

# Sample Engagement Materials for Non-Litigation Services:

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## Introduction

In 2006 sample engagement materials were developed by the Appraisal Institute and made available for use. These sample materials were intended as a reference to assist appraisers and their clients in drafting their own appraisal services agreements and engagement letters (also known as a service contract, service agreement, or contract).

A project team was formed to update the package of sample engagement materials. This project team was comprised of Lance Coyle, MAI, Paula Konikoff, JD, MAI, AI-GRS; and Stephanie Coleman, MAI, SRA, AI-GRS, AI-RRS; with assistance from Christina Mitakis, Esq. Associate General Counsel with the Appraisal Institute and Peter Christensen, Esq. of Christensen Law Firm.

After considering feedback from stakeholders, the project team created revised sample engagement materials for use in the non-litigation context. These are now available to appraisers and clients on the Appraisal Institute's website at [www.appraisalinstitute.org](http://www.appraisalinstitute.org).

The package includes four Word/.pdf documents:

1. **Sample Cover Letter for Appraisal Services Agreement.** Intended as a sample of a brief transmittal letter from the Appraiser to the Client introducing the Appraisal Services Agreement, which would be attached.
2. **Sample Appraisal Services Agreement.** Intended as a sample master agreement to establish an on-going business relationship between the appraiser and client involving multiple assignments.
3. **Sample Engagement Letter.** Intended as a sample engagement letter in relation to a single assignment.
4. **Sample Terms and Conditions.** Intended as a sample of an attachment to the Appraisal Services Agreement and to the appraiser's report.

***These documents are designed to be edited or modified as needed.*** As drafted they address non-litigation appraisal assignments, but they can easily be edited to accommodate review or other types of assignments.

## Why Use an Appraisal Services Agreement and Engagement Letter?

Valuation standards recognize that an “assignment” or “engagement” is the result of an agreement between an appraiser and a client about a service. Valuation standards do not require that an agreement between an appraiser and client about a service be in writing. However, using a written agreement to set out the details of a service is a sound business practice for a number of reasons:

- A written agreement serves to clarify terms of the service.
- A written agreement provides written evidence of both the client’s and the appraiser’s agreement to those terms.
- Disputes that might arise about the services provided can be more easily resolved if there is a written agreement, prepared in advance, that details the client’s and the appraiser’s mutual understanding of the nature of the services to be provided.
- The act of drafting the written agreement and reaching a “meeting of the minds” encourages the parties to address issues that might not otherwise be addressed.

Either party—the appraiser or the client—can draft the appraisal services agreement and/or engagement letter as long as both parties understand and agree to its entire contents. The engagement letter should be drafted after the client and the appraiser have discussed the service and have orally agreed to its scope, timing of completion by the appraiser, fee and other parameters. The engagement letter then serves as an affirmation of this conversation.

To be effective, the appraisal services agreement and engagement letter must be signed and dated by both the appraiser and the client and both parties should retain signed and dated copies. If it is not possible for both parties to sign and date, the appraiser should document the parties’ mutual acceptance.

When the terms and conditions of the assignment are set forth in a written appraisal services agreement or engagement letter, any subsequent modifications to the original agreement should also be in writing. The documented modifications should be retained with the original appraisal services agreement or engagement letter by both the appraiser and the client.

## Completing the *Sample Cover Letter to Appraisal Services Agreement*

The Sample Cover Letter is a sample for a brief transmittal letter from the appraiser to the client introducing an attached Appraisal Services Agreement. Use of a cover letter is entirely optional.

The Sample Cover Letter is an example of what can be printed on your letterhead to accompany a print copy of the Appraisal Services Agreement. Or, if the Agreement is being sent electronically, the body of a cover letter can be copied into an email with the Agreement as an attachment.

The document is designed to be brief. The intent is to simply introduce the Appraisal Service Agreement, which will contain the detail.

### Suggested edits:

- √ Remove the heading at the top.
- √ Insert the “sender” information at the top -- your name, title, company name, address.
- √ Insert the date the letter and Agreement are being sent.
- √ Insert the “recipient” information -- your client, the party engaging you.
- √ Insert the client’s name in the salutation.
- √ Insert your company name in the first line of the body of the letter. Insert your phone number and/or email in the second to last line and your company name again in the last line.
- √ Sign your name and print your name and title in the signature line.

## Completing the *Sample Appraisal Services Agreement*

The Sample Appraisal Services Agreement is an example of what may be used at the outset of what is expected to be an ongoing business relationship between the appraiser and client. It establishes conditions that will apply to all appraisal services to be provided by the appraiser for that client. Subsequently, for each service (appraisal assignment) a separate Engagement Letter will be used to outline the specific requirements of that service. A new Appraisal Services Agreement might be prepared and signed by the appraiser and client annually, for example.

If the appraiser is to provide a service for the client only once, the Appraiser Services Agreement and Engagement Letter can be combined into one document.

The Sample Appraisal Services Agreement references the Sample Terms and Conditions document as an attachment.

### Suggested edits:

At the top of the first page, edit:

- √ Appraiser's firm name and address
- √ Date the Agreement is being prepared
- √ Client name and address
- √ Name of the client in salutation.

In the first paragraph, edit:

- √ The name of the appraisal firm or the appraiser's name if no firm name
- √ The client's full legal name.

Under item 3, Incorporation of Terms and Conditions for Appraisal Services and Reports:

- √ Leave either only the word "None" or replace "None" with any modifications negotiated with the client, such as changes to the time period for claims or limitations of liability.

In item 20, Expiration:

- √ Edit the number of days from the date of this Agreement within which it must be signed to be legally binding.

Other possible edits:

Item 1, Property Documentation: The word “may” can be changed to “will’ if appropriate.

Item 4, Confidentiality: A clause could be added to this section whereby client gives authorization to the appraiser to use the work product as a sample for other potential clients.

Item 5, When Appraiser’s Obligations Are Complete: Language could be included here that limits the amount of time and/or frequency with which the client requests corrections or additional explanations.

Item 7, Cancellation of Assignment by Client: Language could be included regarding a minimum charge in the event the client cancels.

## Completing the *Sample Engagement Letter*

The Sample Engagement Letter document is an example of what may be used as a separate engagement letter prepared for each service. It is designed to be assignment-specific, and it should be edited each time carefully so it clearly spells out the details for the assignment.

If the appraiser and client have not previously signed an Appraisal Services Agreement, it is recommended that the clauses within that Agreement be included in the Engagement Letter.

### Heading information

At the top of the first page, edit:

- √ Appraiser's firm name and address
- √ Date the Engagement Letter is being prepared
- √ Client name and address
- √ Name of the client in salutation.

In the first paragraph, edit:

- √ The name of the appraisal firm or the appraiser's name if no firm name

### 1. Specifications of the Appraisal.

In this section the property to be appraised or analyzed is identified. A property address usually will suffice, but in some cases a lot number, assessor's parcel number or other means of identification will be necessary (for example, "SWC Main and 1<sup>st</sup> Streets"). Be sure to include enough information so that there is no question about which piece of real estate is to be involved in the assignment.

#### Suggested edits:

- √ **Subject property.** Insert address, legal description or other information as necessary.
- √ **Property Type.** Choose the general property type from the selection. If "Other", describe briefly.
- √ **Interest to be Valued.** The subject property is not the real estate itself, but the interests in the real estate, so it is critical to identify what interest(s) that will be. Keep in mind that just because a property is leased, it does not mean that the client needs an opinion of the value of a lease interest. The interest to be valued (or analyzed, in the case of an assignment other than an appraisal) depends on the nature of the client's problem to be solved.

- √ **Additional Property to be Valued.** If the property to be appraised or analyzed includes items other than real property, use this section to identify those items. Choose “none” or from the selection. If “Other”, describe briefly.
- √ **Intended Use.** Choose the intended use from the selection. If “Other”, describe briefly. The intended use is the appraiser’s intent with regard to how the report will be used. As with intended users, there are no “automatics” regarding intended use. It is the appraiser -- not the client -- who identifies the intended use, but in order for the appraiser to fulfill the client’s request for services, the appraiser’s intended use will need to match up with the reason why the client needs the service. Since intended use is a key driver in making a Scope of Work determination, it is best to be as specific as possible regarding intended use.
- √ **Intended User(s).** If the Client is the only intended user, simply state “Client.” If there are intended users other than Client, identify them by name or type. An intended user is a party the appraiser intends will use the report. The client is always an intended user, but there may be others as well. There are no “automatics” regarding intended users beyond the client. In order for the appraiser to fulfill the client’s request for services, the appraiser may need to identify other parties as intended users, but even so, it is the appraiser -- not the client -- who identifies intended users. Intended users must be identified at the time of the assignment, not after the fact. One reason why this is critical is that the appraiser is responsible for preparing a report that contains “sufficient information to enable the intended users of the appraisal to understand the report properly” (see Standards Rule 2-1(b) in USPAP). The intended users will be the audience for the report. Intended users may be identified by name (for example, “John Doe at ABC Company”) or by type (for example, “federally insured depository institutions”).
- √ **Type of Value.** The results of an assignment might be an appraisal opinion, review opinion, or some other type of opinion. In an appraisal assignment, the opinion is some type of value. The type of value is important to identify because there are many different types of “value.” These include market value, investment value and use value, but there are others as well. There are many different definitions of market value in use and it is important for the appraiser and client to know at the outset which ones will apply. In assignments other than appraisals, “type of value” may be replaced with “type of opinion.”
- √ **Date of Value.** The date of value is important because the appraiser’s conclusions are reflected as of that date and that date alone. The date of value may be a current date, a prospective (future) date or a retrospective (historical) date. If the date of value is a current date, it is generally based to coincide with the date of inspection (if any).

- √ **Hypothetical Conditions, Special/Extraordinary Assumptions.** If none are anticipated, state “None anticipated.” If it is anticipated at the time of assignment that hypothetical conditions or special/extraordinary assumptions will be used, they should be explained as fully as possible here. Often, however, their use cannot be anticipated and their need may not be discovered until the assignment is being completed. When this is the case, an amendment to the Appraisal Services Agreement may be necessary.
- √ **Anticipated Scope of Work.** Include a brief description of the anticipated scope of work, especially degree of site visit (property inspection) and approaches to value. Note that the scope of work actually performed may vary once the assignment has begun.
- √ **Report Option and Format.** Select from the examples provided or include other description adequate to convey the type of report to be provided. If the service does not involve the delivery of a written or oral appraisal or review report, edit accordingly.
- √ **Delivery Date.** Specify the delivery date, either as a specific date or as a stated number of days after acceptance by the client of this Agreement. Language can be added about whether delivery will be electronic or hard copy, and if provided via PDF, whether it will be locked.
- √ **Appraiser’s Interest in Subject Property or in Client or Other Involved Parties.** If the service is for a federally insured depository institution, the appraiser may have no interest, financial or otherwise, in the property or the parties. For other clients, the appraiser cannot have an interest that causes bias; interests that do not cause bias must be disclosed both at the time of the assignment and in the certification to any appraisal or review report.
- √ **Prior Services Regarding Subject Property (USPAP Disclosure).** The Uniform Standards of Professional Appraisal Practice (USPAP) require disclosure of any service involving the subject property with the three year period immediately preceding the date of the assignment. The type of service must be disclose, but details such as the identity of the prior client need not be. If USPAP will not apply to this current service, this paragraph can be deleted.
- √ **Special Conditions.** Use this section to indicate any special conditions relating to the service or unique requirements.
- √ **Appraisal Fee.** Indicate the dollar amount of the fee due to the appraiser for providing the service.

- √ **Payment Terms.** An example is provided. Edit as appropriate.

## **2. Property Documentation.**

This section references Attachment A, which is a list of documents the appraiser will require prior to beginning work. In this section, “may result in Appraiser being unable to deliver” can be changed to “will result in Appraiser being unable to deliver” if appropriate.

Attachment A can be edited as needed. Be sure the Engagement Letter is accompanied by Attachment A.

### Completing the *Sample Terms and Conditions*

- √ Include as an attachment to the Appraisal Services Agreement.
- √ Include within your appraisal or review report.