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Appraisers oblivious to danger of USPAP law & regulation

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USPAP is a statutory requirement for licensed/certified real estate appraisers. Violation of a statute can be relevant and admissible evidence of negligence in a civil law suit. It is serious business.

Many USPAP Rules and Standard Rules however are ambiguous, vague, and create confusion in the market place and a considerable danger to licensed real estate appraisers.

The latest is a pronouncement from the Mass. regulatory board is enforcement of Standard Rule 1-6. "In developing a real property appraisal, an appraiser must: (a) reconcile the quality and quantity of data available and analyzed within the approaches used; and (b) reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion(s)." Now, the Standard Rule 1-6 has been in effect since 2008. Nothing new here. The state's advisory adopting the enforcement says the Rule is "clear on its face" Look at this quote. "the rule requires that the appraiser must "identify which approach was used and justify in writing why that approach was used for the final value." This is at best a self serving misinterpretation of the rule. Why? Because Standard Rule One is a development rule. It is not a Report Writing Rule. Standard Two governs what must be contained in an appraisal report. How do the regulators enforce a Standard One development rule? By pushing a square peg into a round hole. Simply by subjectively charging the appraiser with a USPAP violation. Such a charge is seldom supported by any persuasive evidence. Charges of wrong doing are more likely put forth by the dogma encrusted opinion of a self-proclaimed subcontracted review expert. This "expert" will willingly testify that based on his or her experience and training, this or that is a USPAP violation. Due process and rules of evidence are sacrificed. Therefore, countering that often subjective faith-based dogma and interpretation of USPAP Rules requires the defendant appraiser to hire his or her own expert. The battle of experts is more farce than a presentation of persuasive evidence.

Sometimes a rule means what it says and says what it means in unmistakable language. If so the reviewer and or prosecutor should take the plain language of the rule and apply it to the particular facts, e.g. what the appraiser did or did not do.

USPAP Rules are created by private committee and are not created by an elected legislature. Appraisers have little right or input on the creation of the rules. Every appraiser however should become involved at every opportunity to insist on clarity of the rules.

Does the Law Apply? According to statute and the Federal Appraisal Subcommittee, Mass. is a "volunteer" state when it comes to requiring a license to appraiser "federally regulated transactions." The Appraisal Subcommittee defines a volunteer state as one in which licensed appraisers not required for any appraisal/evaluation assignments. If appraisers wish to perform appraisals in such federally related transactions appraisers can choose to become certified/licensed and submit to the state's regulatory jurisdiction. Maine, New Hampshire, Rhode Island are mandatory states. This means that in Maine, New Hampshire, and Rhode Island, a licensed appraiser is required for any

opinion of value, evaluation or appraisal for any real property. This is not true for a "volunteer" state. Yet, every day appraisers not performing appraisals for federally regulated transactions are charged with various USPAP violations under the Board of Registration of Real Estate Appraisers Regulations.

Separation of Powers: The United States and Mass. has a three part government that separates powers. A law making body, the legislature is a separate power; the executive carries out the laws and is a separate power, and a judiciary which interprets and enforces the laws is a separate power. The Mass. licensed real estate appraiser or any professional license holder will find that the judicial function of interpretation and enforcement of laws is carried out by the executive branch. The prosecutor and hearing officer share the same office space and are all employees of the executive branch license board. Mass. Gen. Laws 152A§7C impermissibly assigns a judicial function to a department of the executive branch. Mass. Declaration of Rights Article XXX states, "the executive shall never exercise the legislative and judicial powers..." But it does and appraisers are oblivious to the danger inherent in the misinterpretation of USPAP law and regulations.

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