



Guidance Document 23-01

Adopted June 22, 2023

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SUBJECT: CHRC Carried Out by the Board for Owners of More than 10% of an AMC at Renewal of Registration

LEGAL REFERENCE: Neb. Rev. Stat. § 76-3203 (Laws 2019, LB77, § 12); Neb. Rev. Stat. § 76-3207(1)(b), (2) (Laws 2020, LB808, § 91)

SUMMARY OF ACTION

Adopted by the Board at its June 22, 2023 meeting.

BACKGROUND

At its strategic planning meeting on June 15, 2022, the Nebraska Real Property Appraiser Board (“Board”) set a goal to explore alternatives for verification of AMC owner AMC Rule background compliance related to AMC registration renewal. At its regular meeting on May 25, 2023, the Board reviewed a report titled, “Report on Change to CHRC Procedures for AMC Owners of 10 Percent or More at AMC Renewal” prepared by Director Kohtz. While reviewing information in preparation for drafting this report, it was discovered that many peer states only require a Criminal History Record Check (“CHRC”) for new owners of 10% or more of an AMC after initial registration (CHRCs conducted for all owners of 10% or more of an AMC at initial registration). The Board agreed that annual CHRCs place a burden on an AMC and its owners.

ANALYSIS

When referring to renewal requirements for AMC registration, Neb. Rev. Stat. § 76-3203(6) states, “The renewal of a registration includes the same requirements found in subsections (1) through (5) of this section. An application for renewal of a registration shall be furnished to the board no later than sixty days prior to the date of expiration of the registration.” In addition, N.R.S. § 76-3203(7) says, “For the purpose

of subdivision (6) of section 76-3202, the twelve-month period for renewal of a registration shall consist of the twelve months pursuant to subsection (4) of this section.”

Although N.R.S. § 76-3203 establishes certain requirements for issuance of a registration as an appraisal management company, and those requirements found in subsections (1) through (5) are applicable to renewal of a registration of an appraisal management company, N.R.S. § 76-3203 is silent regarding requirements for owners of 10% or more of an appraisal management company. As such, N.R.S. § 76-3203(6) does not include CHRCs for owners of 10% or more of an appraisal management company as a condition of renewal of a registration as an appraisal management company by association to the requirements for issuance of a registration as an appraisal management company as found in subsections (1) through (5) of 76-3203.

When referring to a person applying for issuance of a registration or renewal of a registration, a person shall not, per N.R.S. § 76-3207(1)(b), “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.”

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.”

Although N.R.S. § 76-3207(1)(b) applies to a person applying for issuance of a registration or renewal of a registration, N.R.S. § 76-3207(2) clearly establishes the requirement for each individual owner of more than ten percent of an appraisal management company at the time an application for issuance of a registration is made. Throughout the Appraisal Management Company Registration Act the requirements for issuance of a registration are defined separately from the requirements for renewal of a registration. This is established by the use of specific phrasing “issuance of a registration” and “renewal of a registration.” N.R.S. § 76-3207(2) does not establish that the CHRC requirements pertain to each individual owner of more than ten percent of an appraisal management company at the time an application for renewal of a registration is made.

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“Title XI”) was amended by the Dodd–Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), which was signed into law on July 21, 2010. Dodd-Frank required states to register and supervise the operations and activities of appraisal management companies. LB410 was approved by Governor Heineman on March 10, 2011, enacting the Appraisal Management Company Registration Act, which became effective on January 1, 2012. AM360 to LB410 was adopted by the Nebraska State Legislature on February 17, 2011, inserting the language found in N.R.S. § 76-3207(1)(b),(2) pertaining to CHRC requirements.

During floor discussion on February 17, 2011, Senator Utter introduced AM360 and stated, *“Thank you very much, Mr. President. Good morning, colleagues. This is a simple amendment that clarifies that all 10 percent, or more, owners of an appraisal management fee must undergo a vetting process that includes fingerprinting and a criminal records check through the national Federal Bureau of Investigation. And it...and this amendment also clarifies that the fees for this criminal records background check will be taken out of the application fees that the appraisal management company is paying. I urge your adoption of this amendment.”* AM360 was adopted with no further discussion.

At its February 17, 2011 regular meeting, the Board discussed AM360. The following excerpt from the meeting minutes details this discussion (p.4): *“AM360 was not submitted with AM197 as we were awaiting approval from the FBI of language necessary to conduct a criminal background check. AM360 simply requests that each individual owner of more than ten percent of an appraisal management company must, at the time of application for registration, 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 the Nebraska State Patrol and the Federal Bureau of Investigation. Enrollment and Review ER27 was adopted on February 17, 2011.”*

Since N.R.S. § 76-3203(5) (2012) required that an application for the renewal of a registration includes substantially similar information required for the initial registration as provided in subsection (2) of the same section (through LB410), and N.R.S. § 76-3207(2) (2012) required each individual owner of more than ten percent of an appraisal management company to submit to a CHRC, at the time an application for registration as an appraisal management company was made, the requirement for renewal of an AMC registration was established as the same for AMC owners of 10 percent or more under N.R.S. § 76-3203(2)(m) (2012), which says, *“Any other information required by the board which is reasonably necessary to implement the Nebraska Appraisal Management Company Registration Act.”* The AMC Rule was adopted on June 9, 2015, with an effective date of August 10, 2015, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Consumer Financial Protection Bureau, and the Federal Housing Finance Agency to implement the minimum requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act, which added a new Section 1124 to Title XI, to be applied by participating States in the registration and supervision of appraisal management companies. LB17, approved by Governor Ricketts on March 21, 2018, updated the Appraisal Management Company Registration Act for compliance with the Title XI and the AMC Rule. LB17 simplified the language in N.R.S. § 76-3203 to better align with the language found in the AMC Rule. Thus, the language, *“Any other information required by the board which is reasonably necessary to implement the Nebraska Appraisal Management Company Registration Act”* was removed.

GUIDANCE

When referring to a person applying for issuance of a registration or renewal of a registration, a person shall not, per N.R.S. § 76-3207(1)(b), *“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.”

Although N.R.S. § 76-3207(2) establishes the CHRC requirement for each individual owner of more than ten percent of an appraisal management company at the time an application for issuance of a registration is made, for the purpose of N.R.S. § 76-3207(1)(b), no such CHRC requirement is established for each individual owner of more than ten percent of an appraisal management company at the time an application for renewal of a registration is made. However, it is the Nebraska State Legislature’s intent that all individual owners of more than ten percent must undergo a vetting process that includes CHRC. Therefore, in order to reduce an unnecessary burden, as of July 1, 2023, the Board will no longer carry out a CHRC for any individual owner of more than ten percent of an appraisal management company that has had a CHRC previously completed. Any owner of more than ten percent of an appraisal management company that has previously completed a CHRC, as identified by the Board, will be evaluated for compliance with N.R.S. § 76-3207(1)(b) by the appraisal management company’s response to the Application for Renewal of Nebraska Appraisal Management Company Registration question, “Has any individual owner of more than 10% of the Appraisal Management Company been convicted of, or entered a plea of nolo contendere to, a felony related to real property appraisal practice or any crime involving fraud, misrepresentation, or moral turpitude since the criminal history record check was carried out by the Board?” A CHRC is still carried out for any new owner of more than ten percent of an appraisal management company, as identified by the Board, at the time application for renewal of a registration as an appraisal management company is made. Rapback reports issued by the Nebraska State Patrol that identify criminal activity for those that have had a CHRC completed will be utilized by the Board as well.