



Illinois Real Estate Appraisal Board

Robert C. Gorman
Chairman

David Dubois
Vice Chairman

March 15, 2009

On March 10, 2009, the Illinois Real Estate Appraisal Board adopted five findings. These findings represent the Board's interpretation of USPAP and Illinois Law. Individuals who have attended Board meetings over the past six months will see these findings as the result of various Board discussions. The findings are attached.

These findings will be followed up with FAQ's on how to implement them – in particular, how to deal with incorporating these requirements into form reports.

Over the next several months, the Board will be discussing these findings at our monthly meetings and also intends to discuss them at the ICAP meetings this summer. The Board intends to fully implement the findings on September 1, 2009.

The Board has every intention of continuing the issuance of findings as the changing appraisal market continues.



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FINDING ONE -- CLIENT AND INTENDED USER

USPAP Standards rule 2-2 (a) and (b) require the appraiser, in self-contained and summary appraisal reports, at a minimum to state the identity of the client and any intended users, by name or type.

With the growing influence of Appraisal Management Companies (AMC's) acting as agents, it has become clouded as to how to deal with this issue within an appraisal report. Typically, an AMC will order an appraisal on behalf of one of their clients. The question then becomes, who is the client.

USPAP defines the client as: **“the party or parties who engage an appraiser (by employment or contract) in a specific assignment.”**

The Board has concluded the Appraisal Management Company is the party engaging the appraiser and is therefore the client.

Since the Appraisal Management Company (the client), at time of assignment, identifies another party by name as a user of the appraisal report (an intended user), both the client and the intended user must be identified in the report.

Suggested disclosure of client/intended user relationship (“ABC Inc.” is the AMC = client; “XYZ Bank” is identified by the client to the appraiser as an additional Intended User):

Client: “ABC Incorporated”
Additional Intended User: “XYZ Bank”



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FINDING TWO -- THE ISSUE OF AN AGENT'S AUTHORITY

Only by knowing the relationship between a financial institution and its authorized agent can an appraiser know how to develop scope of work and the level of detail required in the appraisal assignment.

To be able to determine the appropriate scope of work and level of detail required, for the purposes of developing and reporting a real property appraisal, the appraiser must understand both the needs of the client, who may be acting as the authorized agent for an intended user, **and** the needs of the intended user.

The Board has determined that Appraisal Management Companies, when acting as an authorized agent for a financial institution, (see Board finding on Client and Intended User), is the client when they engage the appraiser.

The federal financial regulatory system has never defined the relationship between a financial institution and its agent. The Appraisal Licensing Board's position is: an authorized agent is one approved by the Board of Directors of the financial institution and has a specified level of authority relating to the appraisal process. The Interagency Guidelines state:

**Office of the Comptroller of the Currency
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of Thrift Supervision
National Credit Union Administration**

INDEPENDENT APPRAISAL AND EVALUATION FUNCTIONS

October 27, 2003

...An institution's **board of directors** is responsible for reviewing and **adopting policies and procedures** that establish and maintain an effective, independent real estate appraisal and evaluation program (program) for all of its lending functions. The real estate lending functions include commercial real estate mortgage departments, capital market groups, and asset securitization and sales units. These independence concerns include the risk that improperly prepared appraisals may undermine the integrity of credit underwriting processes. More broadly, an

institution's lending functions should not have undue influence that might compromise the program's independence...

Appraisal assignments come from many types of clients – some of them are clients that are acting as agents for others – the others being intended users of the appraisal. It is important for the appraiser to understand the relationship of the client and the intended user so as to provide an appraisal that meets both of their needs.

Some authorized agents have a very restricted relationship with financial institutions. Their relationship may be only to find a qualified appraiser in a certain location, or be more complex when acting as a client who engages the appraiser in a specific assignment.

Some of the possible responsibilities of an agent are:

- Providing the intended user with a recommendation for a qualified appraiser based upon geographic location.
- Obtains bids for appraisal assignment – agent's client chooses the appraiser.
- Obtaining bids and awarding contracts – but appraisal is delivered directly to the intended user.
- Obtaining bids, awarding contracts, reviewing appraisals and forwarding the appraisal report to the intended user.
- Obtaining bids, awarding contracts, reviewing appraisals, requiring changes to the appraisal and forwards the appraisal to the intended user.
- Obtaining bids, awarding contracts, reviewing appraisals, requiring changes to the appraisal, summarizes (or otherwise alters the original the appraisal) and forwards the summary or altered appraisal on to the intended user.

The first issue to be addressed within the Scope of Work Rule of USPAP is identification of the appraisal problem to be solved. USPAP states developing a Scope of Work is the appraiser's responsibility. It goes on to state, "Communication with the client is required to establish **most** of the information necessary for problem identification."

The Board finds that it is incumbent upon the appraiser to ascertain the relationship between the agent and the financial institution. We suggest the following options:

Option 1: Obtain, from the agent, a copy of their agreement with the financial institution. This agreement should set out the responsibilities and authority of the agent.

Option 2: Obtain from the agent a letter wherein the agent sets forth their level of responsibility and authority.

If the agent, acting as the client, cannot provide the appraiser with documentation identifying them as a duly authorized agent for the financial institution, or does not have the knowledge to assist the appraiser in developing the scope of work, the appraiser must be allowed to interact with the financial institution, or consider declining the assignment.

If the agent, acting as the client, cannot provide the appraiser with documentation identifying them as a duly authorized agent for the financial institution, but does have the

knowledge to assist in developing the scope of work, a statement must be included within the appraisal indicating that the report may not comply with the Interagency Appraisal and Evaluation Guidelines, Adopted October 27, 1994 by the OCC, FRB, FDIC, and OTC.

Suggested statement: **Documentation was not provided to determine if a regulated financial institution or an agent of a regulated financial institution ordered this appraisal report.**

Failure to include this statement could result in a misleading appraisal.



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FINDING THREE -- DISCLOSING APPRAISAL FEES WITHIN THE REPORT

Whereas; it has been found that many Appraisal Management Companies, in their role in the solicitation of appraisers to perform appraisals, retain a portion of the appraisal fee, the Board finds that allowing Appraisal Management Companies to retain part of the appraisal fee is “payment” to obtain an assignment.

Often the portion retained by the AMC is not disclosed to the client, borrower, or other intended users relying on the appraisal report.

Payment to obtain an assignment without disclosure is in violation of the Uniform Standards of Professional Practice – in particular the Management section of the Ethics Rule, which states....

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 and in any transmittal letter in which the conclusions are stated. In groups or organizations engaged in appraisal practice, intra company payments to employees for business development are not considered unethical. **Competency, rather than financial incentives, should be the primary basis for awarding an assignment.**

We therefore find that appraisers must **prominently** display the amount of the appraisal fee paid to them within the report when an Appraisal Management Company orders the report. The portion of the appraisal fee actually received by the appraiser must be stated in the certification and in any transmittal letter in which the conclusions are stated.



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FINDING FOUR -- UNLICENSED REVIEW APPRAISERS

This finding only applies to Federally Related Transactions as defined within the Illinois Real Estate Appraiser Licensing Act of 2002.

Whereas it has been found that individuals not licensed in Illinois are performing review appraisals of property located within Illinois and that those reviews include the review appraiser's opinion of value, the Board finds that to be a violation of State Law. The act states:

Sec. 5-5. Necessity of license; use of title; exemptions.

(a) Beginning July 1, 2002, it is unlawful for a person to act or assume to act as a real estate appraiser, to engage in the business of real estate appraisal, to develop a real estate appraisal, to practice as a real estate appraiser, or to advertise or hold himself or herself out to be a real estate appraiser in connection with a federally related transaction without a real estate appraiser license issued under this Act. A person who violates this subsection is guilty of a Class A misdemeanor.

Sec. 15-5. Unlicensed practice; civil penalty; injunctive relief.

(d) Practicing as an appraiser without holding a valid license as required under this Act is declared to be adverse to the public welfare, to constitute a public nuisance, and to cause irreparable harm to the public welfare...

Unlicensed persons performing review appraisals, which include the reviewer's opinion of value, **whether it is his or her own opinion or a concurrence with the original appraiser's value**, shall be turned over to the Attorney General for prosecution (out of state offenders) or to the appropriate State's Attorney (in-state offenders).



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FINDING FIVE -- DELIVERY OF APPRAISAL

The Scope of Work Rule states under Disclosure Obligations – “The report must contain sufficient information to allow intended users to understand the scope of work performed.”

The Board is concerned that some AMC’s and /or Internet delivery portals do not provide “true copies” of delivered appraisal reports to their clients or other intended users. This can result in clients/intended users receiving non-credible or even misleading reports. A “true copy” is an exact duplicate of the document as written.

The Board’s position is that appraisers may not be complicit in facilitating the delivery of anything less than a true copy of the appraisal report to the client, an agent of the client or a designated Internet delivery portal.

While the Board recognizes appraisers have no control over what happens to their reports after they are delivered, it is unacceptable practice to deliver a report in a manner where the appraiser knows, or should know, a true copy of the report will not be delivered to all the intended users.