



March 12, 2010

The Honorable Ron D. Parraguirre  
Chief Justice, Supreme Court of Nevada  
c/o Tracie K. Lindeman, Clerk of the Court  
201 South Carson Street  
Carson City, NV 89701

**FILED**

MAR 15 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK  
ADKT 435

Dear Chief Justice Parraguirre:

On behalf of the 35,000 members of our respective professional appraisal organizations, including several hundred members in Nevada, we are writing to oppose the proposed change to Rule 7(2.) of the Nevada Foreclosure Mediation Program (FMP) which would allow the beneficiary of a deed of trust to submit a broker price opinion (BPO) in lieu of an appraisal as part of mediation. We strongly believe that allowing for the use of BPOs in the property valuation component in mediation will not adequately protect the public interest (consumer, borrowers, and others) or the interests of the various parties to the loan. We strongly urge you to retain Rule 7(2.) in its current form.

The current requirement under Rule 7(2.) is that "the beneficiary of a deed of trust or its representative shall produce an appraisal done no more than 60 days before the commencement date of the mediation". These appraisals must be performed by licensed and certified appraisers who meet minimum education and experience requirements, and the valuation assignments must be performed in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). In addition, the preparers of appraisals are overseen by the Nevada Commission of Appraisers of Real Estate, and could lose their license to practice if the value reported in an appraisal is developed in a fraudulent or negligent manner. Because of these stringent requirements, professional appraisals are widely recognized as by far the most reliable indicators of the market value of real estate.

Generally speaking, real estate agents and brokers are not independent or properly trained valuation specialists. They have an inherent bias towards quick results and action which produces a fee for themselves irrespective of whether the loan modification is fair to the lender/services/investor/property owner/borrower. The preparers of BPOs have virtually no governmental oversight, little or no valuation training requirements or any generally-accepted valuation standards and guidelines by which the BPOs must be prepared. As a result, BPO price estimates vary widely and are far less reliable than professionally prepared real estate appraisals. Moreover, real estate agents and brokers who provide broker price opinions can have a direct or indirect financial interest in the outcome of a short sale mediation.

Understanding the market value of the underlying collateral is an essential element to any successful mediation program, as it empowers all parties with a basic understanding of the

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position of the collateral in question. Because of its importance, valuation objectivity, competency, and independence are of central importance, and here, appraisals prepared by certified appraisers in accordance with the Uniform Standards of Professional Appraisal Practice are best suited for the Court. It is for these reasons that the housing agencies of the federal government (FHA; VA; Fannie Mae and Freddie Mac) require the use of professional appraisals and disallow the use of BPOs to value property in mortgage originations and modifications for loans owned or serviced by these agencies and Government Sponsored Enterprises.

Further, disclosure of documents is critical to the success of foreclosure mediation programs, according to a leading consumer law organization that has reviewed such programs. A report issued late last year identified the lack of produced documentation, including appraisals, as one of the biggest obstacles facing homeowners in foreclosure mediation. The report notes that most homeowners will be appearing for mediations without counsel of their own, and that one of the biggest complaints of consumers participating in these programs is the lack of documentation provided by the servicer. It further recommends that such programs require publication of a clear checklist of documents that servicers must produce, including a current appraisal.<sup>1</sup>

We strongly urge the Nevada Supreme Court to retain Rule 7(2.) in its current form as it will benefit all parties involved, including the Court, the borrower, and the lender; as well as the administration of justice. There is an ample number of qualified real estate appraisers – over 1,200 licensed or certified in Nevada - to perform these valuation services.

If you should have any questions, please do not hesitate to contact Scott DiBiasio, Appraisal Institute Manager of State & Industry Affairs at (202) 298-5593 or [sdibiasio@appraisalinstitute.org](mailto:sdibiasio@appraisalinstitute.org), or Peter Barash, Government Relations Consultant, American Society of Appraisers at (202) 466-2221 or [peter@barashassociates.com](mailto:peter@barashassociates.com).

Thank you for your consideration of our position.

Sincerely,

Appraisal Institute  
American Society of Appraisers  
American Society of Farm Managers & Rural Appraisers  
National Association of Independent Fee Appraisers

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<sup>1</sup> Walsh, J. (2009, September). *State and Local Foreclosure Mediation Programs*. National Consumer Law Center. Available at [http://www.consumerlaw.org/issues/foreclosure\\_mediation/content/ReportS-Sept09.pdf](http://www.consumerlaw.org/issues/foreclosure_mediation/content/ReportS-Sept09.pdf)