

REBUTTAL APPRAISAL CASE STUDY

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PART 1: APPRAISER RECEIVES E-MAIL FROM MORTGAGE BROKER

- Mortgage broker was told by Fannie/Freddie that
 - Review appraisal has determined the original appraisal was flawed
 - Mortgage broker must either
 - Provide “Rebuttal Appraisal” by a certain date
- Or
 - Repurchase the allegedly flawed mortgage
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- Mortgage broker tells appraiser to create “Rebuttal Appraisal”
 - Or else mortgage broker will
 - Turn appraiser into state appraiser board
 - File A negligence law suit against appraiser

PART 2: APPRAISER'S INITIAL RESPONSE TO MORTGAGE BROKER

- Do not get angry at the mortgage broker or Fannie & Freddie because they have created this crisis in your life.
 - To paraphrase the words of Michael Corleone:
“Never Get Mad at Your Adversary. It Affects Your Judgment.”
- But understand that they are your adversary
 - Do not send A hurried response
 - Do not admit fault or errors
 - Do not talk to anyone about this process other than those directly involved and your advisors.

PART 3: WHO YOU GONNA' CALL?

If This Is A First For You, Find Someone To Help You Create A Response To The Mortgage Broker's Request

- Senior appraiser with experience in “Rebuttal Appraisal” like Tom Munizzo or an appraiser who is A USPAP instructor and knows more than the annual update material
- Attorney with experience in valuation matters
 - Property tax appeals, eminent domain, etc.
 - If attorney does not have significant knowledge about USPAP your state appraiser act, etc, consider:
 - Using the senior appraiser for substance
 - The attorney for legal advice, during and after the process in the event the rebuttal appraisal does not cause the repurchase demand to be dropped.
- Depending on the money involved – maybe both

PART 4 A: “LEAVE YOUR EGO AT THE DOOR”

- If You Messed Up – ‘Fess Up
 - Did you make an error or series of errors that had an effect on the final value estimate?
 - If so, immediately speak to the attorney about your options
 - State Board
 - E&O carrier (will likely assign their own attorney, but may decline coverage if negligence involved)
- Take your attorney’s advice or get another attorney

PART 4 B: THE REVIEW APPRAISER DID YOU WRONG

Write a rebuttal appraisal under SR 3

- Review of a review
- Demonstration/litigation appraisal quality

Put in the time necessary to do the job right

- You snooze – you loose

PART 5: PERFORM THE ANALYSIS

Review The Review

- Download/Copy Sr-3 And Use It As A Boilerplate
- Scrupulously Review
 - The Review Appraisal
 - Your Original Appraisal

Do The Field Work And Research Yourself

- You Really May Have To Testify
 - Court
 - State Board

Use The Senior Appraiser And/Or Attorney As A Sounding Board And For Guidance

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- Does your explanation of the difference between your Comp 1 square footage and the reviewer's Comp 1 square footage make any sense?
- Who can I call to re-confirm the sale 3 years after the original appraisal?
- Where can I find land use regulations that support my "street knowledge" that this is a redevelopment area?

Use The Scope Of Work To Explain And Disclose

- Everything Necessary About The (Admittedly Unusual) Nature Of This Appraisal Assignment
- Including (But Not Limited To):
 - Role Of The Senior Appraiser
 - Ideally, Use This Person To Explain USPAP Requirements, But Not To “Substantively Participate In The Review”
 - If They Did Any Work That Requires A Report Under USPAP, They Need To Sign The Certification
 - At The Least, Such An Appraiser Must Comply With USPAP, If They Are Functioning As An Appraiser
 - Role Of The Attorney
 - Should Not “Substantively Participate In The Appraisal Process”.
 - May Be Advice On USPAP, State Laws, Etc.
- Your Lack Of Bias

PART 6 – ARGUE PERSUASIVELY

- Writing Style
 - Balance The Dispassionate “Non-Advocacy” Technical Writing Style Of An Appraiser In An Original Appraisal With Persuasive Writing
 - Don’t Try To Sound Like A Lawyer

What is Persuasive Writing?

- See Generally, Antonin Scalia & Bryan A. Gardner, *Making Your Case, The Art Of Persuading Judges*, West, 2008.
- Know Your Audience
 - Tom Munizzo Says That Freddie/Fannie Is Now Staffed With Appraisers Who Will Review Your Rebuttal Appraisal
- Know Your Case
 - You, Not A Junior Appraiser Or A Field Person, Should Re-Visited The Subject, Comps, Neighborhood
- Know Your Adversary's Case
 - You Have Also Visited The Review Appraiser's Comps, If Different From Your Own

Persuasive Writing (Cont'd)

- Pay Attention To The Applicable Standard, For Example:
 - Check *The Appraisal Of Real Estate* And The Senior Appraiser For Determinations Of Technical Appraisal Issue Handling
 - Ask Your Attorney Any Necessary Zoning Questions, etc.
- Never Overstate Your Case, Be Scrupulously Accurate

Persuasive Writing (Cont'd)

Structure Of Your Argument

- First Make Your Most Positive Points
- Then, Refute The Review
- Then, Wrap Up With Review Of Your Strong Points

Persuasive Writing (Cont'd)

- If possible, lead with your strongest argument
- Select your best arguments carefully
 - Follow SR-3 as closely as possible
 - Try to work this into the format without throwing the Freddie/Fannie reviewer off their SR-3 checklist
 - Make sure that you covered all the agency's required points

Persuasive Writing (Cont'd)

- Admit when your argument is weak and the review appraisal is correct
 - Does this create a USPAP violation, or other mistake that causes the rebuttal to fail
 - If so, obtain advice of counsel before submitting your rebuttal appraisal
- A weak argument does not necessarily indicate a USPAP violation

Persuasive Writing (Cont'd)

- Communicate clearly and concisely
 - Start with A statement of the main issue before stating the facts
 - Appeal to common sense but cite if contra to “appraisal industry thinking”
 - Appeal to reason – not to emotions
 - Be respectful to the Review Appraiser who criticized your Original Appraisal and to the Reviewer who will review your Rebuttal Appraisal
 - Control the semantic playing field
 - You decide how to label
 - The reviewer’s Comp 1 that is different from your Comp 1 or
 - The reviewer’s final value estimate that is different from yours

Persuasive Writing (Cont'd)

- Close Powerfully

- Say Exactly What You Want The Reviewer To Do

The original appraisal value was correct. The enclosed photographs show the existence of a garage at Comp 1. There was an insignificant effect of the, now corrected, adjustment to Comp 3. The substitute value proposed by the review appraisal was determined to not be credible in this Review of the Review Appraisal.

- Do Not Call Your Report A “Rebuttal Appraisal”

PART 7 – ALMOST THERE

- Reviewing the review of the Review Appraisal of your Original Appraisal
 - Ask the senior appraiser and/or attorney to read the Rebuttal Appraisal before you submit it to the mortgage broker
 - Ask the mortgage broker (in writing) to review the Rebuttal Appraisal before it is submitted to the lender.
 - Ask the lender (in writing) to review the Rebuttal Appraisal before it is submitted to Freddie/Fannie.
- Listen to any criticism of all of the above & if fatal – do not submit the report

PART 8 - THE RESULTS

- Freddie/Fannie will inform the lender, who will inform the mortgage broker, who will inform you.
- If the Repurchase Demand is withdrawn, you can relax
- If the Repurchase Demand is not withdrawn, consult legal counsel immediately.