



# Guidance Document 21-03

Adopted July 15, 2021

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This guidance document is advisory in nature but is binding on the Nebraska Real Property Appraiser Board (“Board”) until amended or repealed by the Board. A guidance document does not include internal procedural documents that only affect the internal operations of the Board and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document (Neb. Rev. Stat. § 84-901.03 (2)).

**SUBJECT:** Real Property Appraiser and AMC Applicant CHRC Carried Out by the Board

**LEGAL REFERENCE:** Neb. Rev. Stat. § 76-2223(1)(n) (Laws 2020, LB808, § 71); Neb. Rev. Stat. § 76-2224 (Laws 2006, LB 778, § 44); Neb. Rev. Stat. § 76-2227(4) (Laws 2020, LB808, § 72); Neb. Rev. Stat. § 76-2228.01(1)(e), (3)(a) (Laws 2021, LB23, § 4); Neb. Rev. Stat. § 76-2230(1)(e), (2)(a) (Laws 2021, LB23, § 6); Neb. Rev. Stat. § 76-2231.01(1)(f), (2)(a) (Laws 2021, LB23, § 7); Neb. Rev. Stat. § 76-2232(1)(f) (Laws 2021, LB23, § 8); Neb. Rev. Stat. § 76-2233(4)(a) (Laws 2020, LB808, § 78); Neb. Rev. Stat. § 76-2233.02(2) (Laws 2020, LB808, § 78); Neb. Rev. Stat. § 76-3207(1)(b), (2) (Laws 2020, LB808, § 91)

## SUMMARY OF ACTION

Adopted by the Board at its July 15, 2021 meeting.

## **BACKGROUND**

During a discussion between Director Kohtz and AAG Nigro regarding delegation of authority, Director Kohtz brought attention to the Board's procedure for real property appraiser applicant and AMC registration applicant criminal history record check ("CHRC") review. Director Kohtz informed AAG Nigro that the Board intends to provide more authority to the director to approve certain applications, and that the Board may not have any direct involvement in the CHRC review. Director Kohtz inquired about the potential for unlawful delegation of authority since the relevant statutes specifically state that such record check is to be carried out by the Real Property Appraiser Board. AAG Nigro indicated that Neb. Rev. Stat. § 76-2223(1)(n) says, the Board shall administer and enforce the Real Property Appraiser Act, and do all other things necessary to carry out the Real Property Appraiser Act. In addition, Neb. Rev. Stat. § 76-2224 states, "In order to administer and enforce the Real Property Appraiser Act, the board may hire a director and other staff, rent office space, and acquire other facilities and equipment. The board may contract for administrative assistance, including facilities, equipment, supplies, and personnel that are required by the board to carry out its responsibilities under the act." AAG Nigro recommended that the Board adopt a guidance document outlining the procedure used for CHRC reviews.

## **ANALYSIS**

Regarding the qualifications for issuance, or upgrade, of a real property appraiser credential, Neb. Rev. Stat. § 76-2228.01(1)(e), (3)(a) (Trainee Real Property Appraisers); N.R.S. § 76-2230(1)(e), (2)(a) (Licensed Residential Real Property Appraisers); N.R.S. § 76-2231.01(1)(f), (2)(a) (Certified Residential Real Property Appraisers); N.R.S. § 76-2232(1)(f) (Certified General Real Property Appraisers); and N.R.S. § 76-2233(4)(a) (Real Property Appraisers through Reciprocity) state, "Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board."

Regarding the qualifications for renewal of a real property appraiser credential, N.R.S. § 76-2233.02(2) states, "The board shall establish a number of credential holders to be selected at random to submit, along with the application for renewal, two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board."

In accordance with N.R.S. § 76-2227(4), to qualify for an initial credential, an upgrade of a credential, a credential through reciprocity, a temporary credential, or a renewal of a credential, an applicant shall not have been convicted of, including a conviction based upon a plea of guilty or nolo contendere of any felony (if so convicted, has had his or her civil rights restored); any crime of fraud, dishonesty, breach of trust, money laundering, misrepresentation, or deceit involving real estate, financial services, or in the making of an appraisal within the five-year period immediately preceding the date of application; or any other crime which is related to the qualifications, functions, or duties of a real property appraiser within the five-year period immediately preceding the date of application. An applicant must also demonstrate character and general fitness such as to command the confidence and trust of the public, and not possess a background that would call into question public trust or a credential holder's fitness for credentialing.

When referring to the appraisal management company ownership qualifications, N.R.S. § 76-3207(1)(b) declares that a person applying for issuance of a registration or renewal of a registration shall not, "Be more than ten percent owned by a person who is not of good moral character, which for purposes of this section shall require that such person has not been convicted of, or entered a plea of nolo contendere to, a felony relating to the real property appraisal practice or any crime involving fraud, misrepresentation, or moral turpitude or failed to submit to a criminal history record check through the Nebraska State Patrol and the Federal Bureau of Investigation."

In addition, N.R.S. § 76-3207(2) states, "For purposes of subdivision (1)(b) of this section, each individual owner of more than ten percent of an appraisal management company shall, at the time an application for issuance of a registration is made, submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. The board shall pay the Nebraska State Patrol the costs associated with conducting a fingerprint-based national criminal history record check through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board."

Authority for carrying out such record check as required in N.R.S. § 76-2228.01(1)(e), (3)(a); N.R.S. § 76-2230(1)(e), (2)(a); N.R.S. § 76-2231.01(1)(f), (2)(a); N.R.S. § 76-2232(1)(f); N.R.S. § 76-2233(4)(a); N.R.S. § 76-2233.02(2); and N.R.S. § 76-3207(2) is dependent on the Board's ability to delegate administrative authority to its staff, and the interpretation of "Board" in N.R.S. § 76-2228.01(1)(e), (3)(a); N.R.S. § 76-2230(1)(e), (2)(a); N.R.S. § 76-2231.01(1)(f), (2)(a); N.R.S. § 76-2232(1)(f); N.R.S. § 76-2233(4)(a); N.R.S. § 76-2233.02(2); and N.R.S. § 76-3207(2).

In accordance with N.R.S. § 76-2223(1)(n), the Board shall administer and enforce the Real Property Appraiser Act, and do all other things necessary to carry out the Real Property Appraiser Act. N.R.S. § 76-2224 states, "In order to administer and enforce the Real Property Appraiser Act, the board may hire a director and other staff, rent office space, and acquire other facilities and equipment. The board may contract for administrative assistance, including facilities, equipment, supplies, and personnel that are required by the board to carry out its responsibilities under the act."

For the purpose of N.R.S. § 76-2228.01(1)(e), (3)(a); N.R.S. § 76-2230(1)(e), (2)(a); N.R.S. § 76-2231.01(1)(f), (2)(a); N.R.S. § 76-2232(1)(f); N.R.S. § 76-2233(4)(a); N.R.S. § 76-2233.02(2); and N.R.S. § 76-3207(2), Board means the Board or its staff as designated by the Board.

## **GUIDANCE**

For the purpose of N.R.S. § 76-2228.01(1)(e), (3)(a); N.R.S. § 76-2230(1)(e), (2)(a); N.R.S. § 76-2231.01(1)(f), (2)(a); N.R.S. § 76-2232(1)(f); N.R.S. § 76-2233(4)(a); N.R.S. § 76-2233.02(2); and N.R.S. § 76-3207(2), the CHRC review will be carried out by the Board's staff. If staff finds that the applicant may be in violation of N.R.S. § 76-2227(4) or N.R.S. § 76-3207(1)(b), the application shall be presented to the Board for consideration.