requesting that an independent appraiser:

(1) provide additional information about the basis for a valuation; or

(2) correct objective factual errors in an appraisal report.

Section 40‑60‑480. (A) An appraisal management company shall, except in cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment within forty‑five days after the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

(B) For the purposes of this section, ‘payor’ means a person or entity responsible for making payment for the appraisal.

(C) A registrant shall compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised absent the involvement of the appraisal management company.

(D) An appraisal management company shall charge their client a separate and distinct fee for the performance of appraisal management services on behalf of the client.

(E) An appraisal management company shall separately state the fees paid to an appraiser for appraisal services and the fees charged by the appraisal management company for services associated with the management of the appraisal process, including procurement of the services to the client, borrower, and another payor.

(F) An appraiser may not be prohibited by the appraisal management company, client of the appraiser, or other third party from disclosing the fee paid to the appraiser for the performance of the appraisal in the appraisal report.

(G)(1) Fees paid to an appraiser shall not include fees for services typically provided by an appraisal management company. Except as provided in item (2) of this subsection, an appraisal management company may not require payment from the appraiser for:

(a) transactions, assignments, quality assurance, disputes, or services provided by the appraisal management company to its client;

(b) fees associated with the number of assignments performed by the appraiser; or

(c) monthly, quarterly, or annual membership on the appraisal management company’s approved appraiser panel.

(2) An appraisal management company may be compensated from the appraiser for initial and annual expenses directly associated with the inclusion of the appraiser on the approved panel of appraisers of the appraisal management company.

(H) An appraisal management company shall, except in cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment within forty five days of the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

Section 40‑60‑490. An appraisal management company shall not:

(1) alter, modify or otherwise change a completed appraisal report submitted by an independent appraiser without the written knowledge and consent of the appraiser; or

(2) use an appraisal report submitted by an independent appraiser or the data or other information contained in it for another transaction.

Section 40‑60‑500. (A) Except within the first thirty days after an independent appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company shall not remove an appraiser from its appraiser panel or otherwise refuse to assign requests for real estate appraisal services to an independent appraiser without notifying the appraiser in writing of the reasons for the appraiser being removed from the appraiser panel of the appraisal management company. If the appraiser is being removed from the panel for illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice, or a violation of the South Carolina Real Estate Appraisers Act, the appraisal management company shall provide the independent appraiser the nature of the alleged conduct or violation and provide an opportunity for the appraiser to respond.

(B) An independent appraiser removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice, or violation of the South Carolina Real Estate Appraisers Act may file a complaint with the board for a review of the decision of the appraisal management company, except that in no case shall the board make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the actions specified in subsection (A) of this section.

(C) If an independent appraiser files a complaint against an appraisal management company pursuant to subsection (B) of this section, the board shall adjudicate the complaint within one hundred eighty days.

(D) If after opportunity for hearing and review, the board determines that an independent appraiser did not commit a violation of law, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of state licensing standards, the board shall order that the appraiser be added to the appraiser panel of the appraisal management company that was the subject of the complaint without prejudice.

Section 40‑60‑510. The board may censure an appraisal management company, conditionally or unconditionally suspend or revoke a registration issued under this article, levy fines, or impose civil penalties not to exceed twenty‑five thousand dollars for a violation if, in the opinion of the board, an appraisal management company is attempting to perform, has performed, or has attempted to:

(1) commit an act in violation of this article;

(2) violate a rule or regulation adopted by the board in the interest of the public and consistent with the provisions of this article;

(3) procure a registration, license, or certification by fraud, misrepresentation, or deceit; or

(4) violate the South Carolina Real Estate Appraisers Act or the federal Financial Institutions Reform Recovery and Enforcement Act of 1989.

Section 40‑60‑520. (A) In order to qualify for registration or renewal of registration, an appraisal management company shall maintain a bond underwritten by a corporate surety authorized to transact business in the state of South Carolina, or other equivalent means of security. The board shall set the amount and conditions of the surety bond or other equivalent means of security required by this section, provided that the amount of the bond or security required shall not exceed twenty‑five thousand dollars.

(B) The bond or other equivalent means of surety shall secure payment for administrative or judicial penalties imposed by the board or the state and for penalties or costs required by a board disciplinary action, and also as indemnity for any loss sustained by a person damaged as a result of a violation by the appraisal management company, of a provision of this article or of a rule of the board adopted pursuant to this article.

(C) An appraiser who has obtained a final judgment in a court of competent jurisdiction against an appraisal management company shall have the ability to make a claim against that company’s bond or other surety for the satisfaction of this judgment.

(D) An appraisal management company shall notify the board in writing of a claim made on its bond or equivalent surety.

Section 40‑60‑530. The board may conduct adjudicatory proceedings in accordance with the Administrative Procedures Act, provided that:

(1) before censuring any registrant or suspending or revoking a registration the board shall notify the registrant in writing of charges made at least twenty days prior to the date set for the hearing and shall afford the registrant an opportunity to be heard in person or by counsel;

(2) the written notice requirement must be satisfied by personal service on the controlling person of the registrant or the registrant’s agent for service of process in this State or by sending the notice by certified mail, return receipt requested, to the controlling person of the registrant to the address of the registrant on file with the board;

(3) the hearing on the charges must be at a time and place prescribed by the board; and

(4) the board may make findings of fact and shall deliver or mail these findings to the registrant charged with an offense under this article.”

SECTION 2. Sections 40‑60‑5 through 40‑60‑230 of the 1976 Code are designated as Article 1 of Chapter 60, Title 40 and entitled “Real Estate Appraisers”, and Chapter 60, Title 40 of the 1976 Code is reentitled “Real Estate Appraisal Professionals Act”.

SECTION 3. This act takes effect upon approval by the Governor.

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