

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Monday, January 31, 2011
2:00 p.m.

Comments

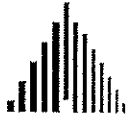
**TESTIMONY ON HOUSE BILL NO. 320 - RELATING TO BROKER PRICE
OPINIONS.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Trudy Nishihara and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on House Bill No. 320, Relating to Broker Price Opinions and, since it addresses an important subject, supports this measure in concept.

House Bill No. 320 creates a new chapter to regulate Broker Price Opinions. Section 26H-6, Hawaii Revised Statutes, requires that new regulatory measures being considered for enactment be referred to the Auditor for a sunrise analysis. The statute further requires that the analysis shall set forth the probable effects of regulation, assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess alternative forms of regulation.

Therefore, the Commission strongly supports a sunrise study on this measure, as mandated by law, before regulating broker price opinions. Thank you for the opportunity to testify on House Bill No. 320.



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January 28, 2011

Representative Robert N. Herkes, Chair
Representative Ryan I. Yamane, Vice-Chair
Committee on Consumer Protection and Commerce
Ted Yamamura, Government Relations Chair
The Hawaii Chapter of the Appraisal Institute
(808) 270-0604
Monday, January 31, 2011

Testimony Conditionally in Support of HB 320, Relating to Broker Price Opinions

The Hawaii Chapter of the Appraisal Institute is part of an international organization of professional real estate appraisers with nearly 24,000 members and 91 chapters throughout the world. Its mission is to advance professionalism and ethics, global standards, methodologies, and practices through the professional development of property economics worldwide.

We believe that broker price opinions ("BPOs") have a very legitimate role in the real estate marketplace. Traditionally, BPOs have been performed by agents or brokers to assist buyers or sellers, or potential buyers or sellers, of residential real estate in determining an appropriate listing or offering price. However, broker price opinions can be easily misinterpreted by the public as a real estate appraisal; therefore there is potential for harm since broker price opinions deal with real estate and its correspondingly high dollar amounts.

Real estate appraisers and appraisals are regulated by both the Federal and State laws whereas broker price opinions are not. In order to ensure the safety of users of broker price opinions, we are proposing additional conditions for basic information, disclosures, and reporting requirements.

PROPOSED CHANGES TO HB 320 - RELATING TO BROKER PRICE OPINIONS (Proposed changes are highlighted in red and underscored)

SECTION 1. Chapter 467, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§467- Broker price opinions. (a) A real estate broker or real estate salesperson licensed pursuant to this chapter may prepare a broker price opinion that meets the requirements of this section relating to the estimated price of a specific parcel of real estate and information of varying levels of detail about the property's condition and relevant market factors including the property's location, neighborhood, and recent comparable sales for use by:

and

- (1) An existing or potential seller for the purposes of listing selling real estate;
- (2) An existing or potential buyer of real estate;
- (3) A third party for purposes of determining the estimated potential listing, offering, sale, exchange, option, lease, or acquisition price of real estate; or
- (4) An existing or potential lienholder; provided that a broker price opinion shall not be substituted for an appraisal by a licensed or certified appraiser if an appraisal is required by applicable law.

(b) If a broker price opinion is provided for compensation or valuable consideration by a real estate broker or real estate salesperson licensed pursuant to this chapter, it shall [must] include:

- (1) A statement of the intended purpose of the price opinion;
- (2) A brief description of the subject property and the property interest to be priced;
- (3) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;
- (4) Any assumptions or limiting conditions used to determine the price opinion;
- (5) A disclosure of any existing or contemplated interest of the broker or sales person issuing the opinion;
- (6) The licensee's name, signature, and license identification number;
- (7) The date of issuance of the broker price opinion; and
- (8) The following disclosure statement:

"Notwithstanding any language to the contrary contained in this document or elsewhere, this broker price opinion is not an appraisal. If you want an appraisal, or if an appraisal is required by law, you must obtain the services of a real estate appraiser licensed or certified pursuant to chapter 466K, Hawaii Revised Statutes."

(c) A real estate broker or real estate salesperson licensed pursuant to this chapter shall not knowingly prepare a broker price opinion for use as an appraisal where an appraisal is required by law or otherwise.

(d) Written report; standards and guidelines. A broker's price opinion prepared under the authority granted in this Act shall be in writing and shall conform to the standards and guidelines published by a nationally recognized association of providers of broker price opinions. The Hawaii Real Estate Commission shall promulgate regulations that are consistent with, but not limited to, the standards and guidelines of a nationally recognized association of providers of broker price opinions.

Finally, the Bill correctly identifies Chapter 467, Hawaii Revised Statutes instead of Chapter 466K. Chapter 467, HRS, applies to Real Estate Brokers and Salespersons who are the preparers of BPO's. Chapter 466K, HRS, is limited to Real Estate Appraisers who prepare real estate appraisals.

We urge the Committee to adopt and incorporate our proposed amendments to the Bill, and urge the passage of an amended HB 320. Thank you for this opportunity to testify.



Ted Yamamura
Government Relations Chair



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January 31, 2011

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 320 Relating to Broker Price Opinions

HEARING: Monday, January 31, 2011 at 2:00 p.m.

Aloha Chair Herkes, Vice Chair Yamane and Members of the Committee:

I am Brian Benton, Chair of the Government Affairs Committee, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate and its 8,500 members in Hawai'i. HAR strongly supports H.B. 320 which permits a real estate broker or salesperson to prepare a Broker Price Opinion ("BPO") for a fee where an appraisal is not required by law or otherwise.

A BPO is a tool used by the real estate industry to estimate the probable selling price of a piece of property, based on the selling prices of comparable properties in the area. Real estate professionals commonly use BPOs to show sellers/buyers what other similar homes have sold for in the neighborhood and to assist the seller in determining a listing price.

Over the last several years, due to the economic crisis, loan delinquencies have increased, which in turn have required more BPOs to determine the market price of the collateral for these delinquent loans. Some industry sources, such as RealtyTrac, predict that loan delinquencies, and the resulting foreclosures and short sales, may not peak until the fourth quarter of 2011. Thus, each property that falls into distress may need at least one BPO, and more often two or more BPOs, to determine the most appropriate disposition of the property -- whether it be loan modification, short sale, or foreclosure.

For example, a lender might use a BPO to determine whether a short sale transaction should be approved, or whether a delinquent loan should be modified. In these types of situations, the BPO can assist with the decision to list, offer, sell, exchange, option, lease, or acquire real property in a real estate transaction, or alternatively, help struggling homeowners stay in their home.

As such, the role of the real estate professional has evolved from that of the traditional listing agent to today providing important, market-based information and data relating to home prices for lenders, mortgage companies and servicers, asset managers, or loss mitigation companies.

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HAR would note that, at the federal level, the Federal Deposit Insurance Corporation (FDIC) allows for the use of BPOs in its loan modification program. The U.S. Treasury also recognizes the use of BPOs to establish eligibility for its current mortgage rescue programs --- the Home Affordable Modification Program (HAMP) and Home Affordable Foreclosure Alternatives (HAFA). In addition, the recently enacted Dodd-Frank Act, which addresses financial regulatory reform, permits the use of BPOs, except that BPOs cannot be used as the primary basis for a loan for the purchase of residential property).

Given the usefulness of BPOs, restricting their use to the context of real estate sales, and disallowing the payment of compensation for this service, does not reflect the current market needs of mortgage servicers and lenders. Under the current Hawai'i appraiser licensing rules, a real estate broker or salesperson is exempted from the appraisers law when providing BPOs, but can only provide a BPO if no compensation is paid for the opinion, or if it is provided in the course of the sale of the property.

Accordingly, this bill seeks to clarify that BPOs may be provided by real estate brokers or salespersons for compensation, provided that certain requirements are met. These requirements include that a specific disclosure statement is provided which states that a BPO is not an appraisal. In addition, a real estate broker or salesperson would be prohibited from knowingly preparing a BPO for use as an appraisal, where an appraisal is required by law.

For the reasons above, HAR respectfully requests passage of this measure.

Mahalo for the opportunity to testify.



Presentation to the House Committee on Consumer Protection & Commerce

Monday, January 31, 2011, at 2:00 pm

Testimony on House Bill 320 Relating to Brokers Price Opinions

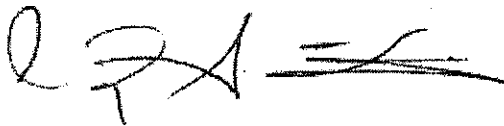
TO: The Honorable Robert N. Herkes, Chair
The Honorable Ryan I. Yamane, Vice Chair
Members of the House Committee on Consumer Protection & Commerce

My name is Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), and HBA supports the intent of the bill, which permits a licensed real estate broker or real estate sales person to prepare broker price opinions (BPO) for use in real estate transactions where an appraisal is not required by law or otherwise.

It is our understanding that the Hawaii Chapter of the Appraisal Institute has submitted testimony to ensure the safety of users of broker price opinions by proposing additional conditions for basic information, disclosures, and reporting requirements.

BPO provide a valuable service to banks when an appraisal is not required, but, a quick determination of the value of a property is necessary. Codifying the preparation of BPO should help in ensuring that users understand the appropriate uses and limitations of BPO.

We thank you for allow us to testify and for your consideration of this matter.



Gary Y. Fujitani
Executive Director