

## Technical Requirements Governing Real Estate Appraisers

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Eras of financial turmoil including the Great Depression and the Savings and Loan scandals of the 1980s have caused real estate appraisal to evolve from an vocation lacking in ethical rules, mandatory reporting guidelines and information disclosure requirements to a profession controlled by both legal rules and trade associations. As a result, real estate appraisers in Michigan must be licensed and comply with regulations. Attorneys work with and retain appraisers regularly as both expert witnesses in litigation and as advisers outside of the courtroom. Real estate appraisers are frequently consulted to assist with divorces, tax appeals, eminent domain proceedings, inverse or regulatory takings, probate matters, and to provide advice when evaluating real estate development opportunities.

This article provides an introduction to some technical issues that lawyers often fail to contemplate when retaining or cross-examining real estate appraisers.

### Michigan Statutorily Defines Four Appraisal Licensing Levels

Michigan has adopted an occupational code governing real estate appraisers. "A person shall not act as or offer to act as an appraiser unless licensed under this article or exempt from licensure under this article."<sup>1</sup> There are no current exemptions from licensure. Therefore, real estate appraisers must obtain a license from the State of Michigan. The Department of Labor and Economic Growth issues licenses based upon four levels identified by statute.

Each of the four levels of licenses issued require unique combinations of education, experience and testing. Furthermore, each licensing level provides authorization to appraise specific types of properties. Therefore, when retaining a real estate appraiser, it is critical to confirm that the appraiser is currently licensed and is authorized to perform an appraisal on the property at issue.

The license levels are: (1) limited real estate appraiser, (2) state licensed real estate appraiser, (3) certified residential real estate appraiser, and (4) certified general real estate appraiser.



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The limited real estate appraiser<sup>2</sup> is an entry-level trainee. At most, a limited real estate appraiser may only co-sign reports. A limited real estate appraiser is subject to direct supervision by a state licensed and/or certified appraiser. The supervisor is required to train and accept responsibility for all appraisal reports prepared by the limited real estate appraiser by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP").

A state licensed real estate appraiser<sup>3</sup> may: (1) appraise properties that are not federally related transactions; (2) appraise one- to four-family residential properties, unless the transaction value is \$1,000,000 or more or if the property is considered complex; (3) appraise non-residential properties for federally related transactions and real estate related financial transactions

so long as the transaction value is less than \$250,000; and (4) provide assistance to a certified residential or certified general real estate appraiser in preparing an appraisal report of a complex residential property or a nonresidential property that is the subject of a federally related transaction; however, the state licensed real estate appraiser shall not sign these reports.

The certified residential real estate appraiser<sup>4</sup> may engage in the same type of appraisals as a state licensed real estate appraiser and may, in addition, appraise complex one- to four-family residential properties with a transaction value greater than \$1,000,000.

Finally, the certified general real estate appraiser<sup>5</sup> may appraise all types of real property.

Obtaining information about licensing requirements and the licensing status of individual appraisers is very simple. Log onto the State of Michigan Web site at [www.michigan.gov](http://www.michigan.gov) and search for "appraisers" in the box on the upper right corner of the page to obtain all necessary links. This service will reveal if the individual is or was licensed, when the license was issued, the level of licensure, any prior disciplinary violations, and pending investigations.

Verifying licensure status prior to retaining or cross-examining a real estate appraiser is critical to assist in evaluating the competency level of the appraisal and confirming that the appraiser can actually perform the necessary task. Double-checking the licensing status of an opposing

expert may also provide valuable ammunition. On rare occasions, the opposing appraisal expert may have a suspended or lapsed license, providing grounds to exclude the testimony. On other occasions, the expert appraiser may have suffered disciplinary proceedings that could serve as a basis of either cross-examination or voir dire at the point that the opposing party seeks to qualify the witness as an expert.

### **Michigan Law Mandates Compliance with the Uniform Standards of Professional Appraisal Practice**

Michigan law requires real estate appraisals to be in writing and comply with USPAP.<sup>6</sup> USPAP is adopted by the private Appraisal Institute and is typically revised annually.<sup>7</sup> USPAP focuses upon ethics and competency requirements.

The ethical rules found in USPAP prohibit appraisers from advocating for another party or issue (as opposed to stating an appraisal position), showing bias, misrepresenting his or her role when providing valuation services that are outside of appraisal practice, and communicating or allowing communication of an assignment in a misleading or fraudulent manner. Appraisers are ethically required to disclose fees, commissions, or things of value connected to the procurement of an assignment in their certification pages, facilitating cross-examination on the topic. This includes finder fees, referral fees, and payments made

to management companies to assist in maintaining directories. Finally, it is unethical for the appraiser to accept an assignment or to have a compensation arrangement that is contingent upon the reporting of a predetermined result, the direction in assignment results that favors the cause of the client, the amount of a value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.

USPAP requires appraisers to maintain the privacy of confidential information. USPAP also requires that appraisers prepare a workfile for each appraisal, appraisal review and appraisal consulting assignment, and that the workfile include at a minimum: (1) the name of the client and the identity, by name or type, of any other intended users; (2) true copies of any written reports; (3) summaries of any oral reports or transcripts of testimony, including the appraiser's signed and dated certification; and (4) all other data, information and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such other documentation (such as office reference libraries). Furthermore, USPAP requires appraisers to retain their workfiles for at least five years after preparation or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period

expires last. It is not necessary that appraisers maintain sole possession of the workfile but he/she either must have custody or make appropriate workfile retention, access and retrieval arrangements with the party having custody. Such is the case when two or more appraisers prepare an appraisal report but from separate offices/locations. Knowing USPAP's record retention requirements and knowing that Michigan law mandates compliance with those requirements is very useful when pursuing discovery from an expert real estate appraiser.

Every appraisal problem requires the appraiser to identify five key components. USPAP's most important competency rule relates to the appraiser's identification of these five critical components.<sup>8</sup>

The appraiser must first identify the client and any other intended users of the appraisers' opinions/ conclusions. The identification of the client and other intended users is necessary to determine the degree of communication that will be required in order to communicate clearly so the client and other intended users can understand the report.

The appraiser must know how the client will use the conclusions contained in the report. The intended use of an appraisal drives the extent of the research that an appraiser will employ. If the intended use is for collateral valuation for a financial institution, the extent of research may not require the appraiser to enter onto the subject property to inspect its physical characteristics. Public records might suffice.

However, if the intended use is for equity determination in a divorce proceeding, then the extent of research might include the appraiser inspecting the interior and exterior of the subject property as well as inspecting the exterior of any other properties used in the appraisal as comparable sales.

The appraiser must identify the type and definition of value that is appropriate as well as the source of the definition. Generally, identifying market value is the purpose of all appraisals. However, appraisals undertaken in different legal contexts require the use of different definitions of market value and these definitions can substantially impact an appraiser's conclusions. For example, in a formal condemnation case, the appraiser must evaluate the "highest price"<sup>9</sup> as opposed to other definitions requiring the appraiser to identify the most likely price.

The appraiser must identify the effective date of the appraisal. People commonly say that the three most important elements in real estate are "location, location, and location." However, timing is equally important. The effective date identifies the context of the market. That date could be retrospective, contemporary or prospective. A retrospective effective date is a context of market conditions that precedes the appraiser's perspective on the problem. A contemporary effective date is one that is contemporaneous with the appraiser's perspective. A prospective effective date is a context of market conditions that is subsequent to the appraiser's perspective on the problem

(one in the future). The timing of the appraisal can substantially impact valuation due to positive or negative sales of adjacent properties or the announcement of new developments in the neighborhood. Often, attorneys fail to consider identifying an effective date that could benefit their clients by allowing the appraiser to consider or disregard particular information.

The appraiser must identify relevant property characteristics. Not all characteristics of a property are relevant. Every property has an infinite number of physical, legal and economic characteristics. The appraiser must identify those characteristics of the subject that are relevant to the assignment. For example, the color of a home might be a relevant property characteristic in some sub-markets while in others it's not a marketable issue.

USPAP governs other areas that require provision of information that may be useful in cross-examination or that may impact an appraiser's credibility if the information is not provided explicitly.

Although not a key variable in identifying an appraisal problem, every assignment will possess parameters of limiting conditions and assumptions. Conditions refer to those parameter boundaries that control the appraisal. This potentially includes hypothetical conditions. One example of a hypothetical condition could be presuming the land possesses a house, as in proposed construction financing problems. Assumptions are those parameters of the assignment that the appraiser presumes to be true and

are not known to be false. This could include assuming that the subject's land does not possess environmental contamination or that the title to the property is free and clear. These assumptions and conditions are identified with the client at the time of assignment and can be amended throughout the appraisal process. However, these assumptions must be identified in the appraisal report, allowing potential cross-examination about the accuracy of the assumptions.

USPAP requires disclosure of other appraisers who assist in preparing the report.<sup>10</sup> The names of individuals providing significant, or material, appraisal assistance who do not sign the certification must be stated in the certification with an appropriate

description of their assistance within the body of the appraisal report itself. The appraiser signing the certification of the appraisal report must indicate who specifically inspected the property that is the subject of the appraisal. If an inspection was not made of the property, then that disclosure must also be made in the certification. Finally, Michigan requires appraisers to maintain a system of books and records in accordance with the Uniform Standards of Professional Appraisal Practice that at a minimum will include all appraisals undertaken by name of client and the address or description of the property appraised. Reviewing these logs during the discovery process could identify reports of similar properties that

could be used for cross-examination if inconsistent positions were taken.

## Conclusion

Knowing relevant technical rules that govern real estate appraisers can prove invaluable in selecting an appropriate appraiser for a particular assignment or in cross-examining an appraiser. The article has addressed some of the most important technical issues. However, a sound knowledge of the Michigan occupational code governing real estate appraisers and USPAP is necessary to properly advise and represent clients that engage the services of real estate appraisers.

1. MCL 339.2607(1).

2. See MCLA 339.2611.

3. See MCLA 339.2613.

4. See MCLA 339.2614.

5. See MCLA 339.2615.

6. MCL 339.2605 requires that "[a]n appraisal shall be in writing and shall do all of the following: (a) Disclose any limitations on the type of analysis, valuation, or opinion. (b) Be independently and impartially prepared

and conform to the uniform standards of professional appraisal practice... (c) Include an opinion of defined value of adequately described real property as of a specific date and be supported by the presentation and analysis of relevant market information; and (d) Indicate on every appraisal report the license number and level of licensure of the appraiser."

7. Copies of the USPAP are available through The Appraisal Foundation either through its toll-free number, 800/805-7857, or at [www.appraisalfoundation.org](http://www.appraisalfoundation.org).

8. USPAP Standard Rule 1-2:  
In developing a real property appraisal an appraiser must:

1. identify the client and other intended users;

2. identify the intended use;

3. identify the type and definition of the value;

4. identify the effective date of the appraiser's opinions and conclusions; and

5. identify characteristics of the property that are relevant to the purpose and intended use of the appraisal.

9. SJI 2d 90.06.

10. USPAP Standard Rule 2-3.

**Stephon B. Bagne** has specialized in representing property owners involved in condemnation proceedings during his entire career. His expertise in representing property owners in condemnation cases is widely recognized. Stephon has represented all types of property owners in a variety of situations including vacant and improved property, partial and total takings, easement and fee acquisitions, involving commercial and residential properties. Stephon has successfully challenged the necessity of takings and negotiated less onerous acquisitions in partial taking matters. He regularly speaks and writes about eminent domain and other real estate law issues for a variety of professional organizations. **Contact him at: [sbagne@clarkhill.com](mailto:sbagne@clarkhill.com) or 313-965-8897**

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