

## Evaluations - Broker Opinions of Price

We remain concerned over ongoing misuse of broker opinions of price, particularly in states that strictly prohibit their performance for purposes beyond a listing if it is provided for a fee. In as many as 24 states<sup>5</sup>, it is illegal for a real estate broker or salesperson to perform a broker opinion of price for anything beyond establishing a listing price if it is provided for a fee. In these states, the performance of a broker opinion of price for anything other than establishing the sales or purchase price of property is strictly prohibited. For example, in Mississippi, it is only permissible for a broker or salesperson to “in the ordinary course of business, give[s] an opinion as to the price of real estate for the purpose of a prospective listing or sale.”<sup>6</sup> Additionally, brokers are largely untrained in valuation techniques and don’t have to show a minimum level of competency as real estate appraisers do. Further, these products are not prepared by any standards or guidelines.

Unfortunately, many lenders and brokers appear to be unaware or unconcerned about these state laws or competency concerns, despite clear statements from state enforcement authorities outlining their misuse.<sup>7</sup> We do not believe it is appropriate or productive for the federal bank regulatory agencies to promote widespread violations of state law, allowing the intent of FIRREA to be undercut by the proliferation of unregulated appraisal practices. We understand that many lenders and loan services are turning to this lesser product because they are seen as cheaper and faster alternatives to appraisals. We dispute this contention. Many brokers routinely advertise turnaround times similar to appraisals, so speed is a not an issue. We do not dispute that broker opinions of price often cost less than appraisals. However, this is due to the different nature of the product. As a valuation product, appraisals are far more robust.

It is important to note that the real estate appraisal community offers financial institutions an array of cost-effective and efficient services to assist in this effort. Specifically, there is great flexibility within the Uniform Standards of Professional Appraisal Practice (USPAP) in developing a scope of work to meet client needs for an appraisal assignment. This allows the client to receive a cost and time efficient report, prepared by a qualified individual, and to uniform and generally accepted standards. Further, while real property appraisers are uniquely qualified to analyze real property markets and develop opinions about market value (most probable price), they are also capable of providing clients with information for purposes of pricing a property for sale. We believe the Interagency Guidelines should inform lenders to this point.

In sum, if the intent of FIRREA and the Interagency Guidelines is to provide structure and regulation of valuation products, any encouragement of broker opinions of price is a contradiction. We believe these products are simply are an unregulated form of appraisal that lack certifications of independence, non-bias and competency. While these services are not illegal in 26 states, their use, particularly in the 24 states that strictly prohibit their performance, flaunts the intent of Congress in its passage of FIRREA.

We believe the best course of action is for the federal bank regulatory agencies guidelines to promote the importance of competency in developing reliable opinions of value. We do not believe broker opinions of price produce reliable value results.

To this end, we believe that it is far more appropriate for the federal bank regulatory agencies to require that evaluations used in federally related transactions *must* adhere to USPAP to help bring uniformity to valuation products with varying scopes of work. We urge the Agencies to embark on this initiative immediately, and we offer our assistance and expertise to accomplish this goal.

4 Letter to the FDIC on Loss Sharing Proposal to Promote Affordable Loan Modifications, November 19, 2008. Available at [http://www.appraisalinstitute.org/newsadvocacy/downloads/ltrs\\_tstmny/2008/AI-](http://www.appraisalinstitute.org/newsadvocacy/downloads/ltrs_tstmny/2008/AI-)

5 ASA-NAIFA-ASFMRA\_FDICLoanMods-11-19-Final.pdf 5 AL, AR, CT, DE, GA, HI, ID, KY, MD, MI, MN, MS, NE, NJ, NV, NM, ND, OR, PA, RI, TN, UT, WI, WV

6 Mississippi Code § 73-34-5. Available at <http://michie.com/mississippi/lpExt.dll?f=templates&eMail=Y&fn=main-h.htm&cp=mscode/15df8/16b16/16b22>

7 One example includes a memorandum from the State of West Virginia Real Estate Commission to all Real Estate Associates, Associate Brokers, and Salespersons, dated December 5, 2007. Available at <http://www.wvrec.org/BPO-letter.pdf>