

# Table of Contents

---

<b>Course Description</b> .....	vii
---------------------------------	-----

<b>Course Schedule</b> .....	xii
------------------------------	-----

## **SECTION 1**

### **Part 1. Legal Specialties Requiring Appraisal Services**

Preview Part 1 .....	1
Real Estate .....	3
Dual Court System .....	3
Litigation Appraisals .....	4
Sources of Litigation Appraisal Assignments .....	4
Review Part 1 .....	11

### **Part 2. Effective Communication with the Trier of Fact**

Preview Part 2 .....	13
Supporting a Value Opinion vs. Advocating the Position of a Particular Litigant ..	15
Multiphase Employment Arrangements Help to Avoid Advocacy .....	15
The Deposition—Your Audience is the Opposing Counsel .....	16
The Trier of Fact (Not the Attorney or the Client) is the Appraiser’s Audience in a Trial .....	18
Prepare Exhibits for the Trier of Fact to Review During Testimony .....	18
Miscellaneous Pointers .....	19
Review Part 2 .....	23

### **Part 3. Environmental Issues**

Preview Part 3 .....	25
Competency Concerns .....	27
Environmental Contamination .....	27
Stigma .....	32
Analysis of an Expert’s Report for Reliability .....	32
Alternative Methods of Quantifying Contamination’s Impact on Property Values.	34
Review Part 3 .....	43
Practice Test Section 1 .....	45

## SECTION 2

### Part 4. Environmental Issues, cont.

Preview Part 4.....	49
Other Environmental Issues Arising in Litigation Cases.....	51
Endangered Species Problems .....	55
Review Part 4.....	64

### Part 5. Tax Appeal Issues

Preview Part 5.....	69
Mass Appraisal Techniques.....	71
Real Estate Tax Expense .....	71
Three Phases of a Tax Appeal.....	72
USPAP .....	72
Role of the Appraiser.....	72
Initial Tax Assessment Review .....	73
Equitable Tax Assessments.....	78
Assessed Value Versus Market Value.....	79
Valuation Issues Regarding Ad Valorem Tax Assessments .....	80
Loading the Capitalization Rate .....	81
Review Part 5.....	89
Practice Test Section 2 .....	91

## SECTION 3

### Part 6. Construction Defects

Preview Part 6.....	93
Construction Defects.....	97
Conclusions.....	99
Review Part 6.....	111

### Part 7. Bankruptcy and Deficiency Judgments

Preview Part 7.....	113
Automatic Stay Provisions .....	115
Bankruptcy Petitions.....	118
Deficiency Judgment.....	113
Review Part 7.....	123
Practice Test Section 3 .....	125

## **SECTION 4**

### **Part 8. Bankruptcy and Deficiency Judgments, cont.**

Preview Part 8.....	129
Cram Down Problems .....	131
Deficiency Judgment.....	134
Review Part 8.....	137

### **Part 9. Fraud, Misrepresentation, and Breach of Contract**

Preview Part 9.....	139
Fraud Versus Misrepresentation .....	141
Principles of Contract Law .....	146
Burden of Proof and Damages—Criminal Versus Civil Litigation.....	148
Review Part 9.....	151

### **Part 10. Reviewing Appraisals for Litigation**

Preview Part 10.....	153
Reviewing in the Litigation Arena .....	155
Appraisal Standards .....	156
Real Estate Appraisers as Experts.....	161
Appraisers Who Review Other Appraiser’s Work.....	162
Review Part 10.....	167
Practice Test Section 4 .....	169

## **SECTION 5**

### **Part 11. Miscellaneous Litigation**

Preview Part 11.....	173
Divorce Assignments .....	175
Income, Gift, and Estate Tax Laws.....	178
Partition Litigation .....	179
Insurance Litigation .....	185
Private Disputes.....	185
Appraiser Liability .....	186
Review Part 11.....	189
Practice Test Section 5 .....	191

## SECTION 6

### Part 12. Inverse Condemnation

Preview Part 12.....	193
Legal Theory .....	195
Inverse Condemnation Actions .....	199
Two Types of Inverse Condemnation Actions .....	201
Measures of Compensation in Permanent Inverse Taking Cases.....	206
Measures of Damages in Temporary Inverse Taking Cases .....	206
Review Part 12.....	211

### Part 13. Consulting Assignments

Preview Part 13.....	213
Consulting Assignments.....	215
Land Use Issues .....	218
Mediation and Arbitration.....	219
Review Part 13.....	221

### Part 14. Course Review

Preview Part 14.....	223
Advocacy .....	225
Effective Communication with the Trier of Fact—Testimony.....	225
Environmental Issues .....	225
Tax Appeal Issues .....	226
Construction Defects .....	227
Bankruptcy and Deficiency Judgments.....	227
Fraud.....	228
Reviewing Appraisals for Litigation .....	228
Miscellaneous Litigation .....	228
Inverse Condemnation .....	229
Consulting Assignments.....	229
Review Part 14.....	233

## Bibliography

Books and Articles .....	235
--------------------------	-----

## Solutions

# Overview

---

## Course Description

*Litigation Appraising: Specialized Topics and Applications* is one of three courses in the Professional Development Program designed to provide appraisers with the educational foundation needed to engage in litigation valuation work. This three-day course provides a broad overview of numerous specialized topics involving areas of the law where the valuation of real estate is frequently an issue.

Examples of these topics include environmental contamination, ad valorem tax assessments, construction defects, bankruptcy, fraud and misrepresentation, income and estate tax disputes, inverse condemnation, contract disputes and equitable distribution in divorce cases, among others.

Participants will gain an understanding of the terminology and concepts involved in providing litigation-valuation services in these and other specialty areas. Moreover, upon completion of the course, real estate appraisers will be better informed about the many opportunities available for expanding their practices in the area of litigation valuation.

Good attorneys are experts at rules of evidence and can be masters of persuasion, but they are seldom well versed in real estate, let alone real estate values or valuation methodologies. Consequently, the importance of the appraiser's role in educating the attorney about real estate-oriented issues cannot be underestimated. When real estate values or market conditions constitute the primary issue of fact in a case, the ultimate outcome depends, to a great extent, upon the real estate experts' testimonies. The expert whose analysis and reporting of the real estate issues and values in question is most credible, and whose opinion is most clearly and convincingly communicated, will likely exert the greatest influence on the trier of fact. Through practice problems and group discussion questions, participants will apply these new concepts and address how to best handle valuation and reporting issues in a professional setting.

An underlying theme of the course is that strict compliance with the applicable appraisal standards establishes a minimum standard for appraisal development and reporting. Failure to comply with appraisal requirements can be presented as evidence of negligence in appraiser liability litigation. We will discuss the appraiser's role in the context of a litigated case and discuss the review of other appraisers' reports for compliance with applicable appraisal standards and theoretical and mathematical errors.

Upon successful completion of the three courses that make up the litigation program (*Condemnation Appraising: Principles and Applications*, *Litigation Appraising: Specialized Topics and Applications*, and *The Appraiser as an Expert Witness: Preparation and Testimony*) and passing the related program exams, Designated members will be placed on the Program's Registry. For more information about the program, go to the Appraisal Institute's website: [www.appraisalinstitute.org](http://www.appraisalinstitute.org). Choose "Education" from the menu and click on "Professional Development Programs" under "Your Career."

**Note.** Participants who complete courses in a *Professional Development Program* represent that they have completed the program's curriculum and passed the examinations. Participants may not represent themselves as having a specialization, certification, competency, or expertise based solely on the successful completion of the program. The program provider does not assume any duty to the public for the services.

## USPAP References in this Course

All references in this course to the Uniform Standards of Professional Appraisal Practice are taken from the 2020-2021 edition (Washington, D.C.: The Appraisal Foundation).

## Learning Enhancements

The course has been designed with a variety of elements to enhance your learning experience.

- **Preview.** To give you a taste of what is to come, you will find a Preview page that begins each Part. Included on the Preview page is a brief overview of the content and learning objectives to consider as you move through the content and learning tips that will assist you in understanding the information you're about to learn.
- **Learning Objectives.** Each learning objective covers essential information you need to know to fully understand the concepts in the course. Look them over before the Part begins so that you have a frame of reference as you move through the material. At the end of each Part, reread the objectives. Are you able to do what is stated? If not, this is the time to ask your instructor for help or review the concepts that you do not understand.
- **Examples, Problems, and Discussion Questions.** Supplementing the discussions, we've included examples and problems to help you visualize and practice what you are learning.
- **Review/Practice Tests.** Each Part concludes with a review. Included in the review are the learning objectives and key terms and concepts that have been covered. Also included are recommended readings that will reinforce what you have learned in class. There will be a practice test at the end of each section.
- **Solutions.** The solutions section contains the answers to the problems worked in class. Please use the solutions section as it is intended. The problems provided in the Course Handbook will help you to comprehend and review the content necessary to pass the final exam. It is in your best interest to check solutions only after you have challenged the questions.

## Classroom Guidelines

To make the learning environment a positive experience for everyone attending, please follow these guidelines when class is in session:

- 100% attendance is required. No exceptions.
- Limit use of computers to classroom projects.
- Communicate with business associates during break time instead of class time.
- Put away reading materials such as newspapers and books that are not used in class.
- Silence cell phones.
- Please do not record the lectures. Recordings are not permitted.
- Refrain from ongoing conversations with those seated near you and other distracting behavior.

## General Information

- **Calculators.** A calculator is required. **Important Note.** Laptops, cellular phones, tablets, iPads, wearable technology (smart watch, Apple Watch, etc.) and other devices that can store data or connect to the Internet are **NOT** permitted during the exam. In addition, all watches, wallets, bags, and purses must be removed and stored out of reach prior to taking the exam.
- **Breaks.** There will be two 10-minute breaks during the morning session and two 10-minute breaks during the afternoon session unless noted otherwise by the course sponsor. The lunch break is one hour.
- **Attendance sheets** will be distributed during class to verify your attendance during the morning and afternoon sessions. 100% attendance is required.
- **Certificates of completion** will be emailed after completion of the course, and attendance during the entire course is required.

## Recommended Texts

- *Applications in Litigation Valuation: A Pragmatist's Guide* by Jeffrey Johnson, MAI, and Stephen Matonis, MAI. Appraisal Institute: 2012
- *Real Property Valuation in Condemnation*, Appraisal Institute: 2018.
- *Appraisers in Arbitration* by Paula K. Konikoff, JD, MAI, AI-GRS, with Peter T. Christensen. Appraisal Institute: 2018