

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. Day two 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. Foundations - Definitions & 3 Approaches**
 - A. Four areas of general knowledge you need to know**
 - B. Four problem areas for all appraiser/consultants**
 - C. The law versus appraisal**
 - D. Test - Are you ready for cross examination? Do you understand the basic terminology?**
 - E. Suggested flowchart**
 - F. Suggestions for engagement letters**
 - G. Establishing proper relationships**
 - H. Attorneys considerations - evaluating the appraiser early**
 - I. Appraiser's considerations - evaluating the case**
 - J. Qualifying the expert**
 - K. Discovery & the expert witness**
 - L. Federal rules of evidence & procedure for the appraiser & attorney**
 - M. Testifying versus consulting experts**
 - N. Jurisdictional exception**

Content: This section sets the foundation for the model for attacking and defending an appraisal. The four areas of general knowledge and four problem areas are models of information and potential problems in appraising and litigation. The presentation helps prevent problems in these areas before they occur in a case. The law versus appraisal covers commonly misunderstood friction between the law and common appraisal theory and thus the conflicts inherent in the attorney's and appraiser's ethical considerations. The test is of basic terms but illustrates how there are different opinions on even basic terminology and concepts. The suggested flowchart aids in planning and preparing the expert and appraisal (as well as attorney) for trial. The suggestions for engagement letters can keep the appraiser and attorney within ethical guidelines for the hiring and conduct of appraisals for an attorney and the reminder of proper relations deals further with potential ethical conflicts. This section helps the attorney and appraiser evaluate the case and each other to avoid problems when the time to name witnesses is past. The qualifying section gives legal and practical considerations for choosing an appraiser and discovery and the expert witness also covers ethical considerations. The federal rules of evidence and procedure that are commonly a problem relative to appraisers and appraisals is addressed. The testifying versus consulting expert and how to keep an expert's work protected or discoverable is discussed. The jurisdictional exception in USPAP and how the provision is in conflict with the law is explained.

III. 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.

IV. The Appraisal - Trapped by USPAP & ethics?

- A. Minimum USPAP requirements**
 - 1. USPAP Standard 1-1**
 - 2. USPAP Standard 1-2**
 - 3. USPAP Standard 1-3**
 - 4. USPAP Standard 1-4**
 - 5. USPAP Standard 1-5**
- B. Regulations**
- C. Industry standards**
- D. Other Standard considerations**
- E. Misconceptions in the appraisal process**
- F. Checklists**

Content: The appraisal requirements of USPAP are explained with special emphasis on commonly misapplied sections. Regulations not in USPAP are identified and USPAP and industry standards are contrasted. The misconceptions in the appraisal process are commonly misapplied approaches or theory and this section helps the professional avoid poor practice being exposed.

V. The Appraisal Report - Minimum requirements

- A. Minimum USPAP requirements**
 - 1. USPAP Standard 2-1**
 - 2. USPAP Standard 2-2**
 - 3. USPAP Standard 2-3**
 - 4. USPAP Standard 2-4**
 - 5. USPAP Standard 2-5**
- B. Canned Sections**
- C. Checklists**

Content: The appraisal report is distinct from the appraisal. An appraiser can do an appraisal that is satisfactory, yet the report be faulty. Common errors in reports are discussed.

VI. The Review Appraisal - Preparing your attorney

- A. USPAP 3-1**
- B. USPAP 3-2**
- C. USPAP 4 & 5**

Content: A review is when an appraiser “critically studies a report prepared by another” appraiser. The consultant when helping the attorney prepare for cross examination against the other appraiser must comply with Standard 3. Practical and provisional considerations are discussed.

IX. Question & Answer Period

Content: This section may be started by a mock examination or other demonstration using the skills and knowledge developed in the seminar.

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)

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 (8:30 - 4:30)
		CLASS BEGINS AT 8:30
11		I. Framework
11	10 minutes	A. Summary of the Appraisal Process
11	10 minutes	B. The Levels of an Appraisal
11	55 minutes	C. A Framework for Attacking & Defending an Appraisal in Litigation
11	15 minutes	D. The Attacking & Defending Brick Wall
	15 minutes	Morning Break 10:00- 10:15
11		II. Foundations
11	15 minutes	A. Four Areas of General Knowledge You Need to Know
11	20 minutes	B. Four Problem Areas for all Appraiser/Consultants
11	15 minutes	C. The Law versus Appraisal
09	15 minutes	D. Test - Are You Ready for Cross Examination?
11	15 minutes	E. Suggested Flowchart
11	15 minutes	F. Suggestions for Engagement Letter
	70 minutes	Lunch 11:50 1:00
11	10 minutes	G. Establishing Proper Relationships
11	10 minutes	H. Attorney's Considerations: Evaluation the Appraiser...
11	10 minutes	I.Appraiser's Considerations
11	10 minutes	J. Qualifying the Expert
11	10 minutes	K. Discovery & the Expert Witness
11	10 minutes	L. Federal Rules of Evidence for the Appraiser
	10 minutes	Afternoon Break 2:00 - 2:10
11	15 minutes	M. Testifying versus Consulting Experts
11	5 minutes	N. Jurisdictional Exception
11		III. The Appraiser
05	15 minutes	A. Ethics
05	10 minutes	B. Competency
11	5 minutes	C. Compared to the Other Appraiser
	10 minutes	Afternoon Break 3:00 - 3:10
11	60 minutes	D. Testimony & Presentation Skills
11	10 minutes	E.Consistency
11	10 minutes	F. Checklists
		CONCLUDE CLASS AT 4:30
Total	480 minutes w/breaks	8.00 hours total 375 minutes actual classroom
		6.25 hours actual classroom

7.50 '50 minute' hours

***AOB**

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

AOB 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 - DAY 2 (8:30 - 4:30)
		CLASS BEGINS AT 8:30
11	90 minutes	D. Testimony & Presentation Skills - Continued.
	15 minutes	Morning Break 10:00- 10:15
		IV. The Appraisal
05		A. USPAP
05	20 minutes	1. USPAP Departure
05	15 minutes	2. USPAP Standard 1-1
05	15 minutes	3. USPAP Standard 1-2
05	10 minutes	4. USPAP Standard 1-3
05	10 minutes	5. USPAP Standard 1-4
05	15 minutes	6. USPAP Standard 1-5
	70 minutes	Lunch 11:50 - 1:00
11	10 minutes	B. Regulations
11	10 minutes	C. Industry Standards
11	10 minutes	D. Other Standard Considerations
11	20 minutes	E. Misconceptions in the Appraisal Process
09	10 minutes	F. Checklists
	10 minutes	Afternoon Break 2:00 - 2:10
05		V. The Appraisal Report
05		A. USPAP
05	10 minutes	1. USPAP Standard 2-1
05	10 minutes	2. USPAP Standard 2-2
05	10 minutes	3. USPAP Standard 2-3
05	10 minutes	4. USPAP Standard 2-4
05	10 minutes	5. USPAP Standard 2-5
05	10 minutes	B. Checklists
	10 minutes	Afternoon Break 3:00 - 3:10
05		VI. The Review Appraisal & Consulting
05	10 minutes	A. USPAP 3-1
05	10 minutes	B. USPAP 3-2
05	10 minutes	C. USPAP Standards 4 & 5
11	50 minutes	QUESTION & ANSWER PERIOD
		CONCLUDE CLASS AT 4:30
Total-page	480 minutes w/breaks	8.00 hours total 375 minutes actual classroom 6.25 hours actual classroom
Total	960 minutes w/breaks	16.00 hours total 750 minutes actual classroom 12.50 hours actual classroom

15.00 '50 minute' hours

I am Requesting 15 hours of Continuing Education Credit for The Two Day Seminar.

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

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.

- I. The Basic Framework***
- II. Foundations***
- III. The Appraiser***
- IV. The Appraisal***
- V. The Appraisal Report***
- VI. The Review Appraisal***

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. Possibly mock deposition or mock trial

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, 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.