

ACTING AS A THIRD APPRAISER (Guidelines for Arbitration, Mediation and Court Appointed Situations)

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WHY ARBITRATION?

1. Avoids Risk of Juries
2. Less Expensive
3. Less Formal
4. Parties Have Control Over the Process – Timing, Exhibits, Format, Witnesses/Testimony
5. More Prompt Resolution
6. Finality – Fewer or No Appeals
7. Approval of ADR by the Courts
8. Eminent Domain – Difficulty Recovering Litigation Expenses After Trial

AN ARBITRATION IS

- A dispute resolution process that avoids litigation
- Typically binding
- Procedures set forth in agreement, lease, law
- Different from mediation

AN ARBITRATOR IS

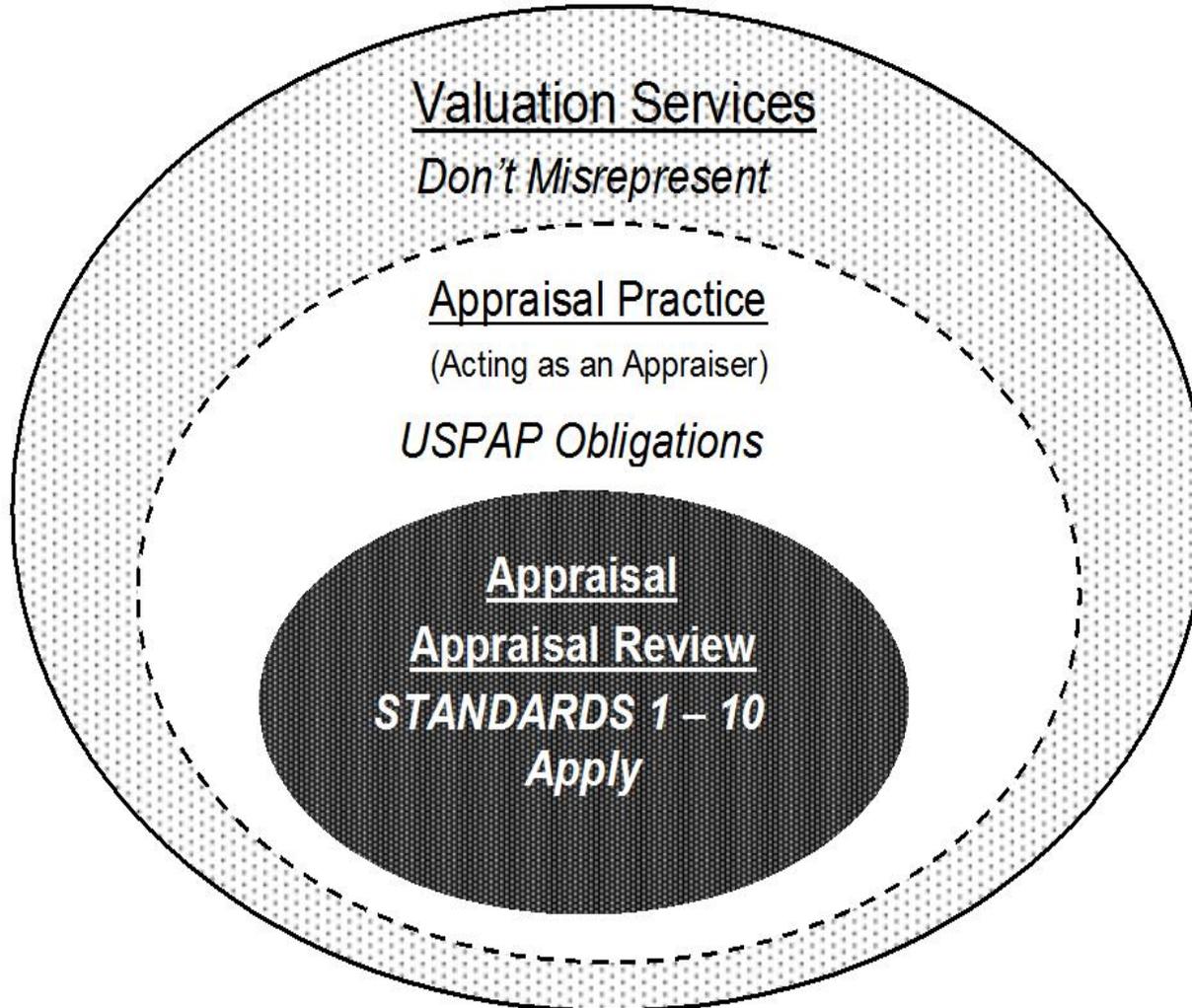
- The finder of fact
- Typically an independent neutral

The term “arbitration” and “arbitrator” are often used with various meanings

USPAP and Arbitration:

- An appraiser might be engaged in arbitration as:
 - A valuation expert witness, or
 - An arbitrator

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When does USPAP apply?

USPAP applies when *acting as an appraiser*
or *performing services as an appraiser*

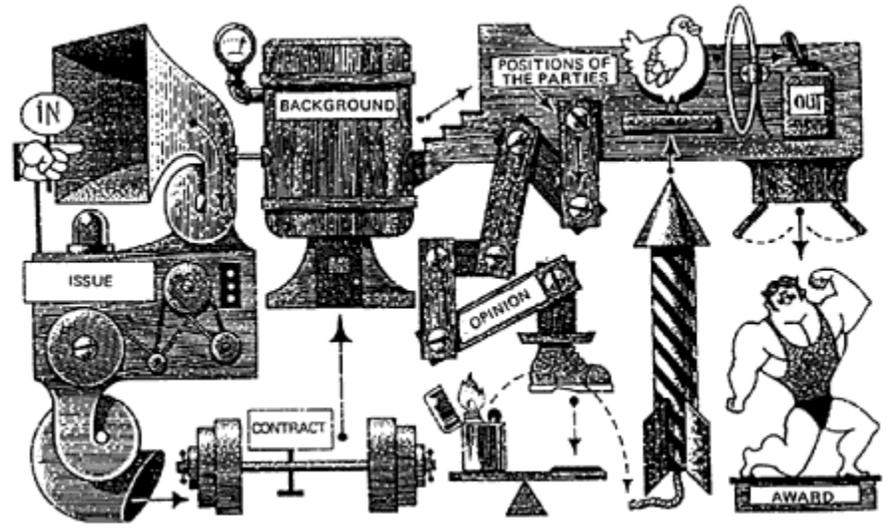
If not, USPAP does not apply.
Appraisal practice =
services performed by appraisers

What does “acting as an appraiser” mean?

One who is expected to perform valuation services competently and in a manner that is independent, impartial and objective.

Practice Tip:

WHAT'S IN MY WORKFILE?



PROBLEMATIC LEASE PROVISION NO. 1

- Within five (5) business days after the Impartial Person is appointed, he shall execute and deliver to Lessor and Lessee an oath swearing that he shall fairly and impartially perform the functions required of him or her under this Section 3.02. The function and authority of the Impartial Person shall be only as herein provided, and he shall not act as an arbitrator or appraiser.

PROBLEMATIC LEASE PROVISION NO. 2

a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each **select an appraiser or broker** ("Consultant") of their choice ***to act as an arbitrator***. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

PROBLEMATIC LEASE PROVISION NO. 2 (CONT.)

- (ii) The **3 arbitrators shall** within 30 days of the appointment of the **third arbitrator reach a decision as to what the actual MRV for the Premises is**, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.
- (iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.
- (iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

PROBLEMATIC LEASE PROVISION NO. 3

Within 60 calendar days following the initial selection of the two appraisers, the **two appraisers will submit appraisals** to the parties and the third appraiser. The **third appraiser will choose the most reasonable of the two appraisals within ten (10) calendar days of receiving the appraisals.** The Third appraiser's **decision** on which appraisal is the most reasonable appraisal ... **will be based solely on the appraiser's review of the two appraisals.**