

APPRAISAL TODAY

2018-2019 USPAP - What You Need To Know

Sometimes there are a few changes and sometimes there are very significant changes to USPAP. This edition has mostly relatively minor changes.

Changes were made to existing sections, making them easier to understand.

Several sections have suggestions on explanatory statements to put into your appraisals and good examples of how to handle problems. Many of the statements and examples relate to residential lender appraising, which is by far the largest number of appraisals completed today.

AO 1, Sales History has been expanded to include sample statements and examples, which are very useful and practical.

New Advisory Opinion 37, Computer Assisted Valuation Tools is valuable for residential lender appraisers as it clarifies what you need to know.

With implementation of Collateral Underwriter in late 2015, statistical software for appraisers for adjustments became available.

Advisory Opinion 31, Assignments Involving More than One Appraiser offers suggestions on how to handle trainees. It does not include having non-appraisers (real estate agents, trained inspectors, etc.) do inspections.

I used comments from the Appraisal Foundation's excellent 32 minute youtube video, USPAP Updates Explained - Hear About Changes in the 2018-19 USPAP. ASB Chair Margaret Hambleton, and Director of Appraisal Issues at The Appraisal Foundation, John Brenan are speaking. There is lots of background information and practical tips, particularly for residential lender appraisers, which is often missing.

In this article, their comments are indicated as "TAF Comments".

These are the best USPAP comments I have ever heard outside a live USPAP class with a very informed instructor. They specifically address what it means in day to day practice? Link to video: <https://www.youtube.com/watch?v=Oiky9zMCHwU> Also, you can also search Youtube for Appraisal Foundation USPAP.

In this article I discuss the most relevant sections. In the list of changes below, I have bolded the sections included in this article.

List of USPAP changes:

(Bolded are discussed in this article)

- **Definition of report**
- **Definition of assignment, intended use, and intended user**
- **Definitions of assumption and extraordinary assumption**
- **STANDARD 3 - Dividing into STANDARD 3, Appraisal Review, - Development and STANDARD 4, Appraisal Review, Reporting**
- STANDARD 6 - Dividing into STANDARD 5, Mass Appraisal, Development and STANDARD 6, Mass Appraisal, Reporting
- Standards Rules 7-2(c), SR 7-5, and 8-2(v) Standards Rule 8-3
- **(New) Advisory Opinion 37, Computer Assisted Valuation Tools**
- Illustration in Advisory Opinion 21, USPAP Compliance
- **Edits to Advisory Opinion 31, Assignments Involving More than One Appraiser**
- **Edits to Advisory Opinion 1, Sales History**
- Edits to Advisory Opinion 32, Ad Valorem Property Tax Appraisal and Mass Appraisal Assignments

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A brief timeline - Actions of the Appraisal Standards Board

USPAP is revised every two years. Regular changes in USPAP are somewhat controversial as it is expensive for appraisers to buy the document and attend the mandatory class.

USPAP is copyrighted (another controversial issue) and provides regular income for the Appraisal Foundation.

- January 15, 2016. The twelve-page document was exploratory in nature, intended to encourage feedback from all stakeholders to facilitate identification and or clarification of potential areas of improvement within the various sections of the USPAP document.

- April 13, 2016 First Exposure Draft with some topics retained from the Discussion Draft and some new proposed edits.

- August 16, 2016, Second Exposure Draft containing the eight proposed content changes in the First Exposure Draft with additional recommendations resulting in a total of eleven sections of proposed changes.

- December 7, 2016, Third Exposure Draft containing the same eleven proposed topic changes contained in the Second Exposure

- February 23, 2017 USPAP 2018-2020 is approved at a public meeting.

- October 1, 2017, USPAP 2018-2020 is available, plus all the USPAP courses.

- January 1, 2017, 2017 USPAP 2018-2020 is effective.

What if you don't like some of the changes?

Read the previous Drafts which are very informative plus the comments (see links at end of this article). All comments are public. You can read different opinions and see how some of the suggestions changed over time.

The ASB reads every comment. You will be heard. You can also make comments at an open meeting, but be sure to submit your written comments so other appraisers read

what you have said. There are links to USPAP exposure drafts with comments included at the end of this article.

If you did not comment this time, be sure to comment for the 2021-2023.

Section 1: Definition of Report and Edits to the ETHICS RULE and the RECORD KEEPING RULE REPORT:

Any communication, written or oral, of an appraisal or appraisal review that is transmitted to the client or a party authorized by the client upon completion of an assignment.

My comments: Previous USPAP only mentioned the client, not a party authorized by the client, such as an AMC. The controversial Draft appraisal discussion was not included again. Possible "unintended consequences" for residential lender appraisals.

Several changes were made adding assignment results to clarify that sometimes a report is not done, but client communication is needed.

TAF Comment: For example, the appraiser determines that the highest and best use on a 1-unit property is a 2-unit property. The client cancelled the report. The old USPAP only referred to communication about the report. A workfile is required before the client communication of assignment results.

TAF comments: An example is if a client says they will be out of the country and want you to send the report to your attorney. The previous USPAP was not clear as there was no "or a party authorized by the client".

Record Keeping Rule: Clarification of Restricted and Oral reports.

My comment: Many appraisers provide Restricted Reports, or are requested to provide them. For appraisers who have done "comp checks" which are appraisals, this is a significant change.

A workfile in support of a Restricted Appraisal Report or an oral appraisal report must be sufficient for the appraiser to produce an Appraisal Report. A workfile in support of an oral appraisal review report must be sufficient for the appraiser to produce an Appraisal Review Report.

Definition of assignment, intended use, and intended user

"The Board created a definition of Assignment Conditions, a term that had only been previously referenced in the SCOPE OF WORK RULE"

My comments: Intended Use and Intended User still contain "at the time of the assignment", which is not defined. The ASB plans on clarifying this in the future. Often, what you thought you were appraising changes after you have accepted the assignment and get more information. The assignment definition uses "agreeing to perform".

TAF Comment: In the old USPAP there was some confusion about whether the assignment was a service or an agreement.

Assignment definition: a valuation service that is provided by an appraiser as a consequence of an agreement with a client.

Assignment conditions: Assumptions, extraordinary assumptions, hypothetical conditions, laws and regulations, jurisdictional exceptions, and other conditions that affect the scope of work. Comment: Laws include constitutions, legislative and court-made law, administrative rules, and ordinances. Regulations include rules or orders, having legal force, issued by an administrative agency.

TAF Comment: this was in other parts of USPAP and was moved to a definition.

Competency Rule: An appraiser must determine, prior to agreeing to perform an assignment, that he or she can perform the assignment competently.

Revision to definitions of assumption and extraordinary assumption

"The Board deleted the definition of Assumption, as its use is not intended to differ from the general English meaning of the word. The Board also adopted a revised definition of Extraordinary Assumption, with administrative edits, in an effort to clarify that term and its applicability."

My comment: I state what I am doing in my reports and do not use appraisal terms such as Extraordinary Assumption or Hypothetical Condition.

Definition of Extraordinary Assumption: an assignment-specific assumption, as of the effective date regarding uncertain information used in an analysis, which, if found to be false, could alter the appraiser's opinions or conclusions.

TAF Comment: *Extraordinary Assumption is critical.* Ordinary Assumption: appraiser does not see any hazards on the property.

Extraordinary Assumption example: The appraisers sees unidentified drums with some leakage and cannot determine what is in the drums. The appraiser uses an Extraordinary Assumption that there is no environmental contamination.

Comment: Uncertain information might include physical, legal, or economic characteristics of the subject property; or conditions external to the property, such as market conditions or trends; or the integrity of data used in an analysis.

STANDARD 3 - Dividing into STANDARD 3, Appraisal Review, - Development and STANDARD 4, Appraisal Review, Reporting

"The Board adopted changes proposed in the Third Exposure Draft to edit the definition of Appraisal Review to include its use as an adjective. The Board also adopted the proposed revisions to divide STAN-

DARD 3, Appraisal Review, into STANDARD 3, Appraisal Review, Development and STANDARD 4, Appraisal Review, Reporting. The edits are intended to improve consistency with the other development and reporting standards...."

TAF Comments: Appraisal Review was divided into "Appraisal Review, Reportion and Review, Reporting to more closely parallel Appraisal Standards

My comment: If you do reviews, be sure to read this section.

Appraisal Review definition: APPRAISAL REVIEW: (noun) the act or process of developing an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment; (adjective) of or pertaining to an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment.

Comment: The subject of an appraisal review assignment may be all or part of a report, workfile, or a combination of these.

Edits to Advisory Opinion 31, Assignments Involving More than One Appraiser

My comments: This is complicated for residential lender appraisers as some lenders will not accept a trainee signing on an appraisal report. For commercial appraisers, having other non-appraiser professionals, such as for business valuations is not unusual.

Unfortunately, a new trend of the use of non-appraisers for residential inspections, photos, etc. is not addressed.

Below I have included relevant excerpts from this section. For example, the list below is not new, but a repeat of who is affected.

Many appraisal assignments involve participation by more than one appraiser. Typical scenarios

include, but are not limited to:

- Two appraisers working together as equals on an assignment.
- A staff appraiser whose work is reviewed and/or directed by a more senior appraiser.
- A person who is being trained as an appraiser ("trainee") and requires supervision and direction by an appraiser already fully qualified to complete the assignment.
- An independent appraiser/contractor performing work for an appraisal firm.
- Two or more appraisers from different appraisal disciplines working on an assignment.

When assignments involve more than one appraiser there are often questions about the proper way to deal with USPAP requirements relating to record keeping, signatures and certifications.

"...Any appraiser who provides significant appraisal or appraisal review assistance in the assignment must sign the certification or be identified in the certification."

Significant Professional Assistance:

USPAP does not define what constitutes significant appraisal assistance in an appraisal or appraisal review assignment. To be significant, the assistance provided must be substantial enough to have affected the development of the assignment results. Assistance is related to the appraisal process and requires appraisal competency. Therefore, only those acting as an appraiser sign the certification, or are identified as providing significant appraisal assistance in the certification.

Examples of significant appraisal assistance include, but are not limited to, identification (research and selection) of comparable properties and data, inspection of the subject property and comparable properties, estimating accrued depreciation, or forecasting income and expenses. An appraiser often uses assistance that does not constitute significant

appraisal assistance. Although it is the responsibility of the appraiser to determine the role of any individual providing assistance, tasks such as, but not limited to, writing down measurements the appraiser provides when measuring a structure, taking photographs of the subject property, and providing clerical duties are not considered significant appraisal assistance.

An appraiser providing assistance must comply with those parts of USPAP that apply to the assistance that he or she provides. So, for example, if an appraiser's assistance includes only developing a cost approach in a real property appraisal assignment, that appraiser must comply with the applicable Rules (i.e., the ETHICS RULE, etc.), Standards Rules 1-1, 1-3, 1-4(b) and any other applicable sections of Standards Rule 1-4, and Standards Rule 1-6(a).

Illustrations

Certification Requirements When Trainee Does Not Sign the Report ... The name of the trainee appraiser who provided significant assistance, but does not sign the certification, must be stated in the certification. It is not required that the description of the assistance appear in the certification, but the extent of the assistance must be set forth in the report as required in STANDARDS 2, 4, 6, 8 and 10. The degree of this description is identified by the applicable reporting option for the assignment. For example, in an Appraisal Report the extent of the significant assistance must be summarized.

Creation of Advisory Opinion 37, Computer Assisted Valuation Tools

TAF Comments: Since appraisers' use of AVMs have been reduced, it was suggested to retire AO-18, Use of an Automated Valuation Model (AVM). But, the ASB received considerable comments that AO18 should be retained and a new AO

developed that considered newer computer valuation tools.

My comments: This 7-page AO is well written, understandable and practical. Much better than the previous Drafts. Below are a few excerpts.

Competency

The COMPETENCY RULE specifically states that competency may apply to an analytical method. Technology that performs statistical analyses is simple to use, but still requires competence.

When using computer assisted valuation tools in an appraisal or appraisal review assignment, an appraiser should have a basic understanding of how it analyzes data to determine whether the computer assisted valuation tool measures and reflects market activity for the property that is being analyzed.

The appraiser does not need to know, or be able to explain, the tool's algorithm, or the intricacies of its statistical or mathematical formulae.

However, the appraiser should be able to describe the overall process and verify that the computer assisted valuation tool is consistent in producing results that accurately reflect prevailing market behavior for the property that is being analyzed. For example, a calculation of both the mean (average) and median of a given data sometimes yield different results.

Either may be appropriate for use but it is the appraiser's responsibility to make that determination. Proper application of these results must also be consistent. For example, it would not be appropriate to compare the mean sale price of office space in one year to the median sale price of office space from a different year. Likewise, an appraiser should not employ terminology (e.g., standard deviation, coefficient of variation, etc.) without understanding what that terminology means.

Use of Computer Assisted Valuation Tools

Standards Rule 1-1(b) states that the appraiser must not commit a substantial error of omission or commission that significantly affects an appraisal. Output from computer assisted valuation tools is typically used only as a portion of the analysis the appraiser relies upon to develop assignment results.

A single error, which on the surface may appear minor, could have a compounding effect that could have a noteworthy impact on the results of the assignment.

When using computer assisted valuation tools, the appraiser is responsible both for selecting the appropriate input parameters and also for being proficient in the use of the technology to ensure the correct input of those parameters.

The calculations performed by a computer assisted valuation tool may always be mathematically correct and easily duplicated. But if either of these criteria is not met, reliance upon the output of the computer assisted valuation tool's calculation may not provide credible results.

Depending on how the appraiser relies upon this data, inappropriate information may impact the results of the assignment. Statistical tools may be employed to support adjustments. Because of the number of independent variables required for analysis of both residential and non-residential properties, a useful statistical tool is multiple linear regression.

The number of variables requires the utilization of an adequate sample size. Multiple linear regression may also be a valuable analytical tool in quantifying and supporting adjustments.

Appraisers must also have at least a basic understanding of statistics. For example, regression analysis is based upon complex calculations.

Appraisers do not need to be able

to duplicate those calculations, but must understand how to use the output.

They must be able to recognize a graph that shows a strong relationship between the variables and one that does not.

Reliance on a weak correlation of the data will directly impact the credibility of the conclusion drawn using that information.

The appraiser must also be aware of what information is used as the input and how to properly apply the output.

The appraiser may have developed a credible adjustment for market conditions in one appraisal, but the appraiser must consider whether or not the data upon which that adjustment was supported is based upon data that is suitable for comparison to the subject of another appraisal.

A regression analysis that correlates the sale prices per acre of land sales to the size of each lot may either be based upon the unadjusted or adjusted sale prices. If unadjusted, the appraiser may need to perform additional analysis before applying the result to the subject.

When using any of these analytical tools, the appraiser is responsible for the accuracy of the output.

Thus, the appraiser must have confidence that the technology uses data that is relevant and that the output is mathematically correct and sufficiently reliable for use in the assignment.

Regardless of the tool chosen, the appraiser is responsible for the entire analysis, including selection of the source data, the calculations, and the resulting output.

An appraiser should use sufficient care to avoid errors that would significantly affect his or her opinions and conclusions. Diligence is required to identify and analyze the factors, conditions, data, and other information that would have a signif-

icant effect on the credibility of the assignment results.

When using a computer assisted valuation tool, an appraiser must not simply rely on the output of data programs which claim to give support for adjustments without an understanding that the output is credible. Reliance on this data without understanding the output could place credibility of assignment results in doubt.

Reporting Requirements

Standards Rule 2-2(a)(viii) states, in part: The content of an Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum: summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions.

This could be accomplished by summarizing the input parameters and the analysis in the report and the rationale for selecting those parameters. The summary might also be supported by graphs, tables, charts, screen captures, etc. that are generated by the tools. This may include all of the input parameters, how the source data was obtained, the resulting output, the software used, including the version number, or the online service relied upon, and the date of the analysis.

Events beyond the appraiser's control may make it impossible to reproduce the exact same output results at a later date. For example, a software vendor might refine the algorithm, or there may be a different vendor altogether. The information retained in the workfile must be sufficient to support the analyses that were the basis for the report.

Illustrations:

Q: An appraiser used a regression analysis model that suggests a relationship between the size of a residence and the price per square foot of

similar residences in a specific market. This relationship has not been confirmed by the actions of market participants. Can the appraiser use the regression analysis as support for the GLA adjustment in the appraisal?

A: No, because the appraiser does not know how the regression analysis model works, has not independently tested the conclusions it provides, and has no reason to believe the database is reliable.

Q: A stand-alone program will calculate the replacement cost of the office building that is being appraised. The software's output is notably different from the actual costs submitted by the builder. On which cost estimate should the appraiser rely?

A: Standard Rule 1-4(b)(ii) requires that the appraiser "analyze such comparable cost data as are available to estimate the cost new of the improvements." Therefore, the appraiser should not simply accept one cost calculation or another without careful analysis.

The appraiser should double-check and reconsider the factual data being input. Likewise, the appraiser should review the cost contract submitted to verify that it also is based upon the same assumptions (e.g., all items included, arm's-length transaction, etc.) and that the calculations are correct. After doing so, the appraiser can determine whether the proposed cost or the software's output is more credible.

Q: An appraiser has purchased a software package that has multiple functions, such as market analysis, deriving adjustments for physical characteristics, automatically inputting information from the local MLS, and more. He uses the program to develop an adjustment for an in-ground pool. The program provides that amount and reports the standard deviation. The

appraiser is not familiar with this term. He assumes that a large standard deviation is better so he decides to employ that adjustment. Is the appraiser correct in deciding that the output was credible?

A: No. The COMPETENCY RULE requires that an appraiser have the knowledge to complete the assignment competently. An appraiser must have at least a basic understanding of statistics in order to rely upon the output. By relying upon unfamiliar terminology, the appraiser is not complying with the COMPETENCY RULE.

Edits to Advisory Opinion 1, Sales History

My comment: Lenders have been complaining about inadequate analysis, and sometimes inadequate reporting, of the subject's sales history. AO-1 was extensively revised to "to help clarify guidance related to an appraiser's proper analysis and reporting related to a subject property's prior and pending sales and current listings." I have included all the Illustrations but not all the other paragraphs.

The Uniform Standards of Professional Appraisal Practice (USPAP) contain sales history requirements that obligate appraisers of real property to analyze and report pending and recent agreements, options, listings, and sales involving the property being appraised.

Because of differences in federal law and regulations, state laws and operating practices relating to the disclosure and confidentiality of real property sales data, the ways in which appraisers comply with the sales history requirements vary according to the jurisdiction and the availability of information. This lack of consistency has raised questions regarding the applicability and relevance of the sales history requirements.

Analysis of sales, offerings, etc., as

referenced in Standards Rule 1-5, requires more than just stating the known facts about the transaction.

Each pertinent factor should be examined individually, methodically, and in detail, to ascertain whether it has relevance to, or potential impact on, the transaction and potentially other assignment results, including the opinion of market value (if applicable).

By examining (or evaluating) the specific details of all agreements of sale, options, or current listings on the subject property, and all sales that occurred within the prior three years, the appraiser gains valuable (or important) insights into market trends, property and buyer characteristics.

Following are examples of summaries of analyses that might be included in an appraisal report in compliance with the applicable standards.

1. For a property that is not under agreement or option, that is not offered for sale on the open market and that has not changed hands within the past three years, the sales history might be shown in the appraisal report as follows:

Research of the applicable public records, private data services and an interview of the current owner, revealed that the subject property is not under current agreement or option and is not offered for sale on the open market. Additionally, according to these sources, the subject property has not been transferred during the past three years.

2. For a property that is currently offered for sale (a current listing) wording similar to one of the following examples might be used in the appraisal report:

A. The subject property is listed for sale at \$350,000. As of the effective date it had been listed for 112 days; it was initially listed at \$369,900 and

reduced to its current price after 60 days on the market. Based on a comparison with other current listings, the subject appears to be competitively priced.

B. The subject property is listed for sale at \$379,000. As of the effective date it had been listed for 174 days; it was initially listed at \$399,900 and reduced to its current price after approximately 60 days on the market. Based on a comparison with other current listings, the subject appears to be inferior to similarly priced properties.

C. The subject property is listed for sale at \$339,000. As of the effective date it had been listed for 4 days. Based on a comparison with other current listings, the subject appears to be superior to similarly priced properties. According to the public records, there have been no other transfers of the subject property within the past three years.

3. For a property that is currently under contract (a pending sale) the summary of the analysis might be similar to one of the following examples:

A. The subject property is under contract to sell for \$525,000. It had been listed for sale at \$535,000 for 107 days prior to the contract. The contract provided to the appraiser contains no atypical terms or conditions. There are no reported seller concessions. This appears to be an arm's-length transaction.

B. The subject property is under contract to sell for \$525,000. It had been listed for sale at \$535,000 for 107 days prior to the contract. The contract provided to the appraiser includes a provision for the seller to retain possession of the premises for 30 days after the closing. In effect, the buyer is making a concession approximately equivalent to one month's rent. Otherwise, there are no atypical terms or conditions. There are no reported seller concessions.

This appears to be an arm's-length transaction, and assuming that the parties were acting in their own best interests (per definition of market value), the price was likely affected by the concession.

C. The subject property is under contract to sell for \$525,000. It had been listed for sale at \$535,000 for 107 days prior to the contract. The contract provided to the appraiser contains no atypical terms or conditions. The contract states that the seller will pay 2% of the sale price (\$10,500) toward the buyer's closing costs. This appears to be an arm's-length transaction, and assuming that the parties were acting in their own best interests (per definition of market value), the price was likely affected by the concession.

4. For a property that is not for sale, but was acquired by the current owner during the past three years, the summary to be included in the appraisal report might appear as follows:

A. The subject property previously sold for \$400,000 on (insert sale date). Based on discussions with the owner and a review of MLS and public records, the prior sale appears to have been an arm's-length transaction and was not impacted by any concessions.

B. The subject property (land only) previously sold for \$100,000 on (insert sale date) prior to construction of the now existing improvements. Based on discussions with the owner and a review of MLS and public records, the prior sale appears to have been an arm's-length transaction and was not impacted by any concessions.

C. The subject property previously sold for \$250,000 on (insert sale date). Based on discussions with the owner and a review of MLS and public records, the prior sale was a bank-owned (REO) property. In this

market, REO properties are typically marketed for a quick sale and usually sell at a discount. The prior sale is not considered to have been an arm's-length transaction.

Special Circumstances

In cases where pertinent information is not available to the appraiser in the normal course of business, wording in the sales histories would likely differ from the examples shown above. The following examples are offered for purposes of illustration only.

Illustrations

1. *In cases where the property being appraised is known to be the subject of a pending transaction, but the appraiser is not privy to the terms of the pending transaction and the parties to the transaction have declined to disclose the terms of the transaction to the appraiser, the summary to be included in the appraisal report might include wording similar to the following:*

The property being appraised is known to be the subject of a pending purchase and sale agreement, but the appraiser was unable to obtain the terms of the contract. The current owner confirmed that the property is under contract for sale, but declined to disclose the details of the agreement.

2. *In jurisdictions where reliable price information cannot be found in the public records and where the appraiser is unable to obtain complete information regarding a prior sale in the normal course of business, it would be appropriate to include in the appraisal report a comment similar to the following:*

The subject property was sold by John Jones to the current owner on June 1, 20XX, for an unknown price. Sale prices are not a matter of public record in this state. The appraiser

attempted to obtain the purchase price and other terms of the transaction without success. The parties to the transaction declined to discuss the terms or conditions of the sale. According to the public records, there have been no other transfers of the subject property within the past three years.

In many cases, a property may require analyses of multiple items under Standards Rule 1-5 (e.g., both a prior sale and a current listing) and in those cases, each of the analyses must be summarized in the report.

Where to get more information

Link to excellent video USPAP Updates Explained - Hear About Changes in the 2018-19 USPAP, discussed above.
www.youtube.com/watch?v=Oiky9zMCHwU or search youtube for appraisal foundation uspap

Main Appraisal Foundation USPAP web page - very long link. Easiest to google appraisal foundation USPAP

USPAP Exposure Drafts: Very long link. Easiest to google appraisal foundation exposure drafts, scroll down to Appraisal Standards Board. To find the Drafts with comments (see below) click on "Past Exposure Drafts" or use the links below.

Links to exposure drafts that include appraisers' comments on the Drafts:

First Exposure Draft & Comments: <https://appraisalfoundation.sharefile.com/d-sa52e31815da41e99>

Second Exposure Draft & Comments: <https://appraisalfoundation.sharefile.com/ds76c5d120f6e41dab>

Third Exposure Draft & Comments: <https://appraisalfoundation.sharefile.com/d-s69874326a08401fa>

How to Get Into Trouble: 8 Great Ways For Real Estate Appraisers!

by Barry Bates

Editor's comments: Lots of "real life" interesting stories in this article. Barry has been appraising for 42 years, with lots of lender related experience. For the last 2 years, before retiring due to illness, he was an appraiser/investigator at Bureau of Real Estate Appraisers (BREA), California state appraisal regulator for 2 years.

CA is one of the few states without an appraisal board. When licensing started, Governor Arnold Schwarzenegger, a Republican, wanted to decrease the number of boards, to cut expense. How does Barry's experience relate to your appraisal board?

If you lose your license, you can still appraise if not in a mandatory state such as California. But, your clients will be very limited. No litigation, no lenders, etc. Also, non-lender prospects often check to see if you have an appraiser license before contacting you. My main competitor for estate work in Alameda is a local real estate broker.

Articles on how to stay out of regulatory jail have always been popular with appraisers. It is a great way to increase readership for a blog or newsletter, and a great lead-in for a lawyer's website. Who knows: maybe such articles offer more protection than E&O insurance?

It's helpful to stay up on the various means used to execute appraisers: read the appraiser law blogs and surf the various forums. The creative ways that appraisers get themselves in hot water will amaze you.

My background:

The ten ways to get into trouble reflect mostly my own experience as an appraiser/investigator for the great State of California, because there's not really much you can do to stay OUT of trouble.

ANYONE, with the exception of the family dog, can file a complaint about you or your work. Rest assured that your chances of answering such a complaint is low, if only because the Bureau closes a HUGE number of complaints on the desktop.

Examples: one appraiser trying to skewer another, a complainant who thinks home inspectors are licensed by the appraisal agency, a homeowner who didn't qualify for a loan because her house wasn't worth what she thought. All of these end up in file 13 before they even get to an investigator. One investigator does nothing all day long but read complaints and close or distribute.

What happens when a complaint is filed?

Once a complaint is received, a Demand Letter is sent to the Respondent (a much nicer word than "Accused"), usually requesting the appraiser's copy of an appraisal report and whatever else the investigator may deem useful. If the Respondent hires an attorney at this point, the investigator assumes, even without being so informed, that the respondent will opt for a hearing, which is his/her right by law.

The hearing is conducted by an administrative law judge working under the state Office of Administrative Hearings and the parent Department of General Services.

If no attorney is involved, it's probable that the Respondent will simply accept the citation and pay the penal-

ties.

These days, attorneys encourage appraisers to fight any and all complaints because it's getting harder to get on fee panels with a "rap sheet". And, in fact, depending on whether the complaint is only about competency vs. conduct, hiring an attorney may always be good advice, and there are a number of well-known names specializing in regulatory discipline defense.

(Editor's note: I strongly recommend hiring an attorney to represent you. State board complaints are NOT covered by E&O insurance. Your insurance broker may have coverage for \$2,000 to \$5,000 for defense cost and hopefully will be able to recommend an attorney for you.)

Next step: interview of the Respondent by the investigator, with or without the attorney present

If it turns out that conduct (behavior) is definitely an issue, the citation may be upgraded to an Accusation, where a hearing is mandatory and where the penalties can include license suspension or revocation.

Obviously, it's better to be incompetent than crooked, since incompetence has a better chance of being cured.

How to keep from digging a bigger hole BEFORE a complaint is filed

So, in fact, you don't really have much control over your fate if someone files a complaint.

But, there are things you can do to dig a deeper hole for yourself.

The only things you can do BEFORE that fated Demand Letter from BREA, IMHO, is to follow the Ten Appraisal Commandments that I modestly proposed in 2011 as a

replacement for USPAP, which I thought at the time to be full of weasel words.

Follow the 10 Commandments of the Valuation God, however, and stay golden:

1. Thou shalt use only comps that are the most recent, proximate and similar from a reliable, customary and verifiable data source.
2. Though shalt not make unsupported adjustments.
3. Thou shalt use no comp situated across a God- or man-made neighborhood boundary, especially rivers and multi-lane highways.
4. Thou shalt not estimate costs without referring to the cost data source (book, page or URL) and including a copy of the analysis in the report.
Likewise, thou shalt not estimate land value in a cost approach context without supplying supportive valuation data in a separate sales comparison, allocation or residual analysis.
5. Thou shalt always comp an over- or under-improvement within the neighborhood or carefully bounded market in which it is located.
6. Thou shalt apply, when applicable, capitalization rates supported by verified comparable sales or recognized formulae, showing all calculations in detail. Likewise, thou shalt not estimate rent or rent multipliers without citation of verifiable data source.
7. Thou shalt comp to the subject property's STATED buyer profile and its highest and best use as constructed or proposed (i.e., thou shalt not refer to a 9-paddock horse boarding operation as an "equestrian home").
8. Thou shalt disclose and describe ALL subject property physical, functional and economic defects in the body of the report and not merely in addenda, certifications, limiting conditions or photographs.
9. Thou shalt get over the notion of "geographical competence". There is no longer any such thing. Read The

Emperor's New Clothes.

The only way for the appraisal profession to save itself is to reinvent itself, not hang its tattered hat on old precepts that have been eliminated by technology. (I deleted this Commandment when my wife and I lived in Philadelphia for a couple of years. In many cities, neighborhoods harbor locational features that are invisible to data collection systems.

Maybe the injunction should be revised to "Do not claim 'geographical competence' on the basis of a single Wikipedia article; likewise, do not claim such competence in areas where all attributes and value components are discoverable online.")

10. Thou shalt try not to form an opinion of value based on a preconceived notion or on anticipated future personal benefits.

What about a Set of Rules instead of USPAP?

I tried again today, six years on, to see which USPAP Standards could not be replaced by a set of rules, but still didn't find any.

Editor's comment: I have been appraising for over 40 years, starting at an assessor's office and later working for many types of clients. My primary rule has always been: Tell the truth and don't be biased in favor of anyone else. In my opinion, much of USPAP is done to satisfy lender complaints.

Is appraising a profession?

Merriam-Webster's definition of "profession" describes "a calling requiring specialized knowledge and often long and intensive academic preparation.

It seems to me that appraisal qualifies only by the skin of its teeth, showing more aspects of trade and service than academic training. It would do well to harden up its qualification.

Where else in the world would members of the "profession" belly-ache so loud about having to have a college degree? B.A.-level education has always been the minimum standard in Europe and Asia.

I remember bellyaching (I do a lot of it) to Marv Levin, the only billionaire I've ever known, that I should get a law degree on top of my B.A., "but I'd be 42 by the time it was done", whereupon he inquired, "How old will you be by that time if you DON'T get a law degree?"

Author's Mandatory Digression: Marv Levin and Don Carlson ran a commercial lending operation in the 80s on the mud flats of Emeryville known as Consolidated Capital Companies. They sought out borrowers in small to medium businesses that held their own real estate.

By mid-growth, these borrowers had piled up as many as five or six mortgages. They would sit around my boss' (not Marv's) plush living-room-like office smoking cigars or snorting coke while he offered to pay off the old mortgages and give them a ton of new money at an amazingly low rate.

What he didn't say was that after Mr. Bates, his Loan Analyst (?), finished crunching the numbers on his trusty HP12C from all 5 underlying loans, then adding a sizeable amount of new money, the new promissory note would reflect maybe an 8.5% rate. However, the company's return on the new money portion was in the credit card stratosphere, like 22%-25%.

My boss never tried to hide that. But, he never mentioned it unless he was asked. Many borrowers figured it out on their own but decided it was STILL a great deal for their particular situation.

In this one, a couple of the mortgages had balloon payments and the new money would handle a temporary cash crunch. In other cases, of course, the magic trick wouldn't work because the underlying loans were too new to have low rates. My boss and coworkers were so crazy that the office life was a lot of fun.

State appraiser agency penalties

Generally, trouble with your state board doesn't amount to much. Usually it's a citation and a fine.

The worst part may be having to take courses. Imagine the pain of sitting through an 8-hour class on building cap and discount rates, knowing that you can't even use it for CE credits.

California uses coursework liberally in writing citations, claiming that the purpose of enforcement efforts among licensing boards and bureaus is to "result in compliance, not punishment", in hopes that the coursework will improve competency.

That's certainly an admirable aim, it seems that too many certified residential appraisers have never heard of David Ricardo's contribution to spatial economics, and are basically uninterested in the theory behind what they're doing. I've even seen a few cases where a younger brother did all the initial licensing courses.

Usually, though, the future appraiser's body was in the classroom or in front of a PC, but the mind must have been elsewhere.

One reason more education is needed is to learn the critical thinking necessary to identify a bad move under contemplation, which will keep you in business a lot longer. Also, many appraisal clients now want to know, before impaneling you, whether you have any outstanding complaints. It's now much easier information to find.

Based on my 42 years in appraisal, with the last two as a state investigator, I thought it might be more interesting in terms of perspective to write

about how to get into trouble with the state rather than how to stay out of it.

At the same time, I'll try to remain aware that a civil lawsuit sometimes comes with a citation and that you can't earn money while taking a non-CE course. The stress involved can do serious damage to an individual and to his or her family economics.

How to dig a deeper hole when fighting a complaint

Although "how to stay out of trouble" is an interesting topic for anyone holding a government license, how to dig a deeper hole once you're fighting a complaint might be more useful information.

Companies like Clearbox.com, that sell data in the mortgage space, often claim to serve the appraiser, but in fact are more heavily used by "providers, lenders, agents/brokers, AMCs and regulators" to scope the enforcement background of the appraiser.

Some lenders, for example, will not empanel an appraiser whose had more than a minor citation. Not over a concern about quality, you understand. It just makes argumentation more difficult when the lender is being asked to buy back a loan sold to a third party.

8 GREAT ways to get into trouble BEFORE AND AFTER a complaint is filed

If you really WANT to get in trouble (I've handled cases where I swore that must have been the Respondent's goal), here are 8 ways to do it, most of them (eventually) guaranteed to succeed

1.) Act like a jerk toward state regulator Investigator. The Flump Story.

There's no law against being a butthead. Maybe, when you get that friendly call from a state investigator, you can intimidate him or her by asserting your native superiority.

Investigator: Can you tell me, Mr. Flump, why you used a sale of a 98-acre parcel planned for a wastewater treatment plant as a comparable sale in your appraisal of the subject 56-acre parcel zoned for residential use?

Mr. Flump: I run a highly specialized practice, concentrating on land appraisal where condemnation and mitigation banking are possibilities. You're not qualified to critique my work.

Investigator: Okay, Mr. Flump, I'll give you a call back after I've done more reading on the issue; perhaps then, you can give me a straight answer.

At this point, it may occur to Mr. Flump that he's succeeded in brushing off a complaint and will never hear from this ignorant investigator again.

In this case, however, the investigator has two commercial designations, an MBA in finance and spent 15 years with a hedge fund that invested heavily in land slated for condemnation.

Can you see the insanity here? Was it Hobbes who cautioned against "contempt prior to investigation"? Mr. Flump is a jerk because his ego would not allow him to treat the investigator with even the normal respect you'd give to a stranger on the street.

It doesn't mean, either, that the Investigator, who may have an ego also, will storm off in a fury to add more charges to Mr. Flump's potential citation. It does mean that he will leave no stone unturned in his or her investigation. This is not necessarily out of revenge, but on the assumption that someone so unskilled in social conversation as Respondent Flump may have other impediments to his

character.

Amazing how often they turn up. Mr. Flump ended up paying \$15,000 in fines (chump change to him), 30 hours of education and insisted on a hearing, which cost him another \$15,000 in legal fees-and his license when the charge was upgraded to an Accusation.

While accumulating Flump's appraisals from various lenders, the investigator came across an appraisal for the government in which a parcel of land was overvalued by \$338M. His license was revoked. He can ask for it back in 5 years, and was lucky that the State Attorney General, to whom the case was referred by the appraisal agency, decided not to prosecute.

Note: the judge's decision can be overruled by the director of the appraisal agency. In either event, the appraiser can appeal to Superior Court for a final decision. The number of appraiser wins is not high, but it does happen.

It's a very human trait to dislike people who make your job more difficult, even if the difficulty is only to write off an insult by a socially-challenged commercial appraiser.

Along these same lines, it's easy to ramp up the intensity of the investigation by repeatedly cancelling a phone interview, failing to produce documentation with the oldest excuse in the book ("my hard drive crashed").

Hello? Have you heard of the cloud? How about a subpoena duces tecum to you and/or your client?. Or, offering a copy of your appraisal that turns out to be substantially different than the one you gave the client (investigators routinely call old colleagues now working for the lender/client to get an appraisal for comparison purposes).

2.) Align yourself with the Minions of Satan.

Example: An experienced reviewer with a big-name lender took a "cush" job with a newly formed AMC. The AMC was owned and operated by two former loan officers who had convinced their lender/employer that owning its own AMC could give it a significant advantage in the marketplace because the AMC could apply convincing pressure on appraisers to "make the deal work". In fact, appraisers on its panel were removed if they could not be cajoled to comply with a higher target value. This was made clear by the new reviewer by phone, email or letter (which, of course, made it easier for a complaint to be supported).

Emails implied that if removed from this AMC's panel, the appraiser would find himself or herself suddenly "disaparecido" from other industry fee panels.

In fact, the deal between the AMC and its parent lender was such that if the appraised value did not support the loan, the AMC would not bill the lender for the service. One lone, brave appraiser complained about the arrangement and provided reams of emails telling the appraiser that his license was in danger and giving him specious reasons why his appraisal showed "gross incompetence".

Some of the threats were personal. In another case, a goon showed up at an appraiser's home and threatened violence if the report was not revised. I kid you not.

My own historical observation is that wearing a collar that says, "I am His Highness' dog at Kew; pray tell me, Sir, whose dog are you?" is absolutely no fun at all (the epigram on the collar of a dog presented by Alexander Pope to the Prince of Wales).

I've seen "pet" appraisers treated very well in organizations which demanded "complete loyalty" (remind you of anyone we know?). After a

while, they acquire a hangdog look when they begin to feel used or feel as if they have no positive purpose in life.

As a kid of 25, taping houses in San Francisco, I couldn't imagine why anyone would jeopardize their job by "rolling over". It was just too much fun to do the job honestly. And I was lucky to work for a couple of S&Ls that believed in controlling collateral risk because they held all mortgages in portfolio. Now certified residential folk are leaving in droves because with fees being low and requirements high, they can't find honest clients or AMCs that don't apply valuation pressure.

3) Advertise your uniqueness!

More important than earning a living, providing support for your family or serving the general public is to let the world know who you really are!

When meeting a homeowner or commercial building owner for the first time, take a few minutes to explain your facial tattoos, your exotic mode of medieval dress and your political positions as shown by the 188 bumper stickers on your car.

Some straights are freaked out by creativity, so it's worth taking the time to calm them down.

When I was Chief Appraiser for The Money Store, I got a call from a prospective borrower in one of the northern rural counties of California.



I had just added another appraiser to the panel in an effort to improve coverage.

The borrower reported that although the appraiser was pleasant of demeanor and appeared to be knowledgeable, there was no question that she was living in her car.

When I called her, I had to cite that stuff in USPAP that talks about inspiring trust of appraisers among members of the public, and told her to reapply to the panel when she would be able to present a more conventional appearance. I didn't hear from her afterwards, but, sure enough, she was a duly certified California appraiser.

4) Pump that value!

It's a "win win" for everyone! I mean, you'd think so, right? What refi borrower complains about a high appraisal? The lender sure won't complain. Even in appraising for a loan to

purchase, it will flatter the owner and facilitate the borrower's deal, right?

Actually, wrongamundo, Buckwheat. By far, the most frequent complaint I saw while at BREA was inflation of value, tendered by the lender, the buyer, the seller, etc.

I recall one respondent, who appraised exclusively for VA lenders, assuring me that he considered it his duty to make sure that if the veteran



really wanted the property and his valuation could make it happen, he would find legitimate comparable sales to support that sale price. What was unclear was his understanding of the word "legitimate". I guess it's tough when another couple of grand is added to the price just for the VA guarantee, but doable, certainly, for someone with such a holy mandate.

As an 11-year Army veteran myself, I let him know that I appreciated his

devotion to cause, but I had to tell him that he was a crook. And that he should reexamine his assumption of duty during his license suspension, during which he had to find 25 hours of courses on ethics.

5) Cut your expenses and time by 30% with "innovative" and "creative" use of photographs.

Even your Fannie/Freddie forms admit that subject and comp photos are just "representations" of what you found in the field. I mean you were THERE, right? So make the photos work for YOU.

My favorite BREA case in this category was a cool appraiser cat from San Diego who did five drive-by's in three days for that big stage



**Bobby Joe's Appraisal Service
No Value Too High!!**

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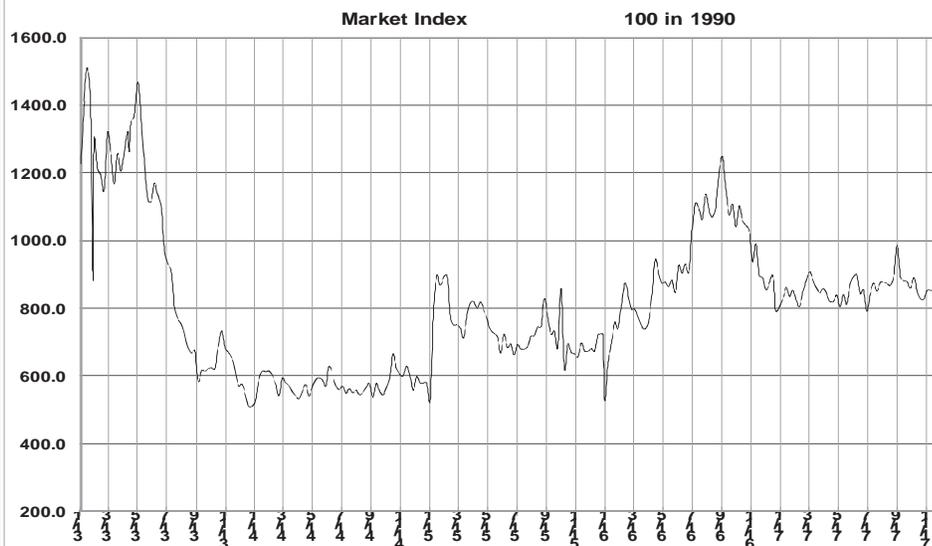
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MBA Loan Volume Application Index – 1/13 to 11/17



coach bank on five homes near Crescent City, California, about 850 miles north of his home office.

Since I had been a VP for the bank's commercial construction unit 25 years before, I was able to persuade the valuation chief (nearing retirement) to send me the complete order log for the order date in question.

With the precise data regarding order acceptance, completion and delivery, it was totally fun to compute that on the day after the order, the appraiser drove to the properties, presumably up I-5, at a speed of 248 miles per hour. Then my heart sank as I thought, "Oh, no, Mr. Bill! He's going to claim an airplane."

He did. In the interview, he said he rented it for just a couple of days. Before the call, of course, I did a fine-tooth examination of the photographs. Every single one was from Google Street View.

One of the many things I enjoyed about the job was the expertise I developed in "reading" photographs. This case was easy in the sense that sun shadows, object intersection and border positions were absolutely identical.

The frustrating part of writing my investigative report was that I couldn't accuse him of a violation in conduct because I couldn't prove beyond a doubt that he never inspected the properties. I got him on fabrication of the photos and told him that one more clear indicator of non-inspection in the log documents might have cost him his license. He didn't seem to care.

6) Don't look over the fence!

You're a professional, even if sometimes you may look more like triple-A road service. It's up to your professional judgement as to what is, and what isn't, a negative externality.

This is one of the great recognized methods of pumping value. Cases observed included a failure to mention that the subject home abutted the crosswinds runway of a busy county airport, a flower shop adjoining a wastewater treatment plant, and a cute little cottage in rural Nevada that adjoined a popular legal brothel. [The guy who did most of the Nevada brothels for mortgages in the late 60s and early 70s was another respondent who claimed that the investigator was not qualified to opine on the reliability of the "dollars per crib" indicator in determining market value.

7) Just "back in" the Cost Approach a little above your value conclusion.

That's what it's there for! The "squishy" part of the cost approach is always the land value estimate. Just enter whatever you need to bring the total just beyond your final value.

You can even refer to it as a "residual approach"! I've had a few appraisers willing to argue that point with me. I would just look at them like your dog looks at you, tilting the head from side to side with an inquisitive expression.

I think that the abuse and misuse of the cost approach had a handle in the Great Recession of 2008. If you looked at just about any sale in the San Francisco Bay area in 2006-2007, it would make no sense whatever. A lot ready for development would cost you \$125,000 and construction costs were about \$82 per square foot. The grand total, with contractor and developer profit might be \$375,000. The subject property's willing price was \$585,000. Did no one ask where those "soft dollars"

were coming from? [Luckily, I was working in securitization and didn't have to.]

8) Even if you have a beam in your eye, don't hesitate to criticize the mote in your brother's eye!

Remember, you're a professional with years of special education and training. I never did get to a hearing during my stay at the Bureau, but I would hear amazing tales of appraisers dressing down judges during hearings, insisting on claims that had been proven repeatedly false.

Some of these folk were clearly not traveling with a full seabag, but some were presentable, if somewhat lofty by virtue of a Narcissistic Personality Disorder as described at <https://www.mayoclinic.org/diseases-conditions/narcissistic-personality-disorder/symptoms-causes/syc-20366662>.

A few more author comments

All in all, I've been a bit too harsh on my fellow appraisers. I have no claim to purity or even a high horse.

I earned a couple of well-deserved letters of reprimand while I served the BREA. I was so used to being a manager that I took the helm when I should have been sitting down. Also, I made offers to other state agencies that I had neither the authority nor the resources to fulfill.

In my own appraisal practice, I was just lucky when it came to complaints. Most of my work was done during the nascent days of FIRREA implementation, and I was lurking in mortgage companies most of the time.

Most of the less egregious cases I handled at the BREAs were just instances of appraisers exercising their ignorance about theory or having trouble explaining to little Johnnie that he couldn't have new shoes this month because Daddy was an honest man.

Barry's Look at the Future

In my last few articles, I predicted a sharp decline in appraisal orders over the next 10 years, after which the resi appraiser will have disappeared into the artificial intelligence-enhanced AVM.

Survival and financial success will depend on transition to legal clients (who will always need a live body on the witness stand).

Or gaining a degree in internet coding (HTML, PHP, CSS, JavaScript, Python, Ruby, etc.) so that you can get rich 3 ways: reverse-engineering AVMs, grading AVM models, developing your own model or finding that need and filling it with your own website to sell it. There is an abundance of learning resources available by using any of the popular search engines, but it is likely that a B.A.-level certification would be helpful in pursuing any of the available avenues of endeavor.

USPAP and appraisers

Appraisers, especially those in residential practice, have received little support from their so-called professional associations, and USPAP has not protected them from coercion. In 2011, I wrote:

Finally, the argument in support of USPAP, that its lack of specificity is only the result of trying to avoid "micro-management" of the appraisal process, is just what we former wire-tappers used to call "cover noise".

It screens from hearing the fact that as it stands, USPAP can be used either to exonerate or execute an appraiser on political motives regardless of the issue at hand.

I once prefaced a speech at an appraiser's conference by stating that "appraisers generally are not people who were abused in childhood. They're more heavily abused in adulthood."

There's some truth in this. Unfortunately, most of USPAP is so vague and subject to interpretation that it is useless as a weapon that an appraiser can use in battling valuation "pressure" and coercion. Dodd-Frank tried. They failed.

But there's plenty of hope from a new generation that will find innovative ways to return the fun to the profession and enjoy a free and fulfilling line of work.

About the author

At 71, Barry has had wide-ranging experience and a technological perspective in a fast-paced career that serves as a testament to the fact that he has never been able to hold down a steady job.

He is now "retired" and lives in Pittsburgh, Pennsylvania with his wife, Kathleen and their two dogs.

He writes for real estate publications and, in his own words, tries to get into more trouble. In 2008, he filed whistleblower suits against MERS (on behalf of county recorders) in 12 states, all of which failed miserably.

Barry Bates wants to hear from you! Send your comments and criticisms by email. He can be reached at barrettbates@gmail.com.

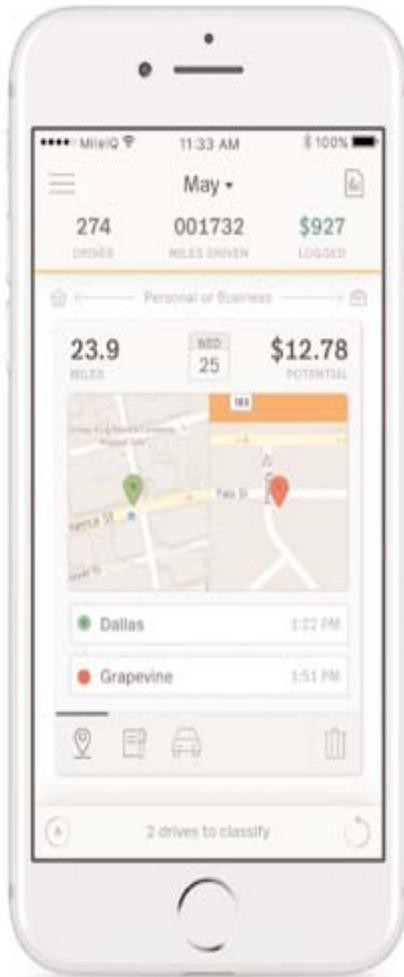


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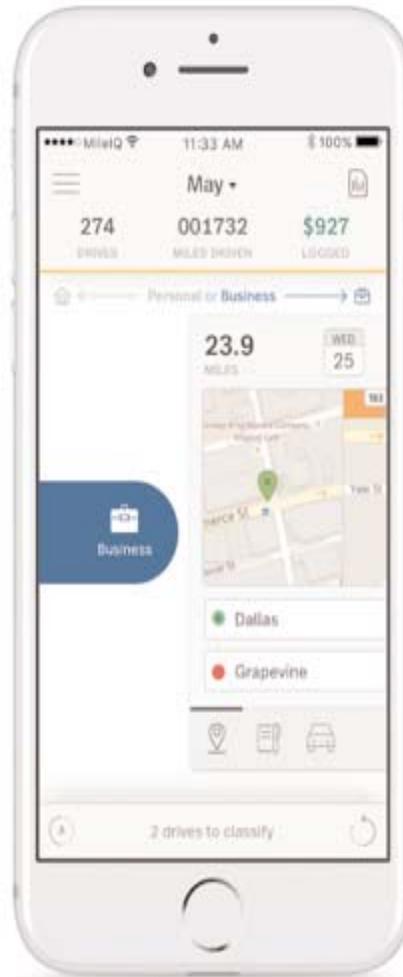
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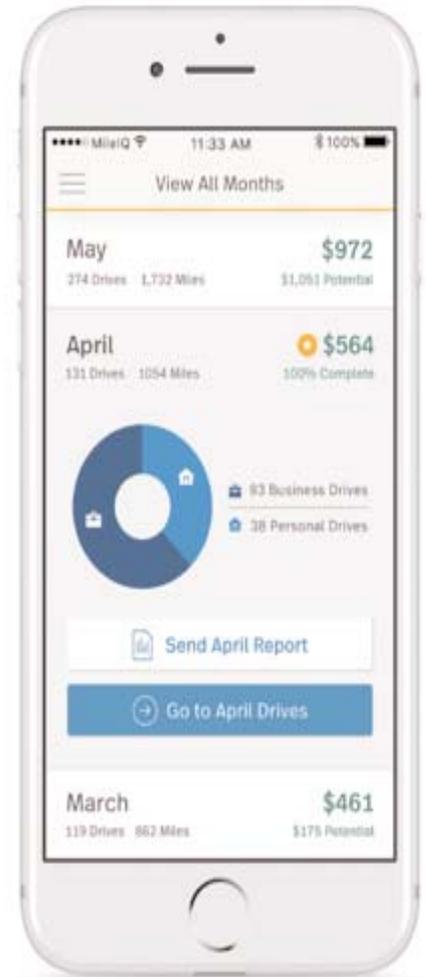
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(Editor's note: I miserably failed my random IRS audit of auto mileage, as I discussed in last month's newsletter issue. I had not kept an accurate mileage log for over 25 years. I cost me thousands of dollars in additional taxes, interest and penalties. This app makes it very easy. Next month I will be reviewing the app I use now, Taxbot, that is very similar. Very easy to set up and use.)

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MileIQ Premium is now included with Office 365 Business Premium subscriptions.

To see how MileIQ works

Check out this tutorial video at www.youtube.com/watch?v=kBnw6a4Jcyw.

Rating

MileIQ rates a 4.5-star rating.

About the author

R. Wayne Pugh is a past international president of the Appraisal Institute, former Chair of the Louisiana Appraisal Board, and the current CEO of R. Wayne