

When Are Distressed Sales Used in An Appraisal?

A common question posed by both borrowers and loan officers is 'When are distressed sales used in an appraisal?'

USPAP (Uniform Standards of Professional Appraisal Practice*), are the quality control standards used in all real property valuations by licensed and certified appraisers. The Appraisal Standards Board (ASB) of the Appraisal Foundation develops, interprets, and amends USPAP on behalf of appraisers and users of appraisal services. The ASB publishes Q & A's covering many issues, and this particular Q & A comes from the USPAP 2011 Q & A, Page 2.

The full version of the 2011 USPAP Q&A Issue Date June 10, 2011 is attached as an addendum

(From 2011 USPAP Q & A's Page 2)

2011-02: APPRAISAL DEVELOPMENT – SCOPE OF WORK ISSUES

Use of Distress Sales in Real Property Market Value Appraisals

Question:

A client has asked me to disregard any foreclosure, real estate owned (REO), or short sales when performing market value appraisal assignments. Is this an acceptable assignment condition?

Response:

No. USPAP does not specifically address which sales should or should not be considered in an appraisal assignment. However, in real property appraisal assignments, Standards Rule 1-4(a) requires:

When a sales comparison approach is necessary for credible results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

So, the appraiser must determine what data is relevant.

There are many appraisal assignments where, in order to achieve credible results, it is necessary to use "distress" (e.g., REO or Short Sales) properties as comparable sales. However, foreclosure sales, defined by *Black's Law Dictionary* as "the sale of mortgaged property, authorized by a court decree or a power-of-sale clause, to satisfy the debt" are seldom based on market expectations. When there is a glut of distress sales in the marketplace, and those properties are truly comparable to the subject, it would be misleading not to use them as part (or in some cases all) of the basis for a value conclusion.

A client-imposed requirement to disregard data that may be relevant and necessary for credible assignment results would be an unacceptable assignment condition.

*Uniform Standards of Professional Appraisal Practice, commonly referred to by the acronym USPAP, can be considered the quality control standards applicable for real property, personal property, intangibles, and business valuation appraisal analysis and reports in the United States and its territories. USPAP, as it is commonly known, was first developed in the 1980s by a joint committee representing the major U.S. and Canadian appraisal organizations. As a result of the savings and loan crisis, the Appraisal Foundation (TAF) was formed by these same groups, along with support and input from major industry and educational groups, and TAF took over administration of USPAP[1].

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) authorized the Appraisal Subcommittee (ASC), which is made up of representatives of the leading U.S. government agencies and non-governmental organizations empowered to oversee the U.S. mortgage and banking system. The ASC provides oversight to TAF.

TAF carries out its work through two divisions – the Appraisal Standards Board (ASB) and the Appraisal Qualifications Board (AOB). The latter group sets forth minimum qualifications for appraisal licensure, and its work has been adopted by all states and territories. The ASB maintains USPAP, and issues updates in January of even numbered years.

All US states and territories require appraisal licensure for valuation work performed for Federally regulated institutions; however, 35 states and territories of the US require appraisal licensure for all valuation work performed, whether Federally regulated or for other use.

Since 2006, USPAP has been updated in a 2 year cycle, which begins on January 1 of even number years. The current version of USPAP is available at www.appraisalfoundation.org and has an effective date of January 1, 2010.

See Attached Addendum for full version of USPAP Q&A June 10, 2011

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APPRAISAL STANDARDS BOARD

USPAP Q&A

2011 USPAP Q&A

Issue Date: June 10, 2011

The Appraisal Standards Board (ASB) of The Appraisal Foundation develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. The USPAP Q&A is a form of guidance issued by the ASB to respond to questions raised by appraisers, enforcement officials, users of appraisal services and the public to illustrate the applicability of USPAP in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems. The USPAP Q&A may not represent the only possible solution to the issues discussed nor may the advice provided be applied equally to seemingly similar situations. USPAP Q&A does not establish new standards or interpret existing standards. USPAP Q&A is not part of USPAP and is approved by the ASB without public exposure and comment.

2011-01: OTHER SERVICES

Advisory Opinion 13 (AO-13) Guidance

Question:

I have heard that Advisory Opinion 13 (AO-13), *Performing Evaluations of Real Property Collateral to Conform with USPAP*, will not appear in the 2012-13 edition of USPAP. Does that mean that the ASB no longer intends to offer guidance on performing evaluations in conformance with USPAP for regulated institutions?

Response:

No. The advice that appears in AO-13 as it was presented in 2010-11 edition of the USPAP document was provided to assist appraisers in understanding and complying with the *Interagency Appraisal and Evaluation Guidelines* that had been issued on October 27, 1994.

Those guidelines were superseded by revised *Interagency Appraisal and Evaluation Guidelines* issued on December 2, 2010. As a result, the ASB will be working with the Interagency Work Group to update AO-13 to provide meaningful guidance on this more recent edition of the guidelines. The ASB intends to expose proposed revisions to AO-13 as soon as possible, and expects to issue an updated version of AO-13 prior to the effective date of the next edition of USPAP, on January 1, 2014.

2011 USPAP Q&A

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In the interim, appraisers are urged to review the revised guidelines by clicking on the following link to The Appraisal Foundation website:

<https://appraisalfoundation.sharefile.com/d/s9a321e73b1947af9>.

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2011-03: ETHICS RULE - CONDUCT

Does a Request for a “Final Inspection” Require Disclosure of Prior Services?

Question:

If I performed an appraisal that was “subject to” completion of repairs, and subsequently received a request to perform a “final inspection” confirming that the work had been

completed, am I required to disclose that I previously appraised the property even if it is obvious to the client that I've done so?

Response:

A "Final Inspection" is **not** an extension of the original assignment unless it is part of the original agreement for services. A subsequent request would be a *new assignment* and as such requires disclosure in accordance with the Conduct section of the ETHICS RULE. This holds true even if it may be obvious to the client that you've already previously performed an appraisal on the property.

2011-04: ETHICS RULE - CONDUCT

Does Utilizing a Property as a Comparable Sale Require Disclosure of Prior Services?

Question:

If I perform an appraisal and use a property as one of my comparable sales, and later receive a request to appraise the property that was used as a comparable sale, must I disclose I "performed a service" on that property because I used it as a comparable sale?

Response:

No. Using a property as a comparable sale in an appraisal does not constitute "performing a service" regarding that property. Therefore, a subsequent request to appraise the sale comparable would not require disclosure under the Conduct section of the ETHICS RULE.

2011-05: ETHICS RULE - CONDUCT

Adding a "Disclaimer" for Disclosure of Prior Services

Question:

I am involved in many aspects of the real estate industry. As such, I "perform services" on a great number of properties in many different ways. It would be very difficult for me to recall each and every property I've performed services on in a three-year period. Is it permissible to comply with the disclosure requirements by saying something to the effect of, "To the best of my knowledge?"

Response:

Such language does not need to be added, since the certification begins with "I certify that, to the best of my knowledge and belief:"

The Conduct section of the ETHICS RULE recognizes that an appraiser may not always recall performing services on a property *prior to* being engaged in the assignment, which is why the requirement states, in part:

*If known prior to accepting an assignment, **and/or if discovered at any time during the assignment**, an appraiser must disclose to the client...* (Bold added for emphasis)

Appraisers are encouraged to review their record keeping procedures and make any necessary modifications to assist them in promptly recognizing any property for which they provided services within the prior three-year period.

2011-06: APPRAISAL REPORTING – CERTIFICATION AND SIGNATURES **Revising Pre-Printed Certification to Disclose Prior Services**

Question:

I perform residential real estate appraisals using “standard” pre-printed appraisal forms, such as those developed by Fannie Mae. I’ve heard that Fannie Mae does not allow any changes to their certifications, so how can I comply with the USPAP requirement to disclose, in the certification, any prior services I have or have not performed on the property within the prior three years?

Response:

Fannie Mae does **not** prohibit additional certifications to their appraisal forms, as long as those additional certifications do not conflict with or diminish the “standard” certification items appearing on their forms. Therefore, appraisers may create an additional certification to comply with the obligations of the Conduct section of the ETHICS RULE.

2011-07: ETHICS RULE – MANAGEMENT **Appraisal Fee Based on Outcome of Assignment**

Question:

I am aware of some appraisers who perform property tax assessment appeal assignments where their fee is based on a percentage of the tax savings to the property owner. Doesn’t USPAP prohibit appraisers from accepting assignments where the fee is based on a specific outcome?

Response:

Yes. The Management section of the ETHICS RULE states, in part:

An appraiser must not accept an assignment, or have a compensation arrangement for an assignment, that is contingent on any of the following:

- 1. the reporting of a predetermined result (e.g., opinion of value);*
- 2. a direction in assignment results that favors the cause of the client;*
- 3. the amount of a value opinion;*

4. *the attainment of a stipulated result (e.g., that the loan closes, or taxes are reduced); or*
5. *the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose. (Bold added for emphasis)*

However, it is important to remember that USPAP applies to individuals only when they are acting as appraisers. An individual who provides some services as an appraiser may also act in a different role when providing other services. If the individual in this question is not preparing an appraisal or otherwise acting as an appraiser, he or she may work as an advocate in the tax appeal case. The only requirement would be that the individual not misrepresent his or her role.

The USPAP Q&A is posted on The Appraisal Foundation website (www.appraisalfoundation.org). The ASB compiles the USPAP Q&A into the USPAP Frequently Asked Questions (USPAP FAQ) for publication with each edition of USPAP. In addition to incorporating the most recent questions and responses issued by the ASB, the USPAP FAQ is reviewed and updated to ensure that it represents the most recent guidance from the ASB. The USPAP Frequently Asked Questions can be purchased (along with USPAP and USPAP Advisory Opinions) by visiting the "Foundation Store" page on The Appraisal Foundation website (<https://commerce.appraisalfoundation.org>).

For further information regarding USPAP Q&A, please contact:

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