

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

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

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**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

STATE OF WISCONSIN  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY  
DEPARTMENT OF SAFETY AND : AND PROFESSIONAL SERVICES  
PROFESSIONAL SERVICES : ADOPTING RULES  
: (CLEARINGHOUSE RULE 18-102)

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PROPOSED ORDER

An order of the Department of Safety and Professional Services to create ch. SPS 88, relating to real estate appraisal management companies.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Sections 458.37 (4), 458.39 (2), and 458.44 (3) (b), Stats.

**Statutory authority:**

Sections 458.33 (2) (c) and 458.46, Stats.

**Explanation of agency authority:**

Section 458.33 (2) (c), Stats., requires the department to promulgate rules "... that require an applicant for a license under this subsection to demonstrate that the applicant is qualified to competently perform appraisal management services in compliance with all applicable state and federal laws."

Section 458.46, Stats., requires the department to "... promulgate rules to implement this subchapter, including, to the extent the department, in consultation with the board, deems necessary, rules establishing standards of professional conduct for licensed appraisal management companies exempt from licensure under s. 458.34 (2)."

**Related statutes or rules:**

None.

**Plain language analysis:**

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.

**Summary of, and comparison with, existing or proposed federal statutes and regulations:**

The Dodd-Frank Wall Street Reform and Consumer Protection Act added section 1124 to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. This section establishes minimum requirements to be applied by states in the registration and supervision of appraisal management companies. Specifically, pursuant to section 1124(a), participating states must require that appraisal management companies (1) register with, and be subject to supervision by, the state appraiser certifying and licensing agency in the state or states in which the company operates; (2) verify that only state-certified or state-licensed appraisers are used for federally related transactions; (3) require that appraisals comply with the Uniform Standards of Professional Appraisal Practice; and (4) require that appraisals are conducted in accordance with the statutory valuation independence standards pursuant to the Truth in Lending Act (15 U.S.C. 1639e) and its implementing regulations. An appraisal management company that is a subsidiary owned and controlled by an insured depository institution and regulated by a federal financial institutions regulatory agency is subject to all of the minimum requirements, except the requirement to register with a state.

The regulations in the proposed rules will comply with the above requirements.

**Comparison with rules in adjacent states:**

**Illinois:**

The Illinois Administrative Code [68 Ill. Adm. Code 1452] implements the Appraisal Management Company Registration Act [225 ILCS 459] and provides for the regulation of appraisal management companies. The rules, which are administered by the Illinois Department of Financial and Professional Regulation, include the requirements for an application for original registration [68 Ill. Adm. Code 1452.20] and identify acts that constitute dishonorable, unethical, or unprofessional conduct for purposes of disciplinary and non-disciplinary action against a registration [68 Ill. Adm. Code 1452.190].

**Iowa:**

The Iowa Administrative Code [187 IAC 25] implements the Iowa Appraisal Management Company Registration and Supervision Act [Iowa Code chapter 543E] and provides for the regulation of appraisal management companies. The rules, which are administered by the Division of Banking of the Iowa Department of Commerce, include the requirements for an application for registration [187 IAC 25.2] and identify acts that constitute grounds for disciplinary sanctions against a registration [187 IAC 25.11].

**Michigan:**

The Michigan Statutes [MCL 339.2661 to 339.2677, as created by Public Act 505 of 2012] provide for the regulation of appraisal management companies. The statutes, which are administered by the Michigan Department of Licensing and Regulatory Affairs, include the requirements for an application for licensure [MCL 339.2665] and identify conduct subject to penalties [MCL 339.2675].

**Minnesota:**

The Minnesota Statutes, Chapter 82C, provides for the regulation of appraisal management companies. The statutes, which are administered by the Minnesota Department of Commerce, include the requirements for an application for licensure [Minnesota Statutes, Section 82C.03] and identify unlawful conduct [Minnesota Statutes, Section 82C.14].

**Summary of factual data and analytical methodologies:**

The proposed rules were developed by reviewing subch. III of ch. 458, Stats., as created by 2017 Wisconsin Act 113, which provides for the regulation of real estate appraisal management companies, and other states' statutes and administrative rules concerning the regulation of real estate appraisal management companies.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:**

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis document is attached.

**Effect on small business:**

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

**Agency contact person:**

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone (608) 261-4472; email at DSPSAdminRules@wisconsin.gov.

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 9:00 a.m. on February 12, 2019, to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. Chapter SPS 88 is created to read:

CHAPTER SPS 88  
REAL ESTATE APPRAISAL MANAGEMENT COMPANIES

**SPS 88.100 Definitions.** In this chapter:

- (1) "Board" means the real estate appraisers board.
- (2) "Department" means the department of safety and professional services.

**SPS 88.110 Licensure.** The department shall issue a license to a real estate appraisal management company that does all of the following:

- (1) Submits to the department an application that meets the requirements under s. 458.33 (1), Stats.
- (2) Pays the initial credential fee required under s. 458.33 (2) (b), Stats.
- (3) Demonstrates, to the satisfaction of the department, the company is qualified to competently perform appraisal management services in compliance with all applicable state and federal laws.

**Note:** An application for licensure is available on the department's website at [dsps.wi.gov](http://dsps.wi.gov).

**SPS 88.120 Unprofessional and unethical conduct.** For purposes of s. 458.44 (3) (b), Stats., unprofessional or unethical conduct of an applicant or licensed appraisal management company or a controlling individual of an applicant or licensed appraisal management company includes any of the following:

- (1) Refusing upon request to comply in a timely manner with an audit of records under s. 458.39 (2), Stats. There is a rebuttable presumption that a real estate appraisal management company that takes longer than 10 business days to respond to a request by the department for records or other information related to an audit has not acted in a timely manner under this subsection.
- (2) Knowingly providing false or misleading information in a notification under s. 458.43 (1) (a) or (b), Stats.
- (3) Failing to reinstate an appraiser upon order of the department under s. 458.43 (2) (c), Stats.
- (4) Refusing to assign appraisal services to, or otherwise penalizing or retaliating against, an appraiser who has been reinstated under s. 458.43 (2) (c), Stats.
- (5) Willfully failing to file a report or record required by the department or under state or federal law, willfully impeding or obstructing the filing of such a report or record or inducing another person to impede or obstruct such filing by another person, or making or filing such a report or record that is known to be false.
- (6) Making a false or misleading representation concerning the results of an appraisal.
- (7) Obtaining or attempting to obtain compensation for appraisal management services by fraud, including billing for services not rendered.
- (8) Revealing confidential information concerning an appraiser or client without consent, except as required or authorized by law.

(9) Failing to notify the department in writing within 30 days of any disciplinary action against a license or other credential to act as a real estate appraisal management company in any jurisdiction.

(10) Failing to notify the department in writing of the date, place, and nature of a felony or misdemeanor conviction or finding in any jurisdiction within 48 hours after the entry of the felony or misdemeanor judgement or conviction.

(11) Failing to cooperate in a timely manner with an investigation of a complaint filed against the real estate appraisal management company. There is a rebuttable presumption that a real estate appraisal management company that takes longer than 10 business days to respond to a request by the board or department for information related to a complaint has not acted in a timely manner under this subsection.

(12) Having a license or other credential to act as a real estate appraisal management company in any state denied, refused, canceled, revoked, or surrendered in lieu of revocation, unless the license or other credential was later granted or reinstated.

(13) Any other act that demonstrates to the department a lack of good moral character.

SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

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(END OF TEXT OF RULE)

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This Proposed Order of the Department of Safety and Professional Services is approved for submission to the Governor and Legislature.

Dated

March 18, 2019

Agency

Dawn B. Orr  
Secretary

Department of Safety and Professional Services

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date December 11, 2018</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) SPS 88</p>	
<p>4. Subject Real estate appraisal management companies</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input checked="" type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect   <input type="checkbox"/> Increase Existing Revenues   <input checked="" type="checkbox"/> Increase Costs   <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy   <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule 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.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole. The Department estimates one-time administrative costs of \$80.67. These costs may be absorbed in the agency budget.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is the statutorily required regulation of real estate appraisal management companies. The alternatives of either partially updating or not updating these rules would be less beneficial to real estate appraisal management companies and their clients.</p>	

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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16. Long Range Implications of Implementing the Rule  
The long range implication of implementing the rule is the statutorily required regulation of real estate appraisal management companies.

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17. Compare With Approaches Being Used by Federal Government  
None

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

**Illinois:**

The Illinois Administrative Code [68 Ill. Adm. Code 1452] implements the Appraisal Management Company Registration Act [225 ILCS 459] and provides for the regulation of appraisal management companies. The rules, which are administered by the Illinois Department of Financial and Professional Regulation, include the requirements for an application for original registration [68 Ill. Adm. Code 1452.20] and identify acts that constitute dishonorable, unethical, or unprofessional conduct for purposes of disciplinary and non-disciplinary action against a registration [68 Ill. Adm. Code 1452.190].

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19. Contact Name

Dale Kleven

20. Contact Phone Number

(608) 261-4472

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
  - Less Stringent Schedules or Deadlines for Compliance or Reporting
  - Consolidation or Simplification of Reporting Requirements
  - Establishment of performance standards in lieu of Design or Operational Standards
  - Exemption of Small Businesses from some or all requirements
  - Other, describe:
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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
-