



Here Are the ABCs of BPOs – in a Flash

Dear Forms Guy: A lender has asked me to do a BPO on a property involved in a potential short sale. Can I do it? I don't really like fooling with these things for what they pay me, but times being what they are, a guy's got to do what a guy's got to do.

Sincerely, Flash

Dear Flash: Normally, Forms Guy specializes in answering questions about forms.

Flash: I guess that's why they call you Forms Guy, huh?
Forms Guy: I see how you got your name, Flash – you're quick! And you're right, these are not ordinary times, so I'll take a stab at answering your question even though it's not about a form.

Flash: Thanks.

Forms Guy: Let's start off with the legal definition of an appraisal under the North Carolina Appraisers Act (the "Act"). An appraisal is defined as "an analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration." According to the Act, it's unlawful for anyone to perform an appraisal unless they have a registration, license, or certificate issued by the Appraisal Board.

Flash: Hold on a minute, Forms Guy. A BPO is a broker's opinion of what the property might sell for. Is that considered an appraisal? Are you telling me it's against the law for me to do a BPO?

Forms Guy: No, you hold on, Flash. Let me finish. Like most laws, there are some exceptions. One of the exceptions in the Appraisal Act relates to the performance of a comparative market analysis, or CMA, by a real estate agent. A CMA is defined as "the analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property by a licensed real estate broker."

Flash: Well, that's the same thing as a BPO, so I guess you're telling me that it's OK to do them after all, right?

Forms Guy: Slow down, Flash. I'm not quite done yet. The exception I mentioned establishes limitations on when a real estate agent can be paid to do a CMA. First, in doing the CMA, you can't represent yourself as

being a real estate appraiser. Second, according to the Act, you can only be paid to do a CMA for "prospective or actual brokerage clients or for real property involved in an employee relocation program."

Flash: Well, heck. This lender isn't a brokerage client. It just wants an opinion on what the property might sell for so it can decide if it's going to approve the short sale.

Forms Guy: And it would be hard for you to argue that the lender is a prospective brokerage client since, if the short sale is approved and closes, the lender won't have any further interest in the property, right?

Flash: That's right. But the short sale *might* not close, and the property *might* go into foreclosure, and the lender might buy it at the foreclosure sale and then might list it with me.

Forms Guy: That's a lot of *mights*, Flash. Do you honestly feel like there is any realistic prospect of you getting a listing on the property?

Flash: No, not really.

Forms Guy: Then I don't think it would be appropriate for you to do the BPO, that is unless you were willing to do it for free.

Flash: OK, I understand. But what if a lender buys a property out of foreclosure and *then* asks me to do a BPO for a fee? Would that be OK?

Forms Guy: Maybe. The answer would depend on the particular circumstances, but I think you'd have a better argument that the lender/owner is a prospective client. If, for example, the lender had previously given you listings on properties it has bought at foreclosure, I think the lender would be considered a prospective client for purposes of the Act.

Flash: Thanks, Forms Guy! ■

Have a question or questions for the Forms Guy?
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