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Editor's Note: One area of diversification is forensic appraisal, i.e. providing attorneys expert appraisal advice and testimony for litigation purposes.

Appraiser as Expert Witness

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While many appraisers are still struggling along doing appraisals for lenders and AMCs, some are branching out into other areas within the appraisal field, such as reviewing appraisals for lenders and appraising for estate purposes and divorces. Notably, one area that has not been widely explored is forensic appraisal, i.e. providing attorneys expert appraisal advice and testimony for litigation purposes.

Several types of legal actions focus on the appraised value of property, the credibility of an appraisal and compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), including condemnations, foreclosure related deficiency actions and professional liability claims. This article discusses forensic appraisal and the skills and preparation necessary for effective forensic appraisal practice.

Deficiency Judgments

The volume of residential and commercial foreclosures is a recurring topic in print, radio and television journalism. However, there is a related topic that has been largely unreported: *deficiency judgment actions*. A deficiency judgment is the difference between the amount owed on a mortgage and what the fair market value of the property at the time of foreclosure or short sale. This amount may be strictly the balance of the mortgage but more than likely will include any late fees and attorney fees. Those who are affected are primarily the borrower (mortgagor) and sometimes the appraiser, if the original appraised value was considered unsupported. Appraisers who have errors and omissions insurance are fortunate to be covered for the financial loss of the lender. But they still need representation. The E&O insurance company typically picks the attorney or law firm to represent them. But many times the attorney or law firm does not have an expert in the appraisal field to act on their behalf representing the accused.

Engagement Letter

Prior to seeking assignments with attorneys or banks, consider preparing a generic engagement letter in advance. The engagement letter should spell out your hourly or flat rate and explain what the fee represents (see *Doing It Right: Engagement Letters*, at WorkingRE.com, Library, Volume 24). Remember, if your assignment is to prepare an appraisal and perhaps testify later, give a quote for the appraisal report and another quote for the expert witness portion. If you prefer, you can prepare a generic engagement letter to present with your qualifications (curriculum vitae or CV). When your client decides to engage your services, you can convert that generic engagement letter and specify your client and other intended users. Make sure that the engagement letter is signed and dated by you and your client. Don't perform services until it is signed and either the original or copy of the engagement letter is in your possession. Do not prepare the engagement letter as an email with your electronic signature. If time is of the essence, scan the engagement letter you signed and send it as a PDF to your potential client with the expectation that the client will sign, date and return it as a PDF. Also request either the original or a copy of the engagement letter to be sent back to you in the mail. If a retainer is requested, wait until the retainer is received and deposited into the bank account before starting your work assignment.

Your client can either be the plaintiff (lender suing the appraiser) or the defendant (either the E&O insurance company or the appraiser). Find out who will be paying for your expertise. Will it be your client, the E&O insurance company or the appraiser?

Reviews

Prior to accepting any appraisal review assignment, read the 2010 USPAP Standards Rule 3 very carefully. Standards Rule 3 was rewritten significantly and reflects the form and content of the other standards. Basically, Standards Rule 3 was divided into two sections: development and reporting requirements. **Role as a Review Appraiser:** when your client or one of the intended users is the lender, your role will likely be as a review appraiser. As a review appraiser, knowledge of the types of appraisals you plan on reviewing (residential or commercial) is essential along with understanding the different appraisal forms and addendums. As a review appraiser, you are more interested in whether the choice of comparable sales is appropriate. Knowledge of USPAP is essential as you will be using one of the appraisal review forms that ask for comments if each section of the appraisal report was completed properly. Knowledge of Fannie Mae guidelines are preferred but remember they are just guidelines.

Find out what the lender's guidelines are. While USPAP and Fannie Mae do not require the comparable sales to be within the past three months of the effective date of appraisal and within a certain radius to the subject property (many appraisers are of the erroneous belief that Fannie Mae requires the comparable sales be within a one mile radius of the subject - it does not), the lender may have their own guidelines. You need to know their guidelines and differentiate between the lender's requirements and those of USPAP and Fannie Mae. Fees for reviews are usually a set amount and not as generous as those for expert witness work.