Staying Out of Trouble

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I hope the following keeps you out of trouble. Please email me with suggestions of common or serious problems that happen in practice but are not included in the following. I hope to add to the list over time. My email address is ted@tedwhitmer.com

IF YOU RECEIVE A COMPLAINT, ARE SUED, SERVED OR CONTACTED BY AN INVESTIGATOR...

If you receive a notice that you have a complaint with the state board, are going to be sued, or are contacted by investigators concerning an appraisal, immediately do the following.

• Contact your insurance company. Let them know what is going on or you might lose coverage. You have only so many days to do this, depending on your policy & carrier.
• Contact an attorney.

Although the insurance company will provide a lawyer if the act is covered, you may need an attorney to look out for your interests. Pull your file and look at your supporting data, field notes, etc. and try to recall and retrace what you did. It is likely the appraisal and subsequent report were some time prior to contact.

I would not advise representing yourself. Many make the mistake of not understanding the severity of the problem. Get counsel. I appraise. If I had to defend an appraisal to the state board, I would bring counsel.

BEWARE OF NON-STANDARD PROPERTIES

I’ve noticed after many board enforcement cases that the properties are typically non-standard (“cookie cutter”) properties. This is probably due to three reasons. (1) The property is just harder to appraise and subject to a greater amount of error. (2) Problems associated with these types of properties and appraisals are more likely to surface because there is a greater chance of review and due diligence. (3) Those who commit mortgage fraud probably will choose non-standard properties so the fraud is not so easily detected. The moral of this brief story is “Beware of non-standard properties.”

COMMON BUT EASILY AVOIDED PROBLEMS

The following are frequent Uniform Standards of Professional Appraisal Practice (USPAP) problems. The violations of USPAP discussed in this section are often considered minor, but are quoted when other problems exist. Furthermore, this first class of problems are easily avoided.

> USPAP requires an appraiser to keep a “true” copy of an appraisal. This can be digital and doesn’t have to be a paper copy. However, the report must be signed to be a “true” copy. A great many appraisers turn in unsigned copies to the State Appraisal Agency during investigations and for
experience reviews. This is a USPAP violation. As one officer told me; “They should at least sign the report before it’s given to the Board.”

> Standard 2-2(b) requires that there be a statement that summarizes the highest & best use of a property. There is NOT an exception because it is a house appraisal or because the form doesn’t have a line or box for it. You should summarize the highest and best use with the following considerations:

✓ Exact zoning – Go to the municipality website and summarize (if summary report) or describe (if self-contained report) the zoning. Use exact zoning, not a tax code or simply say it is residential.
✓ If the improvements conform to private & public restrictions
✓ Etc.

> If you claim to have data “in your files” or someone told you something, then you better be able to back it up. Don’t use canned statements such as “after discussions with those in the marketplace” or “market evidence supports the following”, etc.

> **Failure to support a lot value in a residential appraisal.** MOST clients fail to support the lot value. You need to at least reference the tax value and it would certainly be to your advantage to do a periodic lot study by house value and reference the study. If the lot value is a significant part of the value, then you need to actually appraise the lot, collecting and analyzing comparables. This seems to be necessary in many of the following appraisals. *[This is in the common but not a serious mistake because the appraiser generally does not rely on the cost approach. If it is an appraisal where the appraiser puts major emphasis on the approach, then it would be considered serious. The same goes for the next bullet point related to costs.]*

1. Waterfronts or views
2. Other scenic views
3. Large lots
4. With significantly older homes that contribute little value to the site
5. Transitioning areas to commercial
6. Areas with significant demolition & rebuilding
7. Excess land that is salable

> Failure to support costs in the cost approach. Related to this is not spending time to apply appropriate adjustments and multipliers to the base cost.

> The wrong distance of the comparable to the subject on the second page of the URAR form.

> Having a report with vestiges of a prior appraisal that were not changed. This occurs because it is common practice for appraisers to use a prior appraisal of either the subject or a property in the same area to prepare a subsequent report.

> Having wrong photos of the subject or comparables. Also, using MLS photos. Make sure you (1) label them as such and (2) if you are required to inspect the comparables, take your own photo for your files to prove you did. (You may want to check to see if any photos are copyrighted.)

> Wrong census, flood map, tax or other references. This is often because it was not changed from a previous report.
Boilerplate: Read it, get rid of it, change it when you need to, but understand it. In fact, there is no boilerplate in appraisal reports. If you say it, you will be held to it. Know what your general assumptions say and avoid comments such as “the lot value is based upon sales contained in my files.”

THE FOLLOWING ARE MORE SERIOUS MISTAKES

> Accepting comparables from owners or others affiliated with the transaction or property. The appraiser I represent often has “builder sales” that were not in MLS and turned out to be falsified in some manner.

> Using older sales because of a time constraint. You must research current sales in the market.

> Using nonconforming sales when conforming sales are available. This status could be because of...

  1. Date of sale too distant from appraisal date
  2. Sales too far away
  3. Too many adjustments need to be applied to the sale
  4. Sales are outside of the neighborhood (defined by the appraiser) and not enough detail is given in the report as to rationale for this.

> Failure to analyze and properly report the prior transaction history of the subject. This is a recurring theme for those losing their certifications and license.

  1. SR 1-5 requires the appraiser to analyze any current agreement of sale, option, or listing if available in the normal course of business. Many clients have appraised a property that was listed and offered on MLS in the open market for a significantly lower price than the appraised value. There was no discussion or analysis why. Although the USPAP rule requires the analysis of “current” listings, etc. the appraiser would do well to know all past listing history of the subject and discuss the list prices (there may be many if the listing prices are changed) and discuss why the appraisal is different from the previous or current listing prices.
  2. SR 1-5(b) requires a three year history of the subject. The appraiser often fails to look the history up or fails to properly discuss the history. The requirement is not merely to report the history but to show the analysis of the past history in the reporting. Although there is no requirement by USPAP to analyze or report if the subject has not sold, the appraiser should make an affirmative statement that the property has not sold if it has not within the USPAP required time of three years. It would be safer, although not required to go back as far as you can with the history of the subject including listings, offers, sales, renovations, demolitions, etc.

> Failure to properly analyze or verify the sales data.

> Failure to properly establish the size of the subject.
> Claiming in the Certification to inspect the subject, but not physically inspecting the subject. Also, not reporting those who gave significant professional assistance.

> Improperly supervising trainees.

> Improperly applying an income approach to rental properties.

1. Not supporting the GRM
2. Not supporting the rents
3. Not supporting expenses
4. Not supporting vacancy

- Not maintaining a proper workfile as required by USPAP. The rule requires the appraiser to preserve evidence of all applicable data and statements required by USPAP and “other information as may be required to support the appraiser’s opinions, conclusions and recommendations.” This requirement is not defined in USPAP and is interpreted in many ways by various enforcement officers and Boards.

  - When you turn in your response from a complaint, you set your workfile. You can try to add to it later, but you show you don’t understand what is required of a workfile by trying to add to a file you was suppose to be complete upon submittal.
  - You can incorporate by reference. If you say you used Marshall on your report, then cite the page and year, etc. and you have incorporated by reference. Same with MLS and other services. Be specific in your reports as to the location of your support.
  - If you take notes on top of the file or in the file, they are a part of your workfile. Run a copy.
  - If you support what you did from information, etc. that was not a part of your workfile, label it as such to avoid being misleading to the board.
  - USPAP is clear that for oral reports and restricted use reports the files must be at least to the level of a summary report. That is an eleven point checklist for SR 2-2(b). There is a comment that says all other data, information, and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation. This is problematic. Most agencies add to the requirement past a summary report because of this clause. What is means is that if you say you have supporting documentation in your report that is in the file, then you will have to have it or violate USPAP. To be safe, keep notes, MLS runs, sketches, photos of comparables.
Record Keeping Rule in USPAP

An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment. The workfile must include:

- the name of the client and the identity, by name or type, of any other intended users;
- true copies of any written reports, documented on any type of media;
- summaries of any oral reports or testimony, or a transcript of testimony, including the appraiser’s signed and dated certification; and
- all other data, information, and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation. An appraiser must retain the workfile for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.

An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.

Comment: A workfile preserves evidence of the appraiser’s consideration of all applicable data and statements required by USPAP and other information as may be required to support the appraiser’s opinions, conclusions, and recommendations.

A photocopy or an electronic copy of the entire actual written appraisal, appraisal review, or appraisal consulting report sent or delivered to a client satisfies the requirement of a true copy. As an example, a photocopy or electronic copy of the Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report actually issued by an appraiser for a real property appraisal assignment satisfies the true copy requirement for that assignment.

Care should be exercised in the selection of the form, style, and type of medium for written records, which may be handwritten and informal, to ensure that they are retrievable by the appraiser throughout the prescribed record retention period.

A workfile must be in existence prior to and contemporaneous with the issuance of a written or oral report. A written summary of an oral report must be added to the workfile within a reasonable time after the issuance of the oral report.

A workfile must be made available by the appraiser when required by state enforcement agencies or due process of law. In addition, a workfile in support of a Restricted Use Appraisal Report must be sufficient for the appraiser to produce a Summary Appraisal Report (for assignments under STANDARDS 2 and 8) or an Appraisal Report (for assignments under STANDARD 10), and must be available for inspection by the client in accordance with the Comment to Standards Rules 2-2©(viii), 8-2©(viii), and 10-2(b)(ix).

> Not having the necessary geographical competence to perform an appraisal in an area the appraiser generally does not work. This problem has emerged because of management company rotations.
> Not accounting for builder concessions. It doesn’t matter that an area may have as “typical” concessions builders who pay 10 points to close a deal. You must account for the concessions. The sale price in the above case includes both the price of the real estate and the points paid to cause the sale.

> Appraising to the top end of a reasonable range to accommodate. After time has gone by and more data surfaces, it might look like fraud even though not intended.

> Not controlling a digital signature. *(See signature policy from this website).*

> Use the correct form, or if the form doesn’t fit the problem, don’t use a form.

> Use of post-foreclosure sales without discussion of the price affect of the transaction as such.

> Not using or discussing the post-foreclosure sales or their impact on the market.

> Using HUD statements without verifying their authenticity or failing to analyze the HUD statement.

> Connecting the dots in a fraud case, whether intentionally done or unintentionally done. A fraud transaction requires the parties receiving money from and institution being connected with an appraisal. Google “Mortgage Fraud White Paper” and read it. Know the signs of fraud.

The SUBJECT “box” identifies the client. This is the one that an appraiser owes a Confidentiality duty to. If the loan is sold, you don’t have the right to comment on the appraisal or a review of the appraisal without the clients permission.

If the assignment is an “other” then you must describe it.

Note the requirement that you state if the subject is or has been offered for sale. USPAP requires you to analyze, and not merely report, listings that are current as of the appraisal date. A Q&A suggests that an expired listing may need to be analyzed or there could be a violation of SR1-1(b). Good practice requires showing your analysis of all past and present transactions of the property and not merely REPORTING the past history.
The requirement of your analysis of a contract goes beyond this section of a report. You could report the contract and violate USPAP if you don’t show your analysis of it. Make sure you analyze the contract for seller concessions and discuss the impact of the concessions (either points paid, closing costs, or other things of value) that would impact on the price.

A common theme of my cases is a contract that was representative of a property in need of significant renovation or repairs. The contract would be significantly below appraised value if appraised as renovated or repaired. This is what I commonly call the “contract price + renovation + 30%” problem. If you have a value significantly above contract price plus costs of renovation, you need to spend a great deal of time analyzing the renovations and understanding exactly what is being appraised. The reader will also need to know exactly what the renovations consist of. **You also must make an extraordinary assumption as to the value being subject to the renovation as described and that the value will be significantly impacted if not done as described.** I’ve seen a great number of reports that do not even outline the renovations or the appraiser doesn’t understand what is to be done.

Another common theme is the appraiser, instead of staying in the immediate market and adjusting for condition (after renovation), goes outside of his or her defined area and looks for renovated properties. Often there is a significant difference in locational attributes and the value is suspect because the “comparables” really are not comparable. One appraiser told me there is a rash of “phantom condition” adjustments that result in inflated values.

This is a commonly misapplied section of the form. The appraiser defines the neighborhood and is held to the boundaries in many ways. Many appraisers make the mistake of getting too broad in the geographic area to get their comparables to fit in the defined area. This may require the appraiser to define a large area that is not compatible with the definition of a neighborhood.

Care should be exercised in checking urban or suburban. I have many cases where a house near a downtown area is checked as suburban. The percentage built-up is also often a contentious point as is the growth that is checked. These also feed to the second page with adjustments and even selection of
comparables. The “One-Unit Housing Trends” should be thought out and in line with the comparables taken from the neighborhood.

The enforcement officers will run the MLS for the range and predominant home values as well as age. IF you are not reflecting this run, you need to discuss why. For example, some areas have a significant number of non-MLS sales and sometimes the appraiser will eliminate “outlyers” when completing this section. If you do this, there needs to be comment. The percentage of land use should be thought through before the boxes are checked. Look back at the defined neighborhood and then look at Google Earth.

Be specific and accurate in your reporting for the site description. Include some analysis of the site also. Don’t forget to discuss good and detrimental site factors.

Again, be accurate and discuss good and detrimental features. Don’t ignore significant features.
You will be held to the condition and age of the improvements reported here. This will feed to your Cost and Sales Comparison Approaches (and Income).

If your comparables are outside of the neighborhood, discuss why you went outside and be prepared to answer why you excluded sales in the immediate neighborhood.

Many appraisers “bracket” here. There is no need to bracket if you have arm’s length sales of a similar property. Don’t bracket at the expense of omitting a good comparable.

Don’t go out of the neighborhood just to get similarly renovated properties. Even though the adjustments can be large, they may be better made than going to a better market and appearing to inflate the value.

Think through your adjustments and discuss why you first, went plus or minus. Establish your direction of adjustment, then establish your magnitude of adjustment or why it was as much as it was.

Don’t ignore adjustments that should be made. If a site is bigger or better, then it is possible a location adjustment should be made.
If you lot value is $50,000 and you make a plus $50,000 location adjustment, you are saying the comparable lot is worth $0. Look at your location adjustment relative to the lot values of your subject and the comparables. Don’t over-adjust for condition. If you have $50,000 in renovations and you adjust that much you are saying the comparable is in the same condition of the subject before adjusting and you are also saying the renovations are worth dollar-for-dollar of cost. You need to discuss this.

If you adjust for age, make sure you discuss why you used the ages you do for the subject and the comparables.

The history of the subject and the comparables needs to be analyzed and not merely reported.

If you say what your source is, make sure it is in fact what your source is. Again, there are no such of a thing as canned statements in appraising.
This is one of the most criticized areas in a residential report. If the client doesn’t require this and the house isn’t very new, avoid doing it. Know that there is no such of a thing as penciling in a cost approach, then reconciling it away by saying you didn’t lean on it. If you conduct the Cost Approach, it must be credibly produced.

I wish I had a dollar for every time I’ve seen the statement or something like the following, “The lot value is based upon sales in my files.” (And yet there are none). This is a violation of SR 1-4 in development, SR1-1(b) as a significant omission, Record Keeping and Conduct as misleading. Using tax values is not an acceptable method of site valuation. It is one of the following (1) sales comparison, (2) allocation, (3) extraction, (4) income approach (land residual, ground rent capitalization and subdivision. Tax values are not one of the acceptable methods. Neither is “based upon my experience...”

If you say you use Marshall, I would suggest running off the page you used and supporting your cost number. I see many rounded numbers and I also see many costs that are not consistent with reported quality of construction on the first page or here.

Your depreciation is tied to your age of the subject, your condition adjustments, any external obsolescence and any functional issues you’ve reported or adjusted for.

I have not seen many properly developed income approaches in my practice. It is not OK to infer market rent on to your comparables, then develop your GRM. It is also not OK to infer the values of your rental comparables, then develop your GRM. These two methodologies are not acceptable methodologies and result in identical values from your sales comparison approach.

You need to find sales of properties that were rented when sold and develop multipliers from those comparables.
Be accurate here. Take the time to analyze the PUD.

No canned statements, analyze and conclude.

**Prevention**

1. Create hard and fast company procedures.
2. Use checklists and formats to ensure no violations.
3. Properly train and supervise or don’t hire.
4. Select the right clients.
5. Beware of non-standard properties.
6. Look at exclusions in insurance policies. High risk assignments are exclusions in the policy.
7. Know and keep up with USPAP.
8. Get quality and not easy education.
9. Read appraisal journals and articles.
10. Keep up with market and economic data and indicators.
11. Have appraisers as friends you can consult or network with to discuss tough problems that come up in practice.
12. Join the Appraisal Institute or other trade organization, and get meaningful, not just approved education.