

Working RE

Real Estate Appraisers & Inspectors

Winter 2015, Volume 37

FANNIE MAE WARNING LETTERS ON THE RISE

Adjustments: Your Opinion Isn't Enough
Appraisers, AMCs, and Building Bridges

Taking Success Into My Own Hands

HUD Blacklisting—
Guilty Until Proven Innocent

Understanding USPAP—Part One:
The Preamble

Home Inspectors' CLOSER LOOK

Pricing Your Services—Part 2

Are You Who Your Client Thinks You Are?

Working RE
6760 University Ave. #250
San Diego, CA 92121



Understanding USPAP— The Preamble

By Philip G. Spool, ASA

Editor's Note: This is the first of two articles by Philip G. Spool, ASA on USPAP requirements. This covers the Preamble of USPAP, the next will cover Standards Rules 1 and 2.

If you are a residential appraiser, chances are you prepare your appraisal reports on a Fannie Mae form. If this is the case, then most of the USPAP requirements are "built-in" to the appraisal form. Many appraisers believe that the Fannie Mae or General Purpose (GP) forms must comply with USPAP, when in fact it is the appraiser who must comply with USPAP (Uniform Standards of Professional Appraisal Practice).

To become a state-certified or trainee appraiser, the 15-hour USPAP course and test are required. Most appraisers only concern themselves with the changes to USPAP, which occur every two years, and their continuing education requirements, and don't spend enough time trying to fully understand USPAP. This can result in appraisers not including sufficient documentation in their appraisal reports and having workfiles that are not "USPAP compliant."

Whether you are using a Fannie Mae appraisal form, a General Purpose form or a narrative appraisal report, you must know what additional information is needed within an appraisal form and what you need to add to your appraisal report to be USPAP compliant. If you prepare a narrative appraisal report, then you need to make sure that it covers all USPAP requirements.

What is USPAP?

In essence, USPAP is a set of standards that appraisers must follow in order to maintain a high level of public trust. This is achieved by establishing requirements for appraisers. They are considered a minimum set of standards and are revised every two years by the Appraisal Standards Board of the Appraisal Foundation.

Preamble's Five Sets of Rules

There are five basic rules located in the Preamble section of USPAP. These include the Ethics Rule, Record Keeping Rule, Competency Rule, Scope of Work Rule and Jurisdictional Exception Rule.

The **Ethics Rule** is to promote and preserve the public trust. Within the Ethics Rule are the Conduct, Management and Confidentiality Sections. The **Conduct Section** deals with the *performance of an appraisal* and the appraiser's ability to be impartial, objective, and independent and to not have any personal interest in an appraisal assignment. The **Conduct section** relates to what the appraiser must *not* do. While there are eleven "must nots," the two most common charges brought against appraisers are "must not communicate assignment results with the intent to mislead or to defraud" and "must not perform an assignment in a grossly negligent manner." In regard to

any personal interests in the property, the appraiser must disclose to the client any current or prospective interest in the subject property or parties involved.

The **Management Section** primarily deals with five major issues that an appraiser faces with the client. An appraiser must not accept an assignment that is contingent upon (1) reporting a predetermined opinion of value, (2) a direction in value that favors the cause of the client, (3) the amount of a value opinion, (4) attainment of a stipulated result, and (5) the occurrence of a subsequent event directly related to the appraiser's opinions and specifics in the assignment's purpose. Refer to Advisory Opinion No. 19 of the 2014–2015 USPAP.

Some appraisers are concerned mostly about client pressure to report a value in their favor (high or low for whatever reason). The Intended Use could be for a mortgage transaction and your value outcome will determine if the loan can be made. If the Intended Use is for the dissolution of marriage, your client might want either a high or low value that will favor them. That is why an Engagement Letter is important to spell out to your client that you will be abiding by USPAP and must be independent, and the outcome of your appraisal report will not be in a direction of value dictated by the client. The **Engagement Letter** must be signed and dated by you and your client (See *Doing It Right: Engagement Letters* at *WorkingRE.com*; click *Library*, Volume 24: Summer 2010).



Philip G. Spool, ASA, is a State-Certified General Real Estate Appraiser in Florida, appraising since 1973. Formerly the Chief Appraiser of Flagler Federal Savings and Loan Association, he has been self-employed for the past 18 years. In addition to appraising, he is an instructor with Miami Dade College, teaching appraisal courses and continuing education. He is also the Vice President and Chairman of real estate programs with the Greater Miami Chapter of the American Society of Appraisers. He can be reached at pgsPOOL@bellsouth.net.

Confidentiality

The **Confidentiality Section** is very important but loosely followed by appraisers. The appraiser must not provide anyone with any confidential

information that the client provides to the appraiser, and most importantly, must not disclose a value to anyone other than the client and any other intended users. This brings up the question of what is considered confidential. Is your sketch confidential? (No) Is the rent roll or expenses of the property confidential? (Yes, if not listed on the MLS or other published materials.)

The essence of the **Record Keeping Rule** regards your workfile. An appraiser must prepare a workfile for each report prior to sending it out. The workfile can be in a printed format or an electronic format but it must have the necessary and required information as outlined in USPAP. The workfile must have the name of the client and the identity, by name or type, of any other intended users. This is very important for the appraiser who is requested by the client not to disclose his or her name in the report. I have seen appraisal reports where next to *Client* is the word "private." That is okay but keep in mind that the client's name must be disclosed within the workfile.

The workfile must have a "true" copy of any written appraisal reports. It further states that a true copy is a replica of the report transmitted to the client. Whether a hard copy or electronic, the appraisal report must have the appraiser's signature. I know several appraisers who keep a copy of the appraisal report without their signature just in case the client asks for additional copies. I suggest that they keep separate additional pages that require a signature but still maintain the "true" copy of the whole appraisal report with the signed signature of the appraiser(s).

The appraiser must retain the workfile for a period of *at least* five years after the preparation or at least two years after final disposition of any judicial proceeding in which the appraiser provides testimony related to the assignment, whichever period expires last (lines 326–328, pg. U-10 of 2014–2015 USPAP). This is one of the most misunderstood

statements in USPAP. Most appraisers are of the opinion that once five years has gone by they can eliminate that workfile. While that is correct, it is suggested that it should be held a *minimum* of five years. Getting rid of the workfile does not reduce your obligation to have a supportable appraisal report. In fact, it can be very difficult to support your opinions without your workfile. While you can always reproduce your workfile, it is not easy to reproduce your support and reasoning for your adjustments.

Competency

The **Competency Rule** applies to the appraiser prior to accepting an assignment. The appraiser must determine if he or she is already competent to perform the assignment. If not competent, the appraiser must acquire the necessary competency to perform the assignment, or decline the assignment. Competency requires the knowledge, experience and ability to perform the assignment. Competency requires the appraiser to be geographically competent, meaning the appraiser must be knowledgeable about the neighborhood and market trends of the area. If the appraiser does not meet these requirements, USPAP allows the appraiser to gain competency. USPAP states that prior to accepting the assignment, the appraiser must disclose to the client the lack of knowledge and/or experience and then take the necessary steps to complete the assignment competently. Finally, the appraiser must describe in the report the lack of knowledge and/or experience and the steps that were taken to become competent.

USPAP differs from Fannie Mae guidelines in that USPAP allows the appraiser to *accept* the assignment even if the appraiser is not competent, either by educating him- or herself about the necessary theories and techniques to perform the assignment, or by becoming geographically competent. All the appraiser has to do is disclose this to the client prior to accepting the assignment,

gain the competency required, and then disclose it in the report. Fannie Mae, on the other hand, does not permit the appraiser to accept the assignment unless he or she is *already* competent. This is specifically stated in the *Handbook for Appraisers* by Fannie Mae, where it states: "Fannie Mae expects a lender to use an appraiser who has the knowledge and experience required to perform a professional-quality appraisal for the subject property's specific geographic location and particular property type. We believe that the lender should look for this specific knowledge and experience, rather than allow an appraiser to take advantage of the flexibility contained in the *Competency Rule of the Uniform Standards of Professional Appraisal Practice* (USPAP)."

So if the appraiser is performing the appraisal on a Fannie Mae form with the intended use for mortgage financing, then the appraiser must already have the knowledge of the area; otherwise the appraiser must decline the assignment. I suggest you read *Frequently Asked Questions* (FAQ) 100: Competency Rule (pg. F-45 of 2014–2015 USPAP) about the appraiser who was given an assignment outside the area they were familiar with and given a 48-hour turnaround time. USPAP allows the appraiser to affiliate with a qualified local appraiser, which of course must be disclosed in the appraisal report. Again, Fannie Mae wants the appraiser signing the report to be geographically competent. However, if the appraiser takes on another appraiser who will also sign the report and who has the geographic experience of the neighborhood, that might not sit well with the lender because they, or their AMC, hired you and not the other appraiser.

The **Scope of Work Rule** requires the appraiser to identify the problem to be solved, determine and perform the scope of work necessary to develop credible assignment results, and disclose the scope of work in the report. The

page 30 »

Scope of Work Rule was detailed by this author in the article *Importance of a Good Scope of Work* (WorkingRE.com; click *Library, Volume 35: Spring 2014*).

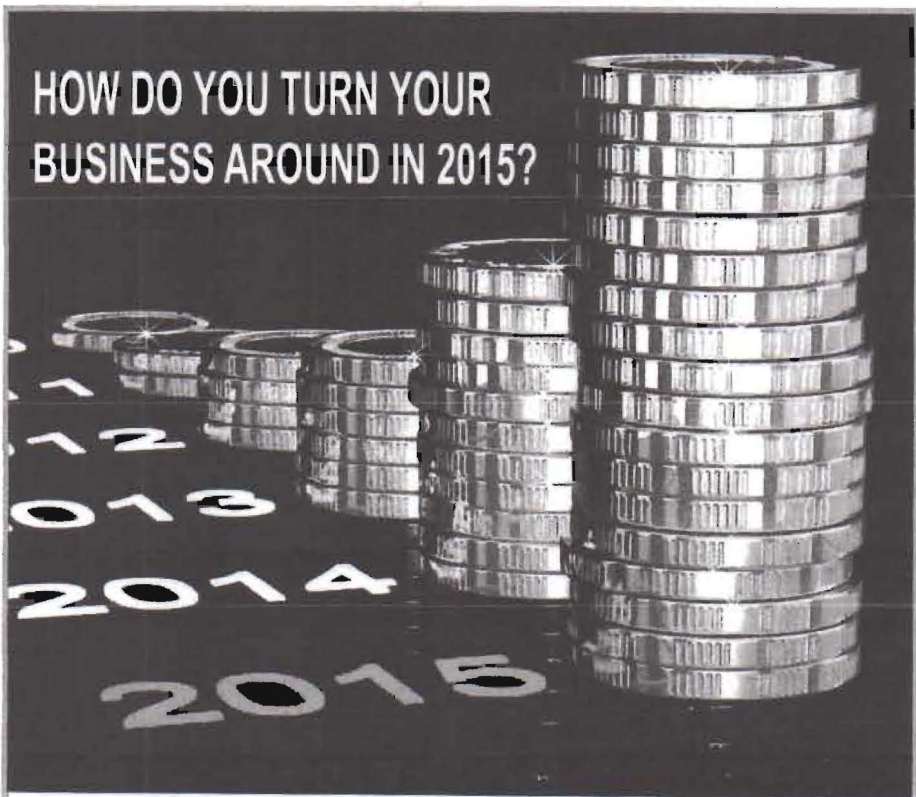
Basically, the scope of work should include the extent to which the property is to be identified and inspected, the type and extent of data researched and the type and extent of analyses

applied to arrive at credible opinions or conclusions. As Standards Rule 2-2 (a) (vii) requires the appraiser to summarize the scope of work used to develop the appraisal, it further states that the appraiser might also disclose research and analyses not performed. Therefore, it is suggested that the appraiser state which approaches will be utilized and

why, but also which approaches will not be utilized and why. Again, refer to the *Importance of a Good Scope of Work* article published in *Working RE* (Spring 2014).

Part of the Scope of Work Rule is Scope of Work Acceptability. In the Comments section, the scope of work is acceptable when it meets or exceeds (1) the expectations of parties who are regularly intended users for similar assignments, and (2) what the actions of an appraiser's peers would be in performing the same or a similar assignment. The first part, which are the expectations of regularly intended users, might be the Appraisal Management Company (AMC) or lender, and if so, then that is unfortunate when the AMC comes knocking at your door requesting additional comparables or listings to consider that would push the value higher. Your only salvation is the second part, which takes into consideration the actions of your peers. Who is considered a peer? In my estimation, it would be an appraiser who is not only geographically competent but knowledgeable in the selection of comparable sales and who understands the methods and techniques to perform the appraisal. This would be important when defending your appraisal report in front of a state appraisal board or in a lawsuit.

The **Jurisdictional Exception Rule** by definition is an assignment condition established by applicable law or regulation which supersedes USPAP. In this case, if the law is in conflict with USPAP, the law wins. An individual's identification as a licensed appraiser establishes an expectation that valuation services will be performed in compliance with USPAP. USPAP states: "If any applicable law or regulation precludes compliance with any part of USPAP, only that part of USPAP becomes void for that assignment" (pg. U-14 of the 2014-2015 USPAP, lines 459-460). The Jurisdictional Exception Rule typically applies to appraisers doing an appraisal assignment for a government agency (not to be confused with a government sponsored enterprise). **WRE**



HOW DO YOU TURN YOUR BUSINESS AROUND IN 2015?

It's All About Working SMARTER Rather Than HARDER!

The fact is, who really knows what will happen within the real estate appraisal business in 2015? However, one constant remains the same year, after year, after year. When business is going up, Certified Machinery & Equipment Appraisers (CMEA) are busy. When the economy goes down, CMEA's are busy. When the economy is stagnant, CMEA's are busy. Why? Because lenders, CPAs, attorneys, courts and others all have to know what the equipment is worth!

Your colleagues are excelling because of the overwhelming demand for Certified Machinery & Equipment Appraisals. Wouldn't you like to capture this business in 2015 and make significant assignment fees?

Find out how you can excel by requesting our **FREE CMEA Preview Pak.**

NEBB INSTITUTE
(866) 632-2467
www.nebbinstitute.org