



April 27, 2017

Rep. Mark Mustio
Chair
Professional Licensure Committee
PA House of Representatives
416 Irvis Office Building
Harrisburg, PA 17120

Rep. Harry Readshaw
Democratic Chair
Professional Licensure Committee
PA House of Representatives
221 Irvis Office Building
Harrisburg, PA 17120

Re: House Bill 863

Dear Chairman Mustio and Chairman Readshaw:

I am writing this letter to you in my capacity as the Chairman of the Coalition of Pennsylvania Real Estate appraisers which is the legislative arm of the 4 chapters of the Appraisal Institute (AI) in Pennsylvania.

The Appraisal Institute appreciates the opportunity to provide constructive criticism to the proposed legislation and to participate in the process.

HB 863, while still containing deficiencies, is the product of intense negotiations over the past 4 years between the AI and the Pennsylvania Association of Realtors (PAR), and represents the significant progress and concessions made by both sides during that process.

Based on the items set forth below, we have attached a “marked up” version of the bill for your reference.

Technical Corrections

In general, we would respectfully offer that the agreement reached between the AI and PAR was based on the premise that Broker Price Opinions would only be performed for an Insured Depository Institution, Insured Credit Union or Relocation Management Company.

Based on the above we believe that the terms Insured Depository Institution, Insured Credit Union, and Relocation Management Company should be defined in the legislation. Additionally, we believe that the allowed uses should specifically refer to Insured Depository Institution, Insured Credit Union or Relocation Management Company so that there is no opportunity for a real estate licensee or a regulatory agency to misunderstand the intent of the legislation.

We believe that the definition of a short sale is deficient and should be modified. The result of the negotiations and the bill as drafted contemplates that real estate licensees would be able to prepare BPO's for all types of properties for the Insured Depository Institutions and Insured Credit Unions. The language in the short sale section only refers to residential properties, creating potential confusion with respect to vacant land, agricultural, commercial and industrial properties.

Given that the negotiations led to an agreement that would not be used for any other purposes we are respectfully requesting that the language be strengthened as shown.

The intent of the negotiated settlement specifically included a prohibition of using a BPO in connection with a decedent's estate, thus we would respectfully suggest that this prohibition should be added to the legislative language.

Drafting Issues

We have significant concerns regarding the language on Page 8 -Lines 10 to 12 inclusive. We believe that a companion bill should be introduced to specifically repeal inconsistent sections of the Real Estate Appraisers Certification Act. Without such specific repeal, there is a significant likelihood that this section will be open to interpretation by real estate licensees, with the unintended consequence of exposing those licensees to discipline from either the State Real Estate Commission and or the State Board of Certified Appraisers, and will only serve as litigation fodder.

Using the same thought process with respect to the Appraisal Management Company Registration Act, Page 6 Line 30 and Page 7 Lines 1 to 3 inclusive should be deleted and a companion bill should also be introduced to modified the items in that act which are inconsistent with this legislation. Again, our intent is to prevent an unsuspecting Appraisal Management Company from violating an ambiguous law.

Based on the above, we **strongly** encourage the modification of this proposed legislation into a 3-bill package that would clearly and succinctly present the intended changes in the law

Conclusion

We look forward to continued co-operation with all interested parties to bring the legislative process on this matter to a successful conclusion.

If you have any questions or concern please do not hesitate to contact me at 717-253-3341 or at scotthartman@cbbigham.com .

Sincerely,

R. Scott Hartman

R. Scott Hartman, SRA
Chairman

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 863 Session of
2017

INTRODUCED BY ROTHMAN, KINSEY, SANTORA, DAVIS, R. BROWN,
A. HARRIS, MARSICO, WATSON, STEPHENS, KORTZ, QUIGLEY, BAKER,
DRISCOLL, CARROLL, CUTLER, ROE, GODSHALL, PHILLIPS-HILL,
LONGIETTI, MASSER, SAYLOR, KNOWLES, HELM, BRIGGS, DEASY,
IRVIN, RYAN, TOEPEL, NEILSON AND MARKOSEK, MARCH 16, 2017

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MARCH 16, 2017

AN ACT

Amending the act of February 19, 1980 (P.L.15, No.9), entitled
"An act establishing the State Real Estate Commission and
providing for the licensing of real estate brokers and
salesmen," in definitions, further providing for definitions;
in qualifications and applications for licenses and
registration certificates, further providing for
qualifications for license; in duties of licensees, further
providing for comparative market analysis disclosure and
providing for broker price opinion; and making a related
repeal.

The General Assembly of the Commonwealth of Pennsylvania
hereby enacts as follows:

Section 1. The definition of "comparative market analysis"
in section 201 of the act of February 19, 1980 (P.L.15, No.9),
known as the Real Estate Licensing and Registration Act, is
amended and the section is amended by adding definitions to
read:

Section 201. Definitions.

The following words and phrases when used in this act shall
have, unless the context clearly indicates otherwise, the

meanings given to them in this section:

* * *

"Broker price opinion." An estimate prepared by a broker, associate broker or salesperson that details the probable selling price of a particular parcel of real property and provides a varying level of detail about the property's condition, market and neighborhood, and information on comparable sales, but does not include an automated valuation model as defined in section 1125(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73, 12 U.S.C. 3354(d)).

* * *

"Comparative market analysis." [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.] A written analysis, opinion or conclusion by a broker, associate broker or salesperson relating to the probable sale or rental price of a specified parcel of real property in an identified real estate market at a specified time, which is prepared for any of the following:

(1) An existing or potential seller, buyer, lessor or lessee of a parcel of real property.

(2) A person making decisions or performing due diligence related to the potential listing, offering, sale,

option, lease or acquisition price of a parcel of real property.

* * *

"Insured Depository Institution". - as that term is defined in 12 U.S.C.A. § 1813.

* * *

"Insured Credit Union" - as that term is defined in 12 U.S.C.A. § 1572

* * *

"Relocation Management Company". - A company that assists entities to move employees from one location to another, including but not limited to purchasing, marketing, and selling the present home of the employee being transferred.

* * *

"Short Sale." A transaction in which the sale of real estate generates proceeds to the insured depository institution or insured credit union that are less than the amount owed to the insured depository institution or insured credit union by a mortgagor. A sale of a house in which the proceeds fall short of the amount the owner owes on the mortgage.

* * *

Section 2. Section 521 of the act is amended and the section is amended by adding a paragraph to read:

Section 521. Qualifications for license.

Each applicant shall as a condition precedent to obtaining a license, take the salesperson license examination and score a passing grade. Prior to taking the examination:

- (1) The applicant shall be at least 18 years of age.
- (2) [The] The following apply:

(i) Except as provided under subparagraph (ii), the applicant shall have completed [60] 75 hours in real estate instruction in areas of study prescribed by the rules of the commission, which rules shall require instruction in the areas of fair housing and professional ethics.

(ii) An applicant shall be required to complete 60 hours of real estate instruction as prescribed under subparagraph (i) if the applicant has completed a portion of the hours before the effective date of this subparagraph. An applicant who has not completed any of the required hours of real estate instruction before the effective date of this subparagraph shall complete 75 hours of real estate instruction within five years of taking the salesperson license examination.

(3) The applicant shall be a high school graduate or shall produce proof satisfactory to the commission of an education equivalent to high school preparation. This paragraph shall not apply to a person licensed before the effective date of this paragraph.

Section 3. Section 608.3 of the act is amended to read:

Section 608.3. Comparative market analysis disclosure.

(a) A comparative market analysis must contain the following statement printed conspicuously and without change on the first page:

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.

(b) A comparative market analysis prepared in accordance with this act shall not be deemed to be an appraisal within the scope of the act of July 10, 1990 (P.L.404, No.98), known as the "Real Estate Appraisers Certification Act."

(c) Any fees charged for a comparative market analysis shall be paid to the broker.

Section 4. The act is amended by adding a section to read:
Section 608.6. Broker price opinion.

(a) A broker price opinion must contain the following statement displayed conspicuously and without change:

This analysis has not been prepared 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.

(b) A broker price opinion prepared in accordance with this act shall:

(1) Not be deemed to be an appraisal within the scope of the act of July 10, 1990 (P.L.404, No.98), known as the "Real Estate Appraisers Certification Act," or a valuation of real estate for purposes of section 8(b)(1) of the act of February 2, 2012 (P.L.30, No.4), known as the "Appraisal Management Company Registration Act."

~~(2) Be deemed to be a comparative market analysis for~~

the purposes of the "Appraisal Management Company
Registration Act."

(c) A broker price opinion must be signed manually or electronically by the person who prepared it and must contain all of the following information:

(1) An identification of the intended users and intended uses of the broker price opinion, if known.

(2) A brief description of the subject property and the property interest to be priced.

(3) The basis for the conclusion as to the price, including applicable market data or capitalization computation.

(4) Any assumption or limiting condition.

(5) Any existing or contemplated interest of the licensee who prepared the broker price opinion.

(6) The effective date of the broker price opinion and the date that the document is signed.

(7) The real estate license number of the preparer.

(d) Any fees charged for a broker price opinion shall be paid to the broker.

(e) A broker price opinion may be prepared by a broker, associate broker or salesperson only for use in conjunction with:

(1) a property owned by an Insured Depository Institution or an Insured Credit Union lender after an unsuccessful sale at a foreclosure auction;

(2) a modification of a first or junior mortgage or equity line of credit held by an Insured Depository Institution or an Insured Credit Union;

(3) a ~~Short Sale~~ of a property subject to a mortgage held by an Insured Depository Institution or an Insured Credit Union;

(4) an ~~evaluation analysis~~ or monitoring of a portfolio of properties subject to a mortgage held by an Insured Depository Institution or an Insured Credit Union or owned by an Insured Depository Institution or an Insured Credit Union;
~~or~~

(65) the relocation of an individual by a Relocation Management Company who is the owner of a property or a prospective purchaser of a property.

(f) A broker price opinion may not be used for any other purpose including but not limited to:

(1) as the basis to determine the value of a parcel of real property for a mortgage loan origination, including a first or junior mortgage, refinancing or equity line of credit; or

(2) in connection with:

(i) an eminent domain proceeding;

(ii) a Federal, State or local tax appeal;

(iii) a bankruptcy or insolvency proceeding;

(iv) an action or proceeding involving divorce or equitable distribution of property; ~~or~~

(v) a decedents estate; or

(vi) any other action or proceeding before a court of record.

(g) The provisions of this section shall not preclude the preparation of a broker price opinion to be used in conjunction with or in addition to an appraisal, for a purpose permitted by

subsection (e) of this section.

~~(h) A registered appraisal management company may recruit, engage and negotiate fees with a broker to prepare broker price opinions and may receive orders for and submit broker price opinions to clients.~~

(i) A broker, associate broker or salesperson may not prepare a broker price opinion, and a broker or associate broker may not sign a broker price opinion under subsection (j), unless the broker, associate broker or salesperson:

(1) has satisfied the requirements prescribed by the rules of the commission to obtain education in the preparation of broker price opinions; and

(2) has completed at least three hours of continuing education during the current or immediately preceding two-year license period in broker price opinion topics prescribed by the rules of the commission.

(j) In addition to the requirements under subsection (i), a salesperson may not prepare a broker price opinion unless the salesperson has held an active license for the three years immediately preceding the effective date of the broker price opinion. A broker price opinion prepared by a salesperson must be signed by the broker or an associate broker designated by the broker in addition to the salesperson.

(k) In order to facilitate the prompt implementation of this section, regulations promulgated by the commission shall be deemed temporary regulations which shall expire no later than three years following the effective date of this section. The commission may promulgate temporary regulations which shall not be subject to:

(1) Sections 201, 202 and 203 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(2) The act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

(1) The authority provided to the commission to adopt temporary regulations under subsection (k) shall expire three years from the effective date of this section. Regulations adopted after that date shall be promulgated as provided by law.

Section 5. Repeals are as follows:

~~(1) The General Assembly declares that the repeal under paragraph (2) is 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.~~

Section 6. This act shall take effect in 60 days.