



The Kansas Real Estate Appraisal Board 2001 Fall/Winter Newsletter

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STATEMENT ON APPRAISAL STANDARDS NO. 7 (SMT-7)¹

SUBJECT: Permitted Departure from Specific Requirements in Real Property and Personal Property Appraisal Assignments

THE ISSUE: When is it appropriate to invoke the DEPARTURE RULE in performing real property and personal property appraisals, and what are the reporting requirements when the DEPARTURE RULE is utilized?

Throughout the history of appraisal practice, a perception has existed that certain types of market transactions require something less than or different from a Complete Appraisal. The phrase "something less than or different from" in this context has meant a Limited Appraisal and a condensed report. To distinguish this type of assignment from a Complete Appraisal, different names have been created for this activity, including Letter Opinion of Value, Update of an Appraisal, Recertification of Value, Certificate of Authenticity, Statement of Quality and Value and, more recently, Evaluation of Real Property Collateral.

When legitimate requests are made by a knowledgeable client or client group for a Limited Appraisal for a particular transaction or type of transaction, do the

Uniform Standards of Professional Appraisal Practice allow an appraiser to perform such a service? If so, under what conditions?

THE STATEMENT: Relevant USPAP References

In the DEFINITIONS Section of USPAP, the Comment to the definition of Appraisal Practice states:

The use of other nomenclature by an appraiser (e.g., analysis, counseling, evaluation, study, submission, valuation) does not exempt an appraiser from adherence to these standards.

The DEPARTURE RULE of USPAP states:

...An appraiser may enter into an agreement to perform an assignment in which the scope of work is less than, or different from, the work that would otherwise be required by the specific requirements...

This rule goes on to permit exceptions from specific requirements, provided that (in summary):

- the appraiser determines the appraisal process is not so limited that the results of the assignment are no longer credible;
- the appraiser advises the client of the limitations and discloses the limitations in the report; and

- the client agrees that the limited service would be appropriate given the intended use.

The following definitions from the DEFINITIONS Section of USPAP are also relevant to the understanding of the response to this issue:

APPRAISAL: (noun) the act or process of developing an opinion of value...

Complete Appraisal: the act or process of developing an opinion of value or an opinion of value developed without invoking the DEPARTURE RULE.

Limited Appraisal: the act or process of developing an opinion of value or an opinion of value developed under and resulting from invoking the DEPARTURE RULE. &

INSIDE THIS ISSUE

Comp Searches and the Competition	2
Mandatory Federal Privacy Regulations Impact Appraisers ..	3
New Board Members	3-4
Some Appraisers Faulting Pressure To Inflate Values	4-6
USPAP Q & A	6-9
Contacting the Board	10

¹ See DEPARTURE RULE



COMP SEARCHES AND THE COMPETITION?

By Michael Gross, President
Michael D. Gross & Associates
Valuation2010.com

What is the Comp Search? One somewhat cynical, yet justified, appraiser defined it for me. He said, *"The comp search is a free service that a lender requires of an appraiser. It is to be performed in an unreasonable amount of time and will be used as a bludgeon to force the appraiser to arrive at the number quoted after the appraisal is ordered."* In a nutshell, I agree with that assessment with one final caveat; the appraiser must give the loan officer a number that "makes" their deal work and in doing so the appraiser may have violated USPAP guidelines.

The Competition & USPAP

Unethical or just plain uneducated appraisers are duped into performing this seemingly "free" service for lenders on a daily basis. Those appraisers that refuse on moral and ethical grounds are typically denied work and a way to make a living. The competition does not understand the problems they create when they perform this free service. They are roped into a value conclusion prior to ever visiting the site and they are providing a value range on a property without creating the proper file or giving the proper disclosures. Most of the competition says that they are not bound by the comp search results because they have not established a value and have not completed a report. However, under the reporting guidelines laid out in the Uniform Standards for Professional Appraisal Practice, these individuals have issued a report, an Oral Report. They have made this report without creating the proper file and without providing the proper disclosures. Whether the competition realizes it or not they have en-

dangered their license while injuring the entire appraisal community.

The Solution

So what should ethical and educated appraisers do? I for one have always been one of those people who believes *"if you can't beat them, then find another way to beat them?"* And through education and some consultation with my attorney, I think I have found another way to beat them. Education is the key! First, ethical appraisers need to educate their clients. When a client calls and asks for a comp check/search, appraisers need to explain that what they are asking for amounts to an oral appraisal report on a property that has not been seen, and explain that you are reluctant to provide that sort of service. Most people are shocked because that is information that they did not know. Education! They even explain that they do not want you to do anything unethical. Next explain that you want to help and that you can in another way! Communication is your next key to winning the comp search game. The competition is providing the lender with an unethical service that could endanger their license and that he/she will not be paid for. You can provide the lender client with a comparable service and stay within the federal regulatory guidelines. Step one is to explain to the client that this is a consulting assignment. Step two is to explain that you will issue them a General Market Analysis and that you will use the address provided to pin point the market. Explain that you will not be providing information about a specific property, however, you will be providing information about the predominant low, median and high value ranges for the market being analyzed. The final step is to explain that they need to make their request on a document that you will provide. This document basically states

that the client understands that the assignment is a consulting assignment, that you are not providing information about a specific property, that the address provided is for the sole purpose of identifying the general market and that the appraiser has departed from typical USPAP guidelines in the performance of the consulting assignment. Finally, the document should state that the information provided is not suitable for making a final loan decision. Education! And Communication! Winning! In the end the goal is winning the game by remaining ethical, moral and in compliance. By educating the client and then converting the service into a beneficial and compliant service, good appraisers can win. When offering this service for the first time, I generally have not charged for the first five requests, however, after completing those requests, my fee is \$25 to \$50. Many of my clients happily pay the fee and the number of requests has started to decline. That is because, with more education from me, my clients have started to create files with this information. Since they generally market to clients in specific and well-defined communities, they now have a database of information to determine which of their customers may be reasonable in their value assumptions and which are not. This helps the loan officer in the process of determining those files that should move forward. By educating the client, communicating your services and properly fulfilling their need, my clients are more efficient and can close more loans resulting in more business for my firm. With Education! Communication! and Ethics! good appraisers can win and create clients that will become loyal. x



Mandatory Federal Privacy Regulations Impact Appraisers

In an effort to protect consumer's personal information that may be obtained through a financial transaction from being disclosed without permission, the Gramm-Leach-Bliley Act was signed into law on November 12, 1999 with a mandatory effective date of July 1, 2001. Numerous government agencies have since promulgated regulations to implement this new law. As an example, one agency, the Federal Trade Commission (FTC), has issued regulations (the "FTC Privacy Rule") that will directly impact many appraisers.

These regulations apply to all providers of financial services, including appraisers of real or personal property. Thus, an appraiser who receives non-public personal financial information from a financial institution or directly from a consumer client will be held accountable to this law effective immediately.

The focus of the law, is "non-public personal information" defined by the rule as:

"1) Information that a consumer provides to a financial institution in order to obtain a financial service; 2) information resulting from a transaction between the consumer and the financial institute involving a financial product or service; and 3) financial information about a consumer a financial institute otherwise obtains in connection with providing a financial service to the consumer."

In addition, a major provision of the regulation includes the right of the consumer to "opt-out" of the disclosure of his/her personal information and that such notice of this provision must be provided to the consumer.

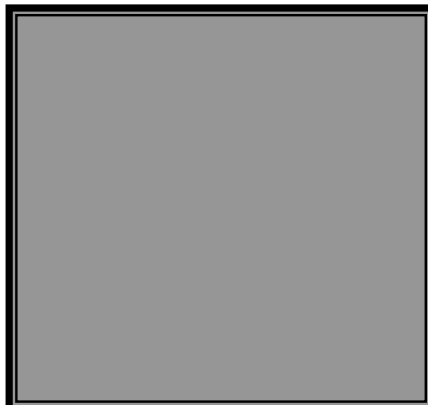
As an appraiser of real or personal property, these provisions may directly apply to you. It is not anticipated that additional regulations for appraisers will be developed by the FTC and the *Uniform Standards of Professional Appraisal Practice* (USPAP) has been updated in relevant sections to comply with this new regulation.

In complying with the FTC Privacy Rule, appraisers are encouraged to confirm compliance with lender clients by seeking clarification of what, if any, information is considered non-public personal information. In addition, appraisers are cautioned in the subsequent dissemination of non-public personal information.

In an effort to provide additional guidance to appraisers on this issue, the Appraisal Standards Board has compiled a detailed white paper on this topic. The White Paper discusses determination of non-public personal information and the consumer opt-out right.

Copies of the ASB's White Paper are available on the Foundation Web site at www.appraisalfoundation.org or by contacting the Foundation Board's staff at (202) 624-3052. Any questions on these regulations can be directed to Jim Park, Director of Research and Technical Issues, at (202) 624-3044. ⌘

SOURCE: FOUNDATION NEWS



New Board Members Appointed

Governor Graves' office recently announced the appointment of two new members to the Kansas Real Estate Appraisal Board. Appointed were G.N. (Jerry) Capps of Wichita, replacing Gary A. Freeman, as the public member, and Ronald D. Aul of Lawrence, replacing Fletcher Simmons, as an appraiser member. The Board welcomes:

G.N. (JERRY) CAPPS

Mr. Capps is a sales, use, property and state tax consultant and an attorney. His credentials in these areas include representing national, state and local taxpayers at all levels of the state and local tax system. He represents clients at the county level, at the administrative level and through the court system, including the states' highest courts. Mr. Capps represents taxpayers and provides state and local tax services in Kansas, Oklahoma, Arkansas, Minnesota, Indiana, Texas, Nevada, California and New Mexico. Mr. Capps represents a diverse group of industries, including construction, retail, manufacturing, oil and gas, entertainment, lodging and industrial.

Mr. Capps has extensive experience with complex state and local tax issues, including business enterprise value, intangible value and unitary asset allocation valuation. Mr. Capps has an extensive background in dealing with contested and litigated state and local tax issues.

He leads the firm's State and Local Tax (SALT) practice, which is the largest in the state of Kansas. Their client list includes the mainstay of Kansas' middle-market companies from all industries, and also includes Fortune 100 businesses.

Mr. Capps graduated from the University of Kansas School of Law with a Juris Doctor degree and has more than twelve years of experience in state and local tax matters. He was recently awarded the *40 Under 40* award by the *Wichita Business Journal*.

Mr. Capps is a member of the Kansas Bar Association, International Association of Assessing Officers, the Institute for Professionals in Taxation, Wichita Chamber of Commerce Legislative Committee and the Kansas Chamber of Commerce & Industry—Tax Committee.

RONALD D. AUL, CPA, MAI

Mr. Aul is a general certified appraiser, carrying certificates in both Kansas and Missouri. He is a commercial real estate appraiser with Aul & Hatfield Appraisals, L.C. in Lawrence, dealing in multifamily, retail, office, industrial, special use, eminent domain and commercial land and farm appraisals.

Mr. Aul received his BS in Business Administration/Accounting from the University of Kansas in 1984 and his MBA from the University of Kansas in 1986.

Mr. Aul is a member of the Appraisal Institute, Jayhawk Breakfast Rotary Club, Tau Kappa Epsilon Fraternity (Board of Control Member), Graduate - Leadership Lawrence - Class of 1998, First United Methodist Church (Board of Trustees - Chair, Administrative Board). Mr. Aul also carries a Kansas Real Estate Broker's License. ⌘



SOME APPRAISERS FAULTING PRESSURE TO INFLATE VALUES

By Jenni Bergal
Business Writer
South Florida Sun-Sentinel

In an ideal world, real estate appraisers are supposed to provide an independent opinion of a home's value, without interference from lenders or real estate agents.

But a vocal and growing number of appraisers nationwide, including hundreds in Florida, say that's not the way things are working.

A national grass-roots petition on the Internet signed by more than 6,000 appraisers claims that mortgage lenders and real estate agents increasingly put pressure on them to artificially inflate the value of homes -- an ethical and licensing violation for appraisers -- so that deals can be closed.

The petition, which is being sent to state and federal regulators, demands that lenders be held responsible for putting undue pressure on appraisers.

So does a bill sponsored by an Illinois congresswoman and supported by appraiser's groups such as the Appraisal Institute, a Chicago-based professional association, that would establish penalties against lenders who coerce or intimidate appraisers into changing their valuation of real estate.

And in Florida, the Real Estate Appraisal Board is proposing legislation that would make it a second-degree misdemeanor to put such pressure on appraisers.

The petition signers said that if they refuse to raise values or guarantee a predetermined amount, many won't be re-hired. Or they won't get paid if they

don't come up with a number the lender wants. Honest appraisers who say "no" are blacklisted and "rubber stamp" appraisers are used in their place, the petition alleges.

Appraisers say this pressure occurs because lenders and real estate agents, who are paid on commission, want to make sure that a deal doesn't collapse. That can happen if the appraisal comes in too low, forcing the buyer to come up with more cash than he can afford.

"We're under pressure all the time to bring homes in for values that really aren't right for the owner, just to help the mortgage broker make the deal work," said Jo Anne Glantz, A Delray Beach appraiser who signed the petition.

Glantz, who owns Glantz Appraisals, said that while most of the lenders she works with now don't cross the line, in the past she has been hired by "numerous companies" that have dumped her because she wouldn't agree to inappropriately increase the value of the home.

"They don't like the result, throw it in the garbage and hire someone else to do a new one that they like," Glantz said. *"You can make more money as a crooked appraiser than as an honest one."*

Glantz and other appraisers warn that when a home's value is artificially inflated, the homebuyer ends up the loser. He might have a home that isn't worth what he bought it for. Or if he needs to sell the house in a year or two, he might not be able to sell it for what he owes on it.

"It is a major, big-time problem," said Sam Blackburn, president of the Association of Appraiser Regulatory Officials, a national group of state regulatory boards that oversees appraisers.

Under Pressure

About 82,000 real estate appraisers work in the United States, the majority of whom concentrate on residential properties, Blackburn said.

Appraisers study a home's sales history and inspect and measure the property, evaluating its condition, both inside and out. They also compare it with similar properties in the market area that have been sold or are listed or under contract, to determine its value.

Appraisers, who are hired by lenders such as mortgage brokers or bank loan officers, charge a flat fee for their services, usually about \$275 to \$300. A set of national uniform standards prohibits them from accepting compensation to report a pre-determined value or change the value to favor a client. It's up to individual states to discipline appraisers who violate those standards.

Appraisers say they are pressured by some lenders and real estate agents, who work on commission and need to get the loan closed quickly. Lenders will make a loan based only on the appraised value or the sales price of a home, whichever is less.

"Mortgage brokers and real estate agents have very strong lobbying groups. They make sure there are no safeguards built in," Blackburn said.

Mortgage brokers, bankers and real estate agents agree that appraisers shouldn't face coercion and say they want to ensure it doesn't occur.

"We cannot condone any pressure on any professional involved in the mortgage process to go against their professional standards," said Joseph L. Falk, president of the National Association of Mortgage Brokers.

"No one should place undue coercion or burden on the appraisers. That corrupts the system."

Falk, president of Irian Mortgage Services in Miami, points out, however, that there's nothing wrong with lenders questioning appraisers about their work or their numbers, which is common practice.

Falk said he has not heard about any inappropriate pressure on appraisers to come up with a certain value or risk being blackballed. But he said he would work with appraiser's groups to seek solutions *"if there is a perceived problem."*

Joseph Pigg, senior counsel for the American Bankers Association in Washington, said the banking industry also supports efforts to make sure appraisers are not being pressured to inflate rates.

"This doesn't serve the bank," Pigg said. *"If the property is not worth what it's being claimed it's worth and you loan money on that, there may not be the security to back up the loan."*

Isolated Cases?

Pigg said that while many traditional banks hold onto loans, mortgage brokers are middlemen who look for lenders to fund the loan, then wash their hands of it. The brokers now represent about 70 percent of the mortgage loan business nationwide, according to federal statistics.

Pigg said for mortgage brokers, *"it may be in their best interest to inflate the value as much as possible"* because they are paid a commission based on the size of the loan.

The appraisers allege that the same is true with real estate agents.

But Cathy Whatley, first vice president of the National Asso-

ciation of Realtors, said her group does not condone any of its members putting undue pressure on appraisers.

"In every type of business, you will have isolated instances where there will be complaints. I don't think it's a pattern," said Whatley, a Jacksonville real estate broker.

Whatley noted that in some areas, buyers are ready and willing to pay more than the appraised value because it's a hot real estate market and there is little available property.

She said that although real estate agents might ask appraisers to re-evaluate their figures or disagree with the results, in the end, it's the appraiser's decision and they accept it.

"From a Realtor side, it is not about commission," Whatley said. *"It is about serving customers and clients."*

Complaint Letters

Blackburn, of the national appraisers regulatory group, said dishonest appraisers inflate a home's value by using comparable values that are inappropriate, such as those from a different neighborhood, or fail to make proper adjustments for location and size.

"It's easy to catch them. But there has to be a complaint first, before a regulatory board will go after them, and the mortgage companies and banks and real estate agents aren't going to turn anybody in," Blackburn said.

He noted that many complaints to regulators end up coming from homebuyers.

"We hear from them after they have kept the house for six months or a year, then get divorced or change a job and have to sell and they can't get nearly what they paid for it," Blackburn

said. *"They end up selling at a loss, and often they are forced into foreclosure or bankruptcy."*

Buddy Johnson, director of the Florida Division of Real Estate, said the state regulatory board that oversees the licensing of the state's 7,237 appraisers has received complaints from appraisers about undue pressure from lenders. He said he did not have statistics on the exact number, however.

Patricia Birch, chairwoman of the Florida Real Estate Appraisal Board, said the panel gets at least one such complaint letter every other month. And Birch, a Miami commercial appraiser, said she hears many more complaints at appraisers' meetings.

Birch said the state does not break out the number of disciplinary actions taken against appraisers for falsifying home values because of lender pressure. In the fiscal year ending on June 2001, the state received 305 complaints against appraisers for activities ranging from violating board rules to using fraud or deceit in their profession.

"When there has been an obvious attempt by an appraiser to become part of a fraud scheme, the board takes it very seriously," Birch said.

James Venney, a Miami appraiser, said he feels lender pressure at least once a week, particularly from mortgage brokers. Venney said he has lost 12 to 15 mortgage broker clients over the past five years because he has refused to cave in.

"I'm not willing to jeopardize my license," said Venney, who owns Real Property Consulting. *"So they go find someone else."*

Robert Ipock, the first appraiser in the country to sign the online grass-roots petition, which was put together by several apprais-

ers, understands what Venney is talking about.

"It's a major issue because the honest, ethical, competent appraiser is going by the wayside due to lender pressure," said Ipock, who owns Bob Ipock & Associates, Inc. in Gastonia, N.C.

Ipock and other appraisers admit that some of their colleagues are also to blame, because they are willing to violate their own ethics to get the work.

"Certainly, we need to clean up the appraisal industry," Ipock said. *"There is no excuse for an appraiser to bow to this type of pressure." &*

USPAP Q & A

Q The Record Keeping section of the ETHICS RULE states in part:

The workfile must include...true copies of any written reports...

Does a true copy have to include a signature on the certification?

A Yes, a true copy is a replica of the report sent to the client. Any signatures that were affixed to the original report must also exist on the copy for the workfile.

Q What is the difference between a client and an intended user?

A The term "Client" is defined in the DEFINITIONS section of USPAP as *"the party or parties who engage an appraiser (by employment or contract) in a specific assignment."*

The term "Intended User" is defined as *"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 commu-*

nication with the client at the time of the assignment."

Eventual receipt of a copy of an appraisal, appraisal review, or appraisal consulting report does not make the recipient an intended user. To be an **intended user** the recipient must have been **identified** as such by the **appraiser**.

Q Is it a violation of USPAP to use a recent sale of the subject property as a comparable in the sales comparison approach to value?

A No. Standards Rule 1-4 states:

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information applicable to the appraisal problem, given the scope of work identified in accordance with Standards Rule 1-2(f).

(a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

Additionally, Standards Rule 1-5 states:

In developing a real property appraisal, an appraiser must:

...
(b) analyze any prior sales of the property that occurred within the following minimum time periods:

one year for one-to-four-family residential properties; and

three years for all other property types; and...

Therefore, not only could the subject property potentially be used as a comparable sale, an analysis of the prior sale must be made in accordance with Standards Rule 1-5. However, appraisers must be aware of any supplemental standards that require minimum numbers of

comparable sales to be reported in addition to the sale of the subject property.

Q Does USPAP require appraisers to take continuing education courses?

A Not directly. However, the **COMPETENCY RULE** mandates that prior to accepting an assignment an appraiser must have the knowledge and experience to complete the assignment, or:

1. *disclose the lack of knowledge and/or experience to the client before accepting the assignment;*
2. *take all steps necessary or appropriate to complete the assignment competently; and*
3. *describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.*

Although the phrase “continuing education” is not used, clearly it could be one means to satisfy this rule. Additionally, Standards Rule 1-1(a), a binding requirement, states:

In developing a real property appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

Comment: This rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Important changes in the cost and manner of constructing and marketing commercial, industrial, and residential real estate as well as changes in the legal framework in which real property rights and interests are created, conveyed, and mortgaged have

*resulted in corresponding changes in appraisal theory and practice. Social change has also had an effect on appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason, **it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.*** (Bold added for emphasis)

The last sentence of the Comment to SR 1-1(a) clearly indicates that in order to “be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal” appraisers must maintain and continuously improve their knowledge and skills. Thus some form of continuing education is required, although not explicitly by the USPAP document.

Q An appraiser was recently asked to review another appraiser’s appraisal review. Must the appraiser comply with STANDARD 3 in completing this assignment?

A Yes, the appraiser must comply with STANDARD 3 in this assignment. STANDARD 3 states:

*In performing an appraisal review assignment **involving a real property or personal property appraisal**, an appraiser acting as a reviewer must develop and report a credible opinion as to the quality of another appraiser’s work and must clearly disclose the scope of work performed in the as-*

signment. (Bold added for emphasis)

The Comment to this statement goes on to state, in part:

*Appraisal review is the act or process of developing and communicating an opinion about the quality of all or part of a completed work **or service** performed by another appraiser in a real property or personal property appraisal assignment.* (Bold added for emphasis)

Simply stated, “appraisal review” encompasses more than just the review of another appraiser’s appraisal. It is *the act or process of developing and communicating an opinion about another appraiser’s work.* (See definition of Appraisal Review.)

Q Can a business entity, such as a corporation, sign an appraisal report?

A Yes. There is no prohibition against an entity signing a transmittal letter or the final page of a report. However, USPAP does require that an individual appraiser(s) sign a certification. While USPAP does not directly state this requirement, Standards Rules 2-3, 3-2(f), 5-3, 6-8, 8-3, and 10-3 (all binding requirements) stipulate that:

Each written appraisal (real property, personal property, mass, or business valuation) report must contain a signed certification that is similar in content to the following form:... (See Standards Rule 2-3, 3-2(f), 5-3, 6-8, 8-3, and 10-3 for the complete text.)

The Comment(s) to these Standards Rules refer to an appraiser(s), a signing appraiser(s), and any appraiser(s). Clearly, this language refers to an individual or individuals, not a corporate or business entity.

Q Does USPAP require that an address for the subject property be reported in every summary real property appraisal report?

A No, it does not. Standards Rule 1-2(e) is a binding requirement that states, in part:

In developing a real property appraisal, an appraiser must;

... identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including;

(i) its location and physical, legal, and economic attributes.

Additionally, Standards Rule 2-2(b), which is also a binding requirement, states:

The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

(iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;

Comment: *The real estate involved in the appraisal can be specified, for example, by a legal description, address, map reference, copy of a survey or map, property sketch, and/or photographs or the like. The summarized information can include a property sketch and photographs in addition to written comments about the legal, physical, and economic attributes of the real estate relevant to the purpose and intended use of the appraisal.*

The appraiser must provide information sufficient to "identify the real estate involved in the appraisal." In some cases an address, particularly a post office box or other rural address may be misleading if no other identifying information such as a legal description is provided. In other

cases an address is sufficient to meet USPAP requirements.

Q Which Standards and Standards Rules apply to developing an appraisal?

A Standard 1 and Standards 1-1 through 1-5 apply to developing a real property appraisal. Standard 6 and Standards Rules 6-1 through 6-6 apply to developing a mass appraisal. Standard 7 and Standards 7-1 through 7-5 apply to developing a personal property appraisal. Standard 9 and Standards 9-1 through 9-5 apply to developing a business appraisal.

Q Which Standards and Standards Rules apply to reporting an appraisal?

A Standard 2 and Standards Rules 2-1 through 2-4 apply to reporting a real property appraisal. Standards Rules 6-7 and 6-8 apply to reporting a mass appraisal. Standard 8 and Standards Rules 8-1 through 8-4 apply to reporting a personal property appraisal. Standard 10 and Standards Rules 10-1 through 10-4 apply to reporting a business appraisal.

Q I was recently asked to review the income approach to value in a real property appraisal report. The client did not ask me to comment on the final value conclusion. He simply requested that I review the income approach and advise him regarding its credibility. Since it only involves reviewing a part of the appraisal report, does USPAP apply?

A Yes. This would be an appraisal review assignment subject to STANDARD 3. USPAP defines appraisal review as:

...the act or process of developing and communicating an opinion about the quality of another appraiser's work.

Comment: *The subject of an appraisal review assignment may be all or part of an appraisal report, workfile, or a combination of these. (Bold added for emphasis)*

Q Is it ethical to disclose confidential information to a duly authorized professional peer review committee?

A Yes. However, the appraiser must be aware of and comply with the applicable laws or regulations that would prevent such disclosure. The Confidentiality section of the ETHICS RULE states, in part:

An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; and a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation. It is unethical for a member of a duly authorized professional peer review committee to disclose confidential information presented to the committee.

Comment: *When all confidential elements of confidential information are removed through redaction or the process of aggregation, client authorization is not required for the disclosure of the remaining information, as modified.*

It should be noted that the ASB modified the Confidentiality section of USPAP, as stated above, effective July 1, 2001.

Q Does USPAP require an appraisal, appraisal review, or appraisal consulting report to contain a section within the report labeled "Scope of Work"?

A No. USPAP does not require that an appraisal, appraisal review, or appraisal consulting report contain a section specifically titled "Scope of Work". However, USPAP does require all reports to disclose the scope of work utilized in the assignment. The level of detail required is relative to the reporting option (self-contained, summary, or restricted) used in the assignment. For example, Standards Rules 2-2(b)(vii) requires the appraisal report to:

...summarize sufficient information to disclose to the client and any intended users of the appraisal the scope of work used to develop the appraisal;

And, the Comment to this Standards Rule states, in part:

The appraiser has the burden of proof to support the scope of work decision and the level of information included in a report...

Requirements are set forth in USPAP for the level of information detail that must appear in a written report, but not for the form, format, or style of written reports. The form, format, or style of written reports is a function of the needs of users and appraisers. The substantial content of a report determines its compliance with USPAP.

Q If requested by a client, can I purge my appraisal files and records of an appraisal that was not utilized in loan underwriting or in any other manner by the client?

A No. USPAP does not permit appraisers to destroy written records prior to five years after preparation **for any reason**, including a client's request to do so or the fact that an appraisal is not utilized by the cli-

ent. The Record Keeping section of the ETHICS RULE states that:

An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment.

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.

Q What information must be retained in an appraiser's workfile?

A An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment. The Record Keeping section of the ETHICS RULE states:

The workfile must include the name of the client and the identity, by name or type, of any other intended users; true copies of any written reports, documented on any type of media, summaries of any oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification; and all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with this rule and all other applicable Standards, or references to the location(s) of such other documentation.

The appraiser's assignment workfile serves several purposes. As in many other professions, the discipline of enforcement by public agencies and peer review, together with one's self-discipline and dedication of effort, serves to ensure performance of assignments in compliance with professional standards. In addition to facilitating enforcement, a workfile aids the appraiser in handling questions from the client or an intended

user subsequent to the date of the report.

An appraiser's assignment workfile preserves evidence of the appraiser's consideration of all applicable data and statements required by USPAP and other information as may be required to support the appraiser's opinions, conclusions, and, in the case of an appraisal consulting assignment, recommendations.

Q I am a manager for an appraisal management company that performs commercial and residential appraisals in various parts of the country. Our company acts as the agent for our clients who consist of numerous regional and national lenders. In that capacity, we take in appraisal orders from our clients and order those appraisals from fee appraisers on our approved list of appraisers. We also perform STANDARD 3 compliant reviews on those appraisals. We forward the appraisal and appraisal review reports to our client. Are we required to keep a file of the appraisal reviews?

A Yes, the Record Keeping section of the ETHICS RULE in USPAP requires that:

*An appraiser must prepare a workfile for each appraisal, **appraisal review**, or appraisal consulting assignment. The workfile must include the name of the client and identity, by name or type, of any other intended users; true copies of any written reports,...* (Bold added for emphasis)

Further, it is important to note that the requirement under USPAP is for the **appraiser** to retain a copy of:

...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...

Therefore, it is incumbent upon the appraiser, not his or her employer, to ensure that a copy of the workfile is available for the time periods stipulated above.

Qa) Jim, an independent contractor, works for my appraisal company on a regular basis. I have always kept all appraisal file documentation (including hard copies of appraisal reports, field notes, drawings, etc.) at my office. Now Jim wants to keep the files relating to his work in his own possession. Under USPAP, which appraiser should keep the workfile?

b) Is the Record Keeping section of the ETHICS RULE upheld if an institutionally employed appraiser ensures that his organization retains copies of his appraisal work for five years? Or, must the appraiser also maintain a personal file of all work performed?

c) A client's attorney requested that I supply all of my files/records regarding an assignment. Can I do this and still be in compliance with the record keeping requirements for USPAP? Also, what must I retain in my files as proof that the files are now the responsibility of the attorney? Will a simple letter from the client be sufficient?

A According to USPAP, the **appraiser**, not the appraiser's employer or client, is ultimately responsible for the retention of the workfile for the prescribed period. (See Record Keeping section of the ETHICS RULE.) An appraiser who is employed by, or works in conjunction with, another party must make arrangements with that party to protect and preserve the workfile, and to allow the appraiser to make the workfile available to other parties (e.g. state appraiser regulatory agencies) when required by due process of law.

There are a number of ways an appraiser who works for or with another party can ensure that files are retained so that the appraiser can have access to the files to meet the requirements of USPAP's ETHICS RULE. For example, an appraiser and his employer or colleague may agree that the files will remain in the employer's or colleague's custody for the duration of the requisite retention period and that the appraiser will have access to those files, if needed.

USPAP does not dictate the form or format of workfile documentation. It is not necessary to include original documents in the file; photocopies and electronic files are acceptable as "true copies". Because there have been cases where employers and others have denied appraisers access to workfiles, an appraiser may wish to make and retain copies of workfiles. However, USPAP does not address any specific manner by which an employer or contractor and appraiser should handle record retention. This is a business matter, which should be arranged in the context of the employer- or contractor-appraiser relationship.

By the same token, provision of the workfile to a duly authorized party, such as a client's attorney could be, is permitted by USPAP. However, this does not relieve the appraiser of the responsibility for that workfile. At no time may an appraiser abdicate his or her responsibility for a workfile. Therefore, when an appraiser relinquishes possession of a file to a client or the client's representative, the appraiser should retain either a copy of the workfile or written reference to an agreement with the client that the appraiser will have access to the workfile if the need arises.

QA new bank client recently sent me a letter acknowledging that my firm is approved

to conduct appraisal assignments for their company. It goes on to state that we are now "preferred providers" and expresses the bank's desire to embark on a mutually beneficial long-term relationship. The letter ends with a solicitation for my firm's banking business as part of this mutually beneficial relationship. I would like to make them happy because they could provide my firm a great deal of business. If I bring my banking business to this company, while I'm engaged as an appraiser, would I be violating USPAP?

AThe answer to this question depends on whether the bank's approval of your firm as a "preferred provider" is conditional on your moving your banking business to that bank. The Management section of the ETHICS RULE in USPAP reads:

The payment of undisclosed fees, commissions, or things of value in connection with the procurement of an assignment is unethical.

Comment: Disclosure of fees, commissions or things of value connected to the procurement of an assignment must appear in the certification of a written report and in any transmitted letter in which conclusions are stated. In groups or organizations engaged in appraisal practice, intra-company payments to employees for business development are not considered to be unethical. Competency, rather than financial incentives, should be the primary basis for awarding an assignment.

If the lender has stated that your firm can only have their appraisal business if you bank with them, this relationship must be disclosed as described in the ETHICS RULE.

However, if the client is merely soliciting your business as it would any other potential customer, and you subsequently

moved your banking business to that bank, there is no requirement in USPAP to disclose your banking relationships.

Q I have been asked by my client's business associate for information relating to an appraisal report I prepared for my client. Can I disclose the results of an appraisal assignment to parties other than the client?

A You can, but only if the appraiser receives authorization from the client before sharing confidential information with the client's associate. The Confidentiality section of the ETHICS RULE of USPAP states, in part, that:

An appraiser must protect the confidential nature of the appraiser-client relationship.

Appraisers may disclose information relating to an assignment to:

...the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; and a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation.

Q I am a fee appraiser currently seeking to get on the approved list for a local mortgage company. In order to be considered for approval, this lender requires appraisers to provide sample appraisals performed within the past year. Is there a way I can accomplish this without violating Uniform Standards of Professional Appraisal Practice (USPAP)?

A In order to provide this information an appraiser must satisfy the Confidentiality section of the ETHICS RULE. This section states:

An appraiser must protect the confidential nature of the appraiser-client relationship.

An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results.

An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; and a duly authorized professional peer review committee. It is unethical for a member of a duly authorized professional peer review except when such disclosure to a committee would violate applicable law or regulation.

The Comment further explains that if all essential elements of confidential information are removed through redaction or the process of aggregation, client authorization is not required for the disclosure of the remaining information, as modified.

The appraiser in this case has three options:

1. Turn down the request to provide the information.
2. Secure a release from the client of each sample appraisal.
3. Provide sample reports, but redact all confidential information.

Q If an appraiser does not utilize an approach to value at the request of the client, is the assignment considered a Com-

plete Appraisal or a Limited Appraisal?

A If the approach is applicable to the assignment but is not necessary to result in credible opinions or conclusions, an appraiser can agree to omit that approach. Such an assignment would then be considered a Limited Appraisal. Refer to the DEPARTURE RULE for other requirements for limited appraisals and to STMT-7 and AO-15 for further guidance.

Q If an appraiser does not develop one of the three approaches to value because there is not enough information to develop that approach (i.e. that approach is not applicable to the assignment), is the assignment considered a Complete Appraisal?

A In the situation described, the appraisal would be Complete Appraisal. The Comment to the DEPARTURE RULE, says, in part:

Not all specific requirements are applicable to every assignment. When a specific requirement is not applicable to a given assignment, the specific requirement is irrelevant and therefore no departure is needed.

Provided there are not other departures, if an approach is not applicable to the assignment, the assignment would be considered a Complete Appraisal and the DEPARTURE RULE would not apply.

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. ⓧ

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

General Certified	429
Residential Certified	328
State Licensed	250
Provisional (Trainee).....	106
 Total	 1,113

APPRAISAL BOARD MEMBERS
 Kenneth Lickteig, Chairman
 Steven R. Adams, Vice Chairman
 LeRoy Leland, Member
 Ralph Leno, Member
 Alida Moore, Member
 G.N. (Jerry) Capps, Member
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 Sally Pritchett, Executive Director
 Cheryl Magathan, Public Service Executive

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The Board's web site: <http://www.ink.org/public/kreab>

WEB SITES
 The Appraisal Subcommittee: www.asc.gov
 The Appraisal Foundation: www.appraisalfoundation.org

OTHER LINKS
 See the Board's website for "Other Links" which provides e-mail and website addresses for appraisal regulatory agencies in other states.

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543

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