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Industry Groups Join Forces to Change Hawaii's BPO Law

BY: CARRIE BAY

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The state of Hawaii has enacted House Bill 320, a statute that permits a licensed real estate broker or real estate salesperson to prepare broker price opinions (BPOs) and charge a fee for their service.



Under previous legislation, if a real estate licensee charged a fee for a BPO other than the commission involved in the normal sale of a property, then the licensee was in violation of the state's legal code for real estate appraisals.

The change, which took effect in July, came about through a unified effort by a number of industry groups who challenged the active legislation restricting the preparation and use of a BPO, and it's been a long time coming.

A few years ago, the valuations department of **Financial Asset Services, Inc.** experienced difficulties assigning BPO orders in the state of Hawaii. Katy Severson, the firm's valuations operations manager, had concerns about the cost effectiveness of an appraisal versus a BPO and the interpretation of the Hawaii statute.

Jimmy Alvarez, director of risk management for Financial Asset Services, says it could be argued a BPO is separate and distinct from an appraisal and has a variety of uses other than lending. He concluded that portions of the Hawaii statute were limited in scope and needed clarification.

Financial Asset Services presented their assessment to Hawaii's Department of Commerce and Consumer Affairs, which oversees the state's real estate appraiser program.

The firm was joined in its push to have the law amended by the **National Association of Broker Price Opinion Professionals (NABPOP)**, and later the **Hawaii Association of Realtors, Hawaii Bankers Association**, and the Hawaii chapter of the **Appraisal Institute**.

Alvarez says in many cases, a BPO is ordered for purposes other than to assess the market price of a property. In Hawaii, for example, a real estate agent or broker may be asked to perform a BPO service that simply involves visiting a property to report back any property damage that may have occurred after a hurricane touched land.

Michael Ramer, president of NABPOP, notes that in such a situation, the agent or broker couldn't provide any kind of BPO service, even if it meant assessing the value extent of property damage, and be compensated for their time. The new law eliminates that restriction.

According to Alvarez, the problem is that states often defer to federal law for the BPO definition, when in fact nowhere in the federal statute does it say what constitutes a BPO versus an appraisal. Some states have interpreted the language to suggest preparing a BPO for compensation could be construed as an appraisal. Alvarez says this ongoing debate has appeared in courts throughout the country.

Ramer adds that in a lot states, BPO issues end up on the appraisal side of the regulatory oversight body. He says his organization advocates for BPOs to fall under the real estate administration or commission, which allows for differentiation in the type of service offered with a BPO and an appraisal.

"There's been a lot of good movement" in transitioning the way BPOs are thought of, Ramer says. "Our goal is to eliminate all the restrictions in all the states, so we'll continue to advocate for that."

Collectively, real estate boards, banking institutions, as well as organizations such as NABPOP and Financial Asset Services have been working together to amend BPO statutes. They say the goal is to create a "streamlined, make-sense approach" to preparing and using BPOs.

Other states that have made changes to their BPO laws include Arkansas, Nevada, Utah, and recently Mississippi.

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