

Content Outline

ATTACKING & DEFENDING AN APPRAISAL IN LITIGATION

The seminar provides a framework and considerations for attacking and defending an appraisal in litigation. Common mistakes made in appraising and testifying concerning an appraisal are stressed. Various standards and ethical rules that are commonly misapplied or misunderstood are highlighted and explained. In addition, common tricks and how to prepare for tricks on cross-examination are identified, as well as answering hypothetical questions at trial. Part II also highlights substantive appraisal theory differences that often cause different approaches and thus values for appraisals in litigation.

I. The Basic Framework - Effective attack & defense

- A. Summary of the appraisal process**
- B. The levels of an appraisal**
- C. Framework for attacking & defending an appraisal**
- D. The Attacking & Defending Brick Wall**

Content: This section includes an overview of the appraisal process in light of the levels of an appraisal. The framework for systematically attacking and defending a real estate appraisal is set forth. The attacking and defending brick wall is an illustration to show the proper method to build up or attack an appraisal that is used in litigation. The focus is to provide a systematic way to approach an appraisal involved in litigation and to understand and attack or defend all the legal and other assumptions behind the estimate of value used in the courts.

II. The Appraiser - Instructions from attorney

- A. Ethics**
 - 1. Conduct**
 - 2. Management**
 - 3. Confidentiality**
 - 4. Record keeping**
 - 5. Appraisal Institute ethics**
- B. Competency**
- C. Compared to the other expert witness**
- D. Testimony & presentation skills**

Content: The appraiser ethics versus the attorney ethics is contrasted and the appraiser ethics explained so that the attorney can protect the witness from attack is stressed. The competency provision of USPAP is explained and the consideration of the expert to the skills, knowledge and expertise of the other expert is discussed. The testimony skills section covers depositions, direct examination and cross examination and many tricks used by attorneys is demonstrated.

III. Case Study

Content: One or two case studies from actual cases will be used to apply the Attacking & Defending Model.

QUALIFICATIONS OF TED WHITMER, MAI

Professional Affiliations

Member of the American Institute of Real Estate Appraisers (#7300)
Member of the State Bar of Texas (#21380020)
State Certified Appraiser - State of Texas (#TX-1321994-G)
Real Estate Broker - State of Texas (License #281161)
Appraiser Member of Texas Appraiser Licensing & Certification Board (appointed by Governor Rick Perry for two years beginning 6/02 & ending 6/04)

Educational Background

J.D. - University of Houston Law Center (1988)
M.B.A. Degree (Finance Major) - Texas A&M University (1981)
B.A.- Stephen F. Austin State University (1977)

Instructor

Comprehensive Appraisal Workshop - I developed and wrote the only review for the MAI comprehensive examination in 1988. Since then I have presented the course to over 2,000 persons, most who now are designated MAI's. The course covers virtually every area of real estate appraisal theory, including the three approaches to value, Standards and Ethics, valuation of partial interests, and other peripheral areas.

Appraisal Institute - Principles, Valuation Procedures, Capitalization Theory A & B, Case Studies, Report Writing, Standards of Professional Practice, and various seminars.

University of Houston - Principles of Real Estate

Texas A&M University - Business Statistics (Graduate Assistant) & a graduate course in appraisal in Spring, 1998

San Jacinto Junior College - Real Estate Appraisal

American College of Real Estate - Appraisal, Principles, Math, Finance

Jones College of Real Estate - Appraisal

Author

The Comprehensive Appraisal Study Guide, this is now published by the Appraisal Institute as *The Appraisers Complete Review*.

The Encyclopedia of Investments, chapter on "Commercial & Industrial Real Estate"

The Appraisal of Real Estate, 10th edition, published by the Appraisal Institute. I contributed to the chapter on accrued depreciation.

Have written numerous seminars including:

Maximizing the Value of an Appraisal Practice

Current Issues & Misconceptions in Appraisal

Deriving Direct & Yield Capitalization Rates

Attacking & Defending an Appraisal in Litigation

Investor

Single family residences - Purchased and sold various single family houses.

Vacant land - Bought land on IH-45 in Houston in 1992 and sold the site to General Mills for an Olive Garden Restaurant.

Retail Center - Formed a partnership of 5 individuals and purchased a shopping center in College Station, Texas for \$1,150,000. Am the managing partner.

Real Estate Courses

Texas A&M University:

Real Property Valuation

Mortgage Market Analysis

Analysis of Real Estate Decisions

Real Estate Law

Problems - Syndications

Appraisal Institute:

Principles of Appraisal

Basic Valuation Procedures

Residential Valuation

Capitalization Theory & Techniques, Part 1

Capitalization Theory & Techniques, Part 2

Capitalization Theory & Techniques, Part 3

Valuation Analysis and Report Writing

Introduction to Investment Analysis

Standards of Professional Practice

South Texas College of Law:

Property I

Property II

University of Houston Law Center:

Real Estate Finance Law

Real Estate Development & Finance Law

Many other real estate related seminars

Current Employment

Ted Whitmer, Real Estate Consultant

Previous Employment

Texas Commerce Bancshares- Vice President & Assistant Manager of the Appraisal Division

Dominy, Ford & McPherson- Associate Fee Appraiser

Partial Litigation Experience

- Testified in the Fifth Circuit as an expert witness in a criminal fraud case.
- Took depositions as an attorney in property tax appeal cases. I worked on the side of the Ft. Bend County Appraisal District.
- Consulted on The Medical Towers case in Houston concerning the interpretation of an appraisal clause in a long-term ground lease.
- Consulted with St. Paul Insurance Company on a Kansas case involving Board of Director liability in a Savings in Loan. I reviewed over 30 appraisals for USPAP and regulatory compliance.
- Was involved in numerous cases that settled after deposition.
- Consulted on property tax case in Minnesota on a downtown office building.
- Taught the *Expert Witness* seminar for the Appraisal Institute.
- Am in process of writing, *Attacking & Defending an Appraisal in Litigation*. This book will provide a framework for attorneys and appraisers to critically evaluate and present a case for and against a real estate appraisal.

***AQB**

NUMBER:

- 01. Ad Valorem Taxation
- 02. Arbitration
- 03. Business courses related to practice or real estate appraisal
- 04. Construction estimating
- 05. Standards of professional appraisal practice (USPAP)
- 06. Land use planning, zoning and taxation
- 07. Management, leasing, brokerage, timesharing

AQB Acceptable ACE Topics:

- 08. Property development
- 09. Real estate appraisal (valuation/evaluations)
- 10. Real estate law (NOT license law or agency law)
- 11. Real estate litigation
- 12. Real estate financing and investment
- 13. Real estate appraisal related computer applications
- 14. Real estate securities and syndication
- 15. Real property exchange

AQB Topic (use No.)	Time devoted to section	Course Topic Outline
		Attacking & Defending an Appraisal in Litigation III (8:00-12:00) or (1:00 - 5:00)
		CLASS BEGINS AT 8:00 or 1:00
11		I. Framework
11	10 minutes	A. Summary of the Appraisal Process
11	10 minutes	B. The Levels of an Appraisal
11		C. A Framework for Attacking & Defending an Appraisal in Litigation
	5 minutes	1. The Appraiser
	10 minutes	2. The Appraisal
	5 minutes	3. The Report
	5 minutes	4. Consulting, review, etc.
11	15 minutes	D. The Attacking & Defending Brick Wall
	15 minutes	Afternoon Break 9:00-9:15 or 2:00 - 2:15
11		II. The Appraiser
05	10 minutes	A. Ethics
05	5 minutes	B. Competency
11	5 minutes	C. Compared to the Other Appraiser
11		D. Testimony & Presentation Skills
	5 minutes	1. 4 problem areas
	5 minutes	2. Deposition considerations
	5 minutes	3. Engagement considerations
	5 minutes	4. Assumptions in an appraisal
	5 minutes	5. Ways to get testimony dismissed
	5 minutes	6. Rules
11	5 minutes	E. Consistency
11	5 minutes	F. Checklists
	15 minutes	Afternoon Break 9:15 -9:30 or 3:15 - 3:30
11		III. Case Studies
	5 minutes	A. Residential single-family
	5 minutes	B. Review
	5 minutes	C. Reporting
	5 minutes	D. Acceptable methodology
	5 minutes	E. Disclosures
	5 minutes	F. Fee simple & Leased fee
	5 minutes	G. Residential - stigma
	5 minutes	IV. Question & answer
		CONCLUDE CLASS AT 11:50 or 4:50
Total	240 minutes w/breaks	4.00 hours total 4.0 '50 minute' hours

Attacking & Defending an Appraisal in Litigation

Purpose of the Course

The seminar is designed to assist attorneys, appraisers and real estate professionals with valuation and other real estate appraisal questions in the context of litigation. The seminar is two days and offers the professional models to testify, procedural and evidentiary basics, Uniform Standards of Professional Appraisal Practices, and appraisal theory that is often misunderstood or misapplied.

Relevance of the Course

After years of experience and discussions with past students and attorneys that have been involved in cases, it is evident that there are common mistakes and misunderstandings concerning appraisal and consulting roles and applications of law and practice in the courts. There are literally billions of dollars in real estate cases in the country involving condemnation, property tax, leases, divorce, insurance claims and other settings where value and real estate consulting is an issue. However, there are very few quality seminars that help the attorney and real estate professional be a professional in a case. This seminar gives timely advice on how to be ethical and make sure the attorney is ethical. It also helps the participant keep the theory accurate in application and not fall for tricks that, until this seminar, have been learned largely by experience only after causing significant loss to a client.

Content Summary

Description of

ATTACKING & DEFENDING AN APPRAISAL IN LITIGATION III

The seminar provides a framework and considerations for attacking and defending an appraisal in litigation. Common mistakes made in appraising and testifying concerning an appraisal are stressed. Various standards and ethical rules that are frequently misapplied or misunderstood are highlighted and explained. In addition, common tricks and how to prepare for tricks on cross-examination are identified, as well as answering hypothetical questions at trial. A case study will be used to apply the Attacking & Defending Model.

- I. The Basic Framework***
- II. The Appraiser***
- IV. Case Study***

Learning Objectives

1. To understand models of testifying
2. To understand commonly misapplied ethics within USPAP and conflicts with attorney ethics
3. To understand commonly misapplied standards within USPAP
4. To understand commonly misapplied Jurisdictional Exception considerations within USPAP and when they are at odds with attorney ethics and considerations
5. To understand common errors within the Cost Approach
6. To understand common errors within the Income Approach
7. To understand common errors within the Sales Comparison Approach
8. To understand the division between a legal and appraisal (fact) question
9. To understand the need for being objective, but adversarial (the attorney) throughout the litigation process

10. Understanding the legal & practical qualifying of an expert as well as when a potential job should be turned down
11. To understand Evidence rules that may apply to an attorney and appraiser
12. To know the difference between testifying & consulting witnesses
13. To be able to apply checklists in the process of providing appraisal or consulting services
14. To be able to offer better reporting and file contents
15. To understand when an “appraisal”, “review”, or “consulting service” is being offered

Instructional Strategies

1. Lecture
2. Problems & solutions
3. Question & answer
4. Group discussion
5. Case study

Instructor

Ted Whitmer, MAI
Qualifications are included

Bibliography of Subject Matter

1. *Attacking & Defending an Appraisal in Litigation*, written by Ted Whitmer, MAI

This may be used for brochures:

About the Instructor **Ted Whitmer, MAI**

Mr. Ted Whitmer is an appraiser, attorney, instructor, author, investor, asset manager, and consultant. Mr. Whitmer holds the MAI designation from the Appraisal Institute, is a member of the State Bar of Texas, is a Certified Commercial & Investment Member or CIREI, a broker and the author of *The Comprehensive Appraisal Workshop*, *Maximizing the Value of an Appraisal Practice* among others. He teaches many courses and seminars including a graduate level course in Real Estate Appraisal at Texas A&M University. Mr. Whitmer received his BA from Stephen F. Austin State University, a MBA from Texas A&M University and a JD from the University of Houston. He is married to Donna and has four children.

For the course description use the Purpose, Relevance & Description on previous page.