

**TITLE 600. REAL ESTATE APPRAISER BOARD**  
**CHAPTER 35. APPRAISAL MANAGEMENT COMPANY ENFORCEMENT**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Chapter 600:35 Appraisal Management Company Enforcement [NEW]
- 600:35-1-1. Purpose [NEW]
- 600:35-1-2. Definitions [NEW]
- 600:35-1-3 Conduct [NEW]
- 600:35-1-4. Complaints [NEW]
- 600:35-1-5. Complaint procedures [NEW]
- 600:35-1-6 Formal complaint [NEW]
- 600:35-1-7. Notice of disciplinary proceedings [NEW]
- 600:35-1-8. Pre-hearing matters [NEW]
- 600:35-1-9 Subpoenas and subpoenas duces tecum [NEW]
- 600:35-1-10. Disciplinary proceedings [NEW]
- 600:35-1-11. Burden of proof, standard of proof [NEW]
- 600:35-1-12. Right to counsel [NEW]
- 600:35-1-13 Rules of evidence [NEW]
- 600:35-1-14. Failure to appear [NEW]
- 600:35-1-15. Oral argument before the Board [NEW]
- 600:35-1-16 Rehearing, reopening or reconsideration of Board decision [NEW]
- 600:35-1-17. Record of hearing [NEW]
- 600:35-1-18. Request for declaratory ruling [NEW]
- 600:35-1-19 Request for rule adoption, amendment or repeal [NEW]
- 600:35-1-20. Severability provision [NEW]

**SUMMARY:**

The proposed new rules are required to replace emergency rules placed into effect to allow for implementation of the Oklahoma Appraisal Management Company Regulation Act. The Act and the emergency rules were effective on January 1, 2011. These rules set forth required administrative guidance on enforcement of the requirements set forth for Appraisal Management Companies.

**AUTHORITY:**

Real Estate Appraiser Board, 59 O.S. § 858-829.

**COMMENT PERIOD:**

Persons may submit written or oral comments to Rod Stirman at the offices of the Real Estate Appraiser Board, Oklahoma Insurance Department, 5 Corporate Plaza, 3625 NW 56th St, Ste 100, Oklahoma City, Oklahoma 73112 during the period November 15, 2010 to December 24, 2010.

**PUBLIC HEARING:**

A public hearing will be held at 9:30 a.m. on January 7, 2011, in the offices of the Insurance Commissioner of Oklahoma at 5 Corporate Plaza, 3625 NW 56th St, Ste 100, Oklahoma City, Oklahoma 73112.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the Board with information, in dollar amounts if possible, about any increases in the level of direct costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Rod Stirman at the above address during the period during the period November 15, 2010 to December 24, 2010.

**COPIES OF PROPOSED RULES:**

Copies of proposed rules are available at the Offices of the Real Estate Appraiser Board, Oklahoma Insurance Department at 5 Corporate Plaza, 3625 NW 56th St, Ste 100, Oklahoma City, Oklahoma 73112. Copies of proposed rules may also be obtained by written request to the attention of Rod Stirman, Real Estate Appraiser Board, PO Box 53408, Oklahoma City, OK 73152. A copy of the proposed rules is posted on the Real Estate Appraiser Board website, [www.reab.oid.ok.gov](http://www.reab.oid.ok.gov).

**RULE IMPACT STATEMENT:**

Copies of the Rule Impact Statement may be obtained at the Offices of the Real Estate Appraiser Board, Oklahoma Insurance Department at 5 Corporate Plaza, 3625 NW 56th St, Ste 100, Oklahoma City, Oklahoma 73112.

**CONTACT PERSON:**

Rod Stirman, Director, (405) 521-6636.

## CHAPTER 35. APPRAISAL MANAGEMENT COMPANY ENFORCEMENT

### Section

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- 600:35-1-20. Severability provision

[**Authority:** 59 O.S. § 858-829]

[**Source:** Codified \_\_\_\_\_]

### **600:35-1-1. Purpose**

The purpose of this chapter is to set forth the administrative procedures for disciplinary proceedings conducted pursuant to the Oklahoma Appraisal Management Regulation Act and the Oklahoma Administrative Procedures Act, 75 O.S. § 250 et seq.

### **600:35-1-2. Definitions**

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“**Appraisal Management Company**” or “**AMC**” means an entity that is required by the Oklahoma Appraisal Management Company Regulation Act, 59 O.S. § 858-801 et seq., to register with the Oklahoma Real Estate Appraiser Board.

“**Appraisal Subcommittee**” or “**ASC**” means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

“**Appraiser**” means an individual person who holds a credential as a Trainee Appraiser, State Licensed Appraiser, State Certified Residential Appraiser, or State Certified General Appraiser; or a valid temporary practice permit issued by the Board entitling that individual person to perform an appraisal of real property in the State of Oklahoma consistent with the scope of practice identified in the Real Property Appraiser Qualification Criteria promulgated by the Appraiser Qualification Criteria promulgated by the Appraiser Qualification Board of The Appraisal Foundation.

“**Board**” or “**OK REAB**” means the Oklahoma Real Estate Appraiser Board.

“**Controlling Person**” means one or more of the following:

(a) an owner, officer, manager, or director of a corporation, partnership, firm, association, limited liability company, or other business entity seeking to offer appraisal management services in this state,

- (b) an individual employed, appointed, or authorized by an AMC that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals, or
- (c) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an AMC.

“Designated Officer” means a Controlling Person authorized by the governing structure of the AMC in the manner contemplated by 59 O.S. § 858-810 (A) to act on its behalf in the manner contemplated by 59 O.S. § 858-810 for purposes of application for, and compliance with, a Certificate of Registration to operate as an Appraisal Management Company pursuant to Oklahoma law. The Designated Officer shall be responsible for supervision and control of activities conducted on behalf of the AMC by its officers and employees as necessary to secure full compliance with the provisions of the Oklahoma AMC Regulation Act (59 O.S. § 858-801 et seq.), including contract services provided to the AMC for the performance of appraisal activities for which an Oklahoma Real Estate Appraiser Board credential is required.

“Director” means the Director of the Oklahoma Real Estate Appraiser Board or his or her designee.

“FIRREA” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73, and any amendments thereto.

“Hearing Examiner” means an individual appointed as such by a Board order. Hearing examiners shall be individuals who are duly licensed to practice law by the Supreme Court of Oklahoma.

“Probable Cause Committee” means the Probable Cause Committee set forth by 600:15-1-2.

“Registrant” means a person or entity authorized to conduct business as an AMC in Oklahoma memorialized by issuance of a Certificate of Registration by the Board.

“RESPA” means the federal Real Estate Settlement Procedures Act codified in 12 U.S.C and any amendments thereto.

“Respondent” means a Registrant, Controlling Person, or Designated Officer against whom a complaint has been received or a complaint filed and not finally resolved.

“TILA” means the Truth in Lending Act of 1968 (15 USC 1631 et seq.) and any amendments thereto.

### **600:35-1-3. Conduct**

(a) It is the finding and declaration of the Oklahoma Real Estate Appraiser Board that registered Appraisal Management Companies are vested with a relationship of trust and confidence with respect to their relationships with their clients, lending institutions, both public and private guarantors or insurers of funds in real estate related transactions, and to the public interest; and that accordingly, the qualifications of honesty, candor, integrity, and trustworthiness are directly and substantially related to and indispensable to the conduct of their business operations.

(b) Every holder of an Appraisal Management Company registration, every Controlling Person, and every Designated Officer shall demonstrate by his or her conduct that he or she possesses the qualifications of honesty, candor, integrity, and trustworthiness.

(c) Every registered Appraisal Management Company, its Controlling Persons, and Designated Officer shall comply fully with the Oklahoma Appraisal Management Company Regulation Act, the rules promulgated thereunder, and with all other applicable federal and state statutes including but not limited to FIRREA, TILA and RESPA.

### **600:35-1-4. Complaints**

A complaint may be filed with the Board against an Appraisal Management Company, a Controlling Person, or a Designated Officer on a form approved by the Board or by other means of transmitting such allegations and supporting documents by any aggrieved person. Such complaints must be in writing and must be signed by the complainant. In addition, where reasonable cause exists, a complaint may be brought directly by the Board.

### **600:35-1-5. Complaint procedure**

(a) Upon receipt of a complaint against an AMC, a Designated Officer, or a Controlling Person, the Director shall cause a complete copy of such complaint to be forwarded to the applicable Designated Officer by Certified Mail, Return Receipt Requested. The copy of the complaint shall be transmitted by a letter giving the Respondent ten (10) calendar days following receipt of the complaint to respond to the allegations contained therein.

(b) The Probable Cause Committee shall meet as required by the volume of complaints received and shall prepare and present a recommendation to the Board summarizing each complaint received and making a recommendation to the Board as to disposition of the complaint.

(c) The Probable Cause Committee may cause such investigation to be conducted as it may require in the preparation of its recommendation.

(d) The Director shall cause records of meeting attendance and summaries of complaints including individual votes to be prepared and furnished to the Board for consideration and action at the next subsequent Board meeting.

#### **600:35-1-6. Formal complaint**

(a) If, in the determination of the Board, the complaint set forth in the summary and recommendation of the Probable Cause Committee appears to warrant such action, the Board shall adopt a formal complaint and the Director shall transmit the complaint to a Prosecuting Attorney.

(b) The Prosecuting Attorney may select one or more members of the Board's Standards and Disciplinary Procedures Committee or a person designated by the Director to assist in preparation of a Notice of Disciplinary Proceedings and presentation of the matter at any such proceeding or in any negotiations for an agreed settlement.

#### **600:35-1-7. Notice of Disciplinary Proceedings**

(a) The Prosecuting Attorney shall prepare a Notice of Disciplinary Proceedings and transmit said notice to the Director. The Director shall set the date, time, and place for the proceedings and shall cause such notice to be served on the Respondent's Designated Officer at the last address reported to the Board by certified mail, return receipt requested.

(b) The Notice of Disciplinary Hearing shall include, but is not limited to, the following:

- (1) a statement of the time, place and nature of the hearing,
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be conducted,
- (3) a statement of the allegations,
- (4) a reference to the particular sections of statutes or rules involved, and
- (5) the identity of the Hearing Examiner appointed to hear the complaint.

(c) Service of the Notice of Disciplinary Proceedings shall be made by not less than thirty (30) days prior to the date and time of the proceedings.

(d) The hearing may be rescheduled by the Director at a different time, date or location with proper written notice of such change given to all parties. Motions for continuance must be filed in the administrative office of the Board by not less than ten (10) days prior to the date and time of the proceeding.

#### **600:35-1-8. Pre-hearing matters**

The Board may utilize counsel to the Board as a hearing officer to hear prehearing matters specified by the Board.

(a) The duties assigned to Board counsel may include, but are not limited to, any of the following:

- (1) to hear and rule on pretrial discovery disputes;
- (2) to hear and rule on Motions in Limine;
- (3) to review Motions to Dismiss in order to advise the Board on questions of law arising therein;
- (4) to hear and rule on Motions for Continuance of a hearing;
- (5) to hear and rule on other preliminary motions;
- (6) to hear and rule on motions to have a Hearing Examiner recused from a hearing;
- (7) to mark, identify, and admit or deny exhibits; and

(8) to rule upon objections made during the hearing.

(b) Any pretrial motions, including discovery motions, motions to dismiss, and motions for continuance, shall be filed at the administrative office of the Board no less than ten (10) days before the date that any hearing in the proceeding is scheduled.

**600:35-1-9. Subpoenas and subpoenas duces tecum**

(a) In all cases where a party desires to have subpoenas or subpoenas duces tecum issued to compel the attendance of witnesses, or production of documents, a written request shall be filed with the administrative office of the Board by such party or his attorney, and directed to the Director or the Director's designee. The request shall specify the witness by name and address; and shall identify any documents to be subpoenaed. The request shall acknowledge that any expense associated with the subpoena process shall be paid by the party requesting the subpoena, including travel expense and daily attendance fees, in the amount as set by statute for other civil matters, at the time of the service of such subpoena.

(b) The Director shall cause such subpoenas to be issued and mailed in conformity with said written requests; provided, that in said subpoena the witnesses named therein shall be advised that they may demand their travel fees and daily attendance fees from the party, or his representative; and that neither the Board nor the State of Oklahoma shall be responsible for any traveling fees, daily attendance fees, or other expenses incurred by such witness in attending any proceeding.

(c) All requests for subpoenas and subpoenas duces tecum shall be filed with the Director or the Director's designee, by mail or otherwise, no later than ten (10) days prior to the date of the proceeding at which the presence of any such witness or documents would be required.

(d) A party requesting issuance of subpoenas and subpoenas duces tecum shall be responsible for obtaining service and for the cost of that service.

**600:35-1-10. Disciplinary proceedings**

(a) Disciplinary proceedings shall be conducted by a Hearing Examiner who shall be appointed by Board order and assigned to an individual matter by the Director.

(b) When the record is closed and submitted for a proposed decision, the Hearing Examiner shall issue proposed Findings of Fact, Conclusions of Law and Disciplinary Recommendations to the Board for its consideration and final order. Interested parties shall receive copies of the Hearing Examiner's proposed decision by certified mail. The Findings of Fact, Conclusions of Law and Disciplinary Recommendations shall include a statement of facts, the issues and contentions, conclusions based on the findings of fact and applicable law, and recommendation to the Board for issuance of the final order.

(c) Upon request of the parties, the Hearing Examiner may permit the parties to submit proposed Findings of Fact, Conclusions of Law and Disciplinary Recommendations which may be adopted by the Examiner.

(d) Disciplinary proceedings shall be open to the public. Witnesses may be excluded upon proper invocation of the witness exclusion rule by any party or the Hearing Examiner.

**600:35-1-11. Burden of proof, standard of proof**

(a) The burden of proof shall be upon the Board in all disciplinary proceedings.

(b) The standard of proof shall be by clear and convincing evidence.

**600:35-1-12. Right to counsel**

(a) At all times during a disciplinary proceeding any party shall have the right to counsel provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he represents.

(b) In order to be recognized as counsel for respondent, such counsel shall file a written entry of appearance with the Director.

**600:35-1-13. Rules of evidence**

(a) The Hearing Examiner shall admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs.

(1) The Hearing Examiner shall give effect to the rules of privilege recognized by law in respect to:

(A) self-incrimination;

(B) confidential communications between husband and wife during the subsistence of the marriage relation;

(C) communication between attorney and client, made in that relation;

(D) confessions made to a clergyman or priest in his professional capacity in the course of discipline enjoined by the church to which he belongs;

(E) communications made by a patient to a licensed practitioner of one of the healing arts with reference to any physical or supposed physical disease or of knowledge gained by such practitioner through a physical examination of a patient in a professional capacity;

(F) records and files of any official or agency of any state or of the United States which, by any statute of such state or of the United States are made confidential and privileged.

(2) No greater exclusionary effect shall be given any such rule or privilege than would obtain in action in court. The Hearing Examiner may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) Documentary evidence may be received in the form of copies, if the original is not readily available, or excerpts if such originals contain voluminous, irrelevant or extraneous material. Upon request, parties shall be given an opportunity to compare the copy with the original.

(c) A party may conduct cross-examinations required for a full and true disclosure of the facts.

(d) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Hearing Examiner's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Hearing Examiner's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

#### **600:35-1-14. Failure to appear**

If either the Respondent or the Board fails or refuses to appear without good cause, the Hearing Examiner may, if no continuance is granted, either enter a default decision or proceed with the formal hearing and determine the matter in the absence of the party.

(1) Default decision.

(A) Any party may move for default against a party who has failed to appear after proper service.

(B) As a consequence of the default, the allegations against a non-appearing Respondent may be deemed admitted and an appropriate sanction recommended, within the Hearing Examiner's discretion. If the non-appearing Party is the Board, the Hearing Examiner may recommend that the complaint be dismissed with prejudice.

(C) A motion to vacate a default decision may be filed with the Board along with or in lieu of a request for oral argument before the Board within the time period specified for requests for oral argument in Board Rule 600:35-1-15.

(D) Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof shall be on the moving party.

(E) "Good cause" for the purpose of this rule means lack of notice in accordance with the Administrative Procedures Act, the Oklahoma Appraisal Management Company Regulation Act, or the rules promulgated pursuant thereto, excusable neglect or unavoidable casualty.

(F) A decision by the Board denying a motion to vacate and the Board's ground(s) therefore shall be included with its final order on the merits issued in accordance with 600:15-1-17 and is subject to review in accordance with the Administrative Procedures Act and Oklahoma Certified

Real Estate Appraisers Act and the rules promulgated pursuant thereto.

(2) If the Hearing Examiner decides to proceed with the formal hearing in the absence of any party, the Hearing Examiner shall render a recommendation based upon presentation and consideration of evidence and argument on all issues involved, and any such recommendation shall not be considered a default decision.

(3) In lieu of personally appearing, a Respondent, unless issued a subpoena to appear at the hearing, may submit a written statement, subject to the following requirements:

(A) The statement shall be filed in the administrative office of the Board at least (7) days prior to the hearing date;

(B) The statement shall be notarized;

(C) The Respondent shall acknowledge in the statement that Respondent received notice of the hearing and, that by not personally appearing, the Respondent is waiving the right to cross-examine witnesses, rehabilitate his or her statement, or present further evidence on his or her own behalf.

#### **600:35-1-15. Oral argument before the Board**

(a) Within fifteen (15) days following mailing of the Proposed Findings of Fact, Conclusions of Law and Recommendations of the Hearing Examiner, the aggrieved party may file an application for oral argument before the Board. Oral argument shall be limited to the Recommended Discipline of the Hearing Examiner.

(b) If such application for oral argument is received, the Director shall set a date, time and place for the hearing and notice shall be given to each side by certified mail no less than thirty (30) days prior to the hearing. Respondent's typewritten brief shall be submitted to the Board no less than twenty (20) days prior to such hearing. Petitioner's typewritten brief shall be submitted to the Board no less than ten (10) days prior to the hearing. Deadlines may be extended by the Director upon good cause shown. If the respondent fails to apply for oral argument or file a brief in a timely manner, the Board may consider respondent to have waived the opportunity for oral argument. Time limits for oral arguments will be set by the Board at the time of the hearing.

(c) The Board shall issue the final order in each case whether or not application for oral argument is made. The Board may, in its discretion, vacate, modify, or affirm, in part or whole, the proposed decision of the Hearing Examiner.

(d) In the event no request for oral argument is made by the Respondent within the fifteen (15) day period, a final order consistent with the Hearing Examiner's findings, conclusions and recommendations shall be presented to the Board for approval, or in its discretion, vacation or modification; and following approval, copies will be mailed to the Respondent. The Board may, on its own motion, require oral argument before the Board.

#### **600:35-1-16. Rehearing, reopening or reconsideration of Board decision**

(a) An order issued by the Board shall be subject to rehearing, reopening or reconsideration by the Board within ten (10) days of the date of its entry. The grounds for such action shall be either:

(1) newly discovered or newly available evidence, relevant to the issues;

(2) need for additional evidence adequately to develop the facts essential for a proper decision;

(3) probable error committed by the Hearing Examiner or the Board in the proceeding or in its decision that would be grounds for reversal on judicial review of the order;

(4) need for further consideration of the issues and the evidence in the public interest; or

(5) a showing that issues not previously considered should be examined in order to properly dispose of the matter.

(b) The order of the Board granting rehearing, reconsideration or review, or the petition of a party therefore, shall set forth the grounds which justify such action. Nothing in the chapter shall prevent rehearing, reopening or reconsideration of a matter by the Board in accordance with other statutory provisions applicable to the Board, or, at any time, on the grounds of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration,

reopening or rehearing, the matter may be heard by the Board, or it may be remanded to the Hearing Examiner. Any such hearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered. If an application for rehearing is timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

**600:35-1-17. Record of hearing**

- (a) A record by means of electronic recording of the hearing shall be made of all disciplinary hearings.
- (b) A person affected by the hearing may cause, at such person's expense, a transcript of the proceedings to be prepared or a full stenographic record of the proceedings to be made by a competent court reporter.
- (c) If transcribed, such transcript shall be part of the record of the hearing and a copy shall be furnished to any third party having a direct interest therein at the request and expense of such party.
- (d) The record of the hearing and the file containing the pleadings shall be maintained in a place designated by the Board. The tape recording of the proceedings shall be maintained until the time for appealing the final Board order has run.
- (e) The record of an individual proceeding shall include:
  - (1) all pleadings, motions and intermediate rulings;
  - (2) evidence received or considered;
  - (3) a statement of matters officially noticed;
  - (4) questions and offers of proof, objections, and rulings thereon;
  - (5) proposed findings and exceptions;
  - (6) any decision, opinion, or report by the Hearing Examiner presiding at the hearing;
  - (7) all disciplinary procedures, memoranda or data submitted to the Hearing Examiner or members of the Board in connection with their consideration of the case.

**600:35-1-18. Request for declaratory ruling**

Any person who may be affected by the existence of any of these public rules set forth by this chapter may request in writing an interpretation or ruling regarding the application of such rule to the facts furnished with the inquiry. Any such request shall state fully the facts concerning the rule which may apply, and the particular rules about which the question exists. The request or inquiry will be assigned to the Board for review. Thereafter, the Board shall make a final determination of the interpretation or ruling. The Board's interpretation of the rule shall be furnished in writing to the person making the request, within a reasonable time.

**600:35-1-19. Request for rule adoption, amendment or repeal**

All interested persons may ask the Board to promulgate, amend or repeal a rule; such requests will be in writing and filed with the Department. The request shall specify reasons for its submission, the alleged need or necessity for the change, whether or not the proposed change will conflict with any existing rule, and what, if any, statutory provisions are involved. If the Board approves the proposed change, notice shall be given that such proposal will be formally considered for adoption. If, however, the Board determines that the proposal or request is not appropriate, the change shall be denied and the decision reflected in the records of the Board. A copy will be sent to the interested person who submitted the request.

**600:35-1-20. Severability provision**

If any provision of this chapter, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the chapter, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.