

APPRAISAL ISSUES UNIQUE TO LITIGATION

- Some Appraiser Independence Lost
 - Restrictions on Use of Sales
 - Sales to Public Agency
 - Sales Impacted by the Project
 - Contracts, Offers & Listings
 - Sales of the Subject Property
 - Highest and Best Use and Other Legal Instructions
 - Attorney May Provide Instructions on Key Appraisal Issues
 - Appraiser MUST Follow Such Instructions

DEALING WITH LEGAL INSTRUCTIONS – SOME EXAMPLES

- Appraiser is Instructed not to Use a Particular Sale as a Comp
- Appraiser is Told to Appraise as of two different Dates of Value, and neither date matches the Appraiser's Understanding of the Underlying Facts
- Appraiser is Told to Assume an Industrial Highest and Best Even Though Property Currently Residential, and Appraiser Thinks only other Viable Use Would Be Commercial

REASONS FOR LEGAL INSTRUCTIONS

- Attorney trying to play appraiser
- Attorney has a legal theory, and anticipates a ruling from the Court approving of that theory
- Attorney working on alternative theories, and asks appraiser to conduct multiple analyses
- Court has already made a ruling (perhaps erroneously) on an issue

APPRAISER IS PERMITTED TO ACCEPT LEGAL INSTRUCTIONS

- Applying legal instructions does not create a problem for appraiser
- Specific Ethical rules established to deal with such situations
 - An **extraordinary assumption** is defined in USPAP as an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions.
 - A **hypothetical condition** is defined in USPAP as that which is contrary to what exists, but is supposed for the purpose of analysis.
- In a worst case scenario, appraiser can decline the assignment, but appraiser should never accept assignment and then refuse to follow legal instructions

USPAP Standards Rule 1-2(f)

(f) Identify any extraordinary assumptions necessary in the assignment;

Comment: An extraordinary assumption may be used in an assignment only if:

- it is required to properly develop credible opinions and conclusions;
- the appraiser has a reasonable basis for the extraordinary assumption;
- use of the extraordinary assumption results in a credible analysis; and
- the appraiser complies with the disclosure requirements set forth in USPAP for extraordinary assumptions.

USPAP Standards Rule 1-2(g)

(g) identify any hypothetical conditions necessary in the assignment.

Comment: A hypothetical condition may be used in an assignment only if:

- use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison;
- use of the hypothetical condition results in a credible analysis; and
- the appraiser complies with the disclosure requirements set forth in USPAP for hypothetical conditions.