

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF REAL ESTATE APPRAISERS
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.101.413 renewal dates and)
requirements, 24.207.401 fees, and)
the adoption of NEW RULES I)
definitions and II through IV appraisal)
management)

TO: All Concerned Persons

1. On September 15, 2011, at 1:00 p.m., a public hearing will be held in the Lewis and Clark Library, large conference room, 120 South Last Chance Gulch, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers (board) no later than 5:00 p.m., on September 9, 2011, to advise us of the nature of the accommodation that you need. Please contact Becky Zaharko, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2354; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsrea@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2011 Montana Legislature enacted Chapter 270, Laws of 2011 (House Bill 188), an act providing for the licensure and regulation of real estate appraisal management companies (AMC). The bill was signed by the Governor on April 22, 2011, and will become effective on October 1, 2011. The board is adopting New Rules I through IV and amending ARM 24.207.401 to coincide with the new legislative changes and further implement the legislation by setting licensure fees, establishing licensure qualifications, and mandating certain record keeping requirements for appraisal management companies. The department is amending ARM 24.101.413 to establish license renewal dates for licensed AMCs. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(ag) remain the same.

(ah)	Real Estate Appraisers	<u>Appraisal Management Company</u>	<u>Annually</u>	<u>October 31</u>
		General Appraiser, Certified	Annually	March 31
		General Appraiser, Certified (Out-of-State)	Annually	March 31
		Licensed Appraiser	Annually	March 31
		Mentor		
		Residential Appraiser, Certified	Annually	March 31
		Residential Appraiser, Certified (Out-of-State)	Annually	March 31
		Trainee	Annually	March 31

(ai) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

5. The board is proposing to amend the following rule. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.207.401 FEES (1) The following fees will apply to all licensed and certified real estate appraisers, trainees, and license holders or applicants. Fees are not refundable or transferable. Fees are not prorated for portions of the year.

(a) through (1)(f) remain the same.

~~(g) federal registry fee~~ _____ 25

(g) Applicants and renewing licensed or certified appraisers must pay a federal registry fee in the amount required by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council in accordance with Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act. The current federal registry fee is specified in the application and renewal forms and can be found by a link from the board's web site.

(h) remains the same.

(i) ~~reciprocity license by credentialing~~ 400 475

(j) through (1)(l) remain the same.

(m) reactivation fee (inactive to active status) 250

~~(n) Additional standardized fees are specified in ARM 24.101.403.~~

(2) The following fees apply to registered appraisal management companies and applicants for registration. Fees are not refundable or transferable. Fees are not prorated for portions of the year.

<u>(a) original application and license fee</u>	<u>2000</u>
<u>(b) appraisal management company address change, (including web site, email, telephone, fax, etc.)</u>	<u>45</u>
<u>(c) application for change in controlling person</u>	<u>500</u>
<u>(d) application for redesignation of controlling person</u>	<u>250</u>
<u>(e) application for change in contact person under [HB 188 section 6]</u>	<u>100</u>
<u>(f) annual fee for reporting of all engagements</u>	<u>250</u>
<u>(i) annual reporting of all engagements after 30 days</u>	<u>1000</u>
<u>(ii) annual reporting of all engagements after 60 days</u>	<u>2000</u>
<u>(g) renewal fee for appraisal management company with 200 or fewer engagements during previous renewal cycle</u>	<u>1000</u>
<u>(h) renewal fee for appraisal management company with more than 200 engagements during previous renewal cycle</u>	<u>3000</u>
<u>(j) fee for filing amended appraiser panel list</u>	<u>25</u>

(i) Applicants and renewing appraisal management companies must pay a federal registry fee in the amount required by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council in accordance with Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act. The current federal registry fee is specified in the application and renewal forms and can be found by a link from the board's web site.

(k) All audited registered appraisal management companies shall pay an audit fee in the amount of \$450. If the board incurs costs in excess of \$450, the board may assess the appraisal management company for such additional costs incurred, and the appraisal management company shall pay such assessments within 30 days of invoicing or in the timeframe agreed upon by the board and designated appraisal management company.

(3) Additional standardized fees are specified in ARM 24.101.403.

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, 37-54-212, 37-54-302, 37-54-310, MCA

REASON: The board is amending (1) to clarify and inform licensees and applicants that fees will not be prorated. Although the board has a long-standing policy to not prorate any licensure fees, it was not previously set forth in administrative rule.

The board is amending (1)(g) to clarify that the federal registry fee is set and collected by the Appraisal Subcommittee. The board is amending this rule to incorporate the federal registry fee by reference so the rule does not have to be amended every time the fee is changed.

The board is amending (1)(i) to correctly set forth the term for licensing out-of-state applicants and correct the fee. Reciprocity requires individual reciprocal agreements between licensing entities and the board does not have such agreements. Further, because the board currently charges out-of-state applicants

the \$475 original license application fee, this is a correction and not a fee increase for these applicants.

It is reasonably necessary to amend this rule to set the licensure and renewal fees for the appraisal management companies and further implement HB 188. Professional and occupational licensing boards are mandated by 37-1-134, MCA, to set and maintain licensure fees commensurate with associated costs. The board estimates that these fee changes will affect approximately 411 licensees and 40 appraisal management companies, and result in approximately \$187,755 in additional annual revenue.

5. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) "Engagement" means each separate instance in which the appraisal management company engages a licensed or certified appraiser in Montana to perform an appraisal of property in Montana, regardless of the level or extent of the activity.

AUTH: 37-54-105, MCA

IMP: [HB 188 Section 3], MCA

NEW RULE II REGISTRATION AND RENEWAL OF APPRAISAL MANAGEMENT COMPANIES (1) An applicant for registration as an appraisal management company in Montana must:

- (a) submit a complete application on forms prescribed by the department and approved by the board;
- (b) submit the appropriate fees;
- (c) provide the appraisal management company employer identification number (EIN) or Tax ID number for Montana;
- (d) provide the information required in [HB 188 Section 3];
- (e) provide contact information for the persons described in [HB 188 Section 3]. Such persons must provide contact information for all forms of communication used by the person in connection with the appraisal management company, including the person's physical office address, mailing address, telephone number, facsimile number, electronic mail address, and web site address;
- (f) include proof that the entity and all persons described in [HB 188 Section 3] have satisfied the registration requirements, if any, of Title 35 of the Montana Code Annotated and the Montana Secretary of State's Office;
- (g) provide a list of all states in which the appraisal management company is currently located and/or providing appraisal management services;
- (h) provide verifications from all states in which the appraisal management company is licensed, registered, or has ever been licensed or registered; and
- (i) provide specific information requested by the board regarding the business practices, any civil, criminal, or administrative actions, ethical practice of the appraisal management company's individual owners, corporation officers, directors, and controlling and contact persons as part of the background examination pursuant to [HB 188 section 5].

(2) An appraisal management company registration shall be renewed annually on or before the date set by ARM 24.101.413. In order to renew a registration, the contact person designated by the appraisal management company must submit the renewal application prescribed by the department and approved by the board, pay the appropriate renewal fee, and be the point of contact for questions and concerns regarding the application and annual renewal processes.

(3) When the ownership or business structure of a currently registered appraisal management company changes, the appraisal management company is required to complete a new appraisal management company registration application and pay the appropriate fees within ten days of the change. Failure to notify and submit the appropriate application and fees to the board within the ten days shall be cause for suspension or revocation of the appraisal management company's registration.

(4) When the individual designated as a controlling person by the registered appraisal management company is no longer employed, appointed, or contractually authorized by the appraisal management company to serve as the controlling person, the appraisal management company must submit an application to redesignate the controlling person. The application to redesignate the controlling person must be made on a form prescribed by the department, accompanied by the appropriate fees, and submitted to the board office within 20 days. Failure to notify and submit the appropriate application and fees to the board within 20 days shall be cause for suspension or revocation of the appraisal management company's registration.

(5) When the individual designated as the contact person by the registered appraisal management company is no longer the contact person and is not the designated owner or the controlling person of the appraisal management company, the appraisal management company must submit an application for change of contact person prescribed by the department and the appropriate fees to the board office within ten days. Failure to notify and submit the appropriate application and fees to the board within ten days shall be cause for suspension or revocation of the appraisal management company's registration.

(6) A registered appraisal management company must report all pending, current, or completed license disciplinary action or investigation against the company, controlling person, or other licensed individuals affiliated with the company to the board within 30 days of the proposed action or notice of such action or investigation. Failure to report such information shall be cause for suspension or revocation of the appraisal management company's registration.

(7) Annually, the registered appraisal management company must report to the board the number of engagements it had during the previous renewal year no later than November 15. The subsequent renewal fee will be based on the appraisal management company's reporting of engagements for the previous renewal year.

(a) An appraisal management company that reports its engagements after the deadline in (7) will be assessed additional fees pursuant to ARM 24.207.401.

(b) Failure to comply with the requirements of (7) on or before January 15 is cause for suspension or revocation of the appraisal management company's registration.

(8) When the registered appraisal management company adds or deletes a licensed or certified appraiser from the appraisal management company's appraiser panel, the appraisal management company must notify the board office within ten days by submitting an amended appraiser panel list with the appropriate fees. Failure to provide such information shall be cause for suspension or revocation of the appraisal management company's registration.

(9) If a registered appraisal management company is no longer providing appraisal management services in Montana, the appraisal management company must notify the board office within 30 days that they are no longer providing services. If an appraisal management company that is no longer providing services in Montana wishes to maintain its registration, it must comply with all applicable requirements, including renewal and reporting provisions. Prior to resuming services in this state, the appraisal management company must notify the board office that it intends to resume services in Montana and must provide updates regarding any changes in the information collected by the board, pursuant to this rule. Failure to provide such information shall be cause for suspension or revocation of the appraisal management company's registration.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, [HB 188 Section 3], MCA

NEW RULE III APPRAISER PANEL LIST FOR APPRAISAL MANAGEMENT COMPANIES (1) Amending the appraiser panel list is defined as the addition or deletion of a licensed or certified appraiser from the appraisal management company's appraiser panel.

(2) A registered appraisal management company must notify the board of any amendment to its appraiser panel list within ten days of the amendment. Except as provided in (3) or (4), an appraisal management company that amends its appraiser panel list must pay the amendment fee specified in ARM 24.207.401.

(3) An appraisal management company is exempt from paying the amendment fee for deleting or removing an appraiser as a result of documented violations of the Uniform Standards of Professional Appraisal Practice (USPAP).

(4) An appraisal management company must submit a current and complete list of all panel members with the renewal application annually. Additions and deletions submitted with the renewal application will not be assessed the amendment fee.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, [HB 188 Section 3], [HB 188 Section 11], [HB 188 Section 12], MCA

NEW RULE IV APPRAISAL MANAGEMENT COMPANY RECORD KEEPING REQUIREMENTS (1) In addition to the requirements of [HB 188 section 15], the following documentation must be kept and made available to the board or its designee for audit purposes upon request:

(a) a complete original locked (PDF) version of the appraisals assigned;

- (b) documentation of all alterations of the appraisal report pursuant to [HB 188 section 18], which must be kept with the originally submitted appraisal report;
 - (c) documentation of proof of payment in accordance with [HB 188 section 17];
 - (d) a list of all appraisal panel members, including dates the panel members were added or deleted;
 - (e) a list of all engagements, including the name of requesting entity, the appraiser assigned, and the dates assigned and completed;
 - (f) a list indicating the number of engagements per panel member on a yearly basis;
 - (g) copies of all contracts/agreements with appraisal panel members;
 - (h) documentation of qualifications and ownership of the appraisal management company;
 - (i) verifications of licensure or certification for all appraisal panel members, controlling persons, contact individuals, and any employees who are responsible for ordering appraisals, providing quality control examinations, or communicating with appraisers and independent contractors who perform appraisal reviews for property located in the state of Montana;
 - (j) documentation of all quality control examinations conducted for each completed engagement; and
 - (k) documentation of the annual appraisal review of work of all appraisers, who performed appraisals for the appraisal management company, on a periodic basis to verify appraisals are being conducted in accordance with Uniform Standards of Professional Appraisal Practice.
- (2) All documentation and record keeping must be kept in a tamper-proof, secure location for a minimum of five full years following the completion of the engagement or document.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, [HB 188 Section 3], [HB 188 Section 5], [HB 188 Section 6], [HB 188 Section 7], [HB 188 Section 8], [HB 188 Section 10], [HB 188 Section 11], [HB 188 Section 12], [HB 188 Section 13], [HB 188 Section 14], [HB 188 Section 15], [HB 188 Section 17], [HB 188 Section 18], MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsrea@mt.gov, and must be received no later than 5:00 p.m., September 23, 2011.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.realestateappraiser.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the

electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2323; e-mailed to dlibsrea@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 3, 2011, by regular mail.

10. Don Harris, attorney, has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 15, 2011