

# APPRAISAL TODAY

## Expert witness for residential appraisers - Yes, No or Maybe

**L**ender business is slowing down  
Land fees are dropping. You made it through the "bad days" starting 2008, when AMCs took over and you lost all your mortgage broker clients. This downturn will be much less of a shock. What will you do this time?

I am focusing on residential lender appraisers who have done little or no non-lender work and are trying to decide if they want to be an expert witness, which is required for some non-lender work. However, much of it applies to commercial appraisers or appraisers with lots of non-lender appraisal experience.

This article will not tell you how to do expert witness testimony. Many books, seminars, articles, etc. are available. At the end of the article I have references for more information. Instead I focus on letting you know what it is like so that you can decide.

There is very little competition for this work from residential appraisers as most refuse to testify. In contrast, estate/trust appraisals will become very competitive as many appraisers want to do them when lender business slows down.

Client communication for all non-lender work is very different than

with lenders. Next month I will have an article on this topic.

For example, the type of value to be used is probably not Fannie's. Limiting conditions are totally different than Fannie forms.

The best source of introductory information on expert witness for residential appraisers, that I could find, is a 4 hour McKissock class, Introduction to expert witness testimony for appraisers: to do or not to do. Information on the class is near the end of this article. I recently attended the class.

### Litigation Support vs. Expert Witness

These terms are often used. Litigation support generally refers to all types of support to attorneys in a litigation. It includes financial, clerical, database, IT, etc.

Expert witness is a type of litigation support provided by appraisers. Other types are third party reviews of appraisals, and consulting.

For appraisers, expert witness includes both deposition and court testimony.

### What if you don't ever want to testify as an expert witness?

You always, always ask the attorney if court testimony will be required or is possible when you are first contacted. Then you can decline the appraisal.

If the attorney says "no testimony will be required", don't believe it. You **MUST** include in your engagement letter in prominent type that you will not be testifying as an expert witness in court or a deposition.

It will limit the amount of certain non-lender appraisals, especially divorce, the highest paying and most available work for residential appraisers.

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### **Expert witness work differs significantly from lender and other non-lender appraisals**

Do you like challenging appraisals?

Do you always spend a lot more time researching and writing your AMC/lender reports? For expert witness, for example, you need to be willing to dig deep to find the details from a party to the sale.

Are you comfortable speaking publicly to others?

Do you want to get your appraisals off your desk and move on, or are you willing to wait months, or years, for testifying?

Do you remain calm when you have hassles with underwriters and reviewers? If so, you have practiced expert witness testimony.

Reading this article can make it seem very intimidating if you have only done lender work. But, remember that over 90% of cases never go to trial.

That's why I strongly recommend doing some non-lender work to see how you like it. Maybe you prefer lender work - no marketing required just get on AMC lists, communication is fairly standardized, etc.

Personally, I did not find it very difficult or intimidating to be an expert witness, probably because I had other appraisers who specialized in it to advise me. Also, I had done a lot of public speaking I so was comfortable speaking to groups. I continued to do lender work for about 20 years after doing non-lender work, including expert witness.

### **What if you receive a subpoena, but did not know you were supposed to be an expert witness?**

It is not unusual for an attorney to try to get free expert witness testimony.

If you receive a subpoena, you must legally appear as percipient witness: "A witness who testifies about things she or he actually perceived. For example, an eyewitness.". You say, after viewing the report, "Yes that is my appraisal report." Or something similar. The fee is usually nominal, such as \$50 for your testimony.

If the attorney asks more questions about the appraisal, tell the judge that you are not appearing as an expert and have no written agreement with the attorney. Or better, your engagement letter, signed by the client attorney, says you will not testify as an expert witness. Bring the letter to show to the judge.

Sometimes, the attorney wants to have your appraisal submitted into evidence, and just needs you to be a percipient witness.

### **Have you ever done any non-lender appraisals?**

I strongly recommend doing some before deciding to do expert witness work.

They are very, very different from lender appraisals. You only use USPAP, plus any special requirements, such as definition of value and case law.

Throw out Fannie, VA, AMC rules, UAD etc. You are not always looking for the value of the total property.

You **MUST** be objective and neutral. Of course, there is sometimes value pressure. Personally, I prefer to find out if there will be pressure. For example, an estate has many out of the area beneficiaries. I put a lot of local information in my appraisal.

Also, your client may not know much about appraisals and appraisers.

### **What dates are needed?**

For lender work it is easy. For non-lender work your client has to give you the dates.

Effective date of appraisal - lender is inspection date. Non-lender can be date of death, date of marital separation, etc.

Date of inspection. For non-lender work there can be multiple inspections for various reasons.

Date of report.

Signature: The appraisal report does not require a signature.

Reports: there is no written report for oral testimony. Check USPAP for the work file requirements.

### **Who is your client?**

This is not always clear.

The client is the entity that engages the services of the appraiser. One party might engage the services of the appraiser (and therefore be established as the appraiser's "client"). Another party may be the owner of the property being appraised and the one responsible for paying the appraiser's fee. This situation is not unusual and must be clarified by the party that engages you.

In next month's newsletter, I have an article on communicating with non-lender clients. Very, very different than lenders.

### **What is your educational background?**

What education providers are on your resume? When you got licensed, did you take online courses or use a local provider who mostly taught real estate licensing classes? Do you take whatever CE is the cheapest?

Unfortunately, when licensing started, the national professional appraisal associations did not offer classes for licensing. Instead, new appraisers had to go to proprietary schools which often focused on passing the licensing exam.

If so, you will need to upgrade

your appraisal skills. I strongly suggest taking classes and seminars from the Appraisal Institute. Their classes are the most recognized by attorneys and judges for real property appraisers.

Remember, your appraisal may be reviewed by the opposing attorney's appraiser, who may be very knowledgeable and experienced. Don't get "shredded" in court with a weak appraisal.

Most residential lender appraisers have little training or experience in highest and best use issues. I was fortunate as I was trained at an assessor. This was the first question asked when doing an appraisal.

Here are a few AI residential classes. I strongly recommend live classes so you can network with the attendees and the instructor for questions you may have later. Live synchronous is okay, but much more limited networking. I don't recommend online unless there is no other option. Be sure to check for pre-requisites.

- Residential Market Analysis and Highest & Best Use. 2 day live and online.
- Advanced Residential Applications & Case Studies/Part 1. 2 day live and synchronous. Has pre-requisites.

To get info, google the course name.

### **What's the difference between expert witness, non-lender with no testimony and lender appraisals?**

Expert witness appraisals are dramatically different.

You don't "just" get an address for an appraisal. You need to know who is the client, intended users, intended use. Plus additional information such as legal description, easements, etc.

Do your appraisal "as if" it was going to be on the Internet, available for anyone to read and critique.

I remember a big dispute over what to do with salt ponds in San Francisco Bay owned by Leslie Salt. Environmentalists wanted it to be

changed back to its natural state. The very difficult appraisal, done by a prominent local MAI, was on the Internet for everyone to read.

No lender requirements at all for any non-lender work. Wipe them from your mind.

Your only guidelines are USPAP and any special requirements, such as the definition of Fair Market Value for estates.

If it is non-lender with no testimony, there is a lot less pressure. You decide how much research to do. I do less if there is no testimony. I include what is important. For example, an estate appraisal for the IRS. The IRS understands appraisals. I explain how to read the appraisal, if necessary, for my client.

### **Appraisal Institute is the best place for education and designations for expert witnesses**

The SRA designation is very good for residential appraisers who testify. I am one of the very few appraisers in the Bay Area with both MAI and SRA designations who regularly appraises homes.

There are many appraisers who have MAI and SRA designations, but seldom appraise homes. (The AI increased the numbers of SRAs by requiring minimal requirements for MAIs to get SRAs.)

In my area, an SRA will do very well testifying against an MAI who only does homes for litigation. You are an expert on homes. Few MAIs are.

For court, Appraisal Institute classes and designations are very good on your resume as it is well known among attorneys. This is where most experienced expert testimony appraisers take their courses and have designations.

The AI has spent decades positioned itself as the "go to" place for expert appraisers who have the MAI designation.

### **Residential vs. commercial**

Residential appraisers are experts on appraising homes. Commercial appraisers appraise all types of properties for many different purposes, such as condemnation.

Commercial appraisers don't do very well on testifying for home values.

The appraisers I know who only do litigation work are all MAIs. There is lots of work available. For example, I regularly receive requests to quote a bid on large properties owned by government agencies because I have an MAI.

Anyone can use Zillow to get a home "value", so many think they are experts on home values.

But, few are experts on shopping centers, 30 unit apartment buildings, vacant industrial land, value of an easement, and many, many other valuation issues with non-sfr appraisals.

### **What is it like in court?**

Have you ever gotten into a big dispute with an underwriter or reviewer? Did they know anything about appraising? When you testify, you stay calm. You are saying what you did on your appraisal.

Some attorneys are "nice" and some attack. The same attorneys can do both, depending on who they are questioning. When your attorney questions you, he will be nice. When the opposing attorney's job is to discredit your testimony and being aggressive may work to "shake you up".

You may be asked the same question over and over. This is to see if you are consistent.

**Number One Rule:** You are the only one in the court, except for the other appraiser(s), who knows much about USPAP or appraising. You are the expert, not anyone else.

**Number Two Rule:** You cannot take it personally. Of course, the attorneys want to win and will try to discredit your qualifications or what you are saying.

There are two types of court: judge only or judge plus jury. When I testified in bankruptcy court it was very easy: only a judge who would not allow the attorneys to go into long attacks on witnesses, etc. The judge understood what was important.

In contrast, when there was a jury, judges had to be more lenient. The jurors were not experts on courts, appraisals, etc.

My job was to be the expert. My attorney's job was to discredit the other side's appraiser. I did not take it personally.

The best way to see what it is like for appraisers is to attend a seminar with a mock trial, when appraisers play all the roles, including judge and jury. I have attended many over the years in AI seminars and workshops. Very worthwhile.

To see what court testimony is like, check the court calendar near where you live. Look for civil cases with expert testimony and attend a few. Live is best, not recorded.

You may be able to find when a local appraiser is testifying in court. Of course, the case may be settled while the appraiser is waiting in the hallway. Then you can do some networking.

### **What about depositions?**

No judge. Multiple lawyers plus their clients and the court reporter. Almost anything goes. See the above 2 rules.

Depositions may occur without any court testimony.

Ask your client attorney what to expect from the opposing attorney.

Remember, some attorneys know a lot about USPAP and some know very little. Some 'fake it' and make it appear they don't know anything.

Attorneys use depositions to see how well the appraiser does under pressure and can be hostile and aggressive. Do not fight back. Remember, that is their job.

Your testimony is typically 2-4 hours, but it can go on for a long time. A friend of mine was deposed for 6 hours once. Six people were there. The issue was someone who crewed on a large racing boat said he damaged his hand by hitting a cotter pin during a race. My friend kept saying the same thing over and over: "I taped the Cotter pin. If the cotter pin was not taped the spinnaker could have been easily damaged during an important race and the owner would have lost the race. Also, the owner very, very picky about taping cotter pins when racing." Just imagine how long it can be for your appraisal.

You can find videos on youtube. Just go to youtube and search for deposition.

Here is good one link for deposition tips:  
<https://www.youtube.com/watch?v=jKahEkr6F4M>  
The youtube channel is seakincorporated and the web site is [www.seak.com](http://www.seak.com)

### **Scope of work**

This can vary widely depending on what your client needs. The "standard" scope of lender appraising is not always applicable.

### **Different definitions of value, and different types of value**

The definition on Fannie forms for market value is for mortgage appraisals. But, there are many other definitions that are used. For the IRS, Fair Value is used.

The court may want a different definition than the FIRREA definition.

Be sure to include the source of the definition.

Check with your client.

I have made up my own definition of value for unusual issues with the property (not expert witness related).

### **Other assignment issues**

Case law, state and federal laws, etc. may apply. For example, the case law on divorces for your area.

### **Property tax assessment appeals**

I will cover this in a future article in much more detail. You cannot be an advocate and an appraiser. Tax consultants are advocates and typically paid as a percent of value reduction. They can make a lot of money on commercial appraisals due to the high values.

In California, you testify before an assessment appeals board, which is much less formal than a court room with a judge and maybe a jury. No depositions, etc. You can appeal that decision to a county appeals board

The property owner can use an attorney.

Depending on the state, there may be other methods of appeal. Check the property tax code for your state or relevant jurisdiction or the assessor's office. Some counties may allow the further appeals in the local Superior Court.

**Who is the client?**

According to USPAP, the client is defined as the party or parties who engage by employment or contract an appraiser in a specific assignment.

For non-lender work this is not always clear. It must be clarified.

I recently was emailed an inquiry by an attorney for an estate appraisal on a 5 unit apartment property. The attorney will pay my fee. But, I was also given the owner's name and contact information.

In my area, typically the trustee finds the appraiser and is the client.

Who is my client? I contacted the attorney and asked because I did not know where to send the engagement letter to be signed by the client.

**Who is (are) the intended users in addition to the client?**

Be sure to get this correct. It can be tricky.

The IRS is not automatically an intended user for date of death appraisals per an Appraisal Standards Board FAQ 125 in the 2018-2019 edition of UAPAP. However, you may list the IRS, depending on what the client wants.

Also, the intended users need to be able to understand the report. They may not have ever seen an appraisal report, such as a trustee of an estate.

The intended users will be using the information in the appraisal report to help make their intended use. Persons who only receive a copy of the report are not the intended users.

**What is the intended use?**

This is not always clear. Be sure you get this correct by asking questions before accepting the assignment. Keep asking to be sure you understand the client's intended use so you can determine the appropriate scope of work.

Sometimes the intended use changes over time. I have done appraisals for estates that were date

of death of the first spouse, then the second spouse, then values of a specified date to distribute the estate which may occur multiple times as the heirs fight over it.

For estates, it varies widely and is not always the date of death for the IRS. For example, they plan on selling the home and need current value appraisal, plus advice on listing, etc. Or, they are trying to decide how to distribute the estate, including the properties, among the heirs.

If you are working for the probate court, determining values for distribution, the IRS is not involved. You will need to check with the probate court to get their requirements, definition of value, etc.

**What are you appraising?**

Some residential appraisers think they are appraising a house. Wrong. You are appraising the land plus what is attached to the land.

Of course, you are appraising the property rights, such as fee simple or partial interest.

You need a legal description. Assessor's plat maps are not legal descriptions. Always ask for easement information or other restrictions, such as bonds.

It is not always the total property value. Examples are rental value (divorce), view (loss of view), partial interest, etc.

Be sure to get this clarified with your client. You don't want to have to find out during your testimony.

**What is the date of value?**

Be sure to ask. Do not assume it is the current value. Also, there may be multiple dates.

If your effective date is different from the date of inspection, be sure to put both dates in your report and discuss any changes between those two dates. For example, the kitchen was recently remodeled, but the effective date is 2 years ago. Your photo will probably be the remodeled kitchen. Occasionally there are photos of the subject before any work has been done.

For estates it is typically the date of death, but if there is a dispute between beneficiaries, it may be another date or two dates.

For divorce it often is the current date, but can be the date of separation or another date or both. Or, a rent dispute with multiple dates. I have gone back as far as 15 years to determine market rent for each year. I charged them a very high fee.

You may be doing future value. For example, you are estimating the effect on value of a planned new large road that the subject property will back up to in 5 years. You may need to discount the value back to the effective date of the appraisal.

Property tax appeals have different dates, depending on the state regulations.

When you are doing a retrospective value, often the biggest issue is what the property was like on the effective date of value. It can be very difficult to get this information.

I appraised a home that was a crack house on date of death. When I saw it, it had been completely remodeled. The repair work had been done by a relative and the costs were below market. I interviewed family members and neighbors to try to find out what it was like. I have also appraised properties that were totally destroyed by fires.

If the property has been sold since

the date of death, it takes additional research to find out the condition on the date of death 4 years prior to the date of death.

If appraising a damaged property, you may need values as of the date of damage, the day before the damage, and the value after the repairs are completed.

### **Highest and best use (HBU) issues - limitations of a residential lender appraiser**

This is the main reason that values between appraisers are dramatically different. This is not well covered in licensing classes. You can get into very big trouble over this.

Unfortunately, for many lender appraisers especially "you don't know what you don't know". They have been pressured to put on blinders and never check the box indicating the HBU is not the current use.

I do commercial and apartment appraisals in a city where most were built many years ago. Zoning and land use has changed over time. Highest and Best use issues are common.

A good example is a row of 10 homes on a street in commercial zoning. 8 have been converted to offices. You are appraising the home that has not been converted. You must value the commercial properties and determine the value of the unconverted home. Which is the more valuable? You cannot decide without an appraisal of the subject as a commercial property and as a home. It can be either one.

Another situation is a small home on a very large lot with multi-family zoning. Can the lot be split? Are apartment buildings being constructed and/or planned. The HBU may be hold for 10 years, then demolish the home and build apartments. The lender decided to make a 10 year loan.

I have done appraisals on both types of properties above.

Zoning and planning issues cause lots of problems. The assessors records do not typically have the current legal zoning. Lender appraisers don't check to see what the actual zoning is. Very few appraisers check planning documents to see what is planned for the future.

To do a preliminary check for these issues, I drive around and see what is happening to nearby properties. If houses are being demolished and much bigger houses built, that is a very good indication the HBU for existing small homes is not the current use.

### **My experience with getting non-lender work, including expert witness**

I have not done any lender work since 2005. Why? I did not like the ups and downs of volume. I liked my clients. There were few AMCs.

How was I able to do this? I was very lucky. Since I started my appraisal business in 1986, I have accepted non-lender work. I worked at an assessor's office and had never seen a Fannie Mae form. All types of business were new to me. I accepted work from relocation companies, insurance and title companies, accountants, attorneys, bail bonds, cities and counties, private individuals and many other types of clients.

I appraised easements, very small "remnant" lots, loss in value for a view, burned up homes and commercial buildings, partial interest, etc. I did expert witness work. I worked 4 counties.

I did residential, apartments, vacant land, commercial and industrial properties. Later, with licensing, I got a Certified General license when licensing started.

Over time, I decided which types of work I preferred and where I wanted to work. Today, I work almost exclusively in my small city and do primarily homes and apartments. Almost all my work for the

past 4-5 years has been estate and trust.

How did I 'learn' how to do them? Fortunately, in 1986 there were monthly meetings of the Society of Real Estate Appraisers and American Institute of Real Estate Appraisers. They both had meetings at the same restaurant in a nearby city. The other appraisers told me what to do. I still rely on them to help me now and again with tough assignments.

For example, at my first appraisal organization meeting, I met two residential appraisers who told me where to get Fannie forms. My first lender's chief appraiser (also a member of one of the organizations) helped me fill them out using lender requirements. At that time there was a severe shortage of appraisers as many left due to the downturn in 1980-1985 due to 18%+ mortgage rates. They knew that I had appraisal experience by just talking with me.

Of course, I also took classes, seminars, workshops and went to conferences. I read what I could find. For example, to get started in relocation appraisals, I read "the" book on relocation "Worldwide ERC® Relocation Appraisal Guide", read articles, joined the Employee Relocation Council, and asked local appraisers about how it really worked (fees, forms, marketing, etc.). To get more info google wwercc and wwercc appraisal.

## **What types of appraisals are more likely to require expert witness testimony in court or a deposition**

Any non-lender appraisal can require expert testimony for any reason. For residential appraisers, divorce is the most likely.

Expert witness testimony at depositions are more likely than in court.

Estate/trust expert witness is less likely, but does occur, such as when the beneficiaries are fighting over who gets what.

Over 90% of cases settle before going to court. However, you may be required to do a deposition.

I have testified in divorce, estate, and bankruptcy cases. I quit doing appraisals for divorce as they can be very personal and I was uncomfortable, so my residential expert testimony has decreased.

Bankruptcy seems to sometimes require expert testimony, however that has declined due to a change in legal requirements. But, it is a bench trial: a judge with no jury and is relatively straight forward. Divorce is a bench trial in family court as well.

I have done many appraisals for attorneys, but have not testified often. For example: view adjustment, change in value over time of a small retail store, tenant lease issues, etc.

## **My experience with expert witness work**

I took workshops and seminars, spoke with other appraisers, read a lot of material on expert witness testimony.

My experience is fairly typical. I have done a lot of work for attorneys over the years, but not testified very often. The lawsuits get settled or dropped. For example, you are sitting outside the court waiting to testify, but the case has been settled. You are paid your hourly rate, of course.

I did not like the hurry up and wait, cases that dragged on for long periods of time, etc. so I quit doing appraisals that would probably

require expert testimony. However, if it is required, I will do it.

## **How to get information and help online**

As always, be sure the information you are getting is correct. There is a lot of mis-information online, especially in chat groups, forums, etc. If you are a "regular" you may be able to tell who is knowledgeable.

Today, with the Internet, getting information is much, much easier. Online seminars, webinars, google, etc. I use google all the time when writing my articles.

For example, every time you take a live online webinar the instructors and other presenters often will help students by email or phone.

Appraisers who blog, post on forums, etc. are a good source. I regularly get emails and calls from appraisers with questions about appraisals or business issues. It is not a personal interaction, but they read my free or paid newsletters.

Read my article "How to connect with appraisers online. What's the best way for you?" in the January 2018, available on the paid subscriber web page.

## **Who do you call when you need local help?**

Again, be sure the information you are getting is correct. Your contact must be knowledgeable and experienced in non-lender work.

You will need a network of appraisers for advice on both on difficult appraisals and local appraisers to find out about fees, turn times, standard court procedures, working with local government agencies, etc.

The Internet is good, but you will need local people to call. I regularly see appraisers posting questions specific to St. Louis on a national appraisers forum, Facebook, etc.

How do you find someone to help? Networking at meetings of your state coalition, local appraisal group,

chapters of national appraisal associations, etc. Take live local classes with local instructors and contact them.

Can't find anyone? Try setting up your own local group. I wrote an article on the topic "Start your own appraisal group with information on 13 groups" in the October 2015 issue of Appraisal Today. Contact us to get a copy.

## **What is an expert witness, legally?**

When you first testify in a specific court, for example Alameda County Superior Court, your attorney client will submit your name as an expert witness. The judge will decide if you are qualified.

The legal requirements for being an expert witness are fairly minimal. According to Federal Rule of Evidence 702, expert witnesses must have "knowledge, skill, experience, training, or education" which will "help the trier of fact to understand the evidence or to determine a fact in issue." This is a very broad standard.

Some states may also require an expert witness testifying in that state to have a license in that state or face charges of practicing without a license.

## **What attorneys are best to work for?**

You get that information from your local appraiser network. Just like lenders, attorneys are not all the same. Some delay paying your billings. Others pressure appraisers. I have encountered both types. I never took another job from them.

Collecting from attorneys can be difficult, especially when they lose the case.

Some won't return phone calls or emails. Others don't communicate very well or wait until the day before your testimony to let you know it is tomorrow.

### **Attorneys vs. appraisers: Very different goals that can conflict**

Attorneys want to win. Appraisers must NOT be advocates, but MUST be neutral and objective.

For example, you are testifying or being deposed. The other attorney keeps asking you the same question trying to trip you up, or keeps being "mean" to try to get you flustered, or finds something from your past to grill you on.

Remember, the attorney's job is to win. That is not your job, although, of course, your testimony can help. You can be prepared by reviewing the other side's appraisal, using Standard 3, of course.

I have learned over 40+ years of appraising that a client almost always wants a value or direction in value. I prefer to know what that is so I can tell them what I always say: "If everyone hates my value, it is probably okay."

I have had attorneys never call me back if I don't do what they want, just like lenders and AMCs.

### **Repeat business**

Once you testify and do well, other attorneys (especially the opposing side) will want to hire you.

That is why appraisers really want to testify if they have never had the opportunity.

### **What attorneys are looking for in an expert witness**

Attorneys want to win. They want an appraiser with excellent credentials and experience, very good testimony skills, reliable, etc.

Here are a few tips:

- The ability to always meet and beat deadlines. Litigation is deadline driven.
- A competitive spirit and commitment to excellence. Expert witness services should not be provided halfheartedly.
- A lack of skeletons in your closet such as criminal convictions, license

revocations, controversial past writings, doing poorly or being disqualified on a past expert witness assignment, etc.

- Having a schedule that is somewhat flexible to allow for depositions and trial appearances.
- Having enough free time to be able to turn assignments on deadline. This may necessitate working nights and weekends.
- Being thick skinned. Expert witnessing is not for the thin skinned. The opposing side will make it their mission to challenge your work and credentials and paint you as unqualified, sloppy, less than honest, a hired gun, etc.
- Communication skills. Expert witnesses lacking in verbal and written communication skills are useless.
- A CV (curriculum vitae) or professional resume so that retaining counsel can review your qualifications.
- Having excellent organizational, investigative, and research skills.

Source:

<https://seak.com/blog/expert-witness/expert-witness-requirements/>  
Note: this web site has some very good info and videos.

Additional appraiser factors:

- Speaking, writing and teaching
  - Prior testimony
- Additional report factors (can help the opposing attorney reduce your credibility):
- No misspelling
  - No bad grammar
  - No typos

### **My experience in an attorney trying discredit me**

I was testifying in a divorce trial. After testifying for awhile, the opposing attorney asked for a break. I had broken my ankle about 6 months ago and could not do residential inspections for about 4 months while I was in a wheelchair. She found out. I assume she contacted another appraiser looking for something to discredit my testimony. I had mentioned it in my weekly free email newsletter. I said that I had done many residential appraisals before and after my accident.

Was I upset? No. That was the opposing attorney's job. She was very clever. I didn't even think about it and did not tell my attorney client, so I didn't let him know about it.

### **Oral Testimony**

This is done sometimes by attorneys so the other side cannot get a copy of an appraisal report, as one was not done.

Be sure to read USPAP's requirements for this.

### **You need an Engagement Letter**

I don't always do a formal engagement letter for an estate house appraisal.

But, I always do them for other appraisals. I have several templates I use and modify them for each assignment. The legalese can be intimidating for executors and trustees, so I go over it with them.

The Appraisal Institute's sample engagement letters were updated in 2018. Google Sample Agreements for Services Appraisal Institute to download them. Although they are for non-litigation appraisal assignments, they are a good way to start. Copy and paste what you think is relevant. For litigation, you need to add your hourly rate for preparation, testimony, waiting in the hallway to testify, etc. Also add payment terms, retainer fee, etc.



Engagement letters are the foundation of the legal relationship between appraisers and their clients. They are letters that, once signed by both you and your client, constitute a legally binding contract between you (or your practice) and the client.

Google "Everything You Need to Know About Appraisals for Litigation" for a good summary of engagement agreements by Nossaman, LLC, which specializes in eminent domain. The PDF is an outline with tips on all parts of expert witness.

For an analysis (no sample agreement) google Engagement letters - doing it right - Working RE Magazine.

If your client is a private individual, such as an estate executor or someone wanting to sell her house to a neighbor, the agreements can be very intimidating with legalese they don't understand. I call them on the phone and go over it with them.

### **Fees - much, much higher than lender**

Do not ever, ever quote a fee first, before you find out what is involved. Do not put fees on your web site.

If someone calls and asks "what is your fee" that is a red flag to not to waste much time. You need to determine what is required for that specific appraisal assignment.

However, just like any lender assignment, after receiving the fee in advance and getting an engagement agreement signed, you MAY discover something that requires you to return your fee.

You need your local network to tell you what are typical fees for your area.

For assignments up to \$1,000 I require payment in advance, such as COD at the door or pre-payment by check. For higher fees I require 50% in advance and 50% before the appraisal is delivered. I do not discuss the appraisal until I am fully

paid.

For example, standard lender fees are \$400 for houses. You could charge \$1,000 or more for a house appraisal report for a divorce as testimony is a possibility. My fee for date of death would be \$700 unless testimony will be required.

Fees for expert testimony in my area starts at \$200 per hour (depends on experience, etc.) for preparation, testimony, waiting in the courthouse, etc. Some states do not allow portal to portal payment (driving from office to and back from court).

Be sure to get a retainer, up front. Include it in your Engagement Agreement.

For depositions, in my area, the hourly fees are the same as for testimony, but the attorney brings a blank check made out to you. When the deposition is over, you receive a check for your time.

When it is over, and you do a good job, the other attorneys may ask for your business card to give you work.

### **You are treated as an expert, not a lender "deal killer"**

I started at an assessor's office, with no pressure on value, no long forms to fill out, etc. My job was to equalize values for a specific geographic area where I appraised all the properties.

Then I started my appraisal business in 1986 and encountered residential lender appraising. It was a big shock. Lenders say how to do your appraisals, what forms to use, etc. If you "come in" under value, at that time, you could lose the client.

I never really adjusted to residential lender appraising and quit doing it in 2005.

### **Turnaround time**

This is very different than lender appraisals, where you give a specific date or time period. Your client is not trying to make a mortgage loan. The lender gives you a copy of their

engagement letter.

In contrast, with expert witness (and other non-lender work) you do the engagement letter. It can be much more difficult to get what you need from the client to do the appraisal. Sometimes the client is very difficult to contact if you have questions.

This is your decision. I usually do not quote a turnaround time/completion date, but many appraisers do. Of course, when you are an expert witness, you may have a specified date for the appraisal report.

It is not unusual to take a long time to get the documents you requested in your engagement letter. Be sure to include, for example: The delivery of the report will be 6 weeks after the receipt of all requested information.

Sometimes the estate trustee needs to have the appraisal in order to file the estate tax return and needs your appraisal ASAP. If I can get it done quickly I will have a completion date. If not, I will refer them to another appraiser.

I have taken over 6 months to complete a large estate with a lot of issues.

### **Information from the attorney**

Be sure to request copies of any other appraisals that have been done. This will help you when testifying. Also, any surveys, home inspection reports, etc. I always ask for this type of information, but it is critical to get when you will be testifying as an expert witness.

### **What types of issues besides the value of the entire property need appraisals?**

Residential appraisal reports are full of things that could end up in litigation due to defects: foundation, drainage, view, lack of permits, illegal unit, etc. The list is endless.

Here are a few examples: construction defects, stigma loss, water intrusion, mold, airport noise, fire, earthquake, and flood losses, soil subsidence and contaminated property.

### **What type of reports are done?**

Never, never, never use a mortgage form report. A savvy opposing attorney will say it is an incorrect form and you are incompetent.

I have always done short narratives on homes. In my area, sometimes attorneys get an appraiser willing to work for \$350, who brings a lender form appraisal. The attorney loses the case. The appraiser never testifies again.

Many residential appraisers here use the GPAR or AI forms.

No typos, ever, ever. Makes you look less competent in testimony.

### **What types of research and analysis are required?**

Your appraisal will be compared with the other side's appraisal.

Make sure that there is nothing in your report that is not correct. You don't want to opposing attorney to "shred" you on cross examination.

Take the time to confirm and get information on every sale you use, with as many people as you can: both agents, seller, buyer. What was the buyer's motivations? How many offers were there? Over or under list? Go over the details of all the listing history.

### **What about adjustments?**

If you use any dollar adjustments, be sure you can support them in a bullet proof way that the jury can understand.

I have never done any adjustments, except market conditions when they are changing, for expert testimony. Or, the issue is a valuable feature such as a view and I am appraising the view. I have support for my opinion on the effect on value of the lost view.

I quit doing any adjustments except marketing conditions in all my residential appraisals about 4 years ago.

As CU in 2015 showed us all, the "adjustments" on form reports are often very difficult to support.

### **What about reviewing the other side's appraisal?**

At a minimum, getting a copy will really help you and your attorney.

Offer to review the report, conforming to USPAP's review standards.

Charge your typical fee, such as \$200 per hour.

### **Marketing to attorneys - divorce appraisals**

There is very little competition in most areas because few residential appraisers will testify in court here and in most areas. In contrast, there is lots of competition for estate/trust.

This requires personal, face to face, marketing plus real estate agent referrals. Your goal is to get your first expert witness testimony, which can take awhile since most cases settle.

Don't forget other appraisers. Most residential appraisers will not testify in court in many areas, including mine. There are very few residential appraisers in my area who will do expert witness work. I give a lot of referrals as I work a very small geographic area.

It is almost always a complete waste of time to send out letters or drop off a business card at an attorney's office. Unless you are following up after meeting them at a meeting.

Divorce has the highest probability of testifying for residential appraisers. Find out where divorce attorneys meet. Anyone who is married is a prospect, so they can be seen in many places.

Here are a few tips:

- I regularly get divorce referrals from real estate agents. See my article on how to market to real estate agents.
- Don't forget appraisers. I don't do divorce appraisals and give out referrals to the few local appraisers who do them.
- Put Divorce prominently on your web site.
- Join the local bar association and be active in the Family Law group
- Chamber of Commerce is possible. Several local divorce attorneys at my local chapter
- Any local groups you are active in may have divorce attorneys: PTA, HOA, sports, etc.

Read this very good article by Peter Christesen of LIA or google 10 Tips for Landing and performing work as an expert witness appraiser.

## **Where to get more info on Expert Witness**

Note: most of the information is from the Appraisal Institute, which has promoted its MAI members to attorneys for many decades. Their books and classes are very "high end", focusing on complex litigation.

See the McKissock classes below for an introduction.

There are hundreds of books on Amazon.

## **Classes Appraisal Institute**

These classes are "high end" including the 4 hour residential class. The commercial seminars (2 days) also use complex issues for the case. Not just the value the total property.

Google the class name for more info:

Litigation Assignments for Residential Appraisers: Doing Expert Work on Atypical Cases 4 hours. Live only. \$45. 1 class scheduled for 2019 as of 2-19

The Appraiser as an Expert Witness: Preparation and Testimony Intro for res and general appraisers 2 days. Live only. \$400. 4 classes scheduled for 2019 as of 2-19

Litigation Appraising: Specialized Topics and Applications 2 days Live only. \$425 2 classes scheduled for 2019 as of 2-19 Res and general

## **Classes - McKissock**

Introduction to Expert Witness Testimony for Appraisers: To Do or Not to Do \$99 live webinar or \$84.99 online. 4 hours. I recently took the online class. It is very good for residential appraisers or commercial appraisers who are thinking about doing it.

How it differs from lender appraisals is mentioned regularly. The text is good, but the narration can be out of date, such as referring to an old version of USPAP.

This class is excellent. It covers the basics plus an intro to doing deposi-

tions and court testimony. A lot of practical tips. Even though I have done expert testimony I got good reminders and new ideas. A hard copy of each chapter is available after each chapter is completed. I took the online version due to time limitations as my newsletter deadline was approaching. Now I know why appraisers complain about the tests.

The live Webinar version is offered frequently. The presenter could be Rob McClelland, Rob Frazier, or Steve Mahe.

Paul Lorenzen, MAI worked on development for the expert witness classes .

My last online class with tests was about 20 years ago. I had some problems figuring out how to do it and called McKissock several times. All the people I spoke with were very patient and helped me a lot.

The Basics of Expert Witness for Commercial Appraisers class: \$125. If you want more information on Expert Witness, this class may work for you. I did not take the class due to lack of time before my newsletter deadline.

## **Book - Applications in Litigation Valuation: A Pragmatist's Guide**

Three intro chapters and one on marital dissolution

Most of the book is for commercial appraisers: eminent domain, environmental contamination, lease renewal, etc. \$75

Note: there are many books available on expert witness testimony. The book above are written for appraisers and published by the Appraisal Institute.

## **Online information:**

For appraiser articles google expert witness appraiser or expert witness.

## **Good appraiser reference books (Appraisal Institute):**

*The Appraisal of Real Estate, 14th edition*

*Appraising residential properties*

*Valuation by comparison*

*Scope of work*

*Real Estate Damages, Third*

*Edition* by Randall Bell, MAI "The" expert on this appraisal issue.

I have all these books on my bookshelf.

## **Online chat group**

National Appraisers Forum Yahoo group. Good discussions on non-lender issues by very knowledgeable appraisers including expert testimony. I have subscribed to this group since it started.

Even if you do not want to do expert witness work, this group has lots of very good advice, including discussions. The moderator, Steve Smith MAI, SRA, has been doing expert witness work, and other types of lender and non-lender work for many years.

## **Should you do expert witness testimony?**

You can't judge if you want to do it if you have never testified,

Most residential appraisers are afraid of testifying in court.

However, most testimony is in depositions, not in a courtroom. If there is no jury, only a judge (bench trial), such as divorce, bankruptcy and estates, it is less stressful.

If you already have good education and experience, have done some non-lender appraisals and research and analyze way beyond what AMCs/lenders want, consider it.

If you lack education and experience, you can take classes, do more challenging assignments, learn how to research thoroughly, do some non-lender appraisals etc.

You will be treated as a professional and paid very well for your time.

Bottom line: if you want to stay in residential appraisal and quit doing lender work, this is a very good option for you.

# The Appraisal Industry at the Crossroads of Change and Re-invention

By Tony Pistilli

*Editor's comments: Change is coming for residential lender appraisers. Fannie Mae is the leader for changes in residential lending. When the deminimus was set at \$200,000 in FIRREA (1989), appraisals were still done. The deminimus was a non-issue. Why? Fannie's investors wanted to see appraisal reports before purchasing Fannie's securitized loans. The analysis below shows how appraisers can fit in. Of course, we don't know what Fannie is planning or how soon it will come. The issue is what their investors will accept.*

Appraisers and the appraisal industry today face a significant crossroads. It's not an exaggeration to say that the manner in which we respond to the changes coming in the upcoming years could determine whether our profession will have lasting purpose and significance, or is headed towards irrelevance - and even extinction. For some appraisers, these changes could take place as soon as the next few months.

Every industry goes through a transformational period at some point in time, whether it's provoked by changes to the profession's culture, economic reform, technical development or the evolving preferences of customers. Each industry's longevity and capacity for success are determined by how they adapt to change.

Before the 1980s, anyone working in automobile repair shops dealt almost entirely with mechanical parts. During that decade, manufacturers began introducing computers into cars. Anyone who refused to learn how to work with new technology risked being replaced. Those mechanics who continue to work on our cars today are those who were open to change and

embraced the opportunity to expand their skill sets - and learned to use computers in addition to their wrenches.

The appraisal industry has changed too. Just look at what we did 2015 or even just 10 years ago. Imagine still typing an appraisal report on a typewriter, using a glue stick to affix photos and mailing it to clients after making three copies. New technology has not only changed the way we undertake appraisals; most people, I believe, would say it has improved our work. However, much more radical change is coming. How well is our industry prepared for it?

## Change Agencies

Fannie Mae and Freddie Mac are both currently engaging industry stakeholders to discuss how to reengineer the appraisal form over the next few years to take into consideration the way the profession is changing. We've also seen pilots taking place that are testing the idea of bifurcating the appraisal process, with a real estate agent, another

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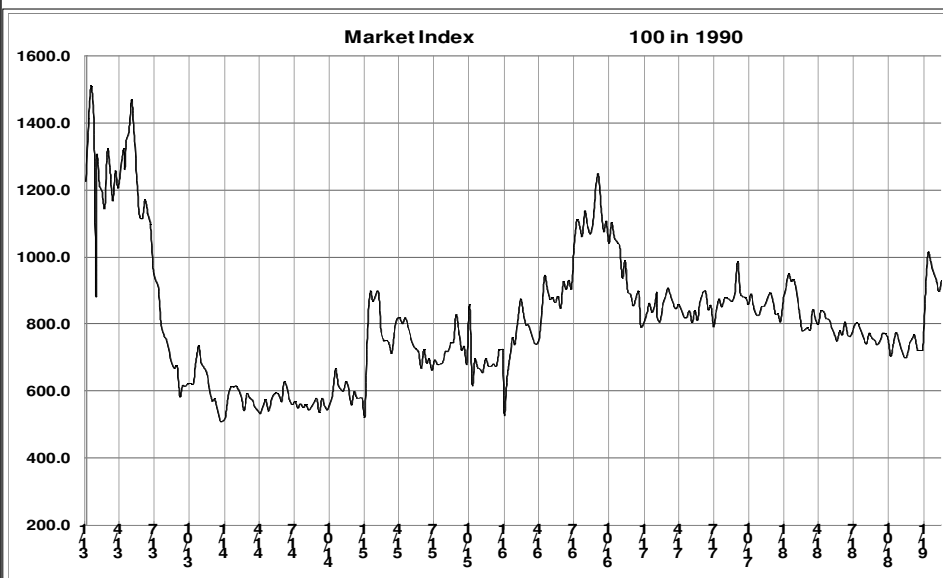
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## MBA Loan Volume Application Index – 1/13 to 2/19



appraiser or someone else doing the inspection, while the main appraiser performs property analysis and develops an opinion of value from a desk miles away.

For appraisers who trained to complete an entire appraisal, this may be a difficult concept to embrace. Some will feel uncomfortable basing their opinion of value on someone else's inspection. Others will insist that public records and MLS photos are no substitute for evaluating homes or visually inspecting comparables in person. Some appraisers will also argue - incorrectly - that the Uniform Standards of Professional Appraisal Practice (USPAP) - the appraisal industry's widely-recognized ethical and performance standards, do not allow this type of appraisal. Rest assured, however, that the methods being tested will most likely become industry policy sooner or later. Our obligation as appraisers if we are to survive is to keep an open mind, welcome these changes and remain experts in our practices as they evolve.

### **Valuations as a Service - "VaaS"**

You may be familiar with the term Software as a Service (SaaS). It's a model by which technology providers allow users to take what they want, when they need it, paying only for what they use, rather than the traditional, one-size-fits-all approach.

Similarly, I believe appraisers need to begin thinking of their valuation businesses as an "on-demand" service of sorts. As appraisers, we are experts in real estate markets and valuation methodologies. What we sometimes fail to understand is that there are many potential users or clients that could benefit from this valuable knowledge. We need to be open to packaging this knowledge into a variety of different delivery methods, not just in a Uniform Residential Appraisal Report. By

communicating and marketing our knowledge and expertise in different ways, we can open up new markets.

As part of this change in approach, we need to be open to the idea that we can be responsible for part of the appraisal, not the entire product. Just like SaaS providers, we have to be able to offer services to those who want them. As our clients' preferences change, we need to adapt.

Years ago, dental hygienists began doing much of the work formerly performed by dentists. Similarly, paralegals do much of the legal research and writing for attorneys, and nurses perform many routine functions for doctors. When someone else performs a property inspection, allowing the appraiser to contribute his or her professional understanding of real estate markets and valuation methodologies, we can provide clients with a more cost-effective solution that is just as reliable as the services we offer today.

### **A Continuum of Valuation Services**

We've all done the "easy" appraisals in our careers. The 3 bedroom ramble in a huge subdivision of 3 bedroom ramblers. When the homogeneity of the subject property is combined with a high FICO score and a low LTV, maybe a full 1004 appraisal isn't always necessary?

Just like many of us no longer rely on travel agents for every aspect of our travel needs, an appraiser may not be required to be involved in every financing transaction?

Going forward, appraisers may be asked to perform many different types of services. No longer will it be just a 1004 or 2055 appraisal. Requests may be to only inspect the subject property, maybe review and inspection and data provided by a third party, maybe an appraisal with a very limited format of reporting. Imagine an ala carte, menu of services, each with specific fees based on length of time and amount of

expertise. All of this dependent on a variety of factors that make up the entire credit decision.

### **Working per Hour, not per Appraisal**

Over the years, appraisals have become commoditized by the companies that order them, but soon it will no longer be the norm for appraisers to perform appraisals for a fee that is constantly challenged and outbid by less experienced appraisers. In the near future, undertaking an appraisal exclusively on a URAR 1004/70 form will become only a portion of our business.

As the "Valuations as a Service" concept takes hold, appraisers will be paid for their services by the hour, not by the product. We will be asked to perform a wide variety of services on the valuation spectrum. Appraisers may be asked only to inspect the property, analyze an inspection with data and analytics, provide an opinion of value, or perform the entire appraisal process. Knowing the value of your time - and therefore how much to charge per hour - will be critical.

Appraisers could earn more money per hour in the future than they earn today, but it will require a dramatic shift in their mindset to achieve it. Appraisers will need to ask themselves if they would prefer to spend eight hours doing a URAR 1004/70 for \$400, or perform a specific valuation service that may pay them less overall but take up a fraction of the time, enabling them to take on more work - and earn more money.

### **Become the Local Market Expert**

This drastic change may sound frightening to some, but it could also be the biggest opportunity for appraisers in the upcoming years. It will require appraisers to be local market experts. They will need to know more about their own markets than anyone else if they want to be paid for it.

The late Earl Nightingale, who was known as the "Dean of Personal Development," once said, "If you are willing to spend an extra hour each day of study in your chosen field, you will be a national expert in that field in less than five years." Now, maybe an hour a day is too much for some of us, but what about an hour a week? How many of us can honestly say we are the acknowledged expert in our market? How many of us put in the time to become the local expert?

Beyond local knowledge - and our continuing education - we must all also ensure we maintain a high level of understand of USPAP. But how many of us do? When was the last time we read the USPAP Standards, the FAQs or the advisory opinions?

Appraisers need to be an irreplaceable source of local market knowledge and possess an understanding of valuation methodologies that is beyond reproach. This professional expertise is crucial to the future success of the appraisal industry - and the very survival of our profession.

### **The Crossroads of Change and Reinvention**

We all need to be open to change and embrace the opportunity it holds to improve everything about the appraisal industry, or risk becoming less relevant. We need to keep open minds about what we are doing today and how we do things tomorrow. Is it really necessary to do the entire appraisal? Could I not just be the dentist and not the hygienist as well?

We should be looking for ways we can do something better than anyone else rather than keep doing what we've always done. That road has no future. We must not only accept change, but embrace it - and see it as an opportunity to prove our worth. If we are not open to change, there may very well be another way to value real estate in the future - and it might not include appraisers.

### **About the author**

Tony Pistilli is the SVP, General Manager of Valuation Services and Chief Appraiser for Computershare Valuation Services, LLC. Tony oversees the valuation business, including Traditional Appraisal, BPO, Inspections, Data and Analytics and Hybrid Appraisal.

Tony is also tasked with introducing innovative and compliant valuation products and industry leading solutions to the marketplace. Tony has over 25 years of real estate appraising and lending experience with national banks, mortgage companies, a federal agency in addition to being self-employed as a fee appraiser.

He is a member of several appraisal industry organizations and is a subject matter expert for the Appraisal Foundation in the area of declining markets. He previously served as vice-chair of the Minnesota Real Estate Appraiser Board. Tony is an AQB certified USPAP instructor and holds a certified residential appraisers license.



## Five Powerful Programs for Every Real Estate Appraiser

By R. Wayne Pugh, MAI, CRE, CCIM, FRICS

The right tools are critical to keeping your appraisal business up and running efficiently. Here are five programs that deliver significant functionality to your daily practice. These programs can secure and shrink files, keep your OS (Operating System, i.e. Windows 10) clean to keep it running efficiently, and save you from horrible mistakes when files are accidentally deleted. They can also manage password access to your OS and programs and provide you with a sophisticated real-time backup of all of your important programs and data. Any one of these five programs are a problem solver on a multitude of levels, and together they help to fill your tool box with five programs that will help keep your computer up and running efficiently every day.

### ZIP ARCHIVER

ZIP Archiver is a powerful and modern archival program that allows users to easily compress and open files from any archive. Users can use cloud technologies to conveniently create copies of important files, quickly send reports to their clients, or share data with colleagues.

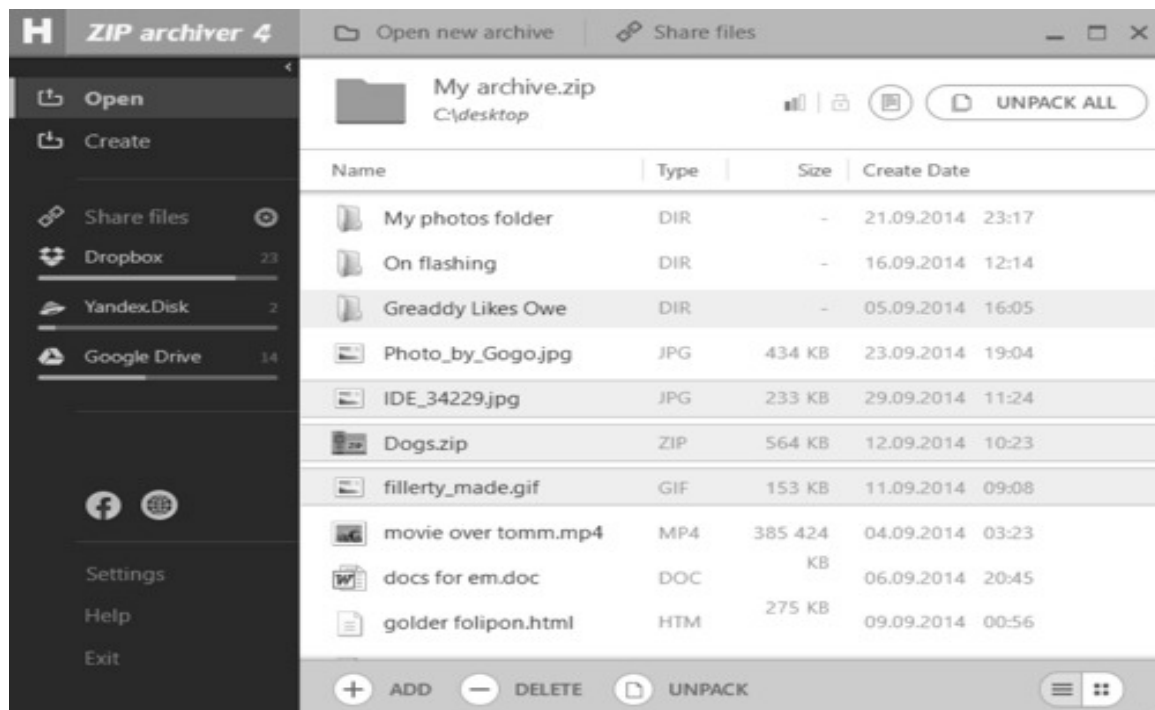


Figure 1: Zip Archiver

## CCLEANER

CCleaner may be the most popular system maintenance tool ever.

Is your computer running slow? As it gets older it collects unused files and settings which take up hard drive space making it slower and slower. CCleaner cleans up these files and remedies this problem in seconds.

Advertisers and websites track your behavior online with cookies that are placed on your computer. CCleaner erases your browser search history and cookies so any Internet browsing you do stays confidential and your identity remains anonymous.

Over time your registry can become cluttered with errors and broken settings which can lead to system crashes.

CCleaner's registry cleaner clears out this clutter to make your PC more stable.

Many programs run silently in the background when you start up your computer. CCleaner helps you disable unneeded programs. This speeds up your computer and improves the startup speed.

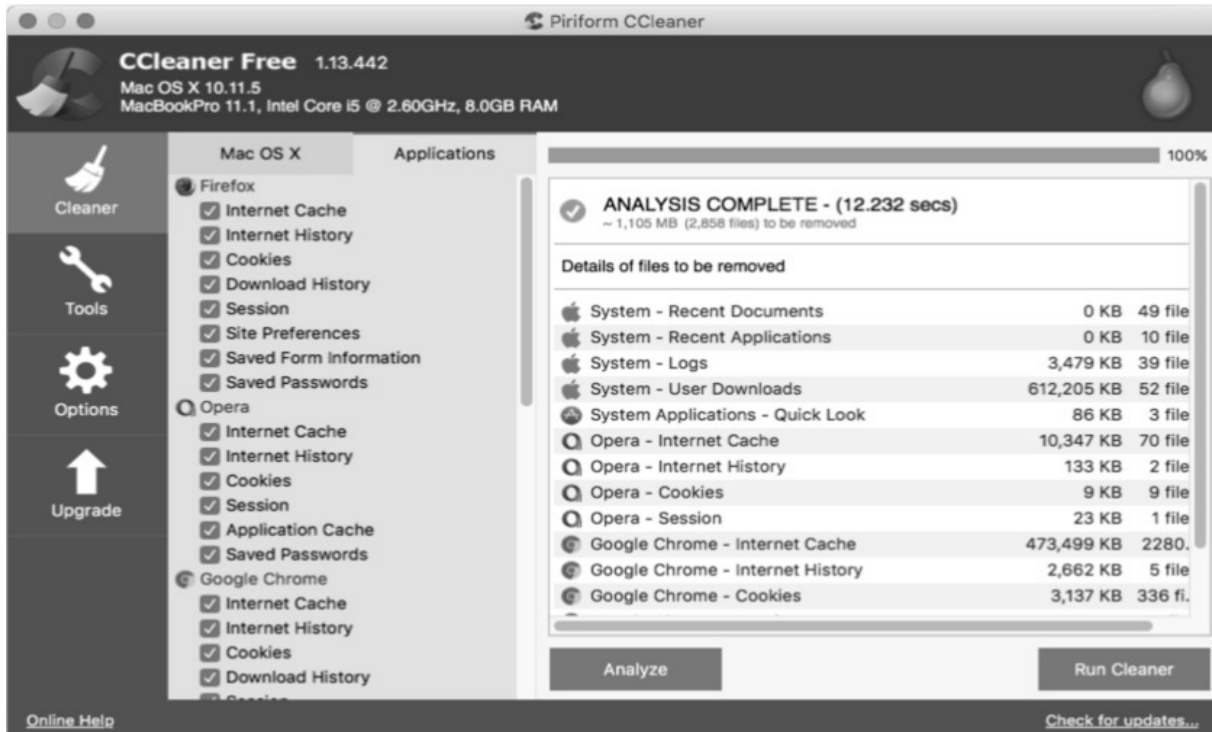


Figure 2: CCleaner

## DISK DRILL

If you have ever accidentally deleted a file that you really needed, try Disk Drill. (Editor's note: that is all of us.)

When a file or folder is deleted on major file systems it's only the filename that gets affected by this action. Typically, the file loses its first character, and the disk space, where that file resided, is marked as available for new data.

The deleted data; however, still resides on the hard drive and Disk Drill can recover the file.



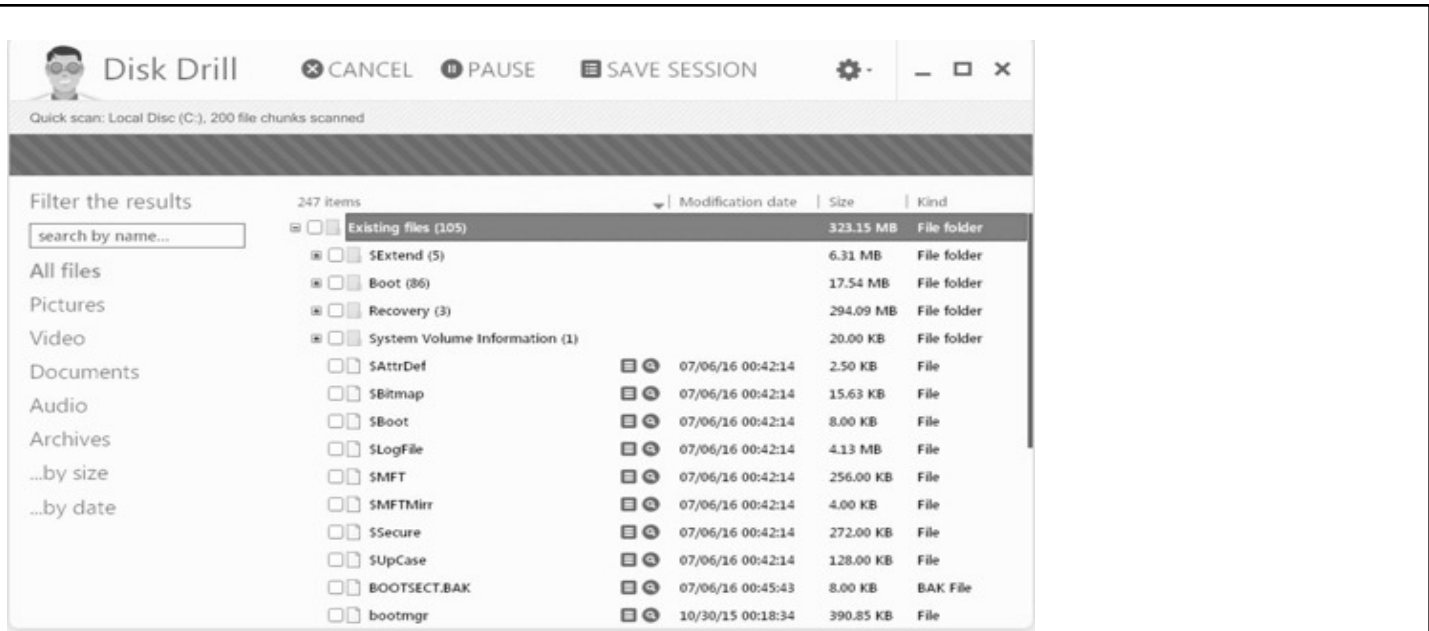


Figure 3: Disk Drill

## DASHLANE

If you have ever thought about using a free password manager, try Dashlane. No more will you have to enter passwords and fill out tedious repetitive data on online forms. Dashlane automatically and easily saves and later recalls your passwords, personal information, and payment details. Dashlane will become your favorite everyday tool.

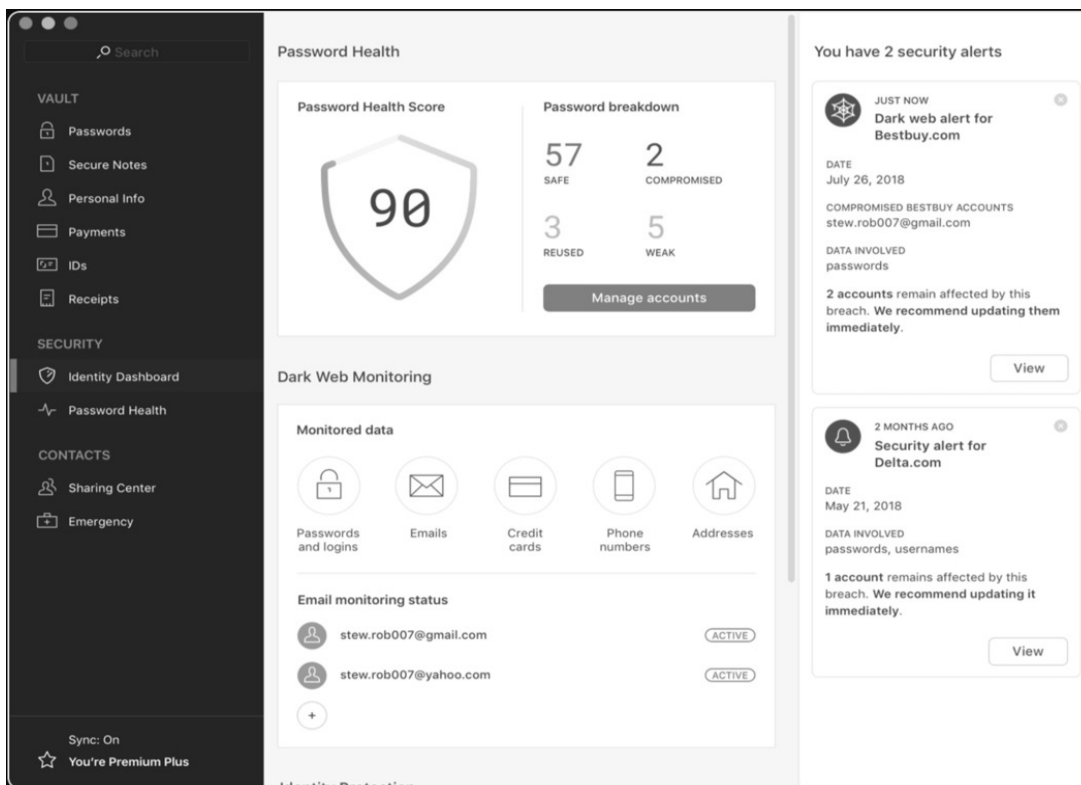


Figure 4: Dashlane

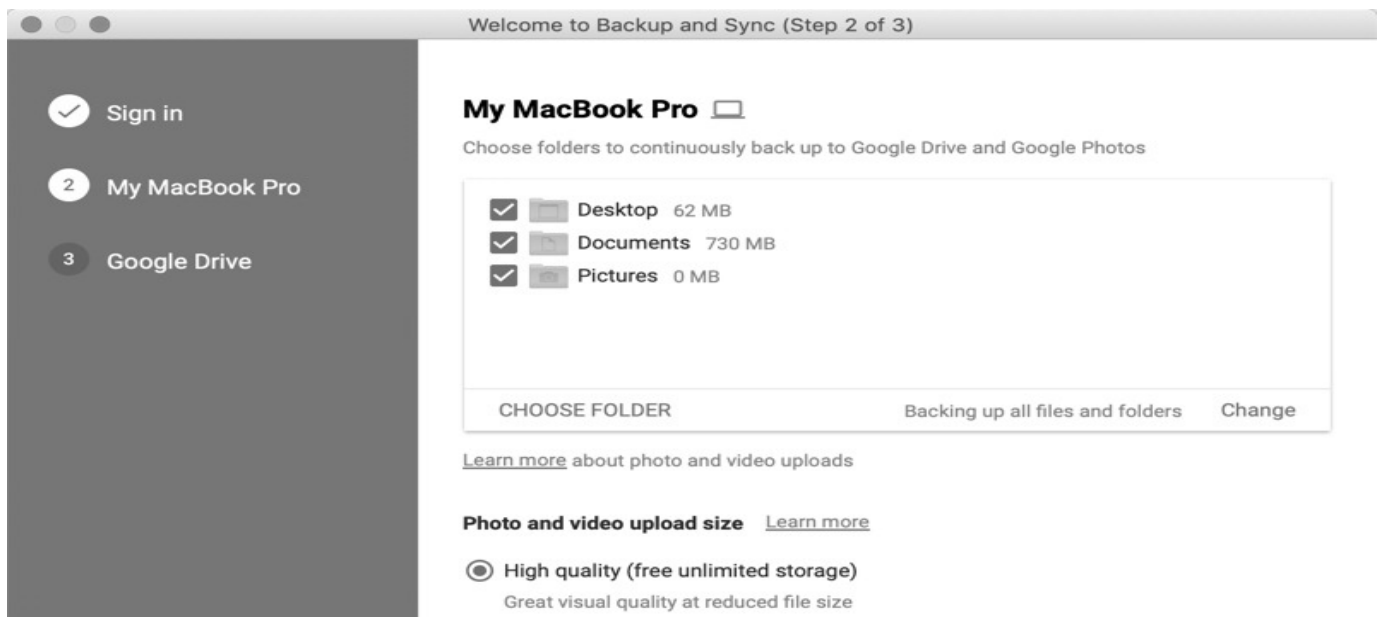
## GOOGLE BACKUP AND SYNC

If you just want to backup your programs and data and not image your entire hard drive, you can use Google Backup and Sync to selectively or automatically backup your files and folders to your Google Drive storage.

But Google Drive is much more than just a cloud-based storage and syncing service with a free storage plan. With Google Drive's apps you create, edit, store, and collaborate on documents. New utilities for the service let consumers specify any folder on the computer for backup and let businesses save space by not duplicating files on local storage. Google Backup and Sync will also save every version of every file.

New paid plans under the Google One brand have made their storage upgrades more affordable than most of their competitors. Google today significantly dropped the prices for its Google Drive online storage service. The first 15GB of storage remain free, but 100GB now costs just \$1.99 per month, and you can get a terabyte of online storage for \$9.99 a month.

Google Drive can help you store, back up, create, and even edit files, whether you work solo or as part of a team.



The Google Drive team continues to raise the standard with their collaborative software tools.

**Figure 5: Google Backup and Sync**

## CONCLUSION

Collectively, these tools can save time, cure computer ills, undelete files, and enhance your productive capacity.

### About the author



R. Wayne Pugh, MAI, CRE, CCIM, FRICS is CEO of real estate consulting and appraisal firm R. Wayne Pugh and Co., the head of Software for Real Estate Professionals Inc. and a principal member of Real Estate Counseling Group of America. He formerly served as president of the Appraisal Institute and as chair of the Louisiana Appraisal Board.