



## State of New Jersey

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### BULLETIN NO. 13-05

**TO: ALL LICENSED NEW JERSEY REAL ESTATE LICENSEES, SCHOOL DIRECTORS, INSTRUCTORS AND OTHER INTERESTED PARTIES**

**FROM: ROBERT L. KINNIEBREW, EXECUTIVE DIRECTOR**

**RE: COMPARATIVE MARKET ANALYSES AND BROKER PRICE OPINIONS**

**DATE: MARCH 19, 2013**

The purpose of this Bulletin is to address the rendering by some real estate licensees of “broker price opinions” (“BPOs”) for compensation in connection with the sale or potential sale of real property, whether the BPO be for a buyer or seller, or any other party with an interest in the transaction or prospective transaction, or for reasons unrelated to a sale transaction. A BPO is defined in federal law as “an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property’s condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(c).” See 12 U.S.C. § 3355(b). New Jersey’s Real Estate Licensing Law, N.J.S.A. 45:15-1 et seq., and the rules of the New Jersey Real Estate Commission (“Commission”), N.J.A.C. 11:5-1.1 et seq. do not use the term BPO. The Commission rules, however, do refer to a “comparative market study or analysis” (“CMA”), which is an estimate of the value of real property similar to a BPO. The Commission considers the term CMA as used in its rules to also encompass BPOs. While the terms CMA and BPO are used throughout this bulletin, if another term or phrase is used in the industry to describe the rendering of an estimate of the value of real property, then the statements in this Bulletin would apply regardless of the term or phrase used to describe the estimate of value.

The Commission has become aware that uncertainty exists regarding how CMAs and BPOs are offered, used and paid for in New Jersey. This Bulletin is intended to clarify the obligations and responsibilities of real estate licensees to consumers under the real estate licensing law and the Commission’s rules when rendering a CMA or BPO.

The rendering of a CMA or BPO is considered real estate brokerage activity. As with any other type of real estate brokerage activity, the rules and standards set forth in the licensing law and the corresponding Commission rules apply to such activity.

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Commission rule N.J.A.C. 11:5-6.1(m) provides that real estate licensees are permitted to prepare CMAs for consumers so long as the CMA includes a statement indicating that the CMA is not an appraisal and should not be considered the equivalent of an appraisal. This statement must appear in print as large as the predominant size print in any writing reporting the results of the CMA. However, on November 27, 2012, the New Jersey Real Estate Appraisers Board (“Board”) issued an advisory opinion interpreting the Real Estate Appraisers Act, N.J.S.A. 45:14F-1, et seq. (“the Appraisers Act”), wherein the Board stated that a BPO is an appraisal under the definition of appraisal in that law. The Board’s Advisory Opinion went on to state that anyone other than a licensed appraiser who prepares a BPO engages in the unlicensed practice of appraising, unless he or she prepares the BPO pursuant to one of two specific statutory exemptions. The Advisory Opinion then interprets and explains the following two exemptions: in N.J.S.A. 45:14F-21c when a person not licensed or certified as an appraiser “giving or offering to give for a fee or otherwise, counsel and advice on pricing, listing, selling and use of real property directly to a property owner or prospective purchaser if the intended use of the counsel or advice is solely for the individual knowledge of or use by the property owner or prospective purchaser;” and, in N.J.S.A. 45:14F-21f when a BPO is prepared for a state or federally chartered bank, savings bank and/or savings and loan associations in circumstances where the underlying transaction is a federally-related transaction for which federal law and regulation do not require that a certified or licensed appraiser be used. Any questions regarding those exemptions or the Board’s interpretation of them should be directed to the Appraiser Board. The Advisory Opinion can be accessed at [www.njconsumeraffairs.gov/real/realbpo.pdf](http://www.njconsumeraffairs.gov/real/realbpo.pdf).

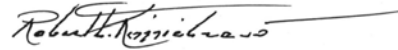
To resolve any perceived conflict between the Commission’s rule, which was adopted years before the enactment of the Real Estate Appraisers Act in 1991, and the definition of “appraisal” in the Appraisers Act as construed by the Appraiser Board in its Advisory Opinion, the Commission intends to amend its rule. In the interim, licensees are advised that in lieu of the statement that a CMA or BPO “is not an appraisal,” they may include a statement in all written CMAs and BPOs they prepare indicating that the “CMA or BPO should not be considered the equivalent of an appraisal prepared by a New Jersey licensed or certified real estate appraiser.” Such a statement should appear in print as large as the predominant size print in the written CMA or BPO. Licensees who do so will be deemed to be compliance with N.J.A.C. 11:5-6.1(m)(3).

N.J.A.C. 11:5-6.1 is the Commission’s advertising rule. N.J.A.C. 11:5-6.1(m) applies to advertisements by licensees offering to provide a CMA. Such advertisements must not contain false, misleading or deceptive claims or misrepresentations. See N.J.A.C. 11:5-6.2(r).

Regarding the use of CMAs and BPOs, some licensees may be preparing them for use by consumers in proceedings such as tax appeals, divorce, probate, and bankruptcy proceedings, or with respect to real estate financing issues. The Commission rules do not govern whether such uses of a CMA or BPO are permissible or advisable. Whether CMAs or BPOs will be accepted in such proceedings and, if accepted, what weight to afford to them, are determinations solely within the province of the court or administrative body before which the proceeding is held. Licensees and consumers may wish to consult with their own legal counsel concerning this issue.

Finally, licensed broker-salespersons and salespersons may only accept payment for the rendering of a CMA or BPO from the real estate broker with whom they are licensed. See N.J.S.A. 45:15-16. Broker-salespersons or salespersons cannot accept payment directly from consumers, including but not limited to individuals or banks. Under no circumstances may a referral agent licensee render a CMA or BPO.

All brokers and school directors are urged to provide copies of this bulletin to all salespersons and broker-salespersons in their firms and to all instructors, respectively.



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Robert L. Kinniebrew, Executive Director  
New Jersey Real Estate Commission

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