

TITLE 30: PROFESSIONS AND OCCUPATIONS
Part 1503: Appraisal Management Companies

Part 1503 Chapter 1: Definitions

Rule 1.1 Definitions. As used in these rules, the following words and terms shall have the following meaning:

- A. **“Applicant”** means any person or entity who has applied for a Certificate of Registration as an Appraisal Management Company (AMC) with the Mississippi Real Estate Appraiser Licensing and Certification Board (MAB).
- B. **“Appraisal Management Company “ or “AMC”** means any person or entity defined in Miss. Code Ann. § 73-34-3(m), required to register with MAB under the Mississippi Appraisal Management Company Registration Act.
- C. **“Appraiser”** means an individual person who currently holds a current valid Mississippi license as a state Licensed Real Estate Appraiser, a state Licensed Certified Residential Real Estate Appraiser or a state Licensed Certified General Real Estate Appraiser; or an out of state certified or licensed appraiser who holds a current valid temporary practice permit issued by the MAB entitling that individual person to perform an appraisal of real property in the State of Mississippi consistent with the scope of practice identified in the Real Property Appraiser Qualification Criteria promulgated by the Appraiser Qualifications Board of the Appraisal Foundation.
- D. **“Board” or “MAB”** means the Mississippi Real Estate Appraiser Licensing and Certification Board.
- E. **“Certificate of Registration”** means a certificate issued by the MAB verifying the registration of a person or entity as being approved to conduct business in the State of Mississippi as an AMC.
- F. **“Commission” or “MREC** means the Mississippi Real Estate Commission.
- G. **“Controlling Person”** means one or more of the following:
 - 1. An officer or director, or an owner of greater than a (10%) interest of a corporation, partnership, or other business entity, seeking to offer Appraisal Management Company services in this state;
 - 2. 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
 - 3. An individual who possesses, directly or indirectly, the power to direct or

cause the direction of the management or policies of an AMC.

- H. **“Designated Officer”** means a Controlling Person who is an employee of the AMC authorized by the governing structure of the AMC to act on its behalf for the purposes of application for, and compliance with, a Certificate of Registration to operate as an Appraisal Management Company, as further set forth pursuant to the Board’s laws, rules and regulations.
- I. **“Federally related transaction”** means any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of an appraiser.
- J. **“Federal financial institutions regulatory agencies”** means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.
- K. **“Registrant”** means any person or entity authorized to conduct business as an AMC in Mississippi memorialized by issuance of a Certificate of Registration by the MAB.
- L. **“Registration”** means the procedure and requirements with which a person or entity shall comply in order to qualify to conduct business as an AMC in the State of Mississippi.
- M. **“Uniform Standards of Professional Appraisal Practice”** means the current standards of the appraisal profession, developed for appraisers and users of appraisal services by the Appraisal Standards Board of the Appraisal Foundation.
- N. **“USPAP”** means the Uniform Standards of Professional Appraisal Practice.

Source: Miss. Code Ann. §§ 73-34-3, 73-34-103(1) & 73-34-111 (Rev. 2012).

Part 1503 Chapter 2: Registration

Rule 2.1 Certificates of Registration

- A. Each Certificate of Registration issued by the MAB shall indicate on its face in clear and concise language the following information:
 - 1. The name of the holder;
 - 2. The Certificate of Registration number;
 - 3. The dates of issuance and expiration of the document; and
 - 4. Shall bear the signature of the Administrator of the Board.

- B. Each Certificate of Registration shall be valid for the term set forth on the face of the Certificate unless otherwise ordered by the Board. Each Certificate of Registration shall remain the property of the MAB and shall be surrendered to the MAB upon order of the Board.

- C. Every Certificate of Registration shall be valid for a period of one (1) year from the date of issuance unless otherwise ordered by the Board.

- D. An Appraisal Management Company shall not be registered, nor may it be placed on the national registry, if such entity is:
 - 1. Owned in whole or in part, directly or indirectly, is owned, by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked by any appraiser credentialing jurisdiction; or
 - 2. Owned by more than ten percent (10%) by a person who is not of good moral character as set forth in Miss. Code Ann. § 73-34-109(1)(b).

Source: Miss Code Ann. §§ 73-34-25, 73-34-123 & 73-34-109(1) (Rev. 2012).

Rule 2.2 Application Process

- A. An applicant for a Certificate of Registration as an Appraisal Management Company (AMC) shall apply by submitting a written application on the Board's prescribed form and shall be subject to approval by the Board. Applicant shall fully and accurately report all information and submit all documentation required by the application and the Board.

- B. Applications for initial registration as an AMC shall include, at a minimum, the following information:
 - 1. The name, business address, phone number and other contact information for the applicant;

2. Fictitious name or names under which applicant does business in any state;
 3. Branch offices at which applicant will conduct business in this state;
 4. If the applicant is not a corporation that is domiciled in this state, the name and contact information for the applicant's agent for service of process in this state;
 5. The name, address, and contact information for any individual or business entity that owns ten percent (10%) or more of the applicant AMC;
 6. The name, address and contact information for the individual designated as the Designated Officer;
 7. A certification that the applicant AMC has a system in place to verify that a person being added to the appraiser panel of the AMC holds a license in good standing by the Mississippi Real Estate Appraiser Licensing and Certification Board, if a license is required to perform appraisals;
 8. A certification that the applicant AMC requires appraisers completing appraisals at its request to comply with the Uniform Standards of Professional Appraisal Practice (USPAP), including the requirements for geographic and product competence;
 9. A certification that the applicant AMC has a system in place to verify only licensed or certified appraisers are used for federally related transactions;
 10. A certification that the applicant AMC has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under Section 129E of the Truth in Lending Act, including the requirements for payment of a reasonable and customary fee to appraisers when the AMC is providing services for a consumer credit transaction secured by a principal dwelling of a consumer; and
 11. A certification that the applicant AMC maintains a detailed record of each service request that it receives and the appraiser that performs the residential real estate appraisal services for the AMC.
- B. An application fee in the amount of One Thousand Dollars (\$1,000.00) shall be submitted with the application.
- C. The application must be accompanied by a surety bond with the Board in the amount of Twenty Thousand Dollars \$20,000.00. The bond shall be payable to the State of Mississippi for the use, benefit and indemnity of any person who suffers any damage or loss as a result of the appraisal management company's breach of contract or of any obligation arising therefrom or any violation of law. Any claims reducing the face amount of the bond must be restored at the time of annual renewal.
- D. Applicants not domiciled in this state shall complete an Irrevocable Uniform

Consent to Service of Process.

- E. Applicant shall provide any other information required by the Board deemed reasonably necessary for the implementation and administration of the statutes and rules.

Source: Miss. Code Ann. §§ 73-34-13, 73-34-103 (1), (2), (4) & 73-34-107 (Rev. 2012).

Rule 2.3 Designated Officer

- A. Each AMC applying for registration shall designate one (1) controlling person who is an employee of the AMC as its Designated Officer. The Designated Officer shall be the AMC's designated contact for all communications between the Board and the AMC.
- B. The Designated Officer shall be authorized by the AMC to act on its behalf for the purpose of the application for and compliance with a Certificate of Registration to operate as an AMC. The Designated Officer shall be responsible for the 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 Board's laws, rules and regulations.
- C. The Designated Officer shall:
 - 1. Be authorized by the AMC to enter into a contractual relationship with other persons for the performance of services requiring registration as an AMC and have the authority to enter into agreements with appraisers for the performance of appraisals; and
 - 2. Possess the power to direct or cause the direction of the management or policies of the AMC.

Source: Miss. Code Ann. § 73-34-111, 73-34-3(q), (ii), (iii) & 73-34-9(l) (Rev. 2012).

Rule 2.4 Renewal Process

- A. Certificates of Registration may be renewed for a period of one (1) year.
- B. To obtain renewal of any registration, the holder of a current, valid registration shall file an application for renewal on the Board's prescribed form no earlier than one hundred twenty (120) days nor later than the expiration date of the registration then held.
- C. The application for renewal of a Certificate of Registration of an AMC shall include substantially similar information as required for initial registration. The

applicant shall fully and accurately report all information and submit all documentation required by the application and the Board.

- D. The One Thousand Dollars (\$1,000.00) renewal fee and the applicable National Registry Fee shall be submitted with the application for renewal.
- E. Registrants may renew expired Certificates of Registration up to sixty days following expiration of the registration by satisfying all of the requirements for renewal and filing an application for renewal, accompanied by the 100% delinquent renewal fee, within sixty (60) days of the date that the registration expired.
- F. After a Certificate of Registration has been expired for a period of time in excess of the above sixty (60) days, the Certificates of Registration may not be renewed. In order to acquire a Certificate of Registration, an AMC shall reapply as if applying for the initial registration.

Source: Miss. Code Ann. §§ 73-34-13, 73-34-25, 73-34-27, 73-34-45(2) & 73-34-103(4) (Rev. 2012).

Rule 2.5 Fee Schedule

- A. The fees required of all AMCs for initial registration or renewing a registration under the Mississippi Appraisal Management Registration Act are set forth below.
- B. The MAB shall charge and collect fees as follows:
 - 1. Certificate of Registration (Initial Registration and Renewal) \$1,000.00
 - 2. Delinquent Renewal Fee (100% penalty) \$1,000.00
 - 3. Dishonored Check Fee costs of collection plus \$25.00
- C. In addition, MAB shall charge and collect a National Registry Fee in such amount as may be assessed by the Appraisal Subcommittee for all AMCs holding a Certificate of Registration in the State of Mississippi. Said fees shall be transmitted by the Board to the Appraisal Subcommittee.

Source: Miss. Code Ann. §§ 73-34-45(1), (2), 73-34-27 & 73-34-9(2)(j) (Rev. 2012).

Rule 2.6 Change of Information

- A. All applicants for and holders of an AMC Certificate of Registration and their Designated Officer shall, within ten (10) days, submit written notice to MAB of any change to the following:
 - 1. Name;

2. Residence address;
 3. Business name;
 4. Business address,
 5. Business telephone number, or
 6. Mailing address, if different than above.
- B. Registrants shall report in writing any changes of an agent for service of process, a Designated Officer, and Controlling Person, including any changes to the percentage(s) of ownership, within ten (10) days of the effective date of any such change.
- C. The business name, address and telephone number shall be considered the applicant's or registrant's address and the telephone number of record for all purposes unless otherwise requested in writing by the applicant or registrant. If no business address is provided, the mailing address shall be the latest address of record and on file with the MAB.

Source: Miss. Code Ann. §§ 73-34-103 & 73-34-111 (Rev. 2012).

Rule 2.7 Background Investigations

- A. Each owner of more than ten percent (10%) of an AMC shall be of good moral character as determined by the MAB pursuant to Miss. Code Ann. § 73-34-109(b), and shall submit to a background investigation authorized by the Board.
- B. Background investigations shall be conducted by a law enforcement agency or entity authorized by the Board and shall be conducted at the applicant's expense. The Board shall conduct searches for participating state AMC registration and licensing checks through the National Registry, or other venues as directed by the Board. Statewide criminal background checks are to be initiated by the applicant with the results to be sent directly to the Board.

Source: Miss. Code Ann. § 73-34-109(1)(b), (2) (Rev. 2012).

Rule 2.8 Bookkeeping Provisions

- A. Each registrant shall maintain records as follows:
1. A detailed record of each service request that it receives for appraisal of real property located in Mississippi, which shall include, but is not limited to:
 - (a) a copy of the letter of engagement between the registrant and the appraiser;

- (b) a copy of each appraisal report received from an appraiser, including the original report, any revised reports, and any addenda or other materials furnished subsequent to the delivery of the original report;
 - (c) copies of all correspondence between the appraiser and the registrant and any other entity involved in the transaction;
 - (d) a copy of the letter of engagement engaging another appraiser for the purpose of reviewing the appraisal;
 - (e) a copy of any review of the appraisal performed, including the original review report, subsequent correspondence between the reviewer and registrant, and each subsequent revised review report;
 - (f) a copy of the request received from the registrant's client, all documentation supplied to that client, all correspondence between client and registrant; and
 - (g) a record of fees disbursed to contracted appraisers and the fee received by the registrant from the registrant's client.
2. Copies of all appraiser fee schedules maintained and used by the registrant for the purpose of compliance with the provisions of the Truth in Lending Act (TILA) relating to reasonable and customary fees, which shall include evidence for such fees required by TILA. Such fee schedules shall include the beginning and ending effective dates for the document.
 3. Copies of rosters of appraiser fee panels used for assignments in Mississippi including the name of the appraiser, each appraiser's Mississippi credential number, the date the appraiser was placed on the panel and the date and reason the appraiser was removed from the panel.
- B. Registrants shall maintain the records set forth above for a period of five (5) years, after an appraisal is completed or two (2) years after final disposition of a judicial proceeding related to the assignment, whichever expires later as required by Miss. Code Ann. § 73-34-119.
 - C. Registrants shall produce for inspection and copying by the MAB, any record required to be maintained herein or under the provisions of the of the Board's laws, rules and regulations, on receipt of reasonable notice by registrant. Reasonable notice shall be taken to mean not later than seven (7) working days following receipt of any such request by a Designated Officer.

Source: Miss. Code Ann. §§ 73-34-103 (k) & 73-34-119 (Rev. 2012).

Rule 2.9 Annual Certifications

Each AMC shall certify on an annual basis:

- A. That it has systems in place to verify that:
 - 1. An individual on the appraiser panel has not had a license or certification as an appraiser refused, denied, cancelled, revoked or surrendered in lieu of a pending revocation in the previous twelve (12) months; and
 - 2. Only licensed or certified appraisers are used to complete appraisal assignments in connection with federally related transactions.
- B. That it requires appraisers completing appraisals at its request to comply with the Uniform Standards of Professional Appraisal Practice (USPAP), including the requirements for geographic and product competence.
- C. That it has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under Section 129E of the Truth in Lending Act, including the requirement that fee appraisers be compensated at a customary and reasonable rate when the AMC is providing services for a consumer credit transaction secured by the principal dwelling of a consumer.
- D. That it has a system in place requiring payment to an independent contract appraiser for the completion of an appraiser service within sixty (60) days after the appraiser provides the completed appraisal report to the AMC, except in cases involving a bona fide breach of contract, substandard performance of services, or alternate payments terms agreed upon by the appraiser and the AMC.
- E. The AMC shall not prohibit an appraiser from reporting the fee paid to the appraiser in the body of the appraisal report, however the AMC may require an appraiser to present any such disclosure in a specified format and location.
- F. That it maintains a detailed record of each service request that it receives and the appraiser that performs the appraisal for the AMC.

Source: Miss. Code Ann. §§ 73-34-113(3), 73-34-117 & 73-34-119 (Rev. 2012).

Rule 2.10: Violations (Employees, Partners, Directors, Officers or Agents of an AMC)

It shall be a violation of Sections 73-34-101 through 73-34-131 of the Board's laws for any employee, partner, director, officer or agent of an AMC to:

- A. Influence or attempt to influence the development, reporting, result or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or in any other manner, including, but not limited to:

1. Withholding or threatening to withhold timely payment or partial payment for an appraisal with the exception of a substandard or noncompliant appraisal;
 2. Withholding or threatening to withhold future business from an appraiser, or demoting, terminating or threatening to demote or terminate an appraiser;
 3. Promising or implying that an appraiser may be given opportunities for future business, promotions or increased compensation;
 4. Conditioning an assignment of an appraisal or the payment of an appraisal fee or salary or bonus on the opinion, conclusion or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;
 5. Requesting that an appraiser provide an estimated, predetermined or desired valuation in an appraisal, or provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal;
 6. Providing to an appraiser an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided; and
 7. Requiring an appraiser to prepare an appraisal report if the appraiser has indicated to the AMC that he or she does not have the necessary expertise for the specific geographic area;
- B. Require an appraiser to indemnify the AMC against liability, damages, losses or claims other than those liabilities, damages, losses or claims arising out of the services performed by the appraiser, including performance or nonperformance of the appraiser's duties and obligations, whether as a result of negligence or willful misconduct;
- C. Submit or attempt to submit false, misleading or inaccurate information in any application for registration or renewal;
- D. Fail to timely respond to any subpoena or any other legally binding request for information.
- E. Fail to timely obey a lawful administrative order of the Board; or
- F. Fail to fully cooperate in any Board investigation.

Rule 2.11 Removal of Appraisers from AMC Appraiser Panel

- A. **Notice.**
1. Except within the first ninety (90) days after an independent appraiser is

first added to the AMC's appraiser panel, an AMC may not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an appraiser without written notice to the appraiser stating the reasons why the appraiser is being removed from the appraiser panel.

2. If the appraiser is being removed from the panel for illegal conduct, violation of USPAP, or a violation of state licensing standards, the written notice should notify the appraiser of the nature of the alleged conduct or violation; and
3. The notice must provide an opportunity for the appraiser to respond to the notice.

B. Decision

The decision to remove the appraiser shall be in writing and shall contain the reason(s) and the basis for the removal.

C. Service of Notice and Decision

The AMC shall send both the written notice and decision to the appraiser by certified mail, return receipt requested.

D. Complaint for Review of AMC's Decision

1. An appraiser who is removed from the appraiser panel of an AMC for alleged illegal conduct, violation of USPAP, or a violation of state licensing standards, may file with the Board a Complaint for review of the AMC's decision.
2. If an appraiser files a Complaint, it shall be filed with the Board within twenty (20) days of the appraiser's receipt of the AMC decision.
3. The scope of the Board's review of the AMC decision is limited to determining whether the AMC has complied with the notice requirements; and whether illegal conduct, a violation of USPAP, or a violation of state licensing standards has occurred.
4. Adjudication of a Complaint for review of an AMC's decision to remove an appraiser from an appraiser panel shall be conducted in accordance with Miss. Code Ann. §73-34-131.
5. If after opportunity for hearing and review, the Board determines that an AMC acted improperly in removing the appraiser from the appraiser panel, or that the appraiser did not commit a violation of law, a violation of USPAP, or a violation of state licensing standards, the Board shall:

- (a) Provide written findings to the involved parties;
- (b) Provide an opportunity for the AMC/or the appraiser to respond to the findings; and
- (c) Make recommendations for action.

Source: Miss. Code Ann. §§ 73-34-129 & 73-34-131 (Rev. 2012).

Part 1503 Chapter 3: Disciplinary Authority, Complaints & Proceedings

Rule 3.1 Grounds for Disciplinary Action:

- A. In accordance with the laws of this state, and to the extent permitted by any applicable federal legislation or regulation, the Board may censure an AMC, conditionally or unconditionally suspend or revoke any registration issued, or deny renewal of any registration issued, or levy fines or impose civil penalties not to exceed Five Thousand Dollars (\$5,000.00), if after appropriate investigation the Board concludes that an AMC is attempting to perform, has performed, or has attempted to perform any of the following acts:
 - 1. Committed any act in violation of the Board's laws;
 - 2. Violated any rule or regulation adopted by the Board in the interest of the public and consistent with the provisions of the Board's laws; or
 - 3. Procured a registration for itself or any other person by fraud, misrepresentation or deceit.

- B. The Board may also deny issuance of a registration to an applicant on any of the grounds set forth above.

Source: Miss. Code Ann. §§ 73-34-35(2), 73-34-29 & 73-34-41 (Rev. 2012).

Rule 3.2 Complaints:

- A. A complaint may be filed with the Board alleging that an AMC, an employee, partner, officer or agent of the AMC has committed a violation of the Board's laws and/or rules and regulations. The complaint must be in writing, signed by the complainant and contain facts to support each allegation of violation. Documents and evidence in support of the complaint should be submitted with the complaint.

- B. Upon receipt of a complaint:
 - 1. The Board staff shall assign the complaint a case number;
 - 2. If it is determined at any time that the complaint is not within the Board's jurisdiction or that no violation exist, a recommendation will be made to the Board to dismiss the complaint.
 - 3. A written notice and copy of the complaint shall be sent to the AMC advising of the allegations and a request made for the AMC to submit a response within twenty (20) days of the receipt of the notice.
 - 4. The response shall include the following:
 - (a) A written response to the complaint, addressing each and every element thereof;
 - (b) A copy of all requested records and any other relevant records; and
 - (c) A list of any and all persons known to the registrant to have actual knowledge of any of the matters made the subject of the complaint

and, contact information, if known.

- C. Upon timely receipt of the AMC's response or after the twenty (20) day response period, the Board will proceed with the investigation.
- D. The Board may also commence an investigation on its own initiative.

Source: Miss. Code Ann. § 73-34-41 (Rev. 2012).

Rule 3.3 Adjudicatory & Disciplinary Proceedings:

- A. If an investigation or information indicates that an AMC has committed a violation of the Board's laws and/or rules and regulations, adjudicatory and disciplinary proceedings may be initiated.
- B. Before censuring any registrant, or suspending or revoking any registration the Board shall:
 - 1. Notify the registrant in a Notice of Hearing and Complaint of any charges made at least twenty (20) days before the date set for the hearing; and
 - 2. Afford the registrant an opportunity to be heard in person or by counsel.
- C. The Notice of Hearing and Complaint shall be:
 - 1. Sent by certified mail, return receipt requested to the Designated Officer of the registrant to the registrant's business address or last address on file with the Board; or
 - 2. Personal service on the Designated Officer of the registrant or the registrant's agent for service of process in this state.
- D. The Notice of Hearing and Complaint shall include, among other things, the date, time and place of the hearing.
- E. The hearing may be rescheduled by the Board Administrator at a different time or date with proper written notice of such change given to all parties. Prehearing motions, including motions to dismiss and motions for continuance must be filed in the administrative office of the Board not less than ten (10) days prior to the date of the hearing.
- F. The Board, upon compliance with the Board's laws relating to procedural requirements and administrative hearings, may also deny issuance of a registration to an applicant on any of the grounds provided by law.
- G. Administrative hearings shall be conducted by a Hearing Officer appointed by the Board. The Hearing Officer shall preside at the hearing and rule on questions of evidence and procedure.

- H. Administrative Hearings shall be open to the public. Witnesses may be excluded upon proper invocation of the witness exclusion rule.
- I. At the conclusion of the hearing, the Board shall issue a decision and order containing the Findings of Fact, Conclusions of Law and any disciplinary action determined by the Board. This decision and order shall be mailed or delivered to the registrant.
- J. Board members who have provide technical assistance in an investigation shall recuse themselves and not participate in any administrative hearing that results from such investigation.

Source: Miss. Code Ann. §§ 73-34-9(2)(b),(d), 73-34-29, 73-34-35, 73-34-41, 73-34-43 & 73-34-131 (Rev. 2012).

Rule 3.4 Appeals

The decision and order of the Board may be appealed in accordance with the applicable statutes.

Source: Miss. Code Ann. § 73-34-43 (Rev. 2012).

Title 30: PROFESSIONS AND OCCUPATIONS
Part 1504: Oral Proceedings & Declaratory Opinions

Part 1504 Chapter 1: Oral Proceedings

Rule 1.1 **Scope.** These rules apply to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Mississippi Real Estate Appraiser Licensing and Certification Board (Board).

Rule 1.2 **When Oral Proceedings will be scheduled on Proposed Rules.** The Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.

Rule 1.3 **Request Format.** Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8 1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board and signed by the requestor(s).

Rule 1.4 **Notification of Oral Proceeding.** The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

Rule 1.5 **Presiding Officer.** The Board Administrator or his designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

Rule 1.6 **Public Presentation and Participation.**

- a. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.
- b. Persons wishing to make oral presentations at such a proceeding shall notify the Board at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Board.
- c. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.

- d. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- e. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.
- f. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where the orderly conduct of the proceeding so requires.

Rule 1.7 Conduct of Oral Proceeding.

- a. **Presiding Officer.** The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall: **(i)** call proceeding to order; **(ii)** give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Board for the proposed rule; **(iii)** call on those individuals who have contacted the Board about speaking on or against the proposed rule; **(iv)** allow for rebuttal statements following all participant's comments; and **(v)** adjourn the proceeding.
- b. **Questions.** The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.
- c. **Physical and Documentary Submissions.** Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board and are subject to the Board's public records request procedure.
- d. **Recording.** The Board may record oral proceedings by stenographic or electronic means.

Source: Miss. Code Ann. § 25-43-3.104 (Rev. 2010).

Part 1504 Chapter 2: Declaratory Opinions

Rule 2.1 **Scope.** These rules set forth the Mississippi Real Estate Appraiser Licensing and Certification Board's (Board) rules governing the form, content and filing of requests for declaratory opinions, and the Board's procedures regarding the requests. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

Rule 2.2. **Persons Who May Request Declaratory Opinions.** Any person with a substantial interest in the subject matter may request a declaratory opinion from the Board by following the specified procedures. A substantial interest in the subject matter means: an individual, business, group or other entity that is directly affected by the Board's administration of the laws within its primary jurisdiction. Primary jurisdiction of the agency means the agency has a constitutional or statutory grant of authority in the subject matter at issue.

Rule 2.3 **Subjects Which May Be Addressed in Declaratory Opinions.** The Board will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforced by the Board or (2) a rule promulgated by the Board. The Board will not issue a declaratory opinion a statute or rule which is outside the primary jurisdiction of the Board.

Rule 2.4 **Circumstances In Which Declaratory Opinions Will Not Be Issued.** The Board may, for good cause, refuse to issue, a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- a. Lack of clarity concerning the question presented;
- b. There is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- c. The statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- d. The facts presented in the request are not sufficient to answer the question presented;
- e. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- f. The request seeks to resolve issues which have become moot, or are abstract or

hypothetical such that the requestor is not substantially affected by the statute or rule on which a declaratory opinion is sought;

- g. No controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;
- h. The question presented by the request concerns the legal validity of a statute or rule;
- I. The request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- j. No clear answer is determinable;
- k. The question presented by the request involves the application of a criminal statute or a set of facts which may constitute a crime;
- l. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- m. The question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's Opinion;
- n. A similar request is pending before this agency or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law;
- o. Where issuance of a declaratory opinion may adversely affect the interests of the State, the Board or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;
- p. The question involves eligibility for a license, permit, certificate or other approval by the Board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

Rule 2.5 Written Request Required. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8 1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board.

Rule 2.6 Where to Send Requests. All requests must be sent to the Board Administrator,

The Mississippi Real Estate Appraiser Licensing and Certification Board: (1) by mail at P.O. Box 12685, Jackson, MS 39236; or (2) delivered to 2506 Lakeland Drive, Suite 300, Flowood, MS 39232; or (3) sent via facsimile to (601) 932-2990. All requests must be sent to the attention of Declaratory Opinion Request as follows: ATTN: DECLARATORY OPINION REQUEST

Rule 2.7 Name, Address and Signature of Requestor. Each request must include the full name, telephone number and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

Rule 2.8 Question Presented. Each request shall contain the following:

- a. A clear and concise statement of all facts on which the opinion is requested;
- b. A citation to the statute or rule at issue;
- c. The question(s) sought to be answered in the opinion, stated clearly;
- d. A suggested proposed opinion from the requestor, stating the answers desired by petitioner and a summary of the reasons in support of those answers;
- e. The identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address and telephone number; and
- f. A statement to show that the person seeking the opinion has a substantial interest in the subject matter.

Rule 2.9 Time for Board Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:

- a. Issue a declaratory opinion regarding the specified statute or rule as applied to the specified circumstances;
- b. Decline to issue a declaratory opinion, stating the reasons for its action; or
- c. Agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request.
- d. The forty-five (45) day period shall begin running on the first State of Mississippi

business day on or after the request is received the Board, whichever is sooner.

Rule 2.10 **Opinion Not Final for Sixty Days.** A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

Rule 2.11 **Notice by Board to third parties.** The Board may give notice to any person, agency or entity that a declaratory opinion has been requested, and may receive and consider data, facts arguments and opinions from other persons, agencies or other entities other than the requestor.

Rule 2.12 **Public Availability of Requests and Declaratory Opinions.** Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Board's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

Rule 2.13 **Effect of a Declaratory Opinion.** The Board will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding only on the Mississippi Real Estate Appraiser Licensing and Certification Board and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.

Source: Miss. Code Ann. § 25-43-2-103 (Rev. 2010).