

SECTION FOUR

BROKER PRICE OPINIONS

Outline:

- ◆ Introduction
- ◆ Examples
- ◆ Reasonable Prospect of Listing
- ◆ Additional Observations

Learning Objective: Upon completing this Section, licensees should have a better understanding of the law governing “broker price opinions” and the circumstances under which it is appropriate for a real estate broker to perform a broker price opinion for a fee.

INTRODUCTION

The North Carolina Appraisers Act (N.C.G.S. Chapter 93E) provides that anyone performing an appraisal in North Carolina must be licensed by the North Carolina Appraisal Board as an appraiser. The law defines a **real estate appraisal** as: “... an analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.” However, the law also distinguishes and defines a **comparative market analysis** as “... *the analysis of sales of similar recently sold properties in order to derive an indication of the **probable sales price** of a particular property **by a licensed real estate broker.***”

The North Carolina Appraisers Act specifically exempts from the licensure requirements a comparative market analysis (CMA) **only when it is performed by a licensed real estate broker for a prospective or actual brokerage client or when it involves real property in an employee relocation program**, provided that the broker does not hold himself or herself out as being state-licensed or state-certified as a real estate appraiser. [See G.S. 93E-1-3(c).]

Real estate brokers are sometimes approached by lenders, REO (“real estate owned”) asset managers, and others, and asked to perform a “broker price opinion” for a fee. Although a broker price opinion (BPO) is *not* defined in the statute, it is an opinion of the value of real property and is therefore an appraisal under the law. A broker who is not licensed as an appraiser may not perform a broker price opinion unless it is exempt as a comparative market analysis for a brokerage client or bona fide prospective client.

A broker who is not also a licensed or certified appraiser may provide a broker price opinion only under the circumstances allowed for comparative market analyses. Thus, a *broker may receive a fee* for performing a comparative market analysis or broker price opinion *as long as the comparative market analysis or broker price opinion is performed for a present or prospective seller or buyer brokerage client on the property which is the subject of a present or prospective brokerage agreement. There must be a genuinely reasonable possibility that the broker will enter into a brokerage agreement as a seller's or buyer's agent for the property that is the subject of the broker price opinion for this exception to apply.*

EXAMPLES

The following scenarios attempt to illustrate situations under which it may be appropriate for a broker to perform a comparative market analysis or broker price opinion and those where it would not be appropriate.

❶ May a broker perform a broker price opinion for a fee for a homeowner who is considering selling his property through a broker, but who does not wish to commit to a broker until he has discussed the broker's services with the broker.

Answer: This is acceptable under the Appraisers Act as the broker has a reasonable possibility of getting a listing from doing the broker price opinion.

❷ A lender is considering whether to foreclose on a property. The lender asks three brokers to each perform a broker price opinion for a fee and lets the brokers know that one of the three will receive the listing if the lender subsequently acquires the property through foreclosure.

Answer: This also is acceptable and all three brokers may provide a broker price opinion knowing that one of them will receive the listing, if the property is foreclosed.

❸ A bank asks a broker to do a broker price opinion. The purpose of the broker price opinion is not mentioned, nor is there any discussion of whether the broker might get a listing from doing the broker price opinion.

Answer: This is unacceptable. Under these circumstances, the broker has no reason to believe that s/he may obtain a listing on the property. Accordingly, the broker should not perform a broker price opinion.

❹ A broker is asked to do a broker price opinion for a loan modification. There is no possibility of a listing on that property, but the broker believes that if s/he performs the broker price opinion, the broker might get a listing from the lender on another property at some point in the future.

Answer: This also is unacceptable, as the broker has no reasonable expectation of obtaining a listing for that property. The same result is true in a short sale situation where the seller already is under contract but the servicer or lender wants a broker outside the transaction to provide a broker price opinion.

REASONABLE PROSPECT OF LISTING

In evaluating whether there exists a reasonable prospect of a listing, the controlling factors will include:

- the express language of the assignment or contract,
- the nature or purpose of the transaction for which the broker price opinion is to be performed,
- the relationship of the potential client to the property and his/her role in the transaction, and
- the history of the broker and potential client.

It is therefore important that brokers maintain records of any engagement letters or agency agreements describing the broker's services and have a clear understanding of why the broker price opinion is being performed. Remember, a real estate broker who is not a licensed appraiser may only perform a broker price opinion for a prospective or actual brokerage client or when it involves real property in an employee relocation program. **Note too** that the statute requires that *the property on which the opinion is offered should be the subject of a present or prospective brokerage agreement.*

Employee Relocation Programs

Employee relocation programs have frequently been a source of confusion. Relocation companies often contact one or more real estate brokers to perform a comparative market analysis on a property which the company may purchase as part of an employee relocation plan. Typically, the company will then choose one of the brokers who prepared a comparative market analysis to subsequently list the property, if the company purchases it from the owner. In this situation, the relocation company may be considered a prospective brokerage client and performing a comparative market analysis under those circumstances, for a fee, would not violate the Appraisers Act given the fact that one of the brokers will receive the listing.

ADDITIONAL OBSERVATIONS

Note that a comparative market analysis to determine **probable sales price (NOT market value)** is restricted to an analysis of *sales of similar recently sold properties*. This may be adequate when attempting to determine a reasonable list price for an owner-occupied property. However, where a broker is asked to list an investment property, such as a residential rental or an income-producing commercial property, a comparative market analysis may **not** be the best indicator of value. Instead, a valuation by income approach may yield a better estimate of what a reasonable list

price would be. *Real estate brokers may not give an opinion as to value based either on an income approach or cost approach **unless** the broker also is licensed in North Carolina as an appraiser.*

Nothing in this Section should surprise any licensee, as this has been the law for years and there have been several articles published in the *Real Estate Bulletin* on this subject, the most recent appearing in the March 2011 edition of the *Bulletin*.

Anyone who obtains a copy of a broker price opinion that appears to have been done in violation of the Appraisers Act may send a complaint to the North Carolina Appraisal Board and to the North Carolina Real Estate Commission. Both agencies will open and investigate the complaint and take whatever action is deemed necessary. Further, the Real Estate Commission's investigators have been instructed to also review broker price opinion files when investigating or auditing other matters to determine compliance with State law.

NOTE: If a broker performs a broker price opinion, s/he cannot state that the conclusion is an estimate of "market value."
Rather, the conclusion must be stated in terms of a "probable sales price" or a range, and should state that it is not an appraisal.