

Chapter xxx

Property Data Collector Licensing and Property Data Collection Company Registration Act

SECTION 1. SHORT TITLE.

- (a) This chapter shall be known as the Property Data Collector Licensing and Property Data Collection Company Registration Act

SECTION 2. PURPOSE

- (a) This Article safeguards the public health, safety, and welfare and protects the public from being harmed by unqualified persons by regulating the use of the title “Property Data Collector” and “Property Data Collection Company” and by providing for the licensure and regulation of those who perform property data collections for compensation and for the registration and regulation of entities that manage the process of property data collection.

SECTION 3. DEFINITIONS

- (a) As used in this chapter:
 - (1) “Act” means the Property Data Collector Licensing and Property Data Collection Company Registration Act
 - (2) “Department” means the {state agency for licensing appraisers, home inspectors, or another similar profession}
 - (3) “License” means a license to provide property data collection services issued by the Department.
 - (4) “Licensee” means the holder of a license as a Property Data Collector.
 - (5) “Licensing” means the process of obtaining a License.
 - (6) “Property Data Collection” means:
 - (A) to perform a physical or virtual visual observation of the interior and/or exterior areas of a specified parcel of residential real estate and the improvements located thereon for use as part of a real estate related financial transaction; and
 - (B) to prepare a property data collection report that is transmitted to a property data collection company or other entity via written or other means; and
 - (C) Is not the practice of real estate appraisal.

- (7) “Property Data Collection Report” means the results of a property data collection that are provided to a property data collection company or other entity via written, electronic, or by any other means.
- (8) “Property Data Collection Company” means a third-party that:
- (A) employs, contracts, retains or otherwise engages one or more property data collectors to perform property data collection services;
 - (B) is retained by a client, including but not limited to a bank or mortgage lender, to manage the process of having a property data collection service performed, including, but not limited to:
 - (i) hiring, employing, retaining, contracting or otherwise engaging property data collectors;
 - (ii) receiving orders for property data collection services from clients;
 - (iii) placing orders for property data collection services with property data collectors;
 - (iv) receiving property data collection reports;
 - (v) reviewing property data collection reports;
 - (vi) submitting completed property data collection reports to a client;
 - (vii) compensating property data collectors for having performed a property data collection service.
- (9) “Property Data Collection Service” means the performance of a property data collection.
- (10) “Property Data Collector” means a person licensed by the Department as a property data collector that is employed, contracted, retained, or otherwise engaged by a property data collection company to perform a property data collection service.
- (11) “Real estate-related financial transaction” means any transaction involving the sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof, including the refinancing of real property or interests in real property and the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.
- (12) “Registrant” means an entity that has registered with the Department as a Property Data Collection Company.
- (13) “Registration” means the process of registering with the Department as a Property Data Collection Service Provider

- (14) "Residential real property" means any real property or manufactured or modular home that is used for or intended to be used for residential purposes and that is a single-family dwelling, duplex, triplex, quadplex or unit in a condominium.

SECTION 4. POWERS AND RESPONSIBILITIES OF THE DEPARTMENT

- (a) General. – The Department has the power to do all of the following:
- (1) Adopt rules pursuant to implement provisions of this chapter; and
 - (2) Examine and determine the qualifications and fitness of applicants for a new or renewed license or registration; and
 - (3) Issue, renew, deny, revoke, and suspend licenses and registrations under this chapter; under this Article; and
 - (4) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons and entities licensed or registered under this chapter and to enforce this chapter; and
 - (5) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this chapter; and
 - (6) Conduct administrative hearings; and
 - (7) Establish fees as allowed by this Article.

SECTION 5. PROPERTY DATA COLLECTOR – LICENSE REQUIRED

- (a) Beginning on January 1 of the year following the effective date of this chapter, it is unlawful for a person to conduct property data collections, develop a property data collection report or otherwise engage in the business of providing property data collection services or in the course of conducting business, use the title "property data collector" or any other title, abbreviation, letters, figures or signs that indicate the person is a property data collector unless the person holds a license as a property data collector pursuant to this chapter.
- (b) The Department may issue a license only to an individual and may not issue a license to a partnership, an association, a corporation, a firm, or another group, however a property data collector may perform property data collection services for or on behalf of a partnership, an association, a corporation, a firm, or another group, may conduct business as one of these entities, and may enter into and enforce contracts as one of these entities.
- (c) Notwithstanding subsection (a) of this Section, a person licensed by the state as an engineer, an architect, an insurance adjuster, a real estate broker or salesperson. or a real estate appraiser may:
- (1) provide property data collection services;

- (2) is not required to be licensed by the Department; and
- (3) is subject to the provisions of the chapter and the jurisdiction of the Department when providing property data collection services.

SECTION 6. PROPERTY DATA COLLECTOR – QUALIFICATIONS FOR LICENSING

- (a) To obtain a license as a property data collector, a person shall:
 - (1) complete an application on forms provided by the Department; and
 - (2) pay the fee(s) established by rule in accordance with Section 20 of this chapter; and
 - (3) complete at least 30 hours of Department approved education, including the passing of an examination, covering all aspects of property data collection, including but not limited to:
 - (A) use of the Uniform Property Dataset
 - (B) Identifying and reporting, with supporting photographs,
 - (i) property characteristics
 - (ii) design features that impair the use of the subject property and cannot be easily changed
 - (iii) factors adjacent to the subject property that are atypical for the location, including but not limited to power lines, commercial sites, and industrial sites
 - (C) measuring the dwelling unit(s) and any other structures on the subject property to produce building sketches, and floorplans in accordance with ANSI Standard Z765
 - (D) collecting a comprehensive set of photographs of the subject property; and
 - (E) fair housing law and regulations, and equal opportunity and discrimination in residential real estate; and
 - (4) provide proof to the Department proof of having participated in no fewer than five (5) property data collections, including having participated in the property data collection and the writing and transmittal of the property data collection report such that:
 - (A) Beginning on the effective date of this chapter, and continuing until the date that is eighteen (18) months after the effective date of the chapter, the required participation in no fewer than five (5) property data collection assignments shall be with a person who has previously provided no fewer than (5) property data collection reports to a property data collection company; and

- (B) Beginning on the date that is eighteen (18) months after the effective date of this chapter, the required participation in no fewer than five (5) property data collection assignments shall be with a licensee; and
 - (5) submit to a fingerprint based criminal history records check to be performed by the Department; and
 - (6) show proof of carrying errors and omissions and professional liability insurance coverage in accordance with Department rules promulgated pursuant to Section 6 of this chapter that establish the minimum terms and conditions of coverage, including limits of coverage and permitted exceptions; and
 - (7) show proof of carrying a business services bond in accordance with Department rules promulgated pursuant to Section 6 of this chapter that establish the minimum terms and conditions of coverage, including limits of coverage and permitted exceptions.
- (b) The Department shall not issue, or issue a renewal of, a license to a person that has a background that that calls into question the public trust as determined by the background check performed by the Department pursuant to subsection (a)(5) of this section, including having been found, or having pled guilty, nolo contendere, no contest, or any other criminal case resolution that has the effect of the person admitting responsibility for the crime and resulting in one or more sanctions imposed by a court, including, but not limited to, the following crimes:
- (1) Fraud
 - (2) Arson
 - (3) Burglary
 - (4) Embezzlement
 - (5) Extortion
 - (6) Obtaining money under false pretenses
 - (7) Forgery
 - (8) Larceny
 - (9) Malicious destruction of property
 - (10) Robbery
 - (11) Theft
 - (12) Bribery
 - (13) Counterfeiting
 - (14) Mail or wire fraud
 - (15) Tax Evasion
 - (16) Assault
 - (17) Indecency or lewdness
 - (18) Carry a concealed weapon
 - (19) Disorderly conduct
 - (20) Assault
 - (21) Kidnapping
 - (22) Manslaughter
 - (23) Murder
 - (24) Prostitution

- (25) Rape
- (26) Aiding or abetting in any crime listed in this subsection
- (27) Being an accessory (before or after the fact) in the commission of a crime listed in this subsection
- (28) Taking part in a conspiracy to commit a crime listed in this sub section.

SECTION 7. RELATIONSHIP TO OTHER LAWS

- (a) Nothing in this chapter shall be construed to allow a property data collector who is not registered, licensed, or certified under one or more of the following laws to perform any activity that would constitute the practice of the profession regulated by that law:
 - (1) the Engineer, Land Surveyor and Geologist Registration Law.
 - (2) the Architects Licensure Law
 - (3) the Real Estate Appraisers Certification Act.
- (b) This chapter shall not:
 - (1) Apply to a person registered or licensed under an act referred to in subsection (a) when acting pursuant to his registration or license.
 - (2) Apply to an officer or employee of a municipality or local authority when acting in his official capacity.
 - (3) Affect the obligations or immunities of a person licensed under the act of Real Estate Licensing and Registration Act.
 - (4) Affect the obligations of a person certified under the Real Estate Appraisers Certification Act when the person is acting pursuant to the person's license.

SECTION 8. PROPERTY DATA COLLECTOR - INSURANCE REQUIREMENTS

- (a) Upon compliance with the conditions of licensure under Section 4 of this chapter, to be eligible to be licensed as a property data collector, an applicant must meet all of the insurance requirements of this subsection, including:
 - (1) General liability insurance in the amount of two hundred fifty thousand dollars (\$250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Department; and
 - (2) Errors and omissions insurance in the amount of two hundred fifty thousand dollars (\$250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Department; and
 - (3) A Business Services Bond in the amount of \$25,000, with parameters established by the Department.

SECTION 9. PROPERTY DATA COLLECTOR – RENEWAL OF LICENSE AND CONTINUING EDUCATION

- (a) The department shall renew a license or registration upon receipt of the renewal application and proper fee.
- (b) Prior to renewing a license as a property data collector, the Department shall perform a fingerprint based criminal history records check to determine if the licensee has been found, or has pled guilty, nolo contendere, no contest, or any other criminal case resolution that has the effect of the person admitting responsibility for the crime and resulting in one or more sanctions imposed by a court, since the time of the last renewal.

SECTION 10. PROPERTY DATA COLLECTION COMPANY – REGISTRATION REQUIRED

- (a) It is unlawful for a person or entity to directly or indirectly engage or to attempt to engage in business as a property data collection company, or to advertise or hold itself out as engaging in or conducting business as a property data collection company, without first registering with the Department under the provisions of this chapter.
- (b) It is unlawful for a person or entity to hire, employ, retain, contract or otherwise engage a person or entity to provide property data collection services unless the person being hired, retained, employed or otherwise engaged holds a license as a property data collector issued by the Department pursuant to this chapter.

SECTION 11. PROPERTY DATA COLLECTION COMPANY – REGISTRATION REQUIREMENTS

- (a) To be registered as a Property Data Collection Company, an entity shall:
 - (1) complete an application on forms provided by the Department that includes, but is not limited to:
 - (A) the name of the entity seeking registration;
 - (B) the business address of the entity seeking registration;
 - (C) a phone contact information of the entity seeking registration;
 - (D) an email contact information for the entity seeking registration;
 - (E) the name and contact information for the company's agent for service of process in this state if the entity is not a corporation that is domiciled in this state;
 - (F) a certification that the entity has a system and process in place to verify that a person being retained, hired, contracted, or otherwise engaged to provide property data collection services for the entity holds a license in good standing as a property data collector in this state pursuant to this chapter

- (G) a certification that the entity has a system in place to review the work of all property data collectors that are performing property data collection services for the property data collection service provider on a periodic basis;
- (H) a certification that the entity maintains a detailed record of each property data collection service request that it receives and the property data collector that performs the property data collection service;
- (I) An irrevocable Uniform Consent to Service of Process;
- (J) any other information that is reasonably required by the Department.

SECTION 11. PROPERTY DATA COLLECTION COMPANY – RELATIONSHIP TO APPRAISAL MANAGEMENT COMPANY ACT

- (a) Notwithstanding Section x of this chapter, an entity licensed or registered by this state as an appraisal management company pursuant to the Appraisal Management Company Registration Act may:
 - (1) act as a property data collection service provider
 - (2) retain property data collectors, engineers, architects, insurance adjusters, real estate brokers or salesperson, and real estate appraisers to provide property data collection services.
 - (3) is not required to be registered by the Department pursuant to this Act
 - (4) is otherwise subject to the provisions of the Act when acting as a property data collection service provider when providing property data collection services.

SECTION 12. PROPERTY DATA COLLECTION COMPANY - INSURANCE REQUIREMENTS

- (a) Upon compliance with the conditions of licensure under Section 4 of this chapter, to be eligible to be registered as a property data collector, an applicant must meet all of the insurance requirements of this subsection:
 - (1) General liability insurance in the amount of five hundred fifty thousand dollars (\$500,000), which insurance may be individual coverage, with coverage parameters established by the Department; and
 - (2) A Business Services Bond in the amount of \$25,000, with parameters established by the Department.

SECTION 13. PROPERTY DATA COLLECTION COMPANY - REQUIREMENTS

- (a) If a property data collection report is provided or is to be provided to a licensed or certified appraiser for use in an appraisal, the property data collection company or any other entity

providing the information to the appraiser, shall provide the appraiser with the name and contact information for the property data collector.

SECTION 14. PROPERTY DATA COLLECTION INDEPENDENCE REQUIREMENTS

- (a) No person is allowed to influence or attempt to influence the observation, reporting, result, or review of a property data collection through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or any other manner including but not limited to:
 - (1) Withholding or threatening to withhold timely full or partial payment to a property data collector;
 - (2) Withholding or threatening to withhold future business from, or demoting or terminating or threatening to demote or terminate a property data collector;
 - (3) Expressly or impliedly promising future business, promotions, or increased compensation to a property data collector;
 - (4) Conditioning the ordering of a property data collection, or the payment of a fee, salary, or bonus on the findings or conclusion of the property data collection;
 - (5) Providing stock or other financial or non-financial benefits to an Independent Party, or any entity or person related to the property data collector;
 - (6) Establishing a list of approved property data collectors, or adding a property data collector to an exclusionary list of disapproved property data collectors;
 - (7) Permitting Loan Originators, loan officers, or Mortgage Brokers to select from a list of property data collector;
 - (8) Directing a property data collector to prepare property data collection using a specific scope of work that is contrary to the defined property data standard;
 - (9) Any other act or practice that impairs or attempts to impair the independence of the property data collection, including but not limited to directing the property data collector to conceal or remove content or other relevant information that would impact or alter the results.

SECTION 15. PROPERTY DATA COLLECTOR AND LENDERS – REQUIRED CONSUMER DISCLOSURES

- (a) Upon first interaction with a property owner or agent of the property owner or a property buyer or agent of a property buyer, or the primary person present at the property during the property data collection, a property data collector shall provide the property owner or agent of the property owner or buyer, or primary person at the property, with a document in a form and manner prescribed by the department, that states, at a minimum, in no less than 14-point bold font:

“My name is [name] and I am a [state] licensed property data collector. I will be performing a visual observation of the interior and exterior of the property to document its physical characteristics. I will also take photographs of both the interior and exterior of the property and the areas surrounding the property.

I am not a licensed or certified real estate appraiser who will determine the value of the property. The data collected as part of my observation of the property will be provided to a lender or their agent to aid in the processing of your transaction. The information may or may not be provided to a licensed or certified real estate appraiser to aid in the determination of the value of the property.

My contact information is:

Property data collector name
Company Name
Telephone number
Email
State License #

If you feel that you have been harmed in any manner by me while performing this property data collection, you may contact:

State Department
Xxx
Xxx”

SECTION 16. LICENSE VALIDITY PERIOD—RENEWAL

- (a) A license or registration issued pursuant to this chapter shall be valid for a period of one year beginning on January 1 and ending on December 31.
- (b) A license or registration issued pursuant to this chapter may be renewed beginning on October 1 of the year preceding the year of licensing or registration by submitting a renewal application, renewal fee, proof of completion of the required continuing education as established by rule of the Department, and other information necessary for a state and national criminal background check.
- (c) A property data collector performing property data collection services based on an expired license shall be deemed a violation of this chapter.

SECTION 17. PROPERTY DATA COLLECTOR LICENSEE--CONTINUING EDUCATION REQUIREMENT.

- (a) The Department shall by rule require that a property data collector, as a condition of license renewal, successfully complete a minimum of seven (7) classroom hours of Department-approved instruction every year.

SECTION 18. PROPERTY DATA COLLECTOR LICENSE RECOGNITION -- RECIPROCITY.

- (a) The Department may issue a license to a property data collector licensed in another jurisdiction provided that the applicant's resident jurisdiction license requirements are the same as or similar to the requirements set forth in this chapter.
- (b) In the event that the state requirements for licensing a property data collector are not substantially similar to the provisions of this chapter, or if the requirements cannot be verified, a property data collector may be issued a license in accordance with Section 5 of this chapter.

SECTION 19. PROPERTY DATA COLLECTOR LICENSE - DENIAL, SUSPENSION OR REVOCATION

- (a) The Department may deny issuance of a license or may suspend, revoke, limit or condition a license if the applicant or licensee is convicted of or pled guilty or nolo contendere to a crime listed in Section 5(d) of this chapter.
- (b) The Department may deny issuance of a license, or may suspend, revoke, limit or condition a license if the applicant or licensee has by false or fraudulent representations obtained a license.
- (c) The Department may deny issuance of a license, or may suspend, revoke, limit or condition a license if the applicant or licensee if, in performing or attempting to perform any of the activities covered by the provisions of this chapter the applicant or licensee has:
 - (A) employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain or renew a license;
 - (B) committed an act of malpractice, gross negligence, or incompetence in the practice of home inspections;
 - (C) failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report.
 - (D) without having a current license, either performed home inspections for compensation or claimed to be licensed;
 - (E) engaged in conduct that could result in harm or injury to the public;
 - (F) engaged in any act or practice that violates any of the provisions of this chapter;
 - (G) aided, abetted, or assisted any person in a violation of any of the provisions of this chapter;
 - (H) failed to maintain the requirements provided in Section 6 of this chapter; or
 - (I) had a license to perform property data collections revoked, suspended, denied, stipulated or otherwise limited in any state, jurisdiction, territory or possession of the

United States or another country for actions of the licensee similar to acts proscribed in this chapter.

- (d) A denial of licensure, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license holder may be ordered by the Department after a hearing.
- (e) An application may be made to the Department for reinstatement of a revoked license if the revocation has been in effect for at least one year.

SECTION 20. FEES

- (a) The Department by rule may establish fees to be paid for application, licensing and renewal, registration and renewal, and reinstatement.
- (b) The fee for initial application and licensing of a property data collector may not exceed \$600, which includes the cost of the criminal history records check.
- (c) The fee for the renewal of a property data collector license may not exceed \$300, which includes the cost of the criminal history records check.
- (d) The fee for initial application for registration of a property data collection company may not exceed \$1,000.
- (e) The fee for renewal of registration of a property data collection company may not exceed \$500. appraisal management company may not exceed \$150. The initial registration and registration renewal fee may not exceed \$150 for each year of the duration of the registration.
- (f) The Department may also establish by rule a late renewal penalty.
- (g) The board shall establish fees which are adequate to ensure its continued operation based on estimates made by the department of the revenue required to implement this chapter.