

**House Professional Licensure Committee**  
**Public Hearing on HB 863, PN 969**  
**May 10, 2017**  
**9:30 AM**  
**Room B31- Main Capitol**  
**Written Testimony of Peter Speaks, Deputy Secretary for Regulatory Programs**  
**Pennsylvania Department of State**

Thank you, Chairman Mustio, Minority Chairman Readshaw and members of the Professional Licensure Committee for allowing the Department of State to submit written comments for the record on HB 863, PN 969, which would amend the Real Estate Licensing and Registration Act, (P.L. 15, No. 9). The Department, through its Bureau of Professional Occupations and Affairs (“Bureau”) administers and enforces practice requirements for the professional licensure of 29 professional boards and commissions, effectively regulating roughly 255 different license classifications, and nearly one million licensees. The Pennsylvania Real Estate Commission is responsible for oversight of 59,202 active licensees across 36 different licensee classes, and issued 6,908 new licenses in 2016.

**I. Department of State Recommendations Regarding HB 863 PN 969**

The Department of State is neutral on Representative Rothman’s proposed legislation. The Department recognizes that broker price opinions are becoming more prevalent throughout the country, and while not specifically opposed to raising the educational requirements for salespersons, the Department has some concerns over some of the language in the bill. Given the proposed amendments below, the Department would likely recommend this legislation.

**A. Current Requirements Under “The Real Estate Licensing and Registration Act”**

Currently, brokers, associate brokers and salespersons are not allowed to perform broker price opinions, and the Pennsylvania Real Estate Commission considers it the unlicensed practice of real estate appraising. The trend in the country is that more and more states are allowing the practice of broker price opinions. At present, 35 states (including New York and Ohio) allow brokers or salespersons to perform broker price opinions as part of the listing process, or for other services, and charge a fee for services. Additionally, the Act requires a minimum of 60 hours of pre-licensure education in real estate instruction for licensure as a salesperson. In contrast to its neighboring states, Pennsylvania requires the least number of educational hours for this licensure classification.

**B. Requirements Under HB 863, PN 969**

HB 863 PN 969 would amend the Real Estate Licensing and Registration Act to allow brokers, associate brokers and salespersons to perform broker price opinions. It would also amend the pre-licensure requirements for salespersons by increasing the education

requirement from 60 to 75 hours and require licensees to possess a high school diploma or its equivalent.

Section 1 of the bill amends section 201 of the Act to create a definition for “broker price opinion,” “short sale,” and amends the definition of “comparative market analysis.” A broker price opinion will give the probable selling price of real property and provide detail about the property’s condition, market, neighborhood, and comparable sales, but does not include automated valuation models as defined by Federal law. A comparative market analysis will be for determining the probable sale or rental price of a property for a potential sale/rental. It will also be available to a person that is making decisions or performing due diligence related to a potential real estate transaction. A short sale is the sale of a house in which the proceeds fall short of the amount the owner owes on the mortgage.

Section 2 of the bill amends section 521(2) of the Act to increase the number of hours required in real estate instruction for a salesperson license. The number of hours would be increased from 60 hours to 75 hours and must complete them within 5 years of taking the salesperson examination. This would be consistent with other states that have increased their hours for pre-licensure education. In comparison to our surrounding states, Pennsylvania requires the least number of hours for salesperson pre-licensure education. Raising the number of hours to 75 makes Pennsylvania the same as New York and New Jersey. This section also requires that a person show proof that the person has graduated high school or has an education equivalent to a high school graduation.

Section 3 of the bill amends section 608.3 of the Act to require that any fee charged for a comparative market analysis must be paid to the broker.

Section 4 of the bill adds section 608.6 to the Act to allow broker price opinions, and provides for the form and allowable uses. This section also provides for the promulgation of temporary regulations to facilitate prompt implementation of the bill, with a sunset date no later than three years after the effective date of the law.

Subsection (a) requires that broker price opinions have a statement, similar to the one for a comparative market analysis, that indicates that the broker price opinion was not prepared in accordance with the Uniform Standards of Professional Appraisal Practice and that it is not to be construed as an appraisal.

Subsection (b)(1) states that the broker price opinion should not be considered an appraisal or a valuation of real estate under the Real Estate Appraisers Certification Act (Appraisers Act) or the Appraisal Management Company Registration Act (AMC Act). Subsection (b)(2) states that broker price opinions shall be deemed to be a comparative market analysis for purposes of the AMC Act. The AMC Act allows appraisal management companies to specifically order comparative market analyses, but not broker price opinions.

Subsection (c) states all the information that must be contained in the broker price opinion, including the preparer’s signature. It would need to identify the intended users of the broker price opinion; a brief description of the property; the basis for the conclusion as to price, including applicable market data or capitalization computation; any assumption or limiting condition; any interest of the licensee who prepared the broker price opinion; the effective date of the broker price opinion and date signed; and the real estate license number of the preparer.

Subsection (d) requires any fee charged for the broker price opinion to be paid to the broker.

Subsection (e) states the allowable uses for a broker price opinion. It could be used in conjunction with a property owned by a lender after an unsuccessful sale at a foreclosure auction; a modification of a mortgage or equity line of credit; a short sale of a property; an evaluation of a portfolio of properties; or the relocation of an individual who is the owner of a property or a prospective purchaser of a property.

Subsection (f) gives the impermissible uses of a broker price opinion. It states that it cannot be the basis to determine the value of a property for a mortgage loan origination, refinancing or equity line of credit. It also cannot be done in connection with an eminent domain proceeding; a tax appeal; a bankruptcy or insolvency proceeding; a divorce or equitable distribution of property action; or any other action or proceeding before a court of record.

Subsection (g) allows broker price opinions to be used in conjunction with or in addition to an appraisal.

Subsection (h) allows registered appraisal management companies to recruit, engage and negotiate fees with brokers to prepare broker price opinions and may receive orders for and submit broker price opinions to clients. This activity is currently not allowed under the AMC Act. While subsection (b)(2) allows the broker price opinion to be considered a comparative market analysis for purposes under the AMC Act because appraisal management companies can order a comparative market analysis, it becomes confusing by interchanging the two terms for trying to circumvent the prohibited activity under the AMC Act.

Subsection (i) allows brokers, associate brokers, and salespersons to prepare broker price opinions if they have satisfied certain conditions. They must have satisfied the requirements prescribed by the Commission to obtain education in the preparation of broker price opinions and have completed at least 3 hours of continuing education in broker price opinion topics.

Subsection (j) is an additional requirement for salespersons to prepare broker price opinions. The salesperson must have held an active license for the 3 years immediately preceding the effective date of the broker price opinion and the opinion must be signed by the broker or associate broker designated by the broker in addition to the salesperson.

Subsection (k) allows the Commission to promulgate temporary regulations to facilitate prompt implementation that will expire 3 years after the effective date of the law.

Subsection (l) reiterates that the temporary regulations will expire after 3 years from the effective date of the law and that any other regulations adopted after the 3 years shall be promulgated as provided by law.

Section 5 of the bill repeals those sections of the Appraisers Act that are inconsistent with the bill. This section should also repeal those sections of the AMC Act that are inconsistent with the bill.

### **C. Departmental Concerns and Suggested Amendments for HB 863, PN 969**

The Appraisers Act defines an 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.” The State Board of Certified Real Estate Appraisers takes the position that a broker price opinion is the same as an appraisal. Currently,

brokers and salespersons that do broker price opinions have been disciplined by the State Board of Certified Real Estate Appraisers for unlicensed practice.

The Department has suggested the following amendments to better effect the purpose of the legislation. Some of the suggested amendments are somewhat technical in nature while others are more substantive. These amendments include:

- Amending the definition of the term “short sale” in section 1 to be defined as “[a] sale of real property in which the proceeds fall short of the amount the owner owes on the mortgage.”
- Section 5 of the bill should be amended to include the Appraisal Management Company Registration Act as follows:
  - Section 5. Repeals are as follows:
    - (1) The General Assembly declares that the repeal under paragraphs (2) and (3) are necessary to effectuate this act.
    - (2) The act of July 10, 1990 (P.L.404, No.98), known as the Real Estate Appraisers Certification Act, is repealed insofar as it is inconsistent with this act.
    - (3) The act of February 2, 2012 (P.L.30, No.4), known as the Appraisal Management Company Registration Act, is repealed insofar as it is inconsistent with this act.

Broker price opinions should be exempt from the Real Estate Recovery Fund. If a licensee is sued because of a broker price opinion and has a judgment based upon that fraud, misrepresentation or deceit, this could require the Real Estate Recovery Fund to pay these claims. The Department recommends the following:

- Amending section 801 of the Act to exempt broker price opinions from the Real Estate Recovery Fund. Section 801 should be amended as follows:
  - Section 801. Establishment of the fund.  
There is hereby established the Real Estate Recovery Fund for the purposes hereinafter set forth in this act.
    - (a) The Real Estate Recovery Fund shall not apply to the sale of, or the offer to sell, a campground membership or to a campground membership salesperson.
    - (b) The Real Estate Recovery Fund shall not apply to the preparation or issuance of broker price opinions.

Thank you for allowing us to provide these comments for your review. Please let the Department know if you have any additional questions or concerns.