



200 W. Madison  
Suite 1500  
Chicago, IL 60606

T 312-335-4100  
F 312-335-4400  
[www.appraisalinstitute.org](http://www.appraisalinstitute.org)

December 1, 2015

Mr. Clay Ketcham  
Vice-Chair, Florida Real Estate Appraisal Board  
400 West Robinson Street, N801  
Orlando, FL 32801

Dear Mr. Ketcham:

On behalf of the nearly 20,000 Designated Members, Candidates for Designation, and Affiliates of the Appraisal Institute, we appreciate the opportunity for our state government relations leaders and staff to have met with the Florida Real Estate Appraisal Board (FREAB) on October 5, 2015. We wanted to provide the Board with additional information regarding some of the comments that were made during the meeting. We also wanted to use this as an opportunity to reiterate our request that the FREAB undertake a rulemaking proceeding in relation to allowing for the use alternate standards of professional appraisal practice.

As you know, Section 475.628 of the Florida Statutes requires the FREAB to adopt “rules establishing standards of professional practice which meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation.” To date, the only standards that have been approved by the Board for use in Florida are the Uniform Standards of Professional Appraisal Practice (USPAP). We believe strongly that there are additional standards of valuation practice that provide for the same assurances regarding the public trust that should be adopted by the FREAB for use by state certified appraisers when providing appraisal services for all purposes other than federally-related transactions.

At the outset it is important to note that the AI’s efforts in Florida and in other states regarding the adoption of alternate standards of professional appraisal practice is not only about the AI and allowing for the use of the Appraisal Institute Standards of Valuation Practice (SVP) and Valuers’ Code of Professional Ethics (VCPE) by valuation professionals. Rather, our efforts are intended to advance the valuation profession and to recognize the broad areas of valuation practice along with the diverse needs of users of valuation services. Our goal is to equip appraisers to be able to effectively and efficiently meet their client’s needs while maintaining the highest requirements for appraiser ethics and competency. We believe that the SVP and the VCPE provides these same protections. There may also be other standards of valuation practice that satisfy the “meet or exceed” threshold and should also be considered and approved by the FREAB.

Importantly, any consideration of whether or not the SVP meets the statutory threshold for adoption by the FREAB is not complete unless it also includes consideration of the VCPE. The VCPE is a model code and available for use by non-AI professionals as a companion document to the SVP. The VCPE contains five Canons and eighteen Ethics Rules that require a valuer to: 1) Refrain from conduct that is detrimental to the profession and the public; 2) Maintain appropriate records; 3) Develop and report unbiased analyses, opinions, and conclusions; 4) Maintain confidentiality; and 5) Refrain from

advertising or soliciting in a manner that is misleading or otherwise contrary to the public interest. Importantly, if any part of an Ethical Rule is contrary to a law or regulation of any jurisdiction, such part shall be void and of no force or effect in such jurisdiction. The use of the SVP coupled with the VCPE would provide the same or greater requirements of the ethics and competence of the appraiser as does USPAP, and would preserve the public trust.

There were several comments made at the October 5 meeting, and in two documents submitted by The Appraisal Foundation, alleging specific deficiencies within the SVP to which we would like to respond.

### **Work Files**

The first comment was that the SVP is devoid of any requirements for an appraiser to maintain a work file for each assignment as is required by the USPAP Record Keeping Rule.

The most important thing to note here is that Florida law (Section 475.629) contains its own requirements regarding the retention of records by a state-certified appraiser. These statutory requirements will supersede any of the requirements in the USPAP Record Keeping Rule. Hence, the issue of what USPAP does or does not require in relation to a “work file” is a moot issue in Florida. This is also true of the SVP’s record retention requirements - they too will not apply in Florida.

With that said, the SVP contains requirements relating to the practitioner’s work. On the other hand, the VCPE contains ethical requirements relating to the practitioner’s behavior. The VCPE requires the retention of certain records (Ethics Rule 2-1). Those records include the same items required by USPAP to be retained in what USPAP defines as a “work file.” So in essence the requirements are the same in the VCPE as they are in USPAP.

AI recently elected to drop the term “work file” because of confusion over what constitutes a “work file” and how it needs to be maintained. Could it be solely electronic? Must paper (hard) copies be retained? Must the contents of a work file all be in one location? USPAP never required that the work file be a single, physical file folder with all the required documentation within it. But, that is often the interpretation. We believe that by simply specifying that certain records need to be maintained we are making the requirement easier to understand and easier to enforce.

### **Highest and Best Use Analysis**

A comment was also made that the SVP does not contain a requirement for an appraiser to “develop an opinion of the highest and best use of the real estate” as is required by USPAP Standards Rule 1-3(b).

Highest and best use is a methodological matter, not a standards matter. The SVP contains only standards, and we believe USPAP should contain only standards. We find it odd that USPAP includes as a supposed “standard” a requirement applicable for market value opinions only, and only “when necessary for credible assignment results.” We believe that true standards are timeless and lasting – they should apply to all assignments. We also firmly believe in drawing a clear line between standards and methodology. While the former remain constant over time, the latter should be permitted to evolve

as valuation practice evolves. The concept of highest and best use has evolved over time, and has been one of the valuation practice issues that has seen the most evolution in recent years. Our classic text, *The Appraisal of Real Estate*, 14<sup>th</sup> Edition presents very different discussion of highest and best use than it did in prior editions.

### **Contingent Fees**

A comment was made that the SVP allows appraisers to accept assignments on a contingent fee basis that does not have to be disclosed in the appraisal report. The comment neglected to reference the VCPE's prohibition on bias.

Ethics Rule 3-1 in the VCPE states that "It is unethical to knowingly contribute to or participate in the development, preparation, use, or reporting of an analysis, opinion, or conclusion that is biased." If an assignment performed under a contingent fee arrangement results in a biased analysis, opinion or conclusion, such valuer would be in violation of ER 3-1. In some instances, contingent fees may be acceptable or even required. For instance, the California probate court requires that valuers acting as probate referees base their fees on a percentage of the value of the property appraised (i.e., on a contingent fee basis). In addition, the International Valuation Standards do not prohibit contingent fees and in some countries, valuers may be required to perform their work on a contingent fee basis.

Historically, the goal of the rules concerning contingent fees was to prohibit practitioners from performing biased work. A contingent fee arrangement was equated with bias. Since that time, the realization has grown that the emphasis – and the focus of enforcement – should be on bias, not the fee arrangement a practitioner has with his or her client. A contingent fee can be used as evidence of bias where appropriate.

In addition, reference was made to a recent decision by the U.S. District Court involving the payment of contingent fees. In the case noted - *Colorado Hospitality Services Inc v. Owners Insurance Company v. Colorado Hospitality Services, Inc., United States District Court, D. Colorado* - the individual engaged with a contingent fee was a state licensed public adjuster, not a state licensed or certified appraiser and his license is issued by the Colorado Division of Insurance. Public adjusters almost always work on a contingency fee basis by entering into a contract with the insured to take an assignment of a percentage of whatever is paid to the adjuster's client by the insurer. The decision cites no evidence of actual bias on the part of the adjuster, and does not indicate what, if any, valuation standards were utilized to prepare the report. The portion of the decision that is cited in TAF's comments was taken entirely out of context, and it is not appropriate to draw any conclusions from this case that are applicable to the standards discussion in Florida.

### **Principles vs. Standards**

A comment was made that "Principles are not a realistic approach to Standards from a professional standpoint where enforcement is an issue."

A principles-based document is one that sets forth broadly stated principles about how the professional must approach the work. For example, the SVP states that, “The valuer must research and verify data necessary to develop a credible appraisal.” A rules-based document is one that sets forth specific rules about how the work is to be done. For example, USPAP Standards Rule 1 states that, “When necessary for credible assignment results in developing a market value opinion, an appraiser must identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends.”

The SVP is designed around the core principle that the practitioner must identify the problem to be solved, determine the appropriate scope of work, and properly apply the appropriate methodology to develop a credible opinion. The SVP contains no “comments”, and very few rules, to distract the reader’s attention away from the core tenet. Those rules the SVP does contain apply to all appraisals and reviews. There is no need for exceptions, or language such as “when necessary” or “when applicable”. The practitioner does not need to think about which requirements to apply when because all of them apply in every assignment.

Further, we believe the SVP is a superior set of standards in that practitioners following them will focus on the core principle – the end result of which is a credible opinion – rather than on compliance with rules that have no impact on the credibility of the results (such as labeling a report properly, or stating whether they provided any service during the last three years involving the property.)

We believe that the SVP and VCPE are easier to enforce because they are simpler, more streamlined and more straightforward. Enforcement of standards – unless they are solely rule-based – requires that enforcers possess the competency to make judgments about what the practitioner’s course of action should have been in a given circumstance and whether that course of action was properly executed. We believe that the members of the FREAB possess the competency to make the determination as to whether a violation has occurred.

### **Mortgage Lending Focus**

A comment was made by TAF that mortgage lending is not the sole focus of USPAP and that it provides a uniform set of standards for real property, personal property, or business appraisal, and for a variety of intended uses including litigation support, eminent domain, IRS assignments, and appraisals for estates.

Over the last two decades we have noticed that USPAP and advice from the Appraisal Standards Board (ASB) has become far more lending oriented, especially residential lending oriented. For example, the requirement to address prior services within the last three years was added to USPAP primarily because of lending concerns. But, it was not a concern in other types of appraisal assignments, where this requirement is now wreaking havoc. In addition, the requirement to retain copies of all draft appraisal reports was brought to the attention of the ASB by state regulators who deal primarily with complaints related to residential mortgage lending. We believe that this requirement serves no purpose other than to burden state regulators with more documents to examine for potential violations where none are

alleged. Further, we have noticed that most of the FAQs issued by the ASB address lending circumstances, and especially residential lending circumstances.

In general, we find that in order for USPAP to “work” in a non-lending environment, its interpretation must be bent and twisted to fit. On the other hand, the SVP was developed to express standards – those requirements that *always* apply -- with clarity and directness.

### **Additional Examples of Problems with USPAP**

We wanted to provide the FREAB with a few additional examples where appraisers have brought to our attention numerous instances in which “USPAP doesn’t work. “

- Appraisers have been excluded from litigation support assignments when they must, under USPAP, disclose in the report that they previously provided a service involving the property in the last three years. While the disclosure to the client does not cause a problem, the perception is that the mere fact that the appraiser previously provided such service would provide the opposing side with something that could be used to discredit the appraiser.
- In valuations for financial reporting, clients typically want a very brief report, along the lines of a Restricted Appraisal Report. Such report would meet client’s needs in such circumstances. However, many times there is more than one intended user and thus the Restricted Appraisal Report is not an option.
- Lending institutions need to obtain “evaluations” for certain non-FRT’s. Such evaluations need not be performed by a state licensed or certified appraiser, and need not meet USPAP. However, appraisers have been sanctioned by state boards for providing such services. As such, appraisers are reluctant to take on this type of work for fear of consequences relating to their state license or certification. In the meantime, non-state licensed/certified individuals -- who are not beholden to USPAP -- are taking this work, and we are told there is a sizeable volume of it.

### **Does the AI Standards of Valuation Practice Meet or Exceed USPAP?**

We do not believe that a determination as to whether or not a set of valuation standards “meets or exceeds nationally recognized standards of appraisal practice” should be based solely upon a comparison to USPAP. The statute requires the FREAB to adopt rules that require USPAP compliance in the absence of other approved standards. But, the statute does not place USPAP alone upon a pedestal in front of which other standards must be evaluated. Moreover, USPAP has many weaknesses and therefore, many other standards can easily exceed them.

A set of valuation standards that requires an appraiser to develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading should be determined by the FREAB to “meet or exceed nationally recognized standards of appraisal practice” and should be approved for use. The SVP and the VCPE meets or exceeds such standards.

Follow-up Letter to FREAB

December 1, 2015

Page - 6 -

**Proposed Rulemaking**

We respectfully request that the FREAB promptly undertake a review of the SVP and the VCPE, make a determination that they meet or exceed other nationally recognized professional appraisal standards, and promulgate rules to allow for the use of SVP and VCPE by Florida state certified appraisers when performing appraisals for non-federally related purposes.

Thank you again for the invitation to appear before your Board to express our viewpoints on this issue of highest importance for the future of the valuation profession. We also appreciate your consideration of the additional information and comments offered in this letter. Please let us know if there is any additional information that is needed by the Board to begin this critical rulemaking proceeding.

Warmest regards,

A handwritten signature in black ink, appearing to read "M. Coyle", written in a cursive style.

M. Lance Coyle, MAI, SRA

2015 President

cc: Members of the Florida Real Estate Appraisal Board  
Ms. Juana Watkins, Director, Division of Real Estate