

STATE OF FLORIDA
FLORIDA REAL ESTATE APPRAISAL BOARD



IN RE: PETITION FOR DECLARATORY STATEMENT

CORNERSTONE HOME LENDING, INC.

DS 2013-076

FINAL ORDER

This matter came before the Florida Real Estate Appraisal Board (hereinafter the "Board") on October 7, 2013, in Orlando, Florida, for consideration of the above referenced Petition for Declaratory Statement. The Notice of Petition for Declaratory Statement was filed on August 30, 2013.

The petition filed by CORNERSTONE HOME LENDING, INC., (hereinafter the "Petitioner"), inquires as to whether its internal appraisal process constitutes "appraisal management services" and whether it is required to be licensed as a appraisal management company under Sections 475.611(3)(c), and 475.6235(1), Florida Statutes. Further, Petitioner inquires as to whether its third party software system, Mercury Network, is an appraisal management company required to be licensed.

FINDINGS OF FACTS

1. Petitioner, CORNERSTONE, is a national lender of residential mortgage loans.
2. Petitioner has developed and maintains an internal appraiser process for the sole purpose of providing appraisals for its own lending purposes.
3. Further, Petitioner does not receive any compensation from its customers for providing these appraisal services.
4. When an appraisal is necessary for a loan, appraisal coordinators review the request as to the location of the property. When the location is determined, a list of licensed and credentialed appraisers is utilized and a competent appraiser in the area where the subject property is located is selected. The appraisal coordinators verify whether the appraiser is properly credentialed for the specific type of loan for which the appraisal is requested.

5. Once the appraisal assignment is accepted and completed by the appraiser, a technical review of the appraisal is completed and presented to an underwriting department to verify the appraisal meets loan conditions. Any clarifications or inquiries required by the underwriting department are forwarded to the appraiser for follow up information if necessary.

6. Petitioner uses a third party technology software, Mercury Network, for random selection of appraisers for Petitioner. Even though the software randomly selects the appraisers, the Petitioner's appraisal coordinators verify that the appraiser is properly credentialed for the assignment. Status requests and updates are also entered into the Mercury Network by the appraisal coordinators which are then directly communicated to the appraisers.

CONCLUSIONS OF LAW

1. The Florida Real Estate Appraisal Board has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

2. The Petition filed in this cause is in substantial compliance with the provisions of 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code.

3. Section 120.565, Florida Statutes, reads as follows:

120.565. Declaratory statement by agencies

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action.

4. Rule 28-105 001, Florida Administrative Code, reads as follows:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to

the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency.

5. Section 475.611(1)(c), Florida Statutes, reads:

(c) "Appraisal management company" means a person who performs appraisal management services regardless of the use of the term "appraisal management company" "appraisal cooperative," "appraiser portal," mortgage technology company," or other term.

(d) "Appraisal management services" means the coordination or management of appraisal services for compensation by:

1. Employing, contracting with, or otherwise retaining one or more licensed or certified appraisers to perform appraisal services for a client; or
2. Acting as a broker or intermediary between a client and one or more licensed or certified appraisers to facilitate the client's employing, contracting with, or otherwise retaining the appraisers.

6. Section 475.611(1)(m), Florida Statutes, reads:

(m) "Client" means a person who contracts with an appraiser or appraisal management company for the performance of appraisal services.

7. The Board states that because the Petitioner states that it uses the appraisal process for its own lending purposes and does not receive compensation from its customers for its appraisal services, the Petitioner isn't "employing, contracting with, or otherwise retaining" certified appraisers to perform appraisal services for a client, or otherwise acting as a broker or intermediary between a client and one or more appraisers to facilitate the client's "employing, contracting with, or otherwise retaining the appraisers." Therefore, the Petitioner is not performing appraisal management services and is not required to be licensed as an appraisal management company.

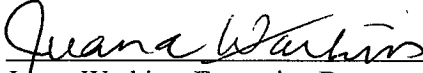
8. Further the Board states that Petitioner does not have standing to inquire whether the third party technology is required to be licensed as an appraisal management company because a Petition is not proper when asking about the conduct or particular circumstances of another person or entity. Rule 28-105.001, Florida Administrative Code. However, the Board can answer that Petitioner is not required to be licensed as an appraisal management company by virtue of its use of the third party technology for the reasons stated in the preceding paragraph.

8. The Board's response to this Petition is based on the Petitioner's particular set of circumstances set forth in the Petition and only answers the questions raised related to the particular set of circumstance as stated in the Petition, and is not a policy statement of general applicability.

Based on the foregoing, the Board hereby **GRANTS** Petitioner's Petition for Declaratory Statement.

DONE AND ORDERED this 4 day of December, 2013.

FLORIDA REAL ESTATE APPRAISAL BOARD

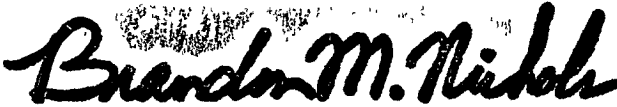

Juana Watkins, Executive Director
For Florida Real Estate Appraisal Board

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, Respondents are hereby notified that they may appeal this Final Order by filing one copy of a notice of appeal with the Clerk of the Department of Health and the filing fee and one copy of a notice of appeal with the District Court of Appeal within 30 days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail or by email to: Cary Whitaker, Cornerstone Home Lending, Inc., 1177 West Loop South, Ste. 200, Houston, TX 77027; Michael Flury, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050, Juana Watkins, Division Director, 400 West Robinson Street, Suite 801N, Orlando, FL 32801; on this 10th day of December, 2013.


Brandon M. Nichols



FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	8/30/2013
File #	

August 30, 2013

Cary Whitaker – Qualified Representative
Director of Regulatory Affairs
Cornerstone Home Lending, Inc.
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DS 2013-076

Juana Watkins
Director
Division of Real Estate/DBPR
400 W. Robinson Street, Suite N801
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(850) 487-1395

RE: Petition for Declaratory Statement before the Florida Division of Real Estate: Declaratory statement relating to the definition of an Appraisal Management Company in Florida.

Dear Ms. Watkins,

Thank you in advance for your assistance into this matter. Cornerstone Mortgage Company is a national lender of residential mortgage loans and seeks this clarification on Florida AMC regulation in order to ensure compliance.

Section 120.565 of Florida Statutes states the following:

Declaratory statement by agencies –

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action.

Furthermore, Florida rule 28-105.001 *Purpose and Use of Declaratory Statement* states the following:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

28-105.002 The Petition.

A petition seeking a declaratory statement shall be filed with the clerk of the agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information:

- (1) The caption shall read: Petition for Declaratory Statement Before (Name of Agency)*
- (2) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner.*
- (3) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner's attorney or qualified representative if any.*
- (4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought.*
- (5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.*
- (6) The signature of the petitioner or of the petitioner's attorney or qualified representative.*
- (7) The date*

Pursuant to the above statutes and regulations, Cornerstone Home Lending, Inc. respectfully requests clarification relating to Title XXXII, Chapter 475, section 475.611(3)(c) and (d) and section 475.6235(1), of the Florida Revised Statutes.

Title XXXII, Chapter 475, section 475.611(3)(c) and (d):

(c) "Appraisal management company" means a person who performs appraisal management services regardless of the use of the term "appraisal management company," "appraiser cooperative," "appraiser portal," "mortgage technology company," or other term.

(d) "Appraisal management services" means the coordination or management of appraisal services for compensation by:

1. Employing, contracting with, or otherwise retaining one or more licensed or certified appraisers to perform appraisal services for a client; or
2. Acting as a broker or intermediary between a client and one or more licensed or certified appraisers to facilitate the client's employing, contracting with, or otherwise retaining the appraisers.

Title XXXII, Chapter 475, section 475.6235(1):

(1) A person may not engage, or offer to engage, in appraisal management services for compensation in this state, or advertise or represent herself or himself as an appraisal management company, unless the person is registered with the department as an appraisal management company under this section. However, an employee of an appraisal management company is not required to obtain a separate registration.

Current internal appraiser panel administration at Cornerstone Home Lending, Inc.:

Cornerstone Mortgage Company has developed and maintains an internal appraiser process for the sole purpose of providing appraisals for our own lending purposes. It is important to note that Cornerstone Home Lending, Inc. does not receive any compensation for providing this service to our customers.

duties and functions described below are not performed for any third parties or for any third party lending. It should also be noted that Cornerstone Mortgage Company's appraiser order team is housed within our compliance department and maintains independence from the company's loan production, underwriting, closing, and operations departments. This department has nine (9) appraisal coordinators that are responsible for day to day functions described below. These (9) individuals are not appraisers and only order the appraisals (more details below) for the loans originated by our company. All appraisers used to fill the appraisal orders are independent contractors. The following provides a description of the process managed by our internal appraisal coordinator staff:

- When a loan reaches the point where an appraisal is necessary, loan processing staff submits an order request to our company's internal appraisal department through our loan origination system. Appraisal coordinators review this request to see where the subject property is located.
- Once the subject property is determined, appraisal coordinators utilize a list of licensed and credentialed appraisers that has been developed by our company. They randomly select a competent appraiser in the area where the subject property is located. Before placing the order with the appraiser, they look to ensure the appraiser is properly credentialed for the specific type of loan for which an appraisal is to be requested. Once it is determined that the appraiser is a good fit for the assignment, the appraisal coordinator submits an order request to the appraiser and awaits a response.
- If the order request is accepted by the appraiser, Cornerstone Mortgage Company appraisal coordinators wait until the assignment is completed. Once the appraisal assignment is completed, they perform a non-technical review of the appraisal to make sure it matches the correct subject property, is properly invoiced, and for other administrative requirements, including compliance with UCDP.
- The appraisal is then forwarded to our underwriting department for loan conditions requirements inherent with the underwriting process
- As is the case with any mortgage lender, underwriters may seek clarification from time to time regarding the appraisal. As such, they may want to ask the appraiser to consider different comps or other information that may be relevant to the appraisal. If this is the case, this request goes from our underwriting department to our appraisal coordinators. The appraisal coordinators then forward the request to the appraiser for their own determination and forward to the underwriter the results from the appraiser.
- Our appraisal coordinators are independent within our company and coordinate the day to day functions associated with ordering appraisals.

Use of software in our internal appraiser panel administration:

Cornerstone Mortgage Company is moving forward to utilize third party technology ("Mercury Network") to increase efficiencies and random selection of appraisers. This software will help Cornerstone Mortgage Company in the administration of our internal appraisal panel in the following ways:

- This software will randomize the selection of an appraiser, however, it is still the responsibility of the appraisal coordinator to confirm the randomized selection of the appraiser. In the event that the appraiser is not a fit for the particular assignment (for example, the appraiser is not a certified appraiser, which is required on FHA transactions), the appraisal coordinator will request another appraiser from the software until all criteria are met. All requests for appraisers will continue to be requested from our appraisal coordinators;



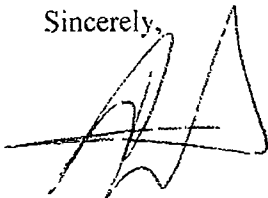
- When the appraisal is complete, the appraiser will upload the XML file to the Mercury Network so a non-technical review can be performed with ensures the report is UCDP compliant.
- All correspondence for status requests and updates on appraisals will be entered into the Mercury Network by our appraisal coordinators. The Mercury Network will communicate such requests directly to the appraiser.

After describing our process and the subsequent use of software in the future, Cornerstone Mortgage Company respectfully requests clarification on the following questions:

1. Is the internal appraisal process that Cornerstone Home Lending, Inc. engages in constitute as "appraisal management services"?
2. Is the internal appraisal process that Cornerstone Home Lending, Inc. operates considered an "Appraisal Management Company"?
3. Based on the process described above, is Cornerstone Home Lending, Inc. required to become registered or licensed as an AMC?
4. If this is considered an AMC, what aspects of our process define it as an AMC?
5. How does the use of the Mercury Network software impact your view of us as an AMC? Does the mere use of this software make an AMC present?
6. Is the Mercury Network considered an AMC?
7. If the Mercury Network is considered an AMC, who is required to be licensed? The Mercury Network or Cornerstone Mortgage Company?

Should you have any additional questions or need further clarification regarding our administration of our internal appraisal panel, please do not hesitate to contact me at (713) 212-3049 or cwhitaker@houseloan.com. We look forward to working with your agency to ensure compliance. Thank you very much for your time and assistance.

Sincerely,



Cary Whitaker
Director of Regulatory Affairs