

**ARTICLE 20:77**

**APPRAISAL MANAGEMENT COMPANIES**

Chapter

- 20:77:01 General provisions.
- 20:77:02 Administration.
- 20:77:03 Application procedure.
- 20:77:04 Fee schedule.
- 20:77:05 Responsibilities and duties.
- 20:77:06 Records
- 20:77:07 Complaints, investigations, and discipline.
- 20:77:08 National registry fee collection and remittance.

**CHAPTER 20:77:01**

**GENERAL PROVISIONS**

Section

- 20:77:01:01 Appraisal management services.

- 20:77:01:02 Appraisal review.
- 20:77:01:03 Controlling person.
- 20:77:01:04 Designated officer.
- 20:77:01:05 Definitions.

**20:77:01:05. Definitions.** Terms used in this article mean:

(1) "AMC National Registry," the registry of state-registered appraisal management companies and federally regulated appraisal management companies maintained by the Appraisal Subcommittee;

~~(4)~~ (2) "Appraisal Subcommittee," the Appraisal Subcommittee of the Federal Financial Institutions Examination Council;

~~(2)~~ (3) "Appraiser," a person who has been issued by the Department of Labor and Regulation a state-certified general, state-certified residential, state-licensed, or state-registered appraiser license or certificate by the State of South Dakota credential to perform appraisals;

(4) "Appraiser panel," a network, list or roster of licensed or certified appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company. Appraisers on an appraisal management company's appraiser panel under this article include the following:

- (a) Appraisers accepted by the appraisal management company for consideration for future appraisal assignments in covered transactions and for secondary mortgage market participants in connection with covered transactions; and

(b) Appraisers engaged by the appraisal management company to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions.

An appraiser is an independent contractor for purposes of this article if considered an independent contractor by the appraisal management company for federal income tax purposes;

~~(3)~~ (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) "Covered transaction," any consumer credit transaction secured by the consumer's principal dwelling;

~~(4)~~ (7) "Department," the Department of Labor and Regulation;

(8) "Federally regulated appraisal management company," an appraisal management company that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813 and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation;

(9) "Federally related transaction regulations," regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIREA Title XI, 12 U.S.C. 3341-3343;

~~(5)~~ (10) "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;

~~(6)~~ (11) "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;

~~(7)~~ (12) "Real estate," as defined in SDCL 36-21A-11;

(13) "Secondary mortgage market participant," a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security;

~~(8)~~ (14) "Secretary," the secretary of the Department of Labor and Regulation;

~~(9)~~ (15) "TILA," means Truth in Lending Act of 1968 (15 U.S.C. 1631 et seq) and any amendments thereto;

~~(10)~~ (16) "Uniform Standards," Uniform Standards of Professional Appraisal Practice as incorporated in § 20:14:06:01.

**Source:** 38 SDR 40, effective September 20, 2011.

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

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

## **CHAPTER 20:77:03**

### **APPLICATION PROCEDURE**

Section

- 20:77:03:01 Application for registration.
- 20:77:03:02 Uniform consent to service of process.
- 20:77:03:03 Term of registration.
- 20:77:03:04 Registration renewal.
- 20:77:03:05 Late renewal.
- 20:77:03:06 Change of ownership – new application.

**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 the designated officer and all other controlling persons;

(4) A signed and notarized irrevocable Uniform Consent to Service of Process;

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

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

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

**Source:** 38 SDR 40, effective September 20, 2011.

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

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

20:77:03:06. Change of ownership – new application. If a registered appraisal management company changes ownership, it shall apply in writing for a certificate of registration as a new appraisal management company under this article and shall complete an irrevocable Uniform Consent to Service of Process on a form approved by the secretary.

Source:

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

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

## CHAPTER 20:77:05

### RESPONSIBILITIES AND DUTIES

Section

20:77:05:01 Responsibilities 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 validate that the services were conducted in conformity with the uniform standards;~~  
Have an appraisal quality control system in place that is reasonably designed and properly applied by the appraisal management company to ensure the work of utilized appraisers who perform

appraisal services are subject to a Standard 3 review to determine if the services were performed in compliance 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~~ a Standard 3 appraisal review, of the work of utilized appraisers who perform an appraisal assignment for a property located in South Dakota, be licensed or certified and in good standing by this state and conducts the appraisal review in compliance with the uniform standards;

(5) File a referral with the department if there is evidence that a utilized 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 § 20:14:11:03;

(6) Authorize a designated officer, who will be responsible for accepting the responsibilities for compliance with SDCL chapter 36-21D and the provisions of this article, and notify the department, within five days, 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, within five days, 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.

(10) Pay the appraisal fee to a utilized appraiser within 45 days of the date the utilized appraiser first transmits the appraisal report to the appraisal management company.

(11) Establish and comply with processes and controls reasonably designed to ensure that the appraisal management company conducts its appraisal management services in accordance with the requirements of section 129E(a) through (i) of the Truth in Lending Act (TILA), 15 U.S.C. 1639e(a) through (i), and regulations thereunder.

**Source:** 38 SDR 40, effective September 20, 2011.

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

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

## **CHAPTER 20:77:07**

### **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.

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

The following act and omissions are grounds for disciplinary action:

(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~~ an owner, in whole or in part, directly or indirectly, a designated officer or a controlling person 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~~ an owner, in whole or in part, directly or indirectly, a designated officer or a controlling person, who is 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 disciplinary action of the designated officer or a controlling person 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 chapter 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) Being disciplined by any agency of the federal government, 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 other 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; ø

(18) ~~Being sanctioned for failing~~ Failing to compensate utilized appraisers, who complete appraisal assignments on properties located within the State of South Dakota, with reasonable and customary fees as required by TILA. establish and comply with processes and controls reasonably designed to ensure that the appraisal management company conducts its appraisal management services in accordance with the requirements of ~~require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence~~

standards established under section 129E(a) through (i) of the Truth in Lending Act (TILA), 15 U.S.C. 1639e(a) through (i), and regulations thereunder;

(19) Being owned in whole or in part, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation or suspension, or revoked in any State for a substantive cause, as determined by the appropriate State appraiser certifying and licensing agency;

(20) Having an investigation or disciplinary action of an appraisal management company, the designated officer or a controlling person by the department or another state pending in this state or another state;

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

(22) Having any owner, designated officer or controlling person fail to demonstrate good moral character.

(23) Failing to register as an appraisal management company as required to perform appraisal management services.

**Source:** 38 SDR 40, effective September 20, 2011.

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

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

## **CHAPTER 20:77:08**

### **NATIONAL REGISTRY FEE COLLECTION AND REMITTANCE**

Section

20:77:08:01 Collection of national registry fee.

20:77:08:02 Remittance of national registry fee.

20:77:08:01. Collection of national registry fee. The department shall collect from each registered appraisal management company the appraisal management company national registry fee as prescribed by the Appraisal Subcommittee pursuant to § 1109 of Title XI of FIRREA.

20:77:08:02. Remittance of national registry fee. The department shall remit the fees collected from registered appraisal management companies to the Appraisal Subcommittee pursuant to § 1109 of Title XI of FIRREA.

Source:

General Authority: SDCL 36-21D-4(12)

Law Implemented: SDCL 36-21D-4(12)