

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING: ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY
DEPARTMENT OF SAFETY AND : AND PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 009-19, was approved by the Governor on January 4, 2019, published in Register 757A3 on January 14, 2019, and approved by the Department of Safety and Professional Services on February 22, 2019.

This emergency rule was approved by the Governor on July 15, 2019.

ORDER

An order of the Department of Safety and Professional Services to create ch. SPS 88, relating to real estate appraisal management companies.

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

The Legislature by SECTION 31 of 2017 Wisconsin Act 113 provides an exemption from providing evidence that promulgating this rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and an exemption from a finding of emergency for the promulgation of this rule.

ANALYSIS

Statutes interpreted:

Sections 458.37 (4), 458.39 (2), and 458.44 (3) (b), Stats.

Statutory authority:

SECTION 31 of 2017 Wisconsin Act 113 and s. 458.46, Stats.

Explanation of agency authority:

SECTION 31 of 2017 Wisconsin Act 113 provides that, using the procedure under section 227.24 of the statutes, the department “may promulgate rules required under section 458.46 of the statutes for the period before the effective date of the permanent rule promulgated under section 458.46 of the statutes, but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes.”

Section 458.46, Stats., requires the department to “... promulgate rules to implement this subchapter, including, to the extent the department, in consultation with the board, deems necessary, rules establishing standards of professional conduct for licensed appraisal management companies exempt from licensure under s. 458.34 (2).”

Related statutes or rules:

None.

Plain language analysis:

Current rules do not provide for the regulation of real estate appraisal management companies. The emergency rules create a new chapter, ch. SPS 88, to provide for the regulation of real estate appraisal management companies in accordance with the provisions of subch. III of ch. 458, Stats., as created by 2017 Wisconsin Act 113.

Specifically, the emergency rules provide the requirements for licensure as a real estate appraisal management company and identify acts that constitute unprofessional or unethical conduct for purposes of conducting disciplinary proceedings and taking action against a license.

Summary of, and comparison with, existing or proposed federal statutes and regulations:

The Dodd-Frank Wall Street Reform and Consumer Protection Act added section 1124 to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. This section establishes minimum requirements to be applied by states in the registration and supervision of appraisal management companies. Specifically, pursuant to section 1124(a), participating states must require that appraisal management companies (1) register with, and be subject to supervision by, the state appraiser certifying and licensing agency in the state or states in which the company operates; (2) verify that only state-certified or state-licensed appraisers are used for federally related transactions; (3) require that appraisals comply with the Uniform Standards of Professional Appraisal Practice; and (4) require that appraisals are conducted in accordance with the statutory valuation independence standards pursuant to the Truth in Lending Act (15 U.S.C. 1639e) and its implementing regulations. An appraisal management company that is a subsidiary owned and controlled by an insured depository institution and regulated by a federal financial institutions regulatory agency is subject to all of the minimum requirements, except the requirement to register with a state.

The regulations in the emergency rules comply with the above requirements.

Comparison with rules in adjacent states:

Illinois:

The Illinois Administrative Code [68 Ill. Adm. Code 1452] implements the Appraisal Management Company Registration Act [225 ILCS 459] and provides for the regulation of appraisal management companies. The rules, which are administered by the Illinois Department of Financial and Professional Regulation, include the requirements for an application for original registration [68 Ill. Adm. Code 1452.20] and identify acts that constitute dishonorable, unethical, or unprofessional conduct for purposes of disciplinary and non-disciplinary action against a registration [68 Ill. Adm. Code 1452.190].

Iowa:

The Iowa Administrative Code [187 IAC 25] implements the Iowa Appraisal Management Company Registration and Supervision Act [Iowa Code chapter 543E] and provides for the regulation of appraisal management companies. The rules, which are administered by the Division of Banking of the Iowa Department of Commerce, include the requirements for an application for registration [187 IAC 25.2] and identify acts that constitute grounds for disciplinary sanctions against a registration [187 IAC 25.11].

Michigan:

The Michigan Statutes [MCL 339.2661 to 339.2677, as created by Public Act 505 of 2012] provide for the regulation of appraisal management companies. The statutes, which are administered by the Michigan Department of Licensing and Regulatory Affairs, include the requirements for an application for licensure [MCL 339.2665] and identify conduct subject to penalties [MCL 339.2675].

Minnesota:

The Minnesota Statutes, Chapter 82C, provides for the regulation of appraisal management companies. The statutes, which are administered by the Minnesota Department of Commerce, include the requirements for an application for licensure [Minnesota Statutes, Section 82C.03] and identify unlawful conduct [Minnesota Statutes, Section 82C.14].

Summary of factual data and analytical methodologies:

The emergency rules were developed by reviewing subch. III of ch. 458, Stats., as created by 2017 Wisconsin Act 113, which provides for the regulation of real estate appraisal management companies, and other states' statutes and administrative rules concerning the regulation of real estate appraisal management companies.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The emergency rules do not have an effect on small business or an economic impact beyond any effect or impact associated with the legislation that provides for the regulation of real estate appraisal management companies (2017 Wisconsin Act 113).

Fiscal estimate:

These emergency rules will not have a fiscal impact.

Effect on small business:

These emergency rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone (608) 261-4472; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be submitted by the date and time at which the public hearing on these rules is conducted. Information as to the place, date, and time of the public hearing will be published on the Legislative Reference Bureau's website and in the Wisconsin Administrative Register.

TEXT OF RULE

SECTION 1. Chapter SPS 88 is created to read:

CHAPTER SPS 88
REAL ESTATE APPRAISAL MANAGEMENT COMPANIES

SPS 88.100 Definitions. In this chapter:

- (1) "Board" means the real estate appraisers board.
- (2) "Department" means the department of safety and professional services.

SPS 88.110 Licensure. The department shall issue a license to a real estate appraisal management company that does all of the following:

(1) Submits to the department an application that meets the requirements under s. 458.33 (1), Stats.

(2) Pays the initial credential fee required under s. 458.33 (2) (b), Stats.

(3) Demonstrates, to the satisfaction of the department, the company is qualified to competently perform appraisal management services in compliance with all applicable state and federal laws.

Note: An application for licensure is available on the department's website at dsps.wi.gov.

SPS 88.120 Unprofessional and unethical conduct. For purposes of s. 458.44 (3) (b), Stats., unprofessional or unethical conduct of an applicant or licensed appraisal management company or a controlling individual of an applicant or licensed appraisal management company includes any of the following:

(1) Refusing upon request to comply in a timely manner with an audit of records under s. 458.39 (2), Stats. There is a rebuttable presumption that a real estate appraisal management company that takes longer than 10 business days to respond to a request by the department for records or other information related to an audit has not acted in a timely manner under this subsection.

(2) Knowingly providing false or misleading information in a notification under s. 458.43 (1) (a) or (b), Stats.

(3) Failing to reinstate an appraiser upon order of the department under s. 458.43 (2) (c), Stats.

(4) Refusing to assign appraisal services to, or otherwise penalizing or retaliating against, an appraiser who has been reinstated under s. 458.43 (2) (c), Stats.

(5) Willfully failing to file a report or record required by the department or under state or federal law, willfully impeding or obstructing the filing of such a report or record or inducing another person to impede or obstruct such filing by another person, or making or filing such a report or record that is known to be false.

(6) Making a false or misleading representation concerning the results of an appraisal.

(7) Obtaining or attempting to obtain compensation for appraisal management services by fraud, including billing for services not rendered.

(8) Revealing confidential information concerning an appraiser or client without consent, except as required or authorized by law.

(9) Failing to notify the department in writing within 30 days of any disciplinary action against a license or other credential to act as a real estate appraisal management company in any jurisdiction.

(10) Failing to notify the department in writing of the date, place, and nature of a felony or misdemeanor conviction or finding in any jurisdiction within 48 hours after the entry of the felony or misdemeanor judgement or conviction.

(11) Failing to cooperate in a timely manner with an investigation of a complaint filed against the real estate appraisal management company. There is a rebuttable presumption that a real estate appraisal management company that takes longer than 10 business days to respond to a request by the board or department for information related to a complaint has not acted in a timely manner under this subsection.

(12) Having a license or other credential to act as a real estate appraisal management company in any state denied, refused, canceled, revoked, or surrendered in lieu of revocation, unless the license or other credential was later granted or reinstated.

(13) Any other act that demonstrates to the department a lack of good moral character.

SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect upon publication in the official state newspaper, pursuant to s. 227.22 (2) (c), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Secretary

Department of Safety and Professional Services