

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on December 21, 2011 by the
Date prior to or same as filing date

Appraiser Certification and Licensure Board OAR Chapter 161
Agency and Division Administrative Rules Chapter Number

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Rules Coordinator Address Telephone

to become effective January 1, 2012 through June 27, 2012
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Temporary rules implementing 2011 Or Laws Chapter 447 regarding appraisal management companies
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: 161-500-0000, 161-510-0010, 161-510-0030, 161-520-0010, 161-520,0020, 161-520-0030,
161-520-0040, 161-530-0010, 161-530-0020, 161-530-0030, 161-530-0040, 161-540-0010,
161-550-0010, 161-560-0010, 161-560-0020, and 161-570-0010

AMEND:

SUSPEND:

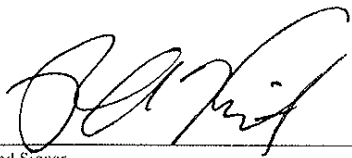
ORS 183.355, ORS 674.305(7), ORS 674.310 and 2011 Or Laws Ch. 447
Stat. Auth.

Federal Dodd-Frank Wall Street Reform and Consumer Protection Act (H.R. 4173)
Other Authority

ORS 674.310 and 2011 Or Laws Chapter 447
Stats. Implemented

RULE SUMMARY

Temporarily adopts Oregon Administrative Rule 161, Division 500, Rule 0000 regarding definitions; Division 510, Rule 0010 regarding application and registration fees, and Rule 0030 regarding Miscellaneous Fees; Division 520, Rule 0010 regarding registration requirements, Rule 0020 regarding system to verify competency, Rule 0030 regarding renewal or reactivation of registration, and Rule 0040 regarding change or addition of subject individual; Division 530, Rule 0010 regarding criminal records check, Rule 0020 regarding information requested from subject individuals, Rule 0030 regarding potentially disqualifying crimes, and Rule 0040 regarding termination or cancellation of surety bond or letter of credit; Division 540, Rule 0010 regarding training; Division 550, Rule 0010 regarding annual reports; Division 560, Rule 0010 regarding audits, and Rule 0020 regarding audit standards; and Division 570, Rule 0010 regarding duty to cooperate.


Authorized Signer

Bob Keith
Printed name

12/22/2011
Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Appraiser Certification and Licensure Board
Agency and Division

OAR Chapter 161
Administrative Rules Chapter Number

In the Matter of: the adoption of temporary rules relating to definitions (OAR 161-500-0000); fees (OAR 161-510-0010 and 161-510-0030); registration requirements (OAR 161-520-0010; system to verify competency (OAR 161-520-0020; renewal or reactivation of registration (OAR 161-520-0030); change of addition of subject individual (OAR 161-520-0040); criminal records check (OAR 161-530-0010); information from subject individuals (OAR 161-530-0020; potentially disqualifying crimes (OAR 161-530-0030; termination or cancellation of surety bond (OAR 161-530-0040); training (OAR 161-540-0010); annual reports (OAR 161-550-0010); audits (OAR 161-560-0010); audit standards (OAR 161-560-0020; and duty to cooperate (OAR 161-570-0010).

Rule Caption: Temporary rules implementing 2011 Or Laws Chapter 447 regarding appraisal management companies

Statutory Authority: ORS 183.355, ORS 674.305(7), ORS 674.310 and 2011 Or Laws Ch. 447

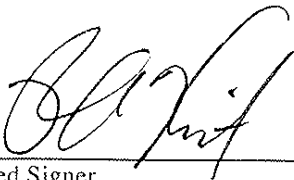
Other Authority:

Stats. Implemented: 2011 Or Laws Ch. 447

Need for the Temporary Rule(s): During the February 2010 Special Session the Oregon Legislature passed 2010 Oregon Laws Chapter 87 requiring the registration and regulation of Appraisal Management Companies (AMC) doing business in Oregon. The statute called for the Department of Consumer and Business Services to implement and administer the AMC program. On July 21, 2010 the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act that calls for AMC regulatory programs nationwide to be implemented and administered by state appraiser licensing boards. The 2011 Oregon Legislature passed HB 2499 (2011 Oregon Laws Chapter 447) that became effective June 21, 2011. This bill transfers regulatory authority for AMCs to the Oregon Appraiser Certification and Licensure Board (Board) effective January 1, 2012.

Documents Relied Upon, and where they are available: Chapters 674 and 183, and 2011 Or Laws Chapter 447

Justification of Temporary Rule(s): These temporary rules are necessary to implement the essential aspects of 2011 Oregon Laws Chapter 447 in order to ensure a smooth transition of the program from DCBS to the Board.



Bob Keith

12/22/2011

Authorized Signer

Printed name

Date

DIVISION 500
DEFINITIONS

161-500-0000 Definitions

In addition to the definitions in 2011 Or Laws Ch. 447, § 8, and as used in OAR 161-500-0000 to 161-560-0020, the following terms (whether capitalized or not) shall have the following meanings:

- (1) "Appraisal Report" has the same meaning as defined in OAR 161-002-0000.
- (2) "Assignment" means:
 - (a) An agreement between an appraiser and a client to perform a valuation service;
 - (b) The valuation service that is provided as a consequence of such an agreement.
- (3) "Audit" or "auditing" means a formal or official examination and verification of the accounts, correspondence, memoranda, papers, books and other records of an appraisal management company for compliance with 2011 Or Laws Ch. 447, § 8 through 19.
- (4) "Board" means the Appraiser Certification and Licensure Board established under ORS 674.305.
- (5) "Competency" or "competent" refers to the Competency Rule as defined in the Uniform Standards of Professional Appraisal Practice (USPAP).
- (6) "Subject Individual" means:
 - (a) A person designated as the controlling person as defined in 2011 Or Laws Ch. 447, § 8;
 - (b) An individual with an ownership interest of 10 percent or more of an appraisal management company; and
 - (c) In cases where ownership interest of 10 percent or more of the appraisal management company is held by an entity other than an individual:
 - (A) An individual who wholly owns a corporation that owns 10 percent or more of an appraisal management company;
 - (B) An individual wholly owning and serving as the only general partner in a limited partnership that owns 10 percent or more of an appraisal management company;
 - (C) An individual wholly owning and managing a limited liability company that owns 10 percent or more of an appraisal management company; or
 - (D) An individual who wholly owns any other type of business entity that owns 10 percent or more of an appraisal management company.
- (7) "System" means an organized or established procedure or method.

DIVISION 510
FEES AND ANNUAL REPORTS

161-510-0010 Application and Registration Fees

(1) A business entity that has not previously conducted business in Oregon, a business entity performing appraisal management services for under 250 instances of real estate appraisal activity in Oregon in the previous calendar year, or a business entity otherwise serving as a third-party broker of real estate appraisal activity for under 250 instances of real estate appraisal activity in Oregon in the previous calendar year, shall pay to the Board:

- (a) A nonrefundable application fee of \$250;
- (b) A nonrefundable registration fee of \$500.

(2) A business entity performing appraisal management services for 250 or more, but less than 1,000 instances of real estate appraisal activity in Oregon in the previous calendar year, or a business entity otherwise serving as a third-party broker of real estate appraisal activity for 250 or more, but less than 1,000 instances of real estate appraisal activity in Oregon in the previous calendar year, shall pay to the Board;

- (a) A nonrefundable application fee of \$1,000;
- (b) A nonrefundable registration fee of \$1,500.

(3) A business entity performing appraisal management services for 1,000 or more, but less than 5,000 instances of real estate appraisal activity in Oregon in the previous calendar year, or a business entity otherwise serving as a third-party broker of real estate appraisal activity for 1,000 or more, but less than 5,000 instances of real estate appraisal activity in Oregon in the previous calendar year, shall pay to the Board;

- (a) A nonrefundable application fee of \$1,500;
- (b) A nonrefundable registration fee of \$3,500.

(4) A business entity performing appraisal management services for 5,000 or more instances of real estate appraisal activity in Oregon in the previous calendar year, or a business entity otherwise serving as a third-party broker of real estate appraisal activity for 5,000 or more instances of real estate appraisal activity in Oregon in the previous calendar year, shall pay to the Board;

- (a) A nonrefundable application fee of \$2,000;
- (b) A nonrefundable registration fee of \$6,000.

161-510-0030 Miscellaneous Fees

<u>(1) Duplicate Registration</u>	<u>\$10</u>
<u>(2) Changing Active Registration to Inactive</u>	<u>\$100</u>
<u>(2) Reactivation of Inactive Registration</u>	<u>\$100</u>
<u>(3) Late Renewal Fee</u>	<u>\$100</u>
<u>(4) Annual Registry Fee</u>	<u>Actual Fee</u>
<u>(5) Fingerprint and Background Checks</u>	<u>Actual Fee</u>
<u>(6) Change or Addition of Subject Individual</u>	<u>\$100</u>
<u>(7) Registration history</u>	<u>\$40</u>

DIVISION 520
REGISTRATION REQUIREMENTS

161-520-0010 Registration Requirements

(1) A business entity applying for registration as an appraisal management company shall submit to the Board all of the following information:

(a) A completed application form listing the information required by 2011 Or Laws Ch. 447, § 9, paragraph (2) as follows:

(A) The name, address, website address, phone and fax numbers of the entity;

(B) The name, address, email and phone contact information of a controlling person of the entity;

(C) If the entity is not domiciled in this state, the name and phone contact information for the entity's agent for service of process in this state;

(D) The name, address, email and phone contact information of any person that owns 10 percent or more of the entity.

(b) For the persons named in paragraph (a) above, the license, certificate or registration numbers issued by any state to do business as an appraiser or an appraisal management company;

(c) Disclosure of any administrative action taken by any state to refuse, deny, cancel or revoke a license, certificate or registration as an appraiser or appraisal management company, if any; and

(d) If the business entity conducts appraisal reviews, the review appraiser's name and license or certification number issued by the Board.

(2) A business entity applying for registration as an appraisal management company shall attach to the application for registration the following:

(a) Applicable fees established in OAR 161, Division 510;

(b) A copy of the surety bond required by 2011 Or Laws Ch. 447, § 10, in a form and format approved by the Board;

(c) A signed certification on a form prescribed by the Board:

(A) That the business entity established a system to verify the competency of appraisers on the business entity's appraiser panel meeting the minimum requirements in OAR 161-520-0020.

(B) A short description of the business entity's system to verify competency as required in paragraph (2)(c) above.

(d) A signed certification on a form prescribed by the Board that the business entity maintains and retains a detailed record of each appraisal management services request the entity receives and the appraiser who performs the real estate appraisal activity contained in the request for:

(A) Not less than five years after the date of completion of the appraisal to which the record pertains; or

(B) For a period of not less than two years after final

- disposition of a judicial proceeding in which testimony relating to the records was given, whichever period expires later.
- (e) A signed certification on a form prescribed by the Board that the business entity maintains and retains a detailed record of each complaint received by the business entity from a person with an interest in a real estate transaction for which an appraisal was arranged by the business entity, along with the name of the client that requested the appraisal and the date the complaint was forwarded to the client.
- (f) A signed certification on a form prescribed by the Board that the business entity provides training to employees of the business entity who:
- (A) Select appraisers for an appraiser panel;
 - (B) Select appraisers to perform real estate appraisal activity; or
 - (C) Perform quality control examinations.
- (g) Sealed envelopes containing fingerprint cards for all subject individuals containing information specified in OAR 161-530-0020.
- (3) A business entity applying for registration as an appraisal management company shall attach to the application for registration as an appraisal management company evidence in the form of written policies and procedures demonstrating compliance with 2011 Or Laws Ch. 447, § 12.

161-520-0020 System To Verify Competency

- (1) A system to verify competency of an appraiser under 2011 Or Laws Ch. 447, § 9, shall meet the following minimum requirements:
- (a) An appraisal management company shall require that each independent contractor appraiser furnish their license or certificate number issued by the Board under ORS 674.310;
 - (b) An appraisal management company shall have a system in place to verify each independent contractor appraiser's license or certification renewal;
 - (c) An appraisal management company shall require each independent contractor appraiser represent in writing the appraiser's qualifications and competency, which may include but not be limited to:
 - (A) The metropolitan statistical areas, metropolitan divisions, areas outside of a metropolitan statistical area, counties, postal codes or other geographic information signifying where the appraiser represents he or she is competent to appraise;
 - (B) The types of real property the appraiser represents she or he is competent to appraise within the scope of their license or certification; and
 - (C) Other information relevant to the business activities of the business entity and necessary to demonstrate the competency of an appraiser.
 - (d) An appraisal management company shall include the following

information in an assignment to an independent contractor appraiser, to the extent the information has been communicated to the appraisal management company by the appraisal management company's client:

- (A) The geographic location of the real property, which may include the metropolitan statistical area, metropolitan division, area outside of a metropolitan statistical area, county, postal code, legal description or other geographic information identifying where the real property is situated; and
- (B) The type of real property the assignment covers.
- (e) An appraisal management company shall require that each independent contractor appraiser completing appraisals at the request of the appraisal management company comply with the Uniform Standards of Professional Appraisal Practice.
- (2) An assignment meeting the minimum requirements under paragraph (1) of this rule does not relieve an appraiser from meeting any legal obligations related to the appraiser's license or certification under ORS Chapter 674 and OAR Chapter 161.
- (3) The Board retains jurisdiction over administrative inquiries and actions involving misrepresentations made by an individual appraiser regarding competency.

161-520-0030 Renewal Or Reactivation Of Registration

(1) An appraisal management company renewing a registration as an appraisal management company shall submit to the Board all of the following information:

- (a) Renewal fees established in OAR 161-510-0020;
- (b) A copy of the surety bond required by 2011 Or Laws Ch. 447, § 10, in a form and format approved by the Board;
- (c) A signed certification on a form prescribed by the Board:
 - (A) That the appraisal management company continues to maintain a system, as stated on the appraisal management company's initial application for registration, to verify the competency of appraisers on the business entity's appraiser panel meeting the minimum requirements in OAR 161-520-0020
 - (B) A short description of the business entity's system to verify competency.
- (d) A signed certification on a form prescribed by the Board that the business entity maintains and retains a detailed record of each appraisal management company services request the entity receives and the appraiser who performs the real estate appraisal activity contained in the request for:
 - (A) Not less than five years after the date of completion of the appraisal to which the record pertains; or
 - (B) For a period of not less than two years after final disposition of a judicial proceeding in which testimony relating to the records was given, whichever period expires later.

(2) Renewal applications received after the expiration date and within one year of the date of expiration of the registration shall be assessed a late fee in addition to the renewal fee.

(3) If an appraisal management company does not submit a complete renewal application within one year from the date of expiration of the registration, the status of the registration becomes terminated and the business entity must reapply pursuant to OAR 161-520-0010 and pay all applicable fees.

(4) A business entity whose registration as an appraisal management company has expired shall cease operating as an appraisal management company or providing appraisal management services until the business entity's registration is reactivated.

161-520-0040 Change Or Addition Of Subject Individual

An appraisal management company shall, within 30 business days, file with the Board, a notice of change or addition of a subject individual of the appraisal management company along with the appropriate fee. Such notification shall be in writing on a form prescribed by the Board.

DIVISION 530
CRIMINAL BACKGROUND

161-530-0010 Criminal Records Check

- (1) The Board shall conduct a criminal records check on a subject individual as a condition of issuing a registration as an appraisal management company, or when there is a change or addition of a subject individual of an appraisal management company.
- (2) The Board may require additional information from the subject individual as necessary to complete the criminal records check and fitness determination, such as, but not limited to, proof of identity; or additional criminal, judicial, or other background information.
- (3) The Board may request or conduct a Law Enforcement Data System (LEDS) criminal records check, an Oregon Criminal Records Check, a Nationwide Criminal Records Check, or any combination thereof to meet the requirements of this rule.
- (4) If a subject individual refuses to consent to a criminal records check, including fingerprint identification, the Board shall not issue a registration as an appraisal management company. A subject individual may not contest any determination made based on a refusal to consent.

161-530-0020 Information Requested From Subject Individuals

For purposes of conducting a criminal records check, a subject individual shall submit to the Board the following information:

- (1) A complete, signed copy of a criminal records request form supplied by the Board. The criminal records request form shall require the following information:
 - (a) Name;
 - (b) Birth date;
 - (c) Social Security Number;
 - (d) Driver's license or identification card number;
 - (e) Prior residency in other states;
 - (f) Any other identifying information deemed necessary by the Board.
- (2) An FD-258 standard fingerprint card published by the Federal Bureau of Investigation and completed by a law enforcement agency or a commercial fingerprinting entity.

161-530-0030 Potentially Disqualifying Crimes; Process

- (1) A "potentially disqualifying crime" means a crime that:
 - (a) Reflects moral turpitude, or an act or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others and for the laws of the state and the nation; and
 - (b) Is rationally connected to the business entity's fitness to act as a controlling person or own 10 percent or more of an appraisal management company.
- (2) The Board shall evaluate a crime on the basis of Oregon laws and, if

applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

(3) A subject individual shall not be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged under ORS 419A.260 and 419A.262.

(4) If a subject individual is denied as not fit, the business entity may not obtain a registration as an appraisal management company unless the subject individual divests all or part of the individual's ownership interest in the business entity or the business entity designates another controlling person, whichever is applicable.

(5) The Board shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via courier, or registered or certified mail to the most current address provided by the subject individual of the disqualification. Responsibility for furnishing the most current address remains with the subject individual.

(6) A final fitness determination is a final order of the Board unless the affected subject individual requests a contested case hearing under ORS Chapter 183. A subject individual may contest a fitness determination made under these rules that she or he is fit or not fit to act as a controlling person or own 10 percent or more of an appraisal management company under ORS Chapter 183.

161-530-0040 Termination Or Cancellation Of Surety Bond Or Letter Of Credit

(1) If the surety bond or letter of credit an appraisal management company maintains is terminated or cancelled, the appraisal management company shall file a replacement surety bond or letter of credit as soon as practicable or within five days of the cancellation or termination, whichever occurs sooner.

(2) An appraisal management company that does not file a replacement surety bond or letter of credit under paragraph (1) of this rule shall surrender the appraisal management company's registration and cease operating as an appraisal management company.

DIVISION 540
EMPLOYEE TRAINING

OAR 161-540-0010 Training

(1) Appraisal management companies must provide specified training to employees who:

- (a) Select appraisers for an appraiser panel;
- (b) Select appraisers to perform real estate appraisal activity; or
- (c) Perform quality control examinations.

(2) The specified training must include, but is not limited to the following topics:

- (a) 2011 Or Laws Ch. 447, § 12, 13 and 14; and
- (b) The Uniform Standards of Professional Appraisal Practice (USPAP). This topic may be broad in scope, but must at a minimum include the following elements:

- (A) Preamble
- (B) Definitions
- (C) Ethics Rule
- (D) Record Keeping Rule
- (E) Competency Rule
- (F) Scope of Work Rule
- (G) Standard 1
- (H) Standard 2
- (I) Standard 3
- (J) Advisory Opinion 3, Update of a Prior Appraisal
- (K) Advisory Opinion 26, Readdressing (Transferring) a Report to Another Party; and
- (L) Advisory Opinion 27, Appraising the Same Property for a New Client.

(3) Appraisal management companies must maintain the training records for each employee, as specified in paragraphs (1) and (2) above, not less than five years after the date of completion of the training. Employee training records must include:

- (a) The name of the employee; and
- (b) The date training was completed.

DIVISION 550
ANNUAL REPORTS

161-550-0010 Annual Reports

An appraisal management company shall annually submit to the Board on March 31 a report disclosing the following information on a form prescribed by the Board;

(1) The number of appraisals in the preceding year for which the appraisal management company performed appraisal management services in Oregon or otherwise served as a third-party broker of real estate appraisal activity in Oregon;

(2) Any action taken by a state to refuse to issue, deny, cancel or revoke a license, certification or registration to act as an appraiser or as an appraisal management company.

DIVISION 560
AUDITS

161-560-0010 Audits Required

- (1) An audit of an appraisal management company registered to provide appraisal management services in Oregon may be conducted by the Board.
- (2) In the case of a subsidiary or affiliate of a financial institution engaging in business as an appraisal management company without obtaining a registration to provide appraisal management services in Oregon, the Board may conduct an audit of the appraisal management company in a joint or alternating manner with the appropriate federal banking agency or the Bureau of Consumer Financial Protection as permitted or required by applicable law.
- (3) The Board may audit an appraisal management company at any reasonable time or times and may require the production of such records at the office of the Board as often as is reasonably necessary.
- (4) An appraisal management company that refuses to submit to an audit shall be considered to have failed the audit.

161-560-0020 Audit Standards

An audit under OAR 161-560-0010 will examine the appraisal management company's compliance with 2011 Or Laws Ch. 447, § 9 to 17, including, but not limited to, examination of the following:

- (1) The appraisal management company's system to verify the competency of appraisers on the business entity's panel meeting the minimum requirements in OAR 161-520-0020.
- (2) The names, license or certification numbers, and competency information required by OAR 161-520-0020 of the Oregon licensed or certified appraisers on the appraisal management company's appraiser panel.
- (3) Training materials used by the appraisal management company to satisfy OAR 161-540-0010.
- (4) Records of employees who received training as required by OAR 161-540-0010.
- (5) The appraisal management company's record retention schedule, consistent with 2011 Or Laws Ch. 447 and these administrative rules.
- (6) The appraisal management company's business practices and transactions that may indicate:
 - (a) The appraisal management company attempted to influence the development, reporting or review of an appraisal or appraisal review assignment, consistent with the prohibitions established in 2011 Or Laws Ch. 447, § 12.
 - (b) The appraisal management company substantively altered in any way a completed appraisal report submitted by an appraiser, consistent with the prohibition established in 2011 Or Laws Ch. 447, § 12.
 - (c) The appraisal management company failed to make payments to an independent contractor appraiser for the completion of an

appraisal or appraisal review, excluding claims for breach of contract or substandard performance, as established in 2011 Or Laws Ch. 447, § 13.

(d) The appraisal management company violated any other provision established in 2011 Or Laws Ch. 447, § 9 to 17 or these administrative rules.

DIVISION 570
ENFORCEMENT

161-570-0010 Duty to Cooperate

Every subject individual and employee of an Appraisal Management Company must cooperate with the Board and must respond fully and truthfully to Board inquiries and comply with any requests from the Board, subject only to the exercise of any applicable right or privilege. Failure to cooperate with the Board is unethical and is grounds for discipline including revocation or suspension of a registration, imposition of a civil penalty, or denial of a registration, or any combination thereof.