WE’RE NOT (ENTIRELY) IN APPRAISER WORLD ANY MORE!

OR “WORLDS COLLIDE”
OBJECTIVES:

• To distinguish between “Appraisal World” and “Law World” in regard to the real estate appraiser regulatory regime in the US
• How AI appraisers can best prepare to address the issues
• What to do when the two WORLDS COLLIDE!
BEFORE WE GET TO THE AUDIENCE PARTICIPATION PART, LET’S HAVE A BRIEF REVIEW OF SOME BASICS:
Long ago and far away, in a fantasy land called Washington DC, a group of real estate appraisers convinced the US Congress to go with the Federalism Paradigm for real estate appraiser regulation.
Douglas Barnard, (D-GA), a former banker, had originally suggested a national license regime as a result of the financial crisis called the “S&L Crisis” of the 1980’s.
Your forebears in the Appraisal Institute were at the table. And had previously been part of the group, which formed The Appraisal Foundation and created USPAP as a melding of various real estate appraisal organization’s standards of practice.
In FIRREA, Congress effectively made USPAP the “appraisal law of the land” by “blessing” TAF, as the entity to whom Congress “outsourced” the oversight of creation of that law.
So, Congress begat FIRREA and FIRREA begat the ASB and AQB.

• Focus today is on the appraiser regulatory regime
• Focus is on ASB/USPAP
USPAP & LAW

• Do you know the ASB creates law?
• Do you know USPAP is law?
  • Both at the Federal and state levels of government
USPAP IS THE STANDARD OF CARE

• USPAP has now become the “standard of care” for the performance of real estate appraisals in the US.
STANDARD OF CARE

• “the watchfulness, attention, caution and prudence that a reasonable person in the circumstances would exercise”.
• You are expected to conform to USPAP as the Standard of Care.
• Whether that law is regulatory, which is required, or other law, which may be permissive (torts, contract, etc.).
THE USPAP STANDARD OF CARE IS LAW

• USPAP is typically incorporated into state real estate appraiser statutes and/or regulations.
THAT MEANS USPAP IS

A. A boring CE topic
B. A set of Appraisal World rules that YOU can interpret
C. A great paper weight for all the loose stuff on your desk, floor
D. Law
STATE LAW USPAP CONFORMANCE

• FRT’s - shall conform with USPAP
• Non-FRT’s - conformance will depend on the state statute
• AI has proposed an alternate standard but USPAP is still the LAW!
USPAP UNDER FEDERAL LAW

• 1992: OMB Director under Pres. Bush 41 issued a memo directing Federal Agencies to use USPAP
• 2013: White House Circular A-126 requires all “non-revenue” real property valuations to conform with USPAP.
SUMMARY OF BASICS

• A group of real estate appraisers got together in 1987, melded their organization standards.
• Congress outsourced creation of real estate appraiser law to TAF/ASB, which promulgates USPAP
• States incorporated USPAP into statutes and regulations under FIRREA
• ASC monitors state boards including USPAP regulatory actions
• USPAP is law at the state and Federal levels
WHAT IS “APPRAISER WORLD”?
WHY ARE YOU HERE?

• Because AI is the best real estate appraiser organization in the world.

• WHY is AI the best?

• Because you are the best.

• That is why lawyers and lenders hire you for the tough ones.
Surely, that gives you a “pass” if someone files a complaint against you with a state real estate appraiser regulatory agency, doesn’t it? After all, they are our peeps on that board.
APPRAISER WHO BELIEVES
THAT
WHAT? ME
WORRY?
WE’RE COVERED! (?)

- State real estate appraiser regulatory agencies frequently have a number of AI members on their board. Don’t they?
- They are our colleagues in AI. Doesn’t that count for something?
NO!
WHAT WORLD IS USPAP IN?

• Appraiser World?
• Law World?
WHAT IS APPRAISER WORLD?
• When you perform an appraisal, you use the doctrine and procedures you learn in AI classes from the best instructors in the world.

• If you were only practicing in a jurisdiction that has not adopted USPAP as the Standard of Care under jurisdictional law.....
NORTHERN MARIANAS, ALASKA

Maybe
APPRAISAL WORLD

• Then, you would be in “Pure Appraisal World”
• Otherwise you are in Predominantly Appraisal World
Predominantly Appraisal World

- Arguably, today you are predominantly in appraiser world
  - presuming you have not already received a board initial inquiry letter
SO......WHEN DO YOU LEAVE APPRAISER WORLD?
TRANSITION: PREDOMINANTLY APPRAISAL WORLD TO LAW WORLD

• When you obtained your state credential you left “PURE” Appraiser World
• You are now in both Appraiser World and Law World.
• Because USPAP is ______ [all together now!]
PREDOMINANTLY LAW WORLD

• If/when you receive an initial inquiry letter, you will be predominately in Law World.
WELCOME TO PREDOMINANTLY LAW WORLD

• No requirement a state regulatory agency conduct their preliminary review on a disciplinary complaint with USPAP

• Some may

• Others may do so partially
WELCOME TO PREDOMINANTLY LAW WORLD
(CONT’D)

• ALJ or Hearing officer will often defer to a board’s determination on who followed USPAP
• YES - State agencies are typically given deference
• NEED LAW - Board opinion deference to your opinion
• UNLIKELY - Board opinion deference to your BFF appraiser who you asked to help you with the initial inquiry letter you received from the state board.
WELCOME TO PREDOMINANTLY LAW WORLD (CONT’D)

• If you use an appraiser to represent you in a proceeding with a State board
  • No client confidentiality
  • No E&O for them to play lawyer
  • With few exceptions, no ability to argue legal issues
  • Real lawyer necessary to file an appeal
• Violation of UPL - if you use an appraiser to act as your lawyer in a disciplinary proceeding, depending on how the state defines UPL

• If you try to represent yourself, remember what Abraham Lincoln said about representing yourself:
  • “If a appraiser represents them self in court, they have a fool for a client.”
WELCOME TO PREDOMINANTLY LAW WORLD (CONT’D)

• What world are you in today?
• When you accept a state appraiser credential, you move from appraiser world into a hybrid Appraisal/Law World
• When you perform an appraisal in a jurisdiction that requires USPAP for that assignment, you have moved more into Law World
If you receive an initial inquiry letter from a state appraiser regulatory agency, you have moved further into Law World.
Q: Of course, anyone reviewing your work in regard to a regulatory complaint would have to be a peer. And they would have to perform a USPAP complaint Appraisal Review or Appraisal.
A: MAYBE BUT DON’T COUNT ON IT

- Two state certified appraisers working for a govt. agency prepared an “appraisal review” that was much more egregious than the charges against my client (I threatened turn-in, and client received an NFA Letter)
- State board members – immunity (actual and practical)
- Exceeding legal authority? (Not in ____ , I was told)
- Listen to what Steven and David have to say.
- Get Ted on a roll and he will make your hair stand on end.
DON’T COUNT ON IT

• What about appraisal standards, isn’t the state Board supposed to uphold them?
• After reviewing too many “Appraisal Reviews” from certain designated appraisers proffered by prosecution, I told opposing counsel…
DON’T COUNT ON IT (CONT’D)

• If I get one more ”Appraisal Review” like that, I will file a complaint with the Board.
• He understood
• Next time, I received a report that at least looked like an Appraisal Review.
CLASH OF TWO WORLDS

• https://www.youtube.com/watch?v=uPG3YMcsvo&feature=youtu.be
LAW WORLD & ADVOCACY

• The board members are not your friends when they are in that role

• As a board member are sworn to uphold
  A. USPAP
  B. The Constitution, laws and regulations of the State
  C. Your interest to be given a NFA letter
  D. The AI Code of Conduct

• Their lawyer works for the board
LAW & ADVOCACY

• How can a board determine who violated the law
  • Expert opinion
  • Gut feel
  • “prosecutorial discretion”?
• Is “prosecutorial discretion” an appraisal term?

• What if the Board is wrong? nasty?
  • See what the U.S. Supreme Court said about the role of a state agency or board in a quasi-judicial proceeding in “Masterpiece Cakeshop”

• Board action could be a violation of your “due process rights” under the 5th and 14th Amendments to the US Constitution.

• Are those appraisal terms?
• When Steven or David or I are acting as an attorney, we do not need to conform with USPAP Standards Rules.

• If you or your BFF appraiser acting as an appraiser, represent you in a regulatory proceeding, USPAP Standards Rule compliance is required.
• When Ted is acting as an appraiser-expert in an appraiser regulatory proceeding, he must conform to USPAP Standards Rules, even though he is licensed as an attorney in Texas.

• I personally do not practice as an appraiser

• Ted no longer practices as an attorney

• We have frequently worked together on cases in our respective roles.
WHAT CAN YOU DO TO NOT NEED US?
WORK FILE

• Work File defined in USPAP:
WORK FILE (CONT’D)

• Well documented
  • Shows you performed required Standard 1 work
  • Relied upon
• Needs to be well organized
• I help an appraiser by questioning
  • Where did you get that information?
  • When did you get it?
  • Where did you put it?
DON’T CUT CORNERS

• Keep well documented records of
  • Communications
    • Clients
    • Employees
    • Verifications
  • Documents
  • Analysis
If a lawyer for a party in interest tells you to switch the client to them, document the call with a tracked communication (email, fax, letter).
If you receive an initial inquiry letter from a Board, hire competent legal counsel. Because USPAP is …..
One appraiser hired me. I obtained a dismissal.
• Another did not hire me immediately on a contractual dispute sent to the Board.
• Board Counsel indicated the case may have been dismissed if I had been in from the beginning.
• I am waiting for a formal complaint, from the prosecutor, after the appraiser could not stomach the “plea bargain” offered.
PLAN AHEAD

• Put aside money to hire your own attorney.
• Insurers will assign their own (sometimes good/bad).
• You want someone who you know is working for you.
• Most insurance policies include a provision for reimbursement of regulatory defense costs.
• Carefully read the policy.
THANK YOU!

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