

PROHIBITED APPRAISAL FEES

By Patricia H. Atwood, ASA

Estate planning professionals can help protect their clients by knowing current legal and ethical standards regarding appraisal fees.

In almost all circumstances contingency appraisal fees are prohibited. While there is some leniency by the IRS in very narrowly defined situations, the prohibition is unequivocal according to both the *Uniform Standards of Professional Appraisal Practice (USPAP)* and the *Principles of Appraisal Practice and Code of Ethics* of the American Society of Appraisers (ASA).



UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)

The Ethics Rule of *USPAP* prohibits contingent fees without exception.

An appraiser must not accept an assignment, or have a compensation arrangement for an assignment, that is contingent on any of the following:

1. *Reporting of a predetermined result (e.g., opinion of value);*
2. *Direction in assignment results that favors the cause of the client;*
3. *Amount of a value opinion;*
4. *Attainment of a stipulated result (e.g., that the loan closes, or taxes are reduced); or*
5. *Occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.¹*

One of the FAQs further clarifies the issue, as follows:

Question: Is it acceptable for an appraisal fee to be based on a percentage of the value conclusion?

Response: No.²



ASA CODE OF ETHICS

ASA members are required to comply with the *Uniform Standards of Professional Appraisal Practice*. In addition they must agree to follow the *ASA Principles of Appraisal Practice and Code of Ethics*, which also explicitly bans contingent fee arrangements, because:

... anyone considering using the results of the appraiser's undertaking might well suspect that these results were biased and self-serving and therefore, invalid.³

And, percentage fees are also explicitly prohibited for ASA appraisers.

The Society takes the position that it is unprofessional and unethical for the appraiser to contract to do work for a fixed percentage of the amount of value, or of the estimated cost (as the case may be) which he determines at the conclusion of his work.⁴

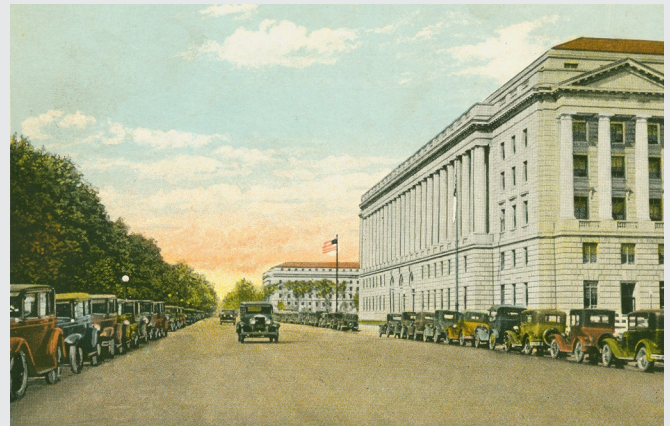
IRS GUIDELINES

Generally, IRS guidelines have begun following those of the *Uniform Standards of Professional Appraisal Practice*. However there is divergence in this case for some appraisals for charitable contribution. The exception is made only under rare circumstances, which one practitioner indicates he has never encountered.⁵ The rules according to IRS *Publication 561* are as follows:

Generally, no part of the fee arrangement for a qualified appraisal can be based on a percentage of the appraised value of the property.

However, appraisals are not disqualified when an otherwise prohibited fee is paid to a generally recognized association that regulates appraisers if:

- *The association is not organized for profit and no part of its net earnings benefits any private shareholder or individual;*
- *The appraiser does not receive any compensation from the association or any other persons for making the appraisal; and*
- *The fee arrangement is not based in whole or in part on the amount of the appraised value that is allowed as a deduction after an Internal Revenue Service examination or otherwise.⁶*



Personal communication with IRS staff confirms that this exception does not apply to appraisals done for estate tax but only for appraisals for charitable contribution.

CONCLUSION

The highest standards of appraisal practice do not permit contingent fee appraisals. Rather they emphasize the importance of trustworthy appraisers, who are impartial, objective, and independent. ■

¹ Appraisal Standards Board. (2014). *Uniform Standards of Professional Appraisal Practice: Ethics Rule*. Washington, D.C.: Appraisal Foundation.

² Appraisal Standards Board. (2014). *Uniform Standards of Professional Appraisal Practice: FAQ 42*. Washington, D.C.: Appraisal Foundation.

³ American Society of Appraisers. (2012). *Principles of Appraisal Practice and Code of Ethics: 7.1 Contingent Fees*. Retrieved from <http://www.appraisers.org/docs/default-source/education/the-asa-principles-of-appraisal-practice-and-code-of-ethics.pdf?sfvrsn=4>.

⁴ American Society of Appraisers (2012). *Principles of Appraisal Practice and Code of Ethics: 7.2 Percentage Fees*. Retrieved from <http://www.appraisers.org/docs/default-source/education/the-asa-principles-of-appraisal-practice-and-code-of-ethics.pdf?sfvrsn=4>.

⁵ Tidd, Jonathan. (2013). *The Qualified Appraisal Rules, A trap for the unwary*. Retrieved from <http://wealthmanagement.com/philanthropy/qualified-appraisal-rules>.

⁶ IRS (2007). *Determining the Value of Donated Property*. Washington, D.C.: Internal Revenue Service.