

For What It's Worth

By Charles E. Gilliland and Michael Oberrender

Traditionally, lenders and other real estate market participants have relied on appraisals when making decisions involving value. In Texas, individuals licensed by the Texas Appraiser Licensing and Certification Board (TALCB) perform residential appraisals. In addition to successfully passing an examination, these licensed or certified appraisers have educational preparation and experience that qualifies them to render professional and informed estimates of market value.

Each appraisal reported by these individuals must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) established by the Appraisal Foundation. The TALCB polices the profession to ensure that work done in Texas conforms to these national standards. To maintain their credentials, appraisers must guarantee their work meets these requirements, often making the process a time- and labor-intensive exercise.

Because an appraisal requires time-consuming investigation and analysis, fees can add up, leading some decision makers to seek a less expensive way to get an estimate of value. Increasingly, a broker price opinion (BPO) is substituted for an appraisal. The most prevalent use of BPOs occurs in cases of foreclosed properties, REO properties and for refinancing purposes.

BPOs began to gain more favor after the housing market crashed. In fact, the Dodd-Frank *Wall Street Reform and Consumer Protection Act*, passed in 2010, explicitly approved



using a BPO for a variety of situations in which an appraisal was previously required.

Dodd-Frank defines a BPO as:

an estimate prepared by a real estate broker, agent, or salesperson 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.

Dodd-Frank also sets forth general prohibitions to the use of a BPO. Section 1126 states:

. . . In conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

BPOs appear to be similar to appraisals. However, a licensed real estate salesperson or broker prepares the BPO, not a state licensed or certified appraiser. The National Association of Realtors (NAR) defines a BPO as "an estimate of the probable selling price of a property." A BPO is a less formal estimate of the *price* of a property rather than the *market value* estimate produced in an appraisal. Consequently, Rule 535.17 of the

Texas Real Estate Commission specifies that every BPO in Texas must contain the following disclaimer verbatim:

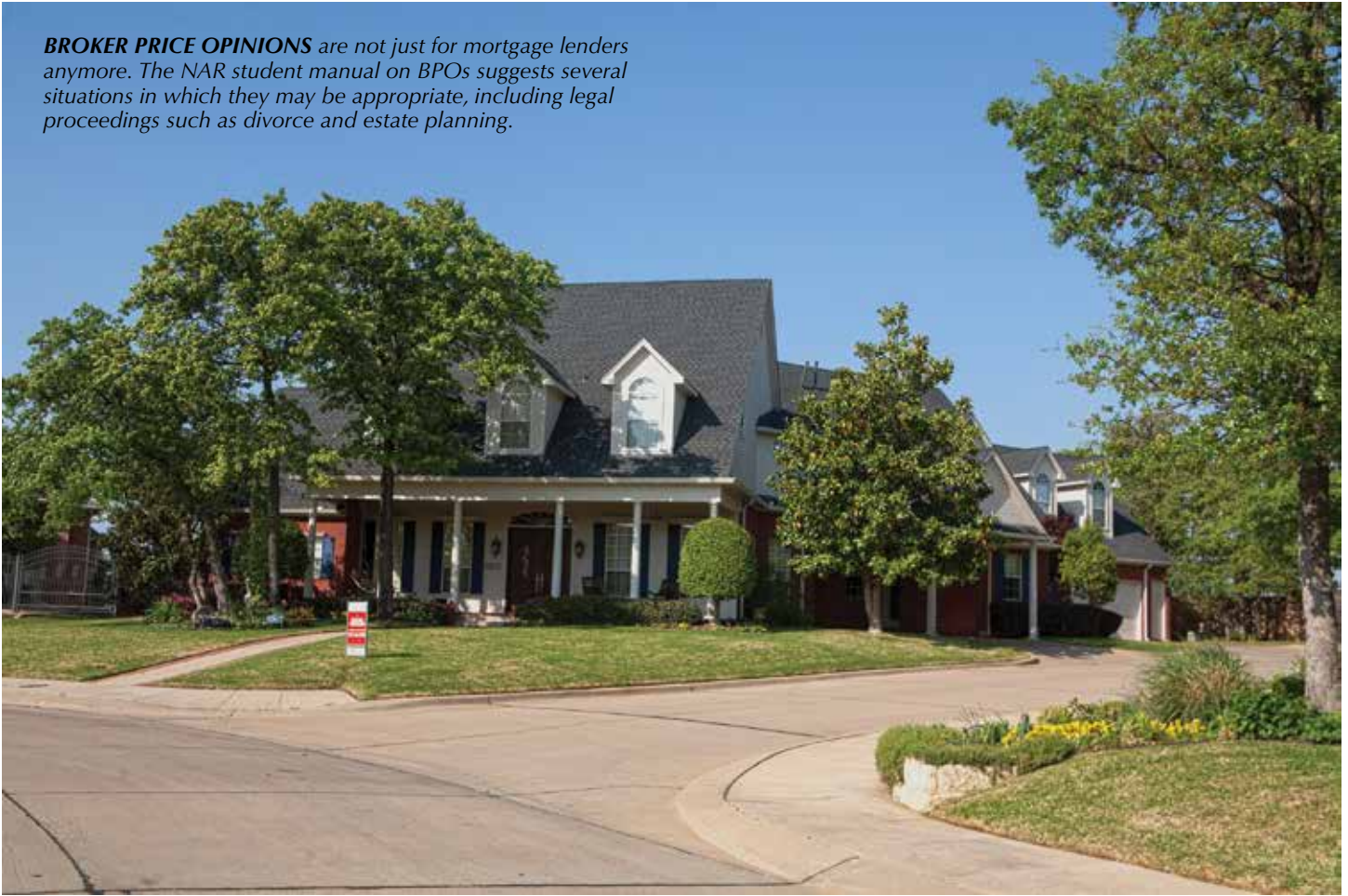
THIS IS A BROKER PRICE OPINION OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.

Otherwise, the preparing salesperson or broker will be held to the formal USPAP standards.

Finally, the rule requires that all BPOs be issued in the broker's name even when a salesperson performs the BPO.

Mortgage lenders historically have been the primary users of BPOs for various purposes. Because most assignments called for an "exterior only" analysis in the past, BPOs frequently were not as thorough as certified market analyses (CMA). Salespersons and brokers routinely provide CMAs focused on sales in an immediate neighborhood to buyers and sellers of homes to facilitate a sale. Following the housing market crash in 2008, use of BPOs escalated. Although Dodd-Frank explicitly prohibits using a BPO in the origination of a residential purchase money mortgage, lenders have identified numerous situations in which they may use BPOs.

BROKER PRICE OPINIONS are not just for mortgage lenders anymore. The NAR student manual on BPOs suggests several situations in which they may be appropriate, including legal proceedings such as divorce and estate planning.



The NAR student manual entitled “BPOs: The Agent’s Role in the Valuation Process” is used for a program NAR designed specifically for agents who plan to expand their services to produce BPOs. The course consists of a thorough explanation of the process a prudent agent would use to produce credible estimates, including practical classroom exercises.

Successful students earn a BPO certification that confers benefits, including a referral service. Although salespersons and brokers are not required to undergo specific education to issue BPOs, they may find a formal course beneficial.

The manual lists the following situations where BPO usage may be appropriate:

- updating values in investment portfolios,
- loans in default,
- legal proceedings such as divorce and estate planning,
- release from private mortgage insurance (PMI) obligations and
- establishing or evaluating home equity lines of credit.

The housing market collapse prompted lenders to seek quick price estimates of homes with defaulted mortgages. BPOs also have become an important tool in government programs designed to relieve housing market problems.

In the 2008 FDIC seizure of the Independent National Mortgage Corporation (IndyMac), the FDIC proposed a loan modification plan to make mortgages more affordable. Under the plan, first lien mortgage payments would have dropped to as low as 31 percent of a borrower’s monthly income. The plan specifically encouraged use of BPOs to establish new

loan-to-value ratios. The FDIC never adopted the plan, but it became a model for subsequent government loan modification efforts that frequently specified BPOs as acceptable home value indicators. These developments created a growing demand for salespersons and brokers who were capable and willing to provide BPOs.

Form 1004 (Uniform Residential Appraisal Report) establishes expected data and analyses for a Fannie Mae appraisal. The appraisal form consists of six pages designed to produce a complete formal appraisal report. In addition, appraisers must complete a Market Conditions Addendum to the Appraisal Report (Fannie Mae Form 1004MC) detailing economic trends in the subject market. These forms call for detailed information on:

- the subject property,
- the contract,
- the neighborhood,
- site,
- improvements,
- sales comparison approach,
- reconciliation,
- cost approach,
- income approach,
- public utility district information,
- market research and analysis and
- condo/co-op information.

This report should provide a comprehensive analysis of the subject property and its market environment.

Fannie Mae also has devised the three-page Residential Broker Price Opinion form. Main sections of the BPO form are:

- general market conditions,
- subject marketability,
- competitive closed sales,
- marketing strategy,
- repairs,
- competitive listings,
- the market value,
- comments and
- included pictures.

The form specifies a host of requirements for brokers or agents offering BPOs. Although BPO requirements focus on many details in the subject residence's environment, they necessarily must omit much of the information included in the appraisal report. NAR's description of an appraisal is as follows: "A certified appraisal is formal, impartial estimate or opinion of value . . . for which the appraiser accepts responsibility. Only a state-certified appraiser can provide a certified appraisal."

Appraisers must answer to the TALCB when questions arise concerning compliance with USPAP; salespersons and brokers do not. However, this does not excuse brokers from the obligation to perform as responsible real estate professionals.

Member codes of ethics promulgated by associations to which they belong still apply. Standards of conduct imposed by licensing requirements at the Texas Real Estate Commission (TREC) still apply. In addition, any broker providing a BPO that strayed over the line into fraud would be subject to legal liability in civil litigation.

Thus, although the strict standards imposed by USPAP do not apply to a BPO provider, other legal and ethical considerations still govern salespersons' or brokers' actions as they provide BPOs. ➔

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THE TAKEAWAY

Broker price opinions (BPOs) and certified market analyses (CMAs) have been more commonplace in the wake of the 2008 housing market crash. Both are less detailed than certified appraisals but usually can be generated faster.

BPOs Outlawed?

By Charles E. Gilliland and Judon Fambrough

As lenders increasingly rely on real estate brokers for broker price opinion (BPOs), a function traditionally reserved for real estate appraisers, word on the street has it that the 82nd Texas Legislature abolished BPOs. But rumors of the demise have been greatly exaggerated (to paraphrase Mark Twain).

For decades, the Texas Real Estate Licensing Act (Licensing Act, found in Chapter 1101 of the Texas Occupations Code), allowed licensed real estate brokers to perform appraisals for compensation. In fact, before the passage of the Texas Appraisers Licensing and Certification Act (Appraiser's Act, found in Chapter 1103 of the Texas Occupations Code), appraisers were required to have a real estate broker's license.

Following the enactment of the Appraiser's Act in 1991, those performing appraisals with "federally related transactions" were required to obtain a license under the new act. These individuals were then designated as "state-certified real estate appraisers" or "state-licensed real estate appraisers." But appraisers performing non-federal related transactions were still allowed to provide appraisals after

obtaining a real estate broker's license under Chapter 1101.

That changed effective Sept. 1, 2011, when the 82nd Texas Legislature removed the language from the Licensing Act allowing real estate brokers to perform appraisals for compensation. This led many appraisers to believe that brokers could no longer render an opinion on the estimated value of real estate without obtaining an appraiser's license.

However, the devil lies in the details. While the legislators removed "appraisals" from the list of permitted activities in Chapter 1101, it added another permitted activity in its place. Brokers may still render written analyses, opinions or conclusions related to the estimated price of real property as long as the analyses or opinions:

- are not referred to as appraisals;
- are given in the ordinary course of the broker's or salesperson's business; and
- are related to the actual or potential acquisition, disposition, encumbrance, or management of an interest in real property.

The Appraisers Act reinforces this fact. The statute was amended to permit BPOs as long as they are done in

compliance with the three conditions just enumerated (Section 1103.004, Texas Occupations Code).

TREC also addressed BPOs under its rulemaking authority by amending the Texas Administrative Code. In addition to Rule 535.17 mentioned earlier, requiring the written disclaimer, the same rule now allows a salesperson to prepare, sign and present a BPO or comparative market analysis on behalf of the salesperson's sponsoring broker, but the salesperson must submit it in the broker's name and the broker is responsible for its content.

Finally, TREC changed Rule 535.16(c), which now obligates a real estate licensee to provide a BPO or comparative market analysis when negotiating a listing or offering to purchase property for his or her own account as a result of a contact made while acting as a real estate agent. So, in some instance, BPOs are not only permitted, but required. ➔

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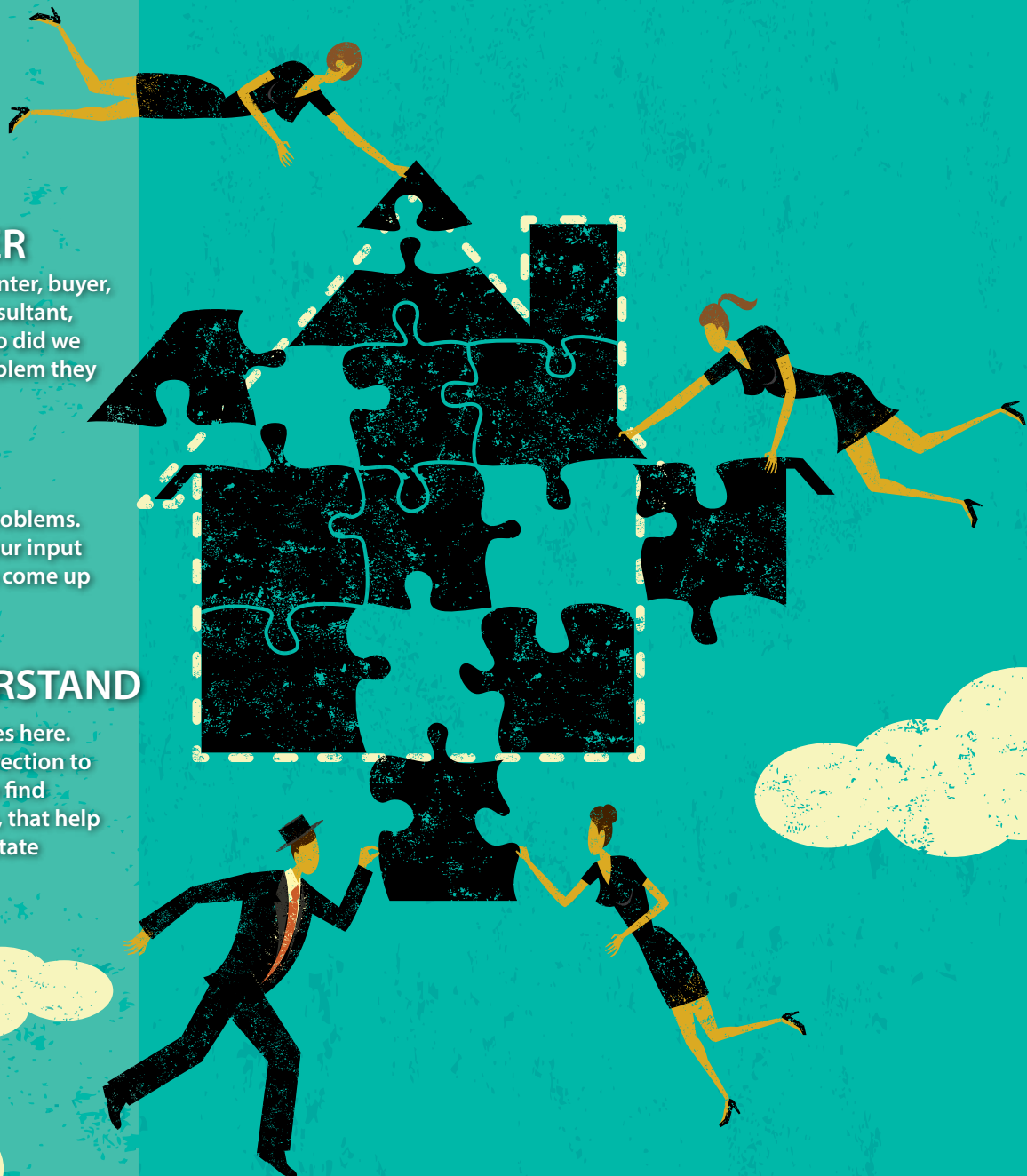
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