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RE: Broker Price Opinions

We are sending this letter to everyone who holds an active designated broker license to request your assistance with this important matter.

Idaho law is very specific that only a licensee with an active status broker level license can prepare a broker price opinion. Unfortunately, there are many salesperson licensees who appear to be rendering broker price opinions in violation of the law. At the Idaho Association of REALTORS® conference in September, after it was mentioned in a CE class that Idaho requires a broker license to render a BPO, two salespersons were overheard discussing the fact that they did BPOs and did not intend to stop!

In addition, when a broker or associate broker provides a BPO, the written opinion must comply with the requirements of the Idaho Real Estate Appraiser Act. If the opinion does not comply with these requirements, the opinion is a “real estate appraisal” and the broker or associate broker is not exempt from the Idaho Real Estate Appraisers Act, including its licensing requirements.

In today’s real estate market, many lenders are contacting Idaho licensees to obtain BPOs. Some designated brokers either do not know what the law requires, or are unaware that salespersons in their office may be acting outside the law. It is extremely important that all designated brokers supervise the activities of their associates and help ensure that BPOs are only rendered by those who are properly licensed to do so. In addition, the license law requires all fees for brokerage services to be paid through the designated broker. This includes fees for services such as broker price opinions.

The Real Estate Commission and the Real Estate Appraisers Board have prepared a joint guideline on Broker Price Opinions. A copy of this new IREC Guideline #20 is attached for your information, and it is also available on our website at www.irec.idaho.gov.

Please do not hesitate to contact the Real Estate Commission if you have any questions about the new Guideline #20, broker price opinions, or any other real estate-related issue. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink that reads 'Jeanne Jackson-Heim'. The signature is written in a cursive style with a large, looped 'J' and 'H'.

Jeanne Jackson-Heim
Executive Director

Attachment: *Guideline #20 – Broker Price Opinions*

JOINT GUIDELINE ON BROKER PRICE OPINIONS (BPOs)

The Idaho Real Estate Appraisers Act (Appraiser Act) prohibits all persons who are not licensed or certified by the Idaho Real Estate Appraiser Board (Appraiser Board) from doing any type of real estate appraisal, including an analysis, opinion or conclusion relating to the value of real estate. The Appraiser Act does grant exceptions for licensed real estate salespersons and brokers. This Guideline addresses the scope and application of those exceptions.

1. Comparative Market Analysis Exception. The first exception relates to price opinions for a prospective listing or a prospective sale:

[A] licensed real estate broker, associate broker or salesperson who, in the ordinary course of his business gives an opinion of the price of real estate for the purpose of a prospective listing or sale, provided that such person does not represent himself as being a state licensed or certified real estate appraiser (Idaho Code 54-4105(2)).

This exception allows any real estate licensee – salesperson or broker – to prepare and present a price opinion for the purpose of a prospective listing or a prospective sale, also known as a Comparative Market Analysis (CMA). Licensees may not represent or mislead someone into thinking they are licensed or certified real estate appraisers, unless they are.

2. Brokers Price Opinion Exception. The second exception relates to broker price opinions (BPOs):

[A] real estate broker or associate broker licensed under [chapter 20, title 54, Idaho Code](#), whose license is active and in good standing, from rendering a broker's price opinion, for which the broker may charge a fee, provided the broker's price opinion complies with the following requirements:

- (a) The broker's price opinion shall be in writing and contain the following:*
- (i) A statement of the intended purpose of the price opinion;*
 - (ii) A brief description of the subject property and property interest to be priced;*
 - (iii) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;*
 - (iv) Any assumptions or limiting conditions;*
 - (v) A disclosure of any existing or contemplated interest of the broker(s) issuing the opinion;*
 - (vi) The name and signature of the broker(s) issuing the price opinion and the date of its issuance;*

*(vii) A disclaimer that, unless the broker is licensed under the Idaho real estate appraisers act, [chapter 41, title 54, Idaho Code](#), the report is not intended to meet the uniform standards of professional appraisal practice;
The broker's price opinion permitted under this chapter may not be used as an appraisal, or in lieu of an appraisal, in a federally related transaction. (Idaho Code 54-4105(3).)*

Under this exception, a real estate broker may prepare and render a BPO for purposes other than procuring listings and sales. This exception is strictly limited to those holding an active associate or designated broker license. BPOs prepared by a broker must include all of the content requirements noted in the Appraiser Act.

A BPO may not be used in place of an appraisal for a *federally related transaction*, which is defined in the Appraiser Act as “*any real estate related financial transaction that a federally regulated institution, regulatory agency, or the resolution trust corporation engages in, funds, contracts for, or regulates*” (Idaho Code 54-4104(6)).

Enforcement. The licensing requirements and exceptions contained in the Appraiser Act are regulated by the Appraiser Board. Real estate licensees who violate the Appraiser Act may find themselves before the Appraiser Board facing allegations of unlicensed practice of appraisal. The Real Estate Commission takes the position that if a licensee violates the Appraiser Act in preparing or rendering a BPO or other unlawful activity, that licensee may also be subject to discipline under the Real Estate License Law for dishonest and dishonorable dealings (Idaho Code 54-2060). This means that a finding of unlicensed practice by the Appraiser Board may lead to additional discipline imposed by the Real Estate Commission.

NOTE: The Idaho Real Estate Appraiser Board and the Idaho Real Estate Commission are more interested in obtaining compliance with the laws pertaining to BPOs than initiating discipline for violations.

Payment of Fees. Although rendering a BPO is not a specifically defined activity in the real estate license law, the Appraiser Act requires anyone rendering a BPO to hold an active real estate broker license. Therefore, the Real Estate License Law provisions pertaining to broker supervision and fee splitting apply to BPOs. The Real Estate Commission requires an associate broker who prepares a BPO to submit the BPO through his/her designated broker (Idaho Code 54-2038). In addition, the associate broker may not accept any fee except through the designated broker (Idaho Code 54-2054(9)).

FREQUENTLY ASKED QUESTIONS

Question #1: A lender calls a real estate broker and requests a BPO and the lender would or could not disclose the intended purpose of the BPO. May the broker render a BPO that complies with Idaho law?

Answer: No. The statute plainly states that a BPO must contain a statement of its intended purpose, and it must be included in the BPO. The Uniform Standards of Professional Practice (USPAP) and the Appraiser Board interpret “purpose” to mean how the BPO is going to be used. Examples may include for estate planning purposes, dissolution of a partnership, refinance of a mortgage, short sale negotiations or determination, loan modification, loan origination, insurance purposes, etc. Any purpose that is for a federally related transaction would be unlawful in Idaho (see previous definitions).

Question #2: A lender calls a real estate salesperson and requests a BPO. May a salesperson render the BPO?

Answer: No. Some states allow salespersons to render BPOs, but Idaho law is very clear that only actively-licensed **brokers** may render BPOs. Unfortunately, many lenders have contacted Idaho salespersons (or inactive brokers) and requested BPOs. In some cases, the lenders have assured the salespersons it is perfectly fine for these licensees to render the BPOs, and many licensees have relied on these statements. If the salesperson renders a BPO, the salesperson would be violating Idaho law and may be subject to disciplinary by the Appraiser Board, the Real Estate Commission, or civil action under Idaho law. Salespersons who receive requests to render BPOs should decline the requests and/or forward those requests to their designated brokers.

Question #3: What if the lender discloses that it wants to use the BPO in its consideration of a short sale? Or a foreclosure? Or a modification of an existing loan? Is a broker restricted from rendering a BPO for these intended purposes?

Answer: Not necessarily. The purpose of the “statement of intended purposes” is to define the context of the price opinion. It is the lender’s responsibility – not the broker’s – to comply with any requirement that the written valuation be performed by a state certified or licensed appraiser. Of course, and unless the broker is in fact licensed under the Real Estate Appraiser Act, the broker must include the required disclaimer that the BPO “is not intended to meet the uniform standards of professional appraisal practice.” Brokers must also include a disclaimer, in the language of the statute, that the BPO “may not be used as an appraisal, or in lieu of an appraisal, in a federally-related transaction.”

Question #4: May a salesperson assist a broker in preparing a BPO?

Answer: Yes, but only if the broker rendering the BPO is the designated broker for the assisting salesperson and the assisting salesperson is acting on behalf of, and under the control and supervision of, the designated broker as required by the License Law. A salesperson who assists his or her designated broker will not be deemed to be engaging in the unlicensed practice of appraisal. Likewise, a

salesperson may assist an associate broker in preparing a BPO, if both the salesperson and the associate broker are licensed at the same brokerage, the designated broker has knowledge of and consents to the assistance, and both the salesperson and associate broker are acting under the control and supervision of their designated broker.

Question #5: Who oversees the quality of a BPO? In other words, what happens to a licensee who renders an inaccurate BPO?

Answer: As long as a broker meets the BPO requirements of Idaho Code 54-4105(3), the Appraiser Board has no jurisdiction. A BPO is merely one broker's opinion of price, not value, and as such, the Real Estate Commission will not get involved in complaints regarding the quality or accuracy of a BPO. However, a broker may be subject to civil liability by an injured party. A real estate licensee who performs BPOs should review his Errors & Omissions insurance policy to confirm coverage.

Question #6: Is there a difference in an estimate or opinion of "price" and "value"?

Yes. **"Price"** is considered to be a *fact and may change based upon factors unrelated to value* such as the seller being relocated to another city, experiencing financial difficulties and needing to sell the property in a shorter period of time, or other personal circumstances unrelated to value such as a divorce or loss of a job. It is defined in USPAP as "the price paid for a property [which] may or may not have any relation to the value".

An opinion of **"value"** is *never a fact* since it is an economic concept and always an opinion of the worth of a property at a given time related to a specific definition of value.

Types of value may include market value, salvage value, liquidation value, distressed value, etc. Any statement of value must also include its relationship to time. For example, if the market value of a property is estimated to be \$150,000 and the typical marketing time is 12-15 months, and a client then requests a value estimate based upon a 3-6 months time frame, it is likely that the value would be adjusted downward for the shorter marketing period.