

## ANALYZING THE APPRAISAL REPORT – Legal Perspective

- I. Options for Analyzing the Report
  - a. Review Appraiser

Retain an expert witness to perform a review appraisal of the other party's appraisal. These are common reports done in both litigation and non-litigation settings. USPAP has its own requirements for review appraisals.

- b. Deposition/Cross-Examination
    - i. Retaining a Non-Testifying Expert

If the attorney is not well-versed in appraisal matters, engage a non-testifying expert to assist in identifying issues, problems and areas of inquiry to explore at a deposition of the opposing expert. Consider having your non-testifying expert attend the deposition.

- ii. What to ask for in the Subpoena Duces Tecum
        - 1. Other Appraisals
          - a. *Ex. Parte Sheppard*, 513 S.W. 2d 813 (Sup. Ct. Tx. 1974)(Other reports of expert re: similar properties discoverable to show bias, prejudice or inconsistencies)
          - b. *Russell v. Commonwealth Transp. Comm. of Va.* 544 S.E. 2d 311 (Va. 2001)(Proper to cross exam appraiser in property tax case regarding report done on same property for eminent domain purposes)
        - 2. Prior Testimony
          - a. Deposition transcripts
          - b. Trial testimony
        - 3. Other areas probably already provided in report
      - iii. Cross Examination - Areas of Inquiry
        - 1. Geographic Competency
        - 2. Inspection Date – Physical Condition of Property
        - 3. Experience w/ Property Type
        - 4. Representation History
        - 5. Bias towards one side
        - 6. Inclusion of hearsay in appraisal
          - a. May rely on hearsay, if type of hearsay is typically relied upon during the practice of experts when not in court.
          - b. May not serve as conduit for opinion of witness not testifying.
        - 7. Independence of Approaches to Value
          - a. *Cook County Bd. of Review v. Ill. Prop. Tax Appeal Bd.*, Ill App. Unpub. LEXIS 591; 2023 WL 3051652 (App. Ct. II. 1<sup>st</sup> Dist. 1<sup>st</sup> Div. 2023) (Sales comparison and cost approaches contaminated by income analysis.)

8. USPAP Compliance
  - a. Must use expert to determine violation of professional standard of care. *City of Jacksonville v. Rodriguez*, 851 So. 2d 280 (Fla. 1<sup>st</sup> DCA 2003)
9. Legal Compliance
  - a. Motion to strike/motion for summary judgment
10. Fact/Math Errors
  - a. Impact on conclusion
11. Post Valuation Date Data
  - a. Sales/Income Comparables
  - b. Facts unknown at date of valuation
12. Support for Conclusion
  - a. *F.R.E. 702*
    - i. Qualified by knowledge, skill, experience, training or education. Rule 702
    - ii. Testimony is based on sufficient facts or data
    - iii. Testimony is the product of reliable principles and methods.
    - iv. Reflects a reliable application of the principles and methods to the facts of the case
  - b. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 592 (1993)
    - i. Theory or technique can and has been tested
    - ii. Theory or technique has been subjected to peer review
    - iii. Known potential rate of error (statistical analysis)
    - iv. General acceptance in industry
    - v. Non-exclusive list
  - c. Using Your Expert to Discredit Opposing Expert

By having your expert explain how she appraised the subject property, she can (without mentioning the opposing party's appraisal) highlight differences between the two. Have the expert discuss which approaches to value she chose, which she did not choose and why.

Further, have the expert explain why she chose certain comparable properties and why she eliminated others, particularly those that happen to be in the opposing expert's report.

Finally, have the expert explain the appraisal theories relevant in the appraisal of the subject property and why the one selected is the better theory to arrive at the correct value.

II. Theory Yes, Bias, Yes, Reputation, No.

While an appraiser may be critiqued as to the appraisal, it is not proper to criticize the ability, credibility or reputation of the appraiser. *In Re Steffen*, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006)

- III. Motion to Strike/Motion for Summary Judgment
  - a. Contrary to Law
  - b. Rule 702/*Daubert*