



ALAN WILSON  
ATTORNEY GENERAL

September 19, 2022

The Honorable Roger K. Kirby  
Member  
South Carolina House of Representatives  
1690 Johnsonville Highway  
Lake City, South Carolina 29560

Dear Representative Kirby:

We received your letter requesting an attorney general's opinion on a real estate licensee's ability to conduct a market analysis or give an opinion as to the price of real estate in light of provisions contained in the South Carolina Real Estate Appraiser License and Certification Act. In your letter, you provided the following information:

The Nation Association of REALTORS® has a program called REALTOR® Property Resource ("RPR") which is used by their members across the state to produce in-depth reports on prospective properties for their clients. These reports include information about the neighborhood, nearby schools, a quality of life report, as well as economic data about the subject property and surrounding area. These reports include the required language regarding lending and even include a disclaimer to get a formal appraisal for the current market value of the property.

Recently, it came to my attention that the Appraisers Board used a Cease and Desist letter to a South Carolina real estate licensee for using one of these RPR reports. The basis for this letter was that since the report includes the term "value" it can only be produced by a licensed appraiser.

Thus, you request an opinion on the following two questions:

1. Is the term "value" a unique term of art that can only be used in a real estate transaction by those with an appraiser's license?
2. Does a REALTOR® RPR report contain information that would exceed the statutory exemption for real estate licensees and therefore, violate the "South Carolina Real Estate Appraiser License and Certification Act"?

### Law/Analysis

Under the South Carolina Real Estate Appraiser License and Certification Act (the “Act”), section 40-60-30 of the South Carolina Code (Supp. 2021) makes it unlawful “to engage in real estate appraisal activity or advertise as an appraiser without a valid license issued by the department.” Section 40-60-20(18) of the South Carolina Code (Supp. 2021) defines “real estate appraisal activity” as “the act or process of performing an appraisal and preparing an appraisal report.” Section 40-60-20(2) of the South Carolina Code (Supp. 2021) defines “appraisal” as “the act or process of developing an opinion of value.” (emphasis added). Accordingly, the Act uses the term “value” in describing what is considered an “appraisal,” which can only be performed by a licensed appraiser. However, in our review of the Act, we did not find a provision prohibiting the use of the term “value” by other real estate professionals. Rather, we believe the actions taken by the individual and whether or not those actions amount to creating an opinion as to the value of a piece of real estate matter more than the terminology used. Thus, the focus should be on the individual’s actions and not whether the report contains the word “value.”

Furthermore, section 40-60-30(1) explicitly exempts certain activities of licensed realtors from coming under Act’s licensing requirements. This section states the Act does not apply to:

A real estate licensee licensed in accordance with Chapter 57, Title 40 who performs a market analysis or gives an opinion as to the price of real estate on the condition that the market analysis or opinion is not referred to as an appraisal. Before performing a market analysis, the real estate licensee must disclose to the requesting party: “This market analysis may not be used for the purposes of obtaining financing in a federally related transaction”.

S.C. Code Ann. § 40-60-30(1). According to this provision, real estate licensees are prohibited from referring to the opinion as an “appraisal,” but this exception makes not mentions of use of the term “value.” As such, we do not believe the Legislature intended to prohibit a real estate licensee from using the term “value” when preparing a market analysis or giving an opinion as to the price of real estate so long as the real estate licensee does not refer to it as an “appraisal” and it contains the required disclosure.

You also ask whether or not a REALTOR® RPR report contains information that exceeds the statutory exemption for real estate licensees under section 40-60-30(1). We do not have a copy of a REALTOR® RPR report, but note the contents of a report may or may not be consistent from report to report and therefore, it would be difficult to comment as to the legality of these reports in general. Moreover, the determination of whether a particular report meets the requirements for exemption under section 40-60-30(1) requires a determination of fact, which is beyond the scope of an opinion of this Office. Op. Att’y Gen., 1995 WL 803662 (S.C.A.G. May 19, 1995) (“[T]his Office has no jurisdiction or authority to undertake the determination of facts.”). However, as long as the report generated by the real estate licensee consists of a market analysis or an opinion as to the price, is not referred to as an “appraisal,” and contains the necessary disclosure language

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required by section 40-60-30(1), we believe a court is likely to find it exempt from the general law requiring a license to engage in real estate appraisal activity.

### Conclusion

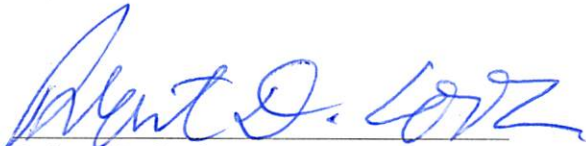
The South Carolina Real Estate Appraiser License and Certification Act requires those engaged in real estate appraisal activities to be licensed under the Act. While section 40-60-20(2), contained within the Act, describes an “appraisal” as “the act or process of developing an opinion of value,” we did not find a provision under the Act prohibiting other real estate professionals from using the term “value.” Moreover, section 40-60-30(1) of the South Carolina Code provides real estate licensees with a specific exemption under the Act when they perform a market analysis or give an opinion as the price of real estate so long as they do not refer to it as an “appraisal” and include the disclosure required under this provision. Whether or not a particular REALTOR® RPR report would exceed this exemption involves a consideration of the facts pertaining to the content of the report, which is beyond the scope of this opinion. Nonetheless, if the report mirrors the requirements set forth in section 40-60-30(1), we believe a court would find it exempt from the provisions of the Act.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General