

# RAC White Paper

## Part I

### Introduction and background

Relocation Appraisers and Consultants (RAC) is publishing this White Paper in response to developments in industry practice as well as changes in the Uniform Standards of Professional Appraisal Practice (USPAP). Part I of our White Paper will focus upon client directions to the appraiser.

There are two primary areas of concern for appraisers: USPAP compliance and not being a party to enriching an employee. USPAP is the guiding document for appraisers, as all states have adopted USPAP as the definitive standard for appraiser conduct and ethics. Appraisers must comply with USPAP or risk their licenses and livelihoods.

It is also important to remember that the intended use of a relocation appraisal as defined by Worldwide ERC is "to assist an employer in facilitating the employee relocation process." Appraisers are cognizant of the fact that appraisals are used as the baseline to establish how much of the expense of the home purchase program can be tax protected. If instructions are made to appraisers that intentionally or unintentionally inflate the value of the home, an appraiser could have exposure in being complicit with tax evasion. The seriousness of this exposure was substantiated in a recent Worldwide ERC paper on the potential ramifications of special client instructions which stated, in part:

*"It is also likely that relocation appraisers performing such appraisals will find it necessary to insert language in the appraisals noting the departure from standard appraisal procedures, and that the result is not an anticipated sale price. Aside from legal rules governing appraisals, appraisers will need to be mindful of section 6701 of the Internal Revenue Code, which imposes a penalty of \$1,000 on any person who aids or assists in preparation of documents that he or she knows or has reason to believe will result in an understatement of tax of another person if used. The IRS has, in the past, applied this penalty to appraisers in other contexts."*

(Source: "Determining Fair Market Value in Home Purchase Programs" prepared by Worldwide ERC® Tax Counsel, Peter K. Scott and available in the Worldwide ERC on-line Master Source)

This exposure has continued to worry appraisers and should also concern our clients. We have therefore attempted to address each area of concern and provide recommendations for both the appraiser and the client.

RAC is sensitive to the needs of our clients and understands that every client has unique needs. Unfortunately, many decisions by clients have been made without appraiser input that currently put the appraiser at risk. RAC is eager to work with

clients to help them achieve their goals while maintaining the integrity of the appraisal process. RAC has an open invitation to assist clients in evaluating policy and procedures.

RAC will publish Part II of this White Paper in the near future. The focus of the second publication will concentrate more on industry practices versus instructions to the appraiser. There are many facets of our client's business practices that can affect the quality of appraisal work produced by appraisers. These items will be explored in Part II.

Worldwide ERC is the recognized leader and policy maker of the relocation industry and the established ERC Guidelines also evolved to meet the needs of the industry. All policies and programs are at risk when Worldwide ERC guidelines are not followed 100%. RAC strongly encourages the entire relocation industry to recognize the importance of exploring the needs of revising the Relocation Appraisal Form and Guidebook.

## **Table of Contents**

### **Issues**

<b>Do not make “Market Change” Analysis/Adjustments</b>	<b>Pages 4 - 5</b>
<b>Do not “Forecast”</b>	<b>Pages 6 - 9</b>
<b>Client Directed Marketing Time</b>	<b>Pages 10 - 12</b>
<b>Do Not Use Foreclosure/REO Properties</b>	<b>Pages 13 - 15</b>
<b>Appraise Property “As If Vacant”</b>	<b>Pages 16 - 17</b>
<b>Employee Appeal and Appraisal Updates</b>	<b>Pages 18 - 21</b>
<b>Appraiser Must Make Market Prep Adjustment</b>	<b>Pages 22 - 24</b>
<b>Use of the ERC Condo Addendum</b>	<b>Page 25</b>
<b>Summary</b>	<b>Page 26</b>

This document has been released after an exposure period that solicited comments from the industry. RAC thanks all respondents for their contribution to this document.

As issues for relocation appraisers develop, RAC may issue advisory opinions to the White Paper.

RAC would also like to extend a special thanks to RAC member Arnold Schwartz, SRA, SCRCP for his input and contributions to the White Paper.

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## **Issue: Do not make “Market Change” Analysis/Adjustments**

### **Background and Discussion**

Appraisers are receiving appraisal orders that prohibit the use of “Market Change” Analysis/Adjustments. This practice is typically utilized as a manner to recognize the sacrifice an employee makes in accepting a move during declining market conditions, in an effort to not penalize the employee. This creates three inherent problems: Worldwide ERC Guidelines and the Uniform Standards of Professional Appraisal Practice (USPAP) compliance and potential employee enrichment.

### **Worldwide ERC and USPAP compliance**

As stated on the ERC Summary Appraisal Report and also in the Worldwide ERC “The Relocation Appraisal Guide – 2001”, the purpose of the appraisal is to develop an opinion of the "Anticipated Sales Price" of the subject property, as of the inspection date.

The “Market Change” adjustment, on Page 83 of the Worldwide ERC “The Relocation Appraisal Guide – 2001”, is described as: “Enter the inspection date of the subject property. For each comparable sale, enter the actual contract date. This represents the point in time at which there was a “meeting of the minds” and the sales price for the home was established. The “Market Change” brings the sales prices of the comparables current with market conditions as of the date of the subject property’s inspection. This is accomplished by making adjustments for any changes in market prices that have occurred between the contract dates of the comparable sales and the inspection date of the subject property.”

Additional discussion of applying the adjustment continues, and a detailed study is presented in the Appendix A, page 103 of the Worldwide ERC “The Relocation Appraisal Guide – 2001”. The “Market Change” adjustment is a factual happening of market changes during the time from the contract date of the comparable sale to the date of the appraisal.

USPAP is the basis for all appraisal licensing laws. Among other things, USPAP requires appraisals to be **credible** and they are **not to be misleading**. A credible relocation appraisal cannot result from a report that does not employ “Market Change”. A report completed without the use of “Market Change” analysis would be misleading.

It has been suggested that, under USPAP, the appraiser has the latitude to appraise the property under the "hypothetical condition" to ignore “Market Change”. USPAP defines a "hypothetical condition" as one which we know is not true, but we are assuming is true for the purpose of the appraisal. It is our professional opinion that providing a relocation appraisal without the “Market

Change” analysis with use of “hypothetical conditions” or scope modifications is not in the spirit of ethical conduct. The appraiser should not be the vehicle to provide this type of manipulation of an analysis.

### **Potential Employee Enrichment**

If company policy causes appraisals to depart from accepted standard, it may result in a directed offer. Omitting the “Market Change” analysis/adjustments in a declining market will result in an inflated “Anticipated Sales Price”. This policy will in effect enrich the employee and result in a directed offer.

### **Conclusion**

Appraisers cannot comply with these instructions without violating USPAP and state license law. The “Market Change” analysis is a requirement for an ERC Summary Appraisal Report and a critical component of “Anticipated Sales Price”.

### **Recommendations**

**Appraiser:** RAC strongly advises the appraiser not to accept assignments that prohibit the “Market Change” analysis/adjustments.

**Client:** RAC strongly advises that appraisal assignments are not ordered with “No Market Change Analysis/Adjustments”. Recognizing that some clients may not want to penalize their employees in a declining market, RAC recommends that the appraiser complete the assignment with the “Market Change Analysis/Adjustments”. The client may then utilize the appraiser’s information to formulate their assistance to the employee, which would take place as a directed offer and be considered a taxable event.

## **Issue: Do not “Forecast”**

### **Background and Discussion**

Appraisers are receiving appraisal orders that prohibit the use of “Forecasting” analysis/adjustments. This practice is typically utilized as a manner to recognize the sacrifice an employee makes in accepting a move during declining market conditions, in an effort to not penalize the employee. This creates three inherent problems: Worldwide ERC Guidelines and the Uniform Standards of Professional Appraisal Practice (USPAP) compliance and potential employee enrichment.

### **Worldwide ERC and USPAP compliance**

As stated on the Worldwide ERC appraisal form and also in the Worldwide ERC “The Relocation Appraisal Guide – 2001”, the purpose of the appraisal is to develop an opinion of the "Anticipated Sales Price" of the subject property, as of the inspection date.

USPAP is the basis for all appraisal licensing laws. Among other things, USPAP requires appraisals to be **credible** and they are **not to be misleading**. A credible relocation appraisal cannot result from a report that does not employ “Forecasting”. A report completed without the use of “Forecasting” would be misleading. Therefore, it is our opinion that following this directive would result in a violation of USPAP.

As stated on the ERC Summary Appraisal Report form and also in the Worldwide ERC “The Relocation Appraisal Guide – 2001”, the purpose of the appraisal is to develop an opinion of the "Anticipated Sales Price" of the subject property. The definition of “Anticipated Sales Price”, on Page 1 of the ERC Summary Appraisal Report, specifically states that “Anticipated Sale Price” is "The price at which a property is anticipated to sell in a competitive and open market, assuming an arm's length transaction whereby: ... 5) Forecasting is applied to reflect the anticipated trend of market conditions and prices during the subject property's prospective marketing period."

This point is further amplified by the Worldwide ERC “The Relocation Appraisal Guide – 2001” on page 16. It is emphasized that "forecasting is an essential component in the relocation appraisal." It goes on to say "The appraiser is ... required to formulate a prospective view of market events that are considered likely during the upcoming marketing period and to consider their impact upon the Anticipated Sales Price of the subject property." On page 18 of the “The Relocation Appraisal Guide – 2001” it states "Forecasting is a critical element in the relocation appraisal." It goes on to say "A forecasting adjustment must be applied in every relocation appraisal. Depending on market conditions during this time frame, the forecasting adjustment may be \$0 (stable market with homes

normally selling within 120 days), a positive dollar adjustment (appreciating market), or a negative dollar adjustment (declining market or normal marketing time greater than 120 days)."

Clearly, "Forecasting" is a necessary key element in the development of "Anticipated Sale Price". Without this necessary key element, the value conclusion reached would not be "Anticipated Sales Price". Calling the resultant value "Anticipated Sales Price" when it is clearly not "Anticipated Sales Price" would be misleading and obviously not credible. In this way, following this client directive would be in violation of USPAP and state license law.

It has been suggested that, under USPAP, the appraiser has the latitude to appraise the property under the "hypothetical condition" that market conditions are stable and the forecasting adjustment is \$0. USPAP defines a "hypothetical condition" as one which we know is not true but are assuming is true for the purpose of the appraisal.

The suggestion was made that the appraiser would not be in violation of USPAP so long as the appraiser stated clearly in the report that their value conclusion was not the actual "Anticipated Sales Price" but, rather, what the "Anticipated Sales Price" would be if the "hypothetical condition" were true. After discussions with USPAP instructors and others who are highly knowledgeable about the details of USPAP, the conclusion was reached that the appraiser's value estimate will be portrayed as the true "Anticipated Sales Price", even though they clearly stated that it is not the true "Anticipated Sales Price" and that, knowing this, the appraiser cannot be a party to such a deception.

In addition to presenting the appraiser with legal liabilities, these special instructions could be problematic for the client as well. If a client were to direct an appraiser to *not* make a forecasting adjustment in a market which is declining and in which a negative forecasting adjustment is clearly required, and if the appraiser were to comply, their value estimate would be inflated as compared to the true "Anticipated Sales Price". Whether intended or not, this instruction will lead to inflated appraisals and sometimes grossly inflated appraisals, in a declining market. Many states have passed, or are in the process of passing, laws against pressuring appraisers to produce inflated values. In this way, this instruction could end up creating legal problems for the client on the state level.

### **Potential Employee Enrichment**

If company policy causes appraisals to depart from accepted standard, it may result in a directed offer. Omitting "Forecasting" could result in an inflated "Anticipated Sales Price". This policy will in effect enrich the employee and result in a directed offer.

## **Conclusion**

Appraisers cannot unconditionally comply with these instructions without violating USPAP and state license law. Worldwide ERC Guidelines strictly require "Forecasting", which is an essential element for an ERC Summary Appraisal Report and a critical component of "Anticipated Sales Price".

## **Recommendations**

**Appraiser:** RAC strongly advises the appraiser not to accept assignments on the ERC Summary Appraisal Form that prohibit "Forecasting". RAC has very strong concerns of the credibility of any appraisal completed on the ERC Summary Appraisal Report that does not include "Forecasting".

Recognizing that some clients may not want to penalize their employees in a declining market, RAC cautiously offers alternative appraisal reporting techniques.

1. Complete the appraisal on the ERC form with forecasting properly applied.
2. The Anticipated Sales Price reflective of forecasting is entered into the appropriate field on Page 5.
3. Add a statement similar to this: "The client has requested that an additional value be provided that does not utilize forecasting, this value is more consistent with \_\_\_\_\_ Value as defined by \_\_\_\_\_. The value without of recasting is \$\_\_\_\_\_." The value definition should be included with this statement.

A second less desirable alternative would be to complete the appraisal on another form, and appropriately identify the value utilized. Other forms are not as detailed as the ERC Summary Appraisal Form and will offer severe limitations to the typical relocation assignment. An additional logistical problem is the lack of a uniform alternative form that could be utilized. The standard URAR form, used for mortgages is not an appropriate alternative due to its embedded scope dealing with the mortgage process. Other general purpose forms are available, but are specific to the software vendor of the appraiser and therefore there is the possibility of receiving two general purpose appraisals on different forms, which is not conducive to the relocation review process.

**Client:** RAC strongly advises that appraisal assignments are not ordered that prohibit "Forecasting". Recognizing that some clients may not want to penalize their employees in a declining market, RAC recommends that the appraiser completes the assignment with "Forecasting". The client may then utilize the appraiser's information to formulate their assistance to the employee, which would take place as a directed offer and considered a taxable event.

Noting that “No Forecasting” has been employed over time, RAC is very sensitive to the perception of this recommendation. It must be understood that appraisal standards, such as USPAP, have evolved and brought clarity to this issue. In 2007, USPAP dramatically changed its focus to concentrate on the scope of the appraisal and the obligations of the appraisers to the use and users of the appraisal.

**Industry:** Worldwide ERC is the recognized leader and policy maker of the relocation industry and the established ERC Guidelines also evolved to meet the needs of the industry. RAC strongly encourages the entire relocation industry to recognize the importance of exploring the needs of revising the Relocation Appraisal Form and Guidebook.

## **Issue: Client Directed Marketing Time**

### **Background and Discussion**

Appraisers are receiving appraisal orders that deviate from Worldwide ERC Guidelines of "Reasonable Market Period not to exceed 120 days". The request is to substitute something other than "not to exceed 120 days" for the development of the "Anticipated Sales Price". This would impact the application of the "Forecasting Adjustment".

This practice is typically utilized as a manner to recognize the sacrifice an employee makes in accepting a move during declining market conditions, in an effort to not penalize the employee. This client deviation has created questions within the relocation appraisal community, regarding the Uniform Standards of Professional Appraisal Practice (USPAP) compliance and potential employee enrichment.

### **Worldwide ERC and USPAP compliance**

Although the ERC Summary Appraisal Report states that an opinion of the "Anticipated Sales Price" of the subject property is derived via a "reasonable marketing period", or a period of "not to exceed 120 days", the Worldwide ERC "The Relocation Appraisal Guide – 2001" implies on several occasions that a client prescribed period of something other than "reasonable marketing time" can be accepted practice in various cases. More specifically:

Page 87 – 6<sup>th</sup> Paragraph – "If the client directs the appraiser to use a marketing period different from ERC guidelines, then this time period would be entered under the subject column".

Page 90 – 2<sup>nd</sup> Paragraph – "A variety of items may be addressed in this section. For example, the appraiser should use this section to indicate any client directed deviations from ERC guidelines – e.g., a marketing time other than "not to exceed 120 days".

Page 110 – 1<sup>st</sup> Paragraph – "In the case where a client modifies the standard ERC instructions and requests an appraisal based upon normal marketing time if it exceeds 120 days, the second component of the forecasting adjustment is eliminated".

As previously determined, "Forecasting" is a necessary key element in the development of "Anticipated Sale Price". However, an "Anticipated Sales Price" can still be developed utilizing a differing prescribed marketing period other than "reasonable marketing period". In these instances, identifying the resultant value as an "Anticipated Sales Price" is not misleading, if the proper detail is provided regarding the marketing time deviation.

USPAP is the basis for all appraisal licensing laws. Among other things, USPAP requires appraisals to be **credible** and they are **not to be misleading**. As long as the client directed marketing time does not produce a misleading valuation, in our opinion this directive would not result in a violation of USPAP. The consideration of forecasting is still applied in these scenarios, albeit to a different projected marketing period. Following a client directive for marketing time other than “reasonable marketing period” is not a violation of USPAP and state license law.

### **Potential Employee Enrichment**

#### **IRS Risk Potential – Homesale Program**

Although from a USPAP standpoint, requests to develop an “Anticipated Sale Price” utilizing a marketing period other than “up to 120 days”, appears acceptable in theory, are there situations where a particular client provided marketing period will serve to enrich the transferee and therefore have IRS implications.

As stated in the Worldwide ERC “The Relocation Appraisal Guide – 2001” – Page 120 – Appendix A – Paragraphs 4, 5, and 6, forecasting adjustments are comprised of (2) separate components:

**Component One** – An adjustment that reflects anticipated changes, if any, in market prices over the previously determined normal marketing time. (Note: A projection of stable market prices will result in a “zero” adjustment, while an appreciating or depreciating projection would result in a positive or negative adjustment, respectively).

**Component Two** – When the above mentioned normal marketing period exceeds the up to 120 days ERC guideline, an additional adjustment is needed to reflect any price reduction considered necessary to accomplish a sale of the subject property within the shorter 120 day reasonable time limit. Should the normal marketing time for the subject fall within the up to 120 day limit, this second adjustment is not necessary.

In cases where the client prescribes a “normal marketing period”, or a more liberal marketing period than 120 days, the second component of forecasting is being essentially eliminated. For instance, if a marketplace has a normal marketing time period of 270 days, and a client prescribes a “normal marketing period”, the 5-month period difference between the Worldwide ERC 120 day reasonable marketing period and normal marketing time is not accounted for in the forecasting adjustment. The likelihood is an “Anticipated Sales Price” greater than what would be generated under ERC Guidelines in this particular scenario.

Often clients instruct appraisers to avoid a forecasting adjustment. Component One would still result in a forecasting adjustment to reflect a declining market up to the expected normal marketing time.

## **Conclusion**

With proper disclosure, appraisers can comply with these instructions without violating Worldwide ERC Guidelines, USPAP and state license law.

## **Recommendations**

**Appraiser:** To properly disclose, the appraiser must clearly state the deviation from Worldwide ERC Guidelines. RAC recommends this disclosure be discussed and detailed: Page 4, Analyze Historic Trends and Current Factors section; Page 4, Reconciliation of Market Trends Analysis; Page 5, within the Sales Comparison grid; Page 5, Reconciliation of Sales Comparison Analysis; Page 5, Analyze Additional Factors Considered in arriving at "Anticipated Sales Price".

In cases such where a client requests consideration of "Anticipated Sale Price" utilizing a marketing period other than "reasonable marketing time not to exceed 120 days", it may be prudent for the appraiser to provide a dual valuation scenario outlining both an "Anticipated Sales Price" for the client deviation and the Worldwide ERC "reasonable marketing time not to exceed 120 days". RAC recommends providing the Worldwide ERC "reasonable marketing time not to exceed 120 days" value on Page 5, Reconciliation of Sales Comparison Analysis and also on Page 5, Analyze Additional Factors Considered in arriving at "Anticipated Sales Price".

The rationale for this recommendation is to provide the client additional information and to assist the appraiser in performance evaluation.

**Client:** From a compliance standpoint, appraisers may complete the assignment that deviates from Worldwide ERC marketing time guidelines. The appraiser must complete the assignment with proper disclosure and if dual valuations are provided, the client should not direct the appraiser to remove the supplementary value.

## **Comment:**

A recent trend has developed where the appraiser is asked to consider the impact of initial overpricing by the employee. Under item #4 in the Worldwide ERC definition of "Anticipated Sale Price", it is stipulated that "The analysis assumes an adequate effort to market the subject property." The word "adequate" is understood to include marketing at an asking price that is in appropriate proportion to the value of the home. The appraiser must assume proper pricing will take place after the valuation process has been completed. The marketing of the property is out of the control of the appraiser and it unreasonable to ask the appraiser to evaluate the likelihood of getting an appropriate price reduction if necessary. That is the client's responsibility.

## **Issue: Do Not Use Foreclosure/REO Properties**

### **Background and Discussion**

Increasingly, appraisers are receiving appraisal orders that prohibit the use of foreclosure/REO (real estate owned) properties for comparison. This practice is typically utilized as a manner to recognize the sacrifice an employee makes in accepting a move during declining market conditions, in an effort to not penalize the employee. This creates three inherent problems: Worldwide ERC Guidelines and the Uniform Standards of Professional Appraisal Practice (USPAP) compliance and potential employee enrichment.

### **Worldwide ERC and USPAP compliance**

As stated and discussed in the ERC "Relocation Appraisal Guide – 2001", page 128, Appendix A, foreclosure/REO properties may become the market. In this instance they are necessary to develop a credible opinion of the "Anticipated Sales Price" of the subject property. The appraiser alone analyzes the impact and relevance of foreclosure/REO properties.

USPAP is the basis for all appraisal licensing laws. Among other things, USPAP requires appraisals to be **credible** and they are **not to be misleading**. A credible relocation appraisal cannot result from a report that does not consider all relevant market data, including foreclosure/REO properties. A report which ignores relevant foreclosure/REO properties would be misleading.

It has been suggested that, under USPAP, the appraiser has the latitude to appraise the property under the "hypothetical condition" to ignore foreclosure/REO properties. USPAP defines a "hypothetical condition" as one which we know is not true, but we are assuming is true for the purpose of the appraisal. It is our professional opinion that providing a relocation appraisal without the consideration of all relevant foreclosure/REO properties with use of "hypothetical conditions" or scope modifications is not in the spirit of ethical conduct. The appraiser should not be the vehicle to provide this type of manipulation of an analysis.

### **Potential Employee Enrichment**

If company policy causes appraisals to depart from accepted standard, it may result in a directed offer. Failure to consider all relevant foreclosure/REO properties may result in an inflated "Anticipated Sales Price". This policy will in effect enrich the employee and result in a directed offer and therefore have IRS implications.

## **Conclusion**

Appraisers cannot unconditionally comply with the instructions prohibiting the use of foreclosure/REO properties without violating USPAP and state license law without taking steps to ensure compliance. Also, the ERC "The Relocation Appraisal Guide – 2001" actually encourages the use of foreclosure/REO properties when appropriate.

## **Recommendations**

**Appraiser:** RAC strongly advises the appraiser not to accept assignments that specifically prohibit the use of foreclosure/REO properties without taking steps to comply with USPAP.

**Client:** RAC'S first recommendation is that appraisal assignments not be ordered with strict "No Foreclosure/REO properties" instructions, for the reasons outlined above. If the client does strongly desire to limit the use of foreclosure properties as either comparable sales or competing offerings, RAC offers two options that would not put the appraiser in violation of their legal requirements:

1) Word the instructions as a guideline rather than a requirement. The difference between a guideline and a requirement is that a requirement **must** be followed whereas a guideline **should be** followed, at the appraiser's discretion. As an example, the instructions might state:

*"The client feels that foreclosure properties are not reliable indicators of value for an owner-occupied home and should not be used as comparables (competing offerings or comparable sales). However, if the appraiser feels that a credible appraisal cannot be produced without the use of foreclosure comparables, the appraiser can use them provided that they include an explanation as to why a credible appraisal could not have been produced without the use of these comparables."* This would leave the decision as to whether the use of foreclosure properties was necessary with the appraiser, thus avoiding USPAP issues and the possible IRS interpretation of the instructions as being intended to create tax protected employee enrichment.

2) Turn the assignment into a two-step process, the first step being a consultation wherein the appraiser researches the market to determine and quantify the extent to which foreclosure properties are present in the market and whether or not a credible appraisal of the Subject property could be completed without the use of foreclosures as comparables. The scope of work would need to be defined to insure that the client has sufficient information upon which to make their decision. The second step would be the completion of an appraisal if, based on the results of the consultation, the client wants to proceed. Appraisers are free to do such market analysis consultations to answer specific questions the client has about the market without violating any legal requirements. If the client decides to have the appraiser complete an appraisal, that assignment

would not include instructions on what data the appraiser can or cannot consider because the issue was already resolved by the consulting assignment. This two-step structure would avoid appraiser conflicts with their legal requirements and would also avoid the appearance that the client was trying to control the outcome of the appraisal in an attempt to financially benefit the employee.

Option #1 is less cumbersome and will result in a quicker completion of the report but leaves the ultimate decision as to whether to use foreclosure comparables with the appraiser. Option #2 is more cumbersome but provides the client with the ability to decide whether or not to have a full appraisal completed.

RAC would be pleased to work with any client wishing to design instructions that meet their goals while, at the same time, allowing the appraiser to provide a credible, USPAP-compliant service.

## **Issue: Appraise Property “As If Vacant”**

### **Background and Discussion**

The definition of “Anticipated Sale Price” includes the stipulation that appraisers use “As-Is” condition. Recently, clients have begun to instruct appraisers to assume that the property will be vacant during the marketing period, and to develop the “Anticipated Sales Price” based on “as if vacant”. There is some concern that this violates the “As-Is” stipulation of the “Anticipated Sales Price” definition. Obviously, if the home is vacant when appraised, this is a moot point. In this discussion, we are talking about those homes which are occupied when appraisers see them.

The ‘As Is’ reference within the definition of Uniform Standards of Professional Appraisal Practice (USPAP) actually pertains to whether the property is completed. It is meant to prohibit doing the appraisal ‘subject to’ repairs or improvements being made after the inspection.

Current unfavorable market conditions and rising overall costs have prompted clients to re-evaluate this guideline and request “as if vacant”.

### **Worldwide ERC and USPAP compliance**

USPAP is the basis for all appraisal licensing laws. Among other things, USPAP requires appraisals to be **credible** and they are **not to be misleading**. As long as the client directed “as if vacant” premise does not produce a misleading valuation, in our opinion this directive would not result in a violation of USPAP. For Worldwide ERC Guidelines, the consideration of forecasting is still applied for this scenario, albeit to a different occupancy status. Following a client directive for “as if vacant” is not a violation of USPAP and state license law.

### **Potential Employee Enrichment**

It is unlikely that this deviation would result in an advantage for the transferring employee.

### **Conclusion**

While it is not specifically addressed within Worldwide ERC Guidelines; the use of alternative occupancy status (as if vacant), does not significantly alter the definition of “Anticipated Sales Price”. With proper analysis and disclosure, appraisers can comply with these instructions without violating Worldwide ERC Guidelines, USPAP and state license law.

## **Recommendations**

**Appraiser:** To properly disclose, the appraiser must clearly state the deviation from Worldwide ERC Guidelines. RAC recommends this disclosure be discussed and detailed on Page 5, Analyze Additional Factors Considered in arriving at “Anticipated Sales Price”.

**Client:** From a compliance standpoint, appraisers may complete the assignment that requires “as if vacant”. The “as if vacant” premise may be an effective tool for users concerned about rising inventory costs.

## **Issue: Employee Appeal and Appraisal Updates**

### **Background and Discussion**

Many corporate policies allow for the employee to appeal their guaranteed home buyout offer to purchase. Typically, this involves submitting additional data to the appraisers involved in their relocation which is usually done weeks if not months after the effective dates of the appraisals. The appraisers review the information and either informs the client that no value changes are warranted or revises the appraisal. The appraisal revisions may consist of correcting factual information, using different market data *available at the time* of the report, and/or using different market data *available after the time* of the report. The appraisal revisions may or may not result in value changes. Often instructions to the appraiser state that the “Anticipated Sales Price” cannot decrease as result of an appeal. Appraisers have expressed concern that some of the current practices in regards to appeals can create violations of the Uniform Standards of Professional Appraisal Practice (USPAP). All licensed and certified appraisers are bound to comply with USPAP.

This practice is typically utilized as a manner to recognize the sacrifice an employee makes in accepting a move during declining market conditions, in an effort to not penalize the employee and to allow the employee to participate in the process. The appeal process has created questions within the relocation appraisal community, regarding USPAP compliance and potential employee enrichment.

### **Worldwide ERC Compliance**

The ERC “The Relocation Appraisal Guide – 2001” does not establish procedures, policies or recommendations for the appraisal appeal process.

The ERC Summary Appraisal Report, Page 6, Item 10, Statement of Limiting Conditions and Appraiser Certification states: “For the purpose of this appraisal, the effective date of the appraisal is contemporaneous with the date of the report.” Contemporaneous is “originating, existing, or happening during the same period of time”. For the Worldwide ERC relocation appraisal, the effective date and the inspection date are singular.

USPAP Standard 2-2(vi), “the effective date of the appraisal establishes the context of the value opinion while the date of the report indicates whether the perspective of the appraiser on the market and property as of the effective date of the appraisal was prospective, current or retrospective.”

Clearly, any data only available after that date would create a new appraisal assignment, and is not an extension of the initial assignment.

## USPAP Compliance

### **1. Correcting factual information**

Simply correcting factual information in the report does not present any USPAP issues for the appraiser.

### **2. Use of market data that was available prior to the date of the report**

When the appraiser modifies an appraised value based upon data supplied by the homeowner that was available prior to the date of the appraisal they are in effect complying with Standard 1-1b. The appraiser is ensuring that they are not omitting pertinent data from the report.

### **3. Use of market data made available only after the date of the report.**

Utilizing additional market data available only after the date of the report can constitute a USPAP issue for the appraiser. If the information to be used was not available at the time of the original appraisal it would basically require the appraiser to update the appraisal per USPAP guidelines. See USPAP Advisory Opinion - 3 (AO-3) below.

#### **A new assignment of a prior assignment (AO-3).**

Regardless of the nomenclature used, when a client seeks a more current value or analysis of a property that was the subject of a prior assignment, this is not an *extension* of that prior assignment that was already completed – it is simply a new assignment. An "assignment" is defined in USPAP as: *a valuation service provided as a consequence of an agreement between an appraiser and a client.*

The same USPAP requirements apply when appraising or analyzing a property that was the subject of a prior assignment. There are no restrictions on who the appraiser is in such a circumstance, who the client is, what length of time may have elapsed between the prior and current assignments, or whether the characteristics of the subject property are unchanged or significantly different than in the prior assignment.

### **4. Instructions prohibiting reduction of “Anticipated Sales Price”**

During the appeal process, if an appraiser is instructed that the “Anticipated Sales Price” cannot be reduced it presents a USPAP problem for the appraiser. See the Ethic Rule below.

#### **Conduct: (ETHIC RULE)**

An appraiser must perform assignments ethically and competently, in accordance with USPAP.

An appraiser must not engage in criminal conduct.

An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

An appraiser must not advocate the cause or interest of any party or issue.

An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.

### **Comment**

An individual appraiser employed by a group or organization that conducts itself in a manner that does not conform to these Standards should take steps that are appropriate under the circumstances to ensure compliance with the Standards.

Clearly an instruction prohibiting a value reduction to the appraiser violates the Ethic Rule of USPAP because that would constitute a predetermined conclusion.

### **Potential Employee Enrichment**

There may be situations where the appeal process could enrich the transferee and therefore have IRS implications.

### **Conclusion**

#### **Correcting factual information**

Simply correcting factual information in the report does not present any USPAP issues for the appraiser.

#### **Use of market data that was available prior to the date of the report**

When the appraiser modifies an appraised value based upon data supplied by the homeowner that was available prior to the date of the appraisal they are in effect complying with Standard 1-1b. The appraiser is ensuring that they are not omitting pertinent data from the report.

### **Use of market data made available only after the date of the report**

Regardless of the nomenclature used, when a client seeks a more current value or analysis of a property that was the subject of a prior assignment, this is not an *extension* of that prior assignment that was already completed – it is simply a new assignment.

### **Instructions prohibiting reduction of Anticipated Sales Price**

Clearly an instruction prohibiting a value reduction to the appraiser violates the Ethic Rule of USPAP because that would constitute a predetermined conclusion.

### **Recommendations**

**Appraiser:** There are four issues of the appeal process: as noted, correcting factual information and using data that was available prior to the date of the report are acceptable.

Use of data made available only after the date of the report is deemed a new appraisal assignment, per USPAP, “this is not an *extension* of that prior assignment that was already completed – it is simply a new assignment.” The appraiser should inform the client that this appeal is actually a new assignment, which requires a new scope of appraisal.

Clearly, an instruction prohibiting a value reduction to the appraiser violates the Ethic Rule of USPAP because that would constitute a predetermined conclusion. The appraiser must decline a request with this instruction.

**Client:** There are four issues of the appeal process: as noted, correcting factual information and using data that was available prior to the date of the report are acceptable.

For clarification, providing appeal information that was only available after the date of report does constitute a new appraisal request. RAC recommends that policy prohibits from supplying data only available after the date of inspection.

Clearly, an instruction prohibiting a value reduction to the appraiser violates the Ethic Rule of USPAP because that would constitute a predetermined conclusion and therefore this instruction should be avoided.

# **Issue: Appraiser Must Make Market Prep Adjustment**

## **Background and Discussion**

Recently, clients have begun to instruct appraisers to make a "market prep" adjustment. Per the instructions, the "market prep" adjustment is applied to consider the subject vacant for marketing, and is different from appeal and condition. This would include items like patching up nail holes in wall, cleaning carpet, fixtures, etc - anything necessary to "stage" the home for showing. Furthermore, it states that it should be a dollar for dollar adjustment and NOT contributory value.

There is some concern that this adjustment is a repetitive adjustment and double penalizes the homeowner.

Current unfavorable market conditions and rising overall costs have prompted clients to add this instruction in an attempt to facilitate more accurate values. It truly appears to be a reaction to the appraiser community not meeting client expectations.

## **Worldwide ERC and USPAP compliance**

The Uniform Standards of Professional Appraisal Practice (USPAP) is the basis for all appraisal licensing laws. The main area of concern for appraisers here would be Standards Rule 1-1.

Standards Rule 1-1 In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

Comment: This Standards Rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Important changes in the cost and manner of constructing and marketing commercial, industrial, and residential real estate as well as changes in the legal framework in which real property rights and interests are created, conveyed, and mortgaged have resulted in corresponding changes in appraisal theory and practice. Social change has also had an effect on appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason, it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.

- (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and

Comment: An appraiser must use sufficient care to avoid errors that would significantly affect his or her opinions and conclusions. Diligence is required to identify and analyze the factors, conditions, data, and other information that would have a significant effect on the credibility of the assignment results.

- (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

Comment: Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care.

Specifically, the appraiser must take care that adjustments are market derived and appropriate. In addition, the appraiser should take care to properly allocate the impact of influences. Adjustments for condition and appeal/décor that have been considered and adjusted will account for any deficiencies in the subject compared to the comparables. These adjustments should theoretically account for items that are necessary to bring the subject into a condition that will maximize its marketability, subject to the market conditions at any given time. A separate adjustment would be double penalizing the property.

In addition, Worldwide ERC Guideline #1 clearly states that: Adjustments must be “made to reflect the reactions from a typical buyer’s point of view”.

### **Potential Employee Enrichment**

It is unlikely that this deviation would result in an advantage for the transferring employee.

### **Conclusion**

Appraisers cannot comply with the instructions to make a separate Market Prep adjustment without violating USPAP and state license law as any need for improvements or repairs should already be accounted for in the condition and/or appeal/décor adjustments.

### **Recommendations**

**Appraiser:** Appraisers should take care not to "double dip" on these types of adjustments. If the appraiser feels they have adequately adjusted for condition and appeal/décor, no separate "market prep" adjustment should be made. If the client requires an adjustment be made, it is recommended that a \$0 adjustment be used.

Appraisers should take extra care with condition and appeal/décor adjustments in depressed marketplaces, as they tend to have a greater influence in such a market less tolerant of imperfections.

**Client:** RAC strongly advises that this instruction not be made as the instruction cannot be ethically accepted by an appraiser. Any such consideration for adjustments outside the scope of the appraisal should be handled separately by corporate policy and in no way be part of the appraisal process.

In addition, after the property is sold, the client should provide feedback to the appraiser on the actual costs to get a property in marketable condition on all their assignments. This information will allow the appraiser to better estimate the impact of décor and condition issues in current market conditions.

## **Issue: Use of the ERC Condo Addendum**

### **Background and Discussion**

Recently, clients have begun to instruct appraisers to use the 1987 ERC Condo Addendum for ERC assignments involving condominiums.

It appears that current unfavorable market conditions and rising overall costs have prompted clients to add this instruction in an attempt to facilitate more accurate values.

### **Worldwide ERC and USPAP compliance**

There is nothing specifically in Uniform Standards of Professional Appraisal Practice (USPAP) that would prohibit the appraiser from completing this instruction. It is however up to the appraiser to determine what data is germane to the appraisal assignment reporting. The consensus of the authors of the White Paper is that the information in the Condo Addendum is not relevant to an ERC assignment which is why Worldwide ERC abandoned the form years ago.

### **Potential Employee Enrichment**

It is unlikely that this deviation would result in an advantage for the transferring employee.

### **Conclusion**

Appraisers can comply with the instructions to provide the 1987 ERC Condo Addendum without violating USPAP and state license law; however it is left at the appraiser's discretion to determine if the form is relevant to the assignment.

### **Recommendations**

**Appraiser:** Appraisers should determine whether the form is relevant to the assignment. RAC recommends not completing the Condo Addendum as it has not been supported by Worldwide ERC for years and the data within would not likely impact the "Anticipated Sales Price" of the property.

**Client:** RAC advises that clients abandon this instruction and focus on more meaningful data. The client should respect the appraiser's judgment in determining whether or not to provide the Condo Addendum when requested.

## This chart serves as the summary page of RAC's White Paper

A complete review of the White Paper is necessary to fully understand the issues, conclusions, and recommendations within.

<b>RAC White Paper Summary Page</b>			
Issue	Conclusion	Recommendations	
		Appraiser	Client
<b>Do not make market change analysis/adjustments</b>	Appraisers have USPAP compliance issues	Do not accept assignments	Do not utilize this instruction
<b>Do not forecast</b>	Appraisers have USPAP compliance issues	Do not unconditionally accept assignments, utilize alternative methodology described in White Paper	Do not order appraisals without forecasting, be aware of the limitation of this instruction in meeting the needs for an accurate relocation appraisal
<b>Client directed marketing times</b>	No compliance issues	Provide proper disclosures	This instruction is an acceptable tool to manage your relocation program
<b>Do not use foreclosure properties</b>	Appraisers have USPAP compliance issues	Do not unconditionally accept assignments or use a staged assignment approach	Do not utilize this instruction or accept a staged assignment approach
<b>Appraise property "as if vacant"</b>	No compliance issues	Provide proper disclosures	This instruction is an acceptable tool to manage your relocation program
<b>Appeal Instructions - Correct factual data</b>	No compliance issues	No compliance issues	No compliance issues
<b>Appeal Instructions - Use of data available prior the date of report</b>	No compliance issues	No compliance issues	No compliance issues
<b>Appeal Instructions - Use of data available after the date of report</b>	Appraisers have USPAP compliance issues	Should complete a new assignment or decline	Do not allow data available after the date of appraisal or be prepared to pay for a new assignment
<b>Appeal Instructions - Value cannot go down</b>	Appraisers have USPAP compliance issues	Do not accept assignments	Do not utilize this instruction
<b>Appraiser Must Make Market Prep Adjustment</b>	Appraisers have USPAP compliance issues	Appraiser should not make separate Market Prep adjustment	Do not utilize this instruction. Any consideration of this concept should be done outside of the appraisal process.
<b>Use of the ERC Condo Addendum</b>	Appraiser to determine relevance to appraisal	Appraiser should determine whether to include	Client should avoid use of form as it is no longer supported by Worldwide ERC and of limited value