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Real estate appraisal war stories from the trenches

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You are sitting in a trench watching the front for danger when behind you are snipers in the form of a lender, borrower or regulator who is taking aim. Real estate appraisers are increasingly the targets of regulators. Three powerful forces are allied against the appraiser. Dodd-Frank federal law mandated that lenders have appraisals reviewed. This changed the routine administrative appraisal review process to a complete USPAP Standard 3 Review. A negative review, i.e. one that finds the appraiser was not in compliance with USPAP can result in a license board complaint because Dodd-Frank also has a mandatory whistle-blower clause requiring lenders and others who find fault with an appraisal to turn the appraiser in to the real estate appraisal license board. Add to Dodd Frank, that the Appraisal Subcommittee is putting pressure on state appraisal license boards to enforce USPAP, expedite the complaint process, and enforce the AQB continuing education requirements and the result is an explosion of complaints against real estate appraisers.

Some of you might think "good" we'll clean out the bad performers. But wait, what if the complaint against the appraiser is without merit, what if it is based on an interpolation of ambiguous wording in a USPAP Rule, or worse the complaint alleges the appraiser did not follow a Fannie Mae guideline? Defending against allegations of USPAP violations can be a costly endeavor because the legal defense process is compounded by how the administrative law side of government prosecutes the complaints against appraisers. The typical Rules of Civil or Criminal Procedure, Rules of Evidence, discovery, depositions, responses to interrogatories, simply do not apply to the administrative prosecution of appraisers. For example, if a bank robber who is not caught and prosecuted within six years, can not then be prosecuted because there is a six year statute-of-limitations. Some states appraisal regulators, like Illinois, adopted the USPAP 5-year Record Keeping Rule as their appraiser complaint statute of limitation. However, there is no applicable statute of limitations for appraiser complaints in Massachusetts.

The license board is charged with enforcing USPAP and state appraiser regulations. The board reviews the complaint material, calls for an investigation, and is authorized to issue an Order to Show Cause against the unwary appraiser. The license board is not made up of USPAP instructors, but is made up of one licensed residential appraiser and one certified residential appraiser, one certified general appraiser, a layman, real estate broker and a banker.

Although Fannie Mae and other lender guidelines are not within the Board's state statute jurisdiction, the complaints coming out of the license board are often based on Fannie Mae guideline missteps. These guideline infractions are interpolated as USPAP violations by the Board and or by an undisclosed prosecutor's appraisal reviewer consultant who by regulation is exempt from performing in accordance with USPAP. The Massachusetts state regulation 264 CMR 12.03 states, "Non-applicability of USPAP to Board-related Appraisal Reviews. Appraisal reviews performed by licensed or certified appraisers are exempt from the Uniform Standards of Professional Appraisal

Practice (USPAP) requirements regarding appraisal reviews when those reviews are conducted on behalf of the Board.

Appraisers charged with a violation should be aware that defending the charges requires time and patient effort to dissuade the prosecutor's steady effort to punish the alleged transgressor.

Our attorneys are fluent in USPAP, state regulations, and state statutes; however we are at the same time bamboozled by the misapplication and interpretation of USPAP. We see a perplexing array of alleged charges carrying heavy fines, probation, and possible suspension that include the following often vague and ambiguous punishable violations; the comps were not appropriate, comps were from a superior neighborhood, did not perform a cost approach, failed to provide at least one offer for sale within the past year, adjustments were incorrect, failed to check off something on the appraisal form, failed to identify the buyer motivation for forth comp, failed to make adjustment to comp #1, used comps that were not adequate in determining the value of the unit, failed to note the seller's concession in comp#1, report improperly inflates the value, central air conditioning is not checked off, there is a lack of care and attention in the sketches, etc...

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