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AMANJ Position on A3718 and S2551 Concerns Pertaining to Litigation Aspect

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If enacted into law, S2551 would exponentially expand the purposes for which BPOs can be performed, including for litigation, tax appeals, eminent domain, estate settlement, divorce proceedings, pre-nuptial agreements, land use planning, easements, etc. Enactment of this legislation could create a breeding ground for conflicts and consumer fraud.

In our field of ad valorem taxation, Article VIII, Section I, paragraph 1 of the Constitution of the State of New Jersey requires that all real property in this State be assessed for taxation under the same standard of value, which the Legislature has defined as “true” or “market” value, and taxed at a uniform general tax rate within each taxing district.

In seeking to fulfill this Constitutional mandate, our Courts demand that a witness seeking to be qualified as an expert at trial show that he/she has the requisite level of professional training. The trial court must also decide the closely related issue of whether the expert's opinion is based on sufficient facts and data (N.J. Rules of Evidence, 702 and 703). As construed by applicable case law, N.J.R.E. 703 requires that an expert's opinion be based on facts, data, or another expert's opinion, either perceived by or made known to the expert, at or before trial. The rule requires an expert “to give the why and wherefore” of his opinion, rather than mere conclusions. Jimenez v. GNOC Corp., 286 N.J. Super 533 (1996); Roseburg v. Tavorath, 352 N.J. Super 385 (App.Div.2002)

These Rules of Evidence have fixed clear guidelines that govern the admissibility of expert opinions and against which trial courts must make their evaluations. Expert testimony must be offered by one who is “qualified as an expert by knowledge, skill, experience, training, or education” to offer a “scientific, technical, or ... specialized” opinion that will assist the trier of fact and the opinion must be based on facts or data of the type identified by and found acceptable under N.J.R.E. 703.

Our courts must ensure that the proffered expert does not offer a mere *net opinion*. See Polzo v. Cnty. of Essex, 196 N.J. 569, 583, 960 A.2d 375 (2008); Buckelew v. Grossbard, 87 N.J. 512, 524, 435 A.2d 1150 (1981). That is, an expert's bare opinion that has no support in factual evidence or similar data is a mere net opinion which is not admissible and may not be considered. The admissibility rule has been aptly described as requiring that the expert “give the why and wherefore” that supports the opinion, “rather than a mere conclusion.”

Keeping this bedrock principle in mind, note the vague and imprecise nature of the “price estimate” exercise expressed in the definition of a BPO – as defined by the NABPOP (*National Association of Broker Price Opinion Professionals*):

“BPO is an acronym for Broker’s Price Opinion. In general, the term Broker’s Price Opinion (BPO) is a method that a Real Estate Broker (or an agent acting on behalf of their employing broker) uses to estimate the probable selling price of a Real Estate property/house. The estimate of price is submitted in a BPO report (2-3 pages)”.

Note that there is absolutely no inclusion of a requirement for analysis or the critical step of applying adjustments to any alleged “comp”. A BPO expresses what supposedly similar buildings sell for (an inventory review), while a licensed appraisal expresses what a property would sell for (a terminal value based on analysis). In this respect, a BPO is not much different from an Attorney-generated, or even Internet Service-generated, series of comparables.

Further, according to NABPOP, under their Standards and Guidelines, “customer ordered” specifications override the Guidelines set forth in BPOSG (*BPO Standards and Guidelines*):

“The Guidelines set forth in BPOSG are to be assumed unless otherwise specified in the BPO order... The guidelines contained herein allow for flexibility, and exceptions to the guidelines are entirely acceptable.”

Thus, by their own guidelines, there is absolutely no uniform structure or standard for BPOs. Further, and most troubling, the Standards and Guidelines of the NABPOP **allow for the advocacy of brokers** for their clients, to override an opinion of true value.

There is no establishment of standards within the proposed legislation of S2551 / A3718. The Proposed Bill seeks to establish Realtors and Brokers as experts in valuation of real property. To be licensed as a Realtor or Broker, however, there is no in-depth training or education, basic or continuing, regarding valuation of real property. The following are the requirements for Realtors and Brokers under N.J.S.A. 45:15-10:

“Before any such license shall be granted, the applicant, and in the case of a partnership, association or corporation, the partners, directors or officers thereof actually engaged in the real estate business as a broker, broker-salesperson, salesperson, or referral agent, shall submit to an examination to be conducted under the supervision of the commission which examination shall test the applicant’s general knowledge of the statutes of New Jersey concerning real property, conveyancing, mortgages, agreements of sale, leases and of the provisions of R.S.45:15-1 et seq., the rules and regulations of the commission and such other subjects as the commission may direct . . .”

The statute further provides that:

- a) *As a prerequisite to admission to an examination, every individual applicant for licensure as a real estate salesperson or a real estate referral agent shall give evidence of satisfactory completion of 75 hours in the aggregate of such courses of education in real estate subjects at a school licensed by the commission as the commission shall by*

regulation prescribe. At least three hours of that course of study shall be on the subject of ethics and ethical conduct in the profession of a real estate salesperson.

- b) As a prerequisite to admission to an examination, every individual applicant for licensure as a real estate broker or broker-salesperson shall give evidence of satisfactory completion of 150 hours in the aggregate of such courses of education in real estate and related subjects at a school licensed by the commission as the commission shall by regulation prescribe. Thirty hours of that course of study shall be on the subject of ethics and ethical conduct in the profession of a real estate broker.*

Summary

BPOs are by nature and design classic net opinions. They would be provided indiscriminately and entirely without standard, and they rely entirely on the individual Realtor or Broker's own view of the market – a “view” articulated by a wholly unqualified individual (in the case of a Realtor / Broker who is unlicensed in appraisal and/or without the requisite educational training). The proposed Bill would fly directly in the face of the carefully laid evidentiary standards of the New Jersey Supreme Court and the entire judiciary of the State. The potential impact on the Ad-Valorem tax system, already fragile during this continuing economic downturn, could be severe.

Respectfully Submitted,



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(Legal research / commentary by John Lloyd, Esq. – AMANJ Legal Counsel)
