



THE APPRAISAL WORKFILE: The best tool you have to aid in your own defense

This *Claim Alert* discusses something integral to every commercial or residential real estate appraiser: workfiles. The workfile can be a crucial benefit to appraisers defending themselves against legal or administrative allegations. Remember, most appraiser E&O claims are made 18 months to 3 years after the appraisal was completed. You may not remember the assignment, but a well prepared and documented workfile will lead you back to that exact moment. We will focus on tips and suggestions of how to create and maintain your workfile in support of your conclusions and reduce your liability.

We understand that all appraisers must comply with USPAP record keeping requirements. To make sure those requirements are satisfied, we recommend you consult with USPAP and take appropriate classes that adequately deal with this subject. If you follow USPAP and incorporate the suggestions herein, you will create a workfile prepared in anticipation of litigation which is a powerful tool in limiting your exposure and defending your reputation.



Keep Each File in Anticipation of Litigation

There is an important question that all appraisers should ask themselves, "If a claim or lawsuit is filed, will I be able to reconstruct what I did and how I did it, based on the contents of my workfile?" If the file contains nothing but your original assignment sheet and a copy of the appraisal, the answer to this question will likely be "No!"

The file must contain enough information to support and justify the work performed and the final conclusion. The file should also have enough additional information to help refresh the appraiser's recollection about the assignment, especially if you use trainees or contract appraisers who may no longer be around.

Another thing to consider is the appearance of the file. In most cases, a copy of the workfile must be turned over to the party who is making the claim as part of the "discovery" process. What does your workfile say about you as an appraiser? That you are organized, neat and detail oriented or that you are sloppy, disorganized and unprofessional?

Many appraisal offices have moved towards a "paperless" system. This is fine as long as the appraiser continues to focus on keeping a complete and well documented electronic workfile. This means scanning supplemental documentation such as post-its, phone notes and call slips. An electronic version of anything that would have been in the physical workfile must be scanned, properly labeled, and saved in a format that can be reliably viewed at a later date.

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Be very careful when you store photos on your computer hard drive. We see numerous instances of hard drive crashes or of photos being lost. *The photos are no good to you if they cannot be accessed when a claim is made!*

Assignment Sheets

It is a good idea to always keep a copy of the assignment sheet in your workfile. We find that many appraisers receive their assignments via email and neglect to retain that original request. The assignment sheet can be very helpful if questions arise about the client, the exact scope of the assignment, any assumptions to be made by the appraiser, the response time, etc. It will also tell if you are dealing with a client that communicates “a must-hit number” or a narrow range of values.

Research Data

It is crucial that the workfile contains any supporting data that was used to prepare the report. No appraiser can count on being able to go back and reconstruct their research years later when a claim is made unless complete and relevant documentation is kept in the workfile.

If public records were consulted for zoning or square footage, print out what you review and keep it in the file. A print out showing a date prior to the signature date of the appraisal conveys the fact that you did thorough research. Supporting documentation with a date **after** the lawsuit was filed implies that you had to go back after the fact to try and support your report. The same applies for MLS information. Will you be able to find the MLS information that you reviewed online today three years from now?

It is best to have as much data on comparables in the file as possible. Make sure your comp research was broad and did not just focus on a target or narrow value range. Keep copies of rejected comps that appeared to be comparable but were disregarded with clear notes as to why they were not used. Include notes documenting which real estate agents were called for further information about the comp sales or the subject.

Before storing the file, look over your handwritten notes. If it was important enough for you to write down, you must be able to read it. Too often appraisers are unable to read their handwriting years later when a claim occurs.

Information From Other Sources

Information used in the report is often given to the appraiser from other sources. It might seem convenient that someone else has done your work, but information provided by others, no matter how reliable they may seem, must still be verified. Evidence of the steps taken to verify should be clearly set forth in the file.

The biggest problem we encounter with regard to verification is with rental and income figures provided by others. *No matter how nicely bound or presented the information might be, it still has to be checked!* If the appraiser is unable to verify the information provided, that should be stated clearly both in the report and in the file.

Sometimes an appraiser is given a prior appraisal of the subject property. Resist the urge to “borrow” information from the prior appraisal as there is no guarantee that the information is accurate. We repeatedly encounter this situation with square footage issues. The appraiser will use the square footage figures from the prior appraisal rather than measuring the subject him or herself. Many times the prior appraiser was wrong. The appraiser who is now defending the claim rarely has a good excuse for this behavior and makes legal defense of the claim more challenging.

Appraisers are frequently provided copies of building plans to review when preparing a report. The plans must be returned upon completion of the assignment. The problem is that plans are often changed or revised during construction. Just as often, the appraiser is inadvertently or intentionally not told of the revisions. Some appraisers do make copies of the plans at their cost. Others simply copy something on the plans that shows the date or some other distinguishing marks. Hopefully the appraiser can show some evidence of which plans they were provided if questioned.



Interior Photos

We strongly recommend that interior photos be taken of every property appraised. Photos can help you document conditions that existed at the time you walked through the property. Often when a loan goes into default, the borrower has not maintained the property's appearance. Some borrowers may damage their property or others may vandalize a property that sits vacant. When the lender gains possession of the property, it may find the property is in far from "good condition" as stated in the appraisal and they are quick to point a finger at the appraiser. It is nice to be able to flash a few photos to show the house was clean and well maintained when you inspected it, which will help prove that it did not have missing fixtures or holes in the walls like it did after foreclosure.

The same applies to claims alleging failure to note defects. For example, you note some hairline cracks. It could be normal settling, but may be a bigger issue where the seller is withholding information in an effort to sell the home. A few photos can prove the property's condition at the time you were there.

Water damage is another area where photos kept in file can help. Is it the remnants of an old roof leak that has been fixed or is it evidence of a condition that might lead to mold growth? A photo provides clear evidence of what was and wasn't there when you were on the premises.

Lastly, interior photos can help to refresh your recollection about the property. If you get sued three years after completing your appraisal, will you remember the property you appraised? Photos can be an enormous help in jogging your memory.

General Notes and Message Slips

Our wish would be that you write down every thought and keep every paper scrap, because you never know what might be important. An appraiser may have had a significant phone conversation with a client about an extraordinary assumption, yet there are no file notes. Months later, someone might call and ask that a copy of the appraisal be provided to the borrower. If questions arise about whom the appraiser spoke to or when the borrower received a copy of the report, the appraiser might remember. However, that is not usually the case. General notes kept in the file can be used as evidence and are very persuasive to a judge or jury.

Conclusion

Every appraiser needs to maintain a workfile to comply with record keeping requirements. Do what you can to make that workfile an essential and reliable tool to help you defend yourself and your appraisal if you are ever the subject of an E&O claim.



TELL TALE CLAIMS...

He Didn't Bury his Head in the Sand

An appraiser was hired to appraise a commercial sand pit. Besides determining the land value, he had to value the sand. The appraiser contacted many contractors, haulers and sand pit operators to determine the sand's value. The workfile had a complete listing of all the contacts. The list was very informative, including such information as when calls were made,





whom the appraiser spoke with, who was unwilling to share information and even who never returned his calls. The sand pit operator eventually defaulted on the loan. The appraiser received a letter from the lender claiming the property had been overvalued, in part, because the value of the sand was overstated.

If the appraiser's sand value was overstated, it had nothing to do with his failure to research available sources of information. The lender's counsel was very impressed with how the workfile was maintained. The volume of neat and orderly documentation confirmed the professionalism of the appraiser. His notes indicated whom he called, when he called, and what was said, providing evidence that his research was thorough and fully documented. The plaintiff quickly agreed to drop the allegation against the appraiser.

You Can Hide but You Can't Always Run from the Law

An insured appraiser was retained to appraise for a new purchase loan. The home looked ordinary, but he was surprised when he went into the garage. The two car garage was completely filled with boxes and cartons which covered the entire floor space and stacked floor to ceiling. He thought it was odd since the rest of the home was relatively clutter-free, and he was compelled to snap photos of the garage. The appraiser's instincts were right on.

Months later, he was served with a lawsuit filed by the new owners. They claimed that after the sellers vacated the house and cleared the clutter from the garage, they discovered a huge crack in the garage floor. The new owners had a contractor advise that the house would have to be lifted off the foundation for an adequate repair. The entire cost to repair the foundation and resulting structural damage was almost as much as the appraised value.



We were able to get the appraiser dismissed early from the case by showing the appraiser's photos of the garage clutter, which proved that the appraiser could not have seen the cracks in the garage floor. He also noted in the report that he could not do a complete inspection of the garage due to the amount of clutter and debris. The plaintiffs' counsel was happy to dismiss him and used our appraiser's photos to get a large settlement from the sellers, claiming they had intentionally concealed the foundation crack by filling the garage with boxes and clutter.

Judge Rules the File Speaks for Itself

An appraiser delivered his appraisal to his lender-client and a week later received a request for a copy of the appraisal from the personal guarantor of the loan. The appraiser got permission from his client and hand-delivered the report to the guarantor's office. The guarantor eventually sued the appraiser and claimed that he had relied on the appraisal when deciding to sign the guarantee. The guarantor testified that he received a copy of the report a full week before the papers were signed. Besides the appraiser's contradicting testimony, his workfile also contained phone message slips and a log that showed when he delivered all of his reports. At trial, the judge ruled in favor of the appraiser on several issues. However, in the judge's written opinion, he specifically noted that the appraiser was found to be more credible than the guarantor/plaintiff due to the manner in which the workfile and his business records were maintained. Case closed!



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