



# Valuations Other Than Appraisals

DODD-FRANK SAYS BPOs AND  
AVMs HAVE THEIR PLACE.



## “No tree grows to Heaven.” - Ancient Persian proverb

In a meeting with the Federal Home Loan Bank Board officials in 1986, Doug Lovell commented prophetically to those of us in attendance that “no tree grows to the sky.” He was referring to the dramatic increase in real estate values which ultimately lead to the collapse of the “Thrift Industry” in the 1990s. I’ve always remembered that observation, albeit with mixed feelings given the prediction it unveiled.

Today we have our new or latest financial crisis and real estate valuation has played a central role in facilitating the incredible escalation that occurred. Not surprisingly, collateral valuation is playing an important part in the hopeful recovery underway. But this time around, financial institutions, investors and regulators are looking for

alternatives to business as usual and are demanding valuation techniques and approaches that deliver greater efficiency and reliability.

Dodd-Frank anticipates valuations other than appraisals as it gave credibility to Automated Valuation Models (AVMs) and Broker Price Opinions (BPOs). The law allows BPOs to be used in transactions other than origination loans on a primary residence. Even before Dodd-Frank, BPOs rose to prominence during the financial crisis, owing to their special facility to meet the need for valuation services required by the surge in mortgage delinquencies. Financial institutions increasingly realized the need to adapt to changing regulatory requirements and due diligence criteria. The record is that the old ways of doing things showed themselves to be inadequate in their great test.

Innovation was needed; efficiency was imperative.

The Real Estate Valuation Advocacy Association (REVAA) was formed by innovative real estate valuation-related companies committed to improving the entire valuation industry. These companies deliver alternative valuation services, as well as appraisals, that address the weaknesses revealed by the mortgage-driven financial crisis of 2008. REVAA promotes high ethical and professional standards conducive to a flourishing real estate valuation industry including fee appraisers.

From the outset, however, REVAA had to address those who were convinced that, with its AMC members, it was designed to lower the compensation of traditional appraisers, if not eliminate them entirely. Dodd-Frank’s



alternatives for determining customary and reasonable appraisal fees seem to some conspiracy theorists to be part of this alleged plot. The reality is that the environment had changed. Efficient, reliable value and price assessments are in high demand. Bank agencies and financial institutions need and rely on the efficient delivery of valuation services provided by innovative companies in today's marketplace. Such efficiency benefits financial institutions and ultimately consumers as it is the consumer that pays for the various services attendant to any given mortgage transaction.

Valuation professionals today are chipping their way through a mountain of toxic assets; debris remaining from an eruption that engulfed the worldwide economy. We need to concentrate not just on recovering from past disasters, but also on designing new processes to ensure that the disastrous mischief of recent years cannot be repeated. We must deal with the troubled assets, even though that amounts to cutting losses rather than making gains. BPOs and alternative valuation products are especially useful in this work, deftly identifying value trends and property characteristics consistently and reliably.

A static or even declining number of qualified appraisers have struggled to meet the surging demand brought by the housing collapse. Inept or

The reality is that the environment had changed. Efficient, reliable value and price assessments are in high demand. Bank agencies and financial institutions need and rely on the efficient delivery of valuation services provided by innovative companies in today's marketplace.

unscrupulous operators—many of whom helped provoke the crisis in the first place—exploited the situation to the chagrin of the dedicated professionals. Even without the crooks, appraisers were overwhelmed by demand they could not meet fast enough. Consider the numbers. Only a tiny portion of the 100,000 licensed or certified appraisers in the United States serve the crucial residential market. In 2009, more than ten million BPOs were called for to fill the pressing demands of the market. The shortfall was especially acute in sparsely populated rural areas, where qualified appraisers are spread thin, but it bedeviled markets and delayed transactions generally. With activity finally revving up, the need for time-sensitive

alternatives becomes progressively critical for buyers, sellers and lenders alike. No one wants a good transaction to fall through for the lack of timely valuation.

Appraisers have long complained of pressures to “come in” with a desired pre-determined value or lose business. The recent legislation has sought to contain such real abuse, but the pressure is often subtle and hard to prove. Perhaps that experience leads some to take alarm at the implementation of the Dodd-Frank mandates as unwittingly containing another invitation for abuse. Yet, the reliance upon objective data makes subtle skulduggery comparatively easier to document.

Far from facing extinction, good appraisers often find themselves with more work than they can handle. In fact, AMCs need good appraisers—credentialed, highly educated, ethical appraisers—to succeed in their work. AMCs are responsible to their lenders for the integrity of their products. This responsibility mandates the kind of expertise that well-qualified appraisers offer.

Our recent bad, though less violent shocks inevitably are producing a more responsive marketplace, where a more varied array of valuation tools must respond fast to an impatient market. There is no reason that AMCs, BPOs and fee appraisers cannot all benefit by cooperating in a resurgent American real estate industry. It will take time and experience for the marketplace to work things out, as it always does.

### ADVOCACY FOR BPOs... STATE ACTIVITY

With the recognition of alternative valuation in federal law and regulations as well as the demand in the marketplace, pressure for the states to refine outdated restrictions on BPOs has increased. Enactment of the federal Dodd-Frank law has spurred the states to respond with their own regulations and legislative activity. REVA

AA has developed and offered model legislation, which has influenced many states in their consideration of alternative valuation methodologies.

**Here is where matters stand at this writing:** Upon examination, many state authorities realized that their codes were unrealistically outmoded, offering safe harbors for real estate professionals providing brokerage related BPOs, but ignoring the issue regarding lien-holders and third parties. Arkansas, Minnesota and >>

Mississippi responded with laws that adopt the Dodd-Frank recognition of BPOs in most contexts other than as the primary basis for residential loan origination. New Mexico was considering a similar bill when its legislative session had to adjourn. Only in Connecticut was comparable legislation killed in committee.

Nevada, in 2009, as well as Nebraska, in 2010, passed permissive BPO legislation in advance of the federal law, allowing BPOs for a wide range of transactions unrelated to brokerage or listing purposes. Other states acted quickly in response to Dodd-Frank. Thus, by the end of the 2011 legislative session, 43 states and the District of Columbia will have laws broadly sanctioning or allowing BPOs for lien-holders, third parties and other purposes. Broad recognition of the utility of BPOs and similar instruments obviously resonates throughout the nation.

**State laws vary in details.** No states have authorized BPOs as the sole basis of value in loan origination yet; and, the current demand is on the “servicing” side of lending where BPOs are most useful. Nine states explicitly allow BPOs to be performed

for lien-holders, and thirty-five others allow for BPOs to be performed for third parties or otherwise broadly permit their use. Seven states provide for safe harbor protection for BPOs in a brokerage context, but are silent as to their permissibility for lien-holders. One factor in this diversity is that most state laws were enacted before the financial crisis magnified the importance of BPOs. The real estate crisis of the 1980s prompted licensing for appraisers but that system proved inadequate to address or anticipate the current mortgage meltdown. The Dodd-Frank current-crisis legislation and new state laws reflect awareness of the use of BPOs in a restructuring real estate industry.

One of the states hardest hit by the mortgage crisis was Nevada, which responded promptly to ensure that the outdated law did not retard its recovery. Eager to meet the crisis, the Silver State did not wait for the federal statute. Effective since 2009, the state’s broadly permissive revised law authorized licensed real estate professionals to prepare BPOs for existing or potential buyers and sellers of real property, for third parties making decisions or performing due diligence for potential listings as well

as for lien-holders. The law lists the contents necessary for a valid BPO and provides rules for their electronic submission. The new Nevada law clearly addresses the current needs of the market relative to valuation.

State legislative sessions are usually short. Some occur only every other year. Nonetheless, states will continue to respond to the need to adapt, and as the opportunity unfolds, those state legislatures that have not already modernized their regulations will be well advised to consider the Nevada approach. Clearly, the tide is running in favor of broad acceptance of BPOs.

The Dodd-Frank landscape; the success BPOs enjoy in addressing the mortgage crisis and draining the toxic swamp; and the precedents in various states offer a strong impetus to reformers in those states where pre-crisis laws have yet to be amended. REVAA continues to work constructively with real estate professionals, financial institutions, consumer groups and other interested parties in the 2012 legislative sessions. Updated and modernized state laws sanctioning realistic and appropriate use of BPOs are needed to help emerge from our current mortgage crisis. ✖

▶ **35 STATES Broadly Allow for BPOs:** Alabama, Alaska, Arizona, Colorado, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, New Hampshire, New York, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin

▶ **9 STATES Allow BPOs for Lienholders:** Arkansas, California, Hawaii, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, Oregon

▶ **7 STATES Provide a Safe Harbor for BPOs in Brokerage Context:** Connecticut, Delaware, New Mexico, North Carolina, Pennsylvania, Rhode Island, Wyoming

## BPO Information by State

