



Three “Must Know” Areas Of The Law for Appraisers

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The Haight-Ashbury District of San Francisco in the 1960s is what comes to mind when I reminisce about appraisers. I envision appraisers as “Berkeley” educated free spirits finding logic in mysticism to explain the past, present and future. These appraisers traded tie-dyed shirts and worn denim for starched collared shirts and tailored suits. They gather baskets of raw data filtering out the speculation and the implausible. Appraisers then find a quiet place to meditate seeking eternal enlightenment in their final opinions of value.

In practice, however, appraisers seeking enlightenment are right of way’s version of professional crime-solving detectives. Using appraisal data resources to identify the most relevant information for each assignment. Interviews of countless people to verify the accuracy of each bit of gathered data. Separating the relevant from the irrelevant. The data selection and valuation analysis processes are invariably shrouded in mystery, at least until the final reporting and opinions are complete. And even after the opinions in the report are finalized, there is the inevitable disagreement over the opinions and conclusions. This very likelihood for dispute over the appraisal findings emphasizes the importance of appraiser preparing for these challenges by acquiring a strong background and knowledge of specific areas of the law. Three essential areas of the law for appraisers: real estate, municipal law and contracts.



Real Estate Law

As with all laws, real estate law provides definitions for the words and terms that govern real estate ownership and use. Legal terminology is truly a separate language. Understanding real estate law is the foundation for every right of way appraiser's expert opinions, both business and real property appraisers. Every assignment requires the identification of specific property rights to be appraised. Definitions of the various property ownership interests include: Fee simple, easement, dedication, covenants, conditions, restrictions and reservations. The law also provides for a few combinations of these terms such as fee simple subject to reservations, fee simple absolute and easement subject to conditions subsequent, among many others.

Real estate is conveyed from one party to another party by a deed. There are many types of deeds: grant, warranty, quitclaim and directors, to name just a few. A document title such as "Grant Deed" has no particular legal effect concerning the ownership interests that are being conveyed. The words within the body of the deed are what effectuates and defines the type of ownership rights being transferred. The deed document itself needs to be reviewed, analyzed and interpreted to verify the intended transfer and the parties involved. Title companies do provide some initial assistance in the identification of various recorded ownership interests and liens against title to review and verify. More recently they also provide hyperlinks to conveniently view the actual deeds on file with the Recorder's Office.

Appraisers should be capable of interpreting the legal descriptions and maps provided for assignments. It is important to be proficient in interpreting the meets and bounds legal description prepared by the surveyor or engineer. It is part of proper due diligence to independently evaluate and confirm this information. On occasion, a directional call, angle or distance in a survey will be incorrectly stated and the property rights being appraised erroneously identified. If the appraiser is called out in deposition or cross-examination on this typographical error made by a surveyor, it will be at best embarrassing and at worst deemed cause for excluding an expert opinion.

Municipal Law

Municipal law covers several legal areas of importance to appraisers. First, cities and counties are tasked with creating laws and regulations for land use planning, permitting and enforcement within those communities. Planning and land use law involve property zoning, permits, rent control, ordinances and resolutions to implement community directives for public spaces, streets, buildings, services and utilities. Existing zoning and anticipated zoning changes certainly affect a property's marketability and value. Conditional use permits are the approved exceptions to existing zoning law requirements with the requirements therein are very specific to the situation and property. Additionally, there are local and regional fire, health and safety, public education, utilities and environmental laws to be familiar and consider.

Contracts

With few exceptions, appraisal assignments to determine just compensation require a thorough review of written contracts, both completed and pending sales. Contracts are an agreement specifying the rights and obligations between two or more parties. You may find clauses for condemnation, waiver, release, financing and disclaimers. Analyzing completed sales contracts for property and business' is the essence of the comparable sales approach to value, by isolating and comparing contract terms and applying appraisal substitution principles. This task of comparing contract terms would be much simpler if the law required all transactions to be completed with one standard legal form or format. With no standard legal form or format, however, appraisers must independently dissect the several contracts, different recitals and verbiage, and then use their professional judgment to determine applicability and comparability. Complicating matters further, the appraiser will very seldom get an entire contract to review.

Most often transaction details are summarized by sales data services that obtain information by interviewing the parties to the contract. The contracting parties keep the transaction information private and refuse to provide an actual contract to review. Therefore, the sales data services routinely provide only secondhand information from one or both parties, with verification of accuracy left to the user. The propriety, validity and legality of the contract and transaction should never be assumed. Contract terms that provide atypical finance concessions, tax considerations, liability shifting and reservation of rights will have an impact on the usability of the sale as comparable. Inability to verify any of this information may end up as an assumption or limiting condition to the appraisal reporting.

Miscellaneous

Some other important areas of law include: finance, foreclosure, bankruptcy, construction contracts, economics, trust deeds, mortgages, wills and trusts, family law, and property taxation. This is the final article in this series of "Must Know" areas of the law. My hope is that this series highlighted the areas of law that you are already well-versed and proficient and, if not, provided you with some direction as you continue your path to eternal enlightenment in the right of way profession. 🙏



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