

# The Kansas Real Estate Appraisal Board 2001 Summer Newsletter

## APPLICATION OF ECONOMIC PRINCIPLES OF REAL ESTATE

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The following principles, taken from the current edition of the *Appraisal of Real Estate* (published by the Appraisal Institute), provide an organized basis applicable to the task of value finding in any discipline.

For instance, if one were writing a residential appraisal report, the principles of anticipation, supply and demand, change, competition, balance, contribution, externalities and conformity should be the basis for a description of the subject property market area, marketability, land use, physical characteristics and depreciation: the same principles will be present and influence comparability in the sales comparison approach.

The principle of substitution is the basis for the cost approach.

All economic principles stated above should influence the application of the income approach in appraisal development and reporting.

### A Summary of Economic Principles of Real Estate

*Principle of Anticipation:* an understanding that value is created by the expectation of benefits to be derived in the future.

*Principle of Change:* involves the result of the relationship between cause and effect that affects real property value.

*Principle of Supply and Demand:* the price of real property varies directly, but not necessarily proportionately, with demand and inversely, but not necessarily proportionately with supply.

*Principle of Competition:* the interaction of potential clients interested in goods and or services of any description, including real estate.

*Principle of Substitution:* indicates that when several commodities are available, the one with the lowest price will attract the greatest demand/distribution.

*Principle of Opportunity Cost:* the cost of foregone options or opportunities not chosen.

*Principle of Balance:* provides that real estate value is created and sustained when contrasting, opposing and interacting elements are in a state of equilibrium.

*Principle of Contribution:* indicates that the value of a specific component is measured in terms of its contribution to the value of the whole, or as the amount that absence would detract from the value of the whole.

*Principle of Surplus Productivity:* the net income that remains after the cost of labor, capital and coordination have been paid.

*Principle of Conformity:* provides that real property value is created and sustained when the characteristics of a property conform to the demands of its market.

*Principle of Externalities:* economics or diseconomics outside a property may have a positive or negative effect on its value.

Source: *Appraisal of Real Estate*, published by the Appraisal Institute

### INSIDE

USE OF REAL ESTATE APPRAISAL FORMS.....	2
APPRAISERS FINDING IT HARD TO BE OBJECTIVE .....	3
APPRAISERS AND THE NEW FEDERAL PRIVACY REGULATIONS .....	4
USPAP Q&A.....	4-9
DO YOU KNOW YOUR SCOPE OF PRACTICE?.....	10
DISCIPLINARY ACTIONS.....	11
CONTACTING THE BOARD.....	12

## USE OF REAL ESTATE APPRAISAL FORMS

Real Property appraisers continue to request clarification of real estate appraisal form contents.

The Uniform Standards of Professional Appraisal Practice (USPAP) are silent on the use of specific forms. However, the "Ethics Rule," Conduction Section, requires the appraiser "not sue or communicate a **misleading** or **fraudulent** report or knowingly permit an employee or other person to communicate a misleading or fraudulent report."

The appraiser should review Standards Rule 1-1(a), (b) and (c). It is the appraisers responsibility to "correctly complete research and analysis necessary to produce a credible appraisal."

Standards Rules prohibit departure from the following Standards Rule 1:

1. Standards Rule 1-1
2. Standards Rule 1-2
3. Standards Rule 1-5

No departure is permitted from any part of Standards Rule 2. Therefore, the appraiser is advised to review Advisory Opinion AO-11, Content of the Appraisal Report Option of Standards Rule 2-2.

The problems inherent in using forms to report the results of a real estate appraisal is the possibility of omitting essential information, thus, committing a USPAP violation.

Standards Rule 2-2 describes the report types. The difference in each is the amount of information required for USPAP compliance. There are three (3) reporting options:

- a. Self-contained requires a complete detail of all information reported. If this option is used there will be no file documentation. The report will contain all information in a detailed format. The only item required for the file documentation should be the order request.
- b. Summary requires a less detailed description than self-contained. The file data may be required for a complete understanding of the development and reporting process.
- c. Restricted appraisal reports are intended for **one user** only. Also, that user must be familiar with

the appraisal process. The information reported will be in a statement format only. The file data must be extensive and will be required for a complete understanding of the development and reporting process.

Generally form reports have been determined to meet the requirements of a 2-2(b) Summary Report format. However, the appraiser is cautioned to make certain that any information lacking in a particular form be included in an addenda section and be included in the report.

Form reports have been developed and amended by the users of appraiser's services throughout time as needs evolve. The primary suppliers of forms are Fannie Mae and Freddie Mac. The forms were never intended for use in services other than for that specifically identified; however, they have been adopted and used by many groups and individuals. Also, appraisers continue to use the forms for assignments that are not intended for Fannie Mae or Freddie Mac. It is recommended that the appraiser verify, with the intended user, the use of the appraisal and make certain the Scope of Work will comply with USPAP in meeting that need.

Remember that it is the appraiser's responsibility to comply with USPAP, Kansas State Law and Administrative Regulations.

*Source: Excerpts from Kentucky Real Estate Appraisal Board Article "Use of Real Estate Appraisal Forms" by Larry Disney*

## NEW DIRECTOR

Mike Haynes, Executive Director of the Kansas Real Estate Appraisal Board since 1993, left the Board staff on April 1. During his term as the first Director for the agency, Mike's accomplishments were recognized on both a state and national level. The Board wishes Mike the best at his new position as the Governmental Affairs Director for the Fort Collins, Colorado Board of Realtors. Mike is also continuing to work as a fee appraiser on residential, agricultural, industrial and commercial properties.

Sally Pritchett, Public Service Executive with the Kansas Real Estate Appraisal Board, has now taken over as the Executive Director. Sally has been with the agency since its establishment in 1991.

Joining the staff as Public Service Executive is Cheryl Magathan, formerly with the Kansas Real Estate Commission. The Board welcomes Cheryl and is confident that she will be an asset to the agency.

## APPRAISERS FINDING IT HARD TO BE OBJECTIVE

By Kenneth R. Harney, Washington Post Writers Group

It's the dirty little secret of the American home real estate and mortgage system. And it's getting worse. Real Estate appraisers nationwide say they are under increasingly heavy-handed pressure by mortgage brokers and loan officers to "hit" the value necessary to get mortgage applications approved, rather than to provide the independent professional market-value assessments required under their own licenses and federally mandated ethics code.

Hitting the value, they say, often involves finding ways to inflate the property valuation enough to support the size of a mortgage needed to finance the price on the sales contract. Appraisers who decline to cooperate with the loan officers who assign work to them increasingly find themselves blackballed, with no further assignments from those mortgage companies. Or worse, when they submit appraisals that don't meet the sales contract price, their invoices go unpaid.

This trend, documented in dozens of interviews with appraisers, state appraisal licensing officials, mortgage brokers and appraiser professional group leaders during the past month, has significant implications for home buyers, taxpayers, and lending institutions themselves. Without an accurate appraisal, buyers can needlessly pay too much for a home. Should national and regional economies cool faster than the "soft landing" predicted by the Federal Reserve Board, buyers also may find themselves with far less equity than they assumed they had in the house.

For example, if a couple buys a house of \$200,000 with a mortgage of \$185,000, what is their real equity if an independent, ethical appraisal would have revealed the true market value of the property at sale to be \$185,000? They may have put \$15,000 into the deal, and had full confidence in the \$350 appraisal they received that hit the \$200,000 sale price on the nose. But in the event of a job loss, or an economic downturn forcing them to sell, they would discover their equity on the date of closing was actually zero. They just didn't know it, in part because behind their backs the loan officer rejected appraisals that didn't "hit" the value needed.

Here's a quick overview of the problem:

- The head of the national association of state appraisal licensing boards calls "lender pressure the number one problem facing appraisers" throughout the country. Sam E. Blackburn, Executive Director of

the Kentucky Real Estate Appraisal Board and incoming president of the Association of Appraiser Regulatory Officials representing state licensing agencies, says the problem is "corrupting the system." Buyers don't want to pay more than they should for a house, but they may end up doing so when their loan broker sends a fax in advance to the prospective appraisers with words to this effect: "Value needed \$178,000." Or "target value of \$155,000."

- Blackburn has "files full of such faxes seeking to direct appraisers to a pre-ordained value" and supplied examples for this column. Blackburn also supplied a taped phone message from a mortgage broker to a licensed appraiser haranguing the appraiser for not following instructions: "You gotta get the value on the home," the broker warns on the recording. "If you couldn't get the value, you shouldn't have taken the money, and I indicated that in my request."

- The second-largest investor in American home mortgages, Freddie Mac, says 97 percent, an astoundingly high incidence, of home purchase appraisals backing the loans it buys now "hit" the value on the sale contract. As a partial result, the corporation recently announced that it would no longer require formal appraisals on home mortgages with 20 percent and greater down payments.

- Congress is highly likely to look into lender coercion on appraisers next year, particularly in connection with so-called "predatory" lending and its potential impacts on the value and stability of banking and institutional mortgage portfolios in the event of an economic downturn. A bill introduced this session by Rep. Jan Schakowsky, D-Ill., would make it a federal offense to influence an appraisal report through coercion or bribery.

Lender coercion can be extremely harmful to individual buyers. Terry Turner, an appraiser based in Gainesville, GA, recounted the case of consumers who closed on a condominium this fall for \$184,900. One appraiser was asked by a loan officer to hit the contract price, but could not find comparable sales data in the subdivision to support a value above \$165,000. The loan officer then brought in a second appraiser who delivered a valuation of \$189,000 by listing as "comparables" higher cost units in a different subdivision, miles from the home being purchased.

Who stands to lose most from lender coercion abuses? Don Kelly, Washington-based public affairs director for the Appraisal Institute, puts it starkly: "There is a real risk of catastrophic losses" on home real estate mortgages in the next recession, he says, "unless we get some controls on this."

Source: *Utah Real Estate Appraiser Review*

**ADDRESS CHANGE?**

Remember to notify the Appraisal Board, in writing, of any change in business or residence address as required by K.S.A. 58-4114. Please include Zip + 4 and any changes to home or business telephone number. Mail, fax or e-mail to:

The Kansas Real Estate Appraisal Board  
1100 S.W. Wanamaker Rd., Ste. 104  
Topeka, KS 66604  
Fax (785) 271-3370  
E-mail: cmkreab@mindspring.com

### APPRAISERS AND THE NEW FEDERAL PRIVACY REGULATIONS

Federal privacy regulations (resulting from the Gramm-Leach-Bliley Act [G-L-B Act]), known as the Federal Trade Commission (FTC) Privacy Act, became mandatory on July 1, 2001. The Act limits the instances in which financial institutions may disseminate certain "non-public personal information" about their customers and will apply to appraisers as well as other providers of financial services.

The Appraisal Foundation states:

" . . . federal regulations identify "appraising real or personal property" as activities closely related to banking and as such are covered by the Act. Moreover, the appraisal community is not likely to be given any more specific regulations, or interpretations thereof, for implementing the requirements of the G-L-B Act in the context of appraisal practice other than what has already been promulgated by the FTC. . . . Although many issues have yet to be resolved with respect to G-L-B and its application in appraisal practice, appraisers will still be held accountable for compliance with the FTC and other federal regulations as they apply to each situation and to information received from clients in the course of performing appraisal assignments. Accordingly, the appraiser must proactively inquire as to the status of the information provided by from their lender clients with respect to its privacy status pursuant to the FTC Privacy Rule and provide the appropriate notices to clients for whom they directly provide appraisals."

The Board recommends that appraisers contact the Appraisal Foundation for more information concerning this act.

Source: *The Appraisal Foundation White Paper: Privacy Regulation and the Appraiser.*

**USPAP Q&A**

**Q** If a home has sold more than once in the past year, am I required to analyze all of the sales, or just the most recent sale? Also, what am I required to do if a transfer of ownership is due to a foreclosure, or is between family members or other related parties?

**A** Advisory Opinion 1 (AO-1) addresses the appraiser's obligations with respect to prior sales of the subject. It states in part:

*"USPAP Standards Rules 1-5(a) and (b) require an appraiser to analyze (1) any current Agreement of Sale, option, or listing of the property being appraised, if such information is available to the appraiser in the normal course of business, and (2) any prior sales of the property being appraised that occurred within one year for a one-to-four family residential property or within three years for all other property types.*

*In any case, USPAP Standards Rules 2-2(a)(ix), (b)(ix) and (c)(ix) call for the written appraisal report to contain sufficient information to indicate compliance with the sales history requirement. Standards Rules 2-2(a)(ix), (b)(ix), and (c)(ix) further require that, if sales history information is unobtainable, the written appraisal report must include a commentary on the efforts taken by the appraiser to obtain the information."*

Therefore, you must report and analyze *all* of the sales, not just the most recent one. This would also include *any* type of sale, whether it was arm's length or not. If a sale was between family members, or otherwise related parties, or involved a foreclosure, the appraiser is still obligated to report it and analyze it.

In addition, if sales, listings, etc. from prior periods (i.e., beyond the one or three year periods) are known and considered relevant to the appraisal of the subject property, they should also be reported and analyzed.

**Q** It is my understanding that lenders are required to provide borrowers with a copy of the appraisal performed in conjunction with their loan if the borrower requests the appraisal in writing within a certain time frame. Does this requirement mean that borrowers are also intended users of the appraisal report?

**A** No, the fact that a borrower or anyone else receives a copy of the appraisal report does not

make them an intended user. The concept of an “intended user” in USPAP is framed within the context of the appraiser-client relationship. An “intended user” is defined as follows:

*“ . . . the client and any other party as identified, by name or type, as users of the appraisal, appraisal review, or appraisal consulting report, by the appraiser on the basis of communication with the client at the time of the assignment.”*

There are several things to note in this definition. First, intended users of the appraisal report must be identified by the client. Secondly, this identification is made at the time of the engagement process so the appraiser can make a prudent judgment about the scope of work to apply in the assignment and the level of detail to include in the report.

It is also worth noting that the concept of “intended use” and “intended users” are related to the purpose of the assignment. Appraisal reports for loan transactions are typically used to substantiate real property value as underlying collateral for a particular loan. The fact that the lending institution is required by law or regulation to make certain disclosures to the borrower about the loan and the basis for the loan decision, does not alter the purpose, the intended use or the intended users of the appraisal assignment.

Statement on Appraisal Standards No. 9 further clarifies this issue by stating,

*“A party receiving a report copy from the client does not, as a consequence, become a party to the appraiser-client relationship.”*

*Parties who receive a copy of an appraisal, appraisal review, or appraisal consulting report as a consequence of disclosure requirements applicable to an appraiser’s client do not become intended users of the report unless the client specifically identifies them at the time of the assignment.”*

**Q** Is it a violation of USPAP to offer as a marketing tool for my services a coupon for a 10 percent discount off the cost of an appraisal to potential clients such as mortgage lenders and the general public?

**A** The Management section of the ETHICS RULE states:

*“The payment of **undisclosed fees, commission, or things of value** in connection with the procurement of an assignment is unethical. (emphasis added)*

*Comment: Disclosure of fees, commissions, or things of value connected to the procurement of an assignment must appear in the certification of the written report and in any transmittal letter in which conclusions are stated.”*

The use of a coupon as a marketing tool would not be a violation of the ETHICS RULE. However, a coupon for a reduced fee would be a thing of value connected to the procurement of an assignment. Therefore, proper disclosure must be made in the certification of the written report and in any transmittal in which value conclusions are stated.

**Q** (#1) My client, a federally regulated lender, has requested a market value appraisal, as of the current date, of a site that has all necessary approvals for development of a multi-family project with 30 units. My client intends to use the appraisal in underwriting the credit in a land acquisition loan. Must I develop an opinion of value for the completed project?

**A** No, so long as the intended use is as you described, the appraisal assignment does not require a current value of the project with the hypothetical condition of it being completed. This is because the “subject” of your assignment is the site with the existing entitlement to develop the multi-family project and presumes those entitlements are consistent with the highest and best use of the site. Since your appraisal is as of a current date and the property that is the subject of your appraisal is a property that actually exists under the zoning and entitlements in place as of that date, there is no need to use a hypothetical condition or to develop an opinion of value of the property after, or as though, it had been developed.

**Q** (#2) My client, a federally regulated lender, has requested a market value appraisal for use in a project development loan take-out commitment on a proposed multi-family property. The intended use of my appraisal is only for the take-out loan commitment, not for project development financing, and the date of value in my appraisal is to be a future date when the proposed project is expected to be completed and the units are rented out (market absorbed). Must I develop an opinion of value for the existing site with its project development entitlements?

**A** No, so long as the intended use is as you described. Your client has not specifically asked that your appraisal include a current value of the project on the basis of a hypothetical condition or a current value of the site as it exists with its entitlements and the zoning in effect. This is because the “subject” of your assignment is the property that will exist, as of a future date (a prospective value opinion, see Statement of Appraisal Standards No. 4), when the

multi-family project has been physically completed and the units have been market absorbed. Since the intended use of the appraisal is only relevant to the future date, with the opinion of value developed under the extraordinary assumption that the property has, by that future date, been completed and market absorbed, there is no need to use a hypothetical condition or to develop an opinion of value of the site as of a current date.

**Q** (#3) My client, a federally regulated lender, has requested a market value appraisal for use in financing a commercial property development project. The client's stated loan conditions include a requirement that the property be leased before the onset of its development. The client stated they need (1) an opinion of market value for the property that actually exists as of a current date, which is the site with its entitlements and under the zoning in effect as of the current date, and (2) an opinion of value as of the future date (a prospective value opinion) when the property will be physically completed and occupied under the pre-leasing terms and conditions. Must I develop both of these opinions of value and, if so, why?

**A** Yes, because the client needs both opinions to aid in identifying its project development loan risk and respond to regulatory requirements and guidelines.

The client's project development loan decision would typically be based, in part, on your analysis of highest and best use (See SR 1-3) and the feasibility of the development project (See SR -14(h)).

The value of the site, with its entitlements and under the zoning in effect as of a current date (i.e., without use of a hypothetical condition), is an important component in your analysis and it provides the client with information necessary to identify development risk and determine appropriate loan terms and conditions. Absent other factors, this value opinion could be developed without use of either an extraordinary assumption or a hypothetical condition. The "subject" in this appraisal is the property, in this case, the site, that actually exists as of a current date of value, with the zoning (including any entitlements) in effect as of that date.

The value of the property as of the future date, when it has been physically completed and leased under the pre-leasing terms and conditions, is also significant information the client would typically use in making its project development loan decision. Developing this value opinion typically requires the use of an extraordinary assumption because the "subject" in this appraisal is the property as it is expected to exist as of that future date when physical development is

complete and the property is leased in accordance with the lease terms and conditions.

**Q** (#4) My client, a federally regulated lender, has requested a market value appraisal for use in financing a commercial property development project, but the property will not be leased before it has been physically completed (a so called "speculative" property, or "spec-built" property). The client stated that because this is to be a speculative property (not pre-leased), they need my opinion of value as of the future date (a prospective value opinion), when the property will be physically completed but before the new space is leased. That is the condition of the property that will exist under the terms of the loan the client is considering.

The client stated that, in accordance with its policy and applicable appraisal regulations and guidelines, they expect that I will analyze and, to the degree appropriate, apply market based deductions and discounts to reflect the difference in the net income flow and investment risk between the future date when the property is expected to be physically complete but vacant and the even later date when the new space has been market leased. The client stated that it needed this opinion of value to better evaluate its development loan risk, decide on appropriate loan terms and structure, and to avoid over advancing development loan funds during the project development and market absorption phases.

In my experience in the market area for this type of property, I have not seen any sales of properties that sold in the condition my client has defined, and I am not aware of anyone who currently builds such a project with the intent of selling it as a vacant property. Instead, in this market area, developers of such properties typically complete the physical construction and the first occupancy leasing before attempting to sell the newly developed and market leased property. I have two questions:

(a) Given the conditions my client defined, do I have to analyze the property to identify and, where appropriate, apply deductions and discounts in this appraisal?

(b) If so, given the absence of sales of property in the condition the client defined, how do I determine whether such deductions and discounts are appropriate and, if so, the amount(s) that should be applied?

**A** (a) Yes, given the situation you described and that the condition of the subject property of your appraisal as of the prospective date of value is different than the typical property condition represented in the market data, your analyses in this assignment must address the effect which that difference has on

the market value of the physically complete but vacant subject property in your assignment.

(b) In a prospective market value appraisal of a new physically complete but vacant income producing property in a market where sales of such properties are atypical or do not exist, determining the appropriateness and amount of adjustments that might be applied (as deductions or discounts) requires analysis of relevant data to identify whether there is a significant difference in the amount and timing of cash flows and in the investment risk involved with a vacant property versus a property that is leased at market level occupancy.

If the identified differences are significant in the market for the subject property in your appraisal, adjustments should be applied to reflect the impact on the value of that property.

For other types of properties, such as tract developments where the cash flows result from sales to end-users rather than lease income, a similar cash flow and investment risk comparison process may be applied based on the concluded timing and amount of unsold unit absorption (sales).

In any case, the analysis of such properties must respond to the applicable USPAP requirements set forth in Standards Rule 1-3 and 1-4, and Statement on Appraisal Standards No. 2 (SMT-2), *Discounted Cash Flow Analysis*, SMT-4, *Prospective Value Opinions*, and SMT-6, *Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions*. Additional requirements might apply as Supplemental Standards in accordance with the SUPPLEMENTAL STANDARD RULE and, effective January 1, 2001, SMT-10, *Assignments for Use by a Federally Insured Depository Institution in a Federally Related Transaction*.

**Q** Do the answers in Questions #1, #2, #3 and #4 change if, instead of the type of property involved in each question, the "project" is some other type of property. For example, a land development project in which finished single-family residential lots are to be created, or a project in which a tract of single-family homes is to be developed, or a project in which a tract of agricultural use land is to be developed with a long-lived planting, such as a vineyard?

**A** Not fundamentally, because the answer to each question is based on factors that are independent of the type of real property involved in the project. These factors are the purpose and intended use(s), and date(s) of value that are relevant to the intended use(s) of the assignment results.

**Q** I am working on an assignment with another appraiser. When finished, we will both sign the

report and the certification. Does this mean that we must create two workfiles so that we can both comply with the record keeping rules?

**A** No. The Record Keeping section of the ETHICS RULE requires that a workfile be prepared for each assignment. One workfile is sufficient, even if two appraisers are involved in an assignment.

The Record Keeping section also requires that:

*An appraiser must retain the workfile for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last, and have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.*

Therefore, arrangements should be made for one appraiser to retain the file, with access provided to the other appraiser.

**Q** I've been asked by a bank to provide a replacement cost estimate for an improved property to assist them in establishing an appropriate level of fire insurance for their loan. This assignment does not involve appraising this property, so I don't consider it to be an appraisal assignment. Is it a consulting assignment under USPAP?

**A** No, the assignment you describe does not constitute an appraisal under Standards 1 & 2 of USPAP, since it does not involve developing an opinion of value. Likewise, it is not an appraisal consulting assignment under Standards 4 & 5. An appraisal consulting assignment, as defined in USPAP, requires that an appraisal be a component of the analysis leading to the assignment results. As such, this type of assignment has no specific name and no specific performance standards that apply to it.

**Q** Why is it unethical for an appraiser to accept compensation for an assignment that is contingent on pre-determined results?

**A** The objective of the appraisal development process is a credible opinion. This objective requires that the development process be independent, objective and impartial so that the resulting opinions are credible in the context of their intended use.

Since the primary objective of these Standards is to promote and maintain a high level of public trust in professional appraisal practice, it is appropriate that those practices, which are inherently contradictory to this objective, be prohibited. Such practices include accepting compensation for assignments that are based on a predetermined or subsequent outcome

that affect the appraiser's independence, objectivity or impartiality.

For these reasons, the Management Section of the ETHICS RULES states:

*It is unethical for an appraiser to accept compensation for performing an assignment when the assignment results are contingent upon:*

1. *the reporting of a predetermined result (e.g., opinion of value);*
2. *a direction in assignment results that favors the cause of the client;*
3. *the amount of a value opinion;*
4. *the attainment of a stipulated result; or*
5. *the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.*

**Q** Why does USPAP require an appraiser to include a signed certification in the workfile and in all written reports?

**A** The certification is the same for all written reports covered by the Standard Rules. A signed certification is also required to be included in the workfile for any oral report given in compliance with USPAP. A signed certification evidences an appraiser's recognition of his or her ethical obligations. The elements of the certification that apply to development are listed as follows:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial and unbiased professional analyses, opinions and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.

- my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

The element of the certification that applies to development and reporting is:

- my analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

The last two items have to do with disclosures relative to inspections and significant assistance.

- I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)
- no one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.)

**Q** I recently went to work for an appraisal company where the owner of the company requires that the workfile be kept solely at the office. He will not allow the appraisers who work for his company to make their own copies and keep them outside of the office. Can I comply with this company's requirement and still conform to the Record Keeping section of the ETHICS RULE in USPAP?

**A** Yes, you can, provided the owner permits access to the file within the defined timeframe. The Record Keeping section of the ETHICS RULE states, in part:

*“ . . . An appraiser must retain the workfile for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last, and have custody of his or her workfile, or make appropriate workfile retention, access and retrieval arrangements with the party having custody of the workfile.”*

Given this qualification, it is not necessary that the appraiser have custody of the workfile but it is necessary that the custodian of the workfile make the work-



file accessible and retrievable within the stated time-frame.

**Q** I understand that the ASB retired Statement No. 8, "Electronic Transmission of Reports" effective January 1, 2002. Does this mean I can no longer send appraisal reports electronically to my clients after that date?

**A** No, you can continue to send your reports electronically. The ASB recently voted to retire Statement No. 8 because some of its requirements were out of date. There have been many changes since this Statement was originally adopted in 1995.

Appraisers should still exercise the same level of care in transmitting their appraisal reports whether they are communicated orally, in a written report or electronically. In particular, for all written reports the certification must be signed. A "signature" is defined in USPAP as:

**"SIGNATURE:** *personalized evidence indicating authentication of the work performed by the appraiser and the acceptance of the responsibility for content, analyses, and the conclusions in the report.*

**Comment:** *A signature can be represented by a handwritten mark, a digitized image controlled by a personalized identification number, or other media, where the appraiser has sole personalized control of affixing the signature."*

**Q** What does it mean when the ASB retires a portion of USPAP?

**A** To "retire" a portion of USPAP means to withdraw it so it is no longer of force. The ASB is responsible for promulgating, developing, publishing, interpreting, and amending the Uniform Standards of Professional Appraisal Practice. As such, it can decide to retire any portion of the USPAP if it is incorrect, no longer necessary or applicable, or otherwise deficient.

However, in the public's eye, the acronym "USPAP" has come to refer to an annual publication of the Appraisal Foundation, which includes more than the Uniform Standards of Professional Appraisal Practice. For example, the Advisory Opinions and Glossary are not actually parts of the Uniform Standards of Professional Appraisal Practice, even though they are bound within the same publication. Since not all of the portions of USPAP constitute appraisal standards or have the weight of an appraisal standard, not all parts of the document are subject to the same process of retirement. Retirement of those portions of USPAP that constitute appraisal standards must be exposed for a minimum of 30 days prior to any action by the ASB. This includes the DEFINITIONS,

PREAMBLE, RULES, STANDARDS RULES, and STATEMENTS ON APPRAISAL STANDARDS. The Advisory Opinions and the Glossary can be adopted, removed, or modified by the ASB without prior notice.

**Q** I understand the ASB recently made changes to USPAP that are effective as of July 1, 2001. Is that true? And, what were those changes?

**A** Yes, that is true. Due to recent federal regulatory activity, most notably the Federal Trade Commission's Final Rule on Privacy of Consumer Financial Information, 16 CFR Part 313, that takes effect on July 1, 2001, the ASB voted to make certain sections of the newly adopted material effective simultaneously on July 1, 2001.

The following changes to USPAP adopted by the ASB were effective July 1, 2001:

1. The Confidentiality section of the ETHICS RULE was edited to illustrate that, "an appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment." Additionally, text was added to indicate that disclosure of confidential information is permissible to professional peer review committees, "except when such disclosure to a committee would violate applicable law or regulation."

A notice regarding the adoption of federal privacy regulations was also added to this section.

2. The DEFINITION of "Confidential Information" was changed to read:

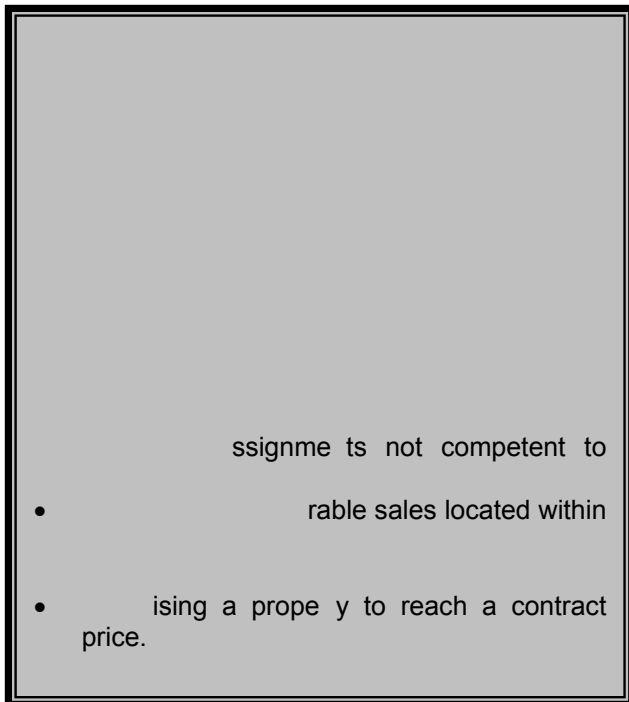
CONFIDENTIAL INFORMATION: *information that is either:*

- *identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or*
- *classified as confidential or private by applicable law or regulation.*

A notice regarding the adoption of federal privacy regulations was also added to this definition.

3. STATEMENT NO. 5 (STMT-5), *The Confidentiality Section of the Ethics Rule*, was retired.

*The question and answer section was furnished to state regulators to inform all states of the ASB responses to questions raised by regulators and individuals to illustrate the applicability of USPAP in specific situations and to offer advice from the ASB for the resolution of issues and problems. This question and answer section does not constitute a legal opinion of the ASB.*



**DO YOU KNOW YOUR SCOPE OF PRACTICE?**

**117-2-4. Licensed classification; scope of practice.**

(a) The licensed classification applies to the appraisal of non-complex one to four residential units having a transaction value of less than \$1,000,000 and complex one to four residential units having a transaction value of less than \$250,000.

(b) The licensed classification includes the appraisal of vacant or unimproved land that is utilized for one to four family purposes and where the highest and best use is for one to four family purposes. It does not include the appraisal of subdivisions wherein a development analysis or appraisal is necessary and utilized.

(c) The licensed classification may also apply to the appraisal of any other property permitted by the regulations of the applicable federal financial institutions regulatory agency; other agency or regulatory body.

(d) All licensed appraisers are bound by the competency provision of the uniform standards of professional appraisal practice.

**117-4-4. Residential classification; scope of practice.**

(a) The residential classification applies to the appraisal of one to four residential units without regard to transaction value or complexity.

(b) The residential classification includes the appraisal of vacant or unimproved land that is utilized for one to four family purposes and where the highest and best use is for one to four family purposes. It does not include the appraisal of subdivisions wherein a development analysis or appraisal is necessary and utilized.

(c) The residential classification may also apply to the appraisal of any other property permitted by the regulations of the applicable federal financial institutions regulatory agency; other agency or regulatory body.

(d) All certified residential appraisers are bound by the competency provision of the uniform standards of professional appraisal practice.

**117-3-4. General classification; scope of practice.**

(a) The general classification applies to the appraisal of all types of real property.

(b) All certified general appraisers are bound by the competency provisions of the uniform standards of professional appraisal practice.

**117-5-3. Provisional classification; scope of practice.**

The provisional licensed classification shall apply to the appraisal of the properties that the supervising appraiser is permitted to appraise.

**PLEASE NOTE**

The Kansas Real Estate Appraisal Board staff is always ready and willing to provide assistance to both appraisers and the public. However, **the staff cannot waive or modify any requirement of the license law or regulations, assist the caller in interpreting USPAP or advise callers on how to proceed in particular situations.** If you have a question and need the assistance of the Board, please address the question **IN WRITING** to the Board and it will be addressed by the Board at a regular monthly meeting or you will be directed on whom to contact.

## DISCIPLINARY ACTIONS

### **JOHN ECTON L-1479 (Spring Hill)** **Complaint No. 209**

**Violations:** K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and 58-4118(a)(8).

**Action:** A Consent Agreement and Order was entered into with the following terms and conditions: that **ECTON** take and pass the examination of a Board approved 15-hour USPAP course within six months from the date of agreement; that **ECTON** attend and pass the examination of a Board approved 30-hour residential appraisal course within six months from the date of agreement; and that **ECTON** pay \$200 to cover the cost of reviews associated with this complaint within 30 days from the date of agreement.

### **JOHN ECTON L-1479 (Spring Hill)** **Complaint No. 227**

**Violations:** K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and 58-4118(a)(8).

**Action:** A Consent Agreement and Order was entered into with the following terms and conditions: that **ECTON** successfully complete the courses outlined in the Consent Agreement and Order entered into in reference to complaint #209; that **ECTON** submit a log of all appraisal reports performed within 45 days after completion of the courses, for review of two of the appraisal reports by the Board. Based upon the improvement (or lack thereof) demonstrated in these appraisals, the Board will either consider the complaint resolved or proceed to suspend **ECTON'S** license for a minimum of six months following a hearing on the violations set forth in this Agreement.

### **WALTER SHARP G-430 (Augusta)** **Complaint No. 155**

**Violations:** K.S.A. 58-4121; 58-4118 (a)(6), 58-4118 (a)(7); and 58-4118(a)(8) and (b).

**Action:** A Consent Agreement and Order was entered into with the following terms and conditions: that **SHARP** allow his general certification to expire on June 30, 2001 and not to seek renewal /reinstatement for a period of at least two (2) years; and that **SHARP** submit costs in the amount of \$575.

### **DEAN E. CLARKSON R-1057 (Independence)** **Complaint Nos. 201, 205, 206**

**Violations:** K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and 58-4118(a)(8).

**Action:** A Consent Agreement and Order was entered into with the following terms and conditions: that **CLARKSON** cease doing all commercial appraisal work and remove from his letterhead any reference to offering commercial appraisal services; that **CLARKSON** attend and pass the examination of a Board approved 15-hour USPAP course within 180 days from date of agreement; that **CLARKSON** attend and pass the examination of a Board approved 30-hour minimum Residential Report Writing course within 180 days from date of agreement; that **CLARKSON** pay \$450 to cover the cost of reviews associated with these complaints within 60 days from the date of agreement; that **CLARKSON** pay a civil fine of \$1,000 for working outside of his scope of practice within 60 days from the date of agreement; that **CLARKSON** pay a civil fine of \$500 for each residential appraisal report performed, for a total of \$1,000 within 60 days from the date of agreement; and that **CLARKSON** is prohibited from acting as a supervising appraiser until all terms and conditions of this agreement are met.

### **HOWARD DEAN HASKINS R-1077 (Kansas City)** **Case No. 164**

**Violations:** K.S.A. 58-4121; 58-4118(a)(7); 58-4118(a)(8); 58-4118(a)(9); and 58-4123(c).

**Action:** A default order was issued revoking **HASKINS** residential certification and any right to re-establish licensed status. **HASKINS** was assessed fines totaling \$6,000, for all 12 counts, due within 60 days from the date of the order.

### **STEVE K. SILLIMON G-1403 (Lee's Summit, MO)** **Complaint No. 194**

**Violations:** K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and 58-4118(a)(8).

**Action:** The Board accepted **SILLIMON'S** surrender of his certificate and ordered the certificate revoked.

### **SAMUEL L. LEVOTA L-1309 (Independence, MO)** **Complaint No. 177**

**Violations:** K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and 58-4118(a)(8).

**Action:** A Consent Agreement and Order was entered into with the following terms and conditions: that **LEVOTA** cease doing appraisal reports on all property other than single family 1-4 residential property; that **LEVOTA** attend and pass the examination of a Board approved 15-hour USPAP course prior to June 30, 2001; that **LEVOTA** pay \$225 to cover the cost of the reviews associated with this complaint within 30 days from the date of agreement; and that **LEVOTA** pay a \$1,000 fine, due within 30 days from the date of agreement.

Congratulations to LeRoy Leland, Chairman of the Kansas Real Estate Appraisal Board, on his appointment by AARO to the College Degree Task Force. The Task Force will advise the AQB regarding the feasibility of requiring a college degree as a prerequisite for state licensure and certification of real property appraisers.

**LICENSED/CERTIFIED APPRAISERS AS OF AUGUST, 2001**

General Certified:.....	419
Residential Certified:.....	317
State Licensed:.....	240
Provisional (Trainee):.....	93
 Total: .....	 1,069

**WEB SITES**  
THE APPRAISAL SUBCOMMITTEE: [www.asc.gov](http://www.asc.gov)  
THE APPRAISAL FOUNDATION: [www.appraisalfoundation.org](http://www.appraisalfoundation.org)

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