

A Simple Explanation of Changes to Appraisal Requirements (2004-2006)

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APPRAISALS

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by Mark Weston

There have been more changes to the regulations and statutes affecting conservation easement appraisers in this two-year period (2004-2006) than in the previous 15 years. As a result, some amount of confusion should be expected. This confusion affects not only appraisers, but land trust staff, employees of the Internal Revenue Service, other regulators and landowners.

Let me try to explain, in plain English and from my own perspective, what has been going on and how it affects appraisals, appraisers and, most importantly, the uses and users of appraisals.

As background, the last big change in the world of real estate appraisal occurred almost 20 years ago. In 1989, Congress required the states to begin licensing appraisers (FIRREA). In addition, Congress authorized the Appraisal Foundation, a nonprofit, to create, promulgate and update the *Uniform Standards of Professional Appraisal Practice* (USPAP). These legislative actions may have marked the beginning of the process of broadly professionalizing the appraisal industry, a process that is still underway.

Early in the 1990s, on the heels of FIRREA, the states passed laws to create appraiser regulatory boards. These newly created state appraisal boards adopted rules and regulations, and the growing pains began. As detailed in a previous issue of *Exchange* ("Land Trust Ethics," Spring 2004), states have embraced appraiser licensing in varying degrees and to differing effect.

In the early years of this millennium, charities, including land trusts, were the recipients of increased media attention. Some of this attention focused on the valuation of gifts to charities. Sadly, but perhaps unsurprisingly, it became clear that there were problems with some of the appraisals made in support of individual taxpayers' gifts. There was a wide range of appraisal problems, and I expect it will be several years until the scope and the impact of the problem is identified.

Meanwhile, Congress and some of the states have initiated steps to address problems with bad conservation easements, appraisals, charities and individual taxpayers intent on gaming the system.

With respect to appraisers and appraisals:

American Jobs Creation Act of 2004 – required that a taxpayer submit a complete copy of the appraisal if the value of the claimed donation was in excess of \$500,000. Prior to this, only an appraisal summary (the federal Form 8283) was required, along with an attachment providing, if needed, more explanation about the conservation easement, the land protected by the easement, or the valuation.

Practical considerations: Appraisers who normally produced x "original" copies of a qualified appraisal needed to produce $x+1$. Why? The IRS needs its own copy of the appraisal.

Unintended consequences: You should purchase stock in companies that manufacture filing cabinets!

Pension Protection Act (H.R. 4 - 2006) – Sometimes referred to as the "trailer" bill (trailing the Jobs Creation Act), the PPA redefined "qualified appraiser" to indicate that membership in a recognized professional appraiser association was necessary. Not surprisingly, some of the "recognized professional appraiser associations" were thrilled to see this protectionist law enacted, as it allowed them to showcase their members' designations. The problem, of course, is that appraisers who are qualified to appraise office buildings, hospitals,



Courtesy of Mark Weston

APPRAISER MARK WESTON and "Emma" inspect a proposed conservation easement on a ranch just outside Steamboat Springs, Colorado.

crop land or investment-quality commercial property are not automatically qualified to appraise conservation easements.

The effective dates associated with the PPA are many and confusing. Certain provisions of the act are retroactive to 2006, while others look ahead to 2007. Consult your lawyer (not necessarily the same lawyer representing your appraisal customer—select one who understands the complexity of this new federal statute)!

Practical considerations: The PPA defined a "qualified appraiser" to mean a person who has earned an appraisal designation from a recognized professional appraiser associ-

ation, or who has met minimum educational and experience requirements established by the Treasury Secretary through regulations.

Unintended consequences: No such Treasury regulations have been written, and there is disagreement as to what is a “recognized professional appraiser association.”

IRS Notice 2006-96 (October 2006) – This very helpful publication by the Office of Associate Chief Counsel (Income Tax & Accounting) clarified the PPA by providing transitional guidance, explaining how the IRS, for the time being, will interpret “qualified appraiser” and “qualified appraisal.”

Entitled *Guidance Regarding Appraisal Requirements for Noncash Charitable Contributions*, Notice 2006-96 clarifies that the IRS will accept designations awarded on the basis of “demonstrated competency” in valuing the type of property for which the appraisal is performed. Also, an appraiser will be treated as having demonstrated verifiable education and experience in valuing the type of property subject to the appraisal within the meaning of §170(f)(11)(E)(iii)(I) if the appraiser makes a declaration in the appraisal that, because of the appraiser’s background, experience, education and membership in professional associations, the appraiser is qualified to make appraisals of the type of property being valued.

Practical considerations: Read Notice 2006-96 [http://lta.org/publicpolicy/irs_guidance_appraisals.pdf], believe the language in the notice, and, if you are an appraiser, take steps to be sure you are qualified to appraise the type of property you are appraising. Further, **take steps** to be sure you know how to appraise a conservation easement. Easements are complex property interests.

Unintended consequences: It is too early to know.

New Forms 8283 – One in December 2005, and yet another in December 2006. The most recent Form 8283 incorporates the *mea culpa* language required in the PPA for the appraiser’s declaration:

Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). In addition, I understand that a substantial or gross valuation misstatement resulting from the appraisal of the value of the property that I know, or reasonably should know, would be used in connection with a return or claim for refund, may subject me to the penalty under section 6695A. I affirm that I have not been barred from presenting evidence or testimony by the Office of Professional Responsibility.

Practical considerations: Same as above! Read Notice 2006-96, believe the language in the notice, and, if you are an appraiser, **take steps** to be sure you are qualified to appraise the type of property you are appraising. Further, take steps to be sure you know how to appraise a conservation easement. Easements are complex property interests.

Unintended consequences: I suspect that the cumulative effect of the PPA and IRS Notice 2006-96, emphasized on the declaration on this most current Form 8283 will cause some

good easement appraisers to stop appraising easements. If you are an appraiser, let me urge you to stay in the game. If you are a reader of *Exchange* or any number of other publications focused on various professions or industries, you likely care about your reputation and the quality of your work. So, keep at it and stay involved.

Looking Ahead – Formal Education

The Appraisal Institute (AI), the American Society of Appraisers (ASA) and the American Society of Farm Man-



L to R: Academic Vice President Jerry A. Warner, AFM; President Ray L. Brownfield, AFM, ARA; and District VI Vice President George E. Luther, Jr., ARA, all of the American Society of Farm Managers and Rural Appraisers at the society’s Executive Council meeting in September.

agers and Rural Appraisers (ASFMRA) are developing a certificate program for real estate appraisers on the appraisal of conservation easements. This new course will combine elements from past programs offered by these appraisal organizations on the appraisal of conservation easements into a stand-alone certificate program (with a rigorous test).

This new course is the product of a Memorandum of Understanding between these appraisal organizations and the Land Trust Alliance. Its intent is to help appraisers meet the new definition of qualified appraiser and to assist land trusts in identifying qualified appraisers in compliance with the PPA. The program will be available to appraisers through each appraisal organization’s education outlets. In addition, it will be available at Rally 2007: The National Land Conservation Conference.

Practical considerations: Conservation easements are complex property interests. Appraisers should plan to attend this course in 2007 or as soon thereafter as possible. In order to demonstrate competency in this complex type of appraisal, all of us who appraise conservation easements, along with experienced appraisers who want to enter this field, should consider attendance at this course a requirement.

Unintended consequences: In its next review of *Land Trust Standards and Practices*, the Land Trust Alliance may want to evaluate Practice 10B (Appraisals) and consider whether stricter requirements of appraisers should be added. It may take a year or two for enough appraisers to complete the course and pass the examination, but conservation easement appraisers should embrace this additional step toward professionalism. 🌱

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