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Editorial opinion

BPOs

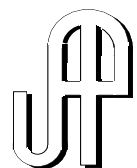
Does the intent of the law mean anything?

It is my understanding that a BPO is a "Broker Price Opinion". I understand that the words PRICE, VALUE and OPINION have different meanings. I understand what a broker is and what an appraiser is. I understand that each has a role to play in the real estate industry. As an AQB Certified USPAP Instructor, I think I understand the meaning of misleading and as coauthor of the State Statute I think I understand the intent of the Appraisal Law. I have read the article by Stephanie Coleman in Valuation Magazine and I heard Mark Steinagel, the Director of the Utah State Division of Real Estate speak Saturday at the St. George Symposium and say that BPOs are legal. With all that, I have a clarifying opinion of my own.

As we were writing the statute, BPOs were discussed along with tax reps. We discussed how agents can become licensed appraisers just like appraisers can become licensed agents and we discussed how tax reps should not do both the appraisal and representation in a tax appeal case. We talked about how agents cannot do appraisals and appraisers cannot sell real estate. And, we carved out some exceptions.

I was the industry representative to rewrite the appraiser law in 1998 and 1999. Ted Boyer, an attorney, was the Division Director, Jerry Adair, a Realtor, was the sponsor in the House and Al Mansell, a Realtor, was the sponsor in the Senate. Shelly Wismer was the Division attorney. Paul Thronsen MAI and Devon Olsen MAI were my backups from UAA. When the legislative analyst who authored this section of the statute used the words "In the ordinary course of business", I can tell you that I asked the question, "What is the ordinary course of a Realtor's business? The answer from all those listed above was listing and selling properties. When I pushed to explore whether that definition was written, Ted responded that listing and selling real estate is the very thing brokers and agents are licensed to do. Jerry and Al agreed with that. The point being, there is no need to license someone to give advice on real estate or assemble statistics on real estate or invest in real estate on their own or any of the other activities agents and brokers might do in their business. Therefore, appraisal law controls the valuation process or appraisal of real estate in Utah. Certainly it was our intent that Broker Price Opinions be legal as a brokerage tool; but, limited to listing and or selling property only. We intended that brokers and agents are not to do appraisals outside this scope without becoming appraisers. I am sure that if you were to ask any of the participants in the legislative process they would concur that that was the understanding and intent of the law.

I understand that some people can have a broad interpretation of listing or selling activity. And some may say I did the BPO hoping to get a listing. Some may even get paid for their time and trouble. But the State cannot sanction the activity when Brokers make BPOs a profit center of their business. In my opinion, the state should not overlook the intent of the law. I also know that it is hard to prove a violation in most cases, but BPOs performed for regulated lenders who use it in making lending or foreclosure decisions seems like a clear violation of the law's intent.



Remember; Price is a historical fact, It carries prefixes like sales price, asking price, offer price. Remember also, that value is an opinion. It carries prefixes like market value, tax value, and investment value. In my opinion a "Broker Price Opinion" should be re-titled "a brokers conclusion of what the price should be under certain circumstances"; such as, foreclosures, duress, quick sale, asking, market listing, offer, etc. To understand a BPO one needs to understand the marketing strategy that the broker uses. Appraisers have to define the value they are looking for so why shouldn't brokers define the price they are looking for. Also, a BPO should never be misrepresented as an opinion of value, even a broker's opinion of value. If it reports to be an opinion of price it cannot be an opinion of value.

In my opinion, BPOs are legal when used correctly; but, if a broker or agent thinks they are estimating value or if a client thinks they are getting an opinion of value then it is an appraisal and is regulated by USPAP. Also, if a broker or agent is doing BPOs as a business, not related to listing or selling, like appraisals, that activity is outside the ordinary course of a broker's business and is regulated by appraisal law. In my opinion, cases like these should be brought to the Appraisal Board for consideration and possible disciplinary action on an individual basis.

Could there be another acronym, BVO for broker value opinion? Yes, but the same restrictions apply. In fact, the exception we carved out in the statute is so brokers and agents can do opinions of value in the ordinary course of their business. This means listing and selling property because that is what and only what real estate brokers and agents are licensed to do. (Note that brokers and agents are required to be licensed to act as leasing agents or managing agents, but these are simply extensions of the listing or selling functions.)

Could there be another acronym, APO for Appraisers Price Opinion? Yes, but definitions and scope of work would have to be clear and compliance with USPAP is required.

When I heard the director say that the Attorney General's office had decided that BPOs were legal I immediately thought, How can we have two Realtors, two Attorneys and two Appraisers involved in writing the law all having a clear understanding of its intent, passing both the House and Senate with no descending votes and then ten years later have one assistant Attorney General interpret it to mean something different? But, that could only happen if someone does not understand the complexity of the law and/or does not understand the nuances of the terms used. After all, the Director did not say when a BPO is legal or when a BPO is not legal or did he. If he said BPOs are always legal I would take exception on the basis of intent.

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