Working RE

Real Estate Appraisers & Inspectors

Fall 2013, Volume 34

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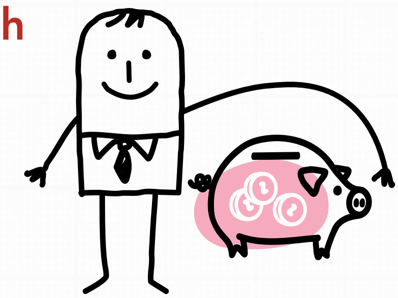

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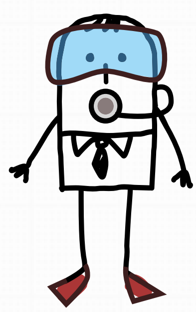

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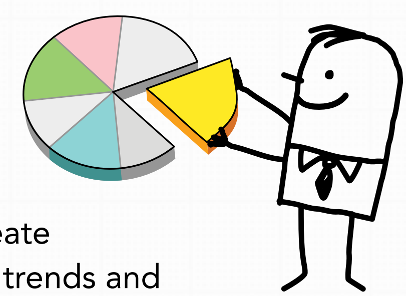

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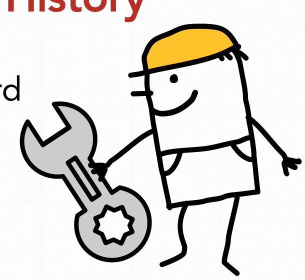

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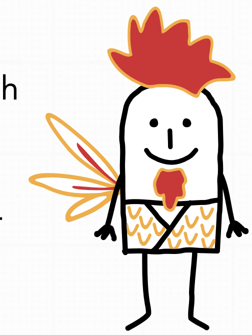

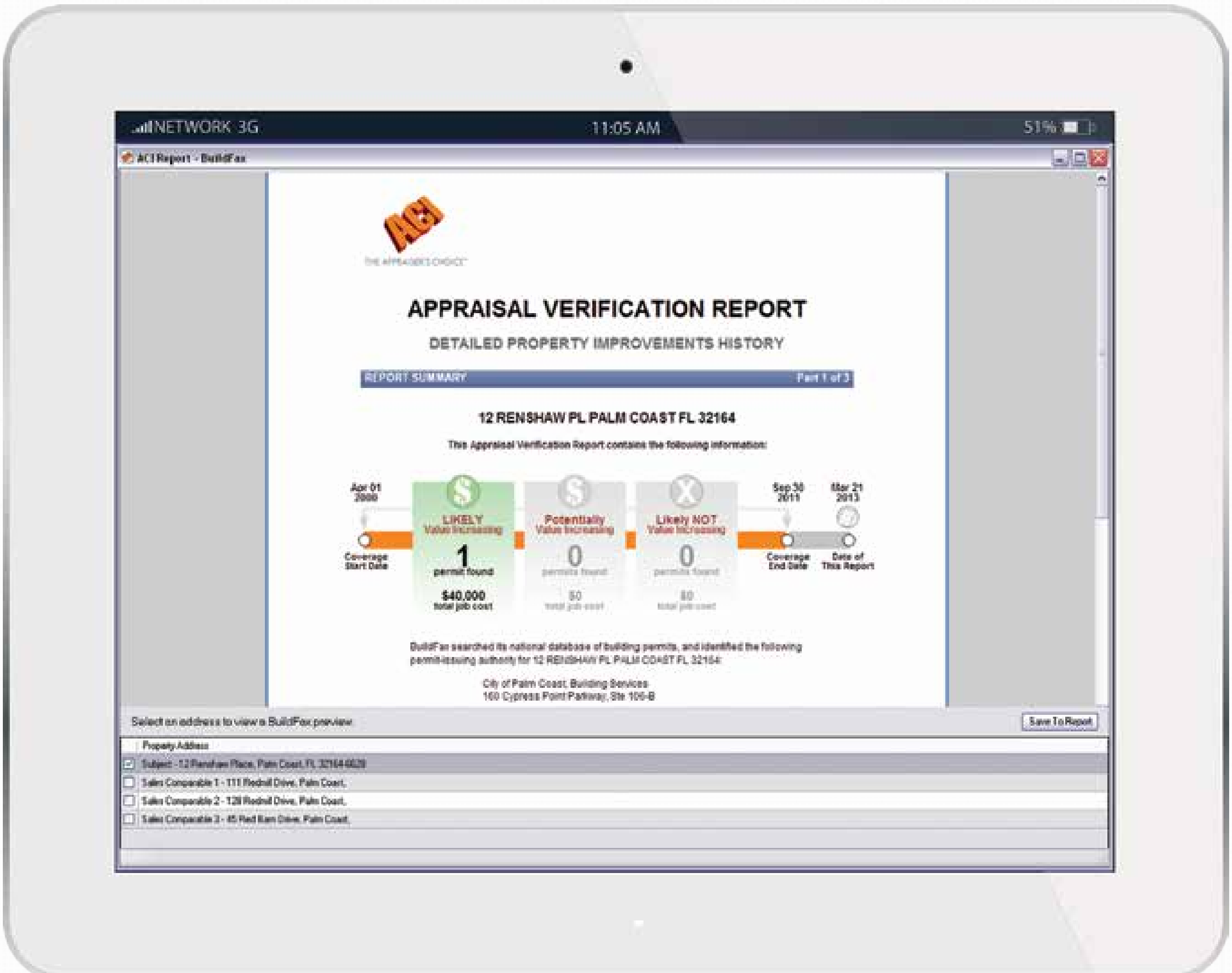

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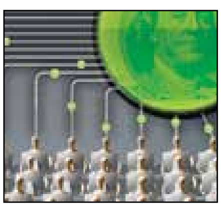


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From the Publisher

What Appraisers Can't Do

By David Brauner, Editor

Looking over this issue it seems obvious what ails appraisers: the marketplace is not incentivizing quality work. The system of appraisal orders by email blast used by some appraisal management companies (AMCs), as reported in *Low Bid Appraisal Ordering* (pg. 16), leads to lower-quality appraisals. This is where orders go not to the best appraiser for the job, but to the first one to accept it "at terms," regardless of their qualifications. This story illustrates the fast and cheap imperative that pervades the marketplace. This reality has chased many veteran appraisers from their livelihoods. They leave because they can't do a thorough job on "compressed" fees and stay in business, and they'd rather walk away than cut corners. The result is that many quality appraisers have abandoned their life's work in the last few years.

Appraisers cannot make lenders demand high-quality appraisals. They can't make AMCs search for the best instead of the cheapest, nor, for that matter, can they make regulators enforce the laws created to give them protection to do an honest job. Everyone *says* they want quality. Most appraisers feel it in their guts but the system is not rewarding the efforts of those who try to live up to the ideal. The system rewards the opposite. If the rules are made by the ones with the gold, then demand must come from the lenders. But lenders have to do more than give lip service to quality: they have to pay for it. There needs to be a system that rewards quality work with fair fees. Lenders *say* they want quality but many turn a blind eye to the fast and cheap dynamic of the current marketplace. If you pay fairly, veteran appraisers will return and new candidates will have *some* incentive to enter the profession, given all that is required. More supply will allow lenders/AMCs to nurture those appraisers who can produce quality work and weed out the ones who can't. To sum it up: if you stand behind the work of the vast majority of competent and *stubbornly* honest appraisers, and pay them fairly, in return you will get higher quality appraisal reports and more than enough choice recruits to keep the profession thriving for years to come. Unlike lenders, appraisers don't need a bailout. To the contrary, all they need is to be left alone to do their jobs. **WRE**

Everyone says they want quality. Most appraisers feel it in their guts but the system is not rewarding the efforts of those who try to live up to the ideal.

Lenders up to Old Tricks? Ex-Chief Appraiser Sues Stearns Lending

I wish her luck and appreciate her standing up for what is right, if the allegations are true, of course. This sounds very common to me. Many appraisers are giving lenders the appraiser they want and price shopping. I know loan officers who use AMCs and they get who they want. There are blurred lines in being an approved appraiser with an AMC versus actually getting the work. My income has dropped drastically over the past few years; I wonder why! *—Southern Appraiser*

Good Job! I wish her the best of luck. I am sure it is going to be a tough road. *—John*

When an appraiser goes on staff, whether by contract and particularly as an employee, independence is gone with the wind. To remain independent one must be willing to risk what Ms. Scheri did, her job, and I doubt many of these so called "chiefs" will do that. Many kudos to Ms. Scheri for sticking to her principles and the law. I hope the court leaves the focus on independence and we can learn what the justice system thinks of that part of Dodd-Frank. You can see from the complaint that the defense is going to try to focus on Scheri's imaginary shortcomings. The allegations are going to be vicious. *—Edd Gillespie*

Appraiser Wins Judgment Against One-West Bank

Perhaps this could be developed into a class action lawsuit? If so, the small firms could have much greater leverage against the big guys. *—Chuck Lemberg*

Excellent article. You will be hard pressed to top the good you have done with this piece. I have had to "pressure" two AMCs in the past for payment, which I received, but then was immediately "fired." You can't do enough for AMCs, these people think they run the show and own you. So down the road I go. I now have much better clients, who give me MORE time to complete reports, MORE money, and NO stips. There is a battle going on among AMCs to scoop up appraisers, as we are a limited resource that grows more limited as time goes by. Don't work for the idiots. Be professional. We are the experts, and nobody tells me how to do my job. *—One Mad Appraiser*

Home Builders' White Paper: Appraisers are Idiots

If home builders provided mortgages from their own portfolios would they be happy with an appraiser who only used the cost approach? They might be until borrowers started defaulting and they discovered their collateral was worth less than the appraised value. *—Duane Adam*

As an appraiser, this white paper angers me. It is us who have kept the builders from naming their price. It was the builders who created the last bubble because their antics could not be sustained. *—Steve*

Bankruptcy Court Absolves Chase of All Liability

This is immensely troubling. So, let me get this straight: an AMC who indicates they are representing a lender really isn't representing anyone at all. And if they don't want to pay, they will not. That means anyone could open an AMC up, get a million dollars' worth of orders then bounce because the law is murky on who is the client. I would suggest appraisers stand firm and begin turning down Chase orders in droves. It is only a matter of time before this scenario repeats itself. *—Cassandra*

Local small claims is all you need for enforcement. This text has been used for a decade: "Acceptance or use of this report by the named client constitutes acceptance of responsibility for timely payment of the agreed appraisal fee to the named appraiser." *—Tony P.*

It's now time for all those who were stiffed to file liens against the properties they performed services on. This will get you paid. Further, it will show Chase and the powers that be that you're not going to take it anymore. Appraisers continue to get the short end of the stick. AMCs now know they have an out. *—Gordon Geco*

Low Fee Solution - Cost-Plus AMC Model?

I have also been doing cost-plus for two+ years. I refuse to work any other way. Appraisers are in very short supply now and there is no longer any need to give our fair fees away to the AMCs. *—Michael Cooper*

I have never accepted less than my normal fees. I guess I am a little surprised that the idea that an AMC will pay my full fee is being presented as if it's new. Most of my work is from AMCs and I just decline those orders that offer anything less. *—Bruce Consaul*

"Checkbox Chimps" and Review Appraisals

Excellent article. I believe some AMCs and Lenders are putting "review questions" onto the lower-paid employees in order to save money. *—Ron*

Should Buyer's Agent Attend the Home Inspection

I'm present for every home inspection with my buyers. Like others have said, there are points that I'm able to clarify and answer without interfering with the inspector in any way. It's also a fantastic learning opportunity! After hundreds of inspections, I like to think that I've become a better agent for my current and future clients. *—Matt Johnston*

Story first appeared in WRE's email edition. Opt in at *WorkingRE.com*

Lenders up to Old Tricks? Ex-Chief Appraiser Sues Stearns Lending

by Isaac Peck, Associate Editor

Katherine A. Scheri alleges that many of the practices that led to the extensive regulation of the appraisal industry are alive and well at one AMC/lender at least.

A recent lawsuit filed against Stearns Lending and its appraisal management company (AMC), TriMavin, by the AMC's former Chief Appraiser, Katherine A. Scheri, alleges that many of the practices that led to the extensive regulation of the appraisal industry are alive and well at one AMC/lender at least.

Appraiser Lists

In late 2011, Katherine Scheri was hired as the Chief Appraiser of TriMavin, an in-house AMC owned by Stearns Lending, a privately held lender who funded over $25 billion in loans over the last three years. Scheri has over 10 years of experience as a field appraiser, review appraiser, and appraisal manager. Prior to being appointed Chief Appraiser at TriMavin, Scheri worked as an appraiser manager overseeing a staff of nine certified appraisers and two trainees.

Among her responsibilities as Chief Appraiser, Scheri was charged with managing TriMavin's active appraiser panel and overseeing the Appraisal Review Department. Upon assuming her position, Scheri implemented an internal process for appraisal reviews and, the suit alleges, put an end to TriMavin's practice of having reviews performed by appraisers who were not licensed in the state of the appraisal. Scheri also implemented a policy that only FHA certified appraisers could review FHA/USDA appraisals.

According to the suit, Scheri quickly learned that Stearns Lending had implemented a marketing program aimed at recruiting mortgage brokers and loan officers who promised them that their own personal lists of preferred appraisers would be added to TriMavin's appraiser panel and would be used on the loans that they submitted. The result, according to the suit, was that private appraiser panels were created for each mortgage broker or loan officer at a given branch.

The suit alleges that Scheri began pushing back against this practice and immediately began receiving emails and phone calls from loan officers, branch managers, and mortgage brokers complaining that their preferred appraisers were not being used on their loans and insisting that Stearns Lending had promised them that they could use their own appraisers. Scheri then notified the CEO of TriMavin, Eric Dellorusso, that it is in direct violation of the appraisal independence regulations of Dodd-Frank, as well as Regulation Z of the Truth in Lending Act (TILA), for individuals in the loan production department to directly or indirectly select (or exclude) an appraiser for a particular appraisal.

Not long after, a meeting was held with upper management from Stearns Lending and TriMavin to discuss Scheri's concerns. According to the suit, upper management of both TriMavin and Stearns insisted that there is nothing wrong with loan officers providing lists of their preferred appraisers because those names were "blended" with the list of approved appraisers. Scheri responded that such selection is in violation of appraiser independence regulations and Regulation Z of TILA. Additionally, Scheri soon learned

Isaac Peck is the Associate Editor of Working RE magazine and Marketing Coordinator at OREP.org, a leading provider of E&O Insurance for appraisers, inspectors, and other real estate professionals in 49 states. He received his Bachelor of Business Management at San Diego State University. He can be contacted at Isaac@orep.org or (888) 347-5273.

that the ranking of appraisers was done in such a way that the "preferred" appraisers were always utilized first, according to the suit. Despite her admonitions, the practice of using loan officers' preferred appraisers continued.

According to Richard Hagar, SRA, an experienced litigation consultant and expert on appraiser independence regulations, if Scheri's allegations are true, then Stearns Lending violated numerous federal regulations governing the appraisal process, including Regulation Z of TILA. "The law is very clear on this point. There is no excuse for there being ANY kind of referrals or recommendations of appraisers from loan officers. Loan officers are sales people; they work in a completely separate function and they wouldn't know a quality appraisal if it was staring them in the face. To most loan officers, good appraisers are the ones who meet value," says Hagar.

Hagar says that even if an AMC's appraisal panel is thin in some areas, that is no excuse for letting loan officers influence the selection of appraisers. "The law doesn't say 'no loan officer influence, except in those areas where your appraiser panel is thin.' Loan officers should never recommend or communicate the names of any appraisers to the Chief Appraiser or to personnel managing the approved appraisal panel. To do so is a violation of appraiser independence regulations and should warrant a fine of $10,000 a day for as long as management is aware of the problem. What we've seen with some of the lenders and AMCs in the industry, now that the system has been around for a couple of years, is that they are trying to figure out ways to manipulate and get around the law," says Hagar. (See pg. 37 for Hagar's recorded webinar: *Top Five Questions Asked of an Appraiser and How to Answer.*)

Builder Lists

Scheri's suit alleges that during her tenure, Stearns Lending was conducting a joint venture with builder William Lyon Homes. The Vice President of the joint venture, Jason Forman, formulated a list of "approved" appraisers, according to the suit, and used only this customized list of appraisers on all appraisals performed for loans with William Lyon Homes. Lately, builders have been particularly vocal when it comes to appraiser issues, with the National Association of Home Builders (NAHB) publishing a white paper which calls for wide-scale appraisal reform because of "extreme bias…imbedded in the home valuation process." (See *Home Builders' White Paper: Appraisers are Idiots*, pg. 36.)

Remembering Countrywide

In May 2012, Brian Hale, former CEO of MetLife Bank, was hired as CEO of Stearns Lending. Before serving as the CEO of MetLife Bank, which was forced to exit the residential mortgage market during his tenure, Hale was the Chief Operations Officer at Countrywide Home Loans, which was later revealed as having one of the most toxic mortgage portfolios in the nation.

Shortly after Hale was hired at Stearns, Scheri alleges that she observed a printed list of the names, addresses, and telephone numbers of appraisers in Dellorusso's office. When she asked what the list was, Scheri alleges that Dellorusso told her that he had been given a list of appraisers by

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One Simple Step to Avoid Putting Your E&O Coverage in Jeopardy

by David Brauner, Senior Broker at OREP

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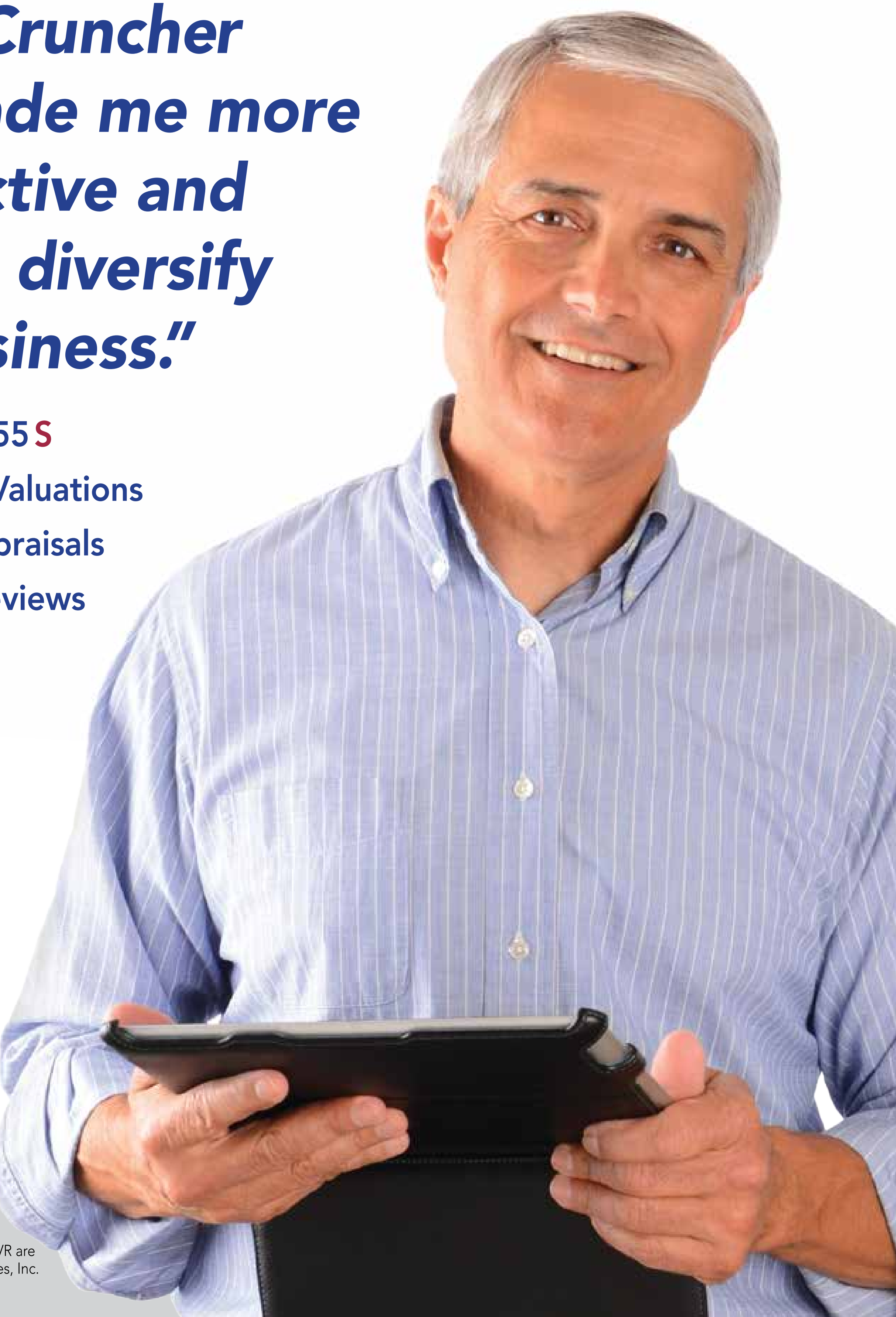

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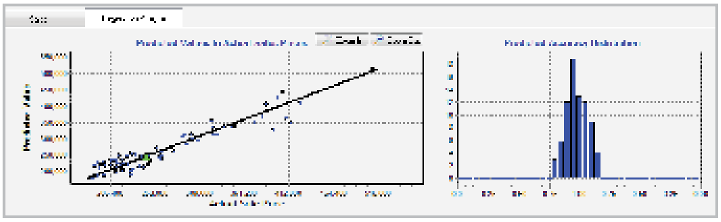

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Hale and that those were the appraisers that TriMavin would be using going forward. During this time, TriMavin had just finished purchasing a new Collateral Management System (CMS) from FNC as well as a select list of 8,500 appraisers rated with exceptional quality scores and vetted based on their qualifications, the suit alleges.

Instead of utilizing the list that TriMavin had just purchased, Scheri's suit alleges that Dellorusso hired temporary workers to key in the printed appraiser list that Hale provided. Additionally, once the system was rolled out, Scheri observed that the list of 8,500 "qualified" appraisers was never imported into the CMS system and that the appraiser rating system within the CMS only utilized those appraisers who were on the list Hale provided.

Throughout her time as Chief Appraiser, Scheri alleges, she continued to receive threatening phone calls and emails from loan production personnel demanding that appraisers be added or removed from the approved appraiser panel. In some cases, they would request that a second appraisal be performed by "their" appraiser when they did not like the value opinion of the original appraiser. Scheri continued to respond that such actions were in violation of federal regulations and that she would not comply with such requests.

End of the Road

In December 2012, Scheri alleges that she was told by Dellorusso that he felt the stress of her job was affecting her and that she should consider transferring to a different position within the company. Furthermore, Dellorusso told her that he believed a man could handle the stress of the job as Chief Appraiser better than she could, according to the suit. Scheri responded that she wasn't interested in moving to a different position as she had been hired to make sure TriMavin's appraisal process was in accordance with applicable laws.

The next day, the suit alleges, Scheri was told that she was being insubordinate and that Dellorusso was going to make the decisions regarding the appraiser process and which appraisers would be placed on TriMavin's panel. Once again, Scheri alleges, she made it clear that the actions Dellorusso was taking were illegal and that she was not willing to risk her license and would not go along with it.

Within a few weeks, Scheri came across her job posted online. After confronting Dellorusso and taking the issue to the human resources and legal departments, she was terminated by TriMavin in January 2013 because, the suit alleges, management indicated it had "lost confidence in her ability to manage." Scheri declined the severance package which included a confidentiality clause, and chose instead to sue TriMavin and Stearns Lending for unlawful retaliation and wrongful termination in violation of public policy.

Stearns Denies Any Wrongdoing

For its part, Stearns Lending denies the allegations laid out in the suit. Representing Stearns is attorney Greg S. Labate. Labate issued the following statement to *Working RE*: "TriMavin and Stearns Lending have thoroughly investigated the claims made by Ms. Scheri, a former employee of TriMavin, and have determined that her lawsuit has absolutely no merit whatsoever. TriMavin and Stearns Lending will vigorously defend themselves against Ms. Scheri's false accusations, and they look forward to their day in court to disprove these frivolous and malicious allegations."

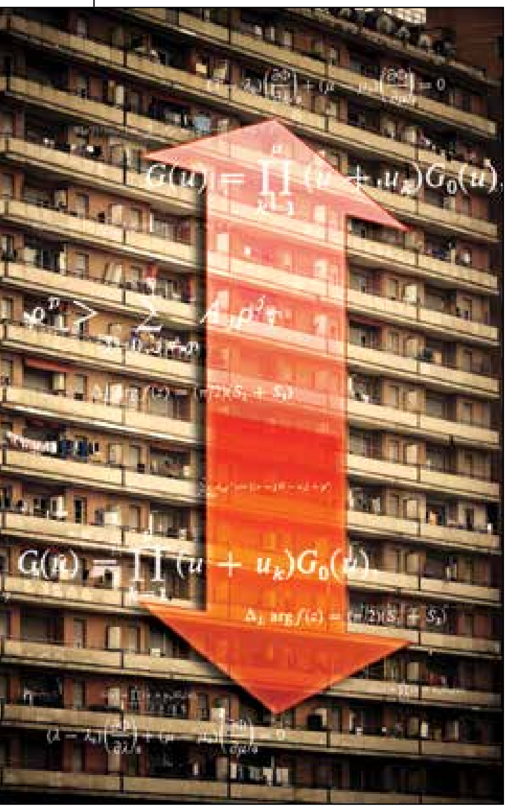
Appraiser Independence

Scheri's allegations echo what many appraisers have been saying all along: that lenders continue to manipulate the appraisal process by using carefully filtered lists of appraisers who don't cause "trouble" and by "blacklisting" (or not using) appraisers who resist pressure.

Earlier this year, in an interview with *Working RE*, Kyle Lagow, the appraiser whistleblower at Countrywide Financial, said that even though his case helped lead to a $1 billion settlement between the Department of Justice and Bank of America, he doesn't see that much has changed in the appraisal industry. "The same people who were in charge when this fraud took place are still here. My supervisor at Landsafe, the area manager, is still there. The appraiser who was completing 400 appraisals a month in Texas still has his license. So you tell me, what's changed?" said Lagow. (Read the full story: *Interview: Appraiser Who Brought Down Countrywide*, *WorkingRE.com*, *Library*, Vol. 33.)

Appraiser Thomas J. Inserra, MBA, MAI, SRA, who served as the National Chief Appraiser for the FDIC/RTC during the 1990s, reports that from what he's seen across the industry of late there are still many lenders who are breaking the law and conducting business the way they did during the real estate boom. "There are still many holdouts who continue to believe they can simply waive or ignore rules, laws or procedures that they just don't like. In fact, some would argue that there is a new wave of 'dumb' lenders going back to the old practices," says Inserra.

Conducting business like in the "good old days" means sidestepping the appraisal process with appraisers continuing to face challenges to their independence. "I have had recent conversations with CEOs and top executives of very large financial institutions who say they believe that to be competitive today and into the future, they must focus on comprehensive risk management. And they shake their heads in disbelief over what some lenders are doing today—a total repeat of the conduct that led to the crisis—manipulation and control of the appraiser process to the point of breaching independence and attaining advocacy," says Inserra. WRE



Estimating External Obsolescence

by Philip G. Spool, ASA

My previous two articles were about estimating physical depreciation and functional obsolescence (find them at *WorkingRE.com*, *Library*). In my article on functional obsolescence, I indicated that it is very complicated to understand and to estimate. I also discussed calculating functional obsolescence in the cost and sales comparison approaches. This article discusses estimating external obsolescence, which is the least applied of the three types of depreciation/obsolescence.

The real estate appraisal books have very little discussion of external obsolescence. Just like my article on functional obsolescence, I read and re-read many appraisal books regarding external obsolescence and how it is determined. Not much is written on it and I can understand why. It is used very little and is good in theory but difficult to apply in the real world. Much of it is based on judgment, which is why it is easy to criticize someone else's report. I imagine this article will be the same, in that I can explain what it is theoretically but find that real-world examples are easy to state but difficult to support.

This article discusses estimating external obsolescence, which is the least applied of the three types of depreciation/ obsolescence.

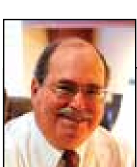
What Is External Obsolescence?

External obsolescence consists of locational obsolescence and economic obsolescence. According to the *Dictionary of Real Estate Appraisal, Fifth Edition* (Appraisal Institute), if you look up locational obsolescence and economic obsolescence, they would both indicate "see external obsolescence." So that is what I did. External obsolescence is defined as "an element of depreciation; a diminution in value caused by negative externalities and generally incurable on the part of the owner, landlord, or tenant." The Appraisal Institute's (AI) book, *The Appraisal of Real Estate—Thirteenth Edition* states, "External obsolescence may be caused by economic or locational factors. It may be temporary or permanent, but it is not usually considered curable on the part of the owner, landlord, or tenant."

For those appraisers who have been in the business more than 25 years (over 40 for me), we were taught that there was physical depreciation, functional obsolescence and locational obsolescence. Economic and external obsolescence were never mentioned until much later. This article will discuss the composition of external obsolescence, which is locational and economic obsolescence. In either situation, locational or economic, the loss in value is caused by something *outside* of the property. Functional obsolescence is caused by something *inside* of the property. While external obsolescence is the loss in value caused by something outside of the property, it only affects the building portion of value in the cost approach. This is important to know and will be explained in this article.

What Is Locational Obsolescence?

It is easier to discuss and understand locational obsolescence as it is the most common form of external obsolescence. Some examples of locational obsolescence include the subject property being located on a busy street or having access



Philip G. Spool, ASA, is a State-Certified General Real Estate Appraiser in Florida, appraising since 1973. Formerly the Chief Appraiser of Flagler Federal Savings and Loan Association, he has been self-employed for the past 18 years. In addition to appraising, he is an instructor with Miami Dade College, teaching appraisal courses and continuing education. He is also the Vice President and Chairman of real estate programs with the Greater Miami Chapter of the American Society of Appraisers. He can be reached at pgspool@bellsouth.net.

from one direction only (either a one-way street or divided highway), being located across from a school where access to your driveway is hampered by cars lining up to pick up children after school, a high noise volume affecting your peace and quiet or a residence located next to or backing up to a commercial property.

Paired Sales Analysis

Locational obsolescence can be estimated by a paired sales analysis. For the purpose of this article, I will use the example of a single family residence to calculate locational obsolescence. Estimating locational obsolescence begins in the sales comparison approach. The best and perhaps easiest way to calculate locational obsolescence in a single family residence is by comparing two sales that are similar in all or most attributes except one, which is the negative aspect of the location of one of the two properties.

This method is commonly known as the "paired sales analysis." For example, a house located on a very busy street or where access to the house is very difficult, might sell for $50,000 less than a house that is not on that street but a few blocks away where access is unaffected. This is the easiest way to calculate the locational obsolescence in the sales comparison approach. Keep in mind that when calculating the loss in value by the paired sales analysis, all other differences must be adjusted for first. An example would be one house has a two-car garage while the other has a one-car garage. The gross living area for the two properties might be different. All of these adjustments should be made first. It is best to pick the one sale that is not affected by the location and adjust the affected (subject) property differences to the non-affected property. Ideally, after these adjustments are made, the difference would be the result of the location of the subject. If the result is $50,000, for the difference between the paired sales after all other adjustments are made, then the $50,000 would be reflected in one of the line item adjustments, such as location or view.

Rent Loss Method

A rarely used but perfectly acceptable way to calculate locational obsolescence for a single family residence is a comparison of the rental rate difference between a house affected by its location, versus one not affected by its location, and then calculating the locational obsolescence by using a gross rent monthly multiplier times the rent loss. The first step is to find the rental rate of a house affected by its location (assume a rental rate of $1,250 per month) compared to a house nearby that is not affected by its location (assume a rental rate of $1,500 per month). The rental rate difference is $250 per month. This method only works if there are rentals of houses affected by their location—otherwise this method is not applicable.

The second step is to calculate the gross rent monthly multiplier (GRMM). The GRMM number is based on the *unaffected* houses that have been rented. The gross rent monthly multiplier is determined by the sales price of a house divided by its monthly rental rate. Hopefully, there are several houses that have sold and rented in order to establish a more accurate GRMM. Let's say that a house sells for $300,000 and was rented for $1,500 per month. The GRMM is 200 ($300,000 divided by $1,500). For this article, let's assume that the other GRMMs are also coming in close to 200. The GRMM is not a dollar amount or a percentage amount. It is just a number.

The locational obsolescence by the rent loss method would be the $250 per month rent difference times the 200 GRMM, equal to $50,000. The $50,000 would be reflected in one of the line item adjustments, such as location or view.

Whatever method you choose to estimate the locational obsolescence (paired sales analysis or rent loss method), the amount of locational obsolescence arrived at for the sales comparison approach considers the entire property, both land and building. In the cost approach, only the building portion is considered. This will be discussed in detail below.

Cost Approach

The cost approach separates the land (site) value from the building value. This is very important because the appraiser should not use the total amount of locational obsolescence calculated in the sales comparison approach and apply that amount in the cost approach. This is considered "double dipping." The examples given above indicate a locational obsolescence of $50,000 that is applied in the sales comparison approach. For the cost approach, the appraiser must consider only the building portion as the land portion is determined by estimating land (site) value that already reflects the location problem.

Therefore, the building-to-total value must be determined. The best way to make this determination is to first calculate the site value and compare it to the total value in the cost approach without considering any locational obsolescence. For example, you estimate the site value of the single family residence to be $100,000 and you estimate the total value by the cost approach to be $400,000. The land-to-total value ratio would be $100,000 divided by $400,000 or 25 percent. This would leave the building-to-total value ratio at 75 percent. The $50,000 in locational obsolescence as calculated in the sales comparison approach should only consider the building portion or 75 percent of the $50,000, equal to $37,500. This would be the amount of locational obsolescence to be reflected in the cost approach.

What Is Economic Obsolescence?

Just about all of the appraisal books overlook economic obsolescence, yet it is

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distinctively different from locational obsolescence. Both economic and locational obsolescence make up external obsolescence. The best way to describe economic obsolescence is a loss in value due to market conditions. Examples that will cause a property to have economic obsolescence include an oversupply of inventory, loss in rental income, a decline in sales price due to the economy or an increase in vacancy, and collection loss due to an increase in unemployment.

Most recently, many parts of the country have experienced an increase in the amount of foreclosures. There are many reasons for this but they are mostly attributable to an overzealous inflation of property values, including homes that should not have been considered an investment but homesteaded properties. People were buying up houses with the expectation of increasing values and then flipping them for a quick profit. As an appraiser, it was quite difficult to support an increase in market value every month as we utilized closed sales, which is historical data.

Those appraisers who utilized an increase in market conditions (time) adjustment in the sales comparison approach had difficulty in the cost approach. In fact, the cost of building materials did increase but nowhere near the rate of increase that the overall sales prices were increasing.

If there was any support to increase the overall value in the cost approach, it would have been in land sales but pure land sales were not plentiful and again, were of closed sales that occurred several months prior to the date of valuation. This scenario did not reflect any economic obsolescence. But when the "bubble" did burst, values spiraled downward and, in many locations, decreased to around 50 percent of its peak, with some areas more and others less.

Economic obsolescence occurs when the sales price of a property is well below the site and building costs combined. An example would be a fee simple townhouse in a new development. Take a 1,200 square foot fee simple townhouse that sold for $150,000 at the peak of the market but now is being sold for $75,000. If the cost to build the townhouse is $80 per square foot, then the cost new for the building component would be $96,000 (1,200 sq.ft. times $80 per sq.ft.). Let's also assume the site value is $15,000 (20% of $75,000). The total cost new, which is the market value by the cost approach (assuming no physical deterioration, functional obsolescence or locational obsolescence) is $111,000 ($96,000 plus $15,000) or $36,000 greater than the sales price of $75,000. Perhaps the $36,000 would be considered economic obsolescence. That is a judgment call in my opinion.

Quantifying (Calculating) Economic Obsolescence for Any Property

Economic obsolescence would probably be considered the difference between the value at its peak versus the current value. I would tend to disagree with this as the peak was a false value as it reflected buyers not concerned with true value but knowing or thinking they could unload the property in a matter of months and make a profit.

Economic obsolescence has to be within a defined time frame and a defined market area. A good example would be if a majority of the property owners or renters in a neighborhood are dependent on a base industry such as a factory that closes due to the poor economy or where a business files for bankruptcy, etc. If the closing of the factory results in a greater than normal number of houses for sale or if the vacancy rate exceeds the typical vacancy rate for that area, this negative effect can be quantified. There would be no economic obsolescence in the sales comparison approach as sales should be relatively recent and within the same general neighborhood as the subject, if the property is a single family residence.

For single family residences, only the cost approach (building portion only) would reflect the economic obsolescence; for a commercial property it would be the cost and income approaches. But why do the cost approach at all? Most likely the cost approach is not applicable in estimating the market value of the property unless it is proposed, under construction or relatively new. Otherwise, don't do the cost approach. Hopefully the lender understands that the cost approach is not applicable in providing a credible opinion of market value.

It is easier to quantify (calculate) economic obsolescence for commercial properties than residential properties as the best test of economic obsolescence is the loss in rent to the affected property by the economy at a particular location. Again, it has to be a defined time period and general area that is effected.

The best example I can give is when I had to travel to Ft. Myers, Florida, to testify at a hearing for a deficiency judgment. My attorney requested that I stay at a La Quinta hotel that was convenient to him. Not knowing Ft. Myers too well, I booked a room at the Interstate 75/Ft. Myers airport location that was convenient to his office and very convenient for me, as Interstate 75 was the highway I was traveling from Miami to Ft. Myers. After I told the attorney that I booked a room there, he told me that he wanted me to change my reservation to another La Quinta in nearby Ft. Myers Beach, that is right off of Sanibel Island where he lives, as it would be more convenient for him to pick me up at that location. I switched hotel locations with no problem. It was even better for me because of the lower price. The price would normally be higher near Ft. Myers Beach than near I-75/Ft. Myers airport but this was at the time when the BP oil spill occurred in the Gulf of Mexico. There was a perception of possible oil contamination on Sanibel Island, which is a tourist destination year round, causing many cancellations.

I inquired at the front desk about the effect of the media's reporting of potential oil coming onshore from the location of the oil rig and was told that there was no problem at all with the beach nor would there be (which he was correct about). However, their occupancy level dropped significantly due to the press coverage. The hotel rooms and amenities at each hotel are identical (Ft. Myers Beach vs. I-75/Ft. Myers Airport) but the perception of the oil spill affected the economy of the hotels in and near Ft. Myers Beach and Sanibel Island.

An analysis of what the net rent would have been with and without the effect of the drop-off of the occupancy rate would have been easy to determine and it would have resulted in a lower value due to the effect of the oil spill (or perceived effect) at this particular location. The result would have been a reduction in value due to the *economic obsolescence* that resulted in this particular location as the occupancy level was not affected at the I-75/Ft. Myers Airport location.

As in estimating locational obsolescence, economic obsolescence has to reflect the building portion only. Therefore, the building-to-total value must be determined just like in the cost approach for locational obsolescence. The best way of making this determination is to first calculate the site value and compare it to the total value in the cost approach without considering any economic obsolescence. If the land-to-total value ratio is 25 percent, the building-to-total value ratio would be 75 percent. Multiply the capitalized rent loss amount with the building-to-total value ratio to arrive at the economic obsolescence. This amount can be applied in the cost and income approaches.

In conclusion, if your subject property has external obsolescence, whether it is locational or economic, an adjustment for it in the sales and cost approaches could be made and supported for single family residences, and in the income approach (for two to four unit residential properties and commercial properties). **WRE**

"Low Bid" Appraisal Ordering and Its Effect on Quality

by Isaac Peck, Associate Editor

Editor's Note: *Are lower quality appraisals the new normal? Here is why low-bid appraisal ordering might be driving down quality and driving out the best appraisers from the profession.*

Any appraiser who has worked with appraisal management companies (AMCs) is likely familiar with the "order by email-blast" system that some AMCs rely on to fill orders.

The process goes like this: an AMC sends an email blast to all appraisers within a given area, detailing a particular property and offering a certain fee for the completion of the assignment within a prescribed time frame. Depending on the AMC, the email may or may not clearly include a scope of work and offer additional information about the property to help appraisers make an informed decision whether to accept. Appraisers receiving the email are then faced with a choice, accept the assignment as-is, and the fee being offered, or "counter" with a higher fee.

The problem is that oftentimes experienced appraisers feel that the fee offered is neither fair nor reasonable (but might be customary!). These experienced appraisers often counter the AMC's initial offer and submit a higher bid to complete the assignment. In some cases, the AMC accepts the counter, but all too often, the order is accepted by another appraiser "at terms offered."

The question raised by many seasoned appraisers familiar with this type of ordering system is what kind of quality does such a "low-bid" appraisal ordering system produce? AMCs insist their entire panel is vetted so that any appraiser they work with will do a good job. Some appraisers are not so sure. James Johnson (not his real name, he fears reprisal from AMCs and banks), an appraiser in New York with 25 years' experience, provides a unique perspective on the issue and tells a story that may resonate with many appraisers.

Any appraiser who has worked with appraisal management companies (AMCs) is likely familiar with the "order by email-blast" system that some AMCs rely on to fill orders.

At Terms Offered

Johnson is a residential appraiser who also does appraisal review work for various AMC clients. Recently, he was underbid on an appraisal assignment by $50. The order came in the form of an email blast solicitation for a multifamily appraisal assignment. After assessing the complexity of the assignment and the required turnaround time, Johnson countered the bid with a fee $50 higher than what was offered. "Based on what I saw, I calculated how much time I would need to do it properly and I decided that the fee offered would not cover the work involved," says Johnson.

Not long after, he learned that the order had been accepted by another local appraiser at the terms offered, a scenario that Johnson says he experiences on a regular basis. Three weeks later, another email blast was sent out to review the same appraisal in question. This time, Johnson won the bid and was given the opportunity to review the work of the appraiser who accepted the earlier order for the lower fee. This is where things get interesting.

Review

Upon reviewing the appraisal, Johnson says he was shocked and angry at the low quality of work that was delivered. "The report was rife with inaccuracies, mistakes and questionable logic. I was steamed when I saw the quality of work done by one of the appraisers who keeps underbidding me. The comparable square footages, age, and lot sizes were all incorrect. One comparable that the Realtor had listed as a 'handyman special' was reported as being in good condition. All comparable photos were cut and pasted from the MLS. Garages were missed on two comparables. Finished basements and property locations were not adjusted for. The subject contained two units, each with two bedrooms and one bath, but the rental comparables used in the appraisal included an unadjusted two-family unit with four bedrooms and two baths, and a one-bed, one-bath apartment," says Johnson.

In addition to shoddy analysis on the adjustments and next to no research on comparables, Johnson says that all of the comments appeared to be canned. "Neighborhood comments were even worse than the comp selection and adjustments. Basically, it looked as though all of the comments were canned and nothing was original or specific to the subject. The 1004MC showed an absorption rate for months seven to12 at 22.50/month, months four to six at 44.67/month and current to three months at 53.67/month, but the appraiser stated repeatedly that the local market is slow, local market activity is stable and the data/activity is considered to be 'too small to be considered statistically reliable.' Everything was checked as stable. There was no reconciliation or explanation as to how the appraiser arrived at his final estimate of value," says Johnson.

How It Happens

Johnson was so upset about the poor quality of work on the appraisal, and the appraisal ordering system that rewards such behavior, that he called the AMC. He says he wanted to find out why the AMC would give orders to an appraiser who produced such poor work when experienced, diligent appraisers are willing to do the same assignment for only a slightly higher fee. "I was told by the representative who works on the solicitation panel that she never would have given that appraiser the job over me. She stated that his rating is terrible whereas mine is excellent, and had this involved scrutiny by a human, anyone on their team would have chosen me over the other appraiser. The problem is that the solicitations are sent out offering a very low fee and it is only when nobody accepts the fee offered that humans get involved," says Johnson.

The bottom line, according to Johnson, is that for this AMC at least, if a more experienced, diligent appraiser

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says that he or she needs a few more dollars, or asks for a few more hours on the due date/time, it is considered a "bid" and it is looked at only if no one else accepts the assignment "at terms." "The result is that even though this appraiser has a terrible rating, and there are others like him I am sure, the AMC leaves him in the system and he can just accept the assignments at ridiculously low fees and continue to steal assignments from me and other appraisers who price the work to do the job correctly," says Johnson. "Then the AMC uses that depressed fee to calculate what they consider to be customary and reasonable for the assignment type in my area." The AMC representative went on to say that the same system is used for appraisal reviews and all of their products, according to Johnson.

Penny Wise, Pound Foolish

"The funny thing is that I would have done the assignment correctly for a mere $50 more. And their client wouldn't have had to wait an extra four to five weeks. The assignment was for a purchase so I know time was an important factor. I was told that the in-house reviewers looked at the appraisal and ordered a field review because they had no confidence in the original appraisal. So they saved $50 and are now spending another $400 for a field review," says Johnson.

The fact that many large AMCs use an appraisal ordering system that automatically selects appraisers based on their acceptance of a low fee and turn- time is disconcerting to Johnson and many other appraisers. "I know that most appraisers take their profession seriously and have standards. They have ethics. But day in and day out I keep losing work to appraisers who undercut me and take assignments at impossibly low fees. I've seen appraisers accepting a complex 1004 UAD with an REO addendum and laundry list of attachments for a total of $250 and a three-day turn-time! These are appraisers who just check a few boxes, add a few photos and call it a day, and they get work that I should be doing," says Johnson.

Who Pays the Price

It is not just the "honest" appraisers who lose out with such a system. Richard Hagar, SRA reports that in situations where the appraisal is deficient, the AMC is required to turn the appraiser in to the state board for disciplinary action. Additionally, the field review conducted by Johnson is not sufficient for the lender to lend on, so an additional appraisal must be ordered. "While the review appraisal might contain an opinion of value, the opinion is not in the correct format, nor has the review appraiser inspected the property. The AMC must order a new appraisal and inform the lender that it has ordered: a) an appraisal, b) a review and, c) a new appraisal—all of which MUST be submitted to the lender prior to making a lending decision," says Hagar.

The end result is that the AMC, if it seeks to comply with federal regulations, will spend an additional $400 on a field review, plus another $400–$500 on an additional appraisal, all because it attempted to save $50 on the first order. The catch is that technically the AMC is not the one who pays the price associated with selecting the appraiser in the first place. "Who gets charged for the review and the new appraisal? It should be the bank but they usually figure a way to charge the borrower for the bad business practices of the AMC and lender," says Hagar.

Good Appraisers Driven Out

Johnson believes his experience is indicative of a major problem in the industry. Namely, that blast-type order systems, that deliberately offer unreasonably low fees for appraisal assignments, result in good, experienced appraisers being driven out of the industry, as well as a systematic degradation of appraisal quality and appraisal fees.

Johnson offers two particular assignments that he recently lost bids on to reinforce his point. The first was a 2055 appraisal order for a property listed for $7 million with over 6,000 square feet of living space on three acres of land. The property was gated and included two guest houses, an in-ground pool, and a tennis court. Johnson bid $900 but according to the AMC's ordering system, the order was accepted at terms offered of $225. The second property was listed at $3.5 million with nearly 6,000 square feet of living space located on the waterfront. Johnson bid $475 but the order was accepted at $225. "These are very complex properties. The 2055 appraisal form might save some writing time but it should be the same amount of work as an appraisal on a 1004. You just can't afford to do all the work that is needed to produce a credible report for the fee offered. You still have to do all the steps. If there are appraisers out there who want to produce a good product and don't care what they get paid, God bless them, but they're not going to last in this business," says Johnson.

"In my area, I'm one of the few appraisers doing residential work who hasn't come into the industry in the last three or four years. Everyone else has moved on to other things because they refuse to lower their standards and submit shoddy work, and it just doesn't make sense to submit quality work for such low fees. Nobody can afford to spend the time to properly complete the assignments at the fees being offered," says Johnson.

Johnson says that the current system rewards unethical, inexperienced appraisers who accept low bids and it puts appraisers like him in a position where it can be hard to get work. "I would be fine if I was bidding against other appraisers who are doing what I am doing, instead of submitting these generic, non-specific appraisals. Most of the appraisals I review have nothing to do with the subject. Yes, they have a floor plan and pictures of the subject, but every single comparable photo is cut-and-pasted from the MLS. The market data is all generic, cut and pasted comments from 100 other appraisals," says Johnson.

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Johnson believes that AMCs are fully aware of the problem. "I've talked to several AMC employees on the phone and they tell me they have frequent meetings discussing this very issue. It is brought up time and again yet nothing gets done about it," says Johnson.

"I've been trying to hold the line. If we establish a customary and reasonable fee, and then the AMCs offer us $25 less, that is still within a reasonable range. But that slowly becomes the customary and reasonable fee, so AMCs lower their bid even further. The end result is that the appraisers who are willing to cut corners are the ones who get the lion's share of the work," says Johnson. "If they allow the substandard appraisers to continue to underbid the ethical and competent appraisers for an extended period of time, the diligent appraisers will need to decide between working for minimum wage or starving. With the age of the average appraiser rising to over 50, many are making a third choice: leave the business." WRE

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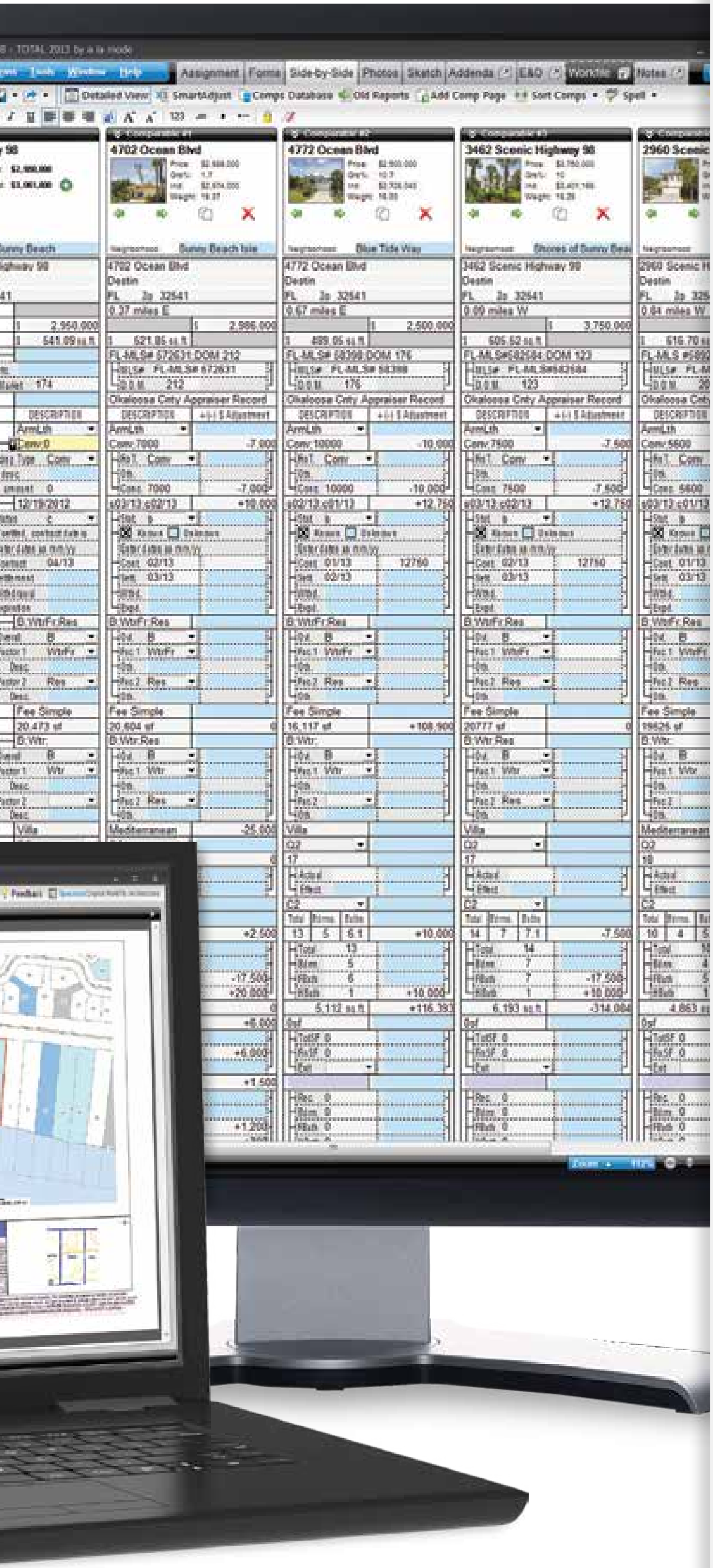

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— William Brush, William C. Brush Appraisal

How to Find Success in Today's Tough Market

by Roy Meyer

Editor's Note: *Marketing expert Roy Meyer shows us that while we can't increase the amount of hours in a day, we can completely change how we use those hours to achieve success. This story is excerpted from one that first appeared in WRE's Online email edition. To read the full story, including more detail on how a virtual assistant can help kick-start your business, visit* WorkingRE.com *(Click Library, WRE Online). You'll also find links to a free webinar by the author on the subject.*

Imagine your appraisal business built primarily around non-lender work and continuing to grow every night while you sleep.

Imagine your appraisal business built primarily around non-lender work and continuing to grow every night while you sleep. Imagine having a dedicated team committed to the success of your appraisal business and taking extended vacations while your business doesn't skip a beat. Imagine…you fill in the blank.

It's not a pipe dream and it's already happening for many appraisers across the country who have opened their minds to a new way of building their businesses. And that new way is with the help of *outsourcing*.

I've been outsourcing for more than nine years and currently have a team of virtual assistants in both India and the Philippines, as well as a number of other part-time virtual contractors from around the world, including the U.S. In addition to appraisers, I consult with Realtors, brokers, investors, and others in the real estate industry on how to grow, automate and streamline their businesses using a combination of outsourcing, marketing and other related tools and systems.

I already know what your initial reaction may be:

"Isn't this stealing jobs from Americans?"

"I know nothing about creating a virtual team—it just sounds too complicated."

"I just don't see how it can help!"

"They can't be trusted and they'll steal all of my information!"

How Outsourcing Creates American Jobs

There are plenty of common misconceptions and misunderstandings about outsourcing, including what it means for American jobs—as well as your own business. The average appraisers are a one-person shop just trying to maintain their business and keep it afloat. They usually can't afford to hire an assistant, marketer or social media expert at local rates. In other words, one can't argue that we're stealing jobs from Americans if you're not providing jobs in the first place. Outsourcing creates an opportunity that would never otherwise exist.

In fact, outsourcing helped grow my appraisal business quickly to a level I could never have achieved on my own, allowing me to hire local office staff and bring on additional appraisers to help manage our increased workload.

Virtual Contractor vs. Virtual Assistant

One of the first things to understand in the world of outsourcing is the difference between a part-time virtual contractor (VC) and a full-time virtual assistant (VA) and why you need both.

Normally you would hire a VC for one-off tasks such as setting up a

Roy Meyer is a Certified Appraiser of nearly 24 years, national speaker, author, outsource & marketing expert, co-founder of the Appraiser's Club and consultant to hundreds of appraisers, brokers, Realtors, and investors across the country. To read the full story at WorkingRE.com, click Library, WRE Online. Learn more about how marketing and outsourcing can help your appraisal business, as well as how Roy is building a new appraisal business from scratch in a free webinar. VisitWorkingRE.com, click Library, WRE Online.

website, designing a logo, providing a list of attorneys to market to, writing copy for a direct mail campaign, and a myriad of other tasks. These jobs are typically paid per job, not per hour, and the person you hire only cares about completing the task at hand and has no actual interest in the success of your business.

On sites such as Elance, oDesk, Guru, and more, VCs from around the world, including the U.S., bid on your job and estimate a time for completion, and you'll then select whom you feel is the best person for the task at hand.

Now the real power of outsourcing begins when you bring on your own full-time VA who is dedicated to you and the success of your business. He or she not only cares about the tasks at hand but also has a vested interest in the success of your business. The more successful you are, the better chance he or she has at long term or even lifetime employment as well as reaping any additional rewards from your success.

Putting together a team or even starting with a single VA can help you with important marketing strategies and techniques that will increase your visibility and your business such as: branding, lead generation, direct mail, article writing, blog posting, video marketing, competitor research, website, management, email management, social media management, SEO (search engine optimization), client relationship management, managing contact management systems, office admin., billing, setting up orders, listing your business on all the online directories, scraping events where you should be networking, marketing, marketing, marketing and more!

I recommend hiring full-time VAs from the Philippines. Since this was once a U.S. territory, the majority of residents are excellent at speaking English and are fairly westernized. Not to mention most of them are very well educated, dedicated to hard work, extremely loyal, and honest to a fault. And of course, they work for unbeatably affordable rates.

The majority of people you hire as VAs from the Philippines have at least one college degree, a multitude of skill sets and speak very good English. As a result, a popular misconception many people have is that you're taking advantage by only paying them \$2–\$3 per hour. However, that's simply not the case as they have a completely different standard of living, their unemployment rate is extremely high and that pay rate is considerably higher than the average minimum wage in the Philippines.

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Sounds Great...But How Will It Help Me?

Here's a peek behind the curtain about how I'll be using outsourcing to build and scale a new second appraisal business completely from scratch in a new market area where I have absolutely no contacts or presence whatsoever.

First, I'll be looking for a local virtual office that's able to provide me with a unique suite number for this new business. If none are available or they're simply too expensive I'll most likely go with a UPS business mailbox as I'm not looking for a formal office and one should never use a P.O. box! And yes, my VAs will be doing all of the initial research and then providing me with a list of options to choose from.

The next step will be building a new website that's unique and tailored to my intended market. Most appraisers don't have a website while other appraisers often have sites that look nearly identical to their competition. Keep in mind that much of the marketing required for non-lender work directly ties in with your website so it's critical to have a site that's unique and branded to you and your market area.

Another cornerstone of this business will be to set up a contact or email management system using a system such as Constant Contact, Mail Chimp, Send Pepper or Infusionsoft, to name a few. Then as I begin networking and marketing, I'll have a system in place to add new leads as well as follow-up with them with an automated marketing campaign. My VAs will be required to learn and completely manage this system for me, and I'll also be hiring a copywriter (VC) to write much of the copy for each campaign.

In this new age, I believe video marketing is a key element in building and sustaining a successful non-lender appraisal business. Did you know it's nearly 53 times easier to rank a video than a website? So it's just as important to have a custom YouTube channel as it is to have a custom website. Did you know you can build out a professional looking YouTube channel without having any of your own video content to start? I'll be outsourcing this task to my own team or a virtual contractor from Elance or oDesk who could most likely complete this task for as little as $50.

Once my outsource team has put all of the foundational pieces in place, I'll turn my VAs loose in the managing and endless marketing of this new appraisal business. So hold on while I run through just a few of the activities my VAs will be performing for me on a regular basis:

- Sign the business up with online directories including Yellow Pages, Bing, Yahoo, Google+, FourSquare, Super Pages, Angie's List, Active Rain, Merchant Circle, Local.com, Infogram, Construction Deal, and more.

- Scrape contact information for local credit unions, bail bondsmen, attorneys, brokers, Realtors and others to market to. Add contacts into a contact or email management system and apply appropriate marketing campaigns. Call credit unions for "point of contact" information as well as information regarding the process involved in being placed on their approved panel.

- Monitor local publications as well as sites such as EventBrite, Yelp, meetup groups, MLS events and more on a weekly basis and provide a weekly report of events and conferences that I should attend in order to network and market my business.

- Perform keyword research for relevant keywords people are searching for. Create related articles, blog posts, videos and press releases around keywords and distribute to directories.

- Manage phone calls, set up orders and re-inspection requests, schedule appointments, assign orders to staff, track each appraisal from start to finish, perform basic data entry once comps have been provided, set-up Dropbox folders for each new file to store and share data including field notes and data sheets, filter emails, follow-up on invoices 30+ days old, maintain current information including updated license and E&O with existing client base, and more.

Now I've just barely scratched the surface on how I'll be using outsourcing to help build, manage and scale this new second appraisal business, including dominating my local market. Imagine having to learn these few tasks yourself as well as being responsible for implementation and tracking results? You simply wouldn't do it! Now imagine trying to compete with an appraiser who has a virtual team in place who's handling all of these tasks and more on a regular basis? You simply couldn't compete! Being able to hand off these types of tasks to your virtual team will allow you to focus on the things you do best as well as the things you enjoy most.

Value of Time

Think of all the tasks you have to do in a day: bookkeeping, returning phone calls, e-mail management and follow up, endless paperwork, setting up orders, scheduling appointments, pulling data and compiling reports, collecting on outstanding invoices, social media management, updating your website, growing your client base, client relationship management—and this is just part of an appraiser's "to-do" list.

Add to that any attempts to market for non-lender work, and it's no wonder you feel like you never seem to get enough done. While you can't increase the number of hours in a day, you can completely change how those hours are put to use. Delegating low-dollar tasks to others enables you to focus on what you should be working at the hardest: obtaining new clients and maintaining existing ones are the bread and butter of any business, and that should be your top priority.

The only way to do that is to be able to hand off tasks that are time consuming, get in the way and prevent you from focusing on getting more clients. It might make you nervous to think about letting go of the control of some of these tasks. Yet once you do so and let others take care of many of these time conuming tasks for you, you'll be amazed. Not only can others often get the job done as well as or better than you can, they can also do it for a fraction of what you might think.

10 Hours a Week Back

At the very minimum, having a virtual assistant can mean giving you 10 hours of your time back a week. That's 10 hours for you to focus on getting clients or even just spending with your family. At the end of the month that equals 40 hours. So what are 40 hours of your time worth to you? I can assure you that extra time is worth far more than the minimal cost of a virtual assistant who can help make that happen!

By delegating tasks you can earn back some of your most valuable asset–your time. Enabling others to take care of tasks that simply tie up your time instead of make your time worth money is the smartest approach to achieving more success. **WRE**

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Appraiser Wins Judgment Against One-West Bank

by Isaac Peck, Associate Editor

Editor: *In a case that may be precedent setting, an appraiser triumphs over a lender in small claims court to collect back fees, and wins an important argument—according to this judge at least, the AMC is an "agent" of the lender.*

The appraiser community is still reeling from the decision of a Florida bankruptcy judge to absolve JPMorgan Chase of all liability in the bankruptcy case of Evaluation Solutions/ES Appraisal Services (ESA). (See *Bankruptcy Court Absolves Chase of All Liability*, pg 36.)

Over 10,000 real estate appraisers and agents/brokers were left unpaid by ESA, an appraisal management company (AMC) that procured valuation reports on behalf of Chase. The judge in the ESA bankruptcy case ruled that ESA was not Chase's agent, and consequently, Chase is not liable for the debts of the AMC.

The court decision has raised many questions within the appraiser community. Namely, who is the client? And are AMCs really the agents of the banks as required by federal law?

Appraisers will be comforted to know that not all courts agree about the relationship between banks and AMCs and the banks' responsibility to pay appraisers. Here is a case in point.

Robert Smith (not his real name, he fears reprisal from other banks), is an appraiser from Boise, Idaho who has recently sued One-West Bank in small claims court for an appraisal he completed for the bank that was ordered through JVI Solutions. The good news? Smith won the case and the court ordered One-West Bank to pay Smith the unpaid fee that JVI failed to pay him.

The good news? Smith won the case and the court ordered One-West Bank to pay Smith the unpaid fee that JVI failed to pay him.

Smith's story begins in February 2012, when he completed a customized appraisal, ordered through JVI Solutions. After going over a year without being paid, Smith decided to track down the lender and hold them accountable fo r the actions of their agent. As *Working RE* reported last year, some lenders decided to take responsibility for their portion of JVI's bad debt, voluntarily paying the unpaid fees of appraisers who completed work on their behalf (*Wells Fargo Paying JVI Bad Debt*, at *WorkingRE.com*; click *Library*, *WRE Online*).

However, One-West Bank, similar to Chase, is denying any responsibility to pay appraisers unpaid fees for work ordered by an AMC on their behalf.

Background

Smith says that on January 31, 2012, JVI contacted him and made it clear that they were shopping for an appraisal on behalf of One-West Bank. "The purpose of the appraisal was to decide what price they could sell the property for. They wanted one value as-is, and one assuming extensive marketing and a 60-90 day exposure time. We bid $1,200 and they liked our bid so we got the assignment," says Smith.

After completing the appraisal in early February, Smith says he was continually given the runaround from JVI regarding payment. "When we pressured them for payment, they said payment was on the way. Then they said they were having cash-flow problems and would get to it. It amounted to a lot of promises with no fulfillment," says Smith.

After over a year of non-payment, Smith decided to pursue One-West Bank for payment since they were listed as the client on the appraisal, and he

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believes that JVI Solutions acted as the bank's agent in ordering the appraisal. "Eventually, I said, enough is enough. Our small claims limit in this state is $5,000; I'm going to go after them. I filed the papers and found out I had to submit the papers to them through a corporate agent in Boise," says Smith.

Smith reports that he heard nothing back from One-West Bank until he was contacted by their legal department. "Their attorney called and told me that I should take up the issue with JVI. She told me to go after JVI and that One-West Bank wasn't responsible," says Smith.

On the day of court, Smith says that One-West Bank actually flew a representative out from California. "It's interesting, because they probably spent more than the $1,200 they owe me just to fight the case," says Smith.

In Smith's opinion, the representative from the bank showed up unprepared. "He didn't know about the Chase case in Florida and he seemed clueless about the federal laws and regulations that require lenders to order appraisals either directly or through an agent. All he brought was the Master Service Agreement between One-West Bank and JVI that says JVI is an independent contractor. Independent contractor or not, that doesn't change the agency relationship," says Smith.

Smith says that he read portions of *Working RE*'s articles on the issue to the judge in court (see *Stiffed Appraisers Go After Chase* at *WorkingRE.com*; click *Library*, *WRE Online*), including the NOLO's Plain English Law Dictionary definition of agency as: "The relationship of a person (called the agent) who acts on behalf of another person, company, or government, known as the principal. The principal is responsible for the acts of the agent, and the agent's acts bind the principal."

Smith says he cited many of the regulations as reported in *Working RE*, including the Interagency Appraisal Guidelines, FIRREA, and Dodd-Frank. "I saw that my best argument was in the agency definition. I said, look, if these guys are going to hold that they have no liability because of their contract with JVI, then they are in violation of federal law. Federal law says that they and their agents are responsible to appraisers for payment," says Smith.

Smith feels that Dodd-Frank provides the best argument for One-West Bank's responsibility. "The strength of the argument lies in the Dodd-Frank regulations," says Smith. "Specifically, Dodd-Frank states: § 129E (i) 1: Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised."

Smith reports the key language is that the law says, "lenders and their agents," and he argued that the law doesn't say lenders or agents, it says "and," which means that if JVI didn't pay him, the lender is on the hook for it. "If you have to steer an argument in a certain direction, the agency law and the Dodd-Frank law are probably an appraiser's best evidence and best argument when going against a large bank," says Smith.

Smith says in the judge's reasoning for the decision he wrote: "Bank's agent did not pay the appraiser, which means the bank did not pay the appraiser."

Smith won the case and One-West Bank has been ordered to pay his firm the $1,200 unpaid fee that JVI failed to pay. "I think the judge ended up making his decision based on Dodd-Frank. He was convinced that JVI was the agent of One-West Bank," says Smith.

One-West Bank has since appealed the decision and is taking Smith to a higher court, even though the amount is only $1,200. "In my opinion, if they pay the bill, they're admitting guilt. They can't let this thing go or else they'll have to pay all of the appraisers who did work for them through JVI and were left unpaid," says Smith.

Smith is hopeful that he can prevail in a higher court and is hoping to set a precedent for appraisers nationwide. "If they lose, it will set a precedent for appraisers across the nation because it's going to a higher court. I think the little guy has an advantage because we're just a small firm being manipulated and taken advantage of by a big, rich bank," says Smith.

Smith sees his story as being a positive sign and hopes it gives other appraisers courage to stand up to banks and hold them accountable for the actions of their agents. "We are just a little appraisal firm in Boise, Idaho, which was contracted by an out-of-state bank to do an appraisal. We did a good job; the bank used the appraisal to market the property and they benefited from the appraisal. We waited for the check to come in the mail and it never came. Finally, we pursued action against the bank and we won! I hope this gives hope to other appraisers who have been left unpaid," says Smith.

This is a developing story; visit *WorkingRE.com* for the latest on this and other issues. **WRE**

To Agents with Love (from Appraisers)

by David Brauner, Editor

Editor's Note: *Here are a few helpful tips on how to facilitate the real estate purchase process, from appraisers to real estate agents/brokers (with love). Comments were gathered from an online thread.*

- The quality of our work improves when appraisers have more information. The more information agents can give appraisers, the better we can do our job. Higher-quality data put into the Multiple Listing Service (MLS) by agents will translate into a better analysis and a higher-quality appraisal report. Better data could improve appraisal turn-times, which would help agents close the deal more quickly.
- Take photos of the street in both directions, all angles of the exterior, all bathrooms, the kitchen and the living area at a minimum. Buyers want more photos when they're looking for a home. Appraisers want more photos when they're trying to select comps. If there is damage, take a picture of it.
- MLS data accuracy is important. Lot size, acreage (in some areas), square footage (GLA), year built, and school district are important. If this information is wrong, the MLS records likely will not display correctly when searched.
- Don't combine contributory structures into the listed gross living area (GLA) even if it is livable area. Appraisers pull a comp at a certain size range only to find that the agent used the main home and a guest house to arrive at the GLA.
- Always include an *Updates/Features* sheet in the attached docs. It takes five minutes to type this information up.
- List finished square footage below grade, rooms below grade and concessions in the MLS.
- Measure the house! Learn the difference between above and below grade.
- Understand your obligation to be available for the appraiser's appointment and show up on time.
- Return calls when an appraiser has questions about sales that are being used as comparables.
- Include the pre-listing comparative market analysis (CMA) and any other comps you wish to provide *at the time of property visit*.
- Understand basic FHA issues like peeling paint, wood-to-ground contact and open electrical boxes. These items need to be fixed.
- Don't just provide the highest comps; explain low sales nearby that the appraiser is likely to find in his/her research. Agents go through lots of homes and hear a lot of things; they can sometimes explain why a sale was low due to marketability or condition issues not reported in the MLS. This information will be confirmed.
- Provide appraisers with pending sales prices on relevant comps when they have that information. Agents can sometimes get pending sales prices when the listing agent won't share it with the appraiser.
- When selling a multi-family property, include the current rents. It's one of the most important pieces of the puzzle on a multi, and it is left out way too often.
- Answer calls and e-mails from appraisers looking to confirm details on your closed sales, that they might be considering using as comparables in another report. Too many agents claim appraisers are clueless about an area but then fail to return calls or emails looking for insight into the very sales that tell the story of those areas. If you really want knowledgeable appraisers, return those calls and emails!
- Learn the difference between a condo and a townhome.
- List manufactured homes properly.
- If you cite "Assessor" or "County Records" as the "SF Source," then be accurate.

Free Help for Agents/Brokers

- Market value does not equal sale price.
- Take care of repair items BEFORE the appraisal inspection. If there is chipping and peeling paint...fix it.
- Garage Count: List the number of cars based on the number of "doors," (not the number of

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Appraiser Independence: Survey Results

by David Brauner, Editor

Editor's Note: *With over 1,000 appraisers participating, the results of this new survey shed some light on the state of appraiser independence in the last quarter of 2013.*

Over 1,000 appraisers participated in the survey; over 300 left additional comments to illustrate their points.

We hear a lot of appraisers complain that illegal influence continues today despite new federal and state regulations designed to remove it from the process. This survey hopes to shine light on what some of you are experiencing. The results are mixed.

Over 1,000 appraisers participated in the survey; over 300 left additional comments to illustrate their points. The survey remains open if you'd like to participate. (To participate, visit the new *WorkingRE.com* and click *Surveys*.)

You will find the questions below, along with the responses by percentage (rounded). You can find comments at *WorkingRE.com*, click Surveys; Appraiser Independence Comments. Many are thought-provoking and troubling. The following three are representative.

• "I have never been removed from a panel but I certainly see a decrease in business as soon as I am under the sales price. This happens with both appraisal management companies (AMCs) and lenders. There is never an explanation, just a sharp reduction in orders."

• "Pressure and undue influence are alive and well. Nothing has changed with all the additional regulation except the pressure is more subtle. Now it's called 'Reconsideration of Value.' No one respects or appreciates the appraiser's professional independent opinion. Everyone has an opinion and thinks they know the value, including the Realtors, loan officers, mortgage brokers and homeowners."

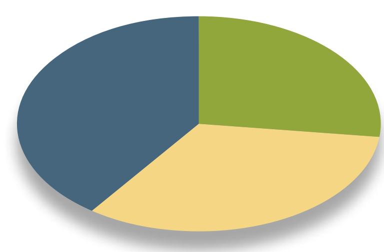
• "Our firm of 11 appraisers lost two very large clients due to pressure from loan officers and Realtors. It was more important to make the loan than to have a credible appraisal. On one we complained through the Consumer Financial Protection Bureau and the FDIC and heard from no one."

Survey Questions

The percent number represents how appraisers answered (rounded).

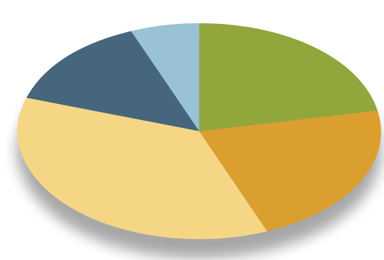
1. *Since HVCC was implemented (5/09), your "Appraiser Independence" has:*

a. Increased....27%
b. Decreased....33%
c. Remained about the Same....40%



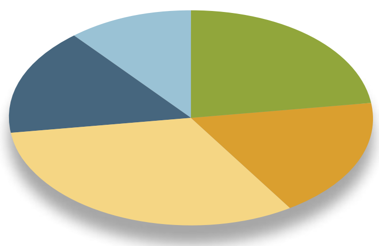
2. *How often do you feel there is an attempt to influence your value conclusion?*

a. Never....22%
b. Infrequently....22%
c. Occasionally....36%
d. Fairly Often....14%
e. Regularly....6%



3. *Within the last year, you believe you were "dropped" from an AMC/Lender roster or lost work for not meeting conditions/requests that you felt were contrary to an accurate appraisal:*

a. Never 23%
b. Infrequently 18%
c. Occasionally........................ 32%
d. Fairly Often 16%
e. Regularly.............................. 11%



Quick Analysis

The response to question one shows that (only) 27 percent of appraisers who answered the survey feel more independence since HVCC (73 percent don't).

Question two shows that nearly 56 percent of appraisers feel an attempt to influence their value conclusion occasionally, fairly often, or regularly; with only 44 percent saying this occurs infrequently or never.

As per question three, 59 percent of respondents believe that occasionally, fairly often, or regularly, they were "dropped" from an AMC/Lender roster or have lost work for not meeting conditions/requests that they felt were contrary to an accurate appraisal. Only 41 percent say this happens infrequently or never.

To take the survey, visit *WorkingRE.com* and click *Surveys*. **WRE**

Home Inspector Sued by the Seller

By Natalie Eisen, Isaac Peck and David Brauner

Can an inspector be sued for just about anything? The answer is, unfortunately, yes.

It's a fact of life that a home inspector is likely to find some issues with the house he or she is inspecting. Inspectors know that even new construction has problems! If it's an inspector's job to report issues to potential buyers so they can make an informed decision before purchasing, when are they liable for just doing their job? Can an inspector be responsible for how a buyer reacts to the findings in the report? One seller in Connecticut thinks they should be.

The seller, who is also a Realtor, has sued a home inspector in small claims court because the buyers lost interest in purchasing a house after reading the inspection report. This leaves inspectors scratching their heads and wondering how to protect themselves. Two issues seem to be at play: the accuracy of the report and who has standing to sue.

Regarding the report itself, liability probably depends on the quality, most agree. "I think an inspector may be liable if the findings are in error," says Lawrence Transue, a Pennsylvania inspector. "If that is the case, I believe the seller has a legitimate gripe and possible grounds for a suit." Transue says an exaggeration or mistake would mean that the buyer's decision to walk away stemmed from a bad report and not any problems in the home, leaving the inspector with a difficult position to defend in court. On the other hand, if the report is accurate and the seller is just displeased about the buyer not purchasing the home, most agree that the lawsuit is frivolous.

Texas inspector Jim Starkey knows the drill. "I have had several sellers file complaints against me over the years," says Starkey. "The sellers were angry that the buyer walked. They accused me of making false statements about the house which caused the deal to fall through, but when you read what I wrote and see the pictures of the defects, it was very obvious I did my job and they were totally clueless. These cases were all judged in my favor and that was the end of that," says Starkey.

Covering Your Assets

Many inspectors keep scrupulous records of their inspections in order to avoid being sued. They recommend never advising clients towards or against buying the house—only presenting the facts and letting them make their own decisions. If the client is present during the inspection, many inspectors use a voice recorder or video camera to record the process. "I carry a voice recorder in my shirt pocket," explains Steve Ott, an inspector from Ontario, Canada. "I record every word I say during an inspection and file them all. If someone comes back to me in the future and claims that I said such and such, I can go listen to the entire inspection."

Being able to stop a complaint or lawsuit before it snowballs is the preferable strategy. If the client isn't with you, be sure to keep records of conversations you have with him or her. Save emails, and transcribe phone calls if you are concerned. When you are inspecting the home, it goes without saying that you should take pictures of any problems you may find. Record-keeping pays off when you need it.

But what if a suit occurs anyway? "I'd stand my ground," says David Tucker, owner of The Inspector Inc. "If the lawsuit isn't retracted, I would hire a lawyer to first send the seller a 'demand letter' for retraction, then I would file a counter-suit in the county court. The seller is not the inspector's client and has no contractual agreement with the inspector. The seller's 'contract' is with the buyer," says Tucker. "Don't let yourself be intimidated, and remember that you are accountable to the person who paid for the inspection—not the Realtor or the seller."

Well…maybe. In some states, third parties can sue even though they did not directly engage the inspector. To be sure about your state's laws, you should consult a local attorney.

Non-Client Can Sue

Regarding whether a third party such as a seller or agent has standing to sue, Todd Stevens, experienced trial lawyer for inspector issues and past President of the San Diego Bar

Association, says it depends on the specific laws in each state. Stevens says the legal term at issue is *privity*, which posits that only parties to a contract should be able to sue to enforce their rights or seek damages. "In some states, privity is required to file a lawsuit like this. However, in other states like California, privity is not required. My advice to any home inspector in this situation, even if you believe the law in your state is on your side, is to take the threat of a lawsuit seriously and not ignore it," says Stevens. The reason, Stevens says, is that even if the sellers aren't able to sue you based on your contractual obligations to them, there still may be other ways for them to pull you into a lawsuit.

Joseph Denneler, another lawyer experienced in home inspector claims, concurs that the ability of a third party to bring a suit varies by state. "It depends on the particular state law. Generally, in a contract-based relationship, a stranger to the contract has no standing to sue for non-performance or for flawed performance. However, I have defended several third-party suits in New Jersey where inspectors were sued by someone with whom they had no relationship at all. Judges are not apt to dismiss claims even though there is clearly a legal flaw in the proposition. Every time I raise this argument in court I get a curiously blank stare from the judge," says Denneler.

Whether a claim is considered frivolous is also defined by state law, according to Denneler. "In [this] example, most states would not find that claim to be frivolous if it can be argued that the claimant is trying to change the law or proffer a new type of claim that the law doesn't currently recognize," says Denneler.

Michael Casey, principal at Casey O'Malley Associates, says that situations where the seller sues the inspector are very rare. "The seller suing the inspector because of the deal falling out is rare. In my experience with over 600 inspector claims, only one was of this type. We responded that the home inspector complied with the Standard of Care and reported material defects as required by published Standards of Practice, thus fulfilling his/her professional obligation. This particular claim went away," says Casey.

The other type of claim that might arise from a seller is an indemnity claim, Casey explains. "I have seen some cross claims against inspectors by sellers for indemnity when they are sued by the buyers, and the inspector is not named in the original action (usually because the condition was in the report, but not properly repaired or nothing was done). These are rare but must be defended like any other claim," says Casey.

Veterans agree that if you find yourself in a similar situation and your case goes to court, present the best defense you can, armed with the facts and the confidence that you have done the right thing. WRE

Should the Buyer's Agent Attend the Home Inspection

by Natalie Eisen, Staff Writer

Veteran agents/brokers weigh in on an ongoing debate: should real estate agents attend the home inspection? The answer varies.

Some real estate professionals believe that the home inspector should be alone, while others argue for various combinations of the buyer, the buyer's agent, the seller, and the seller's agent. Much of the argument centers around the presence of the buyer's agent. Some home inspectors believe that the buyer's agent gets in the way of the inspection and influences the client's opinion. On the other hand, real estate agents argue that the presence of the buyer's agent provides an intermediary between the buyer and the home inspector, as the buyer's agent is then able to request clarification from the home inspector and explain terms to the buyer.

Ultimately, buyer's agents must decide what they, and their clients, feel comfortable with.

Some real estate agents agree that being present at the home inspection can sometimes influence their clients' opinions towards or against something. It might even influence the home inspector. "I no longer attend any of my inspections," says Brian Hurt, sales executive at Keller Williams Premier Realty. "I tell my clients that what may be daunting to them may not be a big deal to me. But ultimately, they are the ones who have to live with it, not me," says Hurt.

"The current opinion is that the buyer's agent is not the one buying the home and should not influence the buyer about what home defects are acceptable or non-acceptable," explains Belinda Spillman, Realtor from Colorado. "At this point in the contract, the agents should merely be the mediators for the buyer and seller. The ultimate decision is theirs, not the agents'," says Spillman.

"I'm not present at home inspections," says Kristin Moran, Texas real estate agent. "It leaves it open for interpretation of what the inspector finds." She suggests that the buyer be there to ask questions to the home inspector directly, without a middleman. Some real estate agents feel that if the buyer's agent attends the home inspection, it can quickly turn into an argument over differing opinions. In some cases, the presence of a buyer's agent might also extend the time of the inspection by several hours.

"I am usually present for my inspections, but sit and quietly work on a laptop," says Chris Ann Cleland, Virginia Realtor. "I'm there the entire time, but don't advise my clients what they should or should not ask for. I like to see whatever the inspectors point out that may end up needing clarification later." Cleland's stance shows that there can be a middle ground between staying away from the inspection entirely and shadowing the inspector while he or she finishes the inspection. Other real estate agents agree that being available during the home inspection, but not being present for its entirety, makes the process easier for all parties involved. By being present only towards the end of the inspection and the presentation of the home inspection report, the agent can often review the results of the home inspection while still allowing the buyer to come to his or her own conclusions.

On the other hand, some agents insist on attending the inspection. "I always attend my inspections," says Gayle Rich-Boxman, a Realtor from Oregon. "There's a fountain of information in those! Not only do I want to be shown what's wrong, but learn from an expert so that I can be better informed for the next client," says Rich-Boxman. She explains that attending home inspections has allowed her to learn more about possible problems within the home and what's typical for the area. This, she says, makes her a better real estate agent and allows her to better serve her clients.

Of course, whether or not to attend a home inspection is entirely up to the buyer's agent and the preferences of the home inspector and buyer. The important take-away seems to be that the buyer's agent should refrain from influencing the buyer's conclusions about the home inspection. WRE

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- Includes discounts on ASHI/NAHI/state-approved education & training, access to group medical coverage (Calif.) and more.

** $1,250 Coverage Limit is for $300,000 Aggregate/$100,000 each Occurrence. Choice of coverage limits and deductibles available. Easy Financing.

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Industry NEWS

Home Builders' White Paper: Appraisers Are Idiots

As you are likely aware, the National Association of Home Builders (NAHB) published a white paper on housing finance system reform in February of this year. It is 18 pages long, so you can read and digest it in about an hour. All appraisers need to read it. This is because the NAHB has a lot more clout in Washington, D.C. than does any single appraisal organization. Therefore, Washington will listen to NAHB before it listens to us. NAHB is biased when it comes to anything that will prevent it from building and selling homes. Frankly, this is how it should be. NAHB has the responsibility to advocate in its own best interests. And so do appraisers. We appraisers also have the right to expose NAHB's lapses (or absence) of logic. For an example from the white paper's language it is clear NAHB thinks real estate appraisers are an impediment to the mortgage loan process. The white paper, under the sub-heading of "NAHB recommends reforming the appraisal system," proclaims which profession, all by itself, caused the last housing bust:

"Many housing industry participants believe the current appraisal system is fundamentally flawed. This view has garnered increased support as the ongoing turmoil affecting the housing and credit markets has brought greater focus to the importance of fair and accurate appraisals. In response to criticism that lax appraisals contributed to the crisis in the financial industry, there has been an industry-wide effort to reform the appraisal system. The effort has resulted in lenders, secondary market participants, and banking regulators all implementing new, more restrictive appraisal policies which have become a major impediment to the housing market recovery. On top of this, an extreme downward bias has been imbedded in the home valuation process. Rather than apply more restrictive appraisal policies, the industry should explore ways to improve the quality of appraisals– particularly as they are applied to distressed markets. Home builders are concerned with appraisals that solely use comparable sales to determine value rather than also considering the cost or income approaches. In particular, it is important to consider giving greater weight in distressed markets to alternative means of valuation, such as the cost-based approach. Using comparable sales to determine an appraised value in distressed markets too often is leading to homes failing to appraise at the sales price or even construction cost."

If NAHB has its way, that reformation would be one that is in the image of whatever it takes to dictate to the remainder of the stakeholders in the financing process that builders must be able to sell homes at whatever price pleases them, those prices as compared with the market's indication of their value be damned. There are those who consider this effort by NAHB to be meddling or interfering in a process that is not theirs to influence. Some might consider NAHB's white paper to be presumptuous, even arrogant. It is possible that some might dare whisper it is self-serving or even biased. NAHB clearly knows (a) what is out-of-whack with the entire new home appraisal process and (b) how to set that process aright. Even to mention (or think) NAHB cannot do so is to cast aspersions on an organization that has only the best in its heart for the American home buyer, as well as all of us who play a secondary and unimportant role in that process. NAHB, just as the government, is here to help us – especially we lowly dullards, the real estate appraisers. *—By Tim Andersen, MAI*

Editor's Note: *Andersen's complete analysis of the NAHB white paper, summarized here, first appeared in WRE's online email edition. You can read it in its entirety, along with many insightful comments by fellow appraisers, at WorkingRE.com; click Library, WRE Online. You can find the white paper itself at WorkingRE.com (click Resources, Sidebar).*

Third Party (AMC) Liability Coverage Now Available

Many appraisers have to make a painful choice: sign a third-party indemnification agreement with an AMC that could result in huge liability, or refuse to sign and miss out on the work. Today, many AMCs require all appraisers who work for them to sign an indemnification agreement (third-party coverage), that places a great deal of liability on appraisers. OREP now has a policy available that can provide contingent appraisal management company coverage as an option. The endorsement option can only be added to certain policies OREP offers, so please ask your OREP agent for details: (888) 347-5273.

Newly Updated AMC Resource Guide

The newly updated AMC Resource Guide has nearly 300 verified AMCs listed, with the first 50 sending over 90% of the author's work. Expand your business and find the AMCs that pay fairly and know how to treat an appraiser professionally. Visit *WorkingRE.com* or email your request to *subscription@workingre.com*.

New Working RE Home Inspector Edition

The new Home Inspector edition of *Working RE* is dedicated to home inspector issues only. Find a link to the PDF magazine at *WorkingRE.com*.

2014-2015 USPAP: Appraisal Foundation's Official Online Course

Provided by Mckissock Education and offered through *OREP/WorkingRE*. Taking this required coursework is now convenient and affordable ($150). Visit *OREP.org* (click USPAP). OREP Members and *Working RE* subscribers save $15. Email *Isaac@orep.org* to request your coupon code.

Bankruptcy Court Absolves Chase of All Responsibility—Appeal Defeated

In July of this year an alarming precedent was set for real estate appraisers in the bankruptcy case of Evaluation Solutions/ES Appraisal Services (ESA). Despite numerous objections from appraisers and agents/brokers alike, a Florida bankruptcy judge ruled in favor of JPMorgan Chase in granting a Bar Order which absolves Chase of any liability on future claims from appraisers, agents, and brokers for unpaid fees for valuation services that were delivered to Chase through ESA. ESA declared bankruptcy in January 2013 with over $11 million in unpaid debt, with an estimated five million in unpaid fees to appraisers, agents, and brokers. JPMorgan Chase was the client for 98 percent of ESA's valuation business and was listed as the client on all of the appraisal reports that appraisers submitted to Chase through ESA. (See *Stiffed Appraisers Go After Chase, Chase Denies Responsibility for Bankrupt AMC Debt; Visit WorkingRE.com; click Library, WRE Online.)*

The ruling hinged on whether AMCs are an agent of the lender and therefore responsible to make good on the AMC's debts. Within the appraisal community, the widely held understanding is that AMCs serve as the lender's agent, with the lender being responsible for the actions and obligations of its agent. This is because federal regulations, including FIRREA and the Interagency Appraisal Guidelines, require a lender to engage appraisers either directly or through "its agent." However, the Court noted that "Agency" is nowhere defined in the federal regulations and, consequently, the court must revert to a common law definition. Using a common law definition, wherein "the essential element of agency is control," the Court ruled that no agency relationship existed between Chase and ESA. The Court cites Section 14.8 of the Master Service Agreement between Chase and ESA where it states that at all times ESA was to remain "an independent contractor." In short, Chase has been released of any liability, in part, because ESA was not Chase's agent. The 2010 Interagency Appraisal Guidelines specifically state: "An institution or its agent must directly select and engage appraisers." "This is very clear cut," says regulatory expert Richard Hagar, SRA. "It means that lenders are prohibited from engaging non-appraisers for appraisal services. They must do it either directly or through their agent. In my opinion, it appears that Chase has knowingly violated numerous Federal Regulations and statements by the banking agencies and ordered appraisals through prohibited parties," says Hagar.

Sirima Chantalakwong is a BPO Agent in California whose company, ProValue, Inc., is owed $44,000 by ESA. She attempted to appeal the decision but was forced to drop it due to a complex bankruptcy law that would require her to post a bond to cover the opposition's legal expenses, in the event of her losing the appeal. The same judge who ruled against appraisers and agents in the initial case, ruled that the appeal will not proceed unless a bond of $250,000 is posted. ProValue has been unable to post the large bond requirement and was forced to abandon the appeal. Additionally, JPMorgan Chase has filed a motion for contempt and sanctions against ProValue, seeking, among other things, compensation for the attorneys' fees for Chase, the Trustee, and Summit Financial Resources. If ProValue loses the motion, it will be forced to pay the legal and defense costs incurred by Chase, the Trustee and Summit Financial. Read the entire story at *WorkingRE.com*; click *Library, WRE Online*. *—By Isaac Peck*

New Jersey BPO Legislation Vetoed by Gov. Christie

In August, New Jersey Governor Chris Christie vetoed SB 2551, a real estate bill meant to clarify that real estate agents and brokers have the authority to perform broker price opinions (BPOs) and comparative market analyses (CMAs). The bill was initiated by the New Jersey Association of REALTORS® and was unanimously approved by the New Jersey State Assembly. Many appraiser organizations voiced their opposition to the bill. The American Society of Appraisers, in a letter to the New Jersey Senate Chairpersons, argued that SB 2551 would expand the use of BPOs and CMAs to tax assessment appeals and estate tax settlements, adding that this would be detrimental to the public as USPAP-compliant appraisals are "the only appropriate tool for determining the value of the underlying property" in such cases. In his veto letter to Congress, Christie said: "While I appreciate the desire to facilitate additional business for real estate licensees in the state of New Jersey, I am concerned about potential consumer confusion…This bill will unwisely introduce confusion into that process, with sellers struggling to determine when and why to use broker price opinions, comparative market analyses, or appraisals." The New Jersey Association of REALTORS® has said they plan to revise the bill to address the Governor's concerns.

Fannie Mae Implements New UCDP Appraisal Messages

Effective November 9, 2013, Fannie Mae is building on its Uniform Collateral Data Portal (UCDP) messaging system to include "additional validation and reasonableness checks." Fannie Mae's September 24, 2013 Release Notes indicate that the "checks" will issue warnings only, and will not prevent the submission of an appraisal. The new items the UCDP will issue warnings about include: (1) proper recording of positive/negative time adjustments, (2) accuracy of the condition of subject and comparable properties, (3) accuracy of the age of subject and comparable properties, and much more. These added, automated "checks" enable Fannie Mae to analyze and review appraisals in a way that would not be possible without recent advances in appraisal technology. The addition of automated review processes may place appraiser's work under additional scrutiny and potentially increase their workload. To review the *Release Notes* in detail, visit *WorkingRE.com*; click *Resources, Sidebar*.

Broker/Agent E&O Insurance

Brokers and Agents looking for Errors and Omissions or General Liability insurance can stop their search with OREP. Serving real estate professionals for over 12 years, OREP offers Brokers/Agents complete Professional Liability coverage along with a variety of incidental coverages in the Minimum Premium, including Open House Coverage, Seller's Defense Coverage, Regulatory Board Defense, Lockbox Coverage, Prior Acts, Asbestos, Fungus/Mold, and Lead Coverage, and much more! General Liability is also available. Minimum Premium $369. Varies by state. Call *OREP.org* for details and a free quote (888) 347-5273 or email: *info@orep.org* with your request. **WRE**

Appraisers E&O Insurance: Minimum Premium $501

Rates vary by state. Commercial rates are slightly higher. Please call or visit *www.orep.org* for more (888-347-5273). Zero deductible available in certain states.

Prior acts coverage is provided free for qualified applicants (call for details). Beginning appraisers/trainees qualify. If you would like an application for this program or a quote for a multiple-appraiser firm or for sales/brokering, please call or visit OREP: (888) 347-5273, *www.orep.org*. Subscription to *Working RE* magazine included. Financing available.

Appraiser E&O Options

- **Policies with no FDIC Exclusion and AMC Third Party Coverage Available.**
- **Combine Appraising, RE Sales and Brokering:** One low premium covers both appraising/sales & brokering.
- **Appraisal Firm Coverage**: If you are experiencing an increase in rates, a decrease in coverage or new exclusions that seem unreasonable, it pays to shop OREP when your firm's E&O policy is expiring. Many appraisal firms are surprised to learn how much they can save by shopping OREP.
- **AMCs**: Many appraisal management companies are forming in the wake of HVCC. If you need this coverage, OREP can help.
- **Retiring**: If you are retiring from appraising, ask your insurance agent about purchasing **Extended Reporting Period or "tail" coverage**. Without it, you are exposed for any liability that may arise from past appraisals. Premiums range from one to one-and-one-half times (100%–160%) your last year's premium and can provide coverage *forever* into the future for past appraisals. Each program is unique. Call your agent for details if you are planning to retire.

New Home Inspector Insurance Program

Complete Home Inspector Coverage: E&O + General Liability Coverage $1,250/$300k Aggregate Limit

Home inspectors no longer have to pay more for the complete coverage they need. A new program from OREP includes most coverages in the minimum premium ($1,250), including General Liability. The new insurance program allows inspectors to have complete coverage and save money! The same low rates and coverage apply even in "expensive" states like Calif., NJ, TX, MD, WA, AZ, IL and others. David Brauner Insurance Services/OREP has been servicing the insurance needs of home inspectors for 12 years.

Program Highlights

- Includes Errors and Omissions (E&O) and General Liability coverage, as well as most incidental coverages, such as termite, radon, and commercial coverage.
- "A" Rated Carrier, Prior Acts, Additional Insured for Agents and other Referring Parties.
- Convenient Self-Rating Application allows you to choose coverage and pay in minutes. Get back to work fast!
- Admitted Carrier, no policy fee, no Surplus Lines taxes, no money down financing available.

"Home inspectors who are paying extra for 'add on' coverages, or worse, going without the full coverage they need just to save money, don't need to any longer. Broad coverage is included in the minimum premium, including E&O and general liability," said David Brauner, Senior Broker at OREP. The minimum insurance premium is $1,250, which provides a coverage limit of $300,000 Aggregate/$100,000 each occurrence for E&O/General Liability. Choice of coverage limits and deductibles are available. Find details pg. 35. Visit *OREP.org* for more or call toll-free (888) 347-5273. *Info@orep.org*. David Brauner Calif. Insurance License: #0C89873

Mortgage Field/Property Preservation

Many appraisers and home inspectors are now providing mortgage field and property preservation services for bank-owned properties. OREP has provided E&O and GL insurance to this industry for over 10 years and is a leader in the field. If you'd like a quote, please call (888) 347-5273, or visit *OREP.org*.

Continuing Education at Cost: OREP Members and Working RE Subscribers

"Thank you Isaac—This is a great perk for being a member" —Yvonne Rosenberg (OREP Member)

"The class was great and the price was even better. Please let me know if you have any other discounted classes." —Eric (OREP Member)

OREP members and *Working RE* paid subscribers save on all online and live classes from McKissock. Additionally, the online McKissock course, *Essential Elements of Disclosures and Disclaimers* (5 hrs. approved continuing education in most states), is available to OREP members/*Working RE* subscribers for administrative costs only ($15.64). Total savings on this course alone is over $60! The purpose of the course is to show appraisers how to meet their disclosure obligations, while at the same time protecting them from unintended liability through the use of appropriate disclaimers. How and where must an appraiser disclose prior services provided on the subject property within the prior three years? How should repair items be disclosed in an FHA appraisal report? How should significant real property appraisal assistance be disclosed? How can an appraiser protect himself or herself when there appears to be mold in the basement? Every appraiser will benefit from this course. E-mail *isaac@orep.org* for your discount code. Subscribe to *Working RE* today, or purchase your insurance through OREP, and enjoy this and many more discounts and savings! (Visit *WorkingRE.com*, click Subscribe.)

Inspectors CE Education at Cost: Online Mckissock course *Home Inspection Safety* (3 hrs. ASHI, NAHI, NACHI approved and also by 15 states), is available at administrative costs to OREP members and affiliates (ASHI, NAHI, NACHI: $5.74; varies by state). The objectives of the course are to identify protective clothing that should be worn; recognize safety equipment used; understand limitations and exclusions; discuss general safety issues; recognize lead paint, asbestos, etc.; discuss electrical safety; understand heating and air conditioning precautions; recognize unpermitted additions and more. (Visit *OREP.org,* click *Benefits* and OREP Education Network. Email Isaac at *isaac@orep.org* for discount code.)

2014-2015 USPAP: Appraisal Foundation's Official Online Course – $150

Provided by Mckissock Education and offered through OREP/Working RE. Taking this required coursework is now convenient and affordable ($150). Visit *OREP.org* (click USPAP). OREP Members and *Working RE* subscribers save $15 (**~~$150~~ $134.96**), email *Isaac@orep.org* to request your coupon code.

AMC Resource Guide: Just Updated

"Hi Everyone: I want to let you know that I just completed a MAJOR update to my Appraisal Management Company Directory. The list now includes almost 300 AMCs, with the first 50 companies sending me the majority of my work. Over the months I heard from many other appraisers about a number of AMCs that were great to work with and I wanted to add them to the list. So if your work has slowed down lately, you should consider signing up to all the AMCs on the list. There is still plenty of lender work out there!" —Bryan

The *Guide* provides direct links to AMC applications and the contact information you need to sign-up. Expand your business and find the AMCs that pay fairly and treat appraisers like a professional. You control whom you work for instead of the other way around. *The 2013 AMC Resource Guide* helps increase orders so you can turn down low-fee AMC work, negotiate fees from a position of strength and confidence, and refuse to work for the AMCs that undervalue you with low-fee work and endless corrections and stipulations. Visit *WorkingRE.com* (click *Resources*, *2013 AMC Guide*) to order or email your request to *subscription@workingre.com*. *Note:* Save when you purchase both the *2013 AMC Resource Guide* and the *Full-Fee Directory and Marketing Guide* (below). Visit *WorkingRE.com* (click *Resources*, *2013 AMC Guide*) for details.

Full-Fee Directory and Marketing Guide

The *2013 Full-Fee Directory* includes 3,400+ Direct Lenders, Credit Unions and Bail Bond Companies that don't require the use of an AMC. Designed by an appraiser for appraisers, this Directory gives you greater choice in who you work with and for how much. The *Guide* also includes important chapters on *how* to market to direct lenders, attorneys, bail bond companies and more. The author shares his expertise in sending low-cost but effective direct mail campaigns to make connections with non-lender clients and how to get referral work from current and existing clients. Avoid AMC pressure, endless stipulations, and low fees – get off the AMC roller coaster ride and get back to full-fee appraising! Save when you purchase the *AMC Resource Guide* and *Full Fee Directory*. Visit *WorkingRE.com* (click *Resources*, *Full-Fee Directory*) for details.

Improve Efficency and Quality with Mobile Appraising

Get practical tips and hands-on training with Mobile Tools– all at your own pace! The three-part *Mobile Appraising Training Package* created by Dustin Harris shows you, step by step, how to use mobile tools to increase your efficiency and profitability. Using a tablet and laser to assist in appraisal inspections is a game-changer for providing a higher volume of appraisals while improving quality. The *Mobile Appraising Training Package* includes: Full instructional e-Book with numerous color pictures, saving you time and money by showing you which technology to buy and how to use it; an hour-long training video showing an actual inspection using both the tablet and the laser and an interactive webinar that goes through the various aspects of tablets and lasers, taking you step-by-step through their use. Dustin shows you how to measure and inspect each room as well as how to integrate the data with the mobile software right on the iPad screen. Mobile tools will improve your efficiency and save you time. To order, visit *WorkingRE.com* (click *Resources*, *Mobile Appraisal Training*) or email your request to *subscription@workingre.com*.

WorkingRE.com Gets a Facelift!

Find breaking news and premium content on the new, improved *WorkingRE.com*!

Saving Money—Old School Way

With constantly changing technology, new software and the latest gadgets grabbing most the headlines these days, it can be easy to overlook savings on "old school" items like office supplies. But savings here can really add to your bottom line. A recent cost comparison of a typical office shopping list netted a savings on supplies of $500 through OREP's Corporate Savings Program ($3,500 total order). Depending on the size of your company, this could be your shopping list for one year or one month. Either way, that's a 14 percent savings! The Corporate Savings Program is free to OREP insureds and *Working RE* subscribers. To see the comparison for yourself, visit *OREP.org*, click Benefits, and look for "Corporate Savings" or email *info@orep.org* and ask for the corporate savings information. If you don't purchase your E&O from OREP, you can qualify with the group by becoming a subscriber to *Working RE* ($50). You'll find more details at *WorkingRE.com* (click Subscribe). A subscription guarantees delivery of the print magazine and comes with hundreds of dollars in savings on office supplies, webinars, the *AMC Directory/Full Fee Guide* and much more. OREP member Cynthia Traylor, from House Calls Home Inspections in California, said, "We are saving 19% on our Verizon bill and I order all of our office supplies through the discounted Staples portal—they provide overnight, FREE shipping, even on Sunday orders! We are taking advantage and truly enjoying your program. Great job!"

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go-carts you can squeeze bumper-to-bumper inside).

- Basements and garages are not GLA.
- Help appraisers help you. If you are producing inferior work (MLS data, photos, etc.), appraisers are using inferior data in their reports.
- Highest sale properties: the highest sale, even in a rising market, is going to attract scrutiny from the lender, so if an agent has that particular sale, the more information they can give appraisers the better. The more information we have about the transaction and market data, the more accurate our value opinion will be.

What Appraisers Wish Agents Knew

- Appraisers are bound by the Uniform Standards of Professional Appraiser Practice (USPAP).
- Appraisers do not determine value by price per square foot.
- Appraisers would like mandatory reporting of sales concessions in the MLS.
- Appraisers must verify information.
- Appraisers do not always agree.
- Cost does not equal value.

Turnabout Is Fair Play: For Appraisers from Agents/Brokers

- Don't be so darn rude to the buyers and sellers. If you go in with a bad attitude, you will lose clients as word gets around.
- Realize agents represent their clients and don't always have the final say in a deal. When you ask, "How did you come up with $XXX?" We may not be able to disclose it.
- Attrition is a natural part of sales. An agent may have to talk to 50 people to make one sale. So realize that this side of the business is NOT about sitting on the couch waiting for commission checks to roll in. Agents/brokers are always looking for the next referral. Speaking of referrals, if you act professionally and can support your opinion, you can become a great resource for a professional agent. Referrals can go both ways, but professional conduct is a must.

Appraisers and agents/brokers can send their advice and comments on how to facilitate the process to *dbrauner@orep.org* for a future story. **WRE**

Thanks to *AppraisersForum.com*

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Building Business with Your Own Optimized (& Affordable) Appraiser Website

One sure way to grow your appraisal business and add non-lender, full-fee clients to your order flow is with a modern-looking, fully search-engine-optimized website for your company—so your services can be found quickly on the Internet. If you've looked into this service before but were discouraged by the enormous costs involved, it's time to take another look. Working with SEO expert and appraiser Bryan Knowlton, WRE/OREP brings readers down-to-earth pricing on personalized appraiser websites, including construction, hosting and optimization ($500 complete for the year). It's time to promote your services to everyone and expand into non-lender, full-fee work. OREP Members/*Working RE* Paid Subscribers enjoy a significant discount on this service ($100 off). "Having the top ranking website in our area, we receive numerous FHA and estate appraisal requests on a weekly basis," Knowlton says. "The majority of the orders are to help customers going through a divorce, partnership dissolution, date of death/probate and for private investor transactions. This is full-fee work." Learn more and order your website today at *WorkingRE.com* (click *Resources*, *Appraiser Websites*).

Free Help Navigating ObamaCare—California Residents Only

The OREP-Affiliated insurance agency handing group health can walk you through your options, under the new Affordable Care Act, without adding to your insurance costs (California residents only). This may be especially important for you if you are uninsured currently and need help obtaining coverage under the new rules. The Agents can help you with the entire process, including determining what your cost will be after the subsidy, helping you select the best plan for your situation and completing the enrollment process. Email *info@orep.org* to be put in touch with the OREP-Affiliated agency. During this transition period and for a limited time, *Working RE* readers are eligible for this free service. **WRE**