

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

General Provisions
Mortgage Loan Appraisal Fee

Adopted Amendment: N.J.A.C. 3:1-16.2

Proposed: February 19, 2002 at 34 N.J.R. 814(a)

Adopted: November 12, 2002 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: November 12, 2002 as R.2002 d.394, without change.

Authority: N.J.S.A. 17:1-8.1, 17:1-15(e) and 17:11C-49.

Effective Date: December 16, 2002

Expiration Date: March 6, 2006

Summary of Public Comments and Agency Response:

The Department of Banking and Insurance ("Department") received written comments from the New Jersey League of Community Bankers, National Real Estate Information Services, First American Appraisal Services, Landsafe Appraisal Services, Atlantic Assurance Group and the Title/Appraisal Vendor Management Association.

COMMENT: One commenter had no reservations with the amendment.

RESPONSE: The Department notes and appreciates the comment indicating no reservations.

COMMENT: One commenter stated that consumers, lenders, the public and appraisal management companies would be negatively affected by the amendment.

RESPONSE: The Department acknowledges the comment, but believes that all of these groups will benefit from the amendment regarding appraisal fees charged to homeowners who obtain mortgages. The amendment does not prohibit the use of appraisal management companies by mortgage lenders and provides for a fee that is consistent with other comparable appraisals based on the survey of fees to be conducted annually by the Department of Banking and Insurance.

COMMENT: One commenter stated that the amendments disregard the additional value that appraisal management companies deliver to lenders and consumers and limit compensation for these services.

RESPONSE: The Department disagrees. The amendment contemplates that an appraisal may be performed by a third party appraiser and delivered by an appraisal management company and permits payment for those services. The amendment does not permit excessive charges for appraisals delivered by appraisal management companies.

COMMENT: One commenter stated that mortgage lenders use appraisal management companies to handle the growth in mortgage lending and help them expedite processing. Such increases in efficiency are beneficial to consumers waiting for a commitment and therefore justify a fee to the appraisal management company in addition to the fee of the appraiser.

RESPONSE: The Department agrees and notes that the amendment permits such an additional fee, as long as the total fee for the appraisal and for the fee added by the

appraisal management company approximates the usual, customary and reasonable fee for comparable appraisals based on an annual survey conducted by the Department.

COMMENT: One commenter stated that in addition to increasing efficiency, appraisal management companies improve the quality of appraisals with a quality review process in which appraisal fraud and abuses are more likely to be discovered or not attempted; and that these additional services that benefit customers, lenders and the public, should be compensated.

RESPONSE: The Department agrees and thus the amendment does not prevent appraisal management companies from being compensated for their work as long as the total appraisal fee approximates the usual, customary and reasonable fee for comparable appraisals based on the Department's annual survey of fees.

COMMENT: One commenter stated that the Department's appraisal fee survey does not support the proposed amendment.

RESPONSE: The Department disagrees. The survey documented the slightly higher fees charged when an appraisal management company was used.

COMMENT: One commenter stated that the appraisal product delivered by an appraiser is different from the value added to an appraisal product delivered by an appraisal management company. The commenter went on to note that because of operating efficiencies in scale, appraisal management companies typically charge fees

for value added appraisals in line with the fees charged by independent appraisers and that appraisal management companies should be allowed to make pricing decisions based on the market for their services.

RESPONSE: The market pricing suggested by the commenter in this highly regulated area must be tempered by reasonable regulation. The Department believes the amendment reasonably regulates this by allowing the appraisal management company to charge a fee as long as the total fee approximates the usual, customary and reasonable fee for comparable appraisals based on the Department's annual survey of fees.

COMMENT: One commenter stated that the amendment unfairly singles out appraisal management companies for pricing regulation, is anti-competitive and serves to penalize the innovation in additional service that appraisal management companies provide.

RESPONSE: The Department disagrees. There is no pricing regulation, only the general requirement that the total appraisal fee package approximate the usual, customary, and reasonable fee. Further, the amendment does not penalize appraisal management companies for their innovation in additional services. It does, however, protect consumers.

COMMENT: One commenter requested that the rule reflect the pre-April 2, 2001 language to allow a lender to pay the party providing the appraisal. The commenter went on to note that the inadvertent change put lenders and consumers in New Jersey

at a disadvantage because the quality of the appraisal product from an appraisal management company is superior to what can be obtained from an individual appraiser.

RESPONSE: The Department neither agrees or disagrees whether the services provided by an appraisal management company or an independent appraiser are superior. The change effective April 2001 was not inadvertent, as explained in the Summary to the proposed chapter readoption (see 33 N.J.R. 213(a)).

COMMENT: One commenter noted that if a customer lives in Newark and wants to take a second mortgage on a home in Cape May, the consumer would apply to a lender in Newark. The lender would have to find an appraiser in Cape May and because the lender seeking the Cape May area appraiser is from out of town, the Cape May appraiser would increase his standard fee by 25 to 50 percent. The additional cost, which reflects no additional work, is being passed onto the consumer. The commenter went on to note that an appraisal management company has approved appraisers throughout the State who work for an agreed upon price; that the appraisal management company adds value by reviewing the appraisal for accuracy and consistency and insures the appraiser for negligence by the appraiser, which also benefits the borrower; and that appraisal management companies review the character, work and skills of the appraisers and make sure that they are consistent with the needs of the lender. The commenter further noted that the appraisal management company can keep the fee reasonable because it provides volume work to the appraisal industry, and the appraisers in turn make fee concessions.

RESPONSE: The Department has no information that appraisers will increase their standard fee by 25 to 50 percent when the lender is from out of the area. Further, the rule does not prohibit appraisal management companies from continuing to operate, compete and charge fees that approximate the usual, customary and reasonable fees for comparable appraisals by third party appraisers based on the Department's annual survey of fees.

COMMENT: One commenter stated that allowing this amendment to go through would take appraisal management companies out of the picture and pave the way for the appraisal industry to raise their fees across the State.

RESPONSE: The Department does not believe that the amendment will eliminate appraisal management companies. They are specifically permitted to operate and to compete by charging reasonable fees.

COMMENT: One commenter stated that subsequent to the last amendment of this regulation, the Department conducted a survey that failed to verify the regulator's concerns about the possibility of higher fees without value added to benefit the consumer.

RESPONSE: The Department conducted a survey of fees by appraisal management companies and independent appraisers. The survey documented the slightly higher fees charged when an appraisal management company was used. Therefore, the results of that survey were valuable to the Department and enabled it to craft the proposal.

COMMENT: One commenter noted that it does not believe that the proposed amendment is warranted and that the Department should withdraw the proposal. The commenter stated that the regulation should read as it did prior to the time it was last amended in April 1, 2001.

RESPONSE: The Department disagrees. The survey documented the slightly higher fees charged when an appraisal management company was used. The Department proposes this amendment to provide that appraisal management companies can be reimbursed for their services, but that the total fee must approximate the usual, customary and reasonable fee for comparable appraisals based on the Department's annual survey of fees.

COMMENT: One commenter stated that the amendment would have certain unanticipated, negative impacts upon both lenders and consumers. The commenter stated that the amendment is a "solution looking for a problem"; that there is no demonstrated need for the amendment; and that the Department should reevaluate the proposal and eliminate it.

RESPONSE: The Department disagrees. The survey documented the slightly higher fees charged when an appraisal management company was used. The Department proposes this amendment to clarify the permissible range of fees.

COMMENT: One commenter noted that the Department's recent survey of appraisal prices in New Jersey failed to verify the concern that appraisal management companies charge higher fees without additional services benefiting the customer, and that the

difference in cost between appraisal management companies and independent appraisers was not significant. Therefore, additional regulation is unnecessary.

RESPONSE: The Department disagrees. The recent survey did document differences in costs between appraisal management companies and independent appraisers. Therefore, the Department disagrees that additional regulation is unnecessary. The amendment does not set prices, but requires that they approximate the usual, customary and reasonable fee for comparable appraisals based on the annual survey conducted by the Department. This will prevent any unreasonable fee from being charged, which is a benefit to consumers.

COMMENT: One commenter stated that the amendment could be used by appraisers to negotiate their fees more aggressively.

RESPONSE: The Department disagrees. The Department believes that the market will control, and that if some appraisers raise their fees, then the other appraisers will reduce their fees to gain more business, thereby maintaining a reasonable cost.

COMMENT: One commenter noted that the proposal is an attempt to regulate the fees of appraisal management companies, but does not regulate the fees of independent appraisers; and, therefore, treats competitors inconsistently.

RESPONSE: The Department disagrees. The amendment does not regulate fees, but sets a standard that they must be reasonable.

COMMENT: One commenter noted that no other state attempts to regulate the fees of appraisal management companies in the same manner as this proposed regulation.

RESPONSE: The Department is not aware whether that is an accurate or inaccurate statement. The Department did not survey other states' regulation of appraisers, but formulated its own standard, consistent with the New Jersey Licensed Lenders Act.

COMMENT: One commenter stated that the Federal Department of Housing and Urban Development allows appraisal management fees to be passed on to and paid by the consumer because of the services provided by appraisal management companies.

RESPONSE: The position of the Federal Department of Housing and Urban Development is based on the Federal statutes under which it promulgates rules. The Department proposed this rule consistent with the New Jersey Licensed Lenders Act.

COMMENT: One commenter stated that appraisal management fees, when included within the total appraisal cost paid by the consumer, should be treated no differently than the fees of independent appraisers.

RESPONSE: The Department disagrees. The survey documented the slightly higher fees charged when an appraisal management company was used. The Department does not believe that consumers should be required to pay more than a usual, customary and reasonable fee for the total appraisal package. The Department proposes this amendment to provide that appraisal management companies can be reimbursed for their services, but that the total fee must approximate the usual,

customary and reasonable fee for comparable appraisals based on the Department's annual survey of fees.

COMMENT: One commenter noted that the whole issue has been addressed by the Department of Housing and Urban Development in their Mortgagee Letter 97-46. The commenter asserts that HUD noted that appraisal management firms "...may provide a host of services that expedite and improve the quality of the appraisal." The commenter went on to note that HUD allows a borrower to pay a fee for the appraisal "... which may encompass fees for services performed by an appraisal management firm as well as fees for the appraisal itself." The commenter stated that the total fee for such "managed" appraisals is limited to the customary and reasonable fee for an appraisal in the market area where the appraisal is performed and that the HUD letter has been the basis of the industry's pricing of managed appraisals.

RESPONSE: The Department does not dispute that appraisal management firms may provide services that expedite and improve the quality of appraisals. The Department notes that the HUD Mortgagee Letter 97-46 requires that the total fee for an appraisal provided by an appraisal management company is limited to the customary and reasonable fee for an appraisal not generated by an appraisal management firm. The HUD requirement of the fee being customary and reasonable is similar to the standard in the Department's rulemaking, in that the total fee being charged by the appraisal management company shall "approximate the usual, customary and reasonable fee for

COMMENT: One commenter stated that the proposed amendment would prohibit lenders from charging a customer more for an appraisal report than the fee charged by the appraiser who performed the appraisal.

RESPONSE: The Department disagrees. The total fee of the appraisal management company, which would include the fee charged to the management company by the appraiser who performed the appraisal, and the additional services provided by an appraisal management company in their management and quality control, would be able to be charged by a lender to a consumer as long as the total fee paid to the appraisal management company approximates the usual, customary and reasonable fee for a comparable appraisal by a third party appraiser based on the Department's annual survey.

COMMENT: One commenter noted that many mortgage brokers pass appraisals along to lenders when they submit loan applications and sometimes mark up the appraisal price.

RESPONSE: Such a mark-up is not permitted under New Jersey law. Brokers who conduct those activities will be subject to disciplinary action by this Department.

Federal Standards Statement

The adopted amendment does not contain standards or requirements that exceed standards or requirements imposed by Federal law. Relevant Federal standards that are equaled but not exceeded are set forth at 12 U.S.C. §§ 2601 et seq.

Full text of the adopted amendments follows:

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