

HB 320, HD2

Measure Title: RELATING TO BROKER PRICE OPINIONS.

Report Title: Real Estate Brokers and Salespersons; Broker Price Opinion

Description: Permits a licensed real estate broker or real estate sales person to prepare broker price opinions for use in real estate transactions where an appraisal is not required by law or otherwise. Sets forth requirements and restrictions for broker price opinions. Effective January 7, 2059. (HB320 HD2)

Companion:

Package: None

Current Referral: CPN



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Tuesday, April 5, 2011
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 320, H.D. 2, RELATING TO BROKER PRICE
OPINIONS.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Celia Suzuki, Licensing Administrator for the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs ("Department"). Thank you for the opportunity to present testimony on House Bill No. 320, H.D. 2, Relating to Broker Price Opinions. The Department supports the intent of the bill but has concerns with this measure as proposed.

This measure proposes to allow licensed real estate brokers and salespersons to prepare broker price opinions for transactions where an actual appraisal is not required. The bill also establishes specific requirements for inclusion in a broker price opinion and restrictions relating to broker price opinions.

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Over the past few weeks the Department has met with the proponents of the bill and we are all in agreement to the language in the proposed S.D. 1. We are in full support of the proposed S.D. 1 and kindly request for your favorable consideration.

Thank you for the opportunity to provide comments on this measure.



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April 5, 2011

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: H.B. 320, H.D. 2, Relating to Broker Price Opinions

HEARING: Tuesday, April 5, 2011 at 9:00 a.m.

Aloha Chair Baker, Vice Chair Taniguchi and Members of the Committee:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **supports** H.B. 320, H.D. 2, which permits a licensed real estate broker or real estate sales person to prepare broker price opinions for use in real estate transactions where an appraisal is not required by law or otherwise, and clarifies that recovery from the real estate recovery fund is not available for complaints regarding broker price opinions.

Real estate professionals often estimate the probable selling price of a piece of property. Their analysis includes local real estate market information, neighborhood analysis, and comparative properties that compare to the subject house that is being priced. Real estate professionals will continue to use this tool to identify what other similar homes have sold for in the neighborhood.

Over the last several years, due to the economic crisis, loan delinquencies have increased, which in turn have required more estimated analysis to determine the market price of the collateral for these delinquent loans. Thus, each property that falls into distress may need at least one price opinion, and more often two or more price opinions, 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 price opinion to determine whether a short sale transaction should be approved, or whether a delinquent loan should be modified. In these types of situations, the price opinion 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, loss mitigation companies, real estate investment trusts, private equity firms, and hedge funds.

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HAR would note that, at the federal level, the Federal Deposit Insurance Corporation (FDIC) allows for the use of broker price opinions (BPO) 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.

Most recently, the Nevada Supreme Court adopted the use of BPOs in addition to or in lieu of an appraisal in the Foreclosure Mediation Program.

Given the usefulness of BPOs, the current needs of the market are not met by restricting their use to the context of real estate sales, and disallowing the payment of compensation for this service. 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 given for the opinion, or if it is provided in the course of the sale of the property.

HAR understands that the Hawaii Real Estate Commission has raised concerns regarding implementation of the measure, as drafted. HAR has been working with the Real Estate Commission on language that will address these concerns, but still allow real estate licensees to provide price opinions. Accordingly, HAR believes that the attached language will accomplish the goal of allowing BPOs to be provided for compensation and will address implementation concerns raised by the Hawaii Real Estate Commission.

HAR respectfully requests your passage of this measure, with the attached amendments.

Mahalo for the opportunity to testify.



A BILL FOR AN ACT

RELATING TO BROKER PRICE OPINIONS

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 466K-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 §466K-4 **Practice as a real estate appraiser; uniform**
4 **standards.** (a) No person may practice as a real estate
5 appraiser in this State unless that person has been licensed or
6 certified to practice in accordance with this chapter and rules
7 adopted by the director of commerce and consumer affairs
8 pursuant to chapter 91. All real estate appraisers who are
9 licensed or certified to practice in this State shall comply
10 with the current uniform standards of professional appraisal
11 practice approved by the director when performing appraisals in
12 connection with a federally or non-federally related real estate
13 transaction.

14 (b) This section shall not apply to any real estate
15 appraiser employed by any county for purposes of valuing real
16 property for ad valorem taxation.

1 (c) This section shall not apply to a real estate
2 broker or real estate salesperson licensed under chapter 467 who
3 provides an opinion as to the estimated price of real estate,
4 whether or not for compensation, fee or other consideration,
5 provided that:

6 (1) the opinion as to the estimated price shall state that
7 it is not an appraisal;

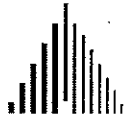
8 (2) the real estate licensee shall not represent that the
9 licensee is a certified or licensed real estate appraiser;

10 and

11 (3) the real estate licensee receiving compensation related
12 to the sale of a property shall not receive additional
13 compensation, fee, or other consideration for a price
14 opinion on that property.

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall be effective upon approval.



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April 4, 2011

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice-Chair
Committee on Commerce and Consumer Protection
Ted Yamamura, Government Relations Chair
The Hawaii Chapter of the Appraisal Institute
(808) 270-0604
Tuesday, April 5, 2011

Testimony in Support of HB 320, HD2, 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 26,000 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 support HB 320, HD2, and reiterate our position that the Bill correctly identifies Chapter 467, Hawaii Revised Statutes as the governing authority 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.

Thank you for this opportunity to testify.

Ted Yamamura
Government Relations Chair