

2018 RELRA Amendments Frequently Asked Questions

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Frequently Asked Questions

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The Real Estate Licensing and Registration Act (RELRA) has been amended by Act 75 of 2018, with two primary changes: an increase to prelicense education requirements, and the legalization of Broker Price Opinions in certain circumstances.

Full implementation of these changes will require regulatory and policy action by the State Real Estate Commission. This FAQ will be amended determinations are made and rolled out. Please check the revision date to ensure you are using the most recent version of the document.

References to specific sections are included in some answers. A fully revised version of RELRA is available to review.

This document reflects PAR's best understanding of the statutory and regulatory environment at the time of drafting. It is not intended to provide legal advice and is not a substitute for consulting with brokerage counsel where legal advice may be necessary.

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Effective Date of Changes

Q: When do these changes go into effect?

A: The effective date of the Act is August 28, 2018. But many of the changes cannot be fully implemented until the State Real Estate Commission establishes certain new educational criteria and real estate schools develop new approved content. Individual questions below discuss the various steps that must be taken and will be updated as these issues are addressed.

Prelicense Education Requirements

Q: How many hours of prelicense education will be necessary to receive a real estate salesperson license?

A: As of the effective date, anyone starting education for a salesperson license will be required to have **75 hours** of prelicense education. This is an increase of 15 hours. (§ 455.521)

Q: What if I already started a prelicense course before August 28? Will I need to take 75 hours?

A: No. Anyone who “has completed a portion of the hours before the effective date” of the changes is grandfathered and will only need to take 60 hours of prelicense education. (§ 455.521)

Q: Once I start a prelicense course, how long do I have to finish and take the licensing exam?

A: The salesperson licensing exam must be taken within five years of starting the prelicense education process. (§ 455.521)

Q: What will be covered in those additional 15 hours?

A: The law states that prelicense education is to be in “areas of study prescribed by the rules of the commission.” The topics for prelicense education are established through two content outlines developed by the State Real Estate Commission – one called Real Estate Fundamentals and one called Real Estate Practice. The Commission has voted to expand the Real Estate Practice outline from 30 to 45 hours. This means the content topics will stay the same, with schools having the discretion to expand their curriculum materials among the approved topics as they see fit.

Q: Many schools use a standard text (Modern Real Estate Practice in Pennsylvania) for prelicense courses. Will this text be updated?

A: The publisher of that book is aware of the changes and will be assessing what changes, if any, it will be making to that text. Additional information will be provided as it is available. Note that the regulations do not mandate the use of any particular text or supporting materials, so schools may develop their own supplemental materials as well.

Q: How is this information being communicated to real estate schools?

A: The commission will communicate with licensed schools in some way, but we are not aware of a specific communications plan at this point. PAR will continue its outreach to Realtor®-owned schools as part of our service to members and local associations.

Q: Is it true that a new salesperson applicant needs to have a high school diploma?

A: Yes. As of the effective date, all **new** salesperson applicants must “be a high school graduate or shall produce proof satisfactory to the commission of an education equivalent to high school preparation.” This new requirement does apply to anyone seeking a license after the effective date, even if they started their prelicense course prior to that date, but **does not apply to anyone with a current salesperson license**. Any existing licensees without a high school education are grandfathered in and can continue practicing. (§ 455.521)

Q: What is “education equivalent to high school preparation”?

A: More information about certain equivalency options is available through the Pennsylvania Department of Education. Applicants will be required to verify their education as part of the application process.

Broker Price Opinions – Definitions

Q: What is a Broker Price Opinion (BPO)?

A: The definition of a Broker Price Opinion is: *An estimate prepared by a broker, associate broker or salesperson that details the probable selling price of a particular parcel of real property and provides a varying level of detail about the property's condition, market and neighborhood, and information on comparable sales....*

(§ 455.201) There are lists of permitted uses and prohibited uses, but a BPO does not have to be attached to an existing or potential transaction.

Q: Is it legal for a licensee to perform a Broker Price Opinion (BPO)?

A: BPOs will be legal as of August 28, 2018 – but with two major caveats. First, any licensee who wants to perform a BPO must complete certain prerequisite education requirements. And second, a BPO may only be performed for certain purposes and can't be used for others. (§ 455.608f)

Q: What is a Comparative Market Analysis (CMA)?

A: The definition of a Comparative Market Analysis is: *A written analysis, opinion or conclusion by a broker, associate broker or salesperson relating to the probable sale or rental price of a specified parcel of real property in an identified real estate market at a specified time, which is prepared for any of the following:*

1. An existing or potential seller, buyer, lessor or lessee of the parcel of real property.
2. A person making decisions or performing due diligence related to the potential listing, offering, sale, option, lease or acquisition price of the parcel of real property.

(§ 455.201) The main limitation on a CMA is that it must be done for an actual or potential client – whether a transactional party (buyer/seller/lessor/lessee) or someone making substantive decisions on whether to list or acquire a particular property.

Q: Is it still legal to perform a Comparative Market Analysis (CMA)?

A: Yes, CMAs are still legal. The definition has been slightly rewritten, but is essentially the same. CMAs and BPOs are both permitted, with differences in their preparation and permitted uses.

Q: How does a BPO differ from a CMA?

A: A BPO and a CMA are similar, in that they each provide an analysis/estimate of the probable sale price of a particular property. Both require a standard disclaimer (the same language that had previously been required for a CMA) that the pricing estimate is not an appraisal and has not been prepared according to the rules that govern appraisals.

The main differences are in the minimum required content of each type of pricing estimate, and the uses for each.

A CMA has no required content beyond the required disclaimer. A BPO requires a minimum of 7 additional pieces of information (included in § 455.608f(c)), plus the signatures of both the preparing licensee and the broker or a designated associate broker. Though these additional items may often be included in a CMA as a practical matter, they're only required in a BPO.

Further, a CMA must be related to an actual or potential sale/lease transaction, while a BPO can be done in a set of four situations that are not necessarily transaction-related. For clarity, there is also a list of scenarios in which a BPO is not allowed.

Q: Beyond earning a license, are there any additional education or experience requirements before I can do BPOs?

A: Yes. Before performing a BPO, a licensee must: hold a license for at least 3 years; complete certain educational requirements relating to preparation of BPOs; and have completed at least three hours of continuing education on BPO topics during the current or prior license period. The same requirements must be met by a broker or associate broker before being able to sign off on a BPO performed by a salesperson. (§ 455.608f(i))

Q: Beyond earning a license, are there any additional education or experience requirements before I can do CMAs?

A: No. Any licensee – salesperson, associate broker or broker – may conduct a CMA.

Q: Will I be able to do BPOs as soon as these amendments go into effect?

A: That is unclear at this time. The commission has the authority to determine additional educational requirements that must be completed before a licensee can perform BPOs, so a licensee would not be able to do that type of work until after the requirements are published and the licensee has then taken the appropriate course(s). Additional information will be made available as it is provided by the commission, but it does not appear that prerequisite course content would be approved prior to the commission's meeting in late August.

BPO Uses and Prohibitions

Q: What can a BPO be used for?

A: For the most part, BPOs are limited to certain specific uses related to lenders and loan servicers. A BPO may be prepared only in conjunction with the following: a

property owned by a lender after an unsuccessful sale at a foreclosure auction; a modification of a first or junior mortgage or equity line of credit; a short sale of a property; or an evaluation or monitoring of a portfolio of properties. (§ 455.608f(e))

Q: Are there specific BPO uses that are prohibited?

A: Yes. Though the law dictates that a BPO can only be used for certain purposes, it also contains a list of specific prohibitions. A BPO may not be used for: determining property value for originating a mortgage loan, equity line of credit or refinance; in connection with eminent domain, tax appeals, bankruptcy/insolvency proceedings; divorce or equitable distribution proceedings; any court proceeding; or the distribution of an estate. If a valuation is required for one of these purposes it would have to be a full appraisal performed by a qualified appraiser. (§ 455.608f(f))

Q: Can an appraiser do a BPO?

A: RELRA relates only to the roles and responsibilities of real estate licensees. Appraisers are regulated by the State Board of Certified Real Estate Appraisers and are subject to laws and regulations of that Board. Any questions about appraiser duties and responsibilities should be directed to the State Board of Certified Real Estate Appraisers.

Q: A buyer has asked me to provide an estimate of value for a tax assessment appeal. Can I prepare a CMA or BPO for that purpose?

A: No. Tax appeals are specifically excluded as a use for BPOs, and a CMA would not be proper because it is not related to an actual or potential transaction.

Q: The executor of an estate has asked me to list a property that is part of the estate. Can I prepare a CMA or BPO for that purpose?

A: A CMA for the executor would be permissible in this circumstance because it would be done for an actual or potential client, or to assist that executor in their due diligence related to the potential listing price. A BPO is not permitted because it is not one of the permitted uses in the statute.

Q: The executor of an estate has asked me to value several properties that will be inherited by various heirs. Can I prepare a CMA or BPO for that purpose?

A: No. A CMA is not permitted because there is not actual or potential transaction contemplated. A BPO is not permitted because distribution of an estate is a specifically prohibited use.

Q: A couple needs to sell their home as part of their divorce proceedings, and I've been approached to do a listing presentation. Can I prepare a CMA or BPO for that purpose?

A: Yes, a CMA would be permissible in this circumstance because it would be done for an actual or potential client. A BPO is not permitted because it is not one of the permitted uses in the statute.

Q: As part of a divorce, a home will be transferred from the couple's joint ownership to full ownership by the wife. Her attorney would like to know the value of the home as part of the overall property distribution. Can I prepare a CMA or BPO for that purpose?

A. No. A CMA is not permitted because there is not actual or potential transaction contemplated – the property will simply be transferred to one of the parties in the divorce. A BPO is not permitted because use in divorce and equitable distribution proceedings is specifically prohibited.

BPO Fees

Q: Can I charge a fee for a BPO?

A: Yes. Keep in mind that and the law/regulations generally require a written agreement between a broker and a consumer where a licensee is providing a service and the consumer may be obligated to pay a fee. A BPO is licensed activity, so there should be a written contract that spells out the services to be performed and the fee to be paid. (§ 455.608a)

Q: Can I charge a fee for a CMA?

A: Yes. Keep in mind that and the law/regulations generally require a written agreement between a broker and a consumer where a licensee is providing a service and the consumer may be obligated to pay a fee. A CMA is licensed activity, so there should be a written contract that spells out the services to be performed and the fee to be paid. Many licensees do not charge a fee for a CMA. If no fee will be charged there is no requirement for a written contract. (§ 455.608a)

Q: How are fees for CMAs and BPOs to be determined?

A: There is nothing in the statute that dictates how fees for CMAs and BPOs are determined or negotiated. Any fees are fully negotiable between the licensed providers and the recipient of the work product.

Remember that like any other licensed service, the ultimate right to contract and negotiate fees rests with the broker. Licensees should check with their brokers about any internal rules or policies related to BPO fees.

Q: I have agreed to do BPOs for a lender that does periodic portfolio reviews. They want to know who the checks should be written to.

A: All fees for all licensed activity must be paid to the broker, at which point the broker can then pass those fees on to individual licensees under whatever compensation agreement is in place. Under no circumstances can fees for BPOs or CMAs be paid directly to a salesperson or associate broker. Ever. (§ 455.608f(d))

BPO Supervision

Q: My broker has said that he doesn't want any agents in his firm to do BPOs, and has established an office policy that prohibits us from doing so. Can he do that?

A: Yes. Like any other licensed service, the ultimate right to set rules belongs to the broker. The broker has authority to prohibit BPO practice within an office, or to establish whatever legal limits he wishes. If you want to do BPOs, you need to first check with your broker to ensure that they are willing to allow those services to be performed in the brokerage. Brokers are encouraged to check with their errors & omissions insurance providers to ensure that adding BPO services to a brokerage will be properly covered.

Q: My broker has informed me that if I perform BPOs she will pass through those fees on the same split that applies to my transactional commissions instead of paying me the full amount received from the lender. Is that permitted?

A: All questions of salesperson compensation are handled contractually between the broker and salesperson. If you want to do BPOs you need to first check with your broker to determine if that type of practice is permitted in the brokerage, and then how those fees will be handled. Since BPOs have not been legal, if there's a desire to handle these fees differently than others it may be necessary to update/amend independent contractor agreements to account for this new type of business.

Q: Once I have my broker's approval to do BPOs are there any additional supervisory responsibilities for the broker?

A: Yes. Every BPO prepared by a salesperson must be signed by both the salesperson and by the broker or an associate broker designated by the broker. (§ 455.608f(j))

BPO – Insurance Coverage

Q: Will BPO practice be covered by my broker's errors and omissions insurance?

A: Brokers should check with their E&O carriers to see if there are any coverage restrictions and/or if there are any best practices to implement if they decide to allow this as a brokerage service.

Q: If a licensee is unable to pay a court judgment after a suit related to a BPO, is that award going to be covered by the Real Estate Recovery Fund?

A: No. The amendments included a specific exclusion so BPOs are not covered by the

rules of the recovery fund.

Location

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