

IllinoisAppraiser

What Everyone Needs to Know—Now!

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In **Illinois**, licensed professionals have a *responsibility* to pay close attention to two things:

- **The Act**
- **Administrative Rules**

Where the **Act** is essentially the *big picture*. The **Rules** are the *details*.

An easy example is where the **Act** tells you that you *need to pay* a renewal fee. The **Rules** tell you *how much* the fee will be.

Back on **December 23, 2009**, Governor Quinn signed into law the amended **Real Estate Appraisal Act of 2002**. In that revision, certain new sections were added.

On **January 20, 2011**, the updated **Administrative Rules** became effective.

The reasons as to why the **Act** and **Rules** weren't approved concurrently are too complicated and boring to go into here. Suffice it to say that they'll probably never sync up any better than an old Milli Vanilli concert. That's just the way it is.

Since the new **Rules** were...*unleashed*, there's been considerable consternation and misunderstanding as to their

meaning and why they were crafted the way in which they were.

The **February 8, 2011** Appraisal board meeting served as a way for your board and the department to discuss what to do next about implementation.

This issue of the newsletter is a keeper. What I mean is that you should print this out and share it with your colleagues, mentors, trainees, office staff, and AMC clients.

When laws are passed in any state regarding licensure, it is the sole responsibility of the licensee to be aware of and understand their meaning.

This issue of the *Illinois-Appraiser* will not only address the relevant statute changes but will provide *examples* of compliance and provide a timeline for implementation.

Aside from **USPAP**, this is what you *must* know and understand.

Fannie guidelines, underwriter stipps, and specific client assignment conditions are at the bottom of the totem pole compared to state law and rules.

If you understand nothing else, you must understand *this*.



Client—Defined

CLIENT (USPAP): the party or parties who engage an appraiser (*by employment or contract*) in a specific assignment.

Comment: The client identified by the appraiser in an appraisal, appraisal review, or appraisal consulting assignment (*or in the assignment work-file*) is the party or parties with whom the appraiser has an appraiser-client relationship in the related assignment, and may be an individual, group, or entity.

The **Administrative Code** for real estate appraisers contains 44 sections. Precious little of it actually affects the activities of a licensee on a *day-to-day* basis.

Let's examine the stuff you *really* need to grasp so that you can go on with your assignments.

In order to understand anything in a statute, you first must turn to the Definitions. This is the heart of a statute.



How does **USPAP** define *client*?

Examine the definition in the green box to the left. The **Act** has contains the identical definition.

Our new Administrative Rules now have the following:

"**Client**" means the party or parties who engage an appraiser, by employment or contract, in a specific assignment. If an appraisal management company is the party engaging the appraiser, the appraisal management company is considered the client.

The underscored portion is new. It *only* applies to orders that you receive from an AMC. Any AMC.

So, if **CoreLogic**, **RELS**, **LSI** or any other entity that represents themselves as an **AMC** sends you an assignment...then *they* are the client.

Simple enough.

Q: I have AMCs who don't want to appear on the report as the client. They insist that the lender and *only* the lender appear as the client. How do I comply with state law and the assignment condition?

A: State laws *always* trump an assignment condition. **USPAP** defines this trumping under the **Jurisdictional Exception Rule**. Under this rule **USPAP** includes the following comment;

Law includes constitutions, legislative and court-made law, and administrative rules and ordinances. Regulations include rules or orders having legal force, issued by an administrative agency. Instructions from a client or attorney do not establish a jurisdictional exception.

This should seal your understanding of the state's authority.

What else does the **JE Rule** say about compliance?

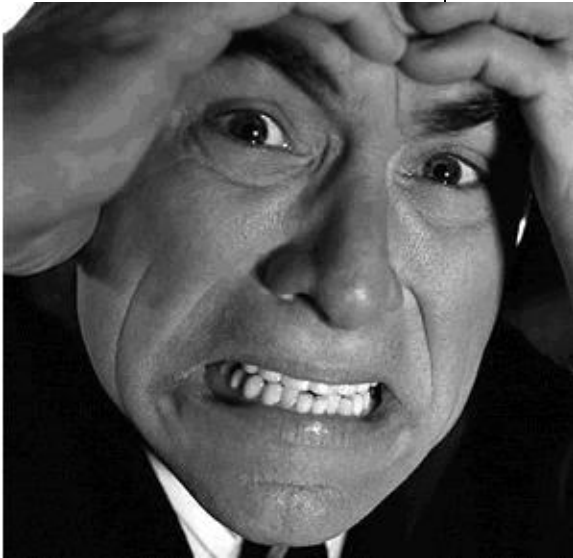
*In an assignment involving a jurisdictional exception, an appraiser **must**:*

1. identify the law or regulation that precludes compliance with USPAP;
2. comply with that law or regulation;
3. clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation; and
4. cite in the report the law or regulation requiring this exception to USPAP compliance.

We'll get to specific language next.

Remember the Findings?

Back in March 2009 the **Illinois Real Estate Appraiser Administration and Disciplinary Board** released a series of *findings*. A couple of these findings became the backbone for the **Administrative Rule Section 1455.250—Grounds for Discipline**:



(a) An appraiser shall identify an **appraisal management company** as the client if the **appraisal management company** is engaging the appraiser. If an **appraisal management company** is acting as an *authorized agent* for a **financial institution**, the appraiser shall identify the **financial institution** as the *additional intended user*.

Items 1 & 2 below (a) serve as explanations, *not* directives.

(b) If a **financial institution** is identified as an additional intended user, the appraiser *shall* ascertain the relationship between the *client/authorized agent* and the **financial institution** by doing **one** of the following:

1) obtain a copy of the agreement between the client/authorized agent and the financial institution. This agreement shall set out the responsibilities and authority of the authorized agent.

2) obtain a *letter* written by the client/authorized agent in which the agent sets forth its level of responsibility and authority. If the client/authorized agent cannot provide the appraiser with documentation identifying them as a duly authorized agent for the fi-

ancial institution, a statement must be included in the appraisal indicating that the report may not comply with the **Interagency Appraisal and Evaluation Guidelines**, adopted **October 27, 1994** by the federal Office of the Controller of Currency (OCC), Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC) and federal Office of Thrift Supervision (OTS).

3) directly communicate with the financial institution to determine the scope of the appraisal assignment.

(c) When an appraisal management company engages an appraiser by employment or contract for a specific assignment, the appraiser **shall** prominently display the appraisal fee received from the appraisal management company in the **certification** as follows:

"The compensation for this appraisal assignment is \$_____."

What It Means—

Let's understand that while the majority of **AMCs** order *residential* assignments, there are also some that order commercial and agricultural assignments.

This law affects every appraiser doing work for *any AMC*.

Item (a) is self-explanatory. We already covered the meaning of *client* on page two of this newsletter.

(Continued on page 4)

Remember the Findings?

(Continued from page 3)

Authorized Agent—

In the *Fifth* Exposure Draft for proposed changes to the 2012-2013 USPAP, released on February 11, 2011, the ASB proposed a new definition of *client*:

CLIENT: the party or parties who engage, (by employment or contract), an appraiser in a specific assignment.

Comment: The client may be an individual, group, or entity, and may engage and communicate with the appraiser directly or through an agent.

Their reasoning was this:

“In FAQ 95 in the 2010-11 edition of USPAP, as well as in a Q&A published in November 2009, the ASB provided

guidance related to the identification of the *client* in assignments where the appraiser is engaged through an appraisal management company (AMC). In order to further clarify the proper application of the term *client*, and to facilitate in the proper identification of the *client* in assignments, the Board is proposing to make a minor edit to the definition of *client* and an edit to the

Comment to that definition. The responses to the revisions proposed in the Fourth Exposure Draft were generally favorable, but there are some respondents who are concerned that the term “agent” may now need to be defined and some who believe that the AMC should always be the client when they order an appraisal.

Absent a USPAP definition, terms used in USPAP are assumed to take their common English definition. Because the laws of agency vary from state to state, the ASB is concerned that attempting to define agent in USPAP might create more problems than it solves.

Although some want the AMC to be the client in all cases, there was not sufficient rationale provided to support that position.

The definition proposed in the Fifth Exposure Draft is unchanged from what was presented in the Fourth Exposure draft.”

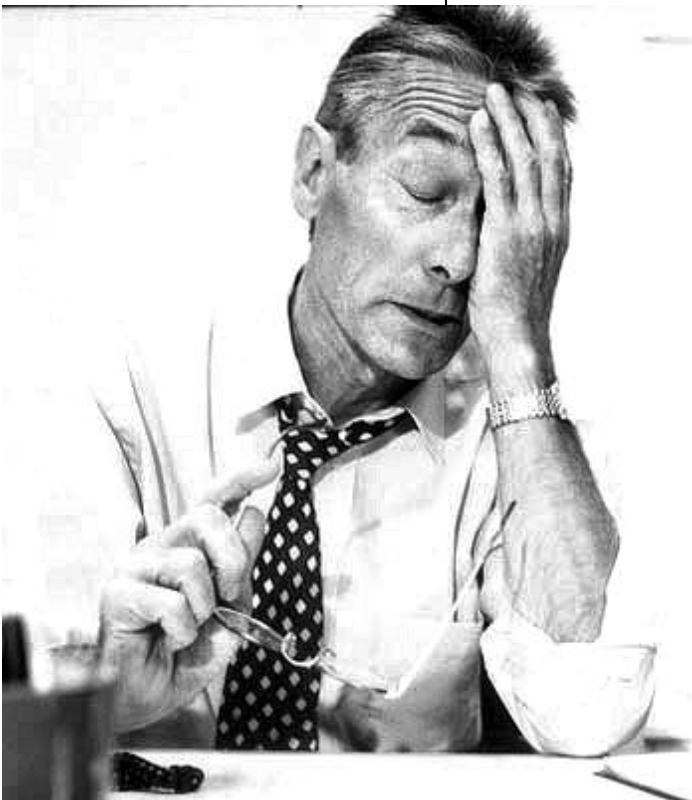
Apparently, the ASB no longer believes in their own definition of *client*.

Great. Thanks. That was a big help.

Even if the proposed definition stands, this still leaves us with the task of figuring out if the AMC is the legitimate agent of a financial institution, doesn't it?

As a licensed Illinois appraiser, you'll need to identify the AMC as the *client* and identify the lender as an *additional intended user*.

(Continued on page 5)



Remember the Findings?

(Continued from page 4)

Because Illinois operates under the previously discussed **Jurisdictional Exception Rule**, you'll need to disclose this **JE** specifically in your report by writing something along the lines of:

In accordance with Illinois Administrative Rule Section 1455.250 I am identifying the client as (XYZ AMC) and (ZYX Bank) as an additional intended user.

Q: When do I start doing this?

A: Immediately.

Ascertaining the Relationship:

Item (b) in the Rules explains that it is *your* responsibility (as the appraiser) to understand the relationship between the lender and the AMC.

Q: That's not fair. Why should I have to figure out what the relationship is between these entities?

A: As was pointed out in the **Illinois Appraisal Board's Finding 2**, the federal financial regulatory system has *never* defined the relationship between a financial institution and its agent.

Even the most recent **Interagency Guidelines** that were released in December of 2010 state the following:

Agent – The Agencies' appraisal regulations do not specifically define the term —agent. *However, the term is generally intended to refer to one who undertakes to transact business or to manage business affairs for another.* According to the Agencies' appraisal regulations, fee appraisers must be engaged directly by

the federally regulated institution or its agent, and have no *direct* or *indirect* interest, financial or otherwise, in the property or the transactions. The Agencies do not limit the arrangements that federally regulated institutions have with their agents, provided those arrangements do not place the agent in a conflict of interest that prevents the agent from representing the interests of the federally regulated institution.



So, the **ASB's** existing as well as *proposed* definition is wanting. The definition offered by the federal financial regulatory system is at best, vague.

So why is the appraiser left to *gather* and *analyze* this?

Under the **Scope of Work Rule** within **USPAP**... "An appraiser must *gather* and *analyze* information about those assignment elements that are necessary to properly identify the appraisal, appraisal review or appraisal consulting problem to be solved."

(Continued on page 6)



Remember the Findings?



(Continued from page 5)

The Rules allow for compliance *options*.

Option 1—

The odds of an AMC actually producing a proprietary agreement between themselves and *their* client/lenders are remote at best. Some *might*. Most just won't.

Option 2—

This is most likely what you *should* be able to receive from your AMC clients. Let's take a look at what that might look like—language-wise.

Authorization—

Your AMC clients can make this easy by sending you a dated missive on their letterhead or order sheet that addresses:

- *That they have a contract with their client.*
- *That they address the specific Scope of Work for each assignment.*
- *That each client has clearly and definitively detailed their assignment conditions to the AMC.*
- *That the AMC is authorized to serve as the client's agent with regard to assigning and screening real estate appraisal assignments.*

Q: What if my AMC client refuses to produce such a document?

A: Should any of your reports become the subject of a complaint or are requested by the department and you *cannot* produce such an authorization for IDFP, you will be subject to disci-

pline. If you think that this is unfair, remember that the Appraisal Board must also comply with these rules.

Q: If my AMC client does not provide the authorization, am I still obligated to place a comment in my appraisal about how the appraisal report may not comply with the Interagency Appraisal and Evaluation Guidelines as adopted October 27, 1994?

A: **No.** New Interagency Appraisal and Evaluation Guidelines were just adopted in December of 2010. At the time that the **Administrative Rules** were submitted, the most recent guidelines had not been adopted. It's the way it goes.

Option 3—

Again, unlikely but entirely possible depending upon the size of the AMC that is your client.



Fee Disclosure—

Finally, Item (c) not only instructs you to report the fee that you receive from the AMC but provides compliance language.

(c) When an appraisal management

(Continued on page 7)

Remember the Findings?

Pat Quinn, Governor

**Brent E. Adams,
Secretary**

**Donald W. Seasock
Acting Division Director**

**Division of
Professional Regulation
Illinois Department of
Financial and
Professional Regulation**

*Division of
Professional Regulation*
100 West Randolph Street
9th Floor
Appraisal Unit
Chicago, Illinois 60601
Phone: 312/793-6608
Fax: 312/793-8720

Appraisal Board

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Brian Weaver, Coordinator
Editor of IllinoisAppraiser
Luisa Rivera, Admin Assistant
Mary Bates, Board Liaison

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company engages an appraiser by employment or contract for a specific assignment, the appraiser **shall** prominently display the appraisal fee received from the appraisal management company in the **certification** as follows:

"The compensation for this appraisal assignment is \$_____."

If an **AMC** receives \$375 for an appraisal report, the **HUD 1** will *typically* reflect *only* an appraisal fee of \$375. However, the panel appraiser might only receive \$200 out of that. To the borrower it appears as though the appraiser collected *all* of the \$375. The **AMC** may never even appear on the **HUD 1** by name.

It'll be up to the consumer to figure out to where the \$175 disappeared.

We've had **AMCs** tell us that their *staff appraisers* can't possibly comply with this because they don't receive any portion of an appraisal fee.

For example, a *staff* appraiser who is an employee of **Landsafe** can certainly place **\$0** on that line. The \$375 fee will *still* appear on the **HUD 1** which will prompt *more* questions by the borrower as to why they were charged an appraisal fee when the appraiser reported that they received no compensation at all.

How *any* **AMC** explains this to the borrower isn't the state's concern. It might be a good idea for them to explain the staff employee relationship somewhere in the addendum

but that's totally up to them.

If calls come to us, we will refer them right back to the **AMC**.

Q: The rules became effective on January 20, 2011. Will I be subject to discipline because I haven't complied already?

A: No. The February board meeting involved a discussion with the department regarding a reasonable launching date for the implementation of **1455.250 section b**.

It was agreed that the implementation date would be **May 1, 2011**. This gives everyone all of March and April to satisfy **Option 2**. That's more than enough time to get it together.

However, you'll need to start identifying the **AMC** as the *client*, immediately.

"In accordance with Illinois Administrative Rule Section 1455.250 I am identifying the client as (XYZ AMC) and (ZYX Bank) as an additional intended user."



Restricted Reports—and AMCs

Jurisdictional Exception:

In an assignment involving a jurisdictional exception, an appraiser must:

1. identify the law or regulation that precludes compliance with USPAP;
2. comply with that law or regulation;
3. clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation; and
4. cite in the report the law or regulation requiring this exception to USPAP

The new rule changes have also impacted an additional aspect of an **AMC** appraisal assignment.

The **Restricted Use Appraisal Report**.

Because the Illinois **JE** definition of *client* (as it relates to **AMCs**) specifically identifies the **AMC** as the *client*, this *may* effectively end the use of **Restricted Use Appraisal Reports**.

We can't imagine too many scenarios in which an **AMC** would order a **Restricted Use Appraisal Report** for their own use from a panel appraiser.

Let's examine **USPAP's** definition of a **Restricted Use Appraisal Report**. The **Comment** within **SR 2-2** states the following:

"When the intended users include parties other than the client, either a **Self-Contained Appraisal Report** or a **Summary Appraisal Report** must be provided. When the intended users do not include parties other than the client, a **Restricted Use Appraisal Report** may be provided."

There can be no intended users other than the client. Under Illinois Rules, this means the **AMC** and only the **AMC**.

Further into **SR 2-2** we find:

"The **Restricted Use Appraisal Report** is for *client use only*. Before entering into an agreement, the appraiser should establish with the client the situations where this type of report is to be used and should ensure that the client understands the restricted utility

of the **Restricted Use Appraisal Report**."

Also:

"A decision to use the **Restricted Use Appraisal Report** is absolute because the minimum level of information required in a **Restricted Use Appraisal Report** is **not** designed to address the needs of *any* third-party users."

It is essential that you understand the terms that have been presented and the reasons behind the formulation of the **Administrative Rules**.

Much of what was created in the rules stems from **USPAP** and how the **ASB** interprets the various **Standards**.

Compliance with *this* portion of the rules begins *immediately*.



Supervisors & Trainees

Let's get this out of the way, first:

USPAP does not address *supervisors* or *trainees*. It doesn't define either term. You'll find **FAQs** on the relationship between them but as we all know by now, **FAQs** are not part of **USPAP**.

What we're discussing is purely a function of licensing as a direct result of **AQB** Criteria policies.

Let's examine the definition under the **Act** that was signed into law back in **December 2009**:

Supervising Appraiser

means *either* (i) an appraiser who holds a valid license under this Act as either a State certified general real estate appraiser *or* a State certified residential real estate appraiser, who co-signs an appraisal report for an associate real estate trainee appraiser *or* (ii) a State certified general real estate appraiser who holds a valid license under this Act who co-signs an appraisal report for a State certified residential real estate appraiser on properties other than one to four units of residential real property without regard to transaction value or complexity.

Under the *new Rules* we have the following definition:

Supervising Appraiser means a State Certified General Real Estate Appraiser or a State Certified Residential Real Estate Appraiser in good standing with the Division. A supervising appraiser *shall not have been subject to dis-*

cipline within the last two years. The supervising appraiser *shall possess a minimum of 2 years of experience as a practicing certified licensed appraiser*. A State Certified General Real Estate Appraiser or a State Certified Residential Real Estate Appraiser may engage in *direct supervision* of an Associate Real Estate Trainee Appraiser. A State Certified General Real Estate Appraiser may engage in *direct supervision* of a State Certified Residential Real Estate Appraiser.

Q: If I became a CR a few years ago and then upgraded to a CG the day before I wanted a trainee, could I still qualify to be an SA?

A: Yes. The rule does not distinguish between **CR** or **CG** as *experience* for being a supervisor. Only that you had at least **two years experience** with your *certified* credential and have **no disciplines** over the same period.

Q: What if I upgraded to CG from an AT less than two years ago? Could I still qualify to be an SA?

A: No.

Direct Supervision—

Let's examine another *new* definition:

Direct supervision means that an appraiser is directing and overseeing the production of each appraisal assignment pursuant to **Section 1455.315**.

This is a *two-part* definition that requires you to read and understand another section of the rules.

(Continued on page 10)



To save space for this article we will refer to:

Certified General as **CG**
 Certified Residential as **CR**
 Associate Trainee as **AT**
 Supervising Appraiser as **SA**

Supervisors & Trainees

(Continued from page 9)

The section that more deeply describes *Direct Supervision* states the following:

A **supervising appraiser** shall *instruct* and directly supervise an **Associate Real Estate Trainee Appraiser** for any classification of license or certificate in the *entire preparation* of each appraisal. A **supervising appraiser** shall provide direct supervision, being personally and physically present, during the first 500 hours of experience for no fewer than 25 assignments. If a **State Certified General Real Estate Appraiser** is supervising an **Associate Real Estate Trainee Appraiser**, all appraisals completed during the first 500 hours of experience shall be non-residential appraisals. The **supervising appraiser** shall approve and sign all final appraisal documents certifying the appraisals are in compliance with **US-PAP**.

Let's be clear on what *direct supervision is and isn't*.

This is *top-to-bottom* training. Mentoring in every sense of the word.

Personally and physically present means that you, as the **SA**, will be inside the subject along with your **AT** at the same time (*if the assignment calls for an interior inspection*).

If you think that the **AT** can just go alone and just take a million pictures for you to look at

on-line or back at the office; that **won't** be accepted as *direct supervision*.

Remote or staggered supervision won't cut it, either.

Five Hundred Hours —

If you're a **CR** supervising an **AT** and all that the **AT** does are garden-variety **URAR** forms that take about 10 hours each (*according to our matrix*); you'll be accompanying them on about 50 assignments. If the assignments required more time than 10 hours each, you'll need to produce at least 25 assignments.

If you're a **CG** training an **AT** to *become* a **CG**, the first 500 hours must be *non-residential* assignments.

A question arose that the Rules appear to prohibit a **CG** from training an **AT** to perform *residential* property appraisals. This was not the intent behind the rule. The department will permit qualified **CG** mentoring of an **AT** for a *residential* career track.

Q: Training someone takes time and energy. As a supervisor, I fully expect that the first assignments in the 500 hours will take longer than what the matrix suggests. Will more hours be accepted?

A: The department and the Board are aware of the challenges faced in training and being trained. Learning curves for individuals vary. Assignments also vary in length, distance, and complexity. Reasonableness will be applied to every case.

(Continued on page 11)

To save space for this article we will refer to:

Certified General as **CG**

Certified Residential as **CR**

Associate Trainee as **AT**

Supervising Appraiser as **SA**



Supervisors & Trainees

(Continued from page 10)

Three and Three—

Within the Act under **Scope of Practice**, item (d) states the following:

An associate real estate trainee appraiser is limited in his or her scope of practice in all transactions in accordance with the provisions of USPAP, this Act, and the rules adopted pursuant to this Act. In addition, an associate real estate trainee appraiser shall be required to have a State certified general real estate appraiser or State certified residential real estate appraiser who holds a valid license under this Act to co-sign all appraisal reports. The associate real estate trainee appraiser licensee may not have more than 3 supervising appraisers, and a supervising appraiser may not supervise more than 3

associate real estate trainee appraisers at one time. A chronological appraisal log on an approved log form shall be maintained by the associate real estate trainee appraiser and shall be made available to the Department upon request. (Source: P.A. 96-844, eff. 12-23-09.)

As of this writing we have not finished developing the forms and IT in Springfield has not finished setting up the internal tracking system. Until these critical items are in place, you are not expected to comply with this portion of the **Administrative Rules** or the **Act**.

You will need to monitor *this* newsletter for when full implementation is scheduled to begin. You'll have plenty of advanced notice.

**REAL ESTATE APPRAISAL BOARD MEETING
TUESDAY, MARCH 8, 2011 @ 10AM
JAMES R. THOMPSON CENTER
100 WEST RANDOLPH STREET—9TH FLOOR
CHICAGO, IL 60601**

OPEN TO THE PUBLIC

UPCOMING FORMAL HEARINGS APPRAISAL

OPEN TO THE PUBLIC

9TH FLOOR OF THE JAMES R. THOMPSON CENTER

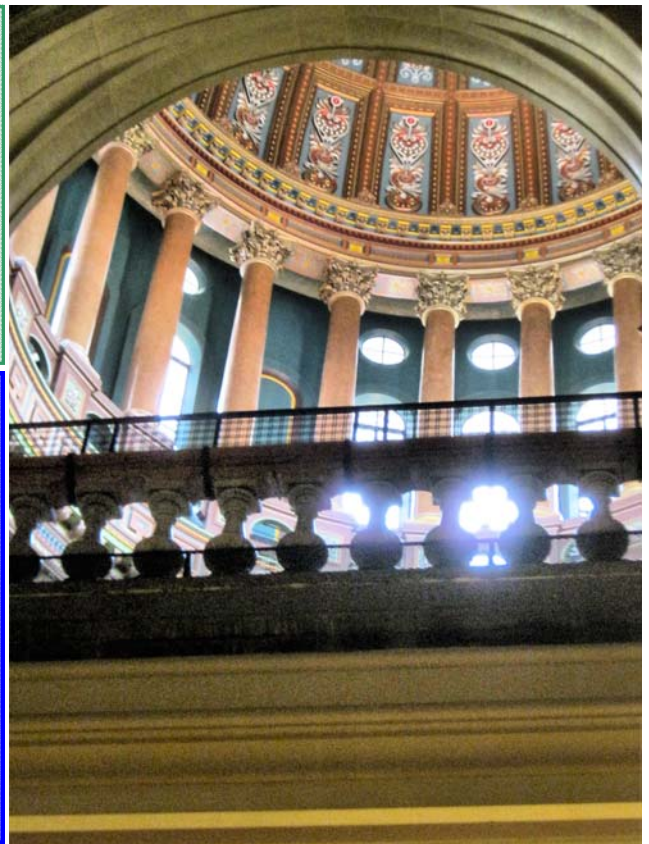
MARCH 15, 2011—IDFPR v FABIS

MARCH 24, 2011—IDFPR v VEGA

APRIL 5, 2011—IDFPR v ROTHWELL

APRIL 6, 2011—IDFPR v HOLSTEIN

APRIL 7, 2011—IDFPR v OWENS



Odds & Ends

IllinoisAppraiser

Provided as a service to licensed Illinois appraisal professionals as well as Illinois course providers. This publication promotes a greater understanding of USPAP, the Act, and the Administrative Rules of the State of Illinois.

Articles found in this publication may not be reprinted or reproduced in any other media without specific reference to this publication and the State of Illinois.

In Section **1455.230 Address Change; Street Address**, the last line states:

The licensee's address shall not be a Post Office Box or a mailbox located within a retail postal business.

This was changed because too many licensees decided that a **UPS Store** or a **Mailboxes Etc.** was the same as a street address.

Q: I don't want irate consumers to know where I live. Or, I live in a rural portion of the state and it's easier for me to get my mail in town. Why can't I maintain a P.O. box?



A: You can. All we require is that you give **IDFPR** an actual street address as your official **address of record**. The address that you provide on your appraisal reports is *not* how we contact you.

We've given you a lot to chew on in this issue of the newsletter. In future issues we'll examine some of the other changes in the Rules.

Of course, it's impossible to anticipate *every* question and *every* scenario that is affected by changes in Illinois law or any other law.

We will be reviewing the changes at this year's **ICAP** seminars. There will probably be smaller programs put on by other organizations at various locations around the state as well as presentations provided by members of our Appraisal Board and myself.

The profession is changing almost daily. As of October of last year, **HVCC** was replaced by **AIR** (*Appraiser Independence Requirements*). **Fannie Mae & Freddie Mac** will be

rolling out the **UAD** (*Uniform Appraisal Dataset*) even as talk on Capitol Hill revolves around whether either of these entities will even survive.

AMCs will become regulated and eventually **BPOs** will need to be reined in.

The current climate for appraisal professionals is in transition.

We don't know what the business model will look like six months from now let alone in five years down the road.

I'm reminded of what an unidentified historian once said.

"I cannot tell you what will happen in the future. But six months after it happens, I'll tell you why it was inevitable."

Let's Make It Easy

What should an AMC (*Option 2*) letter contain?

We laid that out back on *page 6*. But, in the interest of simplicity for our licensees as well as their AMC clients, let's see what it might look like on the written page.

Remember, you have until **May 1, 2011** to get *something like* this from each AMC that you service.

AMC, Inc.

To: Approved Illinois Appraisers
RE: Illinois Administrative Rule Changes

The purpose of this letter is to assist with your compliance in regard to Section 1455.250 of Title 68 of the Illinois Administrative Code.

AMC, Inc. is an appraisal management company that contracts with and serves as an authorized agent on behalf of XYZ Bank (or) for a number of financial institutions.

XYZ Bank (or) our financial institutions have clearly and definitively set forth their specific assignment conditions to us.

AMC, Inc. has authority to negotiate appraisal fees, engage appraisers, address the Scope of Work on each assignment, evaluate appraiser performance, track assignments, and is responsible for payment to its appraisers in accordance with our written agreements for service.

AMC, Inc. invoices our client(s) for a fee that includes the appraisal, administrative costs and ancillary services.

In accordance with Section 1455.250 you shall identify AMC, Inc. as the client and you will identify XYZ Bank (or) our financial institutions as the additional intended user(s).

In addition, you will prominently display the following in reports completed for AMC, Inc.:

The compensation for this appraisal assignment is \$_____.

You must maintain a copy of this letter in your workfile.

Yours truly,

Dustin DeWynn
President