

## Who is my client?

**A**t first blush, the process of identifying your client would seem to be a basic and simple matter. However, as anyone who has worked in the fee sector knows, it is not always that straightforward. With the advent of mortgage brokers and (more recently) appraisal management firms, this has become an increasing concern, and in some instances a serious problem.

The *Canadian Uniform Standards of Professional Appraisal Practice* (CUSPAP) provide our direction in this regard. The basic concept of client/appraiser confidentiality is reinforced within the Ethics Standard Rules, where it is stated that it is unethical for a member “to **disclose** results of an assignment to anyone but the client, except with the client’s permission.”

The Ethics Standard Comments elaborate on this requirement and clarify that you may disclose the analyses, opinions, or conclusions in an assignment to “third parties, when the member is legally required to do so by due process of law; or an authorized Committee of the Institute.”

Who is this client to whom we owe this duty? There is a maxim that states “*he who pays the piper calls the tune*” and it has been suggested it therefore follows that “*who pays for the appraisal owns the report.*” We have to ask if our *Standards* contradict this ‘principle’ in that *CUSPAP* defines the client as “generally the party or parties ordering the appraisal report” and adds emphasis to this apparent contradiction by stating that “it does not matter who pays for the work” (line 1321).

Most of us who do mortgage appraisals have dealt with upset homeowners who cannot understand



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why they are not entitled to a copy of the report unless the lender authorizes its release. It is easy to understand their frustration, especially if they had to fork over the cash to the appraiser as a condition of the report being completed or submitted.

My research has led me to the conclusion that the ‘calls the tune’ concept implies that the person who

hires (i.e., makes the arrangements with) another, determines the services to be rendered. If you search the expression on the internet, you will get thousands of hits, almost all of which centre around the relationship between money and politics and the suggestion that some political systems have long been, and are still, more accountable to those who

have money than to the public as a whole. Stated more directly, “*He Who Has the Gold Rules.*”

Notwithstanding the fact that this has become a prevalent ideology in our society, we must always be cognizant of the requirements of our *Standards*. At the same time, we must be aware of the legal precepts that must be observed in carrying out professional appraisal practices.

I have considered some typical situations that have been put to me in my position of Counsellor Professional Practice. Since the queries almost always involve appraisals for mortgage purposes, the scenarios I have chosen are taken from that area of practice.

#### **Scenario No. 1 – The applicant orders the report**

This is probably the least common of the scenarios, and (not surprisingly) the easiest to define. If the party who orders the appraisal is also the applicant (owner or potential purchaser), he or she is the client, even though they may require that you to address the report to a bank or mortgage company. In this circumstance, the lender would be identified as the ‘intended user,’ but, technically, the applicant owns the report.

#### **Scenario No. 2 – The lender orders the report**

This is (or used to be) the most common way mortgage apprais-

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als were ordered. Typically, the lender contacts your office, orders the appraisal and tells you to collect the fee from the applicant. The *Standards* are clear in this instance. The lender is the client. This is the one that is so difficult to explain to the applicant. The best practice is to inform the applicant, before the assignment is commenced, that the report will be addressed to the lender and is confidential between that party and you.

#### **Scenario No. 3 – A mortgage broker orders the appraisal**

This is a little more convoluted. Typically, the broker will call with a request that you to complete an appraisal for ‘ABC Bank.’ I believe it can be reasonably argued that, in this situation, the broker is ordering the appraisal ‘on behalf of’ the lender. That is to say, the broker is acting in an agency capacity for the lender. The report will be addressed to ABC Bank and the broker is simply facilitating the transaction.

#### **Re-addressing appraisals**

Occasionally, the broker or applicant will come back to you and ask

that you re-address the report to a second lender (XYZ Bank). You are in a position to fulfill that request **only** if you have the authorization of your original client (ABC Bank). If at all possible, get this permission in writing and keep a copy in the file. Be aware that re-addressing a report to a party that was not part of the original appraiser-client relationship is, in effect, extending your liability to this ‘third’ party. If permission is not forthcoming, you simply cannot comply with the request.

#### **Duty of Care**

Having endeavoured to sort out who your client is under various circumstances, it must be pointed out that parties other than the client may be owed a duty of care. Being aware that the appraisal is to be used for mortgage financing, you must be sensitive to this intended use and employ a scope of work that is responsive to it. In the scenarios discussed, therefore, while your ‘primary’ duty of care will be to the client, there could well be a ‘secondary’ duty to other parties, including the applicant and the broker.

Finally, I repeat my advice offered earlier. Make sure that the applicant has a good understanding of his or her position from the get go. It is much easier to explain that the applicant will not be getting a copy of the appraisal before the work is done than some time down the road. ☛

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