

HB

322

<TARGET><BILL>HB 322</BILL><SUBJECT>HB
322</SUBJECT><COMM>HL&C30</COMM></TARGET>


ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

MEMORANDUM

TO: Representative Sam Kito, Chair
House Labor and Commerce Committee

FROM: Rep. Andy Josephson 

DATE: February 23, 2018

RE: Hearing request: House Bill 322

I respectfully request a hearing in the House Finance Committee for HB 329,

"An act relating to the registration and regulation of real estate appraisal management companies; relating to the establishment of fees by the Department of Commerce, Community, and Economic Development; relating to the Board of Certified Real Estate Appraisers; relating to real estate appraisers; and providing for an effective date."

Attached please find:

- A sponsor statement addressing the current version of the bill
- A sectional analysis
- The most recent version of the bill
- Additional documentation, including letters of support
- A preliminary witness list (that list might expand prior to a hearing)

I would be happy to prepare any other necessary documents or provide additional information.

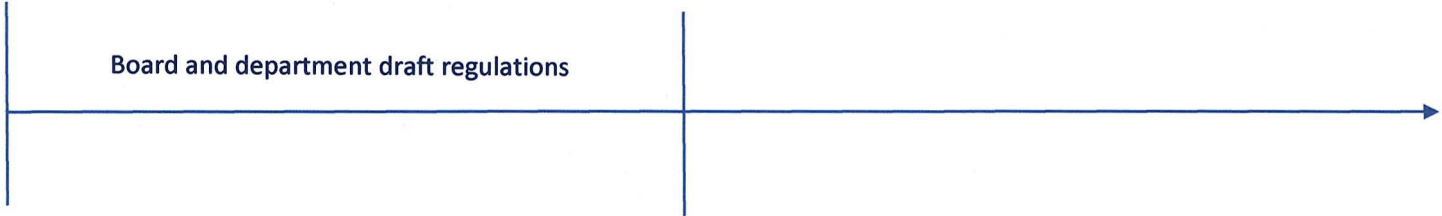
Feel free to contact me or my staff anytime. Thank you for your consideration.

Current Language

Regulations are effective:
First date the department can charge fees and receive applications

Bill passes

Law requiring licensure is effective:
AMCs must be licensed to perform transactions

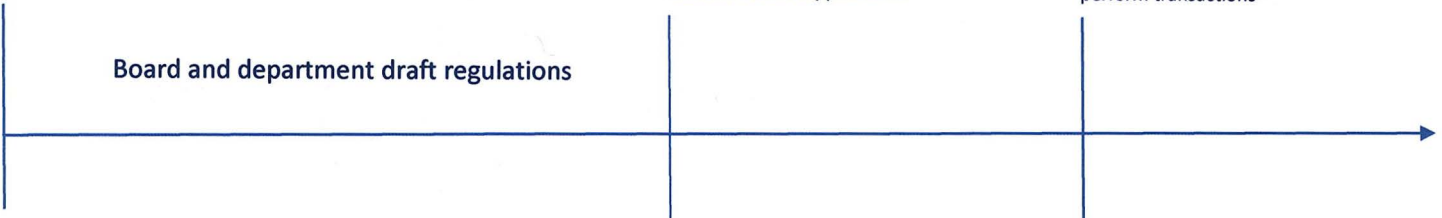


With Staggered Effective Dates

Regulations are effective:
First date the department can charge fees and receive applications

Law requiring licensure is effective: AMCs must be licensed to perform transactions

Bill passes



ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

Sponsor Statement House Bill 329

"An act relating to the registration and regulation of real estate appraisal management companies; relating to the establishment of fees by the Department of Commerce, Community, and Economic Development; relating to the Board of Certified Real Estate Appraisers; relating to real estate appraisers; and providing for an effective date."

Buying or selling property is a complex undertaking. Regular Joe and Jane Alaskan don't do it frequently, and, when they do, it can be befuddling.

Caveat emptor—let the buyer beware—is key, because an occasional shyster slips into the sale process. Shady mortgages triggered America's 2008 recession, and Congress responded with the Dodd-Frank Financial Reform Act that aimed to improve processes and protect consumers.

One Dodd-Frank provision helps avoid collusion in the property appraisal process. Rather than a lender ordering an appraisal directly from an appraiser—and maybe influencing the valuation—Dodd-Frank suggests an appraisal management company (AMC) order the appraisal for the lender, thereby promoting arms-length valuation. That's standard practice now nationwide.

Dodd-Frank regulations require states to regulate AMCs if those AMCs conduct Federally-Related Transactions (FRTs). A small but significant portion of mortgages in Alaska are FRTs, so the Department of Commerce, Community and Economic Development should regulate AMCs to avoid disruptions in the lending process that could make Joe and Jane's property transaction more challenging.

I invite you to support this pro-business, consumer protection measure that allows our Board of Certified Real Estate Appraisers maximum flexibility to regulate AMCs as appropriate in our unique state.

Please contact my staff, Tom Atkinson, with any questions: 465-6873, thomas.atkinson@akleg.gov.

ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

Sectional Analysis House Bill 329

"An act relating to the registration and regulation of real estate appraisal management companies; relating to the establishment of fees by the Department of Commerce, Community, and Economic Development; relating to the Board of Certified Real Estate Appraisers; relating to real estate appraisers; and providing for an effective date."

Section 1: Authorizes the department to establish a fee for regulatory costs and a mechanism for reporting those fees.

Section 2: Requires the department to establish a registry fee as required by the federal government; permits the department to remit the fees for participation in a national registry.

Section 3: Requires the Board of Certified Real Estate Appraisers (board) to adopt regulations for real estate Appraisal Management Companies (AMCs), and to report relevant information regarding an AMC's operations to the federal government.

Section 4: Authorizes the board to examine AMCs' records and investigate alleged violations. Requires AMCs to submit information to the board.

Section 5: Requires AMCs to register, report, retain records and allow inspection of those records. Explains who is exempt from this Act.

Section 6: Describes prohibited practices and outlines a disciplinary process.

Section 7: Defines terminology.

Section 8: Includes AMC registry fees in the definition of program receipts and non-general fund program receipts.

Section 9: Explains to whom the Act applies.

Sections 10 & 11: Authorizes the department to promulgate regulations to implement the Act.

Section 12: Provides an August 9, 2018 effective date for all sections of the Act except Sections 10 & 11.

NOTE: Section 12 should be amended to provide an August 9, 2019 effective date.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: HB 329
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB329-DCCED-CBPL-03-02-18
Title: REAL ESTATE APPRAISAL MNGMT.
COMPANIES
Sponsor: JOSEPHSON
Requester: (H) Labor and Commerce

Department: Department of Commerce, Community and
Economic Development
Appropriation: Corporations, Business and Professional
Licensing
Allocation: Corporations, Business and Professional
Licensing
OMB Component Number: 2360

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates					
	Appropriation Requested	Governor's FY2019 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES	FY 2019	FY 2019	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Personal Services	80.5		80.5	80.5	80.5	80.5	80.5	80.5
Travel								
Services	21.6		17.0	17.0	17.0	17.0	17.0	17.0
Commodities	10.0							
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	112.1	0.0	97.5	97.5	97.5	97.5	97.5	97.5

Fund Source (Operating Only)

1156 Rcpt Svcs (DGF)	112.1		97.5	97.5	97.5	97.5	97.5	97.5
Total	112.1	0.0	97.5	97.5	97.5	97.5	97.5	97.5

Positions

Full-time	1.0		1.0	1.0	1.0	1.0	1.0	1.0
Part-time								
Temporary								

Change in Revenues

1156 Rcpt Svcs (DGF)	112.1		97.5	97.5	97.5	97.5	97.5	97.5
Total	112.1	0.0	97.5	97.5	97.5	97.5	97.5	97.5

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/19

Why this fiscal note differs from previous version/comments:

Not applicable, initial version.

Prepared By: Janey McCullough, Director Phone: (907)465-2538
Division: Corporations, Business and Professional Licensing Date: 03/02/2018
Approved By: Catherine Reardon, Director Date: 03/02/18
Agency: Division of Administrative Services, DCCED

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

BILL NO. HB 329

Analysis

HB329 would enact a registration and regulatory structure for Appraisal Management Companies (AMC) operating in this state. The appraisal management company is the only entity in the real estate valuation process that is not currently subject to licensing or regulation in Alaska, nor are there any laws or regulations specific to their activity.

This legislation amends AS 08.01.065 to allow the department to set, collect, and submit a fee to the federal government.

The division will require one Occupational Licensing Examiner as a result of this legislation; the increased workload associated with this program cannot be absorbed by existing staff. To implement this legislation, regulations will also be required.

If the bill passes the following expenses will be incurred:

Personal Services: \$80.5 (one permanent Occupational Licensing Examiner, range 14)

Services: \$15.0 (on-going support services for new position)

\$4.6 (one-time large regulations project)

\$2.0 (annual hearing services)

Commodities: \$10.0 (one-time startup costs of new position)

Professional licensing programs within the Division of Corporations, Business and Professional Licensing are funded by Receipt Supported Services, fund source 1156 Rcpt Svcs (DGF). Licensing fees for each occupation are set per AS 08.01.065 so the total amount of revenue collected approximately equals the occupation's actual regulatory costs.

February 9, 2018

The Honorable Sam Kito III, Chair
House Labor and Commerce Committee
Alaska State Capitol
Juneau, AK 99801



RE: Support for HB 329 – Appraisal Management Company (AMC) Regulation

Greetings Chair Kito and distinguished members of the House Labor and Commerce Committee:

On behalf of the Appraisal Management Companies (AMCs) represented by the Real Estate Valuation Advocacy Association (REVA), **we strongly support passage of HB 329 We believe this legislation will enact fair and balanced regulation of AMCs in Alaska.**

REVA is an industry trade association whose membership includes 27 AMCs that collectively provide a majority the residential appraisal transaction volume nationwide on behalf of mortgage lenders, many of whom serve Alaska consumers. In addition, many REVA members also provide other important lender valuation services such as Broker Price Opinions (BPO) and Alternative Valuation Methods (AVM).

Background

AMC's are in a precarious situation whereby they need to advocate for their own regulation by all 50 states and the five U.S. territories to avoid a massive disruption in the residential mortgage servicing for consumers and lenders in Federally Related Transactions. Therefore, while generally we believe in less state government regulation, REVA members do support minimal state regulation that complies with the federal mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Dodd-Frank added section 1124, Appraisal Management Company Minimum Requirements, to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 19893 (Title XI). Section 1124 required the Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Bureau of Consumer Financial Protection (Bureau); and Federal Housing Finance Agency (FHFA) (collectively, the agencies) to establish, by rule, minimum requirements for State registration and supervision of AMCs. In accordance with the statute, the agencies recently issued a final rule (referred to as the AMC Rule) which was published on June 9, 2015, with an effective date of August 10, 2015. States have 36 months to comply.

State AMC Regulation

There are currently 46 states that regulate AMCs. The following four states and the District of Columbia are working to pass legislation to regulate AMCs in compliance with the Final Federal AMC Rules deadline (Aug. 2018). Each bill is created by consensus with key stakeholders and mirrors the federal minimum standards.

Alaska	SB 155 / HB 329 introduced in 2018	New York	Bill to be introduced in 2018
D.C.	Bill to be introduced in 2018	Ohio	H 213 has passed House
Mass.	H 577 has passed House		

About AMCs

AMCs existed well before the 2008 global financial crisis. Today, AMCs play an increasingly important role as third-party service providers in the consumer mortgage process. They are hired by lenders and/or other financial institutions to manage an independent and compliant process to determine the price and/or value of a residential real estate. Valuation tools include Appraisals, Broker Price Opinions (BPOs) and Automated Valuation Models (AVMs), among other products. AMCs work with certified appraisers and other real estate professionals across the nation to get this work accomplished.

AMCs have become increasingly popular by lenders to ensure federal and state regulatory compliance and independence requirements between lenders and appraisers to protect consumers are met, as required by Dodd-Frank.

Residential lenders consider AMCs highly-valued partners due to the many essential valuation- related functions they fulfill, including

- Maintaining a qualified panel of licensed appraisers ready to execute lender valuation assignments.
- Ensuring appraiser independence by safeguarding against undue influence in the valuation process.
- Providing quality assurance processes in the delivery of final appraisal and valuation products.
- Supporting a smooth, timely and responsive mortgage process for consumers and lenders.
- Complying with federal and state laws governing valuation products and services.

AMCs Play a Vital Role in Protecting Consumers

- **Safeguard Appraiser Independence and Protect Against Fraud** – AMCs help ensure that appraisals are completed in compliance with federal and state law and that the opinion of value was achieved by the appraiser independently, without undue influence. Prevention of coercion is critical to avoiding collusion within the valuation process and therefore potential fraud.
- **Help Lower Costs Associated with Borrowing** – While compliance with state and federal laws and rules is a big reason for lenders use of AMCs, another one is that lenders have high overhead and must compete in a competitive marketplace. The use of AMCs helps them provide services efficiently and cost effectively to benefit consumers while ensuring payment of Customary & Reasonable Fees to appraisers.
- **Provide Quality Controls** - AMCs employ quality control measures to ensure the integrity of a supportable, dependable and credible appraisal, which can identify mistakes and fraud in appraisal reports that protect consumers from faulty opinions of value.
- **Reduce Turnaround Times** - AMCs employ valuation experts to screen appraisal reports to identify issues early and have a much larger success rate in resolving valuation issues without causing unnecessary delays and mitigate consumer dissatisfaction.
- **Protect Public Safety** – Consumers are provided an extra layer of safety and protection as AMCs complete background checks of appraisers before they can be employed or empaneled. Further, AMCs continue to monitor their appraisers while they are employed or empaneled to ensure that unqualified appraisers or those that may pose a threat to public trust or safety are removed.
- **Assist Appraisers with Consumer Questions** - AMCs work with appraisers to resolve questions and provide the borrower/lender an ability to submit value appeals while complying with appraiser independence.
- **Provide Customer Service Issue Resolutions** - AMCs resolve customer service concerns that are not directly related to the appraisal process through their access to lenders that the consumer may not otherwise have.

AMCs are Integrated into America's Mortgage Lending and Secondary Markets

A majority of lenders now use AMCs exclusively for the facilitation of residential appraisals. The remaining lenders (primarily smaller) manage their own in-house appraiser panels, many of which use their own panels which often include the use of AMCs. But, there is great uncertainty by lenders and AMCs as to what will or won't qualify as a Federally Related Transaction (FRT) because it may change over the loan life-cycle from FRT to non-FRT and back to FRT.

- **Act as a Compliance Partner for AMC Regulations** - Serve as invaluable partners for ensuring efficiency and compliance with state and federal AMC regulations.
- **Ensure Lender Compliance with Banking and Mortgage Regulations** - Support lender compliance with federal banking regulations (e.g., Fed, FDIC, OCC, CFPB) governing mortgage lending.
- **Help Reduce Costs & Ensure Appraiser Independence** - Large and medium sized lending institutions have indicated that they need independent AMCs, because of the cost for them to establish and maintain the necessary internal firewalls for effective appraiser independence compliance.

Thank you for considering our comments. Please do not hesitate to contact me with questions.

Respectfully,



Mark Schiffman
Executive Director



February 12, 2019

Representative Sam Kito
Chair, House Labor and Commerce Committee
State Capitol
Room 403
Juneau, AK 99801

RE: HB-329 Real Estate Appraisal Management Companies

Dear Representative Kito:

Wells Fargo supports Alaska House Bill 329.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 mandated the Federal Financial Institutions Regulatory Agencies to create, and the Appraisal Subcommittee to oversee, minimum standards for state registration and supervision of Appraisal Management Companies (AMCs). The now final federal interagency AMC rules were published in the Federal Register in June 2015 and became effective on August 10, 2015.

Every state needs to set up a compliant regulatory system for AMCs by August of 2018. If a state does not set up a compliant regulatory system for AMCs by August of 2018 then home loan lenders cannot use AMCs for federally related transactions.

Wells Fargo uses the services of AMCs for appraisals done for all of our home loan customers. AMCs are an important buffer between loan officers and appraisers. AMCs ensure the independence of the valuation process. AMCs help our customers in getting the most accurate value on their home. AMCs also support and promote a smooth, timely and responsive appraisal process.

This bill is good for home loan lenders and home owners in Alaska that use the valuable services that AMCs offer.

Thank you for the opportunity to provide comment on Alaska House Bill 329.

Sincerely,

Greg Deal
Region Bank President
Wells Fargo Bank, N.A.
301 W. Northern Lights Blvd., 5th Floor
Anchorage, AK 99519
PH: 907-265-2858

Joe Everhart
EVP and Business Banking Group Northwest Division Manager
Wells Fargo Bank, N.A.
301 W. Northern Lights Blvd., 5th Floor
Anchorage, AK 99519
PH: 907-265-2981

Cc: Representative Andy Josephson

LEGISLATIVE RESEARCH SERVICES

30th Alaska Legislature
LRS Report 18.114
February 14, 2018



(907) 465-3991 phone
(907) 465-3908 fax
research@akleg.gov

Appraisal Management Company Surety Bond Requirements

Jake Quarstad, Legislative Analyst

What is the obligatory surety bond amount Appraisal Management Companies must take out in states with laws or regulations requiring them?

As you know, a surety bond taken out by an Appraisal Management Company (AMC) is a financial guarantee—from a third party bond agent, referred to as the *surety*—that the AMC will follow the laws and regulations required in its practice. Should the AMC fail to do so, the surety is liable to the state for damages or losses, and may be required to compensate any other parties affected by the wrongdoing of the AMC.

At least 23 states require AMCs to take out surety bonds. Each of those states is identified in the table on the following page, as well as the required bond amount for each, and the relevant statute or regulation.¹ Of those states identified, 19 have surety bond requirements of \$25,000 or less; two states require between \$40,000 and \$50,000; and two states require \$100,000 surety bonds.

¹ This table is not intended to be a comprehensive list, but rather a glimpse of the surety bond requirements found across the nation.

Appraisal Management Company Surety Bond Requirements		
State	Amount	Authority
Alabama	\$ 25,000	§ 34-27A-55
Arizona	\$ 20,000	A.R.S. § 32-3667
Arkansas	\$ 20,000	A.C.A. 17-14-406 (b)
Colorado	\$ 25,000	C.R.S.A. § 12-61-706
Georgia	\$ 20,000	Ga. Code Ann., § 43-39A
Idaho	\$ 25,000	I.C. § 54-4124
Illinois	\$ 25,000	225 ILCS 459/50
Iowa	\$ 25,000	I.C.A. § 543E.19
Louisiana	\$ 20,000	LA R.S. 37:3415.3.D(1)
Mississippi	\$ 20,000	Miss. Code Ann. §73-34-103(1)(a)
Missouri	\$ 20,000	V.A.M.S. 339.511
Nebraska	\$ 25,000	Neb. Rev. Stat. § 76-3203 (4)
New Jersey	\$ 25,000	N.J.S.A. 45:14F-35
New Mexico	\$ 25,000	N. M. S. A. 1978, § 47-14-3.1
North Carolina	\$ 25,000	N.C.G.S.A. § 93E-2-4
Oregon	\$ 25,000	O.R.S. § 674.210
Pennsylvania	\$ 40,000	049 Pa. Code § 36.352
Tennessee	\$ 20,000	T.C.A. § 62-39-408
Utah	\$ 25,000	U.A.C. R162-2e
Virginia	\$ 100,000	VA Code Ann. § 54.1-2021.1
Washington	\$ 100,000	RCWA 18.310.040
West Virginia	\$ 50,000	W. Va. Code St. R. § 190-5-5
Wyoming	\$ 25,000	W.S.1977 § 33-39-203
Sources: Thomson Reuters Westlaw, and various state regulatory websites.		

We hope this is helpful. If you have questions or need additional information, please let us know.

ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

House Bill 329 Real Estate Valuation Advocacy Association's Answers to Sponsor's Questions

1) Please provide a list of AMCs currently operating in Alaska. Indicate which AMCs are "Alaska Grown."

It is not possible to know how many AMCs are operating in Alaska as the state does not yet regulate them. However, in states that do regulate AMCs, there is an average of 137 AMCs registered per state (ranging from 85 in Montana to 248 in California, most are around 100).

Please note, AMCs are competitive with one another so many more will seek a license so that they can be ready to do business in Alaska in the future for their lender clients, than will do business right away.

While possible, there are likely no homegrown Alaskan AMCs. While they are licensed in every state, they are not required to be physically located in every state. There is nothing preventing home grown AMCs, it'd be encouraged. AMCs will be contracting with Alaska licensed and certified independent appraisers.

2) Please provide an ironclad definition of what constitutes a federally-related transaction, and provide a list of such transactions. VA? FHA? Fannie Mae? Freddie Mac?

This is one of the hardest definitions to truly understand. AMCs are not privy to info to determine if a transaction is federally related. Lenders don't know how they will tell the difference as it is not a problem today, there are no states that have failed to regulate AMCs. As such, they haven't had to discern the difference between FRT and non-FRT. Furthermore, a transaction can change from a FRT to non-FRT, and vice versa, during its lifetime in the secondary mortgage market.

The sponsor edited REVAA's answer to Question #2 for brevity. REVAA's full answer is available from the sponsor upon request.

3) What percentage of 2017 AMC work in Alaska was on federally-related transactions?

As outlined above, according to federal banking regulators the best guess is believed that 10% of residential mortgage transactions are federally related.

4) What percentage of 2017 Alaska real estate transactions occurred sans an AMC?

This is impossible to estimate as there is no regulation in the state or public accounting. We do know there is a significant number of transactions aided by an AMC. All national lenders and some in-state lenders use AMCs to facilitate their appraisal needs on residential transactions. This follows the national trend toward the use of AMCs, which is expanding among credit unions and community banks.

Without the use of an AMC, a lender still must comply with the federal appraisal independence requirement. They may choose other non-AMC options or take this responsibility in-house, but this is counter to efforts in the past decade to outsource appraisal management to AMCs.

5) How would regulating AMCs (so that they can continue to engage in federally-related transactions) benefit the Alaska:

- a) Real estate buyer?
- b) Seller?
- c) Appraiser?
- d) Realtor?
- e) Lending institution?

Please refer to our answer for question 6. In the big picture, having simple regulation in place avoids significant disruption in Alaska's mortgage marketplace for all involved. The biggest positive to Alaska consumers and real estate professionals is the important role that AMCs play in protecting appraiser independence, eliminating fraud and collusion, protecting public safety and ensuring quality.

6) If Alaska does not regulate AMCs, what negative effects would be experienced by the Alaska:

- a) Real estate buyer?
- b) Seller?
- c) Appraiser?
- d) Realtor?

e) Lending institution?

AMCs only support state regulation because it allows them to work for their lender clients, who collectively serve Alaska consumers, in facilitating an appraisal for a residential transaction.

- AMCs would be unregulated to serve lenders on up to 90% of their assignments - non-FRTs – but prohibited from serving these same lenders on FRTs. So, basically, taking away an AMCs business and placing a significant burden on lenders.
- Lenders would have to adjust to find an alternative to facilitate appraisals for FRTs – 10% or less. In addition, lenders may need to adjust their product offerings to Alaska consumers.
- It could hinder lender ability to sell loans on the secondary market, leading to increased loan costs to consumers when getting a mortgage in Alaska.
- Some AMCs do non-origination work for mortgage lenders/ clients (i.e., default, desktop, alternative valuations, etc.). AMC deregulation may interfere with the ability to do these transactions as well.

The result would be that lenders would have to figure out how to service the 10% or so of transactions that would be considered a federally related transaction. For lenders, this means they would have to reconfigure (significant cost and resource commitment) how they will get appraisals completed and comply with appraiser independence.

This may mean creating an inhouse process (now outsourced) or could perhaps include stopping this type of transaction in Alaska.

The residual impact, beyond the costs and resource issue for lenders, this would disrupt the mortgage lending process in the state and all of those involved including buyers, sellers, appraisers, realtors and lenders.

The sponsor edited REVAA's answer to Question #6 for brevity. REVAA's full answer is available from the sponsor upon request.

7) Would absence of regulation after the Dodd-Frank August 2018 deadline:

- a) Prevent real estate transactions? How many?**
- b) Drive up the cost of federally-related transactions**
 - i) By how many dollars or by what percentage?**
 - ii) Who would pay any additional cost?**

**c). Increase the time it takes to close federally-related real estate transactions?
How many days longer?**

Please review the answer to question 6

8) Why does the Alaska Board of Certified Real Estate Appraisers wish to regulate AMCs? Why is the appraiser board the appropriate home for AMC regulation?

Hard to say if the Alaska appraiser board wants to regulate AMCs. Per Dodd-Frank the licensing of AMCs must exist in the same place as appraiser licensing, which is currently the appraiser board. All costs associated with the regulation of AMCs are paid annually by AMCs through licensing and other fees.

Completed by REVAA – Jan. 19, 2018

Federally Related Transactions

Summary

Each of the Federal financial institutions regulatory agencies have prescribed regulations which contain thirteen categories of real estate related financial transactions that do not require the services of an appraiser. A transaction is not a "federally related transaction" if it does not require the services of an appraiser. The following types of transactions make up the majority of transactions that do not require the services of an appraiser, and thus do not satisfy the definition of a "federally related transaction": 1) Loans with a transaction value less than \$250,000; 2) Business loans less than \$1 million that are not dependent on rental income as the source of repayment; 3) Refinances at the same institution with no advancement of new money and no material change in market conditions; 4) Loans insured by the FHA or VA; or 5) Loans that qualify for sale to Fannie Mae or Freddie Mac.

Explanation

Federal banking law (12 U.S.C.A. § 3350) defines a "federally related transaction" as:

*"Any real estate-related financial transaction which: (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; **and** (B) requires the services of an appraiser."*

The same section defines a "Real estate related financial transaction" as:

"Any transaction involving: (A) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (B) the refinancing of real property or interests in real property; and (C) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities."

Lastly, the term "Federal financial institutions regulatory agencies" means:

"The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration."

In determining whether or not a transaction is a "federally related transaction", you must determine three things.

- 1) Is it a "real estate related financial transaction";
- 2) Is it engaged in, contracted for, or regulated by one of the five "federal financial institutions regulatory agency"; **and**

3) Does the transaction "require the services of an appraiser?"

And #3 above is where it gets tricky.

Title 12, Section 3341 of the federal banking law states that:

"Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe...which categories of federally related transactions should be appraised by a State certified appraiser and which by a State licensed appraiser under this chapter."

Pursuant to this statutory authority, each of the Federal financial institutions regulatory agencies have prescribed regulations that outline the categories of transactions that require a state-licensed appraiser and those categories of transactions that require a state-certified appraiser. In addition, each of the agencies has outlined which transactions do not require "An appraisal performed by a State certified or licensed appraiser" at all. Some, but not all, transactions that don't require the services of an appraiser require an evaluation.

The thirteen categories of "real estate related financial transactions that don't require "An appraisal performed by a State certified or licensed appraiser" are:

(1) The transaction value is \$250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of \$1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies;

or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged- backed securities, and each loan or interest in a loan, pooled loan, or real property interest met OCC regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

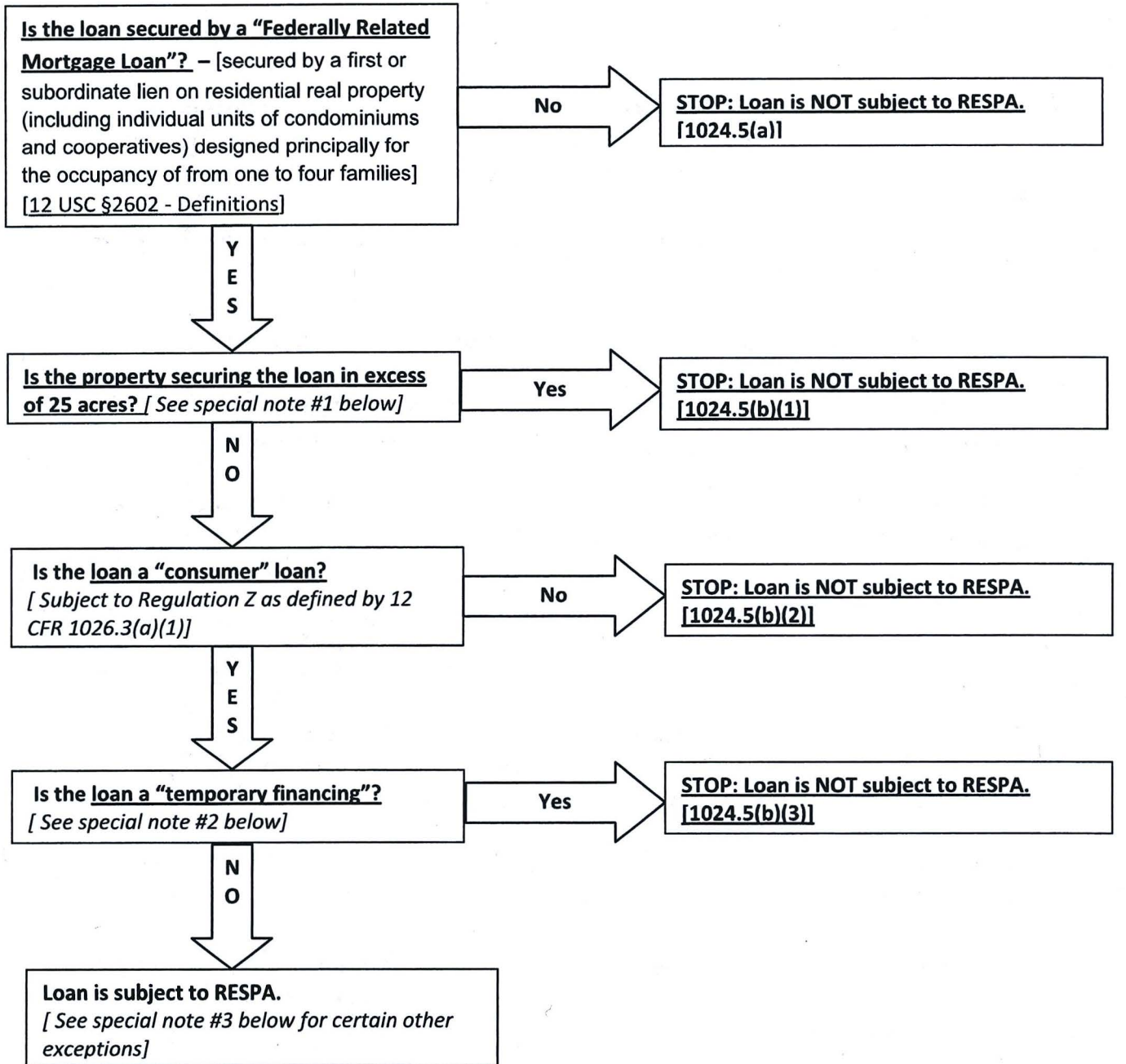
(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The federal bank regulatory agency determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate- related financial transactions or to protect the safety and soundness of the institution.

This document provided via email to the sponsor's staff 2/6/18 by Dave Derry, Chair of the Alaska Board of Certified Real Estate Appraisers.



Special Notes to Consider

#1 - Acreage exception. The acreage needs to be in the same parcel as the “dwelling” – for example a five acre parcel with the dwelling and an adjacent twenty five acre parcel doesn’t qualify for the exemption.

#2 - Temporary financings. A loan with a term of less than two years is considered temporary financing. Thus, the typical residential construction loan is exempt from RESPA. However, if the lender has committed to also make the permanent loan, even though the construction loan has a term of less than two years, the term of the overall relationship governs and the temporary financing exemption does not apply. Furthermore, the temporary financing exemption does not apply, regardless of the term of the loan, if the loan proceeds are used in whole or part to finance the transfer of title to the first user.

#3 – Other exceptions. a) Any **assumption** in which the lender does not have the right expressly to approve a subsequent person as the borrower is exempt from RESPA; b) Loan **conversions** are exempt from RESPA as long as a new note is not required; c) A *bona fide transfer* of a loan obligation in the secondary market is not covered by RESPA.

ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

House Bill 329

Appraisal Board Chair's Answers to Sponsor's Questions

- 1) Please provide a list of AMCs currently operating in Alaska. Indicate which AMCs are "Alaska Grown."

Answer: I am unable to compile a comprehensive list and there is no current registry of AMCs, but my feeling is there may be 25 or so operating in the state off and on. I am not aware of any independent (not affiliated with a bank, credit union, etc.) Alaska based AMCs. Many of these "outside" AMCs are contracting with lower 48 based lenders who have somewhat sporadic borrower loan requests, resulting in sporadic appraisal requests. This lender/AMC activity is almost exclusively residential, and primarily single family residential (SFR). Examples of those "outside" lenders are: Lending Tree, Quicken Loans, Rocket Mortgage, Navy Federal Credit Union, etc.

My office exclusively does **commercial**, large multi-family, land, etc., which are primarily handled in-house by:

- Wells Fargo subsidiaries
- Key Bank subsidiary
- Alaska USA
- Northrim Bank
- Denali FCU

From Appraisal Board members active in the **residential market** we have identified the following AMCs operating in Alaska: Accurate Group, AMC Links, AMO Services, Amerisave/Novo, Axis, Broadstreet, Clear Capital, Collateral Management, Consolidated Analytics, Interthinxs, Independent Settlement Services, Landsafe, LRES, ProTeck, TCV Murcor, RELS Corelogic, Streetlinks, TSI Appraisal, Valligent, Valuetrac/PRMG. None of these AMC are Alaska headquartered or "Alaska Grown".

- 2) Please provide an ironclad definition of what constitutes a federally-related transaction, and provide a list of such transactions. VA? FHA? Fannie Mae? Freddie Mac?

Answer: Federally related transaction defined:

“The term “federally related transaction” means any real estate-related financial transaction which—

- (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and
(B) requires the services of an appraiser.”*

[12 U.S.C. S 3350; S 1121 Definitions]

Note that implicit in this definition is the definition of “real estate related financial transaction”. Accordingly, defined as:

“The term “real estate-related financial transaction” means any transaction involving—

- (A) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;
(B) the refinancing of real property or interests in real property; and
(C) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.”*

[12 U.S.C. S 3350; S 1121 Definitions]

There are exceptions to when a real estate related transaction triggers a need for an appraisal. I have included a separate paper titled Federally Related Transactions which details the exclusions.

- 3) What percentage of 2017 AMC work in Alaska was on federally-related transactions?

Answer: To my knowledge there is no record data of this. The AMC itself may not know that answer, likely only the originating lender. My unsupported estimate, recognizing that Fannie, Freddie, FHA, etc. could be exempt, would be 35+/-%.

- 4) What percentage of 2017 Alaska real estate transactions occurred sans an AMC?

Answer: Following the preceding question/answer, it would be 65%+/- . But again an unsupported estimate.

- 5) How would regulating AMCs (so that they can continue to engage in federally-related transactions) benefit the Alaska:
- a) Real estate buyer?
 - b) Seller?
 - c) Appraiser?
 - d) Realtor?
 - e) Lending institution?

Answer: By allowing the registration and regulation of AMCs the market for potential financing sources is broadened without the confusion on the originating lenders part of whether a loan or loan transaction may be classified as a "federally related transaction". This would benefit all of the players in the real estate market; buyers/sellers, real estate agents/brokers, appraisers, title companies, etc. It simply opens up more potential financing sources primarily for the Alaska residential housing market.

- 6) If Alaska does not regulate AMCs, what negative effects would be experienced by the Alaska:
- a) Real estate buyer?
 - b) Seller?
 - c) Appraiser?
 - d) Realtor?
 - e) Lending institution?

Answer: It simply restricts the potential financing sources for buyers, which in turn adversely impacts all of the other parties to real estate transactions. Housing financing requires a huge amount of capital or sheer dollars, so allowing the broadest source of funding is a benefit to all Alaskans.

- 7) Would absence of regulation after the Dodd-Frank August 2018 deadline:
- a) Prevent real estate transactions? How many?
 - b) Drive up the cost of federally-related transactions
 - i) By how many dollars or by what percentage?
 - ii) Who would pay any additional cost?
 - c) Increase the time it takes to close federally-related real estate transactions? How many days longer?

Answer: a) Yes it would prevent some; the number would just be a guess. If the answer to question #3 is correct, it could be 35%. But again, it's the single family housing market that would be impacted most.

- b) i) Likely no increase in costs, just fewer transactions
- ii) n/a

c) Probably no increase in time, just few if any AMC transactions.

8) Why does the Alaska Board of Certified Real Estate Appraisers wish to regulate AMCs? Why is the appraiser board the appropriate home for AMC regulation?

Answer: AMCs had a history of abuses nationally, related to dealing with appraisers. Those abuses included onerous completion time deadlines, discounted fees, delayed payment of fees to the appraisers, and in some cases influencing values or modifying property characteristics to meet a lender (AMC client's) underwriting requirement. Those abuses were disclosed and regulation of them became an important part of the financial reforms that are contained in the Dodd-Frank legislation. A major thrust of Dodd-Frank is appraiser reforms/oversight and recognizing the link between the appraiser and the AMC, Dodd-Frank encompassed both. Since the nationwide, state appraisal board system was already established, they apparently determined that the natural regulatory entity would be the state appraisal boards. Although Dodd-Frank was enacted in 2010, it has taken until June 2015 for the "AMC rule" to be finalized, and in the interim, the AMC industry has reformed. Likely a result of AMC regulations put in place in 46 states to date.

Following that, if AMCs have reformed, why does Alaska need AMC oversight? It comes back to the issue of national consistency, and allowing the broadest source of financing for Alaska residents. If Alaska doesn't have AMC regulation and an AMC can't operate in Alaska, except for non "federally related transactions", then it's the lenders job (who contracts with an AMC) to determine at inception of a loan application if they can or can't do this deal. As a result, those lower 48 lenders, will likely opt for the typical response, and simply say, we don't do loans in Alaska.

So, **the short answer:** we as a Board want all the financing resources available for our fellow residents, and selfishly we want the appraisal business for our peers. We are the natural home for regulatory oversight since we have a nexus with the AMCs.

February 5, 2018

David M. Derry, MAI, AI-GRS, APRG36

Chair, Alaska Board of Certified Real Estate Appraisers