

Report From Agency

**STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 18-102
DEPARTMENT OF SAFETY :
AND PROFESSIONAL SERVICES :

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

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

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

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Department of Safety and Professional Services held a public hearing on February 12, 2019. The Department received written comments from Mark Schiffman on behalf of the Real Estate Valuation Advocacy Association (REVAA). While in support of the proposed rule, the REVAA requested 4 modifications. The requested modifications to the proposed rule and the Department's responses are summarized below.

Section SPS 88.120 (6): The REVAA indicates this provision sets a lower standard than for appraisers, and requests the proposed rule be modified to include a "knowingly standard" by which an appraisal management company would need to knowingly make a false or misleading representation about an appraisal.

The Department did not modify the proposed rule in response to this comment. A “knowingly standard” puts an undue burden on the Department to prove state of mind. In addition, an appraisal management company has the ability to argue that a representation was not knowingly made and does not warrant discipline.

Section SPS 88.120 (8): The REVAA indicates the prohibition on revealing confidential information should only apply if the disclosure is made knowingly, and requests the proposed rule be modified to accommodate this change.

The Department did not modify the proposed rule in response to this comment. A “knowingly standard” puts an undue burden on the Department to prove state of mind. In addition, an appraisal management company has the ability to argue that a disclosure was not knowingly made and does not warrant discipline.

Section SPS 88.120 (9): The REVAA requests the 30 day deadline for reporting disciplinary action be modified to 30 business days.

The Department did not modify the proposed rule in response to this comment. The Department believes 30 days is a reasonable amount of time within which to report disciplinary action.

Section SPS 88.120 (10): The REVAA indicates 48 hours is an unreasonably short time frame to report a felony or misdemeanor conviction, and requests the proposed rule be modified to mirror other states by allowing between 10 and 30 business days to report this information.

The Department did not modify the proposed rules in response to this comment. The 48-hour deadline is based on the requirements under s. SPS 4.09 (2), which apply to over 70 credentials for which the Department provides legal services.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 2:

The Department does not currently have more detailed requirements for licensure of real estate appraisal management companies.

All other Legislative Council recommendations have been incorporated into the proposed rule.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

N/A