



1 services for clients; receives requests for residential real  
2 estate appraisal services from clients and, for a fee paid by  
3 the client, enters into an agreement with one or more  
4 independent appraisers to perform the residential real estate  
5 appraisal services contained in the request; or otherwise serves  
6 as a third-party broker of residential appraisal management  
7 services between clients and appraisers.

8 "Appraisal management services" means the process of  
9 receiving a request for the performance of residential real  
10 estate appraisal services from a client and, for a fee paid by  
11 the client, entering into an agreement with one or more  
12 independent appraisers to perform the real estate appraisal  
13 services contained in the request.

14 "Appraiser" means a person who provides an opinion of the  
15 market value of real property.

16 "Appraiser fee schedule" means a list of the various real  
17 estate appraisal services requested by an appraisal management  
18 company in the State from independent appraisers and the amount  
19 that the appraisal management company is willing to pay to an  
20 independent appraiser for the performance of each of the listed  
21 real estate appraisal services.



1 "Appraiser panel" means a group of independent appraisers  
2 that have been selected by an appraisal management company to  
3 perform residential real estate appraisal services for the  
4 appraisal management company.

5 "Client" means any person or entity that contracts with or  
6 otherwise enters into an agreement with an appraisal management  
7 company for the performance of residential real estate appraisal  
8 services.

9 "Commission" means the real estate commission.

10 "Controlling person" means an owner, officer or director of  
11 a corporation, partnership or other business entity seeking to  
12 offer appraisal management services in the State; an individual  
13 employed, appointed, or authorized by an appraisal management  
14 company who has the authority to enter into a contractual  
15 relationship with clients for the performance of appraisal  
16 management services and has the authority to enter into  
17 agreements with independent appraisers for the performance of  
18 residential real estate appraisal services; or an individual who  
19 possesses, directly or indirectly, the power to direct the  
20 management or policies of an appraisal management company.

21 "Real estate appraisal services" means the practice of  
22 developing an opinion of the value of real property in



1 conformity with the Uniform Standards of Professional Appraisal  
2 Practice published by The Appraisal Foundation.

3       §   -C   **Registration required; form; fee.** (a) It shall be  
4 unlawful for a person, corporation, partnership, sole  
5 proprietorship, subsidiary, unit, or any other entity to  
6 directly or indirectly engage or attempt to engage in business  
7 as an appraisal management company, either gratuitously or for  
8 pay; to directly or indirectly perform or attempt to perform  
9 appraisal management services; or to advertise or announce  
10 oneself, either publicly or privately, as engaging in or  
11 conducting business as an appraisal management company without a  
12 valid, unexpired registration issued by the commission under  
13 this chapter, regardless of the entity's use of the term  
14 "appraisal management company", "mortgage technology company",  
15 or any other name.

16       (b) The registration required by subsection (a) shall, at  
17 a minimum, include the following:

- 18       (1) Name of the entity seeking registration;  
19       (2) Business address of the entity seeking registration;  
20       (3) Telephone contact information of the entity seeking  
21 registration;



- 1           (4) Name and contact information for the company's agent  
2           for service of process in the State if the entity is  
3           not a corporation that is domiciled in the State;
- 4           (5) Name, address, and contact information for any  
5           individual, corporation, partnership, or other entity  
6           that owns at least a ten per cent share of the  
7           appraisal management company;
- 8           (6) Name, address, and contact information for a  
9           controlling person of the appraisal management  
10          company;
- 11          (7) A certification that the appraisal management company  
12          has a system and process in place to verify that a  
13          person being added to the appraiser panel of the  
14          appraisal management company holds a license in good  
15          standing in the State pursuant to chapter 466K;
- 16          (8) A certification that the appraisal management company  
17          has a system in place to review the work of all  
18          independent appraisers who perform real estate  
19          appraisal services for the appraisal management  
20          company to ensure that real estate appraisal services  
21          are conducted in accordance with the Uniform Standards  
22          of Professional Appraisal Practice;



1           (9) A certification that the entity maintains a detailed  
2           record of each service request that it receives and  
3           the independent appraiser that performs the  
4           residential real estate appraisal services for the  
5           appraisal management company;

6           (10) An irrevocable Uniform Consent to Service of Process;  
7           and

8           (11) Any other information required by the commission.

9           (c) An applicant for registration as an appraisal  
10          management company in the State shall submit to the commission  
11          an application on a form prescribed by the commission.

12          (d) The commission is authorized to impose and collect a  
13          fee of \$                    from each appraisal management company  
14          seeking registration under this chapter.

15          (e) An appraisal management company applying for  
16          registration under this chapter shall file an irrevocable  
17          Uniform Consent to Service of Process with the commissioner of  
18          securities.

19          (f) A registration granted by the commission pursuant to  
20          this chapter shall be valid for one year from the date on which  
21          it is issued.



1           §   -D   **Ownership; requirements.**   (a)   No person who has  
2 had a license or certificate to act as an appraiser refused,  
3 denied, canceled, or revoked in the State or in any other state  
4 shall own more than a ten per cent interest in an appraisal  
5 management company.

6           (b)   Every person who owns more than a ten per cent  
7 interest in an appraisal management company in the State shall:

8           (1)   Be of good moral character, as determined by the  
9               commission;

10          (2)   Submit to a background investigation, as determined by  
11               the commission; and

12          (3)   Certify to the commission that the person has never  
13               had a license to act as an appraiser refused, denied,  
14               cancelled, or revoked in the State or in any other  
15               state.

16          §   -E   **Controlling person; requirements.**   (a)   Each  
17 appraisal management company shall designate one controlling  
18 person to serve as the primary contact for all communication  
19 between the commission and the appraisal management company.

20          (b)   A person designated by an appraisal management company  
21 as a controlling person shall:



1           (1) Certify to the commission that the person has never  
2           had a certificate or a license issued by the State or  
3           any other state, to act as an appraiser refused,  
4           denied, canceled, or revoked;

5           (2) Be of good moral character, as determined by the  
6           commission; and

7           (3) Submit to a background investigation, as determined by  
8           the commission.

9           § -F **Employees; requirements; limitations.** (a) Any  
10          employee of an appraisal management company, or any person  
11          working on behalf of the appraisal management company, who is  
12          responsible for selecting independent appraisers to perform  
13          residential real estate appraisal services or for reviewing  
14          completed appraisals shall be appropriately trained and  
15          qualified in the performance of residential real estate  
16          appraisals as determined by the commission.

17          (b) Any employee of the appraisal management company who  
18          is responsible for reviewing the work of independent appraisers  
19          shall have demonstrated knowledge of the Uniform Standards of  
20          Professional Appraisal Practice, as determined by the  
21          commission.



1           (c) An appraisal management company registered in the  
2 State pursuant to this chapter shall not enter into contracts or  
3 agreements with any person for the performance of residential  
4 real estate appraisal services unless that person is licensed or  
5 certified in good standing pursuant to the chapter 466K.

6           **§ -G Adherence to standards; recordkeeping.** (a) Every  
7 appraisal management company in the State shall maintain a  
8 system and process to verify that any person being added to the  
9 appraiser panel of the appraisal management company holds a  
10 license in good standing in the State pursuant chapter 466K.

11           (b) Every appraisal management company in the State shall  
12 maintain a system and process to review the work of all  
13 independent appraisers who perform real estate appraisal  
14 services for the appraisal management company on a periodic  
15 basis to ensure that the real estate appraisal services are  
16 conducted in accordance with the Uniform Standards of  
17 Professional Appraisal Practice.

18           (c) Each appraisal management company in the State shall  
19 maintain detailed records of each service request and the  
20 disposition of each service request, including the appraiser  
21 performing the residential real estate appraisal services for  
22 the appraisal management company.



1           §    -H Appraiser fee schedule. (a) An appraisal  
2 management company in the State that utilizes an appraiser fee  
3 schedule shall develop the appraiser fee schedule or schedules  
4 through one or more surveys of the market rates paid to  
5 independent fee appraisers in the State for the performance of  
6 real estate appraisal services.

7           (b) The surveys performed pursuant to subsection (a) shall  
8 use statistically valid methodologies and techniques, and  
9 reliable data sources including representative samples of  
10 independent fee appraisers.

11           (c) Every appraisal management company that uses or has  
12 developed an appraiser fee schedule shall disclose that  
13 information to the commission at the time of initial  
14 registration or ninety days before the schedule is adopted by  
15 the appraisal management company, whichever is sooner. The  
16 commission may review any appraiser fee schedule developed or  
17 utilized by an appraisal management company in the State, along  
18 with the methodologies, techniques, and data sources used in its  
19 development, to ensure that it complies with this section.

20           (d) Following a review of any fee schedule conducted  
21 pursuant to subsection (c), the commission shall make the  
22 substantive results of the review available to the public.



1           §   -I   **Appraiser independence; prohibitions.**   (a)   It  
2 shall be unlawful for any employee, director, officer, or agent  
3 of an appraisal management company registered in the State to  
4 influence or attempt to influence the development, reporting, or  
5 review of an appraisal through coercion, extortion, collusion,  
6 compensation, instruction, inducement, intimidation, bribery, or  
7 in any other manner, including but not limited to:

- 8           (1)   Withholding or threatening to withhold timely payment  
9                for an appraisal;
- 10          (2)   Withholding or threatening to withhold future business  
11                for an independent appraiser, or demoting or  
12                terminating or threatening to demote or terminate an  
13                independent appraiser;
- 14          (3)   Expressly or impliedly promising future business,  
15                promotions, or increased compensation for an  
16                independent appraiser;
- 17          (4)   Conditioning the request for an appraisal service or  
18                the payment of an appraisal fee or salary or bonus on  
19                the opinion, conclusion, or valuation to be reached,  
20                or on a preliminary estimate or opinion requested from  
21                an independent appraiser;



- 1           (5)    Requesting that an independent appraiser provide an  
2                    estimated, predetermined, or desired valuation in an  
3                    appraisal report, or provide estimated values or  
4                    comparable sales at any time prior to the independent  
5                    appraiser's completion of an appraisal service;
- 6           (6)    Providing to an independent appraiser an anticipated,  
7                    estimated, encouraged, or desired value for a subject  
8                    property or a proposed or target amount to be loaned  
9                    to the borrower, except that a copy of the sales  
10                   contract for purchase transactions may be provided;
- 11          (7)    Providing to an independent appraiser, or any entity  
12                    or person related to the appraiser, any financial or  
13                    non-financial benefit;
- 14          (8)    Removing or allowing the removal of an independent  
15                    appraiser from an appraiser panel, without prior  
16                    written notice to the appraiser;
- 17          (9)    Obtaining, using, or paying for a second or subsequent  
18                    appraisal or ordering an automated valuation model in  
19                    connection with a mortgage financing transaction  
20                    unless there is a reasonable basis to believe that the  
21                    initial appraisal was flawed or tainted and that basis  
22                    is clearly and appropriately noted in the loan file,



1 or unless the appraisal or automated valuation model  
2 is done pursuant to a bona fide pre- or post-funding  
3 appraisal review or quality control process; or

4 (10) Any other act or practice that impairs or attempts to  
5 impair an appraiser's independence, objectivity, or  
6 impartiality.

7 (b) Nothing in subsection (a) of this section shall be  
8 construed to prohibit the appraisal management company from  
9 requesting that an independent appraiser:

10 (1) Provide additional information about the basis for a  
11 valuation; or

12 (2) Correct objective factual errors in an appraisal  
13 report.

14 § -J **Guaranty of payment.** Every appraisal management  
15 company operating in the State shall, except in cases of breach  
16 of contract or substandard performance of services, make payment  
17 to an independent appraiser for the completion of an appraisal  
18 or valuation assignment within sixty days of the date on which  
19 the independent appraiser transmits or otherwise provides the  
20 completed appraisal or valuation study to the appraisal  
21 management company or its assignee.



1           §    -K   Alteration of appraisal reports.  An appraisal  
2 management company may not alter, modify, or otherwise change a  
3 completed appraisal report submitted by an independent  
4 appraiser.

5           §    -L   Adjudication of disputes between an appraisal  
6 management company and an independent appraiser.  (a)  Except  
7 within the first thirty days after an independent appraiser is  
8 added for the first time to the appraiser panel of an appraisal  
9 management company, an appraisal management company shall not  
10 remove an appraiser from its appraiser panel, or otherwise  
11 refuse to assign requests for real estate appraisal services to  
12 an independent appraiser without:

- 13           (1)  Notifying the appraiser in writing of the reasons why  
14               the appraiser is being removed from the appraiser  
15               panel of the appraisal management company;
- 16           (2)  Notifying the appraiser of the nature of the alleged  
17               conduct or violation if the appraiser is removed from  
18               the panel for illegal conduct, violation of the  
19               Uniform Standards of Professional Appraisal Practice,  
20               or a violation of licensing standards; and



1           (3) Providing a reasonable opportunity for the appraiser  
2           to respond to the notification of the appraisal  
3           management company.

4           (b) An appraiser who is removed from the appraiser panel  
5 of an appraisal management company for alleged illegal conduct,  
6 violation of the Uniform Standards of Professional Appraisal  
7 Practice, or violation of licensing standards, may file a  
8 complaint pursuant to chapter 91 with the commission for a  
9 review of the decision of the appraisal management company. The  
10 commission's review shall be limited to the actions specified in  
11 subsection (a).

12           (c) The commission shall adjudicate all complaints  
13 pursuant to subsection (b) against an appraisal management  
14 company within one hundred eighty days.

15           (d) If after opportunity for hearing and review, the  
16 commission determines that an appraiser did not commit a  
17 violation of law, a violation of the Uniform Standards of  
18 Professional Appraisal Practice, or a violation of state  
19 licensing standards, the commission shall order that the  
20 appraiser be added, without prejudice, to the appraiser panel of  
21 the appraisal management company that was the subject of the  
22 complaint.



1           (e) Following the adjudication of a complaint to the  
2 commission by an appraiser against an appraisal management  
3 company, an appraisal management company may not refuse to make  
4 assignments for real estate appraisal services to an appraiser,  
5 or reduce the number of assignments, or otherwise penalize the  
6 appraiser, where the commission has found that the appraisal  
7 management company acted improperly in removing the appraiser  
8 from the appraiser panel.

9           **§ -M Violations.** The following shall constitute  
10 violations of this chapter punishable by suspension or  
11 revocation of registration, fines, or civil penalties:

- 12           (1) Committing an act in violation of this chapter;  
13           (2) Violating any rule adopted by the commission pursuant  
14           to this chapter; and  
15           (3) Procuring a license for oneself or another person by  
16           fraud, misrepresentation, or deceit.

17           **§ -N Rules.** Pursuant to chapter 91, the commission may  
18 adopt, amend, and repeal rules necessary to effectuate the  
19 purposes of this chapter."

20           SECTION 2. In codifying the new sections added by section  
21 1 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 3. This Act shall take effect on July 1, 2009.

4

INTRODUCED BY: Rosalyn H. Baker  
By Request



**Report Title:**

Real Estate Appraisals; Real Property

**Description:**

Provides for registration of real estate appraisal management companies with the real estate commission of the department of commerce and consumer affairs. Establishes standards and violations.



**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

**TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009**

**Thursday, February 12, 2009  
8:30 a.m.**

**TESTIMONY ON SENATE BILL NO. 1606 - RELATING TO REAL ESTATE  
APPRAISAL MANAGEMENT COMPANIES.**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

My name is Trudy Nishihara and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on Senate Bill No. 1606, Relating to Real Estate Appraisal Management Companies.

Senate Bill No. 1606 creates a new chapter to regulate Real Estate Appraisal Management Companies. Section 26H-6, Hawaii Revised Statutes, requires that new regulatory measures being considered for enactment be referred to the Auditor for a sunrise analysis. The statute further requires that the analysis shall set forth the probable effects of regulation, assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess alternative forms of regulation.

Therefore, the Commission strongly supports a sunrise study on this measure, as mandated by law, before regulating real estate appraisal management companies. Thank you for the opportunity to testify on Senate Bill No. 1606.



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February 12, 2009

Senator Rosalyn H. Baker, Chair  
Senator David Y. Ige, Vice-Chair  
Committee on Commerce and Consumer Protection  
The Hawaii Chapter of the Appraisal Institute  
Thursday, February 12, 2009  
(808) 270-0604

### **Testimony in support of SB 1606, Relating to Real Estate Appraisal Management Companies**

The Hawaii Chapter of the Appraisal Institute is part of an international organization of professional real estate appraisers with nearly 24,000 members and 91 chapters throughout the world. Its mission is to advance professionalism and ethics, global standards, methodologies, and practices through the professional development of property economics worldwide.

We strongly support SB 1606, Relating to Real Estate Appraisal Management Companies, which would provide for state registration, standards of ethical behavior, disclosure, accountability, reporting and recourse.

#### **What are Appraisal Management Companies (AMC's).**

Appraisal management companies (AMC) are business entities that administer networks of independent appraisers to fulfill real estate appraisal assignments on behalf of lenders. AMCs are third-party brokers of appraisal services that sit between banks and other mortgage originators and licensed or certified appraisers who perform real estate appraisals. The AMC recruits, qualifies, verifies licensure, negotiates fees and service level expectations with a network of third-party appraisers. In some cases, the AMC is also responsible for many tasks associated with the collateral valuation process, including appraisal review, quality control, market value dispute resolution, warranty administration, and record retention. Upon the completion of an appraisal, the appraisal management company is responsible for forwarding the report to the lender.

While appraisal management companies have been in existence for many years, the industry has experienced growth as a result of outsourcing by financial institutions and the perceived need for an independent third-party in the appraisal process in order to ensure that an appraiser is not subject to outside coercion or influence. The growth of the industry has resulted in numerous instances of abuse.

The following are examples of litigation involving lenders and appraisal management companies that provides some perspective of problems with their industry. The people that are ultimately hurt by unregulated conduct of AMC's are homeowners and real estate appraisers.

(1) 5/9/2007 – Class action lawsuit filed in Maryland against Appraisal Port/FNC (appraisal management company) for (a) false advertising, (b) intentional misrepresentation (fraud), (c) negligent misrepresentation, (d) conversion, misappropriation, and breach of bailment, and (e) breach of implied contract.

(2) 11/1/2007 - The lawsuit by Attorney General Andrew Cuomo against eAppraiseIT was the impetus behind the final HVCC. The suit claims eAppraiseIT was colluding with Washington Mutual to inflate appraisal values of homes.

(3) 1/12/2009 – Class action lawsuit filed by homeowners in Washington against Countrywide Home Loans and Landsafe Appraisal Services (appraisal management company) claiming the lender illegally rigged the appraisal process in a scheme to boost profits at the expense of homeowners and independent appraisers; and LandSafe who skimmed off part of the appraisal fee for themselves.

(4) 1/30/2009 – Class action lawsuit filed by homeowners in Arizona against Wells Fargo and RELS (appraisal management company) claiming the lender illegally rigged the appraisal process in a scheme to boost profits at the expense of homeowners. The lawsuit claims RELS Valuation subcontracts its appraisal work to a network of independent appraisers, but offers them below market rates for appraisals. The company then marks up the cost of the appraisal when invoicing the homeowners. The suit claims that homeowners pay for inflated fees resulting in tens of millions of dollars in additional profit for Wells Fargo for little to no work completed.

### **Intent of the Legislation**

To date, appraisal management companies are not required to register with any government agency, and are not subject to any state or federal regulation. In fact, the appraisal management company is the only entity in the appraisal process that is not subject to licensing or regulation by any government agency, or any laws or regulations specific to their activity. Because of this, no one is protected from questionable business practices.

On the other hand, real estate appraisers are governed by the Federal FIRREA Act of 1989, State of Hawaii HRS 466K and HAR Chapter 16-114.

Currently, North Carolina, Florida, Mississippi, and Connecticut are considering some form of AMC legislation. There is also a joint nationwide effort by the Appraisal Institute (AI), American Society of Appraisers (ASA), American Society of Farm Managers and Rural Appraisals (ASFMRA), and the National Association of Independent Fee Appraisers (NAIFA) to initiate AMC legislation in every state.

It is not the intent of SB 1606 to interfere with the normal course of business of AMCs, but it does provide a framework for state registration, standards of ethical behavior, disclosure, accountability, reporting and recourse.

As currently drafted, SB 1606 would:

- Require AMCs operating in Hawaii that order residential appraisals to register with the Real Estate Commission (Section C);

- Prohibit AMCs from being owned by individuals who have had an appraiser license or certification denied, refused, cancelled or revoked (Section D);
- Require the identification of a “controlling person” for each AMC that will serve as the main point of contact for the Real Estate Commission (Section E);
- Enact requirements that employees of AMCs are familiar with the real estate appraisal process and applicable standards (Section F);
- Require AMCs to have systems in place to: 1) verify that they only utilize licensed or certified appraisers; 2) ensure that all appraisals are in compliance with the Uniform Standards of Professional Appraisal Practice; and 3) ensure that appropriate records regarding the ordering and performance of appraisals are maintained (Section G);
- Require that AMCs disclose if they utilize an appraisal fee schedule. If yes, requires that the fee schedule be developed utilizing valid methodologies and that the fees paid to appraisers are based upon the market rates that are paid to appraisers for the specific appraisal assignments (Section H);
- Enact requirements that ensure that appraisers are free from coercion or inappropriate influence from AMCs, including provisions that prohibit an AMC from withholding payment to an appraiser that doesn't hit a predetermined property value (Section I);
- Institute a guaranty of payment (Section J);
- Prohibit the alteration of appraisal reports by AMCs (Section K);
- Provide for the adjudication of disputes between AMCs and independent appraisers (Section L); and
- Establish violations (Section M).

We urge the Committee to pass SB 1606. Thank you for this opportunity to testify.



Ted Yamamura  
Chair, Government Relations Committee  
Hawaii Chapter of the Appraisal Institute