

Client Pressure Definition Revisited

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I fear I'm becoming a broken record when it comes to the topic of inappropriate client pressure on appraisers. What brought me to this harsh self-assessment was my realization last week at the 2008 TAVMA Conference & Exposition that I've been saying the same thing for over 6 years now. That is, that the starting point for fixing the client pressure problem is to agree on a clear definition of just what constitutes inappropriate behavior on the part of a client. I want a clear definition but I'm finding that client pressure, like beauty, is in the eyes of the beholder.

It doesn't need to be this way, particularly in an industry like appraisal, where definitions underlay virtually every economic principle and standard of practice. USPAP, the Uniform Standards of Professional Appraisal Practice, devotes a whole section to definitions, as do the major appraisal trades. But when it comes to defining client pressure the collective 'we' tend to describe client pressure in descriptive or experiential terms rather than definitional terms.

Depending on the source client pressure can be as brazen as faxing a letter threatening banishment to a blacklist if the appraiser fails to reach a certain value conclusion, or as subtle as asking the appraiser to carry a cell phone, as one attendee at the 2004 TAVMA conference complained. No kidding. She was intimidated by a client that insisted that its vendors carry a cell phone. Are we approaching the point where using text messaging to place orders and get status updates is interpreted as inappropriate pressure? Maybe so. Some appraisers and course instructors have suggested that any conversation between a client and appraiser is inappropriate. Putting aside our First Amendment right to free speech, and the economic need to communicate with our clients, the very thought of barring any communication between vendor and client illustrates how far we've come and how necessary it is that we agree on meaningful pressure language.

Some states are taking up the matter but with mixed results. More than a dozen states have enacted new laws, and all the federal banking regulators have issued specific guidelines to address appraiser independence. The trouble is that too often these laws and regulations use terms like intimidate to describe inappropriate client pressure on appraisers. I'm not suggesting that intimidation is a fine and upstanding act of civility. What I am saying is that the use of nebulous terms to define inappropriate client pressure does not make for sound prosecutorial justice. What we need are clearly defined terms based in law. TAVMA suggests these: bribery, coercion, collusion, and extortion. Here's why.

It's all in the definition.

Birk and Birk (1949) said that brief definition of terms which a reader may not know is vital to clear communication. In the law profession, Black's Law Dictionary is the recognized source to find definitions of all things legal. Black's offers the following definitions of bribery, coercion, collusion, and extortion, TAVMA's suggested terms for describing inappropriate client pressure:

Bribery, n. The corrupt payment, receipt, or solicitation of a private favor for official action. Bribery is a felony in most jurisdictions.

Commercial bribery. 1. The knowing solicitation or acceptance of a benefit in exchange for violating an oath of fidelity, such as that owed by an employee, partner, trustee, or attorney... . 2. A supposedly disinterested appraiser's acceptance of a benefit that influences the appraisal of goods or services (emphasis added; irony savored). 3. Corrupt dealing with the agents or employees of prospective buyers to secure an advantage over business competitors.

Coercion, n. 1. Compulsion by physical force or threat of physical force. An act such as signing a will is not legally valid if done under coercion...

Commercial coercion. Coercion intended to restrict another's freedom of action by: (1) threatening to commit a criminal act against that person; (2) threatening to accuse that person of having committed a criminal act; (3) threatening to expose a secret that either would subject the victim to hatred, contempt, or ridicule or would impair the victim's credit or goodwill; or (4) taking or withholding official action or causing an official to take or withhold action.

2) Conduct that constitutes the improper use of economic power to compel another to submit to the wishes of one who wields it. - Also called economic coercion.

Collusion, n. 1. An agreement to defraud another or to do or obtain something forbidden by law....

Extortion, n. 1. The offense committed by a public official who illegally obtains property under the color of office; esp., an official's collection of an unlawful fee. 2. The act or practice of obtaining something or compelling some action by illegal means, as by force or coercion.

Re-reading these definitions with client pressure in mind makes it clear that a case can be made for enacting appraiser independence laws using legally defined terms like bribery, coercion, collusion, and extortion. They pretty much cover the usual ways in which brokers, borrowers, buyers, sellers, realtors and others try to get appraisers to hit predetermined value conclusions.

Things people say to get their way.

We've all heard stories about the things clients say to coach appraisers before placing assignments or convince them to bump a value that comes in low. Here are just a few of the many variations of the bribery, coercion, collusion, and extortion theme that I've heard of over the years:

- I need you to come in at \$150,000 or I can't make my deal. If you don't come in at that amount I will lose the deal and you will not be paid.
- If you don't hit the value I'll cut you off and put you on the bank's blacklist (the do-not-use list). I'll also tell others that you are a bad appraiser and ruin you in this town.
- I'll throw in an extra \$50 if you stretch the value to meet the highest possible range in the neighborhood.
- There's plenty more work where that came from... if you help me out by raising the value of this one by X.
- If we can arrange for properties in this phase to come in it will set the market for subsequent sales. You'll get all of the work in this neighborhood if you give me your 'best' appraisal value.
- And so on.

TAVMA is making headway.

A growing number of states have incorporated TAVMA's language into appraiser legislation over the last few years. Arkansas, California, North Carolina, among others, and the proposed federal predatory lending act (Kanjorski bill) all utilize the bribe, coerce, collude, extort theme. Others use one or some of these terms, often in the same sentence as less clear terms like intimidate. But we need more than just the dozen or so states that have already incorporated our language into law to step forward to tackle client pressure.

Some bright minds in our industry have suggested that the terms we're advocating for are already embedded in the laws of the states and the federal government. Thus it may not even be necessary to pass new or amend existing statutes and regulations to prosecute parties to the transaction that pressure appraisers. This however, is another argument for another day. For now, I'll take comfort in knowing that the Birks were right in pointing out the vital link between brief definition of terms and clear communication.

Resources

1. [TAVMA's Position on Client Pressure](#)
2. Birk, Newman B. and Genevieve B. Birk. Understanding and Using English. The Odyssey Press: New York, 1949 (p. 201).