

CHAPTER 22: REAL ESTATE APPRAISING

INTRODUCTION

The entire field of real estate appraising has recently experienced an unusual degree of change. Federal legislation, enacted as a result of what was perceived as widespread problems in the profession during the early 1980's, mandated specific actions to be taken by states in licensing appraisers. Although Oregon was a national leader in both the licensing and supervision of appraisers, changes had to be made in Oregon statutes.

HISTORY OF APPRAISER LICENSING IN OREGON

Until 1992, the Real Estate Agency was responsible for the licensing of appraisers, which was a part of ORS 696, the Real Estate License Law.

A licensing requirement for real estate appraisers had been in effect in Oregon since 1929, when the definition of a real estate broker included someone who would “*appraise or place a value upon real estate.*”

In 1969 the Oregon statute was revised. Oregon became the first state to license real estate appraisers with a license good only for appraising. At that time, the appraiser's license was called a “*real estate broker limited to appraising.*” The creation of that license did not alter the right, in effect since 1929, of a real estate broker to appraise by virtue of his broker's license.

In 1979, the label was changed from “*real estate broker restricted to appraising*” to “*real estate appraiser,*” and licensing information concerning appraising was set out in a separate section of the licensing law. Brokers continued to be authorized to appraise.

Real estate salespersons were permitted to appraise only after passing a separate appraisal examination. They were then issued a “*salesperson qualified to appraise*” license, commonly referred to as a “*sales-appraiser*” license. Sales-appraisers could be licensed to either brokers or appraisers. However, if they were licensed to appraisers they were allowed only to perform appraisals, not any other real estate activity.

The 1991 Legislature created the Appraiser Certification and Licensure Board (ACLB) to administer a new license program. Licenses issued by the Real Estate Agency for appraisers and sales-appraisers became *invalid* upon the effective date of the new law. Brokers are no longer able to appraise *unless they obtain a separate appraiser license from the ACLB.*

LETTER OPINIONS AND COMPETITIVE MARKET ANALYSIS

ORS 696.010(13)(e) defines professional real estate

activity as including the action of a person who, “Offers, attempts or agrees to perform or provide a competitive market analysis or letter opinion, to represent a taxpayer under ORS 305.230, 306.115 or 309.100 or to give an opinion in any administrative or judicial proceeding regarding the value of real estate for taxation”

In ORS 696.010(8), “*competitive market analysis*” (CMA) is defined as:

“ . . . a method or process used by a real estate licensee in pursuing a listing agreement or in formulating an offer to acquire real estate in a transaction for the sale, lease, lease-option or exchange of real estate. The objective of competitive market analysis is a recommended listing, selling or purchase price or a lease or rental consideration. A competitive market analysis may be expressed as an opinion of the value of the real estate in a contemplated transaction. Competitive market analysis may include, but is not limited to, an analysis of market conditions, public records, past transactions and current listings of real estate.”

In ORS 696.010(10), “*letter opinion*” is defined as:

“ . . . a document that expresses a real estate licensee's conclusion regarding a recommended listing, selling or purchase price or a rental or lease consideration of certain real estate and that result from the licensee's competitive market analysis.”

The Real Estate Commissioner, by rule, has specified the minimum contents of a letter opinion and CMA. Among other things, the rule requires that a letter opinion and CMA must include a statement that the letter opinion or CMA is not real estate appraisal (see OAR 863-015-0190).

Although real estate licensees may offer a letter opinion or CMA for the purpose of establishing a listing or selling price, licensees should be careful not to let the recipient of the analysis or opinion believe that it is an opinion of value of the real estate. Caution needs to be exercised by a licensee offering a recommended price for the purpose of obtaining a listing to market a property, preparing or responding to a purchase offer, or offering a letter opinion, even where no specific fee is charged. Even though the public has been informed that this is not an appraisal, a price recommendation offered by a professional in the field of real estate may well be regarded as an appraisal by the recipient of that estimate which could lead to difficulties in civil law.

Prior to the creation of the Appraiser Certification and Licensing Board (ACLB), real estate brokers and salesper-

son appraisers were capable of testifying in court about their opinions on the value and other characteristics of certain real estate. In divorce, property settlement, estate and similar proceedings, the estimated value of real estate was a critical determination. The ACLB laws were being interpreted and enforced to prohibit a real estate licensee from using or referring to the “value” of real estate unless the licensee also had a separate appraiser certification or license.

Recent law changes now allow real estate licensees to use the term “value” or similar terms when they are compelled to do so. For instance, the real estate licensee may have been hired to conduct a competitive market analysis and issue a written letter opinion on a recommended listing/selling price for a property. In court, the judge may ask the licensee whether he believes the recommended listing price to be the “value” of the property in question. The licensee is now allowed to express an opinion of value without fear of sanction by the ACLB. Real estate licensees remain capable of testifying in court about their analyses and findings in a competitive market analysis. Real estate licensees continue to be able to represent taxpayers in property tax valuation hearings and appeals.

The ACLB consists of a ten-member board, which is responsible for developing and administering the education and experience requirements for appraiser licensees and certificate holders. The Board’s address is 1860 Hawthorne NE, Suite 200, Salem, Oregon 97303. The telephone number is (503) 485-2555.

Some of the common questions the Agency receives are:

Q: May a real estate broker perform “*competitive market analysis*” and give “*letter opinions*”?

A: Yes. These activities are defined as part of “*professional real estate activity*” that can be performed under their real estate licenses. However, a real estate broker associated with a principal real estate broker must do so under the control and supervision of the

principal real estate broker.

Q: May a real estate broker give “*an opinion*” in any administrative or judicial proceeding regarding the value of real estate **for taxation**?

A: Yes. These activities are also defined as part of the “*professional real estate activity*” that can be performed under their real estate licenses. Licensees can contact the Regulation Division at (503) 378-4170 for additional information.

Q: Can a real estate licensee express his findings in his CMA in terms of the “value” of property?

A: Yes. The definition of competitive market analysis in ORS 696.010 now includes the statement that a CMA “may be expressed as an opinion of value of the real estate in a contemplated transaction.” Usually, the contemplated transaction is the determination for a seller of the listing price of a property for sale or the determination of an offering price on a property for a buyer client. As a practical matter, the seller and buyer expect the broker to determine the value of the property by his CMA. Normally, a seller wants to receive the “value” of his property at sale, and a buyer wants to pay no more than the “value” of the property at purchase.

Q: Can a real estate licensee charge for letter opinions, competitive market analysis and taxpayer representation?

A: Yes. However, all fees received by a real estate broker associated with a principal real estate broker must be paid pursuant to the brokerage’s written company policy.

