

# IllinoisAppraiser

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## Analyzing the Sales Contract

Before you can begin to analyze a sales contract; you have to have one to analyze. This means that if one wasn't forwarded to you, you need to be asking for it.

We have case after case where the appraiser has marked that "I did" analyze the contract...yet the field following that is empty.

First, let's examine what "analyzing" a contract **ISN'T**.

***"The contract appears to be valid."***

***"The contract confirms the purchase price."***

Both of the preceding lines are taken from actual complaints heading to a **formal hearing**. This boilerplate drivel tells the reader absolutely nothing. These are meaningless statements that are no more informational than counting pages or telling the reader what font was used to print the contract.

So, what exactly satisfies the term "analyze"?

Standards Rule 1-5 states the following:

*When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:*

*(a) analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal;*

USPAP fails to define the word **analyze**. So, we must refer to a typical definition, such as: **to examine critically, so as to bring out the essential elements.**

What are the essential elements in a contract?

Is the contract signed? Is it signed by one or both parties? Is it dated? What's the date? Are there concessions? What are they? Are all the pages and riders accounted for? Did they include the Disclosure Report?

The oldest adage in real estate isn't "location, location, location." It's "You name the price; let ME name the terms."

Tell the reader.

Lenders sent me what **THEY** thought was important. I insisted on seeing everything. If they chose not to cooperate; I noted in the report what pages of the contract that I was provided and to what extent I went through to obtain the rest.

In the **normal course of business**, it may not be possible to get some pages or all of the contracts. But, your responsibility is to inform the reader as to what steps you took to get it.

If not, you're facing an uphill battle with the **Appraisal Board**.

We're dealing with a lot of fraud cases regarding property flips. Many of these cases are not only being referred to law enforcement...but are coming **FROM** law enforcement. In almost every case the appraiser has either written out a one or two sentence "analysis" of the contract or has marked that they did analyze it when they failed to do so.

Analyze. Don't just write one-size-fits-all statements that ultimately mean nothing.



## POOTA – Cost Approach *by Lee Lansford*

*“If you use a cost service; use it and use it correctly. If you don’t use a specific cost service; don’t claim that you do!”*

Frequently—with focus here on appraisals for use in residential lending, but certainly not limited to such—we see appraisal reports that include a Cost Approach that is best described as the **POOTA** (“Pulled-Out-Of-Thin-Air”) Cost Approach.

### How does the Appraisal Board identify a POOTA Cost Approach?

Here are a few examples:

**SITE VALUE:** If you are offering an opinion of site value, be certain that it is credible. Often there is no support (*at least none in the appraisal report and, frequently, none in the appraiser’s workfile—if the appraiser has a workfile!*) for the opinion of site value. And, the opinion of site value has little to no relationship with market data that would have been available to the appraiser.

What, the site value is estimated at \$75,000 when many improved parcels (*distress SFRs*) are selling for \$20,000? Such is not credible. Or, instances where there are market data in the form of closed sales and current offerings that indicate a site value radically different from the appraiser’s opinion.

**\$\$/SF PER MARSHALL & SWIFT:** M&S stock must be quite high given

the number of appraisers who claim to use this (*or a similar*) source for cost figures. The problem with the appraiser’s cost numbers becomes evident when the numbers are so far removed (*we’re not talking about a couple of dollars ‘here and a couple of dollars there*) from reality that the numbers are devoid of any credibility.

**PHYSICAL DEPRECIATION & THE AGE/LIFE METHOD:** Of much interest are cost approaches where the appraiser estimates the Effective Age as 20 yrs., the Remaining Economic Life as 40 yrs., and—when claiming that Physical Depreciation is via the Age/Life Method—arrives at a dollar amount for Physical Depreciation that is equal to 10% of the replacement (*or, reproduction*) cost new. This may be *New Math*, but it isn’t credible.

**EFFECTIVE AGE:** While we’re at it, some estimates of Effective Age are not supported by pertinent comments in the appraisal report. The favorite is the 85-yr. old house with the appraiser’s estimate of Effective Age as, say, 10-yrs. Now, this may be correct, but when the appraiser provides absolutely no indication of updating, remodeling, modernization et cetera to the improvements and

merely cites “*the improvements are maintained in an average manner*” (and “*average*” in this neighborhood is not indicative of an Effective Age of 10-yrs. for an 85 yr. old house), the opinion is not credible.

**INCOMPLETE COST APPROACH:** Do you proof-read your appraisals before communicating to the client? Some appraisers evidently do not because we have seen cost approaches with no opinion of site value, no depreciation whatsoever for a 50-yr. old house, the detached garage not included in the costs, et cetera.

**THE COST APPROACH IS NOT INCLUDED BECAUSE IT IS NOT REQUIRED BY FANNIE MAE (or the client et al):** Be aware that just because Fannie Mae or your client do not require the Cost Approach, this does not mean that you can explain away its lack of inclusion with words to the effect “The client doesn’t require it, so I didn’t do it!” For more on this topic, refer to the USPAP, SCOPE OF WORK RULE. Also, see Standards Rule 1-4 (b) and Standards Rule 2-2, (a,b,c), (viii)

## The Parte is Over

Whenever you, as an appraisal licensee, calls, texts, e-mails, or even discusses with a board member matters involving your *disciplinary* case, you're participating in *ex parte communication*.

This is strictly prohibited. Any and ALL such contact CAN only be done through the Appraisal Coordinator.

Obviously, once a case

goes to prosecution, you're free to contact the appropriate IDFPR staff attorney and/or their assistants.

**DO NOT** contact any of the Appraisal Board members. Such contact could not only force their recusal from *your* case, but could result in additional charges being brought against you.



*“Ex parte communication” means any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the agency.”*

## Sales History – Red Flag – Series LLC’s

In urban areas around the state there are neighborhoods that seem to be swimming upstream against the tide of the current market.

These areas appear to be bi-polar. Part of the market seems to be tanking; another part of it is enjoying boom times.

A two-unit sells for **\$360,000** and yet, right next door is an empty lot, followed by a series of board-ups.

### What gives?

Check the transaction history – carefully. Especially for your “comps”.

If you scratch the surface of the transactions you may see a pattern of entities selling to other entities. Then, you’ll see

an unfamiliar name followed by a foreclosure then a bank sale.

This is a pattern that tends to repeat itself in some areas.

### Who are these entities?

In many cases they are **Series LLC’s**.

You’ll see cryptic names like **Phantom Property, LLC No. 6** selling to **Phantom Property, LLC No. 18**. (*Phantom is a fictional name used in this example*)

You can check the **Illinois Secretary of State’s Business Services website** to check out who the registered agent and manager(s) are...but you won’t uncover who the *members* or *stockholders* of the LLC are.

Series LLC’s were approved by the Illinois legislature in August of 2005.

An umbrella LLC could have an *unlimited* number of series LLC’s attached. However, series LLC’s act independent of each other. They offer tax and liability protection to the members.

Series LLC’s are certainly not illegal. Their ability to transfer assets between themselves isn’t illegal, either.

Still, as an appraiser, you need to be aware of transfers involving LLC’s. Although such transfers may not be fraudulent, they should raise a red flag with you as well as with your clients.

Analyze. Don’t just report.

*“Check the transaction history – carefully. Especially for your comps.”*

## IllinoisAppraiser

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## Access Denied: An Ethics Violation

A number of questions have arisen over access to assignments and workfiles by trainees and employees of supervisory appraisers.

There are trainees trying to upgrade but can't because a current or former supervisor refuses to allow them access to their work.

Let's look at what **USPAP** says about this:

**An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.**

Note that it doesn't say "should have" or that it would be a "good idea to have" custody.

It states "must have".

This is unambiguous language.

There are times when staff appraisers cannot

access their files because a lender or appraisal firm may have closed its doors and lost or destroyed the appraisals. Unfortunately, **IDFPR** cannot accept experience that cannot be properly verified.

We receive a lot of calls and e-mails from appraisers who've been barred from their own files, for one reason or another.

This is unacceptable.

**IDFPR** cannot enforce an agreement between appraisers, but, the **Appraisal Board** has no qualms about opening a complaint over this issue.

There are at least two such cases making their way through prosecution.

As a matter of *best practice*, you *should* have a written agreement regarding access and retrieval. Not only is this important for upgrading but it is essential when answering a complaint that's being investigated

by the **Appraisal Unit**.

Failing to produce a report that the Unit asks for is an **ethics violation** under state law.

How does **USPAP** judge the issue of access?

Under **AO-31** it states:

**Supervising appraisers should be aware that all appraisers, including trainee appraisers, must maintain access to workfiles for a minimum of five years. A supervising appraiser must not impede a trainee appraiser's ability to access workfiles. Denying access to workfiles is a violation of the ETHICS RULE.**

While the Advisory Opinions don't carry the weight of law, they offer insight as to how the **Appraisal Board** might *interpret* the Standard.

The underlying desire is to be fair to both supervisors and trainees.

The *Experience Log* was designed with the purpose of being able to parse out appropriate and reasonable credit for certain aspects of an assignment.

It's up to you, the licensee, to grant or be granted access to your own work product.

