

MICHIGAN APPRAISER UPDATE

A Newsletter of the Board of Real Estate Appraisers

Spring 2002

FROM THE BOARD

E. Roger Everett, Chairperson
Michigan Board of Real Estate Appraisers

Client pressure on appraisers is a topic that has received much attention in the last several months. Many licensed appraisers are aware of various articles and a recent petition dealing with the issue that was circulated on the web. The Michigan Real Estate Appraisal Board is very aware and concerned about this pressure and its potential for resulting in violations of both Michigan Law and USPAP.

Since the single largest source of appraisal requests come directly or indirectly from the lending industry, it is not surprising that there is a cry for help from appraisers who are subjected to either blatant or subtle pressures from lender clients or others related, directly or indirectly, to the financing transaction. These pressures take many forms varying from unrealistic time constraints for the completion of an assignment to more serious requirements that an appraiser overlook or ignore certain property characteristics. Obviously there are those extreme measures when an appraiser is required to reach a predetermined value conclusion that will accommodate the loan transaction.

While the Appraisal Board is acutely aware of the problems presented by these pressures on appraisers, there is nothing in Michigan's licensing law that provides assistance in this area. The purpose of licensing was to protect the public by assuring that appraisers have at least a minimum level of experience, education and competence and to provide for penalties for those who violated the standards contained in the law. However, there have been moves by professional organizations and some legislatures to provide relief in this area. Recently, a bill was introduced in Congress that contained language prohibiting appraiser coercion in connection with conforming loans. There are sources that should be notified of any attempted pressure or coercion. [See related box: pages 2-3] The specifics of each situation should be documented and sent to these agencies or to the Department of Consumer & Industry

Services so they can be forwarded to the appropriate agency. Both the Appraisal Board and the Department encourage those with first hand knowledge to share that information.

Real estate appraisers are often placed in a unique situation. They are expected, in fact required, to provide an objective, unbiased opinion of value, based on factual data. At the same time, the client is often motivated in an entirely different way. Take for example a divorce settlement or a condemnation case. Often the client is only interested in the highest figure obtainable. To a great extent this is also true for real estate financing transactions. Very simply, the one with the most to gain or lose by the amount of the appraisal is the client.

The good news is that there seem to have been very few complaints and violations as a direct result of appraisers succumbing to client pressures. However, we have now developed a rather substantial volume of violations, most of which have been resolved at the compliance meeting level and only a very few have gone through the administrative hearing process. While there are a variety of reasons for the violations, they tend to fall into two large categories. Those are: violations of the specific requirements of Michigan law, and violations falling within USPAP.

The majority of violations related to Michigan law have been related to the work of Real Estate Valuation Specialists or Limited Appraisers who are associated with Licensed Appraisers. These violations usually involve the inspection process and/or the signing of residential appraisal reports. We strongly urge all Licensed Appraisers to be sure they are familiar with the current law and rules about supervision and verification of appraisal report findings. If there is any doubt, seek clarification from the Department.

The violations involving USPAP vary, but many have included the following:

- Incorrect measurements
- Improper selection of comparable data
- Inaccurate or improper adjustments in direct sales comparison analysis

- Incorrect calculation and/or theory relative to the development of income capitalization approaches
- Misunderstandings relative to the difference between self contained, summary and restricted reports and a complete, versus a limited report
- Factual misrepresentations

An example of the type of violations we find of USPAP standards is illustrated by the following findings in a recent case involving a single-family residential assignment. The appraiser selected comparable sales from outside the neighborhood in which the subject property was located. In addition, these comparables had substantially different physical and design characteristics. The distance the comparables were actually located from the subject property was substantially understated. These factors led to the violation because there were an adequate number of sales of similar properties within the neighborhood. The improper selection of comparable sales, whether due to failure to perform adequate research, intent to reach a predetermined conclusion, or lack of knowledge by the appraiser is unknown. However, the result was a report that overstated the property value and was in violation of USPAP as well as Michigan law.

What to Do When the Pressure's On

Bill Garber

*Director of Government Affairs
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2001 has seen a great deal of attention focused on the issue of client pressure, or the ability of a lender, broker or realty agent to pressure an appraiser to appraise a property at a predetermined value. Major newspapers and periodicals have written numerous exposes on the issue and the topic is now becoming one that is generally understood by the public at large.

Appraisers have become increasingly concerned about this client and third party pressure, so much so that in January the Appraisal Institute requested Congress take a look into the phenomenon. Through the course of these activities some general conclusions have been reached about the client pressure issue:

- 1) Client pressure is typically a problem experienced by residential real estate appraisers, although commercial appraisers have reported some cases.
- 2) A client has the right to communicate with the appraiser. However, there is a line that if crossed by the client turns the communication illegal, unethical or fraudulent.

- 3) Communication between a client and an appraiser should be encouraged. However, blackballing, ostracism and defamation of an appraiser who fails to meet a predetermined value of a client should be prohibited.
- 4) It is the appraiser's responsibility to report client pressure to the appropriate agency (see sidebar) when it occurs.
- 5) Government agencies have reporting mechanisms to accept complaints against clients performing client pressure.
- 6) When an appraiser reports an instance of client pressure, it must be in writing and the parties must be named with the circumstances clearly explained.

But, because of the nature of the relationship between clients and appraisers there will always be some level of influence and resistance exerted by all parties involved. Brokers might ask an appraiser if a certain comparable sale was used in their appraisal report, or a loan officer might ask if too much of an adjustment was applied by the appraiser. These are legitimate questions to ask and part of a dialogue that should occur between an appraiser and a client. However, the inquiries cross the line when a predetermined value is required of an appraiser or when future work for the appraiser is contingent upon this predetermined value being met.

Where to Call

Each of the five federal financial regulatory agencies has a division established to accept complaints on cases dealing with client pressure.

- The Office of the Comptroller of the Currency regulates national banks;
- The Office of Thrift Supervision regulates federal savings and loans and federally chartered savings banks;
- The Federal Reserve Board regulates state banks that are members of the Federal Reserve System;
- The Federal Deposit Insurance Corporation regulates federally insured state banks that are not members of the Federal Reserve System; and
- The National Credit Union Administration regulates federal credit unions.

To determine which regulator to report the instance of client pressure to, use the Federal Financial Institutions Examinations Council National Information Center Web site (www.ffiec.gov/nic) to search for the lending institution by name, state, city or type of lending institution. The site will list which regulator has jurisdictional oversight.

DISCIPLINARY ACTIONS

Real Estate Appraisers

A Brief Commentary

Leann G. Britton, Senior Deputy Comptroller
Bank Supervision--Operations
Comptroller of the Currency
Independence Square
250 E Street, S.W.
Washington, D.C. 20219

Scott M. Albinson, Managing Director
Office of Thrift Supervision
1700 G Street, N.W. 5th Floor
Washington, D.C. 20552

Richard Spillenkothen, Director
Banking Supervision and Regulation Division
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Michael J. Zamorski, Director
Division of Supervision
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Marcia Sarrazin, Director
Supervision Division
Office of Examination and Insurance
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314
eimail@ncua.gov
Fax: 703-518-6666

In addition, if a case of client pressure involves the Federal Housing Administration or the Veterans Administration, both have offices that will accept client pressure complaints. They can be contacted at the following addresses:

Phillip Murray, Director
Lender Activities and Program Compliance
Office of Single Family Housing
Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410
Phillip_a._Murray@hud.gov
Fax: 202-708-9868

Rosalind Geller, Director
Loan Policy and Evaluation
Loan Guarantee Service
Department of Veteran's Affairs
810 Vermont Avenue, N.W. (262 B)
Washington, D.C. 20420

In Michigan, complaints may be filed with the Department of Consumer & Industry Services, Office of Financial and Insurance Services, Division of Financial Institutions. P. O. Box 30224, Lansing MI 48909.

Toll-free telephone: 1-877/ 999-6442 for information.

A review of disciplinary sanctions imposed by the Board of Real Estate Appraisers over the past several years shows a noticeable increase in violations of Michigan's real estate appraiser regulations as well as failure to comply with the ***Uniform Standards of Professional Appraisal Practice***. Illustrating the trend, the Board took action against 4 or 5 licensees each year from 1994 through 1998, while 1999 showed 10 licensees being disciplined for a variety of infractions. In the year 2000, there were 20 separate actions taken by the Board. In 2001, that number reached 25 disciplinary cases.

Many of the violations seem to indicate a failure to comply with the requirements of USPAP, which sets national standards for appraisal practice. In this type of violation, the board will frequently order additional education which focuses on course work in USPAP standards and appraising methodology, along with a reprimand and fine. More serious violations, from practicing without a current license, to fraud, deceit, or incompetence resulting in serious harm to clients, may result in suspension or revocation of a license, an order for restitution of client losses, and a fine.

Common problems which are referred to the Board for sanctions are: failure to employ recognized methods and techniques to obtain the relevant information which is necessary to accurately evaluate a given property; failure to properly analyze the available data to reach a conclusion; basing an appraisal on inadequate facts or circumstances; performing appraisals for which the appraiser was not licensed; or a supervisor signing an appraisal report prepared by a limited license appraiser without personally inspecting the property to verify the accuracy of the conclusions.

The Bureau of Commercial Services *Disciplinary Action Reports*, which include summaries of disciplinary actions taken by the Board of Real Estate Appraisers, are available on the Internet through the Michigan.gov web pages. At the Michigan.gov Home Page, select the Department of Consumer & Industry Services. Go to Agencies, Bureau of Commercial Services, Enforcement Division, Disciplinary Action Reports.

You can download any report with Adobe Reader software. Identify the month/year, and license category by using the search procedure shown on the screen. If you do not have access to the Internet, you may contact the Department at 517/ 241-9166 to request a copy of any *Disciplinary Action Report*. Identify the year and month you need. Board minutes also show current

actions. All these materials are public information, and are routinely available by mail or electronic means.

DEPARTMENT COMPLAINT PROCEDURES

Complaints filed against licensed appraisers are reviewed and investigated by the Department, and may be settled at a compliance conference with agency staff (a board member may also attend) where the licensee acknowledges the violation and a settlement is agreed upon. If no agreement is reached, the case may proceed to a formal administrative hearing where the licensee has an opportunity to contest the case before an administrative hearing officer, and may be represented by counsel.

After a violation of the Appraiser licensing law or rules is confirmed, and either a compliance conference or formal administrative hearing has been completed, a summary of the stipulated agreement, or the Hearing Report issued by the administrative hearing officer is then referred to the Board. After review of the documents, the Board will then determine an appropriate penalty for the violation.

Penalties may include fines up to \$10,000, suspension of a license, probation, or temporary limitations on the license until certain requirements of the board are satisfied. The fine amounts ranged from \$300 to \$2000 during the 2000 year.

A detailed chart which shows a summary of recent violations filed against Real Estate Appraiser licensees with penalties imposed by the Board, is available from the board office at 517/241-9261.

SPECIAL NOTICE

Changes to Michigan Appraiser License Examinations

Effective April 2, 2001, the State of Michigan renewed its contract with Applied Measurement Professionals of Lenexa, Kansas. The new contract provides for several changes to the Michigan examinations.

- The examinations are now computer-based, instead of paper and pencil.
- The examinations are given at 6 permanent sites: Troy, Canton, Lansing, Gaylord, Marquette, and Grand Rapids, up to five days a week, instead of once a week only.
- Information, topic outlines, and the Candidate Handbook for the Real Estate Appraisers Exam can

be obtained from the AMP website at www.goAMP.com. Examinations for all license types now include 20 questions pertaining to Michigan law and rules.

The Appraisal Standards Board Adopts Changes to National Appraisal Standards

Washington, DC—The Appraisal Standards Board (ASB) of The Appraisal Foundation convened a public meeting on June 12, 2001, in Denver, Colorado, during which the Board heard public comment on its most recent exposure draft issued on May 1, 2001. The May 1 Exposure Draft illustrated proposed modifications to the current edition of the *Uniform Standards of Professional Appraisal Practice* (USPAP). USPAP, the generally accepted standards of the appraisal profession in the United States, is authorized by the US Congress as the source of standards for real property appraisers.

Following the public comment and further deliberation at the June 12 meeting, the Board voted to adopt the proposed changes to the 2001 edition of USPAP. Most of the changes, with the exception of a few items as noted below, became effective January 1, 2002, and are being published in the annual edition of the document.

Due to recent federal regulatory activity, most notably the Federal Trade Commission's Final Rule on Privacy of Consumer Financial Information, 16 CFR Part 313, that took effect on July 1, 2001, the ASB voted to make certain sections of the newly adopted material in USPAP also effective July 1, 2001.

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

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

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

- A DEFINITION of "Confidential Information" was clarified as follows:
(Information) " Identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or classified as confidential or private by applicable law or regulation."

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

In addition, the ASB made the following changes to USPAP effective January 1, 2002:

- A DEFINITION for “Jurisdictional Exception” was added.
- The DEFINITION of “Supplemental Standards” was edited.
- The SUPPLEMENTAL STANDARDS RULE was edited.
- STANDARD 6 on Mass Appraisal was revised.
- STATEMENT NO 8 (SMT-8), *Electronic Transmission of Reports* was retired.

Individuals who are subject to USPAP, including state licensed/certified real estate appraisers and appraisers belonging to trade organizations that have adopted USPAP, are required to conform to these changes in accordance with the above posted effective dates.

The ASB will issue a formal Summary of Actions regarding these changes after the fall meeting of the ASB, September 25, 2001 in Arlington, Virginia. For more information on upcoming meetings and activities of the ASB, please contact the Board Staff of The Appraisal Foundation at 202-624-3052.

USPAP Changes Every Year!!

USPAP is a changing publication, and is updated annually to clarify the changing requirements for the industry. The Appraisal Foundation publishes and copyrights this document, which sets the national standards for all states. (See the reference to the AQB website in this issue.) Every licensee is required to follow these standards, maintain knowledge of their provisions by attending USPAP Update Courses regularly, or through self-study. Each revision of USPAP contains a summary of any current changes in the front of the publication, and should be reviewed by all licensed appraisers to keep abreast in the field.

FHA REGISTRATION INFORMATION

The Department of Housing and Urban Development, Real Estate Assessment Center, has installed a new dedicated FAX machine for appraisers to submit applications, license renewals and name and address changes to the FHA Register. The new FAX number is (202) 708-6969.

For best results, information should be faxed one time only, unless otherwise requested by HUD. Multiple submissions significantly increase processing time. Appraisers should allow 5 to 7 business days for HUD to process license renewals. They can verify their FHA registration status by accessing the following website: www.hud.gov/lenders1.html. All other contact information remains the same:

U.S. Department of Housing and Urban Development
Real Estate Assessment Center (REAC)
Attn: SASS Team
1280 Maryland Avenue, S.W., Suite 800
Washington, DC 20024

Questions from appraisers should be directed to REAC's Technical Assistance Center (TAC) at (888) 245-4860.

**Appraisers Subject to
New Federal Privacy
Regulations**

The Appraisal Standards Board of the Appraisal Foundation recently published “*A White Paper: Privacy Regulation and the Appraiser*” on the effects of rules and regulations being implemented by the passage of the **Gramm-Leach Bliley Act of 1999**. Subtitle A of Title V of the Act, captioned “Disclosure of Nonpublic Personal Information” limits dissemination of certain “non-public personal information” about customers of financial institutions. Compliance by July 1, 2001 is required. These regulations apply to appraisers as well as other providers of financial services.

Visit the Appraisal Foundation website www.appraisalfoundation.org to view a copy of the White Paper and obtain further explanation of the effect on appraisal practice. Note that these regulations have affected recent changes to USPAP, which also became effective July 1, 2001.

**Check These Websites for Important
Information & Updates**

Board of Appraisers: www.cis.state.mi.us/bcs/appr

- Information about obtaining licensure as a real estate appraiser.
- What the appraiser license categories are and what the categories are authorized to appraise.

- The requirements for licensure and continuing education.
- Applications for licensure (link to Forms and Publications).
- Lists of education providers and the courses approved for prelicensure and continuing education (link to Forms and Publications).
- A "What's New" space to announce recent changes and important information for appraisers to know.
- A place to check license status of an individual by name or permanent I.D. number (license number).
- View the requirements for all other state licensing programs.
- Access the National Registry for a list of appraisers qualified to perform appraisals for federally related transactions.
- Search for state licensed, certified residential and certified general appraisers by county, city, state, or other search criteria.

LICENSE 2000 IMPROVES SERVICE

Real Estate Appraiser license records were part of a pilot project which started in January 2001 to convert all license files in the Bureau of Commercial Services to a new Oracle computer database: LICENSE 2000.

The new computer program provides bureau staff with information at their fingertips to inform callers about the status of pending applications, and answer questions about educational programs, continuing education providers, and current state and federal regulations.

Reports generated from License 2000 are posted regularly to our website, and give updated lists of approved continuing education courses available, and current education sponsors. Eventually, CE credits completed by licensees will be posted on the web site. But until that time, appraisers will need to maintain their own records of continuing education credits completed for the current license cycle.

Reporting of licensees to the National Registry has been simplified, and can be reported to the Appraisal Subcommittee by e-mail. Reports customarily are submitted monthly, but can be done more frequently during renewals. The new data system will enable the Department to provide more efficient service and timely information to licensees and the general public.

Changing Requirements for USPAP Education

In 2000, the Appraiser Qualifications Board (AQB) passed new criteria about the Uniform Standards of Professional Appraisal Practice (USPAP) education. Effective January 1, 2003, the criteria require all licensees to complete the National USPAP course or its equivalent every two years. The first cycle must be completed between January 1, 2003 and December 31, 2005. An Instructor Certification program must also be implemented by education providers by January 1, 2003.

Bureau of Commercial Services:

www.cis.state.mi.us/bcs

- Link to "Verify a License" to find a licensee and disciplinary information, if any, from that page.
- Download copies of the Occupational Code, Articles 1-6 and Article 26, which are applicable to appraiser licensees, and the Administrative Rules for Real Estate Appraisers.
- Use "Verify a License" link to see if your new license has been issued or if your renewal has been processed, and save a phone call to the Board office.
- Check links to other related web sites.

Appraisal Foundation: www.appraisalfoundation.org

- Link to Appraisal Standards Board for changes to the Uniform Standards of Professional Appraisal Practice and how to obtain a current version.
- Find monthly Questions and Answers to commonly asked questions to provide guidance on the interpretation of the Standards.
- Locate appraiser qualification criteria under the Appraiser Qualifications Board. This site also contains information about the AQB's Program to Improve USPAP Education.
- View proposed changes to appraiser qualifications and to USPAP and provide input to the process.

Appraisal Subcommittee: www.asc.gov

For USPAP courses to be acceptable for continuing education, they must be taught by an AQB certified instructor who is a certified real estate appraiser, and they must be AQB approved courses, or be equivalent to courses established by the AQB.

Administrative Rules to adopt these policies for Michigan appraisers will become effective in mid-May, 2002. The new rules will address changes to pre-licensure education and experience requirements as a result of changes to the law in 1999. The rules will also clarify supervision requirements for the newly defined levels of appraiser licenses.

A key item in the new rules is the establishment of approval procedures for the sponsors of Continuing Education who want to offer Distance Learning Programs. This innovation will enable licensed appraisers to take advantage of emerging new technologies for advanced training and upgrading of skills. It will also make meeting continuing education requirements more convenient, especially for those licensees in outlying parts of the state.

Copies of the rules will be posted on the Internet sometime in May, and can be downloaded from the site.

<http://www.cis.state.mi.us/bcs/licdiv>