



Memo from the Board to Nebraska Real Property Appraisers

July 1, 2013

NON-CLIENT REQUESTS FOR APPRAISAL INFORMATION

By Tyler Kohtz, Director

The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") brought additional responsibilities to the Appraisal Subcommittee and state regulatory agencies with jurisdiction over real property appraisers. There is no doubt that the passing of Dodd-Frank has resulted in additional oversight and requirements for appraisers. It has also created a vast web of communication between property owners, realtors, banks, appraisers, appraisal management companies, attorneys, and governmental agencies. With all the information and misinformation disseminated to appraisers concerning rules, regulations and laws, it is difficult to determine what appraisal assignment information can be discussed with what person or organization.

A Nebraska appraiser recently brought this matter to the Board's attention. The appraiser received a written "Quality Control Request" from an organization indicating that it is performing a routine audit of various mortgage loans on behalf of a mortgage company. In the "Quality Control Request" the organization asks the appraiser to verify the effective date, address, and appraised value related to a specific appraisal assignment. Neither the auditing organization, nor the named mortgage company was listed as a client in the subject appraisal report. The appraiser also has not received authorization from the client to disclose the assignment results. Should the appraiser provide this information to the auditing organization?

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The answer depends on factors such as who is listed as the client in the report, and who is requesting the information. In order to answer this question or any other similar questions, an appraiser should rely on his or her training. According to Neb. Rev. Stat. § 76-2237, each credential holder shall comply with the Uniform Standards of Professional Appraisal Practice (“USPAP”). USPAP addresses the disclosure of confidential information and assignment results.

The first step to answering this question is to acknowledge who the client is in the subject appraisal report. USPAP defines client as “the party or parties who engage, by employment or contract, an appraiser in a specific assignment.” In the example above, neither the auditing organization, nor the named mortgage company was listed as a client. The second step is to determine what information may be considered confidential.

When referring to confidentiality under the Ethics Rule, USPAP states, “an appraiser must protect the confidential nature of the appraiser-client relationship.” To help provide clarification to this statement, USPAP follows with “an appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results.” USPAP also requires an appraiser to be aware of and comply with all confidentiality and privacy laws applicable in an assignment.

After the client and the importance of protecting the confidential nature of the appraiser-client relationship has been acknowledged, the disclosure of appraisal information may be evaluated. According to the Ethics Rule in USPAP, an appraiser must not disclose confidential information or assignment results to anyone with the following exceptions:

1. The client;
2. Persons specifically authorized by the client;
3. State appraiser regulatory agency;
4. Third parties as may be authorized by due process of law; or
5. A duly authorized professional peer review committee, except when such disclosure to a committee would violate applicable law.

If the Confidentiality provisions found in the Ethics Rule of USPAP are applied to the above mentioned scenario, the requested information should not be submitted to the auditing organization. Doing so would be a violation of the Ethics Rule in USPAP, and subsequently, a violation of N.R.S. § 76-2237. The appraiser may decline the request without verifying that he or she did or did not complete the appraisal assignment, not respond to the request, or request authorization from the client to disclose the requested information.

If a similar request is made to you concerning an appraisal report prepared by you, remember to follow the Confidentiality provisions found in the Ethics Rule of USPAP. If you are still unsure about what to do after applying these provisions, please contact the Board's office for further guidance; it is better to be safe than sorry.