

BPOs: Ending the Confusion

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Many companies have recently been asking licensed Pennsylvania real estate brokers and salespersons to provide what are called "broker price opinions" for a variety of purposes, including mortgage lending, pre-foreclosure and litigation. These assignments typically involve researching comparable sales and listings and developing a value opinion, which is then reported on a form provided by the requesting company. Many real estate licensees are asking, "Can I complete BPO assignments?" and "If so, may I charge a fee?"

The term "broker price opinion," or BPO, is not referenced in the Real Estate Licensing and Registration Act (RELRA), the Real Estate Appraisers Certification Act (REACA) or the rules and regulations of the State Real Estate Commission and the State Board of Certified Real Estate Appraisers. Depending on its purpose, a BPO assignment requires either a comparative market analysis (CMA) under RELRA or a real estate appraisal under REACA.

RELRA defines "comparative market analysis" as:

"A written analysis, opinion or conclusion by a contracted buyer's agent, transactional licensee, or an actual or potential seller's agent relating to the probable sale price of a specified piece of real estate in an identified real estate market at a specified time, offered either for the purpose of determining the asking/offering price for the property by a specific actual or potential consumer or for the purpose of securing a listing agreement with a seller."

REACA defines "appraisal" as:

"A written analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real property, for or in expectation of compensation."

If a licensed real estate broker or salesperson who is not a certified real estate appraiser receives a request for a BPO, she may lawfully perform the assignment only if it requires a service that qualifies as a comparative market analysis (CMA). The only acceptable purposes of a comparable market analysis are to secure a listing agreement or to determine an asking or offering price for a client. If the BPO assignment is for other purposes such as mortgage lending, litigation or private mortgage insurance (PMI) removal, then the assignment requires an appraisal, which can only be performed by a certified real estate appraiser and must be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).

Practically speaking, when a real estate licensee receives a request for a BPO, he should ask two questions: first, "What is the intended use of the assignment?" As stated previously, if it is to be used for mortgage lending, litigation or PMI removal, then the assignment cannot be completed as a CMA; it is an appraisal. But if the requestor is an actual owner or potential purchaser making a purchase or sale decision, this may be a situation where a CMA

would be appropriate. The second question should be asked at this point: "Is there a possibility that I may obtain a listing or service from a buyer/client as a result of completing this assignment?" If the answer to this second question is an honest "yes," then the assignment could be considered a CMA and could legally be completed by a licensed broker or salesperson.

A licensed real estate broker or salesperson who performs a comparative market analysis is required by RELRA to include the following verbatim statement in a conspicuous manner on the first page of the analysis: **"This analysis has not been performed in accordance with the Uniform Standards of Professional Appraisal Practice which require valuers to act as unbiased, disinterested third parties with impartiality, objectivity and independence and without accommodation of personal interest. It is not to be construed as an appraisal and may not be used as such for any purpose."**

Most of the pre-printed forms used by requestors of BPO services do not contain this disclosure and many do not allow the form to be modified to include this statement. If the form cannot be modified to include the required CMA disclosure on the first page, the assignment should not be completed by a sales agent or broker. A licensee who completes a CMA report without the required disclosure statement may be subject to disciplinary action by the Real Estate Commission.

A real estate licensee may charge a fee for a comparative market analysis, however, a licensed associate real estate broker or salesperson may not receive compensation for performing a comparative market analysis directly from the client; rather, the compensation must be paid through the employing real estate broker.

Real estate licensees who complete BPOs or CMAs for lending, litigation or PMI removal may be subject to charges of unlicensed appraisal practice. During the last few years, several individuals have been disciplined by the State Board of Certified Real Estate Appraisers for unlicensed practice. Real estate licensees who are aware of illegal or unlicensed activity are encouraged to contact the PA Department of State at www.dos.state.pa.us or 800-822-2113.

In summary, if a BPO assignment is not for an actual or potential consumer for the purposes of obtaining a listing or establishing an offering price for a buyer client, then the assignment is considered an appraisal. It does not matter what name the client uses for the service. Companies and others that engage the services of real estate licensees may not be familiar with the requirements of RELRA and the commission's rules and regulations because they are not subject to these requirements. Real estate licensees, on the other hand, are subject to these requirements and it is the licensees' responsibility to be aware of and comply with them. Just because a potential client requests a service does not mean that it is legal or ethical for a real estate licensee to provide it. ▼

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