

Short Title: Standards of Care in the Rendering of Price Estimate Valuation Services

Description of Practice:

Brokers and Licensees are permitted to render valuation services to clients, commonly referred to as: valuations, price estimates, or Broker Price Opinions (BPOs), provided that: A) The service rendered is not an appraisal, perceived to be an appraisal, referred to as an appraisal and instead is identified as a Price Estimate, Valuation or BPO , and B) The individual rendering the service is licensed as an agent or Broker, experienced, appropriately trained and qualified for the specific property and assignment type, and C) The service is rendered in a manner that is not misleading nor inconsistent with the client's intended use of the service, D) The provider of the valuation service develops and renders their valuation in a manner consistent with the standards of practice and competence recognized for the specific discipline in which the licensee engages, E) Any and all compensation (if any) is remitted to the Broker, F) The Client(s) are identified on any valuation reports, and G) Any ownerships interests in or potential assignment conflicts are disclosed in writing to the client.

During the rendering of all services, including the above described valuation services, Brokers and Licensees “...owe a fiduciary duty to the client and shall protect and promote the client's interests.” (R4-28-1101(A)). The fiduciary duties of a Broker and Licensee includes the duty of loyalty, promotion and advocacy of the client's interests and applies to all services rendered by a Broker and Licensee. Typically, the client is the party requesting or engaging the Broker or licensee to provide a service.

A Broker or Licensee rendering a Price Estimate, Valuation or BPO is REQUIRED to be a client advocate as a result of their fiduciary obligations. Conversely, an appraiser rendering a “Market Value” or “Appraisal” is PROHIBITED from client advocacy or bias and instead is required to be objective, impartial, non-biased and to refrain from advocating the interests of any party. Thus, a key distinction between Appraisals and Valuations is the issue of advocacy. Another key distinction is that when advocating the interests of buyers or sellers, licensees and Brokers render price estimates, while conversely Licensed appraisers render Market Value opinions and Appraisals. Thus, unless operating under an appraisal license, a licensee is prohibited from rendering Market Value opinions or Appraisals since those services require non-advocacy.

It's possible that clients and consumers may not fully understand the difference between a Valuation (requires client advocacy) and an Appraisal (prohibits client advocacy).

To ensure that Valuations are rendered in a manner that is not misleading, Brokers and Licensees when rendering a Valuation service shall:

1. Explain to Clients the distinction between Valuations and Appraisals.
2. Provide a written disclosure to clients informing them of the fiduciary duty to promote and advocate the client's interests in the rendering of all services.
3. Disclose the client name(s) and required client advocacy on the Valuation product rendered.

4. Evaluate the Client's needs and intended use of the Valuation service to determine compatibility with the advocacy or non-advocacy client requirements. For example, prospective lender clients as a result of new federal regulations require that all Valuation service providers be free of advocacy or bias and as a result, such assignments would conflict with a Broker or Licensees fiduciary obligations. Brokers and licensees who render valuation services to clients such as lenders when the assignment requires non-advocacy may inadvertently be exposing themselves to civil and criminal penalties since the advocacy requirements of their license represents a fundamental conflict with lender client non-advocacy requirements.
5. If a Client's needs or intended use requires a Valuation service that is free from advocacy or bias, then an Appraisal license would be required to provide that service. An example of a client need requiring non-advocacy is a proposed sale transaction requiring mortgage financing.
6. If a Client's needs or intended use is not required to be free of advocacy, then Brokers and licensee's may render a Price Estimate, Valuation or BPO. An example of a client need that does not prohibit advocacy would be a lender who retains a Broker or licensee to list a property and requests a Price estimate or BPO to assist in establishing an appropriate asking list price.

Q1. Is a real estate license required to render a Price Estimate, Valuation or BPO?

A1. Yes. The rendering of real estate related services requires a real estate license.

Q2. Who is the client?

A2. The party requesting or engaging the licensee or Broker to provide the real estate related service.

Q3. If a lender that is not acting as either a buyer or seller, but rather as part of the loan underwriting, credit evaluation or other lending related transaction - requests a BPO, Price Estimate or Valuation, may the licensee render that service within the constraints of their real estate license?

A3. No. All lenders as a result of new federal regulations are required to retain only those valuation providers who are free of advocacy, so the client requirements for non-advocacy conflict with real estate Licensee and Broker requirements to be a client advocate.

Q4. If a lender has engaged the licensee or Broker as a buyer or seller, may the Licensee or Broker render a Price Estimate, Valuation or BPO?

A4. Yes, provided that the service is rendered consistent with all requirements above.

Q5. What steps should a Licensee or Broker take to ensure their Price Estimate, Valuation or BPO service is rendered in a manner that is not misleading?

A5. Disclose and explain to Clients:

- That real estate licensing requires advocacy in the rendering of all services, including real estate related valuation services.

- Explain the difference between Price Estimates (which require client advocacy) and Appraisals (which prohibit client advocacy)
- Identify the Client and advocacy requirement in reports and work products
- An evaluation and comparison of the Client's intended use of the service to determine if the assignment requires non-advocacy or other potential conflicts with licensee obligations.
- The requirement that Licensees and Brokers refrain from referring to work products as Appraisals or Market Value estimates and instead refer to services as Price Estimates, Valuations or BPOs.
- The requirement that Licensees and Brokers refrain from engaging in the rendering of appraisal services or services which prohibit advocacy unless rendering those services under an appraisal license.