

# Appraisal Litigation Basics

Louis J. Garone, MAI, SRA

1

## INTRODUCTION

2

## PURPOSE

The essential purpose of this seminar is to demonstrate what role the practicing appraiser can play in the legal process as an "expert".

3

## EXPERT DEFINED

A person **qualified by specialized knowledge or experience** so as to be permitted to testify not only to the facts, but give an **opinion respecting the facts**, to inform the jury and enable them to **understand the issues of fact** and arrive at a **proper conclusion**. (James A. Ballentine, Ballentines Law Dictionary, 1969)

4

## WHAT'S IT TAKE?

- EDUCATION
- WORK EXPERIENCE
- LICENSE
- CREDENTIALS
- SPECIALIZED KNOWLEDGE

These combined equates to competency!

5

## PERSONAL ASSESSMENT

- Do you enjoy detail
- Do you like research
- Are you flexible
- Are you committed to Standards
- Are you easily intimidated

6

## THE "DOWNSIDE"

- Long hours
- Cases can take years to settle
- High degree of pressure
- High demand for flexibility of time
- Scope of work can change midstream
- Deadlines are typically very rigid
- Can easily lead to license complaint

7

## THE "UPSIDE"

- The work is challenging
- Assignments are diverse
- Tests your knowledge
- Opportunity to build skills
- Good fee structure when established

8

## THE BOLD REALITY

- Litigation work is not for everyone
- Anyone can be called to testify anytime
- "Litigation cases" are very different from standard appraisal assignments for lending
- You must understand your role and application of USPAP
- Testimony is typically not as bad as you might think when properly prepared
- Safeguard against the potential for complaint

9

## A FEW SPECIFICS

10

## ASSIGNMENT / CLIENTS - 1

- Eminent domain
- Construction defects
- Divorce suits
- Misrepresentation
- Estate Settlement
- Conservation easement
- Taking authority / owner
- Builders / owners
- Owners / attorneys
- Realtors / owners
- Heirs / attorneys / IRS
- Donor / attorneys / IRS

11

## ASSIGNMENTS / CLIENTS - 2

- Easement issues
- Property Tax issues
- Foreclosure suits
- Natural disasters
- Contamination issues
- Taking Authority / owner
- Taxing authority / owners
- Lenders / owners
- Insurance Co / owners
- Owners / attorneys

12

## CLIENT EXPECTATIONS - 1

- In depth knowledge of appraisal theory
- In depth knowledge of specific markets
  - No surprises
- In depth research for given assignment
  - No surprises
- High credibility / good track record

13

## CLIENT EXPECTATIONS - 2

- Highest levels of integrity
- Flexibility – able to “roll with the flow”
- Very high attention to detail in analysis
- Consistency of opinions from case to case
- Full understanding of the assignment
- Willingness to listen and communicate

14

## CLIENT EXPECTATIONS - 3

- Strong verbal or presentation skills
- Strong writing skills
- Ability and willingness to deliver bad news
- Ability to maintain independence
- Ability to present a good image
- Honest in analysis and reporting

15

## ANALYSIS REQUIREMENTS

- USPAP – When does it apply?
  - As appraiser, always, but to what degree?
- Scope of work is critical and sets the stage
  - Appraisal Process and Standard Rule 1
  - Appraisal Review and Standard Rule 3
  - Appraisal Consulting and Standard Rule 4
- Consulting – do any rules apply?
- What about Secondary guidelines?

16

## REPORTING REQUIREMENTS

- Scope of work statement must be clear
  - The shift from lending mentality
- Appraisal and Standard Rule 2
- Appraisal Review and Standard Rule 3
- Appraisal Consulting and Standard Rule 5
- What to include or exclude
- Verbal reports
- File content and retention

17

LET'S TAKE A BREAK!

18

## CLIENT CONTACT

- Understand the ASSIGNMENT
- Explain USPAP and rule limitations
- Develop the Scope of Work
- Fees and payment
  - Bi-lateral contract
  - Retainers
  - Stipulation to represent in the case of complaint
- The 26a2 Disclosure

19

## ISSUES OUT OF THE NORM

- Preliminary findings and draft reports
- Changing direction mid-stream
- Delivering bad news

20

## DEPOSITIONS

- Purpose
- Preparation
- Appearance and Image
- Demeanor and Poise
- Dealing with QUESTIONS
- When you don't know the answer
- Dealing with OBJECTIONS

21

## HEARINGS

- Preparation
- Appearance, Image, Demeanor, and Poise
- Dealing with QUESTIONS
- When you don't know the answer
- Dealing with OBJECTIONS
- Direct and re-direct
- Cross and re-cross

22

## THE AUDIENCE

- The Judge
- The Jury
- Commissions
- Arbitrators and Mediators
- Attorneys (yours and opposing)
- Other Experts (being sequestered)
- The Claimant and Respondent
  - (plaintiff and defendant)
- The Gallery

23

## IN SUMMARY

Is litigation appraising for you? Do you enjoy detail work, constant challenge, confrontational settings? Can you cope with extended assignments with power personalities?

For some, this works, for others – not a chance, but you should always be prepared for the off chance . . . .

24

## THE CASE STUDY

25

## THE HOME

- 2009/2010 constructed \$1,000,000 home in suburban community
- Owners engaged licensed architect to prepare plans and specifications
- Owners engaged builder to construct the home per plans
- Owners did not employ a general contractor
- Owners had no prior experience in building or contracting
- Home heated with in-floor radiant system

26

## THE ISSUES

- Mid to late 2010: Cracks and separation noted in the basement slab.
- Late 2010: Main level deck settling and masonry support columns cracking
- Early 2010: Water noted in the wood floor of the dining room
- Late 2010: Exterior wall framing found to be 2x4 instead of 2x6 as called for in specs and plans
- Early 2011: Slight increase in slab cracks, basement finish halted at 50% complete

27

## EXPERT DISCOVERY

- Slab constructed with wire mesh instead of engineered rebar as specified
- Piers supporting columns are not below frost line
- Radiant heat delivery tube in dining room floor punctured by nail from basement
- Builder oversight missed wall construction of 2x4 instead of 2x6 as called for

28

## BUILDER RESPONSE

- Although plans not specifically followed, construction is within typically accepted limits
- Builder will repair heating system leak and replace damaged wood flooring
- Builder will replace/repair piers supporting columns and repair deck
- Basement floor stopped moving, therefore not an issue
- Builder offers \$30,000 to make cosmetic repairs

29

## OWNER RESPONSE

- Reject builder's offer of repair and payment
- Contend that the home has lost value because disclosure of the problems will diminish market appeal and value even if repaired
- Filed suit in the amount of \$300,000 to cover damages and value loss

30

## THE TRIAL

- Court room protocol will be recognized and presided over by a judge
- A jury of seven will be selected to hear the case
- Several experts for each side will testify before judge and jury
- Following testimony, the jury will deliberate, reach a verdict and damages if appropriate

31

## PARTICIPANTS

- | Defendant / builder      | Plaintiff / homeowner  |
|--------------------------|------------------------|
| ■ Architects - Engineers | ■ Billy Engineering    |
| ■ Testing Laboratories   | ■ Consulting Engineers |
| ■ Monk Engineering       | ■ Valuation Services   |
| ■ Happy Development      | ■ Mrs. Homeowner       |
| ■ Value Consultants      | ■ Mr. Homeowner        |

32

## TRIAL SCHEDULE

- The trial is scheduled for 4 hours
- Jury deliberation is allotted 1/2 hour
- Verdict and critique is allotted 1/2 hour
- Before trial all experts will meet with attorney clients for trial prep

33