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ARM E-Journal™

Providing Value Worldwide

OFFICIAL PUBLICATION

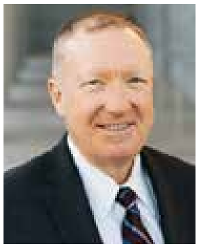
ASA Appraisal Review & Management Discipline

FEATURED ARTICLES

Top Ten Mistakes and Misconceptions in Report Writing

— page 14

Moving Forward with Your Support



A few of us in the ARM Committee recently met with Johnnie White, Todd Paradis, and Joe Noselli about the development and publication of an ARM Manual. This is a big leap forward for ASA ARM that all of you will want to be a part of. The Manual will focus on the materials in the current AR201 class and many of the articles being published in the ARM E-journal such as the two excellent articles from Sandra Tropper and Douglas Krieser in this issue. Please consider submitting an article on your specific area of knowledge for which you will be credited for in the forthcoming ASA ARM Manual.

Technical Topics

This month we have solid articles from two well-known members:

Sandra Tropper, FASA
Top Ten Mistakes and Misconceptions in Report Writing
Learn the common ways appraisers fail to effectively communicate their opinions of value in appraisal reports.

Douglas Krieser, ASA, Past Pres. of ASA
Value is Value, Right? Common Errors in MTS Reports
This is the story of a poorly uninformed appraiser who does everything wrong when it comes to a financial reporting valuation. Learn from these mistakes!

Getting Published

Getting published is a win-win: good for your professional reputation and good for ARM. Get involved in building our discipline by submitting articles to the ARM E-journal on these important subjects:

- Industry specific review topics like most common errors in your area of practice
- Practice management topics, record keeping, quality control, agreement letters, and assignments involving more than one appraiser.
- Standards: *USPAP* and beyond
- Reviewing the “No-Standard” Appraisal Report
- Developing a Logical Argument
- Reviewing for specific intended use, such as financial reporting, collateral lending, family law, business dissolution, property tax appeals
- Litigation support

For more information on article submissions please contact me at jack@norcalvaluation.com or (530) 795-5536.

Jack Young, ASA, ARM-MTS, CPA,
ARM Publication Chair

ARM
E-Journal™

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COLUMNS

Greetings ARM Members

First, we start with some committee business. There have been some changes in our roster of officers. Due to work commitments, Joel Gonia has resigned his position as Vice Chair. Thanks for your service, Joel. Matt Kaufman will assume Joel's duties as Vice Chair. We want to extend a warm welcome to Terri Lastovka as our new Secretary/Treasurer. We thank her for her commitment to the ARM discipline! Travis Avant ASA, ARM-RP, IRWA has been a good friend of ARM and has been appointed to the Committee as a Member at Large.

In the new year, AR202, Litigation Services, and AR203, Managing Multifaceted Assignments, will launch, providing our discipline with a strong Four ARM suite of POV courses. Thanks to Jack Young and Melanie Modica for spearheading these efforts.

The initial offering of AR202 is scheduled for April 19 through May 7. **Registration is open until April16!** The course will be taught on Mondays and Fridays. Details are available here.

Past Chair Jack Young has been working with top-notch litigation specialists like Jeffrey Brend and Brian Brinig to deliver a compelling set of litigation-related webinars. Stay on the lookout for these excellent professional education events.

We are always looking for interesting and relevant webinar topics. If you have ideas or have seen a good speaker at another venue, let us know. Our audience is thirsty for knowledge.

Our Conference Chair Terri Lastovka is putting the finishing touches on the ARM program for the upcoming international conference in Las Vegas. I plan to attend in person! Hopefully, you can make it too. If not, you can take advantage of a virtual conference experience, similar to last year.

The ARM committee recently approved a streamlined candidate examination advancement process. If you have been thinking about going after the ARM designation—now is the time! We offer the two-course, discipline-specific ARM credential, which is ready and waiting for you! Soon, we will have a path to a "Four ARM" designation as well.

The opportunity to work with a group of seasoned professionals from all disciplines is one of the great benefits of ARM membership. Please encourage your ASA colleagues to get a strong ARM credential through the ASA!

J. Mark Penny

J. Mark Penny, ASA, ARM-BV, ARM Discipline Chair

Meet Your ARM Committee

1. J. Mark Penny, ASA, ARM-BV
Chair

2. Matt Kaufman, ASA, ARM-MTS
Vice Chair

3. Terri Lastovka, CPA, JD, ASA, ARM-BV
Secretary/Treasurer
ASA Conference Committee

4. Jack Young ASA, ARM-MTS, CPA
Immediate Past Chair
ARM Publication Chair
ARM Board of Examiners Reviewer

5. Melanie Modica, ASA, ARM-PP, CFLC
Member at Large
ARM Education Chair
ARM Board of Examiners Reviewer
ARM Publication Reviewer
2020 ASA Woman Appraiser of the Year

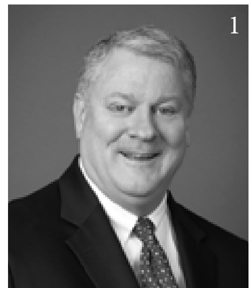
6. Raymond Rath, ASA, CEIV, IA, ARM-BV
Member at Large
ARM Board of Examiners Vice Chair
ARM Publication Reviewer
2020 ASA Reviewer of the Year

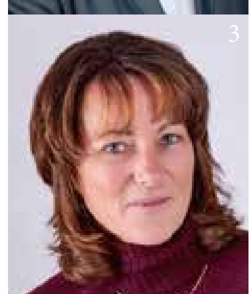
7. Travis Avant, ASA, ARM-RP, IRWA
Member at Large

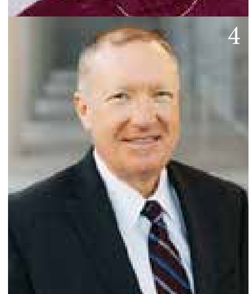
8. Barry Shea, ASA, CG
Member at Large
Secretary, International Ethics Standards Coalition

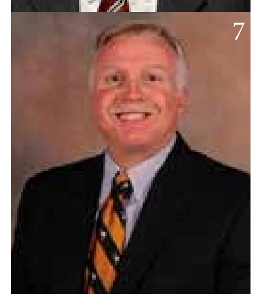
9. Cameron R. Tipton, ASA, ARM-MTS
Member at Large

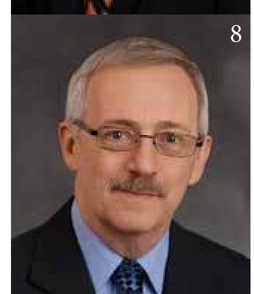
10. Charlie Dixon, ASA, ARM-MTS
ARM Board of Examiners Reviewer
ARM Publication Reviewer
AQB Certified *USPAP* Instructor

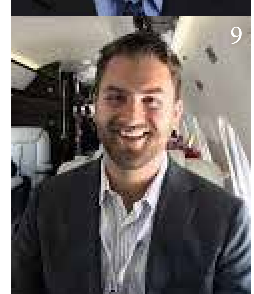












Let 2021 be Your NEW ARM Year!

2021 ARM Education Offerings

The Appraisal Review & Management Committee has been diligently working for the advancement of the program for existing, new, and prospective members.

Prospective members are now able to accredit in the all new "FourARM" program, by completing AR201(prerequisite for AR204), AR202, AR203, and AR204, all with exams and one final review report.

The "add-on" accreditation is still available to ASAs who would like to accomplish an additional accreditation of ARM by taking the AR201 and AR204 courses only (with exams and report).

Non-ASA professionals are able to achieve the ARM Certificate of Completion by successfully participating in the AR201 and AR204 courses (with exams and a draft report).

And, anyone wanting to complete reaccreditation hours in fun, interesting, and energetic courses can take any ARM *Principles of Valuation* classes, any time!

- **AR201:** Appraisal Review & Management—Overview & Development

- **NEW! AR202:** Appraisal Review & Management—Litigation Services

- **NEW! AR203:** Appraisal Review & Management—Managing Multifaceted Assignments

- **AR204:** Appraisal Review & Management—Application & Report Writing

2021 ASA ARM Schedule:

- **AR202:** April 19 REGISTER TODAY!
- **AR204:** June 1
- **AR203:** September 13

Check for more course offerings and webinars!

Register at www.appraisers.org; and also at the Houston chapter website for AR201, AR203 and AR204 offerings in the coming year, online HoustonAppraisers.org.

Plan now for YOUR new ARM designation!

I'm here and I'm ready to help you! Feel free to contact me at (713) 306-7966 or melanie@modicafineart.com. The new 2021 ARM . . . it's got legs!

Melanie Modica, ASA, ARM, CFLC, ARM Education Subcommittee Chair

NEW! AR202: Litigation Services

This class is written for appraisers, lending professionals, CPAs, auditors and tax assessors, appraisal review professionals in the insurance industry, the IRS and everyone interested in learning more about litigation and review services. This course provides litigation support education for any kind of valuation work. Because appraisers are obligated to follow specific, ethical standards of *USPAP* and appraisal organizations, this class addresses how those considerations apply in the legal system. Regardless of the difference in valuation training and ethical regulations, or the specifics of a particular situation, the mechanics of being a litigation support professional remains generally the same. This curriculum assumes that all participants have a working knowledge of appraisal review practice and are experienced in report writing.

> Register for the April 19 class online or by calling (800) 272-8258.

NEW! AR203: Managing Multifaceted Assignments

Focused on managing a variety of multifaceted appraisal assignments, this course will apply methodology for coordinating, supervising, and directing a group of professionals. Complex assignments require a lead professional for planning oversight, various directives, multiple perspectives, and considerations. Course content includes ethics, competency, assessments, scopes of work, contracts, certifications, and case studies for organizing professionals in multiple appraisal disciplines, and multiple specialties within a discipline. This course will demonstrate common practices and standards of care when managing a team of appraisers, appraisal reviewers, or a combination of professionals in assignments of various capacities. Participants will conclude the class with information and tools for understanding the proper and professional coordination of a team on assignments that include multifaceted components.

> Register for the September 13 class online or by calling (800) 272-8258.

Welcome to Our Latest ASA-ARM Members

Matthew Crane, ASA, CEIV, IA, ARM-BV

Matthew works at CFGI in Manhattan, NY and is involved in company, tangible and intangible asset valuations across diversified industry sectors in the U.S. He enjoys skiing, hiking and Texas blues.

Connect with Matthew at:
mcrane@cfgi.com; or www.linkedin.com/in/matthew-crane-ab71268

Jack West, ASA, MTS-ARM

Jack lives in Tampa, FL and Waynesville, NC and has been an ASA since 2004. He specializes in valuations and representations for clients in the Ad Valorem arena. Jack and his wife Nancy have been married 46 years and have three children and seven grandchildren. He enjoys hiking, traveling and sports with his family.

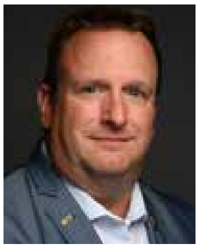
Connect with Jack at:
jack@pvandcjw.com; or www.linkedin.com/in/jack-west-00b61b17a

Alina Niculita ASA, CFA, ARM-BV, MBA

Alina Niculita is a valuation expert who specializes in business appraisal and appraisal review for business transactions and litigation. Since 2014, she has appraised hundreds of companies in diverse industries and sizes with up to several billions of dollars in revenue. She is also an accomplished author.

Connect with Alina at:
alina@moronesanalytics.com; or www.linkedin.com/in/alinaniculita

Matt Kaufman, ASA, ARM-MTS



Matt Kaufman had just left a candy manufacturer and started his own consulting firm Paniolo Solutions. (Paniolo is Hawaiian for cowboy.) A few weeks into the process, his father Richard "Dick" Kaufman needed his help on a project and Matt's appraisal career was born. Matt went through the MTS POV courses and earned his ASA-MTS in 2013; he quickly jumped further into his education completing AR201 and AR204, and earned his ARM-MTS accreditation in 2018.

Matt grew up just outside of Portland, Oregon where he met his wife Kristi. She's a "recovering attorney" who sells real estate. Their son Blake was born during her first year of law school and is currently in marketing at one of Matt's favorite local breweries. Their daughter was born 5 years later and is a Junior at University of Hawaii. The family spends a lot of vacation time in Hawaii where Matt hopes to retire.

Long before becoming an appraiser, Matt finished his undergraduate while working in trucking and construction and served in the Army National Guard for 9 years.

Matt enjoys scuba diving, boating, model trains, target shooting and DJing the occasional day party or wedding through his Mr. Music DJ Service

As a scuba diver and an appraiser, Matt likes to contemplate an interesting appraisal problem regarding a Navy Corsair that sank off the coast of Oahu during a training mission in 1947. Would the Corsair be appraised as an aircraft or a marine survey? Or would a BV appraisal be appropriate considering the number of dive boats that visit it?

Send Matt your appraisal suggestions for the scuba dive problem via email or LinkedIn at: matt@spearheadvaluation.com or www.linkedin.com/in/matt-kaufman-asa-77b9b09.

Exciting ASA ARM News

A historic milestone was accomplished for ASA at the end of last year with the Board of Governors (BOG) casting their final approval for the adoption of the Society's new governance model. The approved Governance Policy Manual is on the ASA website, https://www.appraisers.org/About/asa-leadership.

We have started the year under the guidance of the Governance Policy model, which provides the BOG the ability to set the ends (goals) that are the long-term positive impact on members' value and success and establish the executive limitations for the CEO. Under this new policy-based model it will allow the committees, staff, and I to work more closely in establishing and implementing plans to meet the BOG ends. This process has already begun, and the staff and committees are working together to develop the strategic paths in implementing plans to meet those ends.

I am truly looking forward to working under this new model and working with the BOG and committees in successfully implementing the policies that will ultimately enhance the services and branding of ASA.

Here's other ASA ARM news I am excited to report:

New ARM Promotional Video for Assessors to Air

A new promotional video featuring Melanie Modica, ASA, ARM-PP and Mike Pratt, ASA, ARM-RP will air shortly on ASA's YouTube page and social media channels. The video will target assessors, promote ASA's ARM program, and include a special invitation to IAAO members.

Redesign of ARM E-Journal

A comprehensive redesign of the ASA ARM E-Journal has been undertaken. Updates include new single publication PDF format, linked table of contents, stylized layout & design, search capabilities and issue archive.

ASA Completes Re-Writes of ARM POV Courses – Resumes Designation Program

Considerable effort and attention were given by developers to ensure the latest appraisal review & management standards. The courses utilize the latest professional development learning strategies and incorporate best practices and practical skills the learner can immediately implement within their practice. Read more, including recent media attention about this exciting news.

Sneak Peek at Upcoming *2021 ASA International Conference* Live in Vegas & Online ARM Sessions:

- *Mock Trial* featuring Jeffrey Brend, Craig Capilla and Mark Munizzo
- *Trends in Real Estate Centered Businesses & Going Concern Properties* featuring Robert Schlegel and Deane Wilson
- *AR204 - Unexpected Common Errors in Review Reports* featuring Melanie Modica
- *Competing Appraisals in Litigation* featuring Edward Kainen
- *Cannabis: Business Valuation and Real Estate Appraisal* featuring Vanita Spaulding and Christopher Garlick
- *The New ARM POVs 202 and 203* featuring Melanie Modica and Jack Young
- *Reviewing the Appraisal That Has No Standards -or- Standard of Value vs Intended Use* featuring Jay Fishman
- *Professional Liability Claims* featuring Peter Christensen
- *Risk Management—Insurance & Engagement Letters* featuring Sheri Thome

Register early to take advantage of significant saving discounts at www.appraisers.org/asaic21 or by calling (800) 272-8258.

Success with New ASA ARM Sponsored Expert Witness and Litigation Support Classes

ARM's newest line up of expert witness and litigation support classes has been well-received. Higher than average registration rates have occurred, serving as a testament to market demand for these important professional development topics.

ASA's Partners with Leading Global Assessor Professional Organization to Provide Appraisal Review Programs

ASA has partnered with the International Association of Assessing Officers (IAAO) to provide their 8,000+ members worldwide access to ASA's appraisal review education and credentialing programs leading to the Society's Appraisal Review Management (ARM) Designation.

Stay in the Know with ARM

As you can see there are a lot of exciting ASA ARM initiatives underway. To help stay on top of the latest developments be sure to view our monthly ARM Valuer newsletter, participate in conversations at arm-discussion@list.appraisers.org or opt in to ARM's Members Only Discussion Forum.

Johnnie White

Johnnie White, MBA, CAE, CMP, CEO/EVP

Top Ten Mistakes and Misconceptions in Report Writing

By Sandra Tropper, FASA

Appraisers prepare appraisal reports to communicate to clients and intended users the appraisals they performed. The Uniform Standards of Professional Appraisal Practice (USPAP) draw a clear distinction between the appraisal, the opinion of value concluded, and the appraisal report. The report is the communication of the information to the client and intended users of the research and analysis used to reach that opinion of value.

In this article, I make no attempt to tackle problems of the appraisal activity itself—the methodology process or the scope of work to reach conclusions and opinions. Instead, I focus on the ways appraisers communicate. *USPAP* is clear that the communication of appraisal information to the client and other named intended users is an important aspect of the assignment for all disciplines. The Appraisal Standards Board, the part of The Appraisal Foundation that writes, edits, and promulgates *USPAP*, has established separate standards for the communication of the information in an appraisal. Standards 2, 4, 6, 8, and 10 address the preparation and content of appraisal reports so that, in the words of the Appraisal Standards Board, the appraisals are transmitted in a "meaningful and not misleading" way. For each discipline, including appraisal review reports that include an opinion of value, the relevant standards provide appraisers with a "checklist" to follow to be sure all information necessary to understand the appraisal is communicated in a clear and unbiased manner.

One of the keys to successfully completing an appraisal assignment is taking care in communicating not just results but also the credible, professionally accepted methods used to reach the credible opinions and conclusions. The clear presentation of details is often the difference between an "okay" appraisal report and one that accomplishes its goals and may even result in additional interesting future assignments.

Chances are, if you are reading this Journal, you already know all of what I have written in the last three paragraphs. Please don't stop reading yet…

I have looked at many reports sent in for accreditation in the American Society of Appraisers as well as reports prepared by colleagues in compeer organizations, and reports prepared for submission to clients. This article points out the ten most common mistakes I have seen in appraisal reports. Appraisers are encouraged to be wary of these ten "traps" as they prepare appraisal reports. And I hope that this list will be especially helpful to appraisal reviewers either when reviewing reports or preparing reviews with an opinion of value.

The Big Ten…

The most frequent problem I have seen is #1, though I have found that mistakes or items left out of appraisals often appear in groups. I have worked in reverse order as a bow to David Letterman who regularly followed this format on his television show to add to the "drama" of the list.

Number 10: Inadequate or Inappropriate Description of Property Characteristics

The appraiser needs to describe adequately the properties they are appraising. If the appraiser has knowledge about the familiarity of the named intended users with the property and its markets, the appraiser's job is easier. Certainly, the type or nature of the property makes a difference here as well. The amount of information that needs to be included in the appraisal report is dependent on the intended users' knowledge. Each of the standards in *USPAP* was developed for the different categories of property and lists the minimal information for an adequate property description.

For example, Standard Rule (SR) 9-2 states that the business valuer needs to identify the business enterprise (or intangible asset) including the characteristics of the subject property relevant to the assignment such as the interest in the business enterprise, equity, asset or liability. Instead, SR 7-2 states that the personal property appraiser (including machinery and jewelry appraisers) must consider physical and economic characteristics (including condition, style, size, quality, manufacturer, author, materials, age, history or provenance, alterations, etc.) Failure to include all value characteristics makes it difficult for intended users to understand how those features affect the appraiser's opinions. Description also assists in the identification of the property.

How much is enough? This question comes up in numerous aspects of the appraisal report. *USPAP* development standards (1,3,5,7,9) provide some guidance on the amount of descriptive information to be included. The important characteristics of the property are those that "are relevant to the type and definition of value and the intended use of the appraisal." However, many appraisers, especially those who are ardent researchers, often suffer from TMI (Too Much Information) syndrome and their output turns into "research papers" rather than functional appraisal reports.

I have also encountered examples of inconsistent descriptions when there are multiple properties in appraisals. For example, a consistent format for all items included in an appraisal adds to its readability. In addition, switching between the English and Metrics systems and between decimals and fractions within an appraisal can make an appraisal report difficult to follow.

Finally, the property description needs to be objective and not include "loaded" words that lead to the appearance of "bias." My favorite word in personal property appraisals is "fine." For example, this is a "fine example" of a ball and claw foot. Instead of sounding like an unbiased appraiser's description, the report sounds like an auction or sales catalog – even when I know the appraiser is completely objective.

Number 9: Boilerplate

We all use it. We could not possibly recreate every part of every report for every assignment.

The most obvious mistake is to leave the name of the previous client in an unexpected location in the report. Unfortunately, I have seen numerous appraisals where after a type of value has been stated and defined, a different one is referred to in the narrative section of the report. This problem is especially true for sections such as "Limiting Condition and Assumptions" where conditions included are neither relevant to the property nor the assignment.

For example, while inches may usually be stated as "approximate" for tangible property, approximate weight "within an ounce" may not be relevant for the property in the assignment. That condition may have been relevant to an appraisal that included silver and is probably irrelevant for a bronze sculpture when no weight is included (or necessary).

Number 8: Terminology

Many appraisers who took appraisal courses some years ago have not kept up with changes in the professional terminology. One of my favorites is the "hypothetical appraisal." In plain English, this is an appraisal that does not exist. *USPAP* changed this term many years ago. While still referring to the original concept, an appraisal that includes a circumstance or feature that is counter to what exists, the appraisal is now referred to as one that includes a "hypothetical condition." The changed term clarifies the concept and uses words that make sense to both appraisers and non-appraisers alike.

In the "old days," *USPAP* referred to "type of value" as purpose and "intended use" as function. The Appraisal Standards Board recognized the confusion in these terms and changed them to what is currently used – terms that are understandable to the public. I continue to see these archaic terms used and still not always correctly.

In addition, appraisers use different words in place of those that are defined in *USPAP*. While appraisals require creativity in their work, that does not translate into "creative writing." Appraisers who state they are in compliance with *USPAP* and use *USPAP* terms, have no need to define them. The definitions in *USPAP* provide intended users with a promulgated definition for a term accepted by the profession. Appraisers should not be afraid to repeat a word if it is a professionally accepted term. Instead, I have seen substitutions for "intended users" with "designated readers" or "purpose of the appraisal" substituted for "intended use." These options do not mean the same thing and they are not defined. By using *USPAP* terms, everyone can agree to their definitions, reducing possible misunderstandings.

Other mistakes I regularly see in reports include the misuse of "extraordinary assumption" and "hypothetical condition." The terms are each clearly defined in *USPAP*. However, as there is confusion among appraisers and others regarding the use of these terms, *USPAP* has no requirement that either term be included in an appraisal report. Instead, the requirement is that the appraiser include a statement that a condition or assumption exists and has a potential effect(s) on the appraiser's opinions and conclusions.

Number 7: Price and Value

While this is part of the misuse of terminology, these terms and their definitions are so important in the appraisal realm that I have given them their own number in my list. To quickly review, price is "the amount asked, offered or paid for a property" and once stated it is a fact. Instead, value is "the monetary relationship between properties and those who buy, sell or use those properties, expressed as an

"Number 7: Price and Value... The classic example of the difference between the two terms is the copy of the Declaration of Independence that sold in 1990 for just over $4.00 at a flea market in LA..."

opinion of the worth of a property at a given time." (*USPAP* definitions).

The classic example of the difference between the two terms is the copy of the Declaration of Independence that sold in 1990 for just over $4.00 at a flea market in LA. That was its price. It was one of 24 copies known to exist. (About 200 were originally printed.) This potentially million-dollar valued document had a price of $4.00. To conclude an opinion of value, the appraiser takes into account the sales prices of other comparable properties to the document as of a specific date, the supply and demand for it, etc., not just the price tag attached to it. The fact is that the price was four dollars … the opinion or value will clearly be different.

Other misuses of the terms include the terms "auction value" and "dealer value." These values do not exist. There are realized auction prices. And there are lists that dealers have of items with prices – purchase prices, asking prices or realized prices. None of these however meet the criteria for the definition of "value." Prices can be used by appraisers as part of their analysis in order to conclude their opinions of value; however, they need to be characterized accurately.

Number 6: Market and the Economy

While not every appraisal requires extensive economic study, in order to conclude value, *USPAP* requires that appraisers analyze the "economic conditions" relevant to the appraisal assignment. Appraisers need to consider market acceptability and trends of the property as well as its supply and demand. As this information is relevant to the appraiser's opinions, it needs to be included in the appraisal report.

Unfortunately, many appraisals I have seen include past sales of similar items without looking at the bigger picture which can include economic changes and resulting modifications in its demand (or supply). "Market context" often provides reasons or the rationale for the value conclusions and needs to be included in the appraisal report. Many appraisal reports neglect to provide this information.

For users of Standards 7 and 8, *USPAP* also recognizes that there are different market levels where similar properties are traded. *USPAP* authorizes appraisers in these disciplines to select the appropriate level of trade depending upon the intended use of the appraisal. Reporting standards require explaining the rationale for market selections.

Number 5: Approaches to Value

We all learn that there are numerous Approaches to Value early in valuation classes. *USPAP* refers to the main three approaches as the Sales Comparison Approach, the Cost (asset based) Approach, and the Income Approach. As the appraiser explains the methodology for the value conclusion, the approach(es) used is (are) clarified in the appraisal report. However, there is also a specific requirement in Standards 2, 8, and 10 that an explanation must be stated for any of the three approaches not used in all appraisal reports.

While this requirement is excluded, I have seen numerous appraisal reports that provide inadequate explanations. For example, "I did not use the Sales Comparison or Income Approaches because I used the Cost Approach" does not fulfill the obligation.

Number 4: Effective Date (of Value) and Date of Report

One of the critical elements in determining the Scope of Work for an appraisal is the Effective Date of value. This term is now defined in *USPAP* as "the date to which an appraiser's analyses opinions and conclusions apply." This date is often confused with the date of report, the date that the Certification in the appraisal is signed and the report is transmitted to the client (or to whoever the client designates as a recipient). In other words, the Effective Date establishes "the context for the value opinion" while the Date of Report provides "the perspective" from which the appraiser examined the market. (See Advisory Opinion 34 in *USPAP*.)

While these two dates are often confused, the effective date is also often confused with the date of inspection. I was specifically asked by reviewers at the Internal Revenue Service to clarify in classes that I teach, that the effective date for a donation is the date the property title transfers and not the date the appraiser inspected the property. Likewise, the date of death (or 6 months later) is the effective date for an estate, regardless of when the appraiser inspects the decedent's property. Other effective dates include the date when damage or loss occurred for an insurance claim, not the date that the appraiser viewed the damages or the date the property owner contacted the appraiser for the appraisal.

Number 3: Certification

In each of the reporting standards in *USPAP*, the Appraisal Standards Board has included a Certification which includes numerous provisions to provide intended users with information regarding the ethical stance of the appraiser. The wording in the Certification has been carefully crafted by the Appraisal Standards Board (ASB). While it does not have to be copied exactly, I have yet to see an appraiser rewrite/revise provisions in the Certification and retain the same meaning as that intended by the ASB.

Another problem that I frequently see is the statement within the appraisal report that because the appraiser is up-to-date with *USPAP* education or because the appraisal includes a Certification, that the report is "*USPAP*-certified." This terminology per the ASB is not acceptable because it "could mean that there was some independent certification of compliance" which could be misleading for intended users. Instead, appraisers can state that they are *USPAP*-compliant or / and that the report was performed in compliance with *USPAP*. (See FAQ #43 in *USPAP*.)

Number 2: Adjustments

When using the Sales Comparison Approach, the appraiser selects comparable properties to the one being appraised. The characteristics of the comparable properties and their prices are used as evidence for market analysis. Unless the properties are exactly like the one being valued, the appraiser notes and isolates the characteristics that separates the properties, often assigning a dollar amount to the differences. The appraiser then makes "adjustments" to the realized sales prices of the comparables, adding or subtracting, depending on the different value characteristics.

I've seen many reports that fail to explain the rational for numerical or percentage adjustments. Adjustments can be made upward (for a property with special features or value characteristics) or downward (for a property lacking these features). In either case, reports frequently do not include any anchoring of adjustments to specific numerical market evidence. While I acknowledge that the opinion of an experienced appraiser is often involved in making adjustments, these upward and downward movements of a value conclusion without any discussion or explanation could be assumed to come "from the gut" rather than the marketplace.

And the Number 1 Problem: Argument for Value

This is the problem I see most frequently in appraisal reports. The appraiser has carefully researched the market and listed the evidence together with a value conclusion. What is missing? The step in-between that explains how the evidence was used to reach the conclusion.

A report can include the "claim" (opinion) and the support (data) but not the "warrant," the explanation which is the bridge from the presented facts to an opinion of value. This explanation of the appraiser's logical step-by-step thought process using professionally accepted methodology (approaches to value) to reach a conclusion of value is critical to the purpose of a report. Instead, the appraisal report seems to indicate an assumption by the appraiser that what was so clear to them from the evidence is also as clear to intended users. Instead of the needed explanation, I generally see charts and spreadsheets which lack interpretation. While the data is important, how the data is used can vary, per the bias of the intended user. Conversely, the appraiser represents the objective, impartial and independent interpreter of the data. To make the appraisal report "meaningful and not misleading" to intended users, the appraisal needs to provide a logical, cohesive and convincing argument explaining the derivation of the opinions and conclusions put forth. A report is intended to guide the intended users through the appraisal processes, illuminating the rationale so that the opinions become clear, thereby fulfilling the mandate to make the appraisal report "meaningful and not misleading."

Problem-Free Appraisal Reports

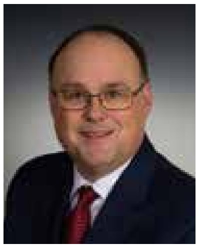
While the goal of a perfect appraisal report may be unreachable, it serves each of us to remember that appraisal reports are intended to communicate to clients and intended users the research and analysis used to reach an opinion of value in the appraisals performed at their request. Appraisers who follow *USPAP* Standards 2, 4, 6, 8, or 10 in the preparation and content of appraisal reports and are able to avoid these ten common "traps" will be likely to provide their clients with a clear and convincing report. Remember: A report that is "meaningful and not misleading" can make the difference between an "okay" appraisal result and one that accomplishes its goals and may even result in additional interesting future assignments. ■

About the Author

Sandra Tropper, FASA, is Owner of Artemis, Inc. She has worked as an appraiser and art consultant for over 25 years and has completed appraisals for estate tax calculation, estate and financial planning, insurance coverage and loss claims, division of property and non-cash charitable contributions. She has completed donation appraisals for properties that have been gifted to such institutions as the National Gallery of Art, the National Portrait Gallery, the Houston Museum of Fine Art, the Phillips Collection and the Corcoran Gallery of Art. Ms. Tropper has been a designated member of ASA for nearly three decades, an active volunteer serving in numerous leadership positions, including most notably as President of the Washington, DC chapter, Chair of the Personal Property Discipline Committee and TFAC Representative.

Value is Value, Right? Common Errors in MTS Reports

By Douglas Krieser, ASA, Past President of ASA



This is the story of a poor uninformed appraiser who does everything wrong when it comes to a financial reporting valuation. Learn from these mistakes.

It all begins the same way any appraisal begins; you get a phone call or an email from a potential client saying they need to obtain an appraisal. They state they are purchasing a company and need an appraisal to satisfy some lending or other requirements. You scope out the project and determine they need Orderly Liquidation Value ("OLV") for lending/financing purposes. The fees and timing are negotiated, you perform your inventory and analysis and issue what you feel is a great report. You believe your job is done and your client is happy.

Four months later you receive a call from someone calling themselves an auditor who wants to review your work. You are confused … why would an auditor want to review an appraisal for financing purposes? Since you follow Uniform Standards of Professional Appraisal Practice (USPAP), you state that you cannot speak to them prior to obtaining permission from your client. They are a bit persistent and state that they need to get their review done so that they can sign off on the year end financials but reluctantly let you go but they ask that you follow up as soon as practical due to a filing deadline.

You contact your client who tells you – "Oh yeah … I forgot to tell you you'd be getting a call from our Auditor… since we just purchased the company, we needed to have the assets appraised for financial reporting purposes, so I gave them your report … no issues, right? Value is value."

You try to explain to them that your valuation was performed for lending/financing and NOT for any accounting purposes. You explain that you will need to redo your report to meet the specific requirements and that will be a different value premise and additional fees. Your client is concerned more about timing since they need to file their financial statements in a week and need the audit done by then. They also concerned about additional fees and redoing an appraisal they thought was already "acceptable."

What Just Happened?

As a trusted consultant you did not completely define the appraisal problem and may have inadvertently put your client into a bad situation. As an appraiser it is your duty to fully understand the needs of the client. As soon as you heard the words "…purchasing a company…" you SHOULD be asking whether your appraisal will be used for the starting balance sheet (or in conjunction with an allocation of purchase price).

You can still provide the OLV indications (most likely under a separate cover due to the need to perform two valuations for differing Intended Uses and Intended Users).

This will become two projects which is good as you can charge additional fees.

Additional Report

Regardless, you offer to cobble together a report for your client in a couple of days. You agree to a fee and you begin your work.

Since this is a purchase you assume that the value premise should be Fair Market Value Installed ("FMV") and you decide to assume the earnings will support the value. You state this in your report.

Luckily, you already arrived at some indications of FMV since you had to utilize the cost approach in your OLV analysis for items where you could not find market comparables.

Due to timing and other issues, you take some shortcuts and grab a few data points off of the internet (why print them off? - you are in a hurry and the data will always be there if someone asks). For other assets you simply mark them up to Fair Market Value using some "rules of thumb" you have learned over the years.

You do make a few dealer calls and scribble data down on a note pad. After you enter the data, you throw the paper away such as to not clutter up your desk.

You complete the report in a couple of days and send it (in final format) to your client so that they can send it to their auditor.

Auditor Questions

A couple of days later you get a call from the same auditor who called you before and asks if they can send you a list of questions.

You provide your email address and a few minutes later three pages of questions show up. You are aghast! What are these questions? Why are they asking them? And most of all...you will need additional fees because you did not budget for this time. Again, a call to your client stating you had no idea the review would be this intense and you will need to charge an hourly fee. Your client reluctantly agrees because they need to get this done but is not happy that your fees keep going up. (HINT: Always add in a few hours of time for the review process and state the number of hours in your letter of engagement OR state that any time spent during the review process will be billed hourly at a specific rate so everyone knows what to expect).

The following are a summary of some of the more pertinent audit review questions followed with explanations of how this appraiser SHOULD have handled the situation.

Where is the Reconciliation to the Fixed Asset Records of the Company?

Of course, you didn't use them. Why? It wasn't your job to reconcile to the fixed asset records.

Since the review its often performed by an auditor (or a subject expert working for or with the auditor) they like to see how the values arrived at compare to both cost and net book value. Thus, if at all practical, show a summary (even at a high level) of how your values compare to the data on the fixed asset records.

If, for some reason (or reasons) the asset records are not a good source to start from or if they cannot be used for some reason, this should be outlined in the report and discussed beforehand with the client and auditor.

Why Did You Use Fair Market Value and Not Fair Value? Your Report Does not Comply with or Reference ASC 805 and ASC 820. Why Not?

You are not even sure what those numbers refer to so it's off to Google to search. ASC 805 is the accounting standard for Business Combinations and ASC 820 refers to Fair Value Measurement.

You state in your response that Fair Market Value with assumed earnings is the proper level of trade for a company being purchased.

The response comes back that this was a **bargain purchase** and thus, the purchase price was dramatically lower than your conclusion of value and the value of the real estate appraiser. The question is then asked whether you considered the purchase price or any projected cash flows in your analysis?

They also ask whether you considered any excess economic obsolescence in your calculations/conclusions of value. Due to the time frame and other circumstances, you simply performed a straight-line depreciation when performing your cost approach (based upon some data you were able to obtain from a pdf of the asset records of the client).

You are now in a quandary as you are not a Business Valuation appraiser and were not hired to perform a business valuation for the company.

USPAP requires that an appraiser be competent and qualified to perform the appraisal when performing a valuation for an Intended Use. In this case, it means being familiar with the appropriate standards and how they apply to the valuation. The ASC standards are long and complex. An MTS appraiser does not need to be able to quote chapter and verse for the standards but they do need to know what sections and how they apply to the project at hand.

Also, in your report, state the appropriate standards and how they were followed.

This includes utilizing the appropriate premise of value, which for this Intended Use is Fair Value not Fair Market Value.

Fair Value and Fair Market Value may be equal under many circumstances, such as when the company is profitable and the purchase price equals to or exceeds the value of all of the tangible or intangible assets.

However, under Fair Value, this usually needs to be "proven" through comparing the total of all of the tangible assets and intangible assets to either the purchase price (usually) or projected cash flows.

If the numbers are not supported, additional analysis may have to be undertaken.

In the case of a bargain purchase, you will have to analyze whether additional discounts in the form of removing installation and engineering costs (i.e., moving to an in-exchange premise) or additional economic obsolescence (for those assets valued utilizing the coast approach) are warranted.

One caveat here is that, just because there is economic support and potentially goodwill, this does not mean that economic obsolescence can be ignored altogether. Most assets suffer some form of economic obsolescence which needs to be considered and quantified. Just keep in mind that the auditor will want to see some form of data and quantification as to how this was done.

"One of the key items to understand when building any work file, and especially one for a financial reporting report is to document and maintain the appropriate data in your files..."

When performing valuations for financial reporting, it is your duty to be aware of at least some of the details of the purchase price, any projected cash flows, and the results of other tangible and intangible valuations.

The auditor asks that you review the numbers again to see if additional adjustments may be required based upon the purchase price and cash flows performed.

This takes another call to your client to gather the data (purchase price and projected cash flows). You also ask (at the behest of the auditor) for the values of the real estate and other intangible assets.

You also inform your client that you are reluctant to change your values since the report is already "final."

Your client provides the data requested and asks that you do what you need to do because they need to finalize this and obtain the auditor's approval soon.

Understanding the appropriated premise and the ramifications in any appraisal assignment is important to producing credible results as outlined by *USPAP*.

Also, it is important to understand that your work will go through a review process and thus, should not be issued as "Final" until after the review is completed. Adjustments, challenges to assumptions or new facts may arise which may require adjustments to the analysis and final conclusions of value.

What is the Source of Your Trends Utilized to Arrive at Reproduction Cost New?

You state that you utilized the "standard" PPI published by the Bureau of Labor Statistics. The follow up question was which specific trends were used for differing assets?

You state that you used "general equipment" but forgot the actual PPI number since it has been so many months.

One of the key items to understand when building any work file, and especially one for a financial reporting report is to document and maintain the appropriate data in your files such that, when asked, you can readily provide the data to the auditor.

Please Provide a Sample of Your Market Data. We did not See a List of Sources in the Report, Where did You Obtain Your Comparables?

You provide a series of links, many of which you have to "re-invent" or re-research since you did not print out copies of your comparable for your file.

Upon your investigation, you realize over half of the data you initially used was no longer available since the item had been sold or removed.

You send the links anyways, in hopes that this will suffice. Unfortunately, it does not as the auditors cannot figure out which comps were utilized for which assets and cannot verify them since many are no longer listed online.

You also stated that you used some "rules of thumb" to adjust OLV to FMV.

This does not sit well with the auditor and they ask you to provide the actual trend data and sources for the "rules of thumb."

Again, it is very important that you maintain your comparables (i.e., print them or pdf them) in a way that can readily be identified and can easily be reconciled to the actual items valued utilizing which particular comparables.

When speaking to dealers, you should always notate the discussion in some way (i.e., write a detailed memo, keep your handwritten notes, type all of the data obtained into the worksheet (including who you spoke with and their contact info)).

Also, it is very important to list at least some of the major sources utilized in your report.

Did You Know that the Buyer was Selling the XYZ Manufacturing Line and Thus, This Line Should be Valued as if "Held for Sale"?

You had no clue. The XYZ line was a series of specialty and standard machinery which was set up to build a very specific product.

No one informed you that this line was going to be sold … and besides, you initially valued it at OLV, appropriately assuming removal, so this fact would not have changed your valuation conclusions for financing purposes.

You inquire as to what the difference is and find out that this means that you SHOULD have valued the assets at Fair Value less the cost to sell.

Thus, under a true Fair Value for financial reporting, the value for this line might actually be closer to OLV than FMV installed.

This data might have been known if you had held some additional discussions with the client and auditor in advance since the client and auditor were both well aware of this fact going into the purchase.

This, along with the potential for a bargain purchase would have probably come to light had the appraiser held preliminary discussions with the client and audit team in advance of performing the valuation.

Audit Conclusion

Overall, the auditor is not convinced that you as the appraiser provided appropriate audit evidence to support the values in such a way that they could sign off on the analysis and they have asked your client to hire another appraiser to perform a more appropriate appraisal.

This will cost your client additional fees and will cause a delay in the reporting of their financial statements.

Obviously, they are not happy and even though you performed an excellent OLV appraisal which was accepted by the client's bank, they may or may not use you again due to the issues and additional costs arising from the audit review.

Guidelines for Avoiding Similar Scenarios

Handled properly, many of the situations listed above may have and should have been avoided. Planning and knowledge would have negated most of the issues which arose.

Obviously, this is a worst-case scenario under which many key issues arose.

Were these all the fault of the appraiser? Most likely not. If the client had better explained what they needed up front, the appraiser may have been able to provide the appropriate valuation with some research and investigation into what was required.

Key Take-Aways

1. Always understand any potential intended use for an appraisal up front and investigate whether the appraisal may be intended for more than one intended use.

2. Understand the appropriate standards and how those standards impact the analysis.

3. Never go final until after the review process is completed.

4. Have discussions with the client AND audit team in advance in order to investigate potential items such as equipment held for sale, potential bargain purchase situations, etc.

5. It is always good to discuss approaches to value, the use of or exclusion of utilizing the fixed asset records and key assumptions with the auditor prior to beginning the analysis.

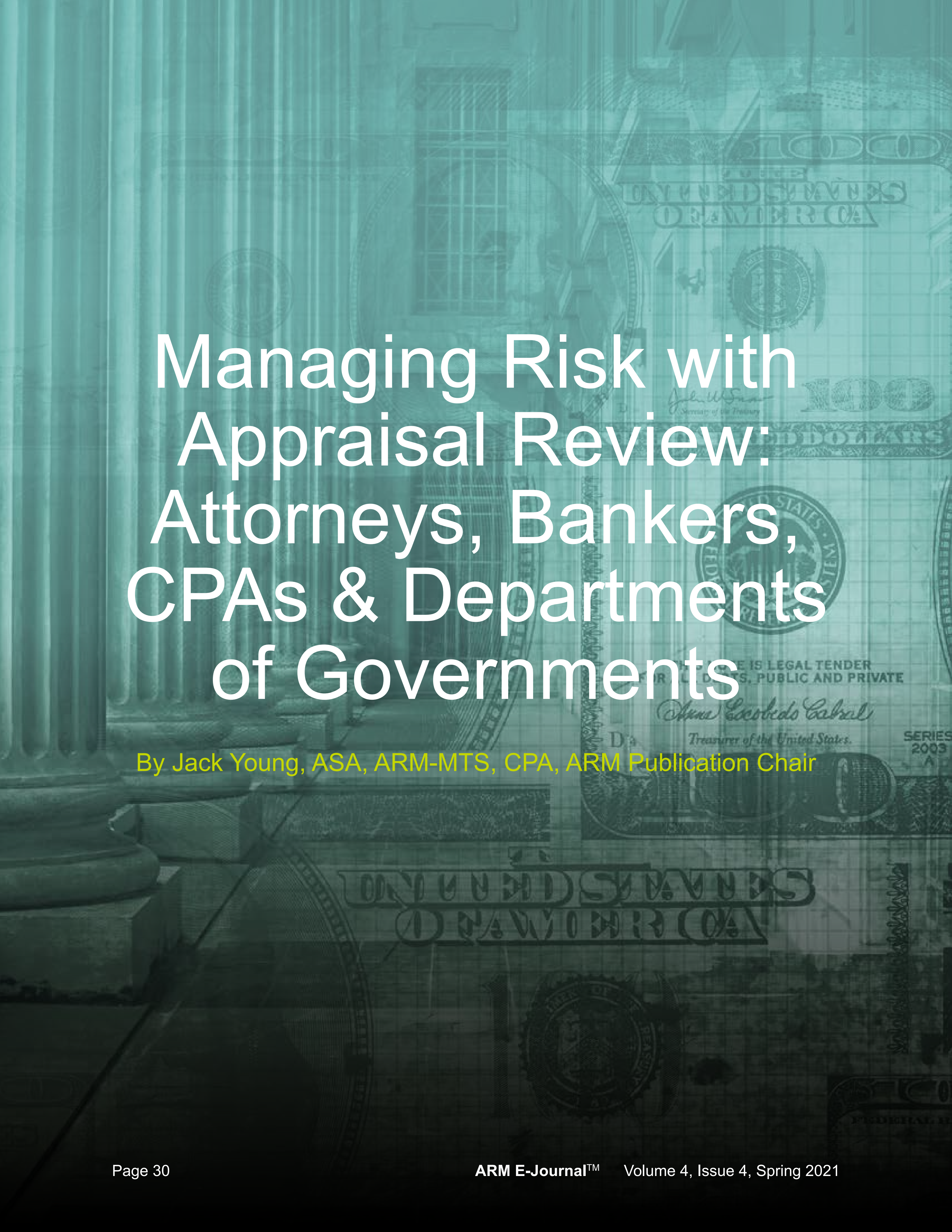
6. Always concurrently build a file which includes hard or soft copies of all relevant data in a way that can be readily referenced to the particular assets being valued. ■

About the Author

Douglas Krieser, ASA, FRICS, has been performing valuations for over 33 years and is a Managing Director at Valcon Partners, LTD. He is also the currently the International Past-President of the American Society of Appraisers (ASA). Prior to becoming Past-President, Mr. Krieser has served in several positions in his 21 years with the Society.

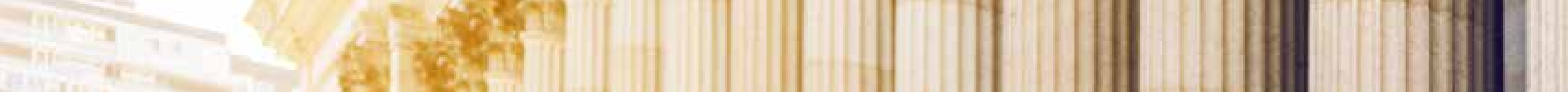
The majority of his career has been spent performing valuations for financial reporting. Mr. Krieser has performed and supervised valuations throughout the United States, Europe, Asia, and South America. In addition to his valuation experience, Mr. Krieser is regarded as an expert witness and has testified in several states regarding personal property tax matters and in federal bankruptcy court.

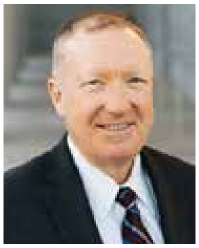
He has authored articles for various value-related publications, contributed to various textbooks published by the ASA, and presented at national conferences on a variety of valuation and regulatory related topics. In addition to his membership in the ASA, Mr. Krieser is a Fellow of The Royal Institution of Chartered Surveyors.



Managing Risk with Appraisal Review: Attorneys, Bankers, CPAs & Departments of Governments

By Jack Young, ASA, ARM-MTS, CPA, ARM Publication Chair





Appraisal review is about managing financial risk. The Appraisal Institute succinctly states that appraisal review plays "a critically important role … in risk management and mitigation for many clients/users of appraisal services."

The economy, as well as our legal and taxation systems depend upon accurate and reliable appraisals. Despite regulations and standards, however, some appraisals are flawed and misleading and can be a risky foundation for financial or legal decisions. Appraisal review determines the credibility and dependability of appraisals in order to reduce risk.

Which of the many users of appraisals have the highest risk exposure from a flawed or invalid appraisal?

- Attorneys
- Bankers & Lessors
- CPAs and CFOs
- Departments of government

Attorneys

Law firms involved in litigation, family law, and estate planning can reduce risk and increase validity with appraisal review services, especially in these situations:

- Family law
- Eminent domain
- Business dissolution
- Insurance settlements
- Bankruptcy
- Estate planning
- Property tax

Let's look at how appraisal review might reduce risk for situations of family law, business dissolution and insurance settlement.

Business Dissolution

Appraisals for the purpose of business dissolution, generally categorized as buy/sell, can range from family law (divorce) situations to a minority shareholder buy out such as regulated by California Corporations Code Section 2000. Depending upon the intended users/intended use, a valuation for business dissolution might only include the equipment or the real property. In other situations, a thorough business valuation is required.

A business valuation reviewer discussed two remarkable errors found in an appraisal report prepared for a business dissolution:

Reasonableness of Future Cash Flows

Valuations are required to assess all significant inputs used in developing an opinion of value. For business valuations, the Income Approach is typically used in the valuation of a going concern. The Income Approach is especially important as the value of businesses is predicated on the future cash flows to be received by the investor from the subject business.

In this case, the report uses projections of the future financial performance of the company being valued without incorporating any discussion or explanation of procedures assessing the reasonableness of the projections. The valuation report does not comment on the ability to reasonably rely upon the projections to develop an estimate of value.

Consideration of Closed Facility

The valuation under review was intended to develop value for the total equity of a manufacturing company. The subject company had three manufacturing facilities that were operating profitably at or near capacity. The business had a fourth manufacturing facility that had been closed in the recent past. For the four manufacturing facilities, the business owned the land and building for each facility.

This report's valuation of the total equity of the parent company, however, did not include any adjustments to the income statements of the company for the expenses associated with maintaining the closed facility. Additionally, in the determination of the value of the total equity of the subject company, the valuation procedures did not include an adjustment to reflect the possible value of the closed facility.

Appraisal Deemed Invalid

Based on these two major concerns, along with a variety of other critical lapses from BV appraisal standard of care, the appraisal report was deemed invalid, and a more reliable valuation was produced for decisions related to business dissolution.

Insurance Settlement

An insured, who collects antique furniture and oil paintings, primarily landscape and still-life, hired an appraiser to appraise a number of items damaged in a flood. The insurance company submitted that report for a review, feeling particularly dissatisfied that the items had been assigned an "appraised value" rather than the "Fair Market Value" specified in the insurance contract.

Reviewing the report against the standard of care for personal property appraisal uncovered even more disturbing factors. Most questionable were that the report included no discussion or explanation of research, methodology, or analysis, as required by Uniform Standards of Professional Appraisal Practice (USPAP); many of the items appeared to be inadequately identified; the appraiser had no affiliation with any of the three main accrediting organizations for personal property; and the one information source credited, a local antique dealer who, according to the report "set forth his values based on his knowledge and expertise," was the dealer who had sold many of the items to the current owner.

Using this review, which included an opinion of value for Fair Market Value provided by the Judicial Council of California Civil Jury Instruction 3903K for Loss or Destruction of Personal Property (Economic Damage), the case was settled in mediation.

Bankers & Lessors

Reviews needed by bankers, lessors, or other financiers usually involve appraisals involved in one of three areas:

- Collateral loans
- Lease buyouts
- Special assets (aka bankruptcy)

Under Dodd-Frank bankers are required to obtain appraisal reviews when making loans with federal funds. Any appraisal for collateral loans and lease buyouts, however, is ripe for a valuation disaster, as one business owner discovered while preparing to liquidate an insolvent manufacturing plant, he had purchased with an SBA loan. Relying on an appraisal that reported a liquidation value of the manufacturing equipment greater than the purchase price of the business, the owner took the loan, thinking that should the enterprise not pan out, the sale of the equipment would cover the loan. Within a year of the acquisition, the main client had left, and the enterprise was insolvent. Preparing for liquidation, the owner was shocked to discover that liquidation values in the report were inflated by about 50%. An equipment appraisal review using the standard of care for appraisal practice as set forth in *USPAP,* discovered that the appraisal was lacking in accuracy, relevance, and reasonableness: three of the five important qualities. In this case, an unreliable appraisal created a financial problem for the business owner and the financial institution that depended on this report.

CPAs & CFOs

CPAs and CFOs will benefit from reviews of appraisals that concern a variety of financial reporting situations in which they may find themselves having to provide advice or make decisions. Some specific areas are

- Estate: inheritance, step-up in basis
- Gift
- Purchase price allocation
- Insurance coverage
- Fair Value accounting, which demands a separate article (See Krieser's article in this edition)

The Financial Accounting Standards Board (FASB) dictates that the allocated purchase price of a newly purchased business must be assigned to designated categories such as inventory, land, buildings, equipment, and intangible assets (such as goodwill) in a process commonly referred to as "purchase price allocation." If none of those values are readily available, the purchaser will need appraisals for each physical aspect of the operation — land, buildings, and equipment — to accurately perform the purchase price allocation. The amount paid for the company in excess of the inventory, land, buildings, and equipment value is determined to be the value of the business's goodwill.

As you can imagine, an appraisal for the purpose of purchase price allocation that doesn't adhere to FASB regulations is a ticking time bomb. And an appraisal of this complexity has ample opportunity to invalidate itself.

Purchase Price Allocation

A review of a purchase price allocation appraisal for a dairy operation acquired by a larger corporation fell afoul of appraisal standards by valuing all equipment as Fair Value (FV), ignoring the Fair Value Accounting rule (ASC 820) that includes two different definitions of FV, determined by whether equipment will be sold as part of an on-going operation or sold by the piece:

> Fair Value, in-use: The price that would be received for an asset or paid to transfer a liability in an orderly transaction between marketplace participants at the measurement date assuming that the asset is sold as part of an on-going operation and assumes that the asset is sold and consequently operated with the other assets in the group.
>
> Fair Value, in-exchange: The price that would be received for an asset or paid to transfer a liability in an orderly transaction between marketplace participant at the measurement date assuming that the asset is sold on a stand-alone basis and independent of the other assets in its group.

"Appraisal review is a good business practice that adds a level of due diligence to what is inherently a risky situation for users of appraisal services."

The purchasing entity's plans to shut down and sell one of the purchased processing facilities makes it is likely that some identical equipment involved in this purchase price allocation valuation will have materially different values. The equipment to be sold will need to be valued at fair value in-exchange, while processing equipment at other locations would be valued at fair value, in-use.

The reviewer further explained that a significant difference in these two values is that fair value in-exchange does not include installation costs, while fair value in-use does.

A more reasonable opinion of value, in this case, materially adjusted the amounts allocated to equipment and goodwill. A side effect was that the purchaser was able to lower property taxes as well as insurance coverage.

Departments of Government

Entities such as IRS, Department of Transportation, Department of the Interior, Parks and Recreation, County Assessor offices may find reviews useful in situations such as

- Eminent domain
- Property tax
- Estate & Gift

Eminent Domain

In eminent domain cases, the Constitution guarantees the property owner's right to fair compensation for the taking of property. Fair compensation is not determined by the taking entity. The property owner has the right to a court hearing to determine fair compensation. An appraisal review report explains flaws in the original eminent domain appraisal and can also provide an opinion of value.

In a situation involving the taking of agricultural land for public land access, an official at the Department of the Interior felt uncertain about the real property appraisal received. With the help of a real property expert's review, the department offered present the property owner a more reasonable and just compensation, avoiding a lawsuit.

The review uncovered three critical flaws in the original eminent domain report:

1. Although the property included three tracts of land that varied greatly in physical differences and potential use, the tracts were combined in the analysis with no discussion of their differences.
2. Improvements to the properties, such as roads, canals, fencing, ponds, and agricultural structures, were ignored.
3. Mathematical errors in the appraisal process created significant errors in the final values presented.

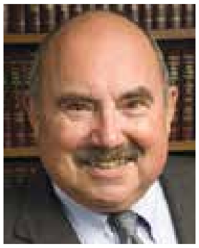
Managing Risk

Appraisal review is a good business practice that adds a level of due diligence to what is inherently a risky situation for users of appraisal services. How often have you sought out a second opinion for other situations, such as medical diagnosis or investment decisions? Appraisal review adds a level of due diligence to what is inherently a risky situation.

Appraisal review measures the credibility of an appraisal report by analyzing the appropriateness of the methods and techniques, reporting on whether appropriate data has been gathered and examined, if the data has been analyzed logically, and whether the conclusions are consistent with the information presented in the report. Appraisal reveals the appraisal's level of compliance with professional standards of care such as those mandated by *USPAP* and promulgated by credentialing associations such as ASA and AI. ■

My Advice to Appraisers — Bulldozers at Your Doorstep

By Michael Rikon, CRE



After fifty years of trying condemnation cases, I am consistently surprised at the occasional instance where an appraiser just does not know how to properly testify in court.

On paper, an appraiser may be incredibly impressive. But is that enough for one to prevail in a case focused on valuation?

Providing expert testimony certainly requires expert knowledge of the subject, but it also requires knowledge of the fundamental rules that should be observed when on the witness stand. The rules will vary from jurisdiction to jurisdiction. An expert must be familiar with what is expected when called as a witness in a particular court. An attorney should carefully explain the issues and what needs to be proven so that there are no surprises.

Before accepting any assignment, the appraiser must be qualified to make an appraisal for the specific case at hand. Does the expert have the necessary skill for the appraisal problem? Can the appraiser complete the report within the time allotted? And, can the appraiser provide testimony at trial?

An appraiser must have a clear understanding of the assignment. It is extremely important that the appraiser meet with the attorney who is retaining him or her as a valuation expert witness so that the witness has a clear understanding of the case.

An appraiser must insist that there be a clear written agreement about the payment for services. If payment is to be made in stages, the stages should be fixed and identified. The agreement should spell out fees for preparing an appraisal, or a report, and the additional sums for conferences and testimony. There should be a clear understanding to avoid subsequent problems. If the fee for court testimony is a flat, per diem amount, it should be clear that the expert will be paid for a full day even if testimony lasts only a half day. If overdue sums will require an interest payment on balances, this too should be set forth specifically in the agreement.

If the appraiser is writing an appraisal for court testimony, make sure the appraisal is in compliance with local rules. Does the report require photographs of comparable sales? Does it require deed recording information and the names of the parties? Is the appraiser required to provide detailed information regarding comparable rentals? If the appraisal is for trade fixtures, is the appraiser required to list the sources used for valuation?

The expert is going to be cross-examined. It will not be an easy or pleasant experience. An appraiser must personally verify the information to be provided. Never rely on your assistant. An appraiser should personally inspect and photograph every comparable. Although commercial real estate reporting services are helpful, an appraiser should not rely on a service without verification. If possible, the

"The expert should carefully set forth his qualifications, including education, professional designations, licenses, and memberships in professional organizations."

appraiser should confirm the details of the transaction directly with a party to the transaction. The witness should be prepared to discuss the area of the sale or lease. For example, personal investigation of important valuation criteria should enable the expert to know exactly what the zoning is. Attention to details is critical. What school district is the property in? Where is the property in relation to the train station? The appraiser should have copies of the deeds in his file. A good witness will make notes of inspection and keep them in the workfile.

Some jurisdictions require a curriculum vitae for an expert. The expert should carefully set forth his qualifications, including education, professional designations, licenses, and memberships in professional organizations. There should be an explanation of work experience in various employment periods. If the expert teaches, that is something a judge and jury will want to know. The same is true if the witness is a volunteer for civic organizations or charities. Finally, the curriculum vitae should list clients and cases for which the appraiser has performed services (with their permission). It also should list every court that has accepted the appraiser as an expert witness qualified to give an opinion.

I always check the qualifications of an expert I am about to cross-examine. Recently, I checked an appraiser's qualifications and found that none were current, including his state license. Do not let any expire, or take it off your list.

Look like an expert. The appraiser should come to court early. A suit is the appropriate dress. The witness must look like a professional.

The appraiser must understand the format of a trial. The expert must know the fundamentals of a trial. If there is an objection during examination (direct or cross), the witness must wait for the court to rule. If the objection is sustained, the witness may not answer the question. If it is overruled, it may be answered. If the attorneys make a legal argument, the appraiser should understand he may be excused and asked to leave the courtroom to prevent the answer from being suggested.

As an expert witness, you must project your voice so that you are clearly heard. Avoid talking in a monotone. It is important to keep everyone's interest by having the witness change his pitch and tone of voice. An expert that cannot be heard is worthless.

You should understand that there can be no communication between counsel and an expert during cross-examination. An appraiser should avoid looking at counsel when being crossed. It's like asking for help.

It is very important that the expert knows that respect for the court is mandatory. When a judge enters the courtroom, the witness should rise. The judge's and court staff's directions should be followed. The expert should understand that if the judge asks a question while the witness is giving his testimony, it should be answered directly and fully. The appraiser must address the court as "Your Honor." A witness should never talk over a judge or avoid making a direct response to a question posed by the court. Credibility is vital and can be damaged by failure to show respect and candor.

No matter how difficult, the expert must show respect for the cross-examining attorney. The witness must be polite. Some experts have short fuses. This is dangerous. The witness must answer questions with simple language and avoid jargon. A witness should answer only the question asked. Incredibly, some experts want to help their cross-examiners. Do not assist a cross-examiner who is having difficulty presenting a question. Make sure your witness never makes negative or self-deprecating comments about his work product, but if an obvious error is present, it should be admitted to and the witness should move on. The witness should understand that he should never offer to help. He should answer the question and no more. A witness should not express frustration if limited to a "yes" or "no" answer. Hopefully, counsel will ask the expert to expand on the answer on re-direct.

When a witness exhibits a lack of comprehension, it does not inspire trust. On the other hand, if an expert does not understand the question, he or she should request that it be rephrased. Experts are not required to guess or provide inaccurate testimony. A witness should answer one question at a time. Compound questions are improper, but a witness can ask for clarification. Take your time responding. No appraiser should let an attorney prod him or her into rapid responses that invite error.

The Uniform Standards of Professional Appraisal Practice (USPAP) require an appraiser to maintain a workfile for at lest five years, or two years after the litigation is complete. Be aware that it will be reviewed by opposing counsel. Counsel should review this with the appraiser, and the appraiser should consider this as he prepares the appraisal. When served with a subpoena, the witness should advise the retaining attorney and provide him with a copy of the subpoena but not produce more than is requested in the subpoena. The witness should never volunteer to bring more or to suggest that other documentation may be in his office.

Under *USPAP's* Record Keeping Rule, an appraiser must maintain a workfile for each appraisal. The workfile must include true copies of all written reports, documented on any type of media. (A true copy is a replica of the report transmitted to the client. A photocopy or an electronic copy of the entire report transmitted to the client satisfies the requirement of a true copy.)

It should be made clear that any report an appraiser delivers to a client must be part of the workfile. It doesn't matter what is was labeled. If the report is transmitted to a client, it must be part of the appraiser's workfile.

The law of most states provides that once it has determined that a prior opinion of value exists it must be produced for use on cross-examination. It doesn't matter what label has been put on the prior report: "draft," "attorney's work product," "confidential," and so on. If prepared by the witness, it qualifies as a prior appraisal.

On cross-examination, the rules of evidence allow a party to impeach the credibility of his adversary's witness through the use of prior inconsistent statements. ■

About the Author

Michael Rikon, CRE, has been practicing law in New York since being admitted to the State Bar in 1969. He began his law career as an Assistant Corporation Counsel for the City of New York, a position he held from 1969 to 1973, where he was a senior trial attorney in the Condemnation Division. From 1973 to 1980, Mike served as a law clerk to the Honorable Albert A. Blinder of the New York State Court of Claims. Before forming the firm that is now known as Goldstein, Rikon, Rikon & Houghton, P.C. in 1994, he established his own private practice specializing in condemnation law, real estate and litigation in the Court of Claims in 1980. Mike served as a special consultant to the New York State Commission on Eminent Domain in 1973 and 1974 and assisted in drafting New York's Eminent Domain Procedure Law.

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