



May/June 2013

From the Director

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[South Dakota Real Estate Commission](#)

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I think spring is finally here and it's about time! I'd like to welcome David Bonde as our newest commissioner. Commissioner Bonde is a public member. I look forward to working with David. His knowledge of economic development and real estate is a great attribute to the Commission. I would also like to congratulate Commissioner Mark Wahlstrom who was recently reappointed by Governor Dugaard to serve a 3-year term. Commissioner Wahlstrom brings a wealth of knowledge to the Commission in regard to title work, as well as a non-licensee's perspective.

The Real Estate Commission, with assistance from the South Dakota Association of REALTORS®, is in the process of working on making changes on residential forms and creating commercial forms. I will keep you posted on this as progress is being made.

Responsible brokers — please make sure you have a written policy in place regarding the procedures to follow when an associate moves to another brokerage. By doing so, the transition will go more smoothly and the clients will be better served.

Reminder - It's never too early to begin working on your continuing education requirements.

Have a wonderful spring/summer!

Instructor Development Workshop

Interested in teaching real estate classes, but don't know where to start? The South Dakota Real Estate Commission is hosting an Instructor Development Workshop in Pierre June 5-6 at the Governor's Inn. This workshop is open to all licensees, from those currently teaching real estate classes to individuals just thinking about it! There is no cost to attend this workshop.

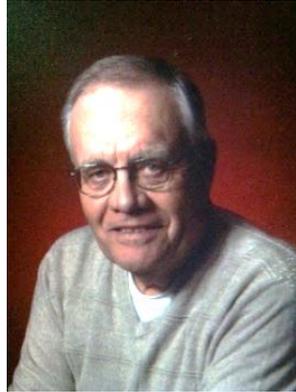
Workshop facilitator will be Marie Spodek, DREI. Spodek is a nationally recognized real estate educator, speaker, and trainer committed to improving the quality of real estate instruction at every level from pre-entry to sales to instructing. Often described as an "instructor's instructor," Spodek is a senior instructor of REEA's Instructor Development Workshop (IDW) and wrote its Course Development Workshop (CDW) in 1999. Building case studies, writing exam questions, creating group activities and encouraging student engagement are just a few of the topic areas that will be covered in this workshop.

For more information, contact Karen Callahan, SDREC Education Director at Karen.callahan@state.sd.us.

Commission Calendar

May 27 – Memorial Day – SDREC Office Closed
July 4 – Independence Day – SDREC Office Closed
July 17-18 – Commission Meeting - Pierre

Bonde Appointed to Commission



Governor Dennis Daugaard has appointed David Bonde of Fort Pierre to the SD Real Estate Commission. Bonde will serve in one of the public member positions on the Commission.

Mr. Bonde received a Master of Education Degree from SDSU and spent over 17 years working for the State in the area of vocational education, including eight years as the State Director. He currently is the Executive Director of the Fort Pierre Development Corporation.

He has held numerous positions within a variety of charitable and civic organizations and is a current member of the Pierre-Fort Pierre Historic Preservation Commission.

Bonde and his wife, Linda, have two children and five grandchildren. Welcome Dave!

Commercial Property Inspections

The SDREC office often gets questions from home inspectors, real estate agents and consumers regarding inspections of commercial buildings.

While the regulation of home inspectors falls under the authority of the SD Real Estate Commission, it is limited to residential buildings, which is defined as “a structure consisting of not more than four family dwelling units.”

The standards of practice outlined in administrative rule in the Home Inspector License Law manual are not intended to limit inspectors from performing services in addition to those required by the standards of practice. However, in the event of a problem arising from an inspection of a commercial building, the SDREC complaint process is not likely an applicable recourse for consumers. Home inspectors also need to be cautious when performing duties beyond those that are covered under the home inspection standards of practice, that they are not engaging in activities that require a professional license, such as an engineer or electrician.

Due diligence is critical for both the home inspector and the consumer seeking an inspection of a commercial property. Home inspectors should consult their errors and omissions insurance companies to determine whether their insurance provides coverage for this type of inspection. They should also be prepared to refer their clients to the appropriate professionals such as engineers, electricians, plumbers, HVAC technicians, etc. as the extent of the inspection will likely need to go beyond what is visual in nature.

Consumers should also understand that services provided by home inspectors may not be sufficient in determining the condition of a commercial property, the suitability of the property for specialized use, and compliance or noncompliance with regulatory or building requirements. They should be prepared to seek the services of licensed professionals whose scope of practice includes services that are more technically exhaustive.

New Appraisal Complaint Hotline *(used with permission from ARELLO)*

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) recently launched its new Appraisal Complaint National Hotline, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). In addition to the appraiser independence requirements codified by Dodd-Frank, the federal legislation required the ASC to establish the hotline to “receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice [USPAP], including complaints from appraisers, individuals or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process.”

The resulting website, <http://refermyappraisalcomplaint.asc.gov>, helps complainants to determine the appropriate state/federal authority with which such complaints should be filed. The website selects and provides contact information for the proper recipient of complaints based on responses to questions and menu selections that sort the complaint type, subject, type of transaction, etc. The Hotline is not designed to initiate complaints, act on behalf of complainants, arbitrate or followup on complaints, or assist with outcome appeals. Complaint intake is handled according to the protocols of the receiving state or federal agency. However, the Hotline website offers resources that enable complainants to determine the nature of their complaints, including explanations of appraisal independence standards and other relevant information. Complainants can access the Hotline through the website, the website's email link, or through the Hotline call center at 877-739-0096.

Commission Actions

The following actions by the Commission have become effective since the last report in the newsletter. A Stipulation and Assurance of Voluntary Compliance is a settlement agreement between a licensee and the Real Estate Commission and constitutes neither an admission nor a denial of any violation. A Consent Agreement and Order is an admission of violation and voluntary acceptance of the terms determined by the Commission in lieu of a formal hearing. Findings of Fact, Conclusions of Law, and Order is the result of a formal hearing. A suspension held "in abeyance" is one where the Commission has set aside the suspension provided the licensee comply with all of the other terms of the agreement.

Craig Olson, Larchwood, IA, Broker. Suspension of license from January 1 to March 31, 2013 for failing to meet the requirements of a Consent Agreement and Order.

Scott Grebner, Aberdeen, Broker. Findings of Fact, Conclusions of Law, and Order. Violation of 36-21A-80, 36-21A-82 and 36-21A-71(5) for failure to account for trust account money, failure to reconcile trust account on a monthly basis and failure to make trust account records available for inspection by the commission upon request. Suspension of license for one year, to be held in abeyance provided all terms of the Order are met; Administrative fine of \$2,500 and completion of the 15-hour Responsible Broker course.

Raymond J (Joe) Duling, Gregory, Broker. Consent Agreement. Violations of the following: 36-21A-84 for collecting a commission on a transaction that had not concluded; 36-21A-132 for failing to exercise reasonable skill and care for his client and to promote the interest of the client with the utmost good faith, loyalty and fidelity due to his personal interest in purchasing his client's property; 36-21A-71(37) for purchasing the listed property and charging a commission without obtaining the written consent of the principal to such provision; 36-21A-71(20) & (31) for failing to deal fairly with all parties to a transaction by failing to promptly give the client every written offer to purchase; 36-21A-71(13) for failing to disclose to an owner in writing his intention to purchase the listed property himself; 36-21A-71 (30)-(33) for failing to protect and promote the interest of the client by misleading potential buyers, failing to properly negotiate offers and gaining undue influence over the client that lead to denial of offers. Administrative fine of \$2,500, completion of 6 hours of education in contracts, six hours of education in agency and the 15-hour Responsible Broker course. Mr. Duling's license is suspended for a period of six months beginning April 1, 2013. The suspension shall be lifted as of October 1, 2013 provided all other conditions of the Consent Order are met.

New Licensees

Broker Associate

Bahmuller, Daniel A - Spearfish
Belitz, Bethany A – Sioux Falls
Bonnema, Paige M – Harrisburg
Brewers, Jeffrey J – Sioux Falls
Busse, William – Rapid City
Egan, Jessica M – Sioux Falls
Gill, Brian J – Spearfish
Horlock, Patricia S – Hermosa
Kallis, Henry E – Spearfish
Konechne, Tobias V – Sioux Falls
Lintvedt, Mark L – Presho
Miller, Pamela K – Brandon
Nelson, Lisa J – Rapid City
Ode, Paul N – Brandon
Pate, Mary M – Sioux Falls
Phillips, Jessie L – Watertown
Richards, Jeffry D – Rapid City
Smith, Laurie A – Huron
Van Alyne, Peggy L – Brandon
Williamson, Sarah L – Rapid City

Bee, Teresa L – Sioux Falls
Beukelman, Dwight D – Sioux Falls
Bowman, Kendra M – Sturgis
Brose, Gregory R – Rapid City
Dunham, Ashley M – Sioux Falls
Eizinger, Jonathan D – Rapid City
Headrick, Abigail E – Brandon
Jankord, Heather A – Rapid City
Klock, Tony L – Rapid City
Leonard, Gregory G – Sioux Falls
Luther, Larissa A – Sioux Falls
Munz, Eric D – Mitchell
Ness, Jeanie C – Hendricks, MN
O’Farrell, Lance A – Corona
Pham, Elizabeth M – Sioux Falls
Raber, Angela – Belle Fourche
Ross, Justin P – Sioux Falls
Stilton, Gregg E – Rapid City
Weissenburger, Rachael A – Sioux Falls

Broker

Asarch, Chad G – Denver, CO
Johnson, Robin K – Aberdeen
Okerlund Matchan, Hope E – S. Falls
Steffes, Jane – Hendricks

Brownell, Betsy A – Rapid City
LaSala, Carl A – Overland Park, KS
Simmons, Cassie L – Whitewood

Property Manager

Chidester Bloom, Janet K – Spearfish
Hoppe, Lori A – Sturgis
Smith, Jared M – Sioux Falls

Heafner, Ellen M – Hot Springs
Plank, Elizabeth A – Rapid City

Registered Home Inspector

Glover, James L – Pierre
Johnson, Anthony W – Aurora
Salter, Jeff – Rapid City

Hart, Douglas J – Huron
King, John L – Nisland

Salesperson

Drent, Kristie – Sioux City, IA

Schneider, Kenneth L – Linton, ND

Residential Rental Agent

Gray, Jana K – Sioux Falls

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Appraiser Update

Appraiser Certification Program Office Has Moved

The mailing address is as follows:

**Appraiser Certification Program
308 South Pierre Street
Pierre, South Dakota 57501-3137**

The telephone number remains the same, 605.773.4608. The facsimile number has changed to 605.773.5405.

New Licensees – March/April 2013

Barbara J. Hegerfeld, State-Registered – Brookings, SD
Megan N. Warner, State-Certified General – Olathe, KS
James M. Slivovsky, State-Certified Residential – Western Springs, IL
Matthew J. Saskowski, State-Certified General – West Des Moines, IA
William G. Wright, State-Certified General – Plano, TX
Crystal Freund, State-Registered – Mitchell, SD

Upgrades Issued April / May 2013

Elizabeth Neuharth, State-Licensed
Timothy O’Hara, State-Licensed

AMCs – Issued Registration in SD April 2013

AMR Appraisals, Inc. - 5000 Executive Parkway # 520, San Ramon, CA 94583
Axios Valuation Solutions, LLC - 9151 Boulevard 26, Suite 400, North Richland Hills, TX 76180
Value Trend Solutions, LLC - 1641 East Osborn Road # 8, Phoenix, AZ 85016
Wasatch Front Appraisal Network, Inc. - 1930 East Nations Way, Holladay, UT 84121

AMC – No Longer Doing Business in South Dakota

National Real Estate Information Services

Complaints Investigation and Upgrade Reviews

For the period January 1, 2013 through May 13, 2013, the Department has initiated six complaint investigations and two upgrade reviews.

Complaints – Six cases pending.
Upgrades – Two cases pending.

What is a True Comparable Sale?

(Courtesy of the North Carolina Appraiser Board Appraisereport – Volume 23, March 2013, Number 1)

In looking at a sale to see if it may be used in an appraisal, the appraiser must make sure that the sale reflected an arm's length transaction. There are generally five elements of an arm's length transaction.

The buyer and seller are typically motivated.

Both parties are well informed or well advised, and each is acting in what they consider their best interest.

A reasonable time was allowed for exposure in the open market.

Payment was made in terms of cash in the United States Dollars or in terms of a financial arraignment comparable thereto.

The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions.

If any of these tests are not met, the sale may only be used with appropriate discussion and adjustment. A client may have additional requirements, such as that the sale must be less than 6 months old or within a certain distance from the subject. It is the appraiser's responsibility to be familiar with and comply with those guidelines.

Source of date

Your source of data for your comparable sales must have sufficient information so that you can understand the conditions of sale, existence of financing concessions, physical characteristics of the subject property, and whether it was an arms-length transaction. Competency requires that you have the ability to locate home sales information available from many sources, not just a Multiple Listing Service. A local MLS is a good source of data, but should not be considered the only source an appraiser may utilize in selecting comparable sales. In some areas, tax records or private databases provide more comprehensive data. A FSBO (for sale by owner) property could be a reasonable comparable sale if it had been properly marketed. Some builders do not utilize the MLS for their subdivisions, preferring to do some or all of the sales themselves. If a property has not been marketed on MLS or another regional database, the appraiser must make sure that the property was exposed to the open market for a reasonable time before it can be used. Also remember that Fannie Mae requires you to state the specific source of your data; they do not allow the use of a broad category such as "public records".

Verification

Remember, Standards Rule 1-4 of USPAP requires that you collect, verify and analyze all of the data used in the report. For example, if you collect comparable sales information from MLS, you then verify the information by checking with the listing or sales agent, the tax office, or another source. If there is any discrepancy between these two sources, you must continue to research the sale until you are confident that the information you will use in your analysis is correct. This is especially important if you receive verbal information or a HUD-1 that conflicts with public records. An appraiser cannot state that the verification source is "inspection".

Information in MLS may not be accurate and may report a sale that was not arm's length. There are some instances where real estate agents may report a land/home package sale on MLS. Sometimes you will see a remark that the sale is for information purposes only and is not to be used as a comp. Even if the sale is reported on the MLS, that does not make it a legitimate, arm's length transaction.

It is not appropriate to simply obtain a list of sales from a developer's sales office, and then verify with the tax office or a HUD-1 settlement statement that the sale took place. By doing this, you are verifying only the sale, not the conditions of the sale. The HUD-1 may provide some additional information, such as closing costs, but it does not address the question as to whether a reasonable time was allowed for exposure in the open market.

Using foreclosure sales

In the current economy, foreclosures have skyrocketed and REO sales have become common in many areas. Lenders may be more willing to accept a short sale to avoid foreclosure. The problem with using these sales is that in many instances the buyers and sellers are not typically motivated. The seller may want to unload the property as soon as possible, not caring about the final price received. The buyer may take advantage of this and make an offer much lower than what they are willing to pay. The properties themselves are often sold "as is", without any repair or inspection contingency. Given these problems, FHA and other lenders "strongly discourage" the use of foreclosure sales or short sales as comparables.

In areas where there are only a few distress sales, it is easy to ignore them as comparable. In some areas, however, there are so many foreclosure sales that they have become the market for that area and buyers will not pay full price for a home absent special financing or concessions. As a result, there could be a longer marketing time and resultant decline in value in the area. These factors should be noted in the marketing conditions section of the appraisal report or on the 1004 MC. In this circumstance, using a foreclosure sale might be warranted, if adequate research is done and the use of the sale is explained in the report.

Recordkeeping

You should also be careful to correctly identify both your data source and verification source, and to keep in your workfile a copy of the information relied upon for the appraisal. For example, if you use MLS as your data source and tax records as your verification source, you should have a copy of the MLS sheet and tax record in your file. MLS and tax records may be changed or deleted before the end of the 5 year retention period for the workfile, and it is important that you can show what information you relied on in your appraisal. Sometimes you may receive information orally, such as from the listing broker over the telephone. You should make a note for the file of your conversation, including the name and telephone number of the source of information and the date, as well as a summary of the information received. You do not have to keep a paper workfile. You may keep your entire workfile in electronic form.

Summary

The choice of comparable sales is crucial to the valuation process. In order to be a comparable sale, the property must have been exposed on the open market. Make sure you have done the necessary research to choose the best sales available, and then verify the data until you are confident that the data is accurate. Make appropriate adjustments as warranted. Keep good records, including documentation of the source of your comparable sales, in case your appraisal is questioned in the future.

Advisory Opinion 13 (AO-13) USPAP Advisory Opinions 2012-13 Edition - The Appraisal Foundation

This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. Advisory Opinions are issued to illustrate the applicability of appraisal standards in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems.

SUBJECT: Performing Evaluations of Real Property Collateral to Conform with USPAP

APPLICATION: Real Property

THE ISSUE:

How can an appraiser operating under the *Uniform Standards of Professional Appraisal Practice* (USPAP) develop and communicate a valuation of real property collateral that complies with the Interagency Appraisal and Evaluation Guidelines?

ADVICE FROM THE ASB ON THE ISSUE:

Relevant USPAP & Advisory References

The DEFINITIONS in USPAP include the following: *APPRAISAL: (noun) the act or process of developing an opinion of value; an opinion of value*

Also included in the DEFINITIONS is the following: *APPRAISER: one who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective*

The SCOPE OF WORK RULE states in part, *Appraisers have broad flexibility and significant responsibility in determining the appropriate scope of work for an appraisal, appraisal review, and appraisal consulting assignment*

Under STANDARD 1, in developing a real property appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal

STANDARD 2 requires that a real property appraisal report *contain sufficient information to enable intended users of the appraisal to understand the report properly*

Background

The terms “appraisal” and “evaluation” have specific meanings and uses for institutions regulated by and under the rules and published guidelines of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (Agencies). The federal regulators require that an appraisal must conform to generally accepted appraisal standards as evidenced by USPAP, but that an evaluation need not conform to USPAP. The Glossary (Appendix D) to the December 2010, *Interagency Appraisal and Evaluation Guidelines* (Agencies’ Guidelines) defines “evaluation” as: *A valuation permitted by the Agencies’ appraisal regulations for transactions that qualify for the appraisal threshold exemption, business loan exemption, or subsequent transaction exemption.* However, appraisers who are bound by USPAP must recognize that an evaluation meets the USPAP definition of appraisal and appraisers must comply with USPAP when providing such a service.

Appraisers must be aware that each lender may have its own internal policies and requirements regarding the format and content of an evaluation. Those policies and requirements supplement the requirements stated in the Agencies’ Guidelines. It is critical that the appraiser and the client have a mutual understanding of the intended use and the scope of work for the assignment. One way to enhance this mutual understanding is for the appraiser to request copies of the institution’s evaluation standards or requirements pertinent to the assignment.

ASB Opinion on Evaluations of Real Property Collateral

USPAP defines an appraisal as:

(noun) the act or process of developing an opinion of value; an opinion of value.

An evaluation, per the Agencies’ Guidelines, provides an estimate of market value. When that estimate of market value is the opinion of an individual who is required to comply with USPAP, that opinion (i.e., the evaluation) is, per USPAP, an appraisal. Therefore, an appraiser who is required to comply with USPAP must meet both the Agencies’ requirements for an evaluation and the requirement of STANDARDS 1 and 2 and other applicable parts of USPAP.

Any request for an opinion of value of real property requires compliance with the SCOPE OF WORK RULE, which states in part:

The scope of work must include the research and analyses that are necessary to develop credible assignment results.

An appraiser must be prepared to support the decision to exclude any investigation, information, methods, or technique that would appear relevant to the client, another intended user, or the appraiser's peers.

An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.

Under the SCOPE OF WORK RULE, any development requirements imposed on an assignment for evaluation of real property collateral would be considered assignment conditions.

If an individual is engaged to provide information or analysis that does not include an opinion of value, the assignment is neither an appraisal (per USPAP), nor an evaluation (per Agencies' Guidelines). However, if the individual providing that service is acting as an appraiser (as defined in USPAP), the assignment would be appraisal practice and the appraiser would be obligated to comply with the ETHICS RULE, the COMPETENCY RULE, and the JURISDICTIONAL EXCEPTION RULE.

Examples of requests for services that do not require a value conclusion include, but are not limited to:

providing sales and rent data, listings, assessments and other similar information, without adjustments or determination of comparability to indicate or suggest the value of a specific property; and providing data describing a neighborhood, community, or any other real estate market segment and analyses on real estate market trends.

Appraisers who believe certain requests for evaluations or real property collateral are inconsistent with USPAP or contrary to law or regulation should explain their concerns to the potential client. If necessary, additional information and advice may be obtained from the appropriate federal regulator regarding the Agencies' Guidelines. If the client does not agree to an assignment that allows the appraiser to comply with USPAP and applicable law or regulation, the appraiser must decline or withdraw from the assignment.

Illustration

A potential client requests evaluations of real property collateral for two properties from an appraiser who is required to comply with USPAP. The client wants to know the market value of the fee simple interest in the properties presented in very brief and concise reports. The client is knowledgeable about the market for the types of property involved.

In an assignment to appraise either property, the appraiser must determine the appropriate scope of work to develop credible assignment results based on the problem to be solved before considering the reporting requirements of STANDARD 2.

One evaluation is for an existing single-family residential fee simple property in connection with a real estate loan amount of less than \$250,000. The client requests only the sales comparison approach for this residential evaluation.

If the appraiser determines that the sales comparison approach alone is sufficient to produce credible assignment results in the appraisal of the residential property, an evaluation (i.e., an appraisal) based solely on this approach can be performed in compliance with USPAP.

The other evaluation is for an existing office building, occupied by the owner (without a lease). The lender is considering a business loan amount of \$1,000,000 or less that is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayments. The client requests only the income capitalization approach for this office building evaluation.

If the appraiser determines that the income capitalization approach alone is sufficient to produce credible assignment results in the appraisal of the office building property, an evaluation of this property based solely on the income approach can be performed. However, if the sales comparison approach is necessary for credible results, the appraiser should discuss the necessity of developing and reporting it with the client. The appraiser is ultimately responsible and must include whatever research and analysis is necessary for credible results in the scope of work.

Reporting the Results of an Evaluation

When reporting evaluations, appraisers need to be aware that the evaluation content, described in the Agencies' Guidelines, may differ from the content required for appraisal reports under STANDARD 2 (see Advisory Opinion 11). It is important that the contents of all appraisal reports satisfy the requirements of STANDARD 2 as well as all applicable assignment conditions. In many cases, a Summary Appraisal Report may be required, but in other cases, a Restricted Use Appraisal Report may be sufficient if expended to include all of the content requirements for an evaluation.

In addition to the requirements in USPAP, an appraisal report used in an evaluation assignment must also comply with The Interagency Appraisal and Evaluation Guidelines. The December 2010 Agencies' Guidelines include the following report requirements:

XIII. Evaluation Content

An evaluation should contain sufficient information detailing the analysis, assumptions, and conclusions to support the credit decision. An evaluation's content should be documented in the credit file or reproducible. The evaluation should, at a minimum:

Identify the location of the property.

Provide a description of the property and its current and projected use.

Provide an estimate of the property's market value in its actual physical condition, use and zoning designation as of the effective date of the evaluation (that is, the date that the analysis was completed), with any limiting conditions.

Describe the method(s) the institution used to confirm the property's actual physical condition and the extent to which an inspection was performed.

Describe the analysis that was performed and the supporting information that was used in valuing the property.

Describe the supplemental information that was considered when using an analytical method or technological tool.

Indicate all source(s) of information used in the analysis, as applicable to value the property including:

External data sources (such as market sales databases and public tax and land records);

Property-specific data (such as previous sales data for the subject property, tax assessment data, and comparable sales information);

Evidence of property inspection;

Photos of the property;

Description of the neighborhood; or

Local market conditions.

Include information on the preparer when an evaluation is performed by a person, such as the name and contact information, and signature (electronic or other legally permissible signature) of the preparer.

Conclusion

An evaluation, when performed by an individual acting as an appraiser, is an appraisal. In addition to complying with USPAP, the appraiser must be aware of and comply with any additional assignment conditions and reporting requirements imposed on the assignment.