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By Bill King

Re-take on Re-types

In the last few months I have had many questions on the article on re-types. The most common questions have to do with new assignments from lenders that follow very closely behind another assignment on the same property from a different lender. Let's look at this from both a USPAP perspective and from a business perspective.

USPAP Issues

We have established that any federally regulated lender can use an appraisal prepared for any other federally regulated lender without a name change or "re-type", provided the chain of custody is not broken. When Bank A transfers directly to Bank B no action is required by the appraiser. Frequently, Bank B contacts Bank A for the transfer and the communication is unclear, or the right party cannot be reached. While intentions are good, the connection cannot be established. The most common reaction to this is for the loan officer to contact the original appraiser and request a re-type with the new bank or mortgage company named as the client. Simply put, Bank B needs a new appraisal. To the appraiser, this is a new assignment.

Each request to provide an opinion of value is a new assignment. There are a handful of things that have to be established at the time of assignment that go into making an appropriate scope of work decisions, and determining the proper reporting tool for the assignment.

Before any work can be started on any assignment, an appraiser has to have a client. By definition, the client is the party or parties who engage an appraiser in a specific assignment. No doubt this is a great start, but with only a client and nothing else, there is no assignment. In order to establish scope of work, an appraiser needs to know who other intended users are, intended use, the purpose of the assignment (standard or definition of value), the property to be appraised, the effective date of valuation, and assignment conditions such as extraordinary assumptions, hypothetical conditions and other limiting conditions. This is the "who, what, why, how and when" of the assignment and if you don't know these basic things, you simply do not have an appraisal assignment. If you want to run out and appraise something with less than this basic starting criteria, knock yourself out, but understand you are probably heading for some level of disappointment at the least, and more likely, trouble. Random acts of appraisal rarely pay.

Let's look at an example. You just appraised a local home two weeks ago for Lender "A" for a refinance and the borrower for whatever reason cannot complete the transaction. They go to Lender "B" with a copy of the appraisal in hand, and complete a new application. (Clue number one: Lender "B" doesn't just do a name change on the borrower's 1003 loan application to Lender "A".) Lender "B" loan officer calls you and

asks for a re-type of the appraisal. (Clue number two: The call is from the loan officer, not an appraisal department.¹) You read my last article so you confidently explain that you cannot ethically do a re-type, but you can do a new assignment on the same property. From a purely practical perspective, if they properly engage you with a new assignment spelling out the “who, what, why, how and when” of the assignment, and the only material change is the client, then the report you deliver is going to look just like the “re-type” they wanted in the first place. So what’s the big deal, why not just do a re-type?

First, without a new engagement, you do not know that all other aspects of the assignment are the same. I think residential appraisers get complacent about this because so often the engagement is a simple one-page fax with some contact information and a request for a Form 2055 with interior inspection. We know that in most cases, the request is for a market value opinion as of a (nearly) current date determined by the appraisers schedule, it is for lending purposes and that intended users include all multi-cell organisms somehow connected to the lending decision². Assumptions and limiting conditions are the ones pre-printed on the form that most appraisers never read because they are always the same.

But often, assignment conditions are not the same. The borrower may request a different loan amount or different loan type. The borrower may have had a change in credit rating that results in a higher or lower level of focus on the collateral. (Clue number three: The new lender isn’t doing a “re-type” on the credit report.) Let’s say for the sake of discussion that most elements are essentially the same, only the client has changed. It is still a market value opinion of current or very recent date for use by the banking client and lending partners for a collateral decision on a federally related transaction. The property is an existing home in an established, relatively homogeneous neighborhood, a.k.a. Elm Street, Middle America.

Without a proper engagement, Lender “B” may get their name on the report by “re-type” but they have no basis for even discussing the report with you; by definition your client is still Lender “A”. Since the client is determined at the beginning of an assignment and this one is already completed, the new bank cannot retroactively become the client. You now have the problem of having communicated confidential information in the form of assignment results to a party that is not the client and was not specifically authorized by the client at the time of assignment. Because their name now appears on the report, they appear to be the client and my guess is that you may have a very difficult time getting off the hook later on if there are problems that arise as a result of Lender “B” accepting the property as collateral. If I am going to accept that level of responsibility, I want to be properly engaged, and I want a clear understanding of the various assumptions and limiting conditions that are part of the assignment.

Some folks have the idea that this means they have to start over from scratch, re-inspect the property, re-measure the house, drive the comps again, and re-enter the data into a new report. If the house was 2800 square feet two weeks ago, it is probably still 2800

¹ See OCC letter of October 28, 2003 for discussion of appraiser independence.

² Page 1 of Form 1004B, paragraph 10

square feet today. Most markets are not changing remarkably in any two-week period, so my comparables are probably still the same. In fact, if I did a proper job the first time, they better still be the same.

I have had some people write to me and insist that if they do not charge a full fee for the new assignment that they will be in hot water. The fact is, USPAP does not require an appraiser to charge a fee at all, it requires an appraiser not charge a *contingent* fee. You can appraise for free as long as none of the other aspects of the Management Section of the Ethics Rule have been violated. Again, this notion of a “full fee” suggests there is a one-size-fits-all fee structure for appraisal.

The fact is, if the standard or definition of value, effective date of valuation, extraordinary assumptions, hypothetical conditions, limiting conditions, and intended use are the same for Lender “B” as they were for Lender “A”, you will probably log onto your computer and clone the previous file, changing only the client name and the signature date on the report. How about that, it looks just like a “re-type” except that you now have two files, one for the assignment from Lender “A” and one for the assignment from Lender “B”. Each file has a proper engagement letter spelling out assignment conditions. Assuming there was no confidential information obtained from Lender “A” used in the assignment for Lender “B”, you have a properly documented relationship with each client. In residential appraisal for lending purposes, there is relatively little, if any information that comes from the lender-client that is confidential and that would be unavailable in a subsequent assignment for the same property.

Business Issues

Tom Watson with the Office of the Comptroller of the Currency (OCC) has made clear that an appraiser should not accept an assignment for a federally related lender for a property that the appraiser has recently appraised for the individual property owner. While this may be technically permitted under USPAP, there is still the perception of conflict of interest. The independence of the appraiser must be questioned in these cases, and even if you can establish your independence, it could be a difficult process. Remember, the difference between being right and proving you are right is called attorney fees. Based on the OCC’s position, the better business decision is to be to decline the assignment from the federally regulated lender, or decline the assignment from the owner if you think there is a possibility of engagement by one of your lender clients for the same property in the near future.

From a business perspective, there may be reasons why you may not want to accept a new assignment for a property you recently appraised for another lender-client. A common practice in the “re-type” days was to get permission from Lender “A” to transfer the appraisal to Lender “B”. We have established that under USPAP, we do not need Lender “A’s” permission to appraise the same property for Lender “B”. After all, I do not need Bank A’s permission to accept other assignments from Bank B, so why do I need it now?

In certain situations, it may still make sense to let Lender “A” know you have been contacted by another potential client about the same property and same borrower to determine whether Lender “A” has concluded their relationship with the borrower for this contemplated transaction. We need to be very careful here, though. I cannot think of a reason why we would need to name lenders in these conversations, and in fact doing so may itself violate confidentiality. And, depending on other circumstances, there may be no reason to call Lender “A”. But there still may be reasons why your lender-client would not want to have you letting other lenders engage you in another assignment for the same property. Be sure there are no provisions against appraising the same property again for a specified period in your engagement letter. In non-lender situations, particularly litigation, this kind of restriction is common.

If Lender “B” is not someone you would otherwise do business with, I would suggest you think very carefully about doing business with them now. Clearly, they are only calling on you now to save money and time. It is not uncommon for Lender “B” to have different underwriting standards and guidelines, and since you have never done business with them before, they do not know you. You could get tangled up in answering a lot of meaningless questions and spend a lot of time and energy providing resumes, licenses and references to someone who will never use your services again anyway. It seems as often as not, what was a perfectly acceptable appraisal to Lender “A” is somehow fatally flawed to Lender “B” and now they need three better new comps (we always save the best comps until they call and ask for them, right?). Sometimes, they even send the comps they want used. Amazing how quickly we seem to always end up back at appraiser independence issues, isn't it?

If you do decide that the new assignment can be accepted, there is no reason to disclose the specifics of your prior lender-client relationship. Remember, this is a new assignment and needs to stand on its own. Including a statement that let's the reader know you have previously appraised the same property may not serve any legitimate purpose. The report cannot be misleading, but again, if this assignment has been entered into properly, the report stands on its own. If you feel the need to disclose your prior assignment, do so only in general terms. This is not the place to name your last client.

Timing

How long is too long before a new effective date and new inspection of the property is needed? It depends on whether the subsequent client finds the prior inspection date acceptable as an effective date of valuation. Most lenders need an appraisal not more than four months old as of the date of funding. Typically, if a new, more current effective date is needed, new market research is needed, a new inspection of the subject property is needed, and you are really back to square one on the assignment.

The most significant benefit to any lender in having you appraise a property at any point in the future that you have previously appraised is the understanding that you will already have a deeper understanding of the subject property than most practitioners in your market. Unless there has been a significant change to the property itself, you should not

need to re-measure the building and the site visit should be a lot faster. The hope many lenders have is that this will result in a cost savings to their customer, the borrower. Their objective is to obtain the required collateral documentation (appraisal) faster and cheaper than would be possible if they started over with a new appraiser. If we are truly charging for our services on a time and complexity basis, this should be a realistic expectation.

Conclusions

Lenders do not ask for “re-types” on loan applications, credit reports, title policies or any other third party services. We do not need to reinvent the wheel when re-engaged by a new client for a property we recently appraised. We do need to be careful with confidential information, and we need to be certain that our independence is not compromised.

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