

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 521
Judiciary I Committee Substitute Adopted 5/2/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S521-PCS75215-RW-79

Short Title: Rule in Dumpor's Case/Broker Price Opinions.

(Public)

Sponsors:

Referred to:

April 6, 2011

1 A BILL TO BE ENTITLED
2 AN ACT ABOLISHING THE RULE IN DUMPOR'S CASE AND CONCERNING BROKER
3 PRICE OPINIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 41 of the General Statutes is amended by adding a new
6 section to read as follows:

7 "**§ 41-6.4. Rule in Dumpor's Case abolished.**

8 (a) The rule of property known as the Rule in Dumpor's Case is abolished.

9 (b) This section shall become effective October 1, 2012, and applies to transfers of
10 property that take effect on or after that date."

11 SECTION 2. Chapter 93A of the General Statutes is amended by adding a new
12 Article to read:

13 "Article 6.

14 "Broker Price Opinions and Comparative Market Analyses.

15 "**§ 93A-82. Definitions.**

16 As used in this Article, the terms "broker price opinion" and "comparative market analysis"
17 mean an estimate prepared by a licensed real estate broker that details the probable selling price
18 or leasing price of a particular parcel of or interest in property and provides a varying level of
19 detail about the property's condition, market, and neighborhood, and information on
20 comparable properties, but does not include an automated valuation model.

21 "**§ 93A-83. Broker price opinions and comparative market analyses for a fee.**

22 (a) Authorized. – A person licensed under this Chapter, other than a provisional broker,
23 may prepare a broker price opinion or comparative market analysis and charge and collect a fee
24 for the opinion if:

25 (1) The license of that licensee is active and in good standing; and

26 (2) The broker price opinion or comparative market analysis meets the
27 requirements of subsection (c) of this section.

28 (3) The requirements of this Article shall not apply to any broker price opinion
29 or comparative market analysis performed by a licensee for no fee or
30 consideration.

31 (b) For Whom Opinion May Be Prepared. – Notwithstanding any provision to the
32 contrary, a person licensed under this Chapter may prepare a broker price opinion or
33 comparative market analysis for any of the following:



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- 1 (1) An existing or potential seller of a parcel of real property.
2 (2) An existing or potential buyer of a parcel of real property.
3 (3) An existing or potential lessor of a parcel of or interest in real property.
4 (4) An existing or potential lessee of a parcel of or interest in real property.
5 (5) A third party making decisions or performing due diligence related to the
6 potential listing, offering, sale, option, lease, or acquisition price of a parcel
7 of or interest in real property.
8 (6) An existing or potential lienholder or other third party for any purpose other
9 than as the basis to determine the value of a parcel of or interest in property,
10 for a mortgage loan origination, including first and second mortgages,
11 refinances, or equity lines of credit.
12 (7) The provisions of this subsection do not preclude the preparation of a broker
13 price opinion or comparative market analysis to be used in conjunction with
14 or in addition to an appraisal.
15 (c) Required Contents of a Broker Price Opinion or Comparative Market Analysis. – A
16 broker price opinion or comparative market analysis shall be in writing and conform to the
17 standards provided in this Article that may include, but are not limited to, the following:
18 (1) A statement of the intended purpose of the broker price opinion or
19 comparative market analysis.
20 (2) A brief description of the subject property and property interest to be priced.
21 (3) The basis of reasoning used to reach the conclusion of the price, including
22 the applicable market data or capitalization computation.
23 (4) Any assumptions or limiting conditions.
24 (5) A disclosure of any existing or contemplated interest of the broker issuing
25 the broker price opinion, including the possibility of representing the
26 landlord/tenant or seller/buyer.
27 (6) The effective date of the broker price opinion.
28 (7) The name and signature of the broker issuing the broker price opinion and
29 broker license number.
30 (8) The name of the real estate brokerage firm for which the broker is acting.
31 (9) The signature date.
32 (10) A disclaimer stating that "This opinion is not an appraisal of the market
33 value of the property, and may not be used in lieu of an appraisal. If an
34 appraisal is desired, the services of a licensed or certified appraiser shall be
35 obtained. This opinion may not be used by any party as the primary basis to
36 determine the value of a parcel of or interest in real property for a mortgage
37 loan origination, including first and second mortgages, refinances, or equity
38 lines of credit."
39 (11) A copy of the assignment request for the broker price opinion or
40 comparative market analysis.
41 (d) Rules. – The North Carolina Real Estate Commission shall have the power to adopt
42 rules that are not inconsistent with the provisions in this Article.
43 (e) Additional Requirements for Electronic or Form Submission. – In addition to the
44 requirement of subsection (c) of this section, if a broker price opinion is submitted
45 electronically or on a form supplied by the requesting party, the following provisions apply:
46 (1) A signature required by subdivision (7) of subsection (c) of this section may
47 be an electronic signature, as defined in G.S. 47-16.2.
48 (2) A signature required by subdivision (7) of subsection (c) of this section and
49 the disclaimer required by subdivision (10) of subsection (c) of this section
50 may be transmitted in a separate attachment if the electronic format or form
51 supplied by the requesting party does not allow additional comments to be

1 written by the licensee. The electronic format or form supplied by the
2 requesting party shall do the following:

3 a. Reference the existence of a separate attachment.

4 b. Include a statement that the broker price opinion or comparative
5 market analysis is not complete without the attachment.

6 (f) Restrictions. – Notwithstanding any provisions to the contrary, a person licensed
7 pursuant to this Chapter may not knowingly prepare a broker price opinion or comparative
8 market analysis for any purpose in lieu of an appraisal when an appraisal is required by federal
9 or State law. A broker price opinion or comparative market analysis that estimates the value of
10 or worth a parcel of or interest in real estate rather than sales or leasing price shall be deemed to
11 be an appraisal and may not be prepared by a licensed broker under the authority of this Article,
12 but may only be prepared by a duly licensed or certified appraiser, and shall meet the
13 regulations adopted by the North Carolina Appraisal Board. A broker price opinion or
14 comparative market analysis shall not under any circumstances be referred to as a valuation or
15 appraisal.

16 (g) No Report of Predetermined Result. – A broker price opinion or comparative market
17 analysis shall not include the reporting of a predetermined result."

18 **SECTION 3.** G.S. 93E-1-3 reads as rewritten:

19 **"§ 93E-1-3. When registration, license, or certificate not required.**

20 (a) No trainee registration, license, or certificate shall be issued under the provisions of
21 this Chapter to a partnership, association, corporation, firm, or group. However, nothing herein
22 shall preclude a registered trainee or licensed or certified real estate appraiser from rendering
23 appraisals for or on behalf of a partnership, association, corporation, firm, or group, provided
24 the appraisal report is prepared by a licensed or certified real estate appraiser or by a registered
25 trainee under the immediate personal direction of, the licensed or certified real estate appraiser
26 and is reviewed and signed by that licensed or certified appraiser.

27 (b) Repealed by Session Laws 2001-399, s. 1, effective October 1, 2001.

28 (c) Nothing in this Chapter shall preclude a real estate broker licensed under Chapter
29 93A of the General Statutes from performing a broker price opinion or comparative market
30 analysis as defined in G.S. 93E-1-4, provided the person does not represent himself or herself
31 as being a registered trainee or a licensed or certified real estate appraiser, and
32 provided they follow the standards set forth in Article 6 of Chapter 93A. ~~A real estate broker~~
33 ~~may perform a comparative market analysis for compensation or other valuable consideration~~
34 ~~only for prospective or actual brokerage clients or for real property involved in an employee~~
35 ~~relocation program.~~

36 (d) Nothing in this Chapter shall abridge, infringe upon, or otherwise restrict the right to
37 use the term "certified ad valorem tax appraiser" or any similar term by persons certified by the
38 Department of Revenue to perform ad valorem tax appraisals, provided that the term is not used
39 in a manner that creates the impression of certification by the State to perform real estate
40 appraisals other than ad valorem tax appraisals.

41 (e) Nothing in this Chapter shall entitle a registered trainee or a licensed or certified real
42 estate appraiser to appraise real estate for ad valorem tax purposes unless the person has first
43 been certified by the Department of Revenue pursuant to G.S. 105-294.

44 (f) A trainee registration, license, or certificate is not required under this Chapter for:

45 (1) Any person, partnership, association, or corporation that performs appraisals
46 of property owned by that person, partnership, association, or corporation for
47 the sole use of that person, partnership, association, or corporation;

48 (2) Any court-appointed commissioner who conducts an appraisal pursuant to a
49 judicially ordered evaluation of property;

50 (3) Any person to qualify as an expert witness for court or administrative agency
51 testimony, if otherwise qualified;

- 1 (4) A person who appraises standing timber so long as the appraisal does not
2 include a determination of value of any land;
- 3 (5) Any person employed by a lender in the performance of appraisals with
4 respect to which federal regulations do not require a licensed or certified
5 appraiser; and
- 6 (6) A person who performs ad valorem tax appraisals and is certified by the
7 Department of Revenue under G.S. 105-294 or G.S. 105-296; however, any
8 person who is registered, licensed, or certified under this Chapter and who
9 performs any of the activities set forth in subdivisions (1) through (5) of this
10 subsection must comply with all of the provisions of this Chapter. The
11 provisions of this Chapter shall not apply to certified real estate appraisers
12 who perform a broker price opinion or comparative market analysis pursuant
13 to G.S. 93E-1-3(c), as long as the appraiser is licensed as a real estate broker
14 by the North Carolina Real Estate Commission and does not refer to himself
15 or herself as an appraiser in the broker price opinion or comparative market
16 analysis."

17 **SECTION 4.** G.S. 93E-1-4 reads as rewritten:

18 **"§ 93E-1-4. Definitions.**

19 When used in this Chapter, unless the context otherwise requires, the term:

- 20 (1) "Appraisal" or "real estate appraisal" means an analysis, opinion, or
21 conclusion as to the value of identified real estate or specified interests
22 therein performed for compensation or other valuable consideration.
- 23 (2) "Appraisal assignment" means an engagement for which an appraiser is
24 employed or retained to act, or would be perceived by third parties or the
25 public as acting, as a disinterested third party in rendering an unbiased
26 appraisal.
- 27 (3) "Appraisal Board" or "Board" means the North Carolina Appraisal Board
28 established under G.S. 93E-1-5.
- 29 (4) "Appraisal Foundation" or "Foundation" means The Appraisal Foundation
30 established on November 20, 1987, as a not-for-profit corporation under the
31 laws of Illinois.
- 32 (5) "Appraisal report" means any communication, written or oral, of an
33 appraisal.
- 34 (6) "Certificate" means that document issued by the North Carolina Appraisal
35 Board evidencing that the person named therein has satisfied the
36 requirements for certification as a certified real estate appraiser and bearing
37 a certificate number assigned by the Board.
- 38 (7) "Certificate holder" means a person certified by the Board under the
39 provisions of this Chapter.
- 40 (7a) "Certified general real estate appraiser" means a person who holds a current,
41 valid certificate as a certified general real estate appraiser issued under the
42 provisions of this Chapter.
- 43 (7b) "Certified residential real estate appraiser" means a person who holds a
44 current, valid certificate as a certified residential real estate appraiser issued
45 under the provisions of this Chapter.
- 46 (7c) "Comparative market analysis" and "broker price opinion" mean means the
47 analysis of sales of similar recently sold properties in order to derive an
48 indication of the probable sales price of a particular property by a licensed
49 real estate broker. an estimate prepared by a licensed real estate broker that
50 details the probable selling price or leasing price of a particular parcel of or
51 interest in property and provides a varying level of detail about the property's

1 condition, market, and neighborhood, and information on comparable
2 properties, but does not include an automated valuation model.

3 (8) "License" means that document issued by the North Carolina Appraisal
4 Board evidencing that the person named therein has satisfied the
5 requirements for licensure as a licensed real estate appraiser and bearing a
6 license number assigned by the Board.

7 (8a) "Licensed residential real estate appraiser" means a person who holds a
8 current, valid license as a licensed residential real estate appraiser issued
9 under the provisions of this Chapter.

10 (9) "Licensee" means a person licensed by the Board under the provisions of
11 this Chapter.

12 (10) "Real estate" or "real property" means land, including the air above and
13 ground below and all appurtenances and improvements thereto, as well as
14 any interest or right inherent in the ownership of land.

15 (11) "Real estate appraiser" or "appraiser" means a person who for a fee or
16 valuable consideration develops and communicates real estate appraisals or
17 otherwise gives an opinion of the value of real estate or any interest therein.

18 (12) "Real estate appraising" means the practice of developing and
19 communicating real estate appraisals.

20 (13) "Residential real estate" means any parcel of real estate, improved or
21 unimproved, that is exclusively residential in nature and that includes or is
22 intended to include a residential structure containing not more than four
23 dwelling units and no other improvements except those which are typical
24 residential improvements that support the residential use for the location and
25 property type. A residential unit in a condominium, town house, or
26 cooperative complex, or planned unit development is considered to be
27 residential real estate.

28 (14) through (16) Repealed by Session Laws 2007-506, s. 4, effective October 1,
29 2007.

30 (17) "Temporary appraiser licensure or certification" means the issuance of a
31 temporary license or certificate by the Board to a person licensed or certified
32 in another state who enters this State for the purpose of completing a
33 particular appraisal assignment.

34 (18) "Trainee", "registered trainee", or "trainee real estate appraiser" means a
35 person who holds a current, valid registration as a trainee real estate
36 appraiser issued under the provisions of this Chapter.

37 (19) "Trainee registration" or "registration as a trainee" means the document
38 issued by the North Carolina Appraisal Board evidencing that the person
39 named therein has satisfied the requirements of registration as a trainee real
40 estate appraiser and bearing a registration number assigned by the Board."

41 **SECTION 5.** G.S. 93E-1-12 is amended by adding a new subsection to read:

42 "(e) No appraiser shall be disciplined for completing an appraisal that includes a reduced
43 scope of work or reporting level as long as it is appropriate for the intended use and is
44 performed in accordance with the Uniform Standards of Professional Appraisal Practice."

45 **SECTION 6.** This act becomes effective October 1, 2012. Rule-making authority
46 granted by this act to the North Carolina Real Estate Commission shall become effective July 1,
47 2012.