



nerej

Appraisal report critique, a short discussion - by Roger Durkin

October 19, 2018 - Spotlights

Roger Durkin, Durkin Law, P.C.

The term appraisal review is used for an appraisal report critique within the appraisal profession.

The first step in an appraisal review is to identify which appraisal standard the appraiser utilized. There are dozens. The Uniform Standards of Professional Appraisal Practice (USPAP) is the standards for the majority of real property and personal property appraisals. The International Valuation Standards (IVS), the Royal Institution of Chartered Surveyors (RICS), American Institute of Certified Public Accountants (AICPA), the American Society of Appraisers, International Society of Appraisers (ISA), Appraisers Association of America (AAA), Appraisal Institute (AI), the Massachusetts Board of Real Estate Appraisers, the National Association of Professional Appraisers, the National Association of Independent Fee Appraisers, the Institute of Business Appraisers, and the National Association of Certified Valuators and Analysts (NACVA). There are others. Each with different or slightly different sets of standards.

There are three areas of appraisal report critique: Standards, logic, and competency. If the appraiser certifies or represents that the appraisal report was made in accordance with USPAP, AICPA, IVS, or some other set of standards, then the reviewer should critique the appraisal report against that set of standards. The second is a critique against logical fallacies addresses whether the appraisal report has specific logical fallacies. The most common logical fallacy is conclusory or jumping to a conclusion from limited data. The third area is whether the appraiser is reasonably competent by education, training, and experience. Resumes should be statements of qualifications indirectly answering the question of whether the appraiser is reasonably competent to perform a specific appraisal assignment. The statement of qualification is similar to the format used to qualify an appraiser to testify as an expert. Never exaggerate or otherwise mislead in your statement of qualifications. The appraisal review must be objective and avoid Ad hominem statements. [See *Briggs v. Boat/US and Society of Marine Surveyors* Mass. Dist. Ct, No. 12-11795-DJC (2012) and *Douglas and Hewson v. Shannon Pratt*, U.S. Dist. Court NH, No. 98-416-M (2000)].

Present the critique using a syllogistic paradigm that leads to a factual conclusion. First, write the transgression as in “non-compliance with Standards Rule XYZ.” Then describe the applicable rule. Next state what the appraiser did or did not do. Next, conclude with “therefore the appraiser is in

non-compliance with Standards Rule XYZ.” Demonstrate the appraiser’s use of logical fallacies in the same manner. The three areas of review, standards, logical fallacies, and credibility of the appraiser, are all critiqued objectively. The reviewer must be competent to critique the work of another appraiser.

CPA Business Valuation

The Massachusetts Board of Public Accountancy regulates approximately 13,000 CPAs. Adhering to AICPA valuation standards are among the best practices that can help CPAs protect themselves. In addition to tax matters, CPAs have greater professional liability risk when performing business valuations. Not only liability risk associated with the immediate client, but there may be liability of fines and penalties for valuation misstatement in preparing a business valuation for IRS decedent estate, gift tax or an IRS non-cash charitable donation. There may also be third party liability such as disgruntled shareholders in a shareholder dispute. Your client could also sue. [see *Boyes-Bogie v. Horvitz*, 14 Mass.L.Rptr. 208, N.E.2d, 2001 WL 1771989 Mass.Super]. Another area of liability is FASB ASC 820 which deals with Fair Value of balance sheet assets and liabilities especially in mergers and acquisitions. There is also a different fair value definition for divorce appraisals in Massachusetts. [Bernier v. Bernier, 449 Mass. 774 , 799 (2007), Bernier v. Bernier (Bernier II) 82 Mass. App].

Arguably, CPAs who prepare business valuations must comply with AICPA’s Statement on Standards for Valuation Services No. 1. SSVS. Is this Standard binding on CPAs? AICPA membership is not mandatory for CPAs. However, AICPA wrote the CPA exam and sponsored the Uniform Accountancy Act. In addition, the AICPA files complaints against CPAs with the Massachusetts Board of Accountancy. This is similar to the requirement that licensed real estate appraisers perform in accordance with USPAP. CPAs performing business valuations should be aware of governmental regulations and other professional standards applicable to the engagement, including the SSVS No. 1.

State Licensed Real Estate Appraisers

The license board complaint process needs mending. License holders are caught in a quagmire of statutory and regulatory mandates. The board often presents an overbroad interpretation of ambiguous parts of USPAP, statutes and regulations.

State agencies, such as the Board of Registration of Real Estate Appraisers, Board of Registration of Real Estate Brokers and Salespersons, and the Board of Public Accountancy claim to ensure that each license holder follows Massachusetts statutes and board regulations. The Massachusetts Division of Professional Licensure has 39 license boards that license and regulate some 167 trades and professions.

Real estate appraisers are required to comply with USPAP; cpas are required to practice in compliance with standards promulgated by AICPA. The same investigators, prosecutors, and hearing-officers process complaints, few of which have expertise in USPAP or AICPA standards. As

such, the investigator relies on subcontractor licensed appraisers to critique the report, which then becomes the basis of the Order to Show Cause. An important error in the board's process is the lack of due process. The due process clause in the 5th and 14th Amendments to the U.S. Constitution state that "No one can be deprived of life, liberty, or property without due process." A professional license is property.

The boards issue an Order to Show Cause enumerating a dozen or so allegations. The Administrative Procedures Act requires, "It [the order to show cause] shall specify in numbered paragraphs the specific facts relied upon as the basis for the action, [and cite] the statute(s) or regulations authorizing the Agency to take action" [802 CMR 1.01(6)(a)]. The Order to Show Cause typically lacks any specific citation to statutes or regulations. The law requires that a respondent charged by the board must be afforded sufficient notice as to how the alleged conduct specifically violated some statute or regulation. The boards often fail to do that.

Roger Durkin, JD, MS, FASFA is an attorney and appraiser with Durkin Law PC, Boston, Mass.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540