

R162. Commerce, Real Estate.

R162-2e. Appraisal Management Company Administrative Rules.

R162-2e-101. Title.

This chapter is known as the "Appraisal Management Company Administrative Rules."

R162-2e-102. Definitions.

- (1) "Affiliation" means a business association:
 - (a) between:
 - (i) two individuals registered, licensed, or certified under Section 61-2g; or
 - (ii) an individual registered, licensed, or certified under Section 61-2g and:
 - (A) an appraisal entity; or
 - (B) a government agency;
 - (b) for the purpose of providing an appraisal service; and
 - (c) regardless of whether an employment relationship exists between the parties.
- (2) The acronym "AMC" stands for appraisal management company.
- (3) "Business day" means a day other than:
 - (a) a Saturday;
 - (b) a Sunday; or
 - (c) a state or federal holiday.
- (4) "Client" is defined in Section 61-2e-102(10).
- (5) "Competency statement" means a statement provided by the AMC to the appraiser that, at a minimum, requires the appraiser to attest that the appraiser:
 - (a) is competent according to USPAP standards;
 - (b) recognizes and agrees to comply with:
 - (i) laws and regulations that apply to the appraiser and to the assignment;
 - (ii) assignment conditions; and
 - (iii) the scope of work outlined by the client; and
 - (c) has access, either independently or through an affiliation pursuant to Subsection (1), to the records necessary to complete a credible appraisal, including:
 - (i) multiple listing service data; and
 - (ii) county records.
- (6)(a) "Employee" means an individual:
 - (i) whose manner and means of work performance are subject to the right of control of, or are controlled by, another person; and
 - (ii) whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form issued by the controlling person.
- (b) "Employee" does not include an independent contractor who performs duties other than at the discretion of, and subject to the supervision and instruction of, another person.
- (c) For purposes of applying Subsection R162-2e-401(1)(g), an appraiser who completes an assignment is considered to be an employee of the AMC that offers the assignment if:
 - (i) this subsection (a) describes the employment relationship between the appraiser and the AMC; or
 - (ii) pursuant to this subsection (a), the appraiser is an employee of a company:
 - (A) that is wholly owned by the AMC; or
 - (B) in which the AMC owns a controlling interest.
- (7) "Select" means:
 - (a) for purposes of composing the AMC appraiser panel, to review and evaluate the qualifications of an appraiser who applies to be included on the AMC's appraiser panel; and
 - (b) for purposes of assigning an appraisal activity to an appraiser:
 - (i) to choose from the AMC's appraiser panel an individual appraiser or appraisal entity to complete an assignment; or
 - (ii) to compile, from among the appraisers included in the AMC's appraiser panel, an electronic distribution list of appraisers to whom an assignment will be offered through e-mail.
- (8) The acronym "USPAP" stands for Uniform Standards of Professional Appraisal Practice.

R162-2e-201. Registration Required - Qualification for Registration.

- (1) The division may not register or renew the registration of an AMC that fails to:
 - (a) comply with any provision of Utah Code Title 61, Chapter 2e, "Appraisal Management Company Registration and Regulation Act";
 - (b) register with the Utah Division of Corporations and Commercial Code and provide to the division its certificate of existence;
 - (c) pursuant to this Subsection (4)(a), evidence having secured a surety bond that:
 - (i) is in the amount of \$25,000; and
 - (ii) provides, throughout the full period of registration, for the division to make a claim:

- (A) on behalf of an appraiser; and
- (B) for unpaid fees as awarded to the appraiser in a final judgment entered by a court of competent jurisdiction; or
- (d) comply with any provision of these rules.
- (2) The division shall schedule a hearing before the board for an AMC that:
 - (a)(i) applies for registration or renewal of registration;
 - (ii) has a control person who discloses, or the division finds through its own research, an issue that might affect the control person's moral character; and
 - (iii) the division determines that the board should be aware of the issue; or
 - (b) fails to provide an adequate explanation for the AMC's:
 - (i) plan to ensure the use of licensed appraisers in good standing;
 - (ii) plan to ensure the integrity of the appraisal review process; or
 - (iii) plan for record keeping.
- (3)(a) An AMC shall register with the division in the name of the legal entity under which it is registered with the Utah Division of Corporations and Commercial Code and conducts the business of appraisal management in Utah and in other states.
- (b) An AMC shall notify the division of a dba, trade name, or assumed business name under which the registered legal entity operates in Utah:
 - (i) at the time of registration; or
 - (ii) if applicable, immediately upon beginning to operate under such dba, trade name, or assumed business name.
- (c) If an AMC changes its registered name, a dba, a trade name, or an assumed business name, the AMC shall notify the division:
 - (i) in writing; and
 - (ii) within ten business days of making the change.
- (4)(a) The deadline by which an AMC shall demonstrate that the entity has obtained a surety bond pursuant to Subsection (1)(c) is as follows:
 - (i) For an AMC that applies for registration on or after October 1, 2012, the bond shall be obtained as a condition for initial registration.
 - (ii) For an AMC that obtained its initial registration prior to January 1 2011 and applies for renewal on or after October 1, 2012, the bond shall be obtained as a condition of the 2012 renewal.
 - (iii) For an AMC that is not described by this Subsection (4)(a)(i) or (ii), the deadline for obtaining the surety bond shall be January 1, 2013.
- (b) Failure to comply with an applicable deadline as outlined in this Subsection (4)(a) shall result in the automatic suspension of an AMC's registration until such time as the AMC provides evidence to the division that it is in compliance with the surety bond requirement.
- (c) If an AMC's surety bond lapses or is cancelled during the period of registration, the division shall:
 - (i) allow the AMC 30 days in which to comply with the surety bond requirement; and
 - (ii) if the AMC fails to obtain or reinstate a surety bond within 30 days, immediately and automatically suspend the AMC's registration until such time as the AMC provides evidence to the division that it is in compliance with the surety bond requirement.

R162-2e-201a. Claims Against an AMC Bond.

- (1) To bring a claim against a bond that is held by an AMC pursuant to Section 61-2e-204(2)(c) and Subsection R162-2e-201(1)(c), an appraiser shall:
 - (a) demonstrate that a court of competent jurisdiction has awarded the appraiser a final judgment against the AMC for the fee(s) claimed;
 - (b) demonstrate that the appraiser earned the fee(s) claimed and that the AMC has had a reasonable period of time in which to tender payment; and
 - (c) submit a complaint to the division alleging nonpayment of fee(s):
 - (i) after a reasonable period of time for payment has passed; and
 - (ii) no later than 30 days after obtaining a judgment as required under this Subsection (1)(a).
- (2) In evaluating whether an AMC has had a reasonable period of time in which to tender payment, the division shall consider the following:
 - (a) if a payment deadline is specified in the contract that applies to the assignment for which the appraiser claims an unpaid fee, whether the payment deadline has passed; or
 - (b) if the applicable contract is silent as to a period for payment, whether at least 90 days have passed since the date on which the appraiser submitted a report that complied with the assignment, including all scope of work requirements, as determined by the division in its sole discretion.

R162-2e-205. Division Service Fees -- AMC Registry Fee.

- (1) The division shall collect and transmit to the Appraisal Subcommittee an AMC registry fee from:
 - (a) an AMC registered under the Appraisal Management Company Registration and Regulation Act; or
 - (b) an AMC that operates as a subsidiary of a federally regulated financial institution.
- (2) The amount of the AMC registry fee shall be as follows:

(a) for an AMC that has been in existence for more than one year, the amount collected shall be the established AMC registry fee multiplied by the number of appraisers who have performed an appraisal in connection with a covered transaction for the AMC in Utah during the previous year; and

(b) for an AMC that has not been in existence for more than one year, the amount collected shall be the established AMC registry fee multiplied by the number of appraisers who have performed an appraisal in connection with a covered transaction for the AMC in Utah since the AMC commenced doing business.

R162-2e-301. Use of Licensed or Certified Appraisers.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide to the division a statement signed by its designated controlling person that explains the AMC's system for verifying that:

- (1) an appraiser who is added to the panel is licensed or certified; and
- (2) an appraiser who is assigned to complete a real estate appraisal remains licensed or certified in good standing.

R162-2e-302. Adherence to Standards.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide a statement to the division, signed by its designated controlling person, certifying that the AMC verifies that each appraisal assignment offered to an appraiser acting as an independent contractor is:

- (1) signed by an appraiser who is included in the AMC's panel at the time the assignment is offered; and
- (2) includes the information outlined in Subsection 304(1)(b)-(c).

R162-2e-303. Recordkeeping.

An AMC's statement of recordkeeping required upon registration with the division and biennially thereafter shall be signed by its designated controlling person and shall describe:

- (1) its system for maintaining a record of:
 - (a)(i) the name of the appraiser who accepts each assignment and signs the corresponding appraisal report; and
 - (ii) if an assignment is accepted by an appraisal entity, the name of the entity that accepts the assignment; and
- (b) the client that requested the appraisal report;
- (2) the format in which the records required to be kept under Section 61-2e-303(1) are maintained;
- (3) an explanation of the system through which the AMC backs up any records kept as required by Section 61-2e-303(1) that are maintained in an electronic format;
- (4) the location where the records are kept; and
- (5) the name of the records custodian.

R162-2e-304. Required Disclosures and Customary and Reasonable Compensation.

- (1) In addition to the disclosures required by Section 61-2e-304, an AMC shall:
 - (a) notify the appraiser in writing at the time an appraiser is first added to an appraiser panel:
 - (i) of the general criteria the AMC uses to rank an appraiser on the panel; and
 - (ii) if the AMC chooses to separate appraisers into different tiers, of the general criteria the AMC uses to distinguish one tier from another;
 - (b) notify the affected appraisers in writing of any changes if, after the notice provided for in subsection (1)(a), the AMC changes any of the general criteria the AMC considers relative to an appraiser's ranking, tier, or classification within the panel structure;
 - (c) at the time an assignment is offered, disclose to the appraiser:
 - (i) the total amount that the appraiser may expect to earn from the assignment:
 - (A) disclosed as a dollar amount; and
 - (B) delineating any fees or costs that will be charged by the AMC to the appraiser;
 - (ii)(A) the property address;
 - (B) the legal description; or
 - (C) equivalent information that would allow the appraiser to determine whether the appraiser has been involved with any service regarding the subject property within the three years preceding the date on which the assignment is offered;
 - (iii) the assignment conditions and scope of work requirements in sufficient detail to allow the appraiser to determine whether the appraiser is competent to complete the assignment; and
 - (iv) any known deadlines within which the assignment must be completed;
 - (d) at or before the time the appraiser accepts an assignment, obtain the appraiser's acknowledgment as to the AMC's competency statement;
 - (e) before requiring the appraiser to submit a completed report, disclose to the appraiser:
 - (i) the total fee that will be collected by the AMC for the assignment; and
 - (ii) the total amount that the AMC will retain from the fee charged, disclosed as a dollar amount; and
 - (f) direct the appraiser who performs the real estate appraisal activity to disclose in the body of the appraisal report:
 - (i) the total compensation, stated as a dollar amount, paid to the appraiser or, if the appraiser is employed by an appraisal company, to the appraiser's employer; and
 - (ii) the total compensation retained by the AMC in connection with the real estate appraisal activity, stated as a dollar amount.

(2) Within 10 business days of receiving a written request from an appraiser or any inquiry related to the business relationship between the appraiser and the AMC, an AMC shall reply to the appraiser in writing. An inquiry may address subjects including the AMC scorecard, appraiser panel status, clarification on work assignments, training, or notice of the removal of an appraiser from an AMC panel as required by Utah Code Section 61-2e-306. If the AMC has requested appraisers send such inquiries to a specific address or email address, appraisers shall direct such inquiries accordingly.

(a) If the AMC has determined to decrease the number of assignments to the appraiser the AMC's reply will explain the reason why the AMC has made this decision;

(b) if the AMC has determined to cease offering assignments to the appraiser, the the AMC's reply will explain the reason why the AMC has made this decision; and

(c) if the AMC has determined to remove the appraiser from an appraiser panel, the AMC shall provide the appraiser notice as required by Utah Code Section 61-2e-306.

(3) Any written notice or reply required by this section from an AMC to an appraiser may be communicated:

(a) by email;

(b) in a written communication to the mailing address provided by the appraiser; or

(c) by posting to a private vendor website, portal, or other digital venue to which the appraiser has access for at least 30 days following posting of the notice.

(4) For purposes of this Section, the term " general criteria" means a standard description of the factors the AMC considers when ranking or differentiating appraisers or tiers within a panel of appraisers. This does not require an AMC to disclose any algorithms, formulas, or information about proprietary processes.

(5) In replying to a request from an appraiser, an AMC is not required to reply to subsequent or multiple requests if a request unreasonably duplicates a prior request from that person.

(6) In addition to the presumptions of compliance referenced in Utah Code Subsection 61-2e-304(2)(b), an AMC is presumed to be in compliance with the Utah requirement to pay appraisers a customary and reasonable fee if the AMC compensates an appraiser for a completed appraisal at a rate consistent with the fee schedule for the state of Utah as published by the United States Department of Veterans Affairs Denver Regional Loan Center Appraisal Fee Schedule, as the fee schedule is updated from time-to-time.

R162-2e-305. Employee Requirements.

(1) An AMC seeking registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has taken and passed the 15-hour national USPAP course.

(2) An AMC seeking renewal of the company's registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has completed the seven-hour national USPAP update course.

R162-2e-306. Offering an Appraisal Assignment and Communicating With Two or More Appraisers About a Potential Assignment.

(1) If an AMC simultaneously contacts two or more independent contractor appraisers to offer an assignment of a one to four-unit residential mortgage appraisal or to gauge interest in such an assignment, the AMC shall include in the communication the information required in R162-2e-304(1)(c). To provide adequate time for a contract appraiser to determine the appraiser's competency and to communicate interest in the assignment to the AMC, the AMC may not award the assignment to a contract appraiser until the earlier of:

(a) 120 minutes following the offering of an assignment; or

(b) each contract appraiser has affirmatively responded to the offering.

(2)(a) If a one to four-unit residential mortgage appraisal assignment is simultaneously offered to two or more independent contractor appraisers on a business day, the AMC shall allow the appraisers a minimum of 120 minutes to respond to accept the assignment before offering the assignment to other appraisers.

(b) If a one to four-unit residential mortgage appraisal assignment is simultaneously offered to two or more independent contractor appraisers on a day other than a business day, the AMC shall allow the appraisers until 9:00 A.M. Mountain Time on the next business day to accept the assignment before offering the assignment to other appraisers.

(3) If an independent contractor appraiser declines to accept an assignment or does not respond by the specified deadline, the AMC may offer the assignment to other appraisers.

(4) Nothing in this Section prohibits an AMC from communicating or attempting to communicate, directly or in real time with an independent contractor appraiser, without offering an assignment, in order to determine the appraiser's availability, willingness, competency, fee requirements, and turn time for a potential assignment. In such circumstances, the AMC is not required to wait any length of time before contacting other candidates who appear to the AMC to qualify for the potential assignment.

R162-2e-401. Unprofessional Conduct.

(1) An entity that is registered or required to be registered with the division as an AMC pursuant to Section 61-2e-201 commits unprofessional conduct if the entity:

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- (a) requires an appraiser to modify any aspect of the appraisal report, unless the modification complies with Section 61-2e-307;
 - (b) unless first prohibited by the client or applicable law, prohibits or inhibits an appraiser from contacting:
 - (i) the client;
 - (ii) a person licensed under Section 61-2c or Section 61-2f; or
 - (iii) any other person with whom the appraiser reasonably needs to communicate in order to obtain information necessary to complete a credible appraisal report;
 - (c) requires the appraiser to do anything that does not comply with:
 - (i) USPAP; or
 - (ii) assignment conditions and certifications required by the client;
 - (d) makes any portion of the appraiser's fee or the AMC's fee contingent on a favorable outcome, including but not limited to:
 - (i) a loan closing; or
 - (ii) a specific dollar amount being achieved by the appraiser in the appraisal report;
 - (e) requests, for the purpose of facilitating a mortgage loan transaction,
 - (i) a broker price opinion; or
 - (ii) any other real property price or value estimation that does not qualify as an appraisal;
 - (f) charges an appraiser:
 - (i) for a service not actually performed; or
 - (ii) for a fee or cost that:
 - (A) is not accurately disclosed pursuant to Subsection R162-2e-304(1)(a)(ii); or
 - (B) exceeds the actual cost of a service provided by a third party;
 - (g) fails to pay the appraiser's fee within 45 days of completion of the appraisal assignment;
 - (h) uses or retains an employee to complete an appraisal assignment without first disclosing to the client that the appraiser is an employee of the company, such that the company is acting in the capacity of an appraisal firm rather than as an AMC pursuant to Utah Code Subsection 61-2e-102(4); or
 - (i) when acting in the capacity of an AMC pursuant to Utah Code Subsection 61-2e-102(4), uses or retains an employee appraiser to complete an appraisal assignment.
 - (2) An AMC commits unprofessional conduct and creates a violation by the appraiser of R162-2g-502b(1)(f) if the AMC requires the appraiser to:
 - (a) accept full payment; and
 - (b) remit a portion of the full payment back to the AMC.

R162-2e-402. Administrative Proceedings.

- (1) An adjudicative proceeding before the board shall be conducted as an informal adjudicative proceeding.
- (2)(a) A hearing before the board will be held in:
 - (i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;
 - (ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;
 - (iii) a case where the division seeks disciplinary action pursuant to Sections 61-2e-307 or 61-2e-402(2) against an AMC or an owner or controlling person of an AMC; and
 - (iv) an appeal from an automatic revocation under Section 61-2e-203(3)(b), if the appellant requests a hearing.
- (b) If properly requested by the applicant, a hearing will be held before the board to consider an application that is denied by the division on the grounds that the controlling person's attestation to upstanding moral character is false.
- (c) A hearing is not required and will not be held in the following informal adjudicative proceedings:
 - (i) the issuance, renewal, or reinstatement of an AMC registration by the division;
 - (ii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division; and
 - (iii) the denial of renewal or reinstatement of an AMC registration for incompleteness or for failure to comply with a requirement found in statute or rule.
- (3)(a) An application for an AMC registration shall be deemed a request for agency action.
- (b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:
 - (i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;
 - (ii) the agency's file number or other reference number, if known;
 - (iii) the date of mailing of the request for agency action;
 - (iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;
 - (v) a statement of the relief or action sought from the division; and
 - (vi) a statement of the facts and reasons forming the basis for relief or agency action.
- (c) A complaint against an AMC, a controlling person, or an appraiser on the panel of an AMC requesting that the division commence an investigation or a disciplinary action is not a request for agency action.
- (4) Procedures for hearings in informal adjudicative proceedings.
 - (a) All informal adjudicative proceedings shall adhere to procedures as outlined in:

- (i) Utah Administrative Procedures Act Title 63G, Chapter 4;
 - (ii) Utah Administrative Code Rule R151-4 et seq.; and
 - (iii) the rules promulgated by the division.
- (b) Except as provided in Subsection R162-2e-402(5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.
- (c) In any proceeding under this Subsection R162-2e-402, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.
- (d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division through a registration process.
- (ii) The notice shall set forth the matters to be addressed in the hearing.
- (e) Formal discovery is prohibited.
- (f) The division may issue subpoenas or other orders to compel production of necessary evidence:
- (i) on its own behalf; or
 - (ii) on behalf of a party where the party:
 - (A) makes a written request;
 - (B) assumes responsibility for effecting service of the subpoena; and
 - (C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.
- (g) Upon ordering a person who is registered or required to be registered as an AMC to appear for a hearing, the division shall provide to the person the information that the division will introduce at the hearing.
- (h) Intervention is prohibited.
- (i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:
 - (i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or
 - (ii) Title 52, Chapter 4, the Open and Public Meetings Act.
- (j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.
- (5) Additional procedures for disciplinary proceedings.
- (a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:
 - (i) a notice of agency action;
 - (ii) a petition setting forth the allegations made by the division;
 - (iii) a witness list, if applicable; and
 - (iv) an exhibit list, if applicable.
 - (b) Answer.
 - (i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.
 - (ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.
 - (iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (5)(a).
 - (c) Witness and exhibit lists.
 - (i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.
 - (ii) Any witness list shall contain:
 - (A) the name, address, and telephone number of each witness; and
 - (B) a summary of the testimony expected from the witness.
 - (iii) Any exhibit list:
 - (A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and
 - (B) shall be accompanied by copies of the exhibits.
 - (d) Pre-hearing motions.
 - (i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.
 - (ii) The division director shall receive and rule upon any pre-hearing motions.

KEY: administrative proceedings, appraisal management company (AMC), conduct, AMC registry fee

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