

REAL PROPERTY

Real Estate Appraisal Standards

BY MICHAEL V. SANDERS

Cases involving the value or marketability of real property often require the services of a real estate appraiser. Though a lawyer's knowledge of the appraisal process, highest and best use, and the three approaches to value are certainly helpful, familiarity with rules governing the professional conduct of appraisers is also important, providing a potent tool for evaluating the credibility of appraisal experts on both sides.

The California Real Estate Appraisers Licensing and Certification law (AB 527, c 491) was enacted by the California Legislature in 1990, establishing the Office of Real Estate Appraisers (www.orea.ca.gov). Appraisers performing work as forensic consultants or expert witnesses in California will in most cases hold either a Certified Residential or Certified General license. Appraisal experts may also be members of professional organizations (such as the Appraisal Institute) that may subject them to additional requirements.

The Uniform Standards of Professional Appraisal Practice (USPAP) is the recognized benchmark for performance of appraisals, and in California it constitutes "the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards." Cal Bus & -Prof C §11319.

USPAP is updated annually and is available directly from the Appraisal Foundation (www.appraisalfoundation.org). The document includes ten Standards. For example, Standard 2 governs the process of reporting the results of an appraisal, noting that appraisal reports, however reported must

not be misleading; must contain sufficient information to enable understanding by intended users; must clearly and accurately disclose any extraordinary assumptions or limiting conditions; and must contain a signed certification attesting to truth, objectivity, and compliance with USPAP.

In addition to the ten Standards, there are currently seven active Statements on Appraisal Standards, 23 Advisory Opinions, and a number of rules: (1) the Ethics rule; (2) the Competency rule; (3) the Departure rule, which allows departure from certain non-binding portions of the Standards, resulting in a limited appraisal; (4) the Jurisdictional Exception rule, which applies when any part of USPAP is contrary to law or public policy; and (5) the Supplemental Standards rule, which requires appraisers to satisfy additional standards that may be issued by governmental or related public policy agencies.

There are three written reporting options offered by USPAP. The Restricted Use Appraisal report, which contains the least amount of detail and information and is for the use of the client only, would therefore never be appropriate for litigation, in which third-party users would include the court and other parties.

Oral appraisal reports in the form of sworn testimony are also permissible but require a written summary in the appraiser's work file and must address the substantive matters required in a Summary Appraisal Report. The Ethics Rule of USPAP requires a work file for every appraisal, appraisal review, or consulting assignment. It must include all data, information, and documentation necessary to support the appraiser's

opinions and conclusions. The work file must be retained for the longer of five, years after preparation or two years after the final conclusion of related judicial proceedings in which testimony was given. When documents are subpoenaed in connection with a deposition or other discovery, failure of a licensed appraiser to produce a work file is a clear violation of USPAP.

WHAT DOES IT ALL MEAN?

The importance of USPAP as the rule book for appraisers can't be overstated. It places affirmative duties on the appraiser to perform careful and impartial analyses and to accurately and completely report his or her opinions and conclusions. Attorneys who deal with real estate valuation matters on a regular basis should have general familiarity with USPAP, if for no other reason than to make sure their appraisal expert is in compliance.

USPAP is a potent tool for attacking the credibility of an opposing expert. Lack of knowledge relative to the detailed requirements of USPAP, efforts to produce only minimal reports; and, sometimes, advocacy in favor of their clients often result in significant violations of USPAP by appraisers. Showing these violations of generally accepted and recognized standards of professional appraisal practice can be a powerful weapon to discredit an opposing expert. ■

Michael V. Sanders, MAI, SRA, of Bell Anderson & Sanders in Laguna Beach, is an appraisal expert specializing in real estate damage issues.