

OPINIONS OF VALUE: HARMLESS PRELUDE TO A LISTING PITCH, OR A TRAP FOR THE UNWARY

By Jim Hochman

My guess is that most practicing commercial real estate brokers are asked some variations of the following question: “What do you think my property is worth?” The owner may be considering a sale, or refinancing, or perhaps working on his estate plan, and the logical and usually least expensive, even free source of property valuation is you – the well-meaning broker. You might even see the question as an opening to a sale listing, or even a leasing listing if the property’s value could be improved with better leasing. Beware, my friends, sometimes free advice can open the door to some real problems.

Brokers market properties for sale or lease, while appraisers value properties for owners, lenders, sometimes buyers, and even judges. Each profession, then, has its own “turf.” Sometimes, though, if a broker is perceived to cross the line into appraiser territory, the consequences, and I mean regulatory consequences, can be severe.

I recently represented a well-meaning real estate broker who was also a licensed auctioneer. A bank trustee, administering a decedent’s estate, re-

tained my client to offer an “Auctioneer Estimate of Value,” so that the trustee could determine if the value of 4 farms would mean the estate was large enough to incur federal estate tax. If the value of these 4 farms approached the federal estate tax barrier, she knew that she needed, and would therefore obtain, formal appraisals for each farm.

My client won the assignment, and happily provided his thoughtful and detailed analysis of the farms. Acreage, soil quality, and equipment all were analyzed and addressed in the opinion to determine an opinion of value the report. The bank trustee was pleased, and she got the information she needed, but someone was unhappy. We speculate that one of my client’s competitors, or perhaps an appraiser who didn’t get the assignment, decided to retaliate. You guessed it, a complaint was filed with IDFPR (The Illinois Department of Financial and Professional Regulation).

IDFPR regulates both brokers and appraisers, and the complaint found its way to the desk of a zealous young prosecutor, who felt it was his responsibility to keep the world safe for appraisers,

and protect those appraisers from brokers who might wander into appraisal territory. The first complaint charged my client with practicing appraisal without a license. That got me hired.

We moved to dismiss the complaint based on an Illinois broker’s statutory right to give broker price opinions as “BPO’s,” per 225 ILCS 454/10-45 of the Illinois Broker License Act. I also pointed out that the Appraisal License Act itself, at 225 ILCS 458/1-10, actually recognized the BPO as an exception, if the BPO was rendered for compensation related to the sale or lease of the real estate. The complaint was dismissed – an outright win for the good guys. Until IDFPR filed a new complaint, alleging that my client’s BPO didn’t meet all of the requirements of a permitted BPO, under the Broker License Act. Talk about sore losers.

The second case was recently resolved by an agreed non-disciplinary order (which is not published and is confidential), so my client’s record and reputation are intact. Is there a lesson to be learned? Of course, that’s why I write this column.

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In Illinois, a BPO must meet all of the elements of 225 ILCS 10-45, including:

1. A statement of the intended purpose of the BPO;
2. A brief description of the interest in real estate that is the subject of the BPO;
3. A brief description of the author's methodology used to determine value;
4. A statement of assumptions or limiting conditions;
5. Disclosure of the broker's interest in the real estate (if any);
6. The broker's name, license number and signature;
7. A statement that the BPO is a BPO and not an appraisal prepared by an appraiser; and
8. Other items deemed appropriate by the author.

My client, arguably, met each of the requisite criteria, although there could have been a better and clearer statement that the estimate of value was not an appraisal prepared by an appraiser, even though that was obvious from the report.

I have developed a template to be used by my Illinois broker clients when they offer that well-intended BPO, the one that might just win a listing or curry enough favor with an owner to get the listing sometime in the future. I haven't surveyed other states' license laws on BPO's, and Illinois is, admittedly, a tough regulatory climate for real estate professionals. However, it would be worthwhile for you to know the requirements or limitations on the BPO you often provide. I can tell you that a little research might save you a great deal of trouble. ▼