

“To promote and preserve the Public Trust inherent in professional appraisal practice”

The protection of the Public Trust **must** supersede any other condition or requirement placed on the Appraiser.

The mission of the Virginia Appraisal Board: **to serve and protect the public** through:

(1) **Licensure of qualified individuals and businesses in professions that, if not regulated, may harm the public's health, safety, and welfare and**

(2) **Enforcement of laws that demand professional conduct.**

There have been several significant issues that have been presented to the Board and it is important to review what has been covered so far:

SIGNATURE ISSUE

The act of applying a signature to an appraisal report is the single most significant act for the Appraiser. It provides authentication and acceptance of the document and value opinion. And that is why it is listed in USPAP, the Board's Rules & Regulations, and the Code of Virginia:

I USPAP: (in definitions) Defines Signature as:

The Appraiser's Signature is personalized evidence indicating authentication of the work performed by the Appraiser and the acceptance of the responsibility for content, analysis, and the conclusions in the report.

Comment: A signature can be represented by a handwritten mark, a digitized image controlled by a personal identification number, or other media, **where the appraiser has sole personal control of affixing the signature.**

II CODE OF VIRGINIA:

§ 54.1-2017 authentication of reports:

Each licensed residential real estate appraiser certified residential real estate appraiser, and certified general real estate appraiser **shall comply with the standards of professional appraisal practice and code of ethics adopted by the Board and shall authenticate all written appraisal reports with his signature, license designation and license number.**

III Appraiser Board's Rules & Regulations:

18VAC130-20-180. Standards of professional practice.

C. Use of signature and electronic transmission of report.

1. The signing of an appraisal report or the transmittal of a report electronically shall indicate that the licensee has exercised complete direction and control over the appraisal in accordance with §54.1-2011 C of the Code of Virginia.

2. All original appraisal reports shall be signed by the licensed appraiser. For narrative and letter appraisals, the signature and final value conclusion shall appear on the letter of transmittal and certification page. **For form appraisals, the signature shall appear on the page designated for the appraiser's signature and final estimate of value.**

Questions:

- How can the Appraiser retained necessary control of their signature when sending a report electronically to a client?
- What minimum preventive measures should the Appraiser take to secure their signature?
- Can the Appraiser's signature be attached as a separate file to the report without it being applied directly to the Appraiser's Certification, Limiting Conditions, and Value Conclusion?
- How can the Appraiser exercised complete direction and control over the appraisal when using conversion software?

The Answers can be found in:

Appraiser Board's Rules & Regulations

18VAC130-20-180. Standards of professional practice.

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Appraisal Report Conversion

Currently the Appraiser is being required, as a condition of the assignment, to convert the appraisal report into a proprietary software data format as part of the transmission process when sending it to the client.

These conversion applications are proprietary software programs from third-party vendors that are not the Appraiser's Client (such as AIReddy, RELS, LIGHTHOUSE, etc.).

By requiring the Appraiser to do the conversion during the communication / transmission of the report, these third-party vendors are doing an "end run" around USPAP. They are able to claim that the converted report is now the "true copy" of the appraisal report.

According to these proprietary software vendors, the converted report is the "true copy" of the appraisal report; and the Appraiser is totally responsible for the content, or lack thereof, the converted report.

But is the "converted report" the "true copy"?

In order to understand this issue we must establish common definitions for several terms we are using:

1. What is proprietary software?

Proprietary software is any computer software with **restrictions on use or private modification, or with restrictions judged to be excessive on copying or publishing or modification.**

These type of software applications are generally referred to as "Black Box" applications because the user has limited, or restricted, control over the output.

2. What is the "true copy" a copy of?

Before something can be labeled a "true copy" there has to be an original report on which the copy is based. The **"original report"** is traditionally defined as the "hardcopy" or the paper report created by the Appraiser on which a traditional ink signature can be applied.

3. What is a "true copy"?

A "true copy" therefore would be an accurate reproduction of the "original report" as created and produced by the Appraiser. This includes all information and addenda the Appraiser deems necessary to comply with the scope of work and the USPAP. This includes the sequence and presentation of the information as developed by the Appraiser.

4. What is the meaning of "Client" as used in the appraisal industry:

Under USPAP Client is defined as: the party or parties who engage an appraiser (by employment or contract) in a specific assignment.

Comment: The client indentified by the appraiser in an appraisal, appraisal review, or appraisal consulting assignment (or in the assignment work file) is the party or parties with whom the appraiser has an appraiser-client relationship in the related assignment, and may be an individual, group, or entity.

Appraiser –Client relationship: represents the Appraiser’s obligation to not disclose confidential information, as identified by the Client or by law.

The term “Client” has many different connotations for different professions implying a wide range of obligations and/or advocacy. Generally the term is defined as:

- a. Somebody using professional services: a person or organization taking advice from an attorney, accountant, or other professional person.
- b. Customer: a person or organization to whom goods or services are provided and sold.

To the Appraiser the term “client” means Customer.

5. What does format mean?

To the proprietary computer software company (Black Box) format means line spacing, margins, and paper size, and the manipulation of the information in the report.

To the Appraiser format is equivalent to “presentation” which is the way the information, analysis, and conclusions are communicated. The Appraiser develops and communicates the appraisal in a logical order that presents the data, analyzes the data, and reconciles the data used to support an opinion of value.

But **conversion** software alters the content and format of the appraisal report from what the Appraiser believes is the “true copy”. The Appraiser is unable to save or print a copy of the converted appraisal report that the third-party vendor claim is the “true copy” of the report.

(It should be noted that FNC has slightly modified this with AIReady with access to a website that enables the report to be re-viewed and printed to a PDF file; but these feature are restricted to their online website only).

From the Appraiser’s perspective the client **NEVER** received the report as created, the “true copy”; rather it is some adulated version in which items and attachments are omitted and the Appraiser’s signature is either removed and re-applied; **or is being sent as a separate attachment to the file.**

According to these proprietary software vendors, the converted report is the “true copy” of the appraisal report; and the Appraiser is totally responsible for the content, or lack thereof, of the converted report.

But the Appraiser has not exercised complete direction and control over the appraisal because of the conversion software's restrictions (a violation of USPAP and the State's Rules & Regulations).

The USPAP obligations of the Appraiser are:

USPAP:

1. Ethics Rule:
 - a. (224-226) An Appraiser must not communicate assignment results in a misleading or fraudulent manner. **An Appraiser must not use or communicate a misleading or fraudulent report** or knowingly permit an employee or other person to communicate a misleading or fraudulent report.
2. Scope of Work Rule:
 - a. (410-411) **An Appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignments results are not credible in the context of the intended use.**
 - b. (419-420) **An Appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.**
3. Disclosure Obligations:
 - a. (422-423) the report must contain sufficient information to allow intended users to understand the scope of work performed.
4. Standards Rule 1-1:
 - a. (472-473) not commit a substantial error of omission or commission that significantly affects an appraisal;
5. Standards Rule 2: Real Property Appraisal, Reporting: (612-613). In reporting the results of a real property appraisal, **an Appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.**

Standards Rule 2-1: (620-625)

- (a) Clearly and accurately set forth the appraisal in a manner that will not be misleading;
- (b) Contain sufficient information to enable the intended users of the appraisal to understand the report properly; and
- (c) Clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

Appraiser Board's Rules & Regulations

18VAC130-20-180. Standards of professional practice.

D. Use of signature and electronic transmission of report.

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(in accordance with §54.1-2011 C of the Code of Virginia).

In a recent release (July 2008) of Questions and Answers from the Appraisal Standards Board (Vol. 10, No. 7) the ASB touches upon this issue when they state:

*"In the transmission of electronic reports, the appraiser's obligation is to ensure that the report transmitted is not misleading or fraudulent. **Therefore, the appraiser needs to be familiar with the electronic report created by the software used in the assignment. The appraiser must have a sufficient understanding of the report generating software used in an assignment to avoid the communication of misleading reports.** In order to comply with USPAP, the electronic report that must be examined by the appraiser prior to transmission to ensure that it is not misleading or fraudulent."*

"Once an appraisal report has been transmitted to the client, USPAP places no further responsibility on the appraiser for the client's use of that report."

This last sentence is critical to the understanding of this issue: only **after** the appraisal is transmitted to the client is the client free to convert the report.

The client would, after all, have received a "true copy" of the complete report in the format as created by the Appraiser. And, the Appraiser would have no control over what the client legally does with the report after they receive it.

The ASB opinion also indicates the Appraiser should have necessary knowledge of what the report looks like when it's received by the client. But the use of proprietary software (Black Box) prevents the Appraiser from having control over the content of the "converted" report; or of knowing what the client receives.

Users of the appraisal reports:

The client is not the only one that relies on the appraisal report. It is relied on by borrowers, lenders, investors, GSEs, government agencies, and many others including this Board.

The Public and the Appraisal Board have a direct interest to insure equal access to the true copy of the appraisal report in a universally accepted format.

A printed hard-copy of the report is accepted as the original, and by extension an unadulterated reproduction of that hard-copy **must** be considered the “true copy” of that report.

The PDF format is the de facto standard for electronic documents across multiple industries and platforms because of its universal acceptability:

Portable Document Format (PDF)

Each PDF file encapsulates a complete description of a fixed-layout document that includes the text, fonts, images, and graphics that comprise the original document.

Paper copy =PDF=True copy

PDF is a true “open standard “

Conclusion:

This is not about what the client can do **after** they receive the appraisal report. They can slice and dice the report into as many sections as they desire and use the data in any legally permissible way they want.

But the Appraiser **cannot** and **should not** be required to convert the report into anything less than a “true copy” prior to sending the report to the client.

This Board was created to protect the Public Trust. And at the same time to provide guidance to those it regulates. The Board has an obligation to both and it must provide clear and definitive guidance to protect both.

In order to protect the Public Trust, it is essential that appraisal reports be required to be sent in either the hardcopy form and/or in a **universal** format (PDF) which retains the presentation, data, analysis, and conclusion and is a “true copy” of the reported as created by the Appraiser.

The Board **does not** regulate either “web-based” services or technology.

The Board **does** regulate Appraisers and **does** have a duty to protect the Public Trust.

Currently PDF format is the de facto standard for electronic documents and should be the only current acceptable method of electronic transmission for appraisal reports.

As technology evolves, the board will naturally consider other advances.

Therefore the Board should notify its Regulants that effective immediately and enforced in 60 days of the Board’s decision:

Appraisers **cannot** convert appraisal reports. Appraisal reports should be delivered to the client in either the “hardcopy” original and/or sent electronically as a “true copy” in PDF format.

Any other delivery method would be considered by the Board as a violation of its Rules and Regulations.

The Board has this authority under:

18VAC130-20-160. Grounds for disciplinary action.

The board has the power to fine any licensee, registrant or certificate holder, to place any licensee, registrant or certificate holder on probation, and to suspend or revoke any license, registration or certification issued under the provisions of Chapter 20.1 of Title 54.1 of the Code of Virginia and the regulations of the board, in accordance with §§54.1-201(7), 54.1-202 and the provisions of the Administrative Process Act,

Chapter 1.1:1 of Title 9 of the Code of Virginia:

when any licensee, registrant or certificate holder has been found **to have violated or cooperated with others in violating any provision** of Chapter 20.1 of Title 54.1 of the Code of Virginia, any relevant provision of the Uniform Standards of Professional Appraisal Practice as developed by the Appraisal Standards Board of the Appraisal Foundation, or any regulation of the board.

It's a simple question really, is the true copy the work product of the Appraiser, or is it the converted report the Appraiser is forced to send? But before you answer, what is the definition of a "true copy" and who ultimately must determine what the contents of the "true copy" must be. But before you answer, who does the Appraiser have the ultimate duty to, the client or the Public Trust?

But before you answer, is the appraisal only the conclusion or does the presentation of the information with its logical reasoning that develop the conclusion constitute the report?

This is not about what the client can do after they receive the appraisal report. As long as it's legal they can dice the report into as many sections as they desire and use the data any legally permissible way they want.

But the Appraiser cannot and should not be required to convert the report prior to sending the report to the client.

The bottom line is each of us is responsible, individually we are forced succumb to the "do it my way, or move on" philosophy. Together to can draw the line and say no.

The choice is yours.

K. Unworthiness.

1. A licensee shall act as a certified general real estate appraiser, certified residential real estate appraiser or licensed residential real estate appraiser in such a manner as to safeguard the interests of the public, and shall not engage in improper, fraudulent, or dishonest conduct.