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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/11
LAST UPDATED 03/16/11 **HB** _____

SPONSOR Griego, P.

SHORT TITLE Real Estate Broker's Price Opinions **SB** 561/aSPAC/aSFL#1

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY11 | FY12 | | |
| | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of SFL Amendment #1

The Senate Floor amendment to Senate Bill 561 restricts the scope of the use of broker's price opinions (BPO) for which fees may be charged and collected to:

- 1) an owner of real property or the legal representative of the owner for purposes of an administrative tax protest, but may not be used as evidence in any other legal action; or
- 2) an existing lienholder when used as a secondary source of a price opinion in conjunction with or in addition to an appraisal; but prohibits BPOs for use with loan origination agreements or refinancing of primary or secondary dwelling, investment property, equity line of credit, second mortgage or improvement loan.

The Senate Floor amendment also prohibits the charging and collecting of fees for BPOs when brokers provide BPOs for:

- 1) an existing or potential seller for purposes of listing and selling real property; or
- 2) an existing or potential buyer for purposes of purchasing real property.

The amendment requires that the commission establish a new “broker’s price opinion committee” composed of no more than five members to promulgate new rules requiring brokers preparing BPOs to pay a fee to register with the commission and prescribe the manner in which the BPOs shall be prepared and utilized. The new committee shall be formed within 60 days of the effective date of the act and rules shall be promulgated and approved by the commission within three months after the formation of the committee.

According to the Attorney General’s Office, by prohibiting the charging and collecting of fees associated with providing BPOs to an existing or potential seller for purposes of listing and selling real property; or to an existing or potential buyer for purposes of purchasing real property, SB 561 will foreclose the ability by private, individual homeowners and buyers of property to assess the estimated market value of their homes without hiring the more expensive services of an appraiser or require the full and costly services of a licensed broker. Potentially the restricted use of BPOs proposed by SB 561 could increase the cost and time of executing short sales frequently used in foreclosure proceedings.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment to Senate Bill 561 further defines the persons who may and may not be charged a fee for a broker’s price opinion. Under the amendment existing and potential sellers and buyers of real property cannot be charged a fee for a broker’s price opinion.

The amendment also reiterates that a broker’s price opinion shall not be substituted for an appraisal.

The amendment elaborates on the duties of the Real Estate Commission as they relate to broker’s price opinions and creates a Real Estate Broker’s Price Opinion Committee under the Real Estate Commission.

All other changes are grammatical and technical.

Synopsis of Original Bill

Senate Bill 561 would amend the Real Estate License Law to define a real estate “broker” or “qualifying broker” as someone who “prepares a broker’s price opinion” and then defines a broker’s price opinion as “a written estimate, analysis or conclusion prepared by an active licensed broker that details the probable selling price of a particular piece of real property and provides a varying level of detail about the property’s condition and neighborhood, the local real estate market and comparable sales”. The proposed definition concludes by saying, “A broker’s price opinion is not an appraisal”.

In a subsequent section, SB561 provides that a licensed (real estate) broker may charge and collect a fee for a broker’s price opinion for

- An owner of real property or the legal representative of the owner
- An existing or potential seller for the purposes of listing and selling real property
- An existing or potential buyer for the purpose of purchasing real property
- A third party making decisions or performing due diligence related to the potential listing, offering, sale, exchange, option, lease or acquisition price of real property; or

- An existing or potential lien holder; provided that a broker's price opinion shall not be substituted for an appraisal by a state licensed or certified appraiser if an appraisal is required by applicable law.

SB561 goes on to say that a broker shall not knowingly prepare a broker's price opinion for use as an appraisal when an appraisal is required by law or otherwise, and provides that the Real Estate Commission may adopt rules prescribing the manner in which a broker's price opinion shall be prepared in accordance with the provisions of this section of the Act.

The second half of SB561 would amend the Real Estate Appraisers Act to define a "broker's price opinion" exactly as it would be defined in the Real Estate License Law under SB561, and provides in a subsequent section that the requirement for registration, licensing or certification as a real estate appraiser would not apply to a real estate broker who prepares a broker's price opinion, as defined in the Act.

SB561 goes on to provide that a licensed real estate broker may charge and collect a fee for a broker's price opinion under the same conditions described in the proposed amendment to the Real Estate License law.

FISCAL IMPLICATIONS

No significant fiscal impact is identified.

SIGNIFICANT ISSUES

The Real Estate Appraisers Act has long provided an exception from licensing as a real estate appraiser for a real estate broker "who, in the ordinary course of business, gives an opinion of the price or value of real estate for the purpose of securing a listing, marketing of real property, affecting a sale, lease, or exchange, conducting a market analysis or rendering specialized services; provided, however, this opinion of price or value shall not be referred to or construed as an appraisal or appraisal report and no compensation, fee or other consideration is expected or charged for such opinion, other than the real estate brokerage commission or fee for services rendered in connection with the identified real estate or real property. "

According to the Real Estate Commission, the large number of real estate foreclosures and so-called "short sales" i.e., sales of real estate for less than is owed on the mortgage, has resulted in large numbers of what are known as "bank owned properties". In an effort to expedite the sales of such properties, banks and other lending institutions are soliciting and paying real estate brokers for broker price opinions.

Banks and other lending institutions maintain that real estate brokers are better equipped by virtue of their working knowledge of the current real estate market to render timely and realistic opinions of value that assist banks in setting realistic sales prices on bank-owned properties, and that provide parameters for re-negotiating terms of distressed mortgages.

According to the Regulation and Licensing Department (RLD), such payments by banks to real estate brokers constitute potential violations of the Real Estate Appraisers Act, i.e. a real estate broker receiving a separate fee for rendering an opinion of value outside the commission that may be earned on a real estate transaction, and actual violations of Real Estate Commission

Laws and Rules which prohibit brokers from paying or receiving compensation from individuals not licensed as real estate brokers, and from receiving compensation from someone other than their qualifying broker.

According to the Real Estate Commission, banks and other lending institutions solicit broker price opinions based on the premise that they are quicker and cheaper and that they are a more accurate indicator of current market value. Real estate brokers may render broker opinions of value because of the potential that such an opinion could lead to securing the listing of the property, and because they are a source of income for brokers during a period depressed real estate sales.

While real estate brokers and lending institutions maintain that a broker price opinion and an appraisal are entirely different, both in scope and purpose, appraisers maintain there is little to no difference between such an opinion and a certain level of appraisal. Appraisers are apprehensive about expanding the exception to appraiser licensure that currently exists in the Real Estate Appraisers Act out of a concern that such an expansion would further blur the distinction between an appraisal and a broker price opinion and allow real estate brokers to act as de facto appraisers.

ADMINISTRATIVE IMPLICATIONS

The main administrative implication of SB561 is the provision stating that the Real Estate Commission may adopt rules “prescribing the manner in which a broker’s price opinion shall be prepared in accordance with the provisions of this section.” This could be difficult given the conflicting views among real estate brokers, real estate appraisers, and lending institutions about what constitutes a broker price opinion and how such an opinion differs from an appraisal.

TECHNICAL ISSUES

According to RLD, proposed language on line 9 of page 3 of the bill adds to the definition of “broker” or “qualifying broker”, “someone who prepares a broker’s price opinion” seems misplaced. It would be better on lines 16 through 18 of page 2 of the bill to incorporate “prepares broker price opinions” within the other activities performed by brokers or qualifying brokers.

On line 6, page 8 between the words “persons” and “under”, insert the words, “providing such fee is paid to and disbursed to the licensed broker by the qualifying broker with whom the broker is affiliated”.

OTHER SUBSTANTIVE ISSUES

The Broker Price Opinion (BPO) is a tool often used by buyers, sellers, lenders and mortgage companies to value properties in situations where it is believed that the expense and delay of an appraisal is outweighed by the need for a quick and inexpensive estimated valuation by a broker. BPOs are frequently used on foreclosed properties or for short-sales. The broker generally does either a drive-by BPO or an internal BPO. Some of the information collected in order to complete a BPO in order to determine the market value of the property includes: location of the home, description of the neighborhood, conformity of the home to neighborhood and zoning, property type, style, approximate age of the home, visual condition of all individual exterior

features of the home, whether the home looks occupied, type of parking, lot size, estimated square feet, estimated room count, three recently sold comparable homes, three currently listed comparable homes and two photos. Currently, both Fannie Mae and Freddie Mac have approved BPO forms. While BOPs are less expensive and can be completed faster which assists homeowners looking to enter into a short-sale for homes they may be upside down, problems exist with BPO such as brokers may not be independent or properly trained and have a bias towards quick sales for a fee. Additionally, because BPOs are estimated market values, it easier to undervalue property in order to make a quick turnaround in sales thereby potentially further depressing the market value of homes.

According to RLD, the situation that is the impetus for SB561, i.e., a distressed real estate market resulting in large numbers of “bank owned properties” may be temporary. The provisions of SB561 would be a permanent change in the laws governing and defining the respective roles of real estate brokers and real estate appraisers.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to RLD, the consequence of not enacting this bill will be that real estate brokers who perform and are compensated for broker’s price opinions will continue to be in potential violation of the Real Estate Appraisers Act and in actual violation of the aforementioned provisions of the Real Estate License Law and the Real Estate Commission Rules.

CS/mew