

Common Misconceptions About USPAP

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Dear Instructor,

As Director of Screening for the Appraisal Institute, I'm afforded the opportunity to address numerous standards and ethics issues with practicing appraisers on a daily basis. The following are a collection of notes I've made on common misconceptions about the Uniform Standards of Professional Appraisal Practice (USPAP). I hope you will find this information helpful no matter what course or seminar topics you teach.

Please remember that USPAP touches every aspect of all appraisal work, and therefore every aspect of appraisal education, whether it be an introduction to real estate course, an advanced business valuation course, a gems and jewelry analysis course, or simply a USPAP course. The future of the appraisal profession depends on quality education, and especially standards education. As instructors, we are each responsible for disseminating correct information about USPAP.

Sincerely,

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Note: Line numbers and quotes are from the 2006 edition of USPAP and Advisory Opinions.

(1) Misconception: “USPAP is enforced by The Appraisal Foundation.”

Reality: The Appraisal Foundation is not an enforcement body. (Preamble, Lines 176-180.)

- (2) **Misconception:** “The Appraisal Standards Board determines who has to comply with USPAP.”

Reality: Neither the ASB nor USPAP itself decides who must comply. Individuals comply with USPAP either because they want to or they are required by law, regulation or agreement with the client to comply. (Preamble, Lines 176-180.)

- (3) **Misconception:** “You can’t appraise a property if you have an interest in the property or in the parties involved.”

Reality: An interest with respect to the property or parties involved must be disclosed in the certification. (Lines 939-941, 2244-2246, and 2573-2575.) *However*, an appraiser CANNOT have a direct or indirect interest in the property of the transaction if the assignment is subject to the appraisal requirements of FIRREA.

- (4) **Misconception:** “It’s unethical to pay a fee in order to get an appraisal assignment.”

Reality: It’s okay to pay a fee to procure an assignment as long as it is disclosed. (Lines 258-259.)

- (5) **Misconception:** “If you appraised a property before, you can’t appraise it again because that would be a conflict of interest.”

Reality: Just because you appraise a property doesn’t mean you now have an interest in it. USPAP has no restrictions against appraising the same property more than once.

- (6) **Misconception:** “If the borrower is going to get a copy of the report, that means they are the intended user.”

Reality: Intended users are identified by the appraiser as intended users at the time of the assignment, based on communications with the client. (Lines 101-103) Just because a person or entity receives a copy of the report does not mean they are an intended user. (Statement 9, Lines 3031-3035.)

- (7) **Misconception:** “If Client A hired you to do an appraisal, you can’t reappraise the same property for Client B unless you get a written release from Client A.”

Reality: The only reason you couldn’t reappraise the same property for Client B would be that if in doing so you would breach the confidentiality of your relationship with Client A. That is, if Client A gave you information, *and* told you it was confidential, *and* that information is not available from another source (or it’s classified as confidential by privacy laws or regulations), you could not subsequently reveal that information to Client B without Client A’s permission. (Advisory Opinion 27.)

- (8) **Misconception:** “If Bank A hired you to do an appraisal, and now Bank B wants to use it, you can go ahead and ‘recertify’ or ‘readdress’ it to Bank B.”

Reality: Simply “recertifying” or “readdressing” the appraisal report to Bank B is misleading. The appraiser should treat the request from Bank B as a new assignment, with a new intended user and possibly a different intended use – and be mindful of confidentiality issues regarding Bank A. (Advisory Opinion 26.)

- (9) **Misconception:** “If Bank A hired you to do an appraisal, and now Bank B wants to use it, there’s nothing you can do to help Bank B.”

Reality: There are two ways for the appraiser to help Bank B. First, the appraiser can remind Bank B that a regulated lender may accept an appraisal prepared by an appraiser engaged directly by another financial services institution. So even if the appraisal is addressed to Bank A, per the appraisal regulations of FIRREA, Bank B can use it. Second, the appraiser can take on an appraisal assignment with Bank B, as long as there is no breach of confidentiality with the first client (Bank A). (Advisory Opinion 27)

- (10) **Misconception:** “If an attorney tells you to do something contrary to USPAP, you can do it by invoking the Jurisdictional Exception Rule.”

Reality: The Jurisdictional Exception Rule can be invoked only when a part of USPAP is *contrary* to law or public policy, and the appraiser must identify in the appraisal report the legal authority (i.e., law or public policy) justifying it. An attorney’s request to do something contrary to USPAP does not in itself constitute “law or public policy.” (Lines 459-478.)

- (11) **Misconception:** “If you do an appraisal for a government agency, USPAP doesn’t apply because of the Jurisdictional Exception Rule.”

Reality: The Jurisdictional Exception Rule can be invoked only when a part of USPAP *is contrary to* law or public policy. If no part of USPAP is contrary to the requirements established by law or public policy, there is no need to apply the Jurisdictional Exception Rule. Also, when the Jurisdictional Exception Rule applies to one part of USPAP, the balance of USPAP still applies. (Lines 461-463.)

- (12) **Misconception:** “If a property is unique and there is no market for it, you have to provide an opinion of ‘use value’ instead of ‘market value’”.

Reality: The type of value to be developed depends on the intended use of the assignment results. If the intended use of the assignment calls for ‘market value’, it would be misleading to substitute ‘use value’ for ‘market value’. Just because a property has a limited market does not mean it has no market value.

- (13) **Misconception:** “If the client wants you to assume that Highest and Best Use is the current use, you can go ahead and do that; just make sure you disclose the assumption.”

Reality: The use of an extraordinary assumption is okay *only if* it is needed to develop credible opinions and conclusions; there is a reasonable basis for it; using it results in a credible analysis; and it is properly disclosed in the report. Depending on the intended use of the appraisal, using an extraordinary assumption may be misleading, or it may be appropriate. (Lines 578-583, 1888-1893, 2345-2350.) However, highest and best use is a conclusion drawn by the appraiser based on the appraiser’s own analysis. Highest and best use is critical to the question of market value, so when the value being developed is market value, as a general rule it is inappropriate to simply make an assumption about it.

- (14) **Misconception:** “USPAP says you must inspect the property. If you don’t you’ve limited the scope of the appraisal.”

Reality: USPAP doesn’t have a Standards Rule that says the appraiser must inspect the property. In real and personal property appraisal, Standards Rules 1-2(e) and 7-2(e) require the appraiser to “identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal.” (Lines 553-576, 1861-1872.) This means that in some cases an inspection will be needed, and in other cases it won’t. Whether or not the appraiser inspects the property – and to what degree (e.g., interior, drive-by) – is part of the “scope of work” decision.

- (15) **Misconception** “You can exclude the Cost Approach in a real property appraisal if a client requests you to.”

Reality: You can exclude the Cost Approach if it’s not necessary for credible results. (Lines 385-386, 425-438, 610-615.) Also, the tests for the appropriateness of the scope of work decision are (1) the expectations of those who are regularly intended users for similar assignments and (2) what one’s peers’ actions would be in the same or similar assignment. (Lines 428-432.)

- (16) **Misconception:** “It’s okay to provide a ‘letter update’ that states ‘there has been no change in market conditions since the previous appraisal’ so the previous appraisal is still current.”

Reality: Making so brief a statement without providing the data and analysis that supports it can be misleading. Saying “no change in market conditions” implies “no change in value”; and stating a relationship to a previous value opinion is an appraisal. (Lines 13-15.) An appraisal must be developed in accordance with Standard 1, 7, or 9. An “update” can be provided in a letter – provided it meets the reporting requirements for an appraisal. (Advisory Opinion 3.)

- (17) **Misconception:** “No matter what, you have to follow all the Standards Rules in USPAP, or the appraisal will be worthless / the appraisal won’t stand up in court / some reviewer is going to turn you in to the state.”

Reality: The scope of work (which includes the type and extent of analyses applied) for any assignment must be appropriate for the purpose and intended use. The applicability of Standards Rules in the Development Standards (1, 3, 7, 9) is relative to the scope of work. If the scope of work is appropriate, the credibility of the appraisal is not compromised. (Scope of Work Rule.)

- (18) **Misconception:** “If you were hired to review an appraisal of a property, you can’t be hired later to do an appraisal of that same property.”

Reality: USPAP has no such restriction. Just because you review an appraisal of a property, it doesn’t mean you now have an interest in that property or the parties involved, or that you would necessarily be biased in the new appraisal.

- (19) **Misconception:** “If the appraisal is basically finished, and the report will be finalized and delivered to the client in a few days, you can go ahead and send the letter of transmittal today, since the report is to follow.”

Reality: A letter of transmission that provides a value opinion is, in and of itself, an appraisal report – and therefore must comply with USPAP’s reporting requirements. To provide the value opinion in this manner could be very misleading, especially if the scope of work, hypothetical conditions or extraordinary assumptions are not detailed.

- (20) **Misconception:** “You have to send the original, signed copy of the report to the client. Then in your workfile, you keep an unsigned copy. That way you can make additional copies with original signatures from the one in your workfile.”

Reality: You are required to keep a “true copy” of the report sent to the client (line 308), which by definition is what is given to the client (line 139). The “true copy” would be identical to the one sent – which means it would include a copy of the signature. How else could you later prove, should the need arise, which copy you sent to the client? [Note: USPAP doesn’t require a “report” to be signed – it requires the certification to be signed.]

- (21) **Misconception:** “A real estate appraisal report has to have a ‘Regional Description’ section.”

Reality: Standards Rule 2-2, which outlines the reporting requirements for real property appraisals, does not require a section with this heading. However, for a Self-Contained or Summary Appraisal Report, “regional” information is often part of the “information analyzed” (lines 760 and 841) and therefore should be addressed.

- (22) **Misconception:** “If the attorney who hired you says to destroy your appraisal workfile, that’s okay; USPAP has an exception for litigation.”

Reality: USPAP requires a workfile to be retained for a minimum of five years. There is no exception for litigation, unless the Jurisdictional Exception Rule applies (e.g., a court order – which is NOT the same as a request from an attorney).

- (23) **Misconception:** “If you do tax appeal work, you can take a contingent fee as long as you disclose it.”

Reality: When one is acting as an appraiser, one cannot structure one’s fees on a contingent basis, regardless of the nature of the assignment. (Lines 266-273.) An appraiser may do tax appeal work, but if acting as an appraiser, must arrange it so the fee isn’t contingent.

- (24) **Misconception:** “It’s okay to make an appraisal based on a hypothetical condition as long as the client agrees.”

Reality: The use of a hypothetical condition is permitted *only if* it is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison; using it results in a credible analysis; and it is properly disclosed in the report. Depending on the intended use of the appraisal, using a hypothetical condition may be misleading. (Lines 586-590, 1249-1253, 1895-1900, 2352-2357.)

- (25) **Misconception:** “You can use a hypothetical condition in an appraisal only if there is a reasonable probability that it will become reality in the near future.”

Reality: USPAP does not have this restriction. Hypothetical conditions are not predictions. In some cases, use of a hypothetical condition may be appropriate even if there’s no chance it will become reality in the future.

- (26) **Misconception:** “USPAP requires you to provide an ‘as is’ value.”

Reality: USPAP does not use the phrase “as is value” (except in Statement 10, where it reiterates the appraisal requirements pursuant to FIRREA.) However, USPAP does require the appraiser to identify and report any hypothetical conditions (which would make the value opinion other than “as is.”)

- (27) **Misconception:** “An appraiser can do an Administrative Review.”

Reality: “Appraisal review” is defined as the “the act or process of developing and communicating an opinion about the quality of another appraiser’s work...” (Lines 32-33.) When an appraiser renders such an opinion, Standard 3 applies. If the individual who renders an opinion about the quality of an appraiser’s work is *not* acting as an appraiser, then USPAP does not apply.

- (28) **Misconception:** “A review report done according to Standard 3 has to be a long, detailed document.”

Reality: The scope of work in the review process can (and should) be varied according to the purpose and intended use of the review. (Lines 1033-1065.) The review report will therefore vary accordingly.

- (29) **Misconception:** “Every appraisal report has to address both exposure time and marketing time.”

Reality: An appraiser must always *think about* the associated exposure time in the process of developing an opinion of market value for real property. (Lines 550-551.) However, there is no longer a requirement in USPAP to report exposure time. Marketing time is addressed in Advisory Opinion 7, which says “The request to provide a reasonable marketing time opinion exceeds the normal information required for the appraisal process, and should be treated separately from that process.” (Advisory Opinion 7.)

- (30) **Misconception:** “USPAP doesn’t allow you to provide ‘letters of opinion’.”

Reality: If a “letter of opinion” (i.e., a value opinion stated in letter format) meets USPAP’s reporting requirements (Standards 2, 8, or 10), it is permitted. However, a letter that doesn’t meet USPAP’s reporting requirements is not permitted.

- (31) **Misconception:** “If you are both a broker and an appraiser, you are in violation of USPAP if you prepare a broker’s competitive market analysis (CMA).”

Reality: USPAP applies to individuals who are acting as appraisers. If an appraiser “wears another hat” – i.e., is also a broker – USPAP does not apply when that individual is acting as a broker, not an appraiser.

- (32) **Misconception:** “Appraisers can never provide price opinions.”

Reality: An appraisal, by definition, is an opinion of *value*. (Line 10.) When asked for a “price opinion”, an appraiser must be careful to determine whether the client needs a value opinion (appraisal) or a suggested offering price. An opinion of a suggested offering price goes beyond valuation, and takes into consideration marketing strategy, pricing relative to competition, motivation of seller, etc. Such an assignment may constitute an *appraisal consulting* assignment under Standards 4 and 5.

- (33) **Misconception:** “If you prepare a report that says the value is at least a certain amount (say, “at least \$1 million”), that’s a consulting report and you don’t have to comply with Standards 1 and 2.”

Reality: A report that states an opinion that the value “is at least” or “is less than” a stated amount is an appraisal report. A value opinion (appraisal) can be stated as a relationship to a given benchmark amount, or a range, or a single point. (Lines 13-15.)

- (34) **Misconception:** “You can’t deliver an appraisal report to a client if the report doesn’t have a pinpointed value opinion.”

Reality: See #33 above.

- (35) **Misconception:** “If you have an interest with respect to the parties involved in the property, that automatically means you have a conflict of interest, and you’re biased.”

Reality: You can have an interest without having a *conflict* of interest which would cause you to be biased. An interest with respect to the parties involved must be disclosed in the certification. (Lines 939-941, 2244-2246, and 2573-2575.) However, if having the interest causes one to be biased, one cannot take the assignment.

- (36) **Misconception:** “The client is the one who pays for the appraisal.”

Reality: The client is the one who engages the appraiser. In terms of who USPAP says the client is, it doesn’t matter who pays. (Line 60-61.)

- (37) **Misconception:** “You have to report any known, current offers on the subject.”

Reality: USPAP requires analysis and disclosure of current Agreements of Sale, options or listings, but not offers. Agreements of Sale and options indicate a “meeting of the minds” between buyer and seller, while listings provide a fair indication of what the seller is willing to accept. Offers are one-sided and may even be egregious (in which case their disclosure could be damaging to the credibility of the appraisal.) (Lines 653-654.)

- (38) **Misconception:** An appraisal is an estimate of value.

Reality: An appraisal is an opinion of value. (Line 10.)

- (39) **Misconception:** “USPAP makes it impossible for state licensed or certified appraisers and designated appraisers to provide services that non-appraisers can provide.”

Reality: What differentiates licensed or certified appraisers, or appraisers who are members of appraisal organizations, from non-appraisers is that appraisers *do* comply with USPAP. Appraisers are the ones who are able to sign a *Certification* stating that they are impartial and unbiased, and that they have complied with recognized standards of professional practice.

Suggestion: USPAP should be viewed as a selling point, not a boat anchor.