

O K L A H O M A REAL ESTATE APPRAISER BOARD NEWSLETTER



ISSUE #26

P.O. BOX 53408, OKLAHOMA CITY, OK 73152-3408

January 2009

Kim Holland, Chairperson

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MESSAGE FROM THE DIRECTOR

The only constant in the appraisal business is that things change. These are some important changes of which you should be aware.

Administrative Rules. The Board has issued a Notice of Rulemaking Intent proposing several changes to Chapter 10 of its rules, which generally pertain to trainees and supervisors. You will find a copy of this notice inserted in this newsletter. Both the notice and the proposed changes can be accessed at www.reab.oid.ok.gov. I will accept comments from the public from January 16 through February 27, 2009. A public hearing on the changes will be conducted on March 6, 2009 at the Board's regular meeting.

If you have comments regarding the proposed changes, please email, fax, or mail them to arrive by February 27th.

HVCC. On December 23, 2008, Federal Housing Finance Agency (FHFA) Director James B. Lockhart announced that Fannie Mae and Freddie Mac will implement a revised Home Valuation Code of Conduct (HVCC) effective May 1, 2009. The Code is based on an agreement between the two Enterprises, New York State Attorney General Andrew Cuomo, and FHFA to improve the reliability of home appraisals. Following a comment period on the original Code, modifications were made by the Enterprises to reflect comments received. The revisions will facilitate implementation in the marketplace. (www.fhfa.gov)

The revised HVCC can be accessed on the website under announcements.

HUD. On December 17, 2008, HUD published Mortgagee Letter 08-39. This letter advises interested parties that effective October 1, 2009, only state-certified appraisers will be eligible for assignments involving FHA-insured mortgages. State licensed appraisers will no longer be eligible to participate in these transactions. HUD took this action because Congress enacted a law that placed this requirement in Section 202 of the National Housing Act.

Only licensed appraisers under Criteria were on the HUD roster anyway, amounting to about 110 people. To remain on the roster, licensed appraisers must become qualified and apply for an upgrade to a certified level.

(www.hud.gov/groups/appraisers.cfm) rs

LICENSING BREAKOUT

<u>MONTH/YEAR</u>	<u>CGA</u>	<u>CRA</u>	<u>SLA</u>	<u>Total</u>	<u>TRA</u>
5/1/98	427	376	418	1221	
6/1/00	424	385	661	1470	
8/1/01	390	370	750	1510	
4/1/02	394	360	649	1403	115
10/1/02	398	361	577	1336	213
2/1/03	394	371	558	1323	280
6/30/03	387	384	510	1281	360
12/31/03	387	399	473	1259	449
6/30/04	385	417	450	1252	494
12/31/04	387	419	442	1248	503
6/30/05	378	430	396	1204	481
12/31/05	379	440	398	1217	479
6/30/06	380	450	386	1216	433
12/31/06	379	446	361	1186	387
6/30/07	386	442	313	1141	336
12/31/07	401	483	289	1173	289
6/30/08	404	476	278	1158	235
12/31/08	404	470	270	1144	195

This publication was printed by the Real Estate Appraiser Division of the Oklahoma Insurance Department. It is authorized and issued by the Honorable Kim Holland, Oklahoma Insurance Commissioner. 1,485 copies were prepared at a cost of \$606.82. 25 copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.

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WORKFILES

Within the scope of operation of the Real Estate Appraiser Board, appraisers' workfiles come into play in two ways. First, during the disciplinary process, workfiles are often requested or subpoenaed. The purpose is to try to find evidence that supports the appraiser's opinions and conclusions and evidence of compliance with the applicable guidance of the USPAP. Workfiles are also important to those applying for certifications or licenses and who, in the course of the work product review process, are required to provide sample work product selected from their appraisal log.

The workfile is the first line of protection for the appraiser. It is the method set forth by regulatory guidance that provides the framework for the appraiser to accumulate the supporting materials that will establish the basis for an effective and well supported defense in the event of an inquiry. Inquiries can come from various sources including this agency, HUD, and appraiser professional organizations. They are also discoverable during legal proceedings.

With the advent of the requirement by the Appraisal Subcommittee that this agency, not the appraiser, select the sample work product to be reviewed for USPAP compliance, workfiles are now very important to applicants. The inability of an applicant to provide the reports requested from the appraisal log submitted is taken as an indication of one of two things; either the applicant is claiming credit for experience hours not performed, or the applicant is in violation of 59 OS § 858-729 and the Recordkeeping Section of the Ethics Rule of USPAP. Either is disqualifying.

The Recordkeeping Section of the USPAP Ethics Rule and the statutory guidance entitled "Retention of Records – Inspection by Board" are reprinted below.

Record Keeping Section, ETHICS RULE, USPAP 2008-2009 Edition:

"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 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. [Emphasis added.]***

"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 the appraiser provided testimony related to the assignment, whichever period expires last.

"An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile. [Emphasis added.]

"Comment: A 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 recommendations.

"A photocopy or an electronic copy of the entire actual written appraisal, appraisal review, or appraisal consulting report sent or delivered to a client satisfies the requirement of a true copy. As an example, a photocopy or electronic copy of the Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report actually issued by an appraiser for a real property appraisal assignment satisfies the true copy requirement for that assignment.

"Care should be exercised in the selection of the form, style, and type of medium for written records, which may be handwritten and informal, to ensure that they are retrievable by the appraiser throughout the prescribed record retention period.

"A workfile must be in existence prior to and contemporaneous with the issuance of a written or oral report. A written summary of an oral report must be added to the workfile within a reasonable time after the issuance of the oral report. [Emphasis added.]

"A workfile must be made available by the appraiser when required by state enforcement agencies or due process of law. In addition, a workfile in support of a Restricted Use Appraisal Report must be sufficient for the appraiser to produce a Summary Appraisal Report (for assignments under STANDARDS 2 and 8) or an Appraisal Report (for assignments under STANDARD 10), and must be available for inspection by the client in accordance with the Comment to Standards Rules 2-2(c)(viii), 8-2(c)(viii), and 10-2(b)(ix)."

Oklahoma Certified Real Estate Appraisers Act, 59 OS § 858-729. Retention of Records – Inspection by Board:

A. *"An Oklahoma certified real estate appraiser shall retain for five (5) years, originals or true copies of all written contracts engaging that appraiser's services for real property appraisal work, and all reports and supporting data assembled and formulated by the appraiser in preparing the reports.*

B. *"This five-year period for retention of records is applicable to each engagement of the services of the appraiser and shall commence upon the date of the submittal of the appraisal to the client unless, within such five-year period, the appraiser is notified that the appraisal or report is involved in litigation, in which event the five-year period for the retention of records shall commence upon the date of the final disposition of such litigation.*

C. *"All records required to be maintained pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act shall be made available by the Oklahoma certified real estate appraiser for inspection and copying by the Board on reasonable notice to the appraiser."*

WORKFILES

There is additional regulatory guidance in the Board’s rules relating to workfiles incidental to a supervisor-trainee relationship. The guidance requires that both supervisor and trainee maintain a workfile for each assignment. Accordingly, when an applicant for upgrade reports that the supervisor won’t allow access to pertinent workfiles, this statement is regarded as proof of a violation of the Board’s rule. The trainee should have maintained a copy in the first place. The rule is reprinted below.

OAC 600:10-1-16. Supervision of trainee appraisers.

“(d) Both supervisory and trainee appraisers shall maintain complete workfiles as required by the Uniform Standards of Professional Appraisal Practice and the Oklahoma Certified Real Estate Appraisers Act.”

Neither the USPAP nor the statute provides specific guidance as to contents of a workfile. It should also be noted that this newsletter discussion is generally directed to self-contained and summary reports and that a restricted use report carries another set of workfile considerations. Specific guidance on exactly what pieces of paper should be found in a workfile are difficult to find. One list is located in HUD Handbook 4150.2, Valuation Analysis for Single Family One- to Four-Unit Dwellings, and it is reprinted below. While this guidance states (correctly) that it’s not comprehensive, it does provide a place to begin thinking about the contents of a workfile and is useful from that perspective.

HUD HANDBOOK 4150.2

5-3 **RECORD KEEPING**

HUD reserves the right to request and review the appraiser’s work files supporting an FHA-insured mortgage at any time and without prior notice. Appraisers on the FHA Register must comply with the record-keeping and inspection requirements as a condition of performing appraisals for FHA-insured mortgages.

B. DOCUMENTATION FILE REQUIREMENTS

Although there is no prescribed file format or content, the appraiser’s work files must include information to support all findings, observations and conclusions supporting the value estimate. The files must indicate the rationale for adjustments and the market data analyzed in the development of the appraisal report. The files must include documentation of the acceptance of the assignment and historical and factual information, such as photographs and maps. A sample documentation file index is provided below. This is not a comprehensive list of information.

C. SAMPLE DOCUMENTATION FILE

<u>Section</u>	<u>Supporting Data</u>
Acceptance of assignment	File memorandum
Property Description	Legal description Photographs Floor plans Tax map and information Field notes from inspection Listing information Offer to purchase
Neighborhood	Notes from the field visit Photographs Demographic data
Cost Approach (if applicable)	Relevant Marshall Swift Valuation information Calculations performed Land Sales detail
Sales Comparison Approach	Sale details and photographs Transaction information Derivation of adjustments Interview notes
Income approach (if applicable)	Market rent comparable information Cap rate justification Historical financial statements
VC Conditions Noted	Photograph of condition Field notes Support for any assumed repairs Calculation of cost to repair a VC condition
Additional Information	Surveys Relevant market data Other sources of data

IDENTITY THEFT

You may recall an item in Newsletter #20, June 2005, dealing with identity theft. The title of the article was: "Imagine the Surprise", written by Mike Brown, who was at that time Director of the Illinois Real Estate Appraiser Board. If not, you may access that newsletter at www.reab.oid.ok.gov.

There are several instances of identity theft/signature fraud in Oklahoma that the Board is presently aware of. This topic has been mentioned at several of the Board's annual educational seminars. You need to take steps to protect yourself.

There have been two different varieties of identity theft that we have recognized. The first, and this has been observed on multiple occasions, is that a supervisor provides his electronic signature to a trainee. Conversely, we have had other instances where a trainee provided his electronic signature to his supervisor.

It is unacceptable for this office to have a letter from a supervisor's attorney to a trainee demanding that the trainee "return my signature disk immediately." The trainee should not have had it in the first place. Do not allow this to happen.

It is unacceptable for a supervisor to provide an answer to this agency in response to a subpoena duces tecum for the workfile relating to an appraisal assignment that [s]he doesn't have a workfile, that [s]he just gave the trainees his[her] electronic signature and allowed the trainee appraiser to conduct business over his[her] signature.

It is unacceptable for an appraiser to provide sworn testimony during a disciplinary hearing that [s]he provided unfettered access to his[her] electronic signature to a trainee.

The Definitions in USPAP state:

"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 personal identification number, or other media, where the appraiser has sole personal control of affixing the signature." [Emphasis added.]

One recent example of the other variety involved an appraiser whose credential was revoked by the Board. He got (from who knows where) a copy of another appraiser's electronic signature and credential. He subsequently appraised 153 properties for two mortgage brokers totaling \$24,000,000 appraised value. The appraiser whose identity was stolen found out because a lender took her off their list ("Imagine the Surprise") for faulty work product, and when the lender gave her a copy of the subject report, she identified it as being fraudulent.

Identity theft is a circumstance much like credit card fraud in which the individual almost has to prove his[her] innocence.

Guard your signature zealously. Brand your reports. Page number reports "Page 1 of 16 Pages", "Page 2 of 16 Pages", and so on. Maintain, contemporaneously, an appraisal log and the workfiles required by 59 O.S. § 858-729 and the Record Keeping Section of the Ethics Rule. You aren't doing this for the Board; you are doing this to support your case in the event that you are victimized by a scammer.

Finally, if you have reason to believe that you are the victim of identity theft, **REPORT IT**. Report it to this office and to law enforcement officials. In no case should you simply let it go. Remember, if someone has stolen your signature, that individual may not be the sort of individual to be particularly conscientious about the content of the (your) appraisal report.

USE OF LICENSE NUMBERS

Use of certificate numbers and titles is addressed at two separate locations in the Oklahoma Real Estate Appraisers Act. § 858-719 (B) of the Act states: "Each trainee, state licensed, state certified residential or state certified general real estate appraiser shall place that appraiser's certificate number adjacent to or immediately below the title Trainee Appraiser, State Licensed Appraiser, State Certified Residential Appraiser or State Certified General Appraiser when used in an appraisal report or in a contract or other instrument used by the certificate holder in conducting real property appraisal activities." Certificate numbers should be used exactly as printed on the credential. It isn't "99888" it is "99888TRA."

The other citation is § 858-732 (A) (4), which reads: "Advertising for or soliciting appraisal assignments in a manner which is false, misleading or exaggerated is unethical."

This is a particular problem with respect to trainee appraisers. Use of the title "Licensed Trainee Appraiser" is an illegal act. It violates § 858-719 by using a false title, and § 858-732 and Standard 2 because it is misleading. When found on an appraisal report, both the trainee and the co-signing supervisor have signed a misleading report.

Please be certain that you are in compliance with the Act. This is a subject that truly deserves your time and attention.

NEWSLETTER INFORMATION

Newsletters are used as a means of providing the appraiser population that we support with current information critical to understanding the laws, rules and policies of the board as well as current issues facing appraisers. The primary means used to determine content of this document is the questions asked by appraisers and the relevance of the questions to the general appraiser population.

Please take the time to read and understand the contents of the newsletter. It will be time well spent, and will answer many of your questions.

NATIONAL REGISTRY AND HUD/FHA

If you are on the HUD Roster, you need to read this item. There have been a number of inquiries about HUD and the relationship between the HUD roster and the National Registry.

First, please understand that there is no direct link between REAB and HUD. HUD has its own application process and uses the Appraisal Subcommittee's National Registry to determine qualification. (www.asc.gov.) Around the first of each month, HUD eliminates those who are expired on the registry. The National Registry is not a real-time data link. It is updated monthly on Tuesday or Wednesday of the week following the Board meeting.

So, as an example, you receive your fee statement on 7/10 for your payment due date of 8/31. You pay your fee on 8/15. 9/1 is on Thursday, and HUD drops you that day. The September Board meeting is on 9/9. On 9/13, an email update is sent to ASC. ASC gets the update input into their system on 9/15. You can then get back on the HUD roster.

Don't wait to pay your annual fee or to renew your license. Do it before August 1st so that you will be included in the August update.

Also, the expiration date in the registry is the ASC national registry expiration date. It advances one year at a time as you pay annual fees. Do not confuse it with the expiration date on your credential.

INFORMATION, NOT ADVICE

The REAB staff makes every possible effort to provide timely and appropriate advice to its licensees and to the public. In accomplishing this, the staff spends a large portion of available time on the phone answering questions. Please recognize, however, that the staff is limited in this endeavor. We are administrators, not appraisers. Assistance will be provided only in the form of information, not in the form of advice or interpretations of statutes, rules or the USPAP. Illustrations are as follows:

- May refer callers to relevant portions of the Oklahoma Certified Real Estate Appraisers Act and the Board's administrative rules and provide copies, but may not interpret them and may not waive or modify any requirement thereof.
- May refer callers to relevant portions of the USPAP, but may not make interpretations of the standards or give advice on compliance.
- May provide a list of approved courses and schools with locations and telephone numbers and share any known information on courses scheduled, but may not recommend a school or a course.
- May provide a list of appraisers in the state or in a particular geographic location, but may not indicate a preference for a particular individual or firm.
- May provide information and assistance regarding administration of the real estate appraiser program.
- Must assist appraisers to the maximum extent possible. The staff is not here to make your life any more difficult than it already is. (Nor should it be your mission to make the staff's lives any more difficult than they already are.)

If you have questions that are beyond the staff's scope as identified above, write a letter to the Board, presenting the question in as much detail as possible. An answer will be forthcoming.

The Board staff has voice mail. If you receive the voice mail message, it could mean one of several things. If the line is busy, you will be switched to voice mail. The system will not give you a busy signal. If there is a hearing or board meeting or other function in progress and no one is at the phones, you will get voice mail. All calls are returned as quickly as practicable. This can range from several minutes to several days, but calls will be returned.

"It is not what we eat but what we digest that makes us strong; not what we gain but what we save that makes us rich; not what we read but what we remember that makes us learned; and not what we profess but what we practice that gives us integrity."

Francis Bacon

CONTACT WITH BOARD MEMBERS

An ex parte communication is a communication made to a Board member concerning a pending licensing or disciplinary action, rule making proceeding, or education course approval. An ex parte communication is made outside of the formal proceeding, is made in the absence of the other party, and is made to less than a quorum of the Board. Literally, ex parte means "from (by or for) one party." The formal definition is: on or from one party only, usually without notice to or argument from the adverse party. Ex parte communications may violate due process and may force a Board member to recuse him/herself from participation in any proceeding at which the issue involved in the ex parte communication is subsequently discussed.

Administrative Procedures Act, 75 OS § 313. Agency Members Not to Communicate

"Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an individual proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member (1) may communicate with other members of the agency, and (2) may have the aid and advice of one or more personal assistants."

When you have a question regarding a complaint or a licensing action, contact the Board staff. Members of the appraiser board staff are not empowered "to render a decision or to make findings of fact and conclusions of law." Accordingly, staff can provide assistance or direct you to the correct individual as appropriate.

The rules of the Board also address this situation. OAC 600:15-1-6(j) states: "Any person subject to the jurisdiction of the Board, who shall attempt to pressure, coerce, intimidate, or otherwise influence or affect the opinion of a Board member, hearing officer, witness, or complainant regarding a disciplinary matter, shall be subject to disciplinary action by the Board."

Also, with respect to fairness and objectivity, the Board's rules, in OAC 600:15-1-6, state: "(k) In the event any hearing officer has any personal, social, or economic relationship with the complainant, appraiser named in any complaint, or any attorney involved in the proceedings, the hearing officer shall make full disclosure of that relationship to the Board who shall take appropriate administrative action to assure objectivity in the proceedings including, if necessary, replacement of any Hearing Panel member."

WEBSITE

The Board's website, www.reab.oid.ok.gov, has recently been updated and a number of items added. The intention of the Board in undertaking this project was to make the website more user friendly and valuable to its credentialed population.

The front page of the website was redesigned and includes a space for announcements. This will be used to furnish information regarding current items that need to be emphasized. Examples of this are the requirement for each resident appraiser to complete the 7-Hour National USPAP Update Course by December 31, 2008, as well as changes with respect to the HUD roster.

You will find other types of information that may be helpful. These include information relating to Board meetings including a meeting schedule, agendas for the meetings, and minutes from past meetings. There is an event calendar listing all the activities scheduled. You will find copies of newsletters, copies of disciplinary orders, and the regulatory guidance including the Appraisers Act, Board rules, and a link to the current USPAP.

A list of approved course providers and approved courses is included on the website. There is other information on the site that we hope you find useful also.

If you have suggestions regarding website content, please contact us and let us know.

SCOPE OF PRACTICE

"I have a client that wants me to appraise this 'particular property type.' Am I permitted to accept this assignment?" This is a question that we are asked by individuals on a regular basis.

Regulatory guidance states the following:

- Certified general appraisers may appraise all types of real property with any transaction value.
- Certified residential appraisers may appraise any transaction value up to \$250,000 and 1-4 residential units without regard to transaction value or complexity.
- State licensed appraisers may appraise any transaction value up to \$250,000 and non-complex 1-4 residential units up to \$1,000,000.
- Trainee appraisers may appraise such real property(ies) as their supervisor(s) are qualified to appraise.

Complex residential properties are those consisting of one to four residential units that exhibit one or more atypical factors such as size; ownership; design, locational, or physical condition characteristics, or exhibits non-conforming zoning, landmark or historical place designation, lack of appraisal data, or other similar unusual or atypical factors.

Qualification under the above guidance does not carry an implication of competence. The appraiser must qualify both with respect to the above guidance and in accordance with the Competency Rule of USPAP.

USPAP Q & A

Appraisal Report Labeling Confusion

Q: I am an appraiser who is still confused about the use of the various labels used in USPAP. For example, I am not certain how many approaches to value must be developed when performing a Summary Appraisal. Can you help resolve my confusion?

A: To resolve this confusion, you must first understand that USPAP separates the process of *developing* your assignment conclusions from the process of *communicating* your results to the client and other intended users. The "summary" label is used in the **reporting** process, and is one means of communicating your assignment results. The actual label used in STANDARD 2 (for real property) and STANDARD 8 (for personal property) is "Summary Appraisal Report." Standards Rules 2-2(b) and 8-2(b) describe the minimum requirements for preparing a Summary Appraisal Report, which have to do with the level of detail and amount of information communicated for that reporting option.

The number of valuation approaches you develop is part of the scope of work decision made in the **development** process. USPAP does not specify the number of approaches required, but leaves that decision to the appraiser. The SCOPE OF WORK RULE requires that the development process (including the number of approaches used) is sufficient to produce credible assignment results. The scope of work that you determine appropriate for an assignment is the same regardless which option you use for writing your report, Self-Contained, Summary or Restricted Use Appraisal Report.

For additional information on the appraisal reporting options, see Advisory Opinion 11, *Content of the Appraisal Report Options of Standards Rules 2-2 and 8-2*.

For more information regarding how to make the decision of how many valuation approaches to develop in an assignment, see the SCOPE OF WORK RULE, Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure*, and Advisory Opinion 29, *An Acceptable Scope of Work*.

Reviewer Citation of USPAP Non-Compliance

Q: If a review appraiser concludes that an appraisal report is unacceptable, does the reviewer need to cite specific requirements in USPAP that were not fulfilled appropriately?

A: No, but the review appraisal report must include the reasons for the reviewer's conclusion. When the scope of work requires the review appraiser to "evaluate compliance with relevant USPAP requirements," it is appropriate to analyze compliance or non-compliance with USPAP. However, USPAP does not require a reviewer to determine that the subject of an appraisal review complies with USPAP.

We Americans place a high value on education: The average college professor earns more in a year than the average pro athlete earns in a whole week.

USPAP Q & A**Sales History for New Construction**

Q: I have received an assignment to appraise a property with newly constructed improvements. Because the property includes new construction, there is no prior sales history of the property as it now exists. However, I do have information pertaining to a prior sale of the site (without the improvements). Does Standards Rule 1-5(b) require me to analyze this prior sale of the site?

A: Yes. The goal of USPAP is to promote public trust in the appraisal profession. Standards Rule 1-5 provides for a research and analysis requirement for information that is judged to be important to the credibility of the appraisal process. To be consistent with the purpose of USPAP as well as the intent of SR 1-5, an appraiser is required to analyze *all* prior sales that include the subject property. This includes: 1) prior sales of a property that includes the subject property; and 2) prior sales of a portion of the subject property.

In this case, the analysis of the prior sale of the unimproved site would be necessary to comply with Standards Rule 1-5(b). The site in this instance is a component of the subject property.

Another example might be the appraisal of a leased fee interest in a property. The appraiser must research and analyze prior sales of the subject, even if these sales include a fee simple interest in the property.

An additional example might be the appraisal of 20 acres subdivided from a 200-acre parcel. The appraiser must research and analyze prior sales of the subject, even if these sales include the 200-acre site in its entirety.

Confidentiality and Review Appraisers

Q: A few weeks ago I performed an appraisal for a lender client. I was recently contacted by an individual who claims that she is a review appraiser that has been hired by the lender, and wanted to ask me some questions about my appraisal. Can I discuss my appraisal with her?

A: Yes, if you receive authorization from the client. The Confidentiality section of the ETHICS RULE states, in part:

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

Appraisers may disclose confidential information or assignment results 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.” [Emphasis added.]

USPAP Q & A**Addressees, Clients, And Intended Users**

Q: If the party to whom an appraisal report is addressed is the client and is also the only intended user, does USPAP require the report to state the intended user by name or type?

A: While USPAP requires all reports to state the client and any other intended user(s), USPAP does not dictate how this should be done. When there is only a single intended user (the client), a simple statement as part of the salutation may be sufficient; however, in other cases, it may not be adequate. The report must clearly and accurately set forth the appraisal in a manner that will not be misleading and must contain sufficient information to enable intended users to understand the report properly.

The purpose of reporting requirements related to client and intended user identification is to: (1) ensure that the client and any other intended users can recognize their relationship to the assignment and report; and (2) ensure that unintended users will not be misled by notifying them that they are neither the client nor an intended user.

STATEMENT 9, *Identification of Intended Use and Intended Users*, provides extensive information on this topic in addition to several examples of statements that may be appropriate for inclusion in a report, such as the following:

This report is intended for use only by (identify the client) and (identify any other intended users by name or type). Use of this report by others is not intended by the appraiser.

Appraisal Update With No Change In Value

Q: I was recently contacted by a client for whom I had previously completed an appraisal. The client asked if I could simply tell them that there have been no changes in the market since the time of my appraisal, and that the value of the property remains the same. Am I permitted to do this under USPAP?

A: Yes. However, it must also be understood that an appraiser making a determination that the value of a property has not changed is performing an appraisal as defined in USPAP. The Comment to the definition of “Appraisal” states:

An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value) [Emphasis added.]

In addition, the appraiser is obligated to comply with the reporting requirements of USPAP. The request from the client should be treated as a new assignment, which could be completed in accordance with Advisory Opinion 3, *Update of a Prior Appraisal*.

USPAP Q & A**Electronic Report Delivery**

Q: I am an appraiser who has been asked by my client to submit my appraisal reports to them electronically. Assuming that I have satisfied the reporting obligations in the creation of the report, what are my obligations in the use of electronic delivery systems?

A: USPAP does not specifically address this issue, but there are general ethical obligations that are relevant. The Conduct section of the ETHICS RULE states, in part:

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report...

Communication in this instance means transmission of the report, which can occur through such mechanisms as U.S. mail, private courier service, fax, e-mail, or web portal. The appraiser's obligation is to not transmit a misleading or fraudulent report.

In the transmission of electronic reports, the appraiser's obligation is to ensure that the report that is transmitted is not misleading or fraudulent. Therefore, the appraiser needs to be familiar with the electronic report created by the software used in the assignment. The appraiser must have a sufficient understanding of the report generating software used in an assignment to avoid the communication of misleading reports. In order to comply with USPAP, the electronic report that will be sent to the client must be examined by the appraiser prior to transmission to ensure that it is not misleading or fraudulent.

An appraiser cannot control what a client or intended user does with his or her appraisal report. USPAP establishes requirements only for appraisers, not clients, intended users, or others. Once an appraisal report has been transmitted to the client, USPAP places no further responsibility on the appraiser for the client's use of that report.

Is it Permissible to Use MLS Photos for Active Listings?

Q: I use a pre-printed appraisal report form that contains a statement saying I personally inspected the exterior of the comparable sales, but it does not address active listings. One of my clients now requires two additional active listing comparable properties to be included with every appraisal report. However, the client told me not to inspect the exterior of these active listings and to just use the MLS photos. Am I compliant with USPAP if I do not physically inspect the exterior of these properties and only use the MLS photos?

A: Yes, because USPAP does not require physical inspections or photographs. However, both are often required by clients. If an inspection of the active listing comparables is not required for credible assignment results, and it is not contrary to assignment conditions or specific statements in the report, then using an MLS photo and not performing an exterior inspection would be acceptable.

Ed. Note: USPAP Q & A are reprinted through the courtesy of The Appraisal Foundation. The Q & A are published as guidance for users of USPAP and to illustrate how USPAP applies in specific situations. They are selected for the Newsletter based on questions being raised with staff. See www.appraisalfoundation.org for a complete set of USPAP Q & A.

USPAP Q & A**"Comp Check" Assignments**

Q: I'm a residential appraiser and have been asked to perform a "comp check" (or "pre-comp") assignment, where a client wants to get an idea of the value of a home prior to proceeding with a mortgage financing transaction. Does USPAP allow me to perform this type of assignment?

A: Yes. As stated in FAQ #130 in the 2008-09 edition of the USPAP document, these types of assignments are allowed under USPAP. To understand the USPAP requirements, it is important to identify exactly what the appraiser is being asked to do. If the appraiser is asked to "provide comps," that would typically mean the appraiser would be exercising his or her own judgment to determine which sales are most "comparable" to the subject property. The appraiser may choose to include only those sales that he or she deems are most similar to the subject in size, location, quality, etc., which could mean that certain sales may be omitted. In this case, the resulting data would have been "filtered" by the appraiser's judgment, which would have the net effect of providing a range of value to the client. This range of value is defined as an appraisal under USPAP; therefore, the appraiser would be obligated to comply with STANDARDS 1 and 2.

But as FAQ #130 also states, "comp check" assignments should be contrasted to requests for an appraiser to simply provide data. For example, an appraiser asked by a client to provide "sales data of all homes located within a one mile radius" of a specific address could comply with the client's request without complying with STANDARDS 1 and 2, because the appraiser would just be providing sales data pursuant to the client's defined parameters. In this example, the appraiser must be careful not to communicate any opinions or conclusions regarding the data provided.

Is it Permissible to Use MLS Photos for Comp Sales?

Q: I use "standard" pre-printed appraisal report forms that contain a statement saying I personally inspected the exterior of the comparable sales. The assignment conditions require me to comply with this statement and do not permit any alterations. One of my clients now requires two additional sales of comparable properties to be included with every appraisal report. However, the client told me not to inspect the exterior of these additional sale comparables and to just use the MLS photos. May I comply with the client's request?

A: No, because you are being asked to not inspect the comparable sales when the form states that you have. You must either inspect the sales or change your report to indicate you did not inspect the sales.

Can an Appraiser Disclose the Identity of Past Clients in an Appraisal Report?

Q: I have a client that requires my résumé to be included with each appraisal report I perform for them. Does USPAP permit me to identify past clients in my résumé, since it will be included in the appraisal report?

A: There are no prohibitions in USPAP against identifying an appraiser's past clients. An exception might exist if the client told the appraiser not to disclose their identity.

DISCIPLINARY ACTIONS**Order 08-021, Sheri L. Lovin, 90364TRA, Oklahoma City, Consent Order.**

Agreed findings of fact. Respondent hired another trainee to assist her. Instructed the assistant to inspect, research and compile appraisals; and to make adjustments in order to obtain value requested by client.

Agreed Conclusions of law. Violation of 59 O.S. § 858-723 A 5, 7, 8, 10 & 13; § 858-723 A 6 thru violation of § 858-719 and the Conduct Section, Ethics Rule, Standard 1 and SR 1-1, 1-2, 1-3, 1-4, 1-6, Standard 2 and SR 2-1 and 2-2, USPAP.

Agreed Order. \$500 administrative fine, 12 month suspension, 15 hours corrective education.

Order 08-022, Gordon A. Cook, 12474CRA, Oklahoma City.

Findings of fact. (See Order 08-023, below.) Respondent signed, as supervisory appraiser, a report for a trainee appraiser for whom he wasn't supervisor. Respondent not qualified to serve as supervisor under the rules (Order 06-014). By signing certification page, assumed ultimate responsibility for content of report.

Conclusions of law. Violation of 59 O.S. § 858-723 A 6 thru violation of the OAC 600:10-1-16(a), (e)(1), (e)(3), and (g).

Order. 6 month suspension, permanently enjoined from supervisory relationships, 38 hours corrective education, payment of cost of prosecution in the amount of \$4,277.

Order 08-023, Keri B. Sloan, 90669TRA, (SLA 2007026832, Missouri) Consent Order.

Agreed findings of fact. (See Order 08-022, above.) Respondent signed, as appraiser, a report containing many errors of omission and commission. Described bathroom as completely updated when it was not, described property as average condition though exterior badly needed paint, carport trim never painted and water damaged, outside paneling of enclosed patio water damaged. Selected inappropriate comps superior to subject and failing to describe their enhanced condition and amenities. Gave property inflated value opinion.

Agreed Conclusions of law. Violation of 59 O.S. § 858-723 C 5, 7, and 8; § 858-723 C 13 by violation of § 858-732 A 1; § 858-723 C 6 by violation of Conduct Section, Ethics Rule; Standard 1, SR 1-1(a), 1-1(b), 1-1(c), 1-2(e)(1), 1-3(b), 1-4(a), Standard 2, SR 2-1(a), and 2-2(b)(iii); and § 858-723 C 9 by violation of OAC 600:10-1-16(a).

Agreed Order. 45 hours corrective education within 90 days.

Order 08-024, Daniel J. Corff 90848TRA and Johnny W. Corff 12009CRA.

Findings of fact. Gave property inflated value opinion, was misleading and contained inaccurate information. Failed to report mobile home on property; misled by stating that the home was recently completed new construction. Ignored more suitable comps, used comps that were not comparable, and made inappropriate and misleading adjustments.

Conclusions of law. Violation of 59 O.S. § 858-723 A 7, 8 and 9; § 858-723 A 13 by violation of § 858-732 A 1; § 858-723 A 6 by violation of Conduct Section, Ethics Rule; Competency Rule; Scope of Work Rule; Standard 1 and SR 1-1, 1-2, 1-3, 1-4, 1-5, 1-6; Standard 2 and SR 2-1, and 2-2.

Order. As to Daniel J. Corff: Obtain new supervisor, supervisor to inspect all properties over \$150K for 2 years; submit log of all reports monthly and submit workfiles to Board office as requested for 2 years; complete 120 hours of corrective education from Core Curriculum within 1 year.

DISCIPLINARY ACTIONS (Cont'd)**Order 08-024, Cont'd from column 1.**

Order. As to Johnny W. Corff: Prohibited from supervising trainee appraisers for five years; complete 120 hours of corrective education from Core Curriculum within 1 year.

Order 08-026, Donald Todd Yeager 10838CRA, Overbrook.

Findings of Fact. Respondent was charged in US District Court in MN with violations of 18 USC § 1343 and 1346, and pled guilty in the matter. Facts included: devised and intended to devise a scheme to defraud by means of depriving mortgage lending companies of the intangible right to his honest services as an appraiser, performed free of fraud, dishonesty, conflict of interest and self-enrichment, and caused the transmission of an interstate wire communication for the purpose of executing his scheme.

Conclusions of Law. Violations of 59 O.S. §§ 858-723A5 & 10; violation of 59 O.S. § 858-723C4.

Order. Revoked without the right to reapply.

NOTE: Yeager was sentenced to 15 months in federal prison, followed by 3 years supervised release, and was ordered to pay restitution. Yeager's credential in the State of Minnesota was revoked by the Minnesota Department of Commerce.

Order 08-027, Sheri L. Lovin, 90364TRA, Oklahoma City.

Findings of Fact. Entered into consent order, Order 08-021 agreeing to take corrective education. Failed to provide certificate of completion as required. As result of failure to pay annual fees, was suspended until 5/09.

Conclusions of Law: Violation of 59 O.S. § 858-723C and OAC 600:15-1-18 by violation of Board order.

Order. Suspension extended until appearance before Board.

Order 08-028, Don M. Yeager, 10378CGA, Ardmore.

Findings of Fact. Performed appraisal for a taking to estimate the decreased as-is fair market value. Fails to state type of report. Estimated value of \$31,500. Subject is part of Lot 1, Lots 1 and 2 sold four months earlier for \$30,000. Other findings related to land value and adjustments, and a mobile home.

Conclusions of Law: Violation of SR 2-2.

Order. Public Reprimand, 15-Hour National USPAP Course within one year.

Order 08-029, Mark D. Bruner, 11852CRA, Broken Arrow.

Agreed Findings of Fact. Went outside of neighborhood for two comps from superior neighborhood, provided no reasons or justification. Failed to make appropriate adjustments. Reported subject as average construction and functionality, yet valued subject well above average sales price for neighborhood. Cost approach was independently verifiable. Errors freely acknowledged.

Agreed Conclusions of Law. Violation of 59 O.S. § 858-723 C 7, 8, and 9. Violation of 59 O.S. § 858-723 C 6 by violation of Standard 1 and SR 1-1(b), 1-1(c) and 1-2(e)(1); and Standard 2 and SR 2-1(a) and 2-2(b)(iii).

Agreed Order. Within 90 days, completion of 15 hours corrective education. Within 90 days, payment of administrative fine in the amount of \$500. Within 90 days, payment of legal costs in the amount of \$500. If fails to comply, immediate suspension, reported to national registry, and issue Notice to Appear and Order to Show Cause as to why should not be further disciplined.

STATE OF OKLAHOMA

Real Estate Appraiser Board

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HAVE YOU MOVED?

**YOU ARE REQUIRED BY LAW
TO NOTIFY THE REAB IN
WRITING WITHIN 10 DAYS OF
CHANGING YOUR ADDRESS.**