

Select Year:

The 2012 Florida Statutes

Title XXXII
REGULATION OF PROFESSIONS
AND OCCUPATIONS

Chapter 475
REAL ESTATE BROKERS, SALES
ASSOCIATES, SCHOOLS, AND APPRAISERS

[View Entire
Chapter](#)

475.612 Certification, licensure, or registration required.—

(1) A person may not use the title “certified real estate appraiser,” “licensed real estate appraiser,” or “registered trainee real estate appraiser,” or any abbreviation or words to that effect, or issue an appraisal report, unless such person is certified, licensed, or registered by the department under this part. However, the work upon which an appraisal report is based may be performed by a person who is not a certified or licensed appraiser or registered trainee appraiser if the work is supervised and approved, and the report is signed, by a certified or licensed appraiser who has full responsibility for all requirements of the report and valuation service. Only a certified or licensed appraiser may issue an appraisal report and receive direct compensation for providing valuation services for the appraisal report. A registered trainee appraiser may only receive compensation for appraisal services from her or his authorized certified or licensed appraiser.

(2) This section does not preclude a Florida licensed real estate broker, sales associate, or broker associate who is not a Florida certified or licensed real estate appraiser from providing valuation services for compensation. Such persons may continue to provide valuation services for compensation so long as they do not represent themselves as certified, licensed, or registered under this part.

(3) This section does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a price opinion, or gives an opinion of the value of real estate. However, in no event may this comparative market analysis, price opinion, or opinion of value of real estate be referred to or construed as an appraisal.

(4) This section does not prevent any state court or administrative law judge from certifying as an expert witness in any legal or administrative proceeding an appraiser who is not certified, licensed, or registered; nor does it prevent any appraiser from testifying, with respect to the results of an appraisal.

(5) This section does not apply to any full-time graduate student who is enrolled in a degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a certified or licensed appraiser and is engaged only in appraisal activities related to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual who is responsible for the report’s content.

(6) This section does not apply to any employee of a local, state, or federal agency who performs appraisal services within the scope of her or his employment. However, this exemption does not apply where any local, state, or federal agency requires an employee to be registered, licensed, or certified to perform appraisal services.

History.—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 224, ch. 96-410; s. 1119, ch. 97-103; s. 21, ch. 98-250; s. 3, ch. 2000-198; ss. 4, 50, ch. 2003-164; s. 2, ch. 2006-198.

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475.01 Definitions.—

(1) As used in this part:

(a) “Broker” means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. A broker renders a professional service and is a professional within the meaning of s. [95.11\(4\)\(a\)](#). Where the term “appraise” or “appraising” appears in the definition of the term “broker,” it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. The term “broker” also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term “broker” also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. [475.011](#) and [721.20](#).

(b) “Broker associate” means a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another.

(c) “Commission” means the Florida Real Estate Commission.

(d) “Customer” means a member of the public who is or may be a buyer or seller of real property and may or may not be represented by a real estate licensee in an authorized brokerage relationship.

(e) “Department” means the Department of Business and Professional Regulation.

(f) “Fiduciary” means a broker in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. The duties of the broker as a fiduciary are loyalty,

confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

(g) “Involuntarily inactive status” means the licensure status that results when a license is not renewed at the end of the license period prescribed by the department.

(h) “Principal” means the party with whom a real estate licensee has entered into a single agent relationship.

(i) “Real property” or “real estate” means any interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, subleasehold, or mineral right; however, the term does not include any cemetery lot or right of burial in any cemetery; nor does the term include the renting of a mobile home lot or recreational vehicle lot in a mobile home park or travel park.

(j) “Sales associate” means a person who performs any act specified in the definition of “broker,” but who performs such act under the direction, control, or management of another person. A sales associate renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

(k) “Single agent” means a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction.

(l) “Transaction broker” means a broker who provides limited representation to a buyer, a seller, or both, in a real estate transaction, but does not represent either in a fiduciary capacity or as a single agent. In a transaction broker relationship, a buyer or seller is not responsible for the acts of a licensee. Additionally, the parties to a real estate transaction are giving up their rights to the undivided loyalty of a licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

(m) “Voluntarily inactive status” means the licensure status that results when a licensee has applied to the department to be placed on inactive status and has paid the fee prescribed by rule.

(2) The terms “employ,” “employment,” “employer,” and “employee,” when used in this chapter and in rules adopted pursuant thereto to describe the relationship between a broker and a sales associate, include an independent contractor relationship when such relationship is intended by and established between a broker and a sales associate. The existence of such relationship shall not relieve either the broker or the sales associate of her or his duties, obligations, or responsibilities under this chapter.

(3) Wherever the word “operate” or “operating” as a broker, broker associate, or sales associate appears in this chapter; in any order, rule, or regulation of the commission; in any pleading, indictment, or information under this chapter; in any court action or proceeding; or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in this chapter as constituting or defining a broker, broker associate, or sales associate, not including, however, any of the exceptions stated therein. A single such act is sufficient to bring a person within the meaning of this chapter, and each act, if prohibited herein, constitutes a separate offense.

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12(23).

History.—s. 1, ch. 12223, 1927; CGL 4062; s. 1, ch. 29983, 1955; s. 1, ch. 59-199; s. 1, ch. 59-197; s. 1, ch. 59-438; ss. 30, 35, ch. 69-106; s. 1, ch. 75-112; s. 7, ch. 75-184; s. 3, ch. 76-168; s. 1, ch. 77-239; s. 1, ch. 77-355; s. 1, ch. 77-457; s. 1, ch. 78-215; s. 1, ch. 78-366; ss. 2, 42, 43, ch. 79-239; ss. 2, 3, 5, ch. 80-405; ss. 2, 3, ch. 81-318; ss. 5, 38, ch. 82-1; ss. 18, 45,

ch. 82-179; ss. 1, 28, 30, ch. 88-20; s. 1, ch. 89-368; s. 10, ch. 90-228; s. 10, ch. 90-341; s. 13, ch. 90-345; ss. 2, 10, ch. 91-89; s. 1, ch. 91-289; s. 4, ch. 91-429; s. 2, ch. 93-261; s. 134, ch. 94-119; s. 159, ch. 94-218; s. 1, ch. 94-337; s. 1, ch. 97-42; s. 361, ch. 97-103; s. 1, ch. 98-250; s. 1, ch. 99-384; s. 1, ch. 2002-233; ss. 1, 22, ch. 2003-164; s. 78, ch. 2004-5.

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The NJ State Director's office of the NJNAIFA is pleased to announce that the New Jersey Real Estate Appraisal Board approved an advisory opinion stating that Broker Price Opinions (BPOs) are considered to be appraisals, and therefore are subject to the jurisdiction of the Appraisal Board. It is the opinion of the Appraisal Board that a BPO cannot be prepared by anyone other than a licensed or certified real estate appraiser.

Any unlicensed person that prepares a BPO for any purpose other than those excluded by operation of N.J.S.A. 45:14F-21 (c) and/or 45:14F-21 (f) engages in the unlicensed practice of appraising. The unlicensed practice of appraising is punishable by significant fines.

Present at the board meeting were NJNAIFA members Charles Blau (National President), Bob Solotist (State Director), and Dan Drelich (Central Jersey Chapter Member). Messers Blau and Drelich addressed the board on the advisory opinion.

A copy of the APPRAISAL Board's Opinion can be found at http://www.njconsumeraffairs.gov/real/agenda/realattach_112712.pdf.

Sincerely,

Bob Solotist
2012-2013 NJNAIFA State Director

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October 23, 2012

ADVISORY OPINION

The New Jersey Real Estate Appraisers Board (the "Board") is aware that uncertainty exists regarding the question whether state licensed real estate brokers (the term "broker" is herein used in a generic sense, and includes licensed brokers, salespersons, broker/salespersons and/or agents) may prepare "Brokers' Price Opinions" (hereinafter "BPO"s) without violating New Jersey law. Specifically, the Board has received inquiries whether brokers who prepare BPOs are engaged in the unlicensed practice of appraising, and has also received complaints asking that the Board investigate and/or take legal action against brokers preparing BPOs.

In order to provide general guidance to the public, to include both licensees of the Board and licensees of the Real Estate Commission, the Board issues the following Advisory Opinion. It is the Board's intent, through the issuance of this Advisory Opinion, to provide notice of the Board's position on issues regarding the preparation of BPOs by persons other than licensed or certified appraisers. While the Advisory Opinion is offered to provide general guidance to the public, it is not intended to be, nor may it be considered to constitute, a formal Attorney General's opinion.

For the reasons set forth below, the Board advises that a "BPO" is an "appraisal" under New Jersey law. Given that predicate, anyone other than a licensed appraiser who prepares a BPO engages in the unlicensed practice of appraising, unless he or she prepares the BPO pursuant to a specific statutory exemption (see additional discussion of exemptions below).

An appraisal is defined under New Jersey law to be "an unbiased analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, real estate." N.J.S.A. 45:14F-2. An "appraisal report" is defined to be "any written communication of an appraisal." Id. The Uniform Standards of Professional Appraisal Practice, which are incorporated by reference in their entirety within the Board's regulations, see N.J.A.C. 13:40A-6.1(a), define an "appraisal" generally to be "an opinion of value," and define the term "report" to encompass "any communication, written or oral, of an appraisal

. . ."¹ The Board takes the position, for purposes of the analysis herein, that a written report which communicates an opinion of the value of an interest in real estate is an "appraisal report."

The term BPO is not defined within New Jersey law. The term does not appear in the Real Estate Appraisers Act or in any of the Board's regulations, nor does it appear in the statutes governing the practice of real estate brokers and salesmen, see N.J.S.A. 45:15-1, et seq. or in any regulations adopted by the Real Estate Commission, see N.J.A.C. 11:5-1.1 et seq. A BPO is defined, under federal law (within the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010), to be "an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate 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." H.R. 4173 at §1126(b). For purposes of the analysis

1

The full definitions of the terms "appraisal" and "report" within the USPAP (2012-2013 edition) are as follows:

APPRAISAL: (noun) the act or process of developing an opinion of value; an opinion of value

(adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

Comment: An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value).

REPORT: any communication, written or oral, of an appraisal, appraisal review, or appraisal consulting service that is transmitted to the client upon completion of an assignment.

Comment: Most reports are written and most clients mandate written reports. Oral report requirements (see the RECORD KEEPING RULE) are included to cover court testimony and other oral communications of an appraisal, appraisal review, or appraisal consulting service.

herein, the Board adopts the definition of BPO found in the Dodd-Frank Act. It is the Board's position that any report that details the probable selling price of a property must also be considered to be a report communicating an opinion upon the value of that property. Accordingly, a BPO is an "appraisal" under New Jersey law.

The Real Estate Appraisers Act mandates that appraisals of real property situate in New Jersey can only be performed by state licensed or certified appraisers. Accordingly, unless a specific exemption applies under state law, brokers who prepare BPOs in New Jersey are engaged in the unlicensed practice of appraising.

There are two provisions of the Real Estate Appraisers Act which may operate to exempt brokers preparing BPOs from appraiser licensure requirements. A broker may legally prepare a BPO if the BPO is:

- prepared for the purpose of giving "counsel and advice on pricing, listing, selling and use of real property, directly to a property owner or prospective purchaser, if the intended use of the counsel or advice is solely for the individual knowledge of or use by the property owner or prospective purchaser." N.J.S.A. 45:14F-21(c)² ; or

2

N.J.S.A. 45:14F-21(c) specifically provides:

Except as otherwise provided in subsection f of this section, no person other than a State licensed real estate appraiser, a state certified real estate appraiser or a person who assists in the preparation of an appraisal under the direct supervision of a State licensed or certified real estate appraiser shall perform or offer to perform an appraisal assignment in regard to real estate located in this State including, but not limited to, any transaction involving a third party, person, government or quasi-governmental body, court, quasi-judicial body or financial institution.

Nothing in P.L. 1991, c. 68 (C.45:14F-1 et seq.) shall be construed to preclude a person not licensed or certified pursuant to this act from

- prepared for a State or federally chartered bank, savings bank, or savings and loan association, in those circumstances "where the underlying transaction is a federally related transaction for which federal law and regulation do not require that a certified or licensed appraiser be used." N.J.S.A. 45:14F-21(f).

The Board maintains that the exemption set forth at N.J.S.A. 45:1-21(c) - that is, for the provision of counsel and advice on pricing, listing, selling and use of property - must be interpreted to apply only when a broker is engaged in a transactional relationship with a property owner or identifiable prospective purchaser of a specific property, and when the broker then elects to prepare a BPO directly for the sole use of the individual client. Alternatively stated, the Board suggests that the exemption applies only when the broker has a commercial and/or professional relationship with the prospective purchaser or property owner. Even in those situations, it remains the case that the BPO can only be prepared for the individual knowledge of or use by the property owner or prospective purchaser, and not for any other purpose. The Board points out that any broader interpretation of the statutory exemption could effectively eviscerate appraisal licensure requirements, because it would then provide brokers with potentially limitless authority to prepare appraisals on New Jersey properties.

The second statutory exemption set forth at N.J.S.A. 45:14F-21(f) applies only to state or federally chartered banks, savings banks and/or savings and loan associations, and only to those "federally related transactions" where federal law and regulation do not require the use of a certified or licensed appraiser. While the Board will not herein seek to analyze the scope of the subsection (f) exemption, the specified financial institutions may opt to engage brokers to prepare BPOs upon properties for the specified transactions, and brokers preparing

giving or offering to give, for a fee or otherwise, counsel and advice on pricing, listing, selling and use of real property, directly to a property owner or prospective purchaser if the intended use of the counsel or advice is solely for the individual knowledge of or use by the property owner or prospective purchaser.

October 23, 2012

BPOs for use in those circumstances would not violate state law.

Any broker who prepares a BPO for any purpose or user other than those excluded by operation of N.J.S.A. 45:14F-21(c) and/or 45:14F-21(f) engages in the unlicensed practice of appraising. The unlicensed practice of appraising, in turn, is punishable by fines of up to \$10,000 for a first violation and \$20,000 for each subsequent violation.

Given the ambiguity that has existed prior to the issuance of this Advisory Opinion, the Board has determined that it will exercise prosecutorial discretion, and not seek to penalize or take action(s) against any brokers who may have previously prepared BPOs for impermissible purposes or uses. Brokers are cautioned, however, that they should immediately cease and desist from engaging in the preparation of BPOs for any uses other than those permissible under New Jersey law. Failure to do so may expose a broker to penalties for the unlicensed practice of appraising.

SUPPLEMENT

In order to provide additional guidance, set forth below are additional questions and answers generally regarding appraisals and BPOs. The questions and answers should be considered to provide additional information outlining the position set forth herein, and should thus be considered to be incorporated within, and a part of, this Advisory Opinion.

1) **Can a broker prepare a BPO provided that he or she includes a statement in the BPO that the BPO is not to be considered to be an appraisal?**

A broker can only legally prepare a BPO in New Jersey if the BPO is prepared pursuant to one of the two statutory exemptions discussed above. Neither the inclusion of, nor the failure to include, a "disclaiming" statement in any way alters the analysis whether or not a BPO is in fact an appraisal, nor the analysis whether the BPO can be legally prepared.

2) **What are examples of impermissible uses of a BPO, or impermissible clients for whom a BPO might be prepared?**

While it would be impossible to catalogue a complete list of potential impermissible uses and/or clients, the Board suggests that BPOs prepared for the following uses or clients are likely to be outside the scope of the statutory exemptions, and thus illegal under New Jersey law:

- BPOs prepared for use in tax appeal proceedings;
- BPOs prepared for use in judicial or quasi-judicial proceedings where the value of property is an issue to be determined;
- BPOs prepared for use in determining the value of property for the purpose of loan origination;
- BPOs prepared for mortgage service companies or asset managers for purposes such as loan origination, loan modifications, short sales portfolio valuation, etc.

3) **What are the consequences or potential penalties for**

preparing a BPO?

The Board is authorized, under state law, to investigate and to penalize individuals who engage in the unlicensed practice of real estate appraising. The Board has broad investigative powers, and is authorized to hold hearings to determine whether an unlicensed person has engaged in unauthorized practice. Following a hearing, the Board can enter Orders requiring unlicensed persons to cease and desist from continued unlicensed practice, and is authorized to assess penalties of up to \$10,000 for a first violation, and up to \$20,000 for each subsequent violations.

While the Board cannot order the suspension or revocation of a broker's license, it is possible that licensed brokers or salespersons could be subject to such actions by the Real Estate Commission.

4) **What is a "CMA"? Is a "CMA" the equivalent of a "BPO."?**

The Board declines to seek to interpret the regulations of the Real Estate Commission, but points out that the term "comparative market study or analysis" ("CMA") only appears within one paragraph of those regulations, specifically N.J.A.C. 11:5-6.1(m)(3). The Commission's rules state that a CMA is not an appraisal, and the Commission's regulations state that the term "appraisal" is to be "given its technical meaning as a study and analysis by an appraiser authorized by law to perform appraisals of New Jersey real estate to ascertain fair market value by using a process in which all factors that would fix price in the market place must be considered." N.J.A.C. 11:5-6.1(m)(3). The Commission's rules further provide that any written CMA is to "include a statement that the CMA is not an appraisal and should not be considered the equivalent of an appraisal."

Given that the Real Estate Commission's regulations do not define the term CMA, it is impossible for the Board to take a position whether a CMA would or would not fall within the definition of an appraisal under New Jersey law.