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 **Late Appraisals: USPAP Violation?**

By Isaac Peck, Editor

In a move that outraged many Oregon appraisers last Sept., the Oregon Appraisal Board warned its appraisers via email that failing to submit an appraisal on time “can be” considered a violation of USPAP.  According to many, this is a very creative interpretation of the Uniform Standards of Professional Appraisal Practice (USPAP)!  The controversy has been simmering ever since until the AQB recently issued an FAQ on the subject, settling the matter once and for all.

In an email to all licensed appraisers in Oregon, Gae Lynn Cooper, the Administrator for the Oregon Board, writes that the Board “has been receiving an increasing number of calls regarding ‘past due’ appraisal reports.” Lynn’s email stresses that an appraiser should communicate with the client if there are unforeseen circumstances that prevent a timely submission of the report and adds that “accepting an assignment is also accepting the associated assignment conditions.  Failing to adhere to the assignment condition can be an actionable violation of USPAP and Oregon Statute.”

When an appraiser questioned Cooper how missing a due date could be a violation of USPAP, Larry Noe, an Investigator of Appraisal Compliance for the Oregon Board, responded in an email that, “A due date is an assignment condition and as such it is the appraiser’s responsibility under the Scope of Work Rule (Problem Identification) to comply with all assignment conditions.  In some cases (rare cases) it could be an Ethics violation (see line 249 on page U-7 in USPAP).  Also, ORS 674.140(13)(a) involves actions that constitute ‘bad faith’.”

The Board’s email announcement understandably inspired a great deal of controversy among Oregon appraisers.  It also inspired a response from Scott Dibiasio, Manager of State and Industry Affairs at the Appraisal Institute.  In an email to the Board, Dibiasio eloquently disagrees with the Board’s position and argues that there is nothing in USPAP that says that a violation of an assignment condition is a violation of USPAP.  “What USPAP says is that accepting an assignment condition that precludes an appraiser’s impartiality, limits the scope of work so that the assignment results aren’t credible, or limits the content of a report so that it’s misleading, is unacceptable. (Scope of Work Rule, U-14, Lines 441-442)   By accepting, and not meeting, an agreed upon ‘Due Date’ an appraiser has not automatically done anything that would compromise their impartiality, the credibility of the assignment results, or limit the content of a report to such an extent that it is misleading,” writes DiBiasio.

In other words, DiBaisio explains, “If an appraiser misses a ‘Due Date’ but maintains impartiality, produces credible assignment results, and does not limit the content of the report to the point that it is misleading, then no violation of USPAP has occurred.”

Dibasio goes on to disagree with the Board’s interpretation that missing a “Due Date” means that the appraiser has performed that assignment in a “grossly negligent manner.”  “Missing a ‘Due Date’ does not have any direct impact on the credibility of the assignment results,” Dibiasio argues.

Dibiasio also takes issue with the idea that a late appraisal submission constitutes “an act or conduct…that constitutes or demonstrates bad faith, incompetency, or untrustworthiness, or dishonest, fraudulent or improper dealings.” Dibiasio points out that the second part of 674.140(13) from Oregon law states that an act must be “substantially related to the fitness of the applicant or holder of a certification, license or registration to conduct real estate appraisal activity” in order for a violation of the statute to have occurred.  “We do not believe that missing a due date in any way impacts the ‘fitness of the applicant or holder…to conduct real estate appraisal activity’ which is defined in Oregon State Legislature 674.100(1)(b) as the ‘preparation, completion, or issuance of an opinion as to the value of real property or an interest in real property.’” writes Dibasio.

While granting that missing a “Due Date” may be “a contract issue and a poor business decision,” Dibiasio maintains that “It is in no way substantially related to the ability of an appraiser to prepare, complete or issue a credible appraisal.”

**Appraisal Foundation Weighs In**

When the controversy first arose, the Appraisal Institute requested that the Appraisal Standards Board (ASB) of The Appraisal Foundation (TAF) issue a “Frequently Asked Question” to clarify whether missing a due date is a violation of USPAP.

Nearly five months later, on February 10, TAF finally issued a FAQ inspired by and addressing this very issue. Settling the debate once and for all, the FAQ states unequivocally that missing a due date is not a violation of USPAP.

FAQ 2016-08: Is Turnaround Time an Assignment Condition?:
Question: My state’s appraiser regulatory agency sent out a newsletter that says a due date is an

*assignment condition*, and that failing to adhere is a violation of USPAP. Is this true?

Response:

Assignment due dates are contractual obligations, but are not assignment conditions under

USPAP. Turnaround times and similar items are business practice issues, and are outside

the scope of USPAP.

Assignment conditions are addressed in the Problem Identification section of the SCOPE

OF WORK RULE (Lines 421-425). The Rule states in part:

*Assignment conditions include assumptions, extraordinary assumptions,*

*hypothetical conditions, laws and regulations, jurisdictional exceptions, and other*

*conditions that affect the scope of work. Laws include constitutions, legislative and*

*court-made law, administrative rules, and ordinances. Regulations include rules*

*or order, having legal force, issued by an administrative agency.*

However, an appraiser failing to comply with contractual obligations could potentially be

subject to civil penalties.

**Public Trust**In an interview with Working RE, James Baumberger,  Chair of the Oregon Appraiser Board, offers some context to help appraisers understand what led to the Board’s email warning about due dates and USPAP. Baumberger was quick to note that he is speaking only for himself, and his comments do not necessarily reflect the opinion or stance of the Board.

Baumberger explains that when the email was sent Oregon was one of a few states where there was a very strong demand for appraisal services. “Over the summer of 2015, turn times on appraisals were getting extended and appraisal fees were going up rapidly.  Much of what occurred was simply supply and demand and that’s not an issue that the Board is concerned with,” Baumberger said.  “However, a trend began where appraisers would take assignments, agree to the due date, and not deliver an appraisal. The real problem is that some appraisers were going dark and not answering their phones, nor responding to emails, and not updating websites/portals. So there were a lot of sales transactions where people were being negatively affected,” says Baumberger.

Before sending out the email warning, Baumberger reports that the Board checked with as many as 11 other state appraisal boards, to ask if they thought this might be a violation. To Baumberger’s knowledge, only a couple of the boards thought that it was not a USPAP violation, so there was consensus that it might be a violation.

The increase in the number of complaints and the number of people affected by the delays and the lack of communication caused the Board to begin to view the problem as one which was negatively affecting the public trust. “While I’m not authorized to speak for the Board, I can tell you that an important part of the Board’s vision in Oregon is to protect the public trust.  When the public has negative impressions of real estate appraisers, when the public begins to view appraisers as unprofessional and unreliable, then the public trust in the appraisal function begins to erode and that negatively affects financial institutions, credit systems and the countless families involved,” argues Baumberger.

**Under Pressure**The pressure on the Board from lenders, AMCs, home buyers, and even state and federal legislators continued to intensify as a backlog of appraisals were delaying closings around the state. “Lenders and AMCs were up in arms and we received calls from families who were living in hotels with their possessions in a moving truck because they were waiting for an appraisal and the closing date had been missed,” Baumberger said.  “The Board also was contacted by several state legislators, and one federal legislator, who were hearing from their constituents that it was difficult to impossible to get an appraisal and that people could not buy and sell homes because a minority of appraisers were being unprofessional,” says Baumberger.

When pressed on whether missing a due date is, in fact, a USPAP violation, Baumberger leaves that question open. “It’s unknown whether an appraiser being late and becoming unresponsive is a violation of USPAP.  There are many people who think it is not covered in USPAP.  The letter was tentative in is wording, saying that being late on an assignment, and then not communicating with your client, might be a violation. The letter did not say that it WAS a violation or that there would be disciplinary actions,” says Baumberger. “We do not know definitively that it is a violation.  We do not know if it would stand up in an administrative law hearing, or in court.”

**Communication**

The most important aspect to the Oregon Board’s email warning, according to Baumberger, is to stress that communicating with the client is absolutely key for appraisers and that failing to do so has very real effects not only on people’s lives, but also on the public’s perception of the appraisal profession as a whole. “The Board’s email was an attempt to encourage appraisers to communicate with clients. It was very important that the Board issue some kind of notice because there were many families adversely affected. Nobody is faulting the appraiser if the agent/broker wants to delay the inspection, or the seller misses an inspection appointment. It’s our genuine hope that most appraisers are shaking their heads because they already run their businesses like professionals, and hopefully those appraisers who have been unprofessional will take it as a warning. It doesn’t help any appraiser if the public has a negative view of appraisers. All the Board and the public need is for appraisers to communicate with their clients,” says Baumberger.

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 **About the Author**
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