



STAY OUT OF TROUBLE (PART II)

SOME DO'S AND DON'TS (IF YOU WANT TO AVOID A PROFESSIONAL PRACTICE COMPLAINT)

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In Volume 61, Book 1 of *CPV* magazine, we provided case studies to illustrate some of the ways our Members get in trouble with the Professional Practice Committee. We continue on that theme in this article and provide a few more 'do's' and 'don'ts' that may help you keep practising professionally without giving rise to complaints against you.

WHO IS YOUR CLIENT AND WHAT DO YOU OWE THEM?

The Professional Practice Committee and AIC Staff are often asked these questions:

- What does the client relationship mean?
- Who gets a copy of the report?
- What happens when another user of the report (other than the client) requests a copy?
- What are your responsibilities to your clients, past or present?

Here is an example:

You receive a phone call from Mortgage Broker A, who asks you to prepare an appraisal for mortgage financing purposes. At this point, Mortgage Broker A does not have a lender, so he or she asks you to prepare the report in their name. Mortgage Broker A is your *client*.

You complete the appraisal and email Mortgage Broker A. Several weeks go by and Mortgage Broker A contacts you to send the report to Bank B.

- What are your requirements and responsibilities?
- What do you owe Broker A or Bank B?

Before we attempt to answer these questions, here is a definition:

The *Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP 2016)* defines client as:

2.13 – The client is the individual or organization for whom a Member renders professional services. The client is typically the intended user of the assignment.

The Standard Comment 7.2 **Client and Intender User** further expands on this:

7.2.1 The client is the individual or organization for whom the Member renders professional services. The client is typically the intended user of the assignment. It does not matter who pays for the work.

7.2.2 The client/Member relationship lasts at least until the completion of the intended use of the original appraisal, or release from client.

7.2.2.i. A party receiving a copy of an appraisal report does not become an intended user unless authorized, and clearly identified by name and in writing, by the Member and the client.

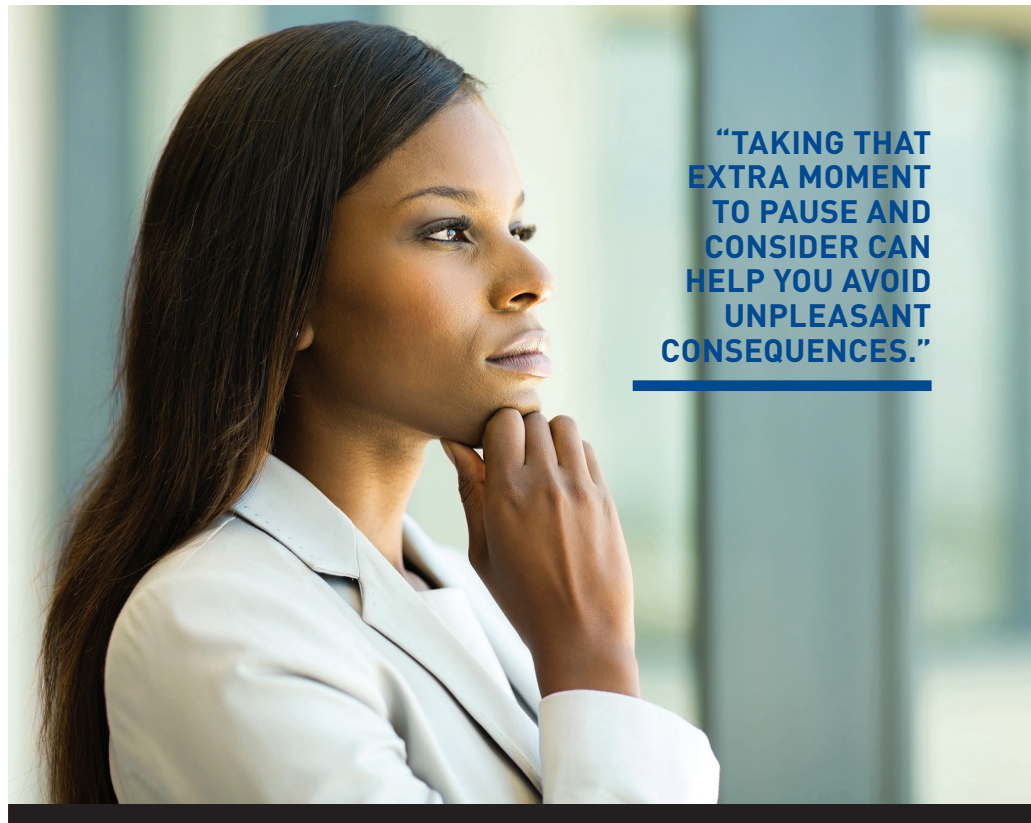
In this scenario:

- Your client is Mortgage Broker A.
 - You require his/her written authorization to release the report to Banker B. This does not mean that you remove Mortgage Broker A's name from the report and add Banker B.





“TAKING THAT EXTRA MOMENT TO PAUSE AND CONSIDER CAN HELP YOU AVOID UNPLEASANT CONSEQUENCES.”



- Once you have received written authorization from Mortgage Broker A, you would prepare a **Letter of Reliance** addressed to Banker B. (If you are not familiar with the Letter of Reliance, a sample is provided in Box 16.12.9 on page 98 of *CUSPAP 2016* in the Practice Notes section.)
- Bank B is now authorized to rely on your appraisal for mortgage financing purposes and Bank B is now your client.
- Now, what happens when Mortgage Broker A calls you and says Bank B is not going to provide the funding, however, Lender C is taking a look and requires a copy of your appraisal?
- Remember that Bank B is your client.
- You require Bank B’s written authorization to provide a copy of your report by way of a Reliance Letter to Lender C. You will have to get in touch with Bank B and get their written authorization.
- When you issue a Letter of Reliance to Lender C, they become your client.

Along the way, if one of your clients says “no” and will not provide written authorization, then you cannot provide a reliance letter to a prospective new lender. You will have to advise the most recent requestor that no written authorization was provided and you cannot provide a reliance letter.

Now, what if Lender E calls you and asks you to provide an appraisal of this property to them? You have already appraised it for Mortgage Broker A and authorized first Bank B and then Lender C to rely on your report. What can you do?

- If this request comes within a few weeks or a couple months after your engagement with Mortgage Broker A and Lenders A, B and C, you need to tell Lender E, your new prospective client, that you have recently appraised the property and that
 - you will be approaching your prior clients to obtain their written consent to undertake the appraisal for another lender.

If this causes you discomfort, think of it this way:

“If you cannot tell your prior client or your new one that you have appraised the property before, then that is a sign you should not appraise it now.”

While it is not easy to pass on work, you might save yourself a lot of time and money by passing on an assignment that may cause problems with your client, past or present.

And now for another big question on this topic:

- Is there anyone else to whom you can give a copy of your report?

The Homeowner who was Mortgage Broker A’s client and who ultimately paid for your work is dissatisfied that Mr. A has dragged his heels and, despite shopping the deal around, has not obtained the financing they wanted.

The Homeowner wants a copy of the appraisal for which he/she has paid. The Homeowner was never your client

and **you cannot give them a copy of the appraisal** without written permission from your client (if, in this scenario, you can remember who your client was).

You will need to direct them to contact Lender C, and to be safe, Mortgage Broker A, to ask for them to provide you with written authorization to release a copy of the report.

ALWAYS WORK WITHIN YOUR SCOPE

CRA designated members must take care to remain within the scope of their designation or risk claims and/or complaints.

Importantly, **when working outside of the scope of the CRA designation without an AACI co-signer, you do not have liability insurance coverage.**

For these next examples, determining the highest and best use – actual or assumed – of the property will be the first step in deciding if the assignment is



within the scope of a CRA designation. The table found in Practice Note 16.32 can be a useful tool in this process.

Here are some examples:

1. Your client owns 12 four-plex buildings held in one single-titled parcel. You think you should be able to appraise one of the four-plexes because it is 'a dwelling containing not more than four self-contained family housing units' and within the scope of the CRA designation (Ethics Standard Comment 5.5.3).

However, this is really a 48-unit project and you can appraise it only with an AACI co-signer.

You may be able to appraise one four-plex based on the extraordinary assumption that it had been subdivided from the larger parcel at the effective date, but you should be very clear that the final hypothetical current market value estimate for the single four-plex should not be multiplied by 12 to arrive at a current market value estimate for the whole project.

Similarly, it is inappropriate to appraise a single unit in a condominium project and imply that your client can multiply that value to arrive at a total value estimate for the entire condominium project.

2. You are asked to appraise a residential care facility. The building has 12 bedrooms, two kitchens and several living areas, as well as accommodations for the care staff.

You rationalize that this is really just a big house and should be within your scope as a CRA. Although we do acknowledge this could be a grey area; be cautious, get the report reviewed and co-signed by an AACI, preferably one with experience in the property type.

3. You are asked to appraise a 12,000 square foot vacant site on the corner of two major thoroughfares. The zoning indicates that development should

be for single-family housing, therefore, you believe you should be able to appraise it.

Given the size of this parcel and the prominent corner location, it is important to carefully consider the highest and best use of the site, which may be for development with a small apartment project, several homes, a small commercial development or a mixed use building.

The most likely purchaser of the property is a developer who will apply to have the zoning changed to permit another type of project. The test of whether an assignment is within the scope of a CRA is in the highest and best use, and, in this example, that is not likely to be as a site for a single-family dwelling.

4. Your friendly mortgage broker calls you and requests an appraisal of a triplex. You set your fee, arrange an appointment and go to inspect the property. While attending the property, you are shocked to find out it is actually a five-plex because there are two vacant basement units. You call your friendly mortgage broker and advise her of this situation. The broker informs you that the conditions have to be removed by tomorrow and that it is just a finished basement... and besides, the units are vacant. She urges you to complete the assignment.

The legal highest and best use is the test, not the homeowner who may have installed additional apartments without obtaining approval, nor the mortgage broker pressuring you to complete an assignment without getting all of the facts.

You understand that you cannot appraise a five-plex without an AACI co-signer. Also, you will be unable to check the zoning to verify the legal use of the property given the time constraints being placed on you. Be prudent and inform the broker that you cannot complete the assignment under these conditions.

5. You receive a phone call from a financial institution and are asked to do an appraisal of a two-storey building. The ground floor is a commercial use and the second floor contains a residential apartment. The property is vacant. The intended use of the appraisal is 'only a refinance.' Your client informs you that he does not want the owners to pay for a long, drawn-out, commercial appraisal. This institution is a good client of yours and what could be the harm? You appraise the property using the AIC Residential Form Report. You have ticked off all the appropriate boxes, including the one about the highest and best use, added some detail on the neighbourhood, filled in the grid section, added six comparable sales and a cost approach. The report is completed and off it goes. Your client is happy. Several years go by and the mortgage is in default. The lawyer acting on behalf of the mortgagee sends your report to an AIC designated review appraiser for review.

The consequences could be very serious for you. Remember, an assignment completed on a property that is outside the scope of the CRA designation will not be covered by the AIC Professional Liability Insurance Program, meaning you could end up personally bearing any financial responsibility. A small building with ground floor commercial and second floor apartment is out of scope for a CRA without an AACI co-signer.

We hope that these case studies will provide you with some guidance the next time you are faced with a practice question similar to those outlined. Taking that extra moment to pause and consider can help you avoid unpleasant consequences.

We would prefer to meet you at a conference rather than at a hearing.