



Legislative Bills Summary



REQ03544 (Real Property Appraiser Act 2015 AQB Changes)

The purpose of this bill is to update the act to be in compliance with the real property appraiser qualification criteria that becomes effective January 1, 2015. The Board must adhere to the criteria to meet the requirements promulgated by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, which has been charged with enforcing Title XI of the Financial Institutions reform, Recovery, and Enforcement Act of 1989. If the State of Nebraska is found to not be compliance with Title XI by the Appraisal Subcommittee, The Appraisal Subcommittee may remove all Nebraska credentialed appraisers from the Federal Registry, resulting in no appraisers qualified to appraise real property in connection with federally related transactions, which is approximately 80-90% of all mortgage loan activity. The changes primarily affect qualifications for each level of credential, but also affect reciprocal credentialing, and continuing education.

REQ03543 (Real Property Appraiser Act General Cleanup)

The purpose of this bill is to address a multitude of issues concerning the administration and enforcement of act, along with inconsistencies found throughout the act. The Board also intends to develop definitions that more closely reflect those found in the Uniform Standards of Professional Appraisal Practice (USPAP), the standards recognized by the Appraisal Subcommittee through Title XI of the Financial Institutions reform, Recovery, and Enforcement Act of 1989. Over the years, the definitions and applications of USPAP have changed, but the Real Property Appraiser Act was not updated to reflect these changes. This has resulted in inconsistent definitions and terms, and difficulty establishing cohesiveness between the standards and the act. The Board intends to eliminate the as much of the inconsistent language as possible.

The following language changes are intended to address issues faced by the Board recently, or to provide clarification for appraisers, the public, and the Board:

- A definition for education provider, employee, person and specialized knowledge is included in the draft, some exemptions have been added, temporary permit requirements better clarified, and renewal and continuing education requirements are better defined.
- The Board also seeks to clarify its ability to issue cease and desist orders. A previous Attorney General wrote an opinion indicating that the Board has the authority to issue cease and desist orders to non-credentialed persons, while the view of the current Attorney General is that the Board cannot issue cease and desist orders to non-credential holders. This drafted language was modeled after the Real Estate Commission's act.

- The Board intends to add an appraiser independence law to the act. Although the Residential Mortgage Licensing Act prevents appraiser influence by those in the mortgage profession, nothing is in place to protect appraisers from the influence of non-mortgage people (e.g. property owners). The drafted language would make it unlawful for anyone to attempt to influence the independent judgment of an appraiser. Many states have similar language.
- The Board intends to give credentialed appraisers the ability to keep their credential without practicing if needed, which was the basis for the inactive status. Instead of having to let a credential lapse, an appraiser would have a set period in which he or she could continue to meet continuing education requirements, but not have an active credential. This ability would prevent an appraiser from being required to reapply and meet the current requirements for credentialing if he or she was unable to practice for a short amount of time.
- The real property associate credential draft language was included to give county assessor personnel and others in similar positions a professional credential. This language was developed after the Board had the opportunity to listen to the concerns of counties related to appraisal services.

The drafted language includes the following changes related to the Board's financials:

- Increasing board member per diems, and also the number of activities that may qualify for a per diem payment. The members of this board put a drastic amount of work into the position. In addition to attending meetings and events, each member is directly involved in the investigations of this act and the Appraisal Management Company Registration Act. I estimate that the board chair spends approximately 10 hours a week engaged in board business, the vice-chair 5-10 hours per week, and the remaining board members 3-5 hours per week. Board members should be compensated for time spent in service other than regular board meetings.
- At the recommendation of the Nebraska State Auditor's Office, the Board has established a sufficient cash fund balance. Draft language was added to request that transfers of funds from the Appraiser Fund not exceed the sufficient cash fund balance as established by the Board.
- A fee for inactive status was included in the draft language.

Finally, the drafted language includes the following general changes:

- Allow for preparation of an electronic directory, and for that electronic directory to be made available on the website.
- Allow for the rules and regulations to be made available electronically.
- Remove credential holder place of business requirements for resident appraisers only. Appraiser credentialing is moving towards one credential, not a separate resident or non-resident credential. According to the Appraisal Subcommittee, reciprocity is only a means by which a credential may be obtained, not the definition of a credential. The draft language reflects this position.
- Remove requirements for initially appointed board members. The board has been established for quite some time and the existing language is no longer needed.

REO03545 (Appraisal Management Company Registration Act)

The AMC Act has been in effect for one year now, and the following drafted changes are to address issues confronted by the board during the initial enforcement and administration of the act:

- The definition of appraisal management company was changed to include all third party companies that provide the services described. Currently, only those companies that provide the described services in connection with valuing real property collateralizing mortgage loans, mortgages, or trust deeds into a securitization; and authorized by a creditor of consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of other principal in the secondary mortgage markets are appraisal management companies.
- As AMCs have become the norm, appraisal assignments for property types other than residential have also appeared. The way the act is written now, the Board has no authority over an appraisal management company offering assignments in Nebraska for non-residential properties. The resident only requirements in the act are removed in the drafted language.
- Some general updates were drafted to more closely mirror the real property appraiser act to allow for consistency and uniformity in administering each act, and to define terms used in the act that were not defined previously (definitions, ability to establish appropriate fees for services provided by the Board).
- Draft language was added to allow the Board authority to issue cease and desist orders. This language was based on the language found in the Real Estate Commission's act.
- Investigation and hearing procedures drafted to reflect those found in the real property appraiser act. The purpose is to establish consistency enforcing and administering both acts. In addition, the draft includes violations that the board anticipates may be common in the future. Once again, these additions also reflect many appraiser violations found in the Real Property Appraiser Act.
- The language pertaining to the Appraisal Management Company Fund was drafted to reflect the language found in the Real Property Appraiser Act, including the drafted changes to that act. The Board has established a sufficient fund balance and requests that any transfers made by the legislature do not exceed the sufficient fund balance established by the Board.
- Draft language was added to "prohibited acts" to limit the length of time that an AMC would have to refrain from employing an appraiser that has had certain action taken against his or her credential. Previously, there was no time limit, which implied that this requirement is effective for the rest of that appraiser's professional career.
- Draft language was added to "prohibited acts" to prevent an AMC from requiring that an appraiser indemnify the company concerning any liability, damage, losses, or claims arising out of the services provided by the AMC. Indemnification language has become common in AMC/Appraiser contracts, and the majority of residential appraisers obtain the majority of work through AMCs. There have been instances in other states where the AMC held the appraiser liable for issues not completely related to the appraisal services performed by the appraiser. The majority of independent fee appraisers cannot afford this type of liability. Many other states are introducing or considering similar language.