

Code of Professional Ethics

of the Appraisal Institute

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CODE OF PROFESSIONAL ETHICS OF THE APPRAISAL INSTITUTE

Effective June 20, 1997

Preamble

The importance of the role of the real property appraiser, consultant, and review appraiser in our economy places ethical obligations upon the men and women who serve in these capacities. In recognition of these obligations, the Appraisal Institute has adopted this Code of Professional Ethics. Each Member of the Appraisal Institute is required to conduct his or her activities in accordance with the requirements of the Code of Professional Ethics, adopted periodically by the Board of Directors, and with the Standards of Professional Appraisal Practice as adopted periodically by the Board of Directors. Each Member of the Appraisal Institute is urged to bring to the attention of the national Ethics and Counseling Committee any significant factual information that such Member may possess which reasonably tends to indicate that another Member may have failed to observe the requirements of the Code of Professional Ethics or the Standards of Professional Appraisal Practice.

Definitions

As used in the Code, the following definitions apply. The definitions of appraisal, consulting, real estate, real property, report, and review are quoted from the Uniform Standards of Professional Appraisal Practice and are included for ease of reference.

APPRAISAL: (noun) The act or process of estimating value; an estimate of value.
(adjective) Of or pertaining to appraising and related functions.

ASSIGNMENT: Assignments include appraisal, consulting, and review.

CONSULTING: The act or process of providing information, analysis of real estate data and recommendations or conclusions on diversified problems in real estate, other than estimating value.

FILE MEMORANDA: Sufficient information to demonstrate substantial compliance with the Standards of Professional Appraisal Practice including in statement, outline, or reference form: work sheets, data sheets and related material.

KNOW OR KNOWINGLY: Means that the Member realizes what he or she is doing, is aware of the nature of his or her conduct and is not acting through mistake or accident.

Knowledge can be inferred from the Member's conduct and from all the facts and circumstances surrounding the case. The determination of "knowingly" should be made in the context of the Member's training, appraisal background and other relevant experience. A Member will be deemed to have acted (or failed to act) "knowingly" if he or she acted in disregard of the requirements of the Code of Professional Ethics or Standards of Professional Appraisal Practice or the recognized appraisal methods and techniques as set forth in the Appraisal Institute's courses, seminars, textbooks and other publications. The term "knowingly" includes not only what the Member knew, but also what the Member reasonably should have known given all the facts and circumstances of the case and the Member's training, appraisal background and experience.

MEMBER: shall mean a Designated Member, Associate Member, or Affiliate Member of the Appraisal Institute.

REAL ESTATE: An identified parcel or tract of land, including improvements, if any.

REAL PROPERTY: The interest, benefits, and rights inherent in the ownership of real estate.

REPORT: Any communication, written or oral, of an appraisal, review, or consultation service that is transmitted to the client upon completion of an assignment.

Appraisal reports, real estate counseling reports, real estate tax counseling reports, real estate offering memorandum, mortgage banking offers, highest and best use studies, market demand and economic feasibility studies and all other reports resulting from an assignment are reports regardless of their title.

REVIEW: The act or process of critically studying a report prepared by another.

Since a clear understanding of defined terms is essential to a proper understanding of the Code of Professional Ethics, it is the responsibility of each Member to be familiar with and understand each defined term in the Code when following and applying the Canons and Ethical Rules set forth in the Code and discussed in the Explanatory Comments.

Exceptions to Ethical Rules

If any Ethical Rule set forth in the Code of Professional Ethics is contrary to the law or public policy of any jurisdiction, such Ethical Rule shall be void and of no force or effect in such jurisdiction.

In stating each individual Ethical Rule, no attempt has been made to enumerate all of the various circumstances and conditions that will excuse a Member from the strict observance of such Rule; however, the Appraisal Institute recognizes that illness, acts of God, and various other events beyond the control of a Member may make it inequitable to insist upon a strict observance of a Rule in a particular case. When a Member in the exercise of reasonable care, violates an Ethical Rule due to illness, acts of God or other circumstances beyond his or her control, it is expected that the agency of the Appraisal Institute charged with responsibility for enforcing the Code of Professional Ethics will act in a manner that will avoid an inequitable result.

CANON 1

A MEMBER MUST REFRAIN FROM CONDUCT THAT IS DETRIMENTAL TO THE APPRAISAL INSTITUTE, THE APPRAISAL PROFESSION AND THE PUBLIC

Ethical Rules

E.R. 1-1

It is unethical to knowingly:

- (a) act in a manner that is misleading or fraudulent;
- (b) use, or permit an employee or third party to use, a misleading report;
- (c) communicate, or permit an employee or third party to communicate, any report in a manner that is misleading;
- (d) contribute to or participate in an appraisal, review, or consulting opinion that reasonable appraisers would not believe to be justified; or
- (e) contribute to or participate in the preparation or delivery of a report containing an appraisal, review or consulting opinion that reasonable appraisers would not believe to be justified, whether or not such report is signed or delivered by the Member.

E.R. 1-2

It is unethical to engage in misconduct of any kind that leads to a conviction of a crime involving fraud, dishonesty, or false statements or a crime involving moral turpitude.

CANON 2

A MEMBER MUST ASSIST THE APPRAISAL INSTITUTE IN CARRYING OUT ITS RESPONSIBILITIES TO THE USERS OF APPRAISAL SERVICES AND THE PUBLIC

Ethical Rules

E.R. 2-1

It is unethical:

- (a) to knowingly violate the rules set forth in the Regulations of the Appraisal Institute that govern the confidentiality of the admissions process or the confidentiality of the peer review process.
- (b) for a Member who has made a referral of a peer review matter, or who has any knowledge of the existence of such referral or any subsequent screening or review of the matter, to fail to treat such knowledge confidentially.

E.R. 2-2

It is unethical to accept an appointment to, or to fail to immediately resign from, an Appraisal Institute committee dealing with admissions or peer review activity if the Member is unable or unwilling to fulfill the responsibilities of a member of said committee.

E.R. 2-3

It is unethical for a Member :

- (a) To knowingly make false statements or submit misleading information to a duly qualified Admissions Committee or on an application, or to refrain from promptly submitting any relevant information in the possession of such Member when requested to do so by a duly qualified Admissions Committee or on an application.
- (b) To knowingly submit misleading information to a duly authorized peer review committee (or member or agent thereof); or, when requested to do so by a duly authorized peer review committee (or member or agent thereof), to refrain from promptly submitting any relevant information in the possession or control of the Member; to refuse to appear for a personal interview or participate in an interview conducted by telephone; or to refuse to promptly answer all relevant questions concerning the matter being investigated.
- (c) To fail or refuse to promptly submit a written report or file memoranda containing data, reasoning and conclusions, or to fail or refuse to submit a Permission to Review relating to a report or file memoranda when requested to do so by the Director of Screening or any duly authorized member of the Screening Staff.
- (d) To fail or refuse to promptly submit any relevant information in the possession of the Member concerning the status of litigation related to a peer review matter when requested to do so by the Ethics and Counseling Department; or, to knowingly submit misleading information to the Ethics and Counseling Department concerning the status of litigation related to an Ethics and Counseling matter or to the Ethics Administration Division Chair concerning a possible violation of Ethical Rule 5-2 (or its predecessors) or correction of such a violation.
- (e) To fail to notify the Ethics and Counseling Department prior to resumption of any activity governed by the Code of Professional Ethics or the Standards of Professional Appraisal Practice if the Member previously gave notice that such activity had ceased and, as a result, one or more pending peer review files were closed.

E.R. 2-4

It is unethical to fail to comply with the terms of a summons issued by a duly authorized peer review committee.

E.R. 2-5

It is unethical to fail to prepare either a written report or file memoranda containing the data, reasoning and conclusions for each assignment within a reasonable time after completing the assignment.

E.R. 2-6

It is unethical to give testimony as to an appraisal, review, or consulting opinion in a deposition or affidavit, or before any board, commission, tribunal or court, unless a written report or file memoranda is prepared prior to giving such testimony.

E.R. 2-7

It is unethical to fail to preserve each written report, file memoranda, and any related file for;

- a) a period of five years from the date of preparation of such report or file memoranda;
- b) a period of two years following final disposition of a proceeding in which testimony was given;
- c) a period commencing upon notification that an assignment is the subject of a peer review matter until notification by the Appraisal Institute of final disposition of the peer review matter;
- d) a period commencing upon a request from Admissions relating to an assignment until notification by the Appraisal Institute of the completion of review by Admissions; or
- e) a period of two years following the final disposition of a review of an assignment by a state licensing and/or certification board,

whichever period shall be the last to expire.

E.R. 2-8

It is unethical to enter into a contract for an assignment that precludes compliance with the Standards of Professional Appraisal Practice, the Code of Professional Ethics, the Bylaws, or any Regulation of the Appraisal Institute.

E.R. 2-9

It is unethical to enter into a contract for the performance of an assignment that does not provide that all assignments will be developed and all reports will be prepared in conformity with and subject to the requirements of this Code of Professional Ethics and the Standards of Professional Appraisal Practice.

E.R. 2-10

It is unethical for a Member who is employed by a business entity engaged in assignments to fail to sincerely and demonstrably seek other employment if

- (a) such business entity fails to comply with the Appraisal Institute's rules relating to the development of assignments, the preparation of reports, or the use of reports; or
- (b) such business entity fails to comply with the Appraisal Institute's rules relating to advertising or the solicitation of business.

E.R. 2-11

It is unethical, in the performance of an assignment, to sign a report without accepting responsibility for the contents of the entire report unless the Member clearly and precisely indicates in the report the portion or portions of the report for which responsibility is or is not accepted.

CANON 3

IN THE PERFORMANCE OF AN ASSIGNMENT, A MEMBER MUST DEVELOP AND COMMUNICATE EACH ANALYSIS AND OPINION WITHOUT BEING MISLEADING, WITHOUT BIAS FOR THE CLIENT'S INTEREST AND WITHOUT ACCOMMODATION OF HIS OR HER OWN INTERESTS

Ethical Rules

E.R. 3-1

It is unethical, in the performance of an assignment, to develop an analysis or opinion that is biased or misleading or to prepare, orally present, sign, or deliver a report that fails to accurately communicate his or her analyses or opinions or that the Member knows to contain any biased analysis or opinion. Further, it is unethical for a Member to knowingly permit a business entity that is wholly or majority owned or wholly or partially controlled by such Member to develop an analysis or opinion that is misleading or biased or to prepare, orally present, sign, or deliver a report that contains any biased analysis or opinion or a report that fails to accurately communicate the Member's analyses or opinions.

E.R. 3-2

Reserved.

(NOTE: OLD E.R. 3-1 AND E.R. 3-2 HAVE BEEN COMBINED INTO NEW E.R. 3-1.)

E.R. 3-3

It is unethical to accept or perform an assignment that is contingent upon reporting a predetermined analysis or opinion.

E.R. 3-4

It is unethical to accept or perform an assignment if the compensation to be paid for the performance of such assignment is contingent upon the opinion or conclusion reached, the attainment of a stipulated result, or the occurrence of a subsequent event.

The above restriction on contingent compensation does not apply to those consulting assignments where the appraiser is not acting in a disinterested manner and would not reasonably be perceived as performing a service that requires impartiality. It is unethical to perform such an assignment without disclosing in the report that the compensation is contingent. The Member must explain the basis for the contingency in the report and in any transmittal letter in which conclusions are stated.

E.R. 3-5

It is unethical to accept or perform an assignment that is based upon a hypothetical condition, unless

- (a) the use of the hypothesis is clearly disclosed; and
- (b) the assumption of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison and would not be misleading; and
- (c) the report clearly describes the rationale for this assumption, the nature of the hypothetical condition, and its effect on the result of the assignment.

E.R. 3-6

It is unethical to accept an assignment if a Member has any direct or indirect, current, or prospective personal interest in the subject of the assignment or outcome of the assignment or any personal bias toward the parties involved in the assignment, unless

- (a) prior to accepting the assignment, the Member carefully considers the facts and concludes that his or her professional judgment will not be affected and reasonable persons, under the same circumstances, would reach the same conclusion; and
- (b) such personal interest or bias is disclosed to the client prior to acceptance of the assignment; and
- (c) such personal interest or bias is fully and accurately disclosed in each written and oral report resulting from such assignment.

E.R. 3-7

It is unethical for a Member, during the period that commences at the time that he or she is contacted concerning an assignment and expires a reasonable length of time after the completion of such assignment, to deliberately acquire property or assume a position that could possibly affect his or her judgment or violate his or her fiduciary duty to the client unless, prior to such acquisition or change of position,

- (a) the Member carefully considers the facts and reasonably concludes that the proposed acquisition or change of position will not affect his or her judgment or violate his or her fiduciary duty to the client; and
- (b) the Member makes full disclosure to the client and obtains from the client a written statement consenting to or approving such acquisition or change of position; and
- (c) at the time of such disclosure, the Member gives the client the right to terminate the assignment without payment of any fee or other charge; and
- (d) the facts concerning such acquisition or change of position are completely and accurately described in each written and oral report resulting from the assignment.

E.R. 3-8

It is unethical, in the performance of an assignment, to fail to acknowledge by name in any written report each individual who rendered significant professional assistance.

CANON 4

A MEMBER MUST NOT VIOLATE THE CONFIDENTIAL NATURE OF THE APPRAISER-CLIENT RELATIONSHIP

Ethical Rules

E.R. 4-1

It is unethical to disclose the analyses, opinions, or conclusions of an assignment to anyone other than

- (a) the client and those persons specifically authorized by the client to receive such information;
- (b) third parties, when and to the extent that the Member is legally required to do so by statute, ordinance, or order of court; and
- (c) the duly authorized committees of the Appraisal Institute.

E.R. 4-2

If the client furnishes confidential factual data to a Member in the course of an assignment, it is unethical to disclose such confidential factual data to anyone other than

- (a) those persons specifically authorized by the client to receive such information;
- (b) third parties, when and to the extent that the Member is legally required to do so by statute, ordinance, or order of court; and
- (c) the duly authorized committees of the Appraisal Institute,

unless such confidential factual data has subsequently been made public.

E.R. 4-3

If a Member is furnished confidential factual data by a client and a third party subsequently requests an assignment that will be materially affected by the use of, or the failure to use, such confidential factual data, it is unethical to accept such subsequent assignment, unless

- (a) the source that provided such confidential factual data permits such data to be used in the subsequent assignment;
- (b) such confidential factual data has subsequently been made public; or
- (c) the Member is able to obtain data from other sources that is sufficient to support a properly developed analysis or opinion.

E.R. 4-4

It is unethical for a Member serving on an Appraisal Institute committee to discuss or disclose confidential information or factual data derived through committee activities with anyone other than

- (a) the appraiser whose report, file memoranda, or file contains the confidential information or factual data;
- (b) the appraiser's client and those persons specifically authorized by such client to receive such information;
- (c) third parties, when and to the extent that the Member is legally required to do so by statute, ordinance, or order of court; and
- (d) committee members within the scope of the Bylaws and Regulations of the Appraisal Institute.

CANON 5

A MEMBER MUST USE CARE TO AVOID ADVERTISING OR SOLICITATIONS THAT ARE MISLEADING OR OTHERWISE CONTRARY TO THE PUBLIC INTEREST

Ethical Rules

E.R. 5-1

It is unethical to utilize misleading advertising. Further, it is unethical to knowingly permit a business entity that is wholly or partially owned or controlled by a Member to utilize misleading advertising.

E.R. 5-2

It is unethical to use or refer to the Appraisal Institute or its membership designations in a manner that is misleading, or to use or display the registered designations or emblems of the Appraisal Institute in a manner contrary to Regulation No. 5.

E.R. 5-3

It is unethical for a Member to solicit assignments in a misleading manner. Further, it is unethical to knowingly permit a business entity wholly or partially owned or controlled by a Member to solicit assignments in a misleading manner.

E.R. 5-4

It is unethical for a Member to pay an undisclosed fee, commission, or thing of value for the procurement of an assignment, or for a Member to knowingly permit a business entity owned or controlled by such Member, to pay an undisclosed fee, commission, or thing of value for procuring an assignment. The disclosure of fees, commissions and things of value paid in connection with the procurement of an assignment must appear in the certification of any resulting written report and in any transmittal letter in which conclusions are stated.

Intra-company payments to employees or partners for business development are not deemed to be a "fee, commission, or thing of value" for the purpose of this Rule.

E.R. 5-5

Reserved.

E.R. 5-6

It is unethical to prepare or use in any manner a resume or statement of qualifications that is misleading.

EXPLANATORY COMMENTS RELATING TO THE CODE OF PROFESSIONAL ETHICS

The Need for a Code of Professional Ethics

Real estate is one of the basic sources of wealth and its proper use is essential to the economic well-being of any society. If real estate is to be properly used, however, it is essential that business organizations, government bodies, individuals, and others who own, manage, sell, purchase, invest in, or lend money on the security of real estate have ready access to the services of men and women of integrity and independent judgment who not only can provide accurate, unbiased estimates of the nature, quality, or utility of interests in or aspects of real estate but also can provide sound opinions as to the manner in which real estate can or should be used.

Proper appraisal, consulting, and review and the making of sound determinations concerning the use of real estate are essential to the orderly growth and development, and to the stability of both metropolitan and rural areas. In addition, proper appraisal, consulting, and review gives stability to real estate loans and investments and this in turn helps to promote public confidence in the economy that sustains a free society. Conversely, the improper appraisal, consulting, and review and improper utilization of real estate can lead to substantial financial losses by business organizations, government bodies, individuals, and others who own or deal with real estate. Such losses contribute materially to economic recessions and a lack of public confidence in the economy, which in turn may pose a threat to a free society. Hence, the real property appraiser, the consultant, and the review appraiser play a vital role in the economic well-being of our society.

The importance of this role in our society places ethical responsibilities and obligations upon the men and women who serve in these capacities. These ethical responsibilities and obligations are due to both the public and the profession. When performing an assignment (as that term is defined in the Code of Professional Ethics), the individual Member's ethical obligation to the public is to provide accurate, unbiased appraisals, consultations, or reviews and sound opinions as to the manner in which real estate can or should be used.

Different rules are required to regulate the various activities because the knowledge and experience of a Member can be put to use and serve the public interest in many ways.

In some situations, the need is to provide competent, unbiased estimates of value or review of others estimates of value. In other situations, the need is to provide competent, unbiased consulting relating to the nature, quality, or utility of real estate. For example, the developer, the mortgage lender, and the public all benefit when a Member renders a competent, unbiased opinion of the highest and best use of a parcel of land or properly prepares a market demand and economic feasibility study of a proposed shopping center.

In some cases, however, the public or the business community needs consulting services that go beyond the rendering of unbiased analyses or opinion and are directed toward an individual's investment objectives such as real estate brokerage, mortgage banking, real estate counseling, real estate tax counseling, marketing, financing or other services directed toward achieving the specific goals of the client. To perform these consulting services, the Member may be required to advocate the best interest of his or her employer or client. When conducted in a proper manner, these activities also serve the public interest. For this reason, the Code of Professional Ethics does not prohibit Members from engaging in such real estate related activities. The Code does, however, require a Member performing such consulting assignments to take all steps reasonably required to make certain that third parties or the public will not be misled as to the nature of the services being performed by the Member or the relationship existing between such Member and his or her employer or client.

The individual appraiser's ethical obligation to the profession is to understand and keep abreast of market conditions and to constantly seek the improvement of appraisal, consulting, and review principles, methods, and techniques. Further, the individual appraiser should assist the efforts of appraisal organizations and educational institutions to provide educational

materials and opportunities not only to practicing real property appraisers, consultants, review appraisers, and individuals seeking to enter the profession, but also to the users of appraisal, consultation, and review services and reports.

In recognition of the above described ethical responsibilities and obligations of Members, the Appraisal Institute has adopted and published its Code of Professional Ethics. For those who wish to have additional information concerning the background, interpretation, or application of a Canon or Ethical Rule, the Appraisal Institute has also adopted and published these Explanatory Comments Relating to the Code of Professional Ethics.

CANON 1

A MEMBER MUST REFRAIN FROM CONDUCT THAT IS DETRIMENTAL TO THE APPRAISAL INSTITUTE, THE APPRAISAL PROFESSION, AND THE PUBLIC

Explanatory Comments to Canon 1

Comment E.R. 1-1(a)

All Misleading or Fraudulent Actions by a Member are Detrimental to the Appraisal Institute and the Profession As Well As the General Public.

As noted above, the appraiser, consultant, and review appraiser play a vital role in the economic well-being of our society, and this places ethical responsibilities and obligations upon the men and women who serve in this capacity. For Members, these ethical responsibilities and obligations run to the Appraisal Institute, the profession and the public. Such responsibilities and obligations apply to all activities of a Member. For example, when a Member performs real estate brokerage services, such Member must refrain from conduct that is misleading or fraudulent because any such misleading or fraudulent conduct by a Member would not only be contrary to the public interest, but would also tend to reflect adversely upon both the Appraisal Institute and the profession.

Comment E.R. 1-1(b)

The use of a Misleading Report for any Business Purpose is Detrimental to the Appraisal Institute and the Profession As Well As the General Public.

The ethical obligations of a Member are not limited to accepting responsibility for the contents of a report that has been signed by such Member. To protect the public, Members are prohibited from using, for any business purpose, a misleading report that was prepared and signed by a third party. The public relies upon the expertise and integrity of Members in dealing with appraisal, consultation, and review assignments, and would give unwarranted credence to a misleading report prepared and signed by a third party if a Member used such a report for any business purpose. Therefore, before using a report prepared and signed by a third party, a Member must check to be certain that it is not misleading.

E.R. 1-1(b) also makes it clear that Members cannot avoid their ethical responsibilities and obligations to the public by doing indirectly that which they cannot do directly. Thus, to the extent that such Member is in a position to legally control such use, a Member cannot knowingly permit an employee or third party to use a misleading report for any business purpose.

As noted above, any conduct by a Member that is contrary to the public interest will reflect adversely upon both the Appraisal Institute and the profession; hence, great care should be used in dealing with the reports of third parties.

Comment E.R. 1-1(c)

The Communication of a Report in a Misleading Manner is Detrimental to the Appraisal Institute and the Profession As Well As the General Public.

Members are also prohibited from communicating a report of a third party in a manner that is misleading. The public relies upon the expertise and integrity of Members in communicating their own opinions and would give similar credence to a Member communicating the opinion of a third party. For this reason, Members must observe the same standards in communicating the opinions of a third party as they must observe when communicating their own opinions.

E.R. 1-1(c) also makes it clear that Members cannot avoid their ethical responsibilities and obligations to the public by doing indirectly that which they cannot do directly. Thus, to the extent that such Member is in a position to legally control such use, a Member cannot knowingly permit an employee or third party to communicate a report in a misleading manner.

It should be noted in this connection that this rule applies to all reports, whether prepared by third parties or by the Member, and hence this rule must be borne in mind by a Member when a client requests permission to quote selectively from or use a report that was prepared by such Member.

Comment E.R. 1-1(d)

The Knowledge and Skills of a Member Must Not Be Used to Develop or Produce an Opinion that Reasonable Appraisers Would Not Believe to be Justified.

A Member cannot avoid his or her ethical responsibilities and obligations to the public by knowingly contributing to or participating in the development of an analysis or opinion that reasonable appraisers would not believe to be justified even though such Member is not publicly identified with such analysis or opinion. Whether or not the Member is publicly identified with the opinion, the moral issue is the same. To protect the public, the knowledge and skills of a Member must not be used to produce an analysis or opinion that reasonable appraisers would not believe to be justified.

It should be noted in this connection that the test under E.R. 1-1(d) is "justified" rather than "misleading." Appraisers can and do differ as to the correct solutions to assignments. If, however, reasonable appraisers conclude that there is no rational foundation for an analysis or opinion, then such analysis or opinion would not be "justified" under this rule.

Comment E.R. 1-1(e)

The Knowledge and Skills of a Member Must Not be Used to Develop or Produce a Report that Reasonable Appraisers Would Not Believe to be Justified.

Comment E.R. 1-1(e) applies the same reasoning as was discussed in E.R. 1-1(d) to the development or production of a report. The Member must not knowingly contribute to or participate in the preparation or delivery of a report containing an opinion that reasonable appraisers would not believe to be justified, whether or not such report was signed or delivered by the Member.

* Comment E.R. 1-2

Explanatory Comment

The Commission by a Member of a Crime Involving Fraud, Dishonesty, False Statements or Moral Turpitude Reflects Adversely Upon the Appraisal Institute and the Profession.

The users of appraisal services continue to place their reliance upon an individual appraiser's integrity as well as such appraiser's knowledge and experience. If Members fail to observe the highest standards of ethical conduct, the users of appraisal services will lose confidence in the personal honesty and integrity of Members and the Appraisal Institute will suffer. Further, if the users of appraisal services lose confidence in the personal honesty and integrity of members of the profession, the ability of the profession to perform its current role will be hampered and the public will suffer. Therefore, each Member of the Appraisal Institute must be acutely aware of the adverse effect that any misconduct will have upon the trust and confidence placed in the Appraisal Institute and in the profession by the users of appraisal services and the public. For this reason, a Member must not commit a crime involving fraud, dishonesty, false statements, or moral turpitude, since the conviction of a Member of such a crime will tend to discredit both the Appraisal Institute and the profession. The types of crimes referred to in E.R. 1-2 are not limited to felonies.

For the purposes of E.R. 1-2 moral turpitude means an act of baseness, vileness, or depravity in private and social duties which a person owes to other people, or to society in general, an act contrary to accepted and customary rules of right and duty between people, in essence contrary to justice, honesty, or good morals.

CANON 2

A MEMBER MUST ASSIST THE APPRAISAL INSTITUTE IN CARRYING OUT ITS RESPONSIBILITIES TO THE USERS OF APPRAISAL SERVICES AND THE PUBLIC.

Explanatory Comments to Canon 2

Comment E.R. 2-1

A Violation of the Confidentiality Rules of the Appraisal Institute is Detrimental to the Appraisal Institute and the Public.

To enable the Appraisal Institute to serve the public, it is essential that Members cooperate with the Appraisal Institute, its officers, and committees, in all matters relating to the professional activities of the Appraisal Institute, especially those relating to admissions matters and peer review proceedings. In particular, it is essential that each Member who has contact with or is involved in admissions or peer review activities scrupulously observe the confidentiality rules that govern and control such activities. If the Members of the Appraisal Institute fail to observe such confidentiality rules, the judicial protection given to professional organizations in connection with such admissions and peer review activities will break down and the Appraisal Institute will be unable to carry out its functions. This will not only be detrimental to the Appraisal Institute, but the public interest will be damaged as well.

Comment E.R. 2-2

Members of the Appraisal Institute Who Accept An Appointment to a Committee with Responsibility for Admissions or Peer Review Activities Must Act with Diligence and Objectivity.

As noted above, the appraiser, consultant, and review appraiser play a critical role in our economy, and the public interest is served by having available to the public, men and women of integrity and independent judgment who are capable of providing accurate, unbiased estimates of the nature, quality, value, or utility of real estate. By conferring the MAI and SRA designations to individuals who possess these qualifications, and by conducting peer review activities to maintain these qualifications, the Appraisal Institute serves a vital public need. This service to the public cannot continue unless the individuals who serve on admissions and peer review committees continue to act with diligence and objectivity. Therefore, if a Member of the Appraisal Institute accepts an appointment to a committee of the Appraisal Institute charged with responsibility for admissions or peer review activities, such Member must carry out his or her responsibilities with diligence and objectivity. Further, if any such Member subsequently is knowingly unable or unwilling to carry out his or her responsibilities in connection with such appointment, such Member must immediately resign from such committee.

Comment E.R. 2-3

Retention of Public Confidence in the Personal Integrity and Professional Competence of Members of the Appraisal Institute Requires the Cooperation of All Members in Admission and Peer Review Proceedings.

In the mind of the public, membership in the Appraisal Institute signifies that an individual possesses a high degree of personal integrity and professional competence. If this public confidence is to be maintained, it is essential that admissions and peer review committees perform their duties thoroughly and competently.

Admissions and peer review committees will be unable to carry out their responsibilities unless Members cooperate fully with such committees. Therefore, when responding to the requests of a duly authorized admissions or peer review committee (or member or agent thereof), a Member must promptly submit all information relevant to the peer review process. As used in Ethical Rule 2-3, "relevant information" means information the appropriate committee (or member or agent thereof) reasonably believes may be relevant in fulfilling its responsibilities.

Comment E.R. 2-4

Protection of the Public Interest Requires Members to Comply with a Summons Issued in Connection with Disciplinary Proceedings.

As used in this Regulation the term "Summons" means a document issued by the Chair of a Hearing Committee requiring a Member of the Appraisal Institute, who possesses knowledge of the facts which are at issue in the case, to testify at a formal Hearing or to produce specific evidence in his or her possession for use at a formal Hearing. A Summons is issued in response to a request by either the Grievance Committee or the accused Member involved in that Hearing.

To ensure that due process is afforded to all parties and to ensure that all evidence required to protect both the accused Member and the Appraisal Institute is considered, it is imperative that each Member of the Appraisal Institute comply with the terms of any Summons which may be served upon him or her.

Comment E.R. 2-5

To Enable the Appraisal Institute's Peer Review and Admissions Activities to Function, a Member Must Take Certain Steps After Reaching an Opinion.

Membership in the Appraisal Institute has come to be recognized by the Courts and public as evidence of not only the appropriate educational background but also the knowledge, experience and integrity that is required to arrive at and communicate competent, unbiased estimates of value and other analyses and opinions concerning real estate. To maintain this recognition, it is essential that each Member gather and analyze the appropriate data relating to an assignment prior to developing an opinion. To enable the committees of the Appraisal Institute to determine whether or not Members are complying with this rule, it is essential that each Member prepare and have available either a written report or file memoranda containing the data, reasoning and conclusions on which an opinion is based within a reasonable time after reaching or developing an opinion.

Comment E.R. 2-6

To Ensure the Highest Level of Competence, a Member Must Take Certain Steps Prior to Testifying in a Judicial Proceeding.

As noted above in Comment E.R. 2-5, membership in the Appraisal Institute has come to be recognized by the Courts and the public as evidence that an individual not only has the appropriate educational background but also the knowledge, experience, and integrity required to arrive at and communicate competent, unbiased estimates of value and other analyses and opinions concerning real estate. To maintain this recognition, it is essential that each Member gather and analyze the appropriate data relating to an assignment prior to appearing as an expert witness in a judicial proceeding and testifying concerning the subject of the assignment.

If a Member fails to gather and analyze the appropriate data prior to giving testimony, each analysis or opinion expressed will be little more than a guess, and the Member will have improperly used the credibility that the Courts and the public impute to the work product of Members of the Appraisal Institute. This action perpetrates a fraud upon the Court and the public and cannot be tolerated; therefore, the Appraisal Institute requires its Members to prepare a written report (or file memoranda) containing the data, reasoning, and conclusions upon which the testimony is to be based before testifying as an appraiser, consultant, or review appraiser in a judicial proceeding or deposition, or hearing before a quasi-judicial public body, board, or commission.

Members must use their best efforts to ensure that their report (or file memoranda) containing data, reasoning, and conclusions are preserved intact. If a report (or file memoranda) is delivered to a client and the client removes portions of such report (or file memoranda) prior to delivery to the opposing party, the credibility given to the work product of Members is being used to mislead the opposing party and the Court.

Comment E.R. 2-7

To Enable The Appraisal Institute's Peer Review and Admissions Activities to Function, a Member Must Preserve Certain Records.

As noted above in Comment E.R. 2-5, if the peer review and admissions activities of the Appraisal Institute are to be effective, certain information must be available to the Ethics and Counseling Committee (and its Divisions, subcommittees, individual members, and agents) as well as appropriate Admissions Committees, their members, and their agents. Therefore, the Appraisal Institute not only has adopted rules requiring Members to prepare certain records, but it also has adopted rules relating to the preservation of these records.

Comment E.R. 2-8

Members May Not Avoid Compliance with the Requirements of the Appraisal Institute's Standards of Professional Appraisal Practice, Code of Professional Ethics, Bylaws or Regulations by Entering Into a Contract for an Assignment that Precludes Compliance.

A primary objective of the Appraisal Institute is to formulate a Code of Professional Ethics and Standards of Professional Appraisal Practice that will serve the public interest and to enforce such Code and Standards upon and for its Members. Each Member has solemnly pledged to support this objective. Therefore, Members are prohibited from entering into any contract for an assignment that precludes compliance with the Bylaws, Regulations, Code of Professional Ethics, or Standards of Professional Appraisal Practice.

Comment E.R. 2-9

To Enable the Appraisal Institute to Enforce its Ethical and Performance Standards, Members Must Refrain From Certain Contractual Relationships.

As noted above in Comment E.R. 2-8, Members are prohibited from entering into any contract for an assignment that precludes compliance with the Code of Professional Ethics or Standards of Professional Appraisal Practice. To protect its Members from an inadvertent violation of this rule, the Appraisal Institute has adopted a companion rule that requires an affirmative statement in written contracts and a mutual understanding in oral contracts providing that all assignments will be developed and all reports prepared in conformity with and subject to the requirements of this Code of Professional Ethics and the Standards of Professional Appraisal Practice.

Comment E.R. 2-10

Reserved.

Comment E.R. 2-11

In the Performance of an Assignment, Members Must Assume Responsibility for the Contents of the Entire Report Unless the Report Clearly Indicates Otherwise.

The rule requiring an acknowledgment of the significant professional contributions of others does not reduce the responsibility of each Member who signs a written report resulting from an assignment. In making use of or in evaluating a report, clients and third parties to whom the report is given are entitled to rely upon the judgment and responsibility of each individual who signs the report unless the report clearly indicates that a signatory is accepting responsibility for only a portion of the report. Therefore, although others may make a significant contribution to the analyses or opinions set forth in a written report resulting from an assignment, if a Member of the Appraisal Institute signs or co-signs such report, such Member must either accept responsibility for the contents of the entire report or clearly and precisely indicate the portions of the report for which he or she does (or does not) accept responsibility.

CANON 3

IN THE PERFORMANCE OF AN ASSIGNMENT, A MEMBER MUST DEVELOP AND COMMUNICATE EACH ANALYSIS AND OPINION WITHOUT BEING MISLEADING, WITHOUT BIAS FOR THE CLIENT'S INTEREST AND WITHOUT ACCOMMODATION OF HIS OR HER OWN INTERESTS

Explanatory Comments to Canon 3

Comment E.R. 3-1

In the Performance of an Assignment, Members Must Not Develop an Analysis or Opinion that is Misleading or that They Know is Biased.

This rule concerns a misleading or biased analysis or opinion and the communication of a report that is misleading or contains a biased analysis or opinion. A misleading or biased opinion is generally outside of a reasonable range and deviates in a direction that would favor the client's or the appraiser's interest. In addition, there is no reasonable explanation for reaching the opinion. The use of the report is considered in determining the direction of the client's interest. The interest of a client who wants to finance would be favored by a higher value; the interest of a government agency that wants to condemn a property would be favored by a lower value.

If a Member wanted to bias a report in favor of a client's interest, he or she could use numerous techniques to distort the appraisal, consulting, or review process and arrive at an analysis or opinion that is not justified and that is biased in favor of the client's interest. For example, the Member could depart from reasonable appraisal, consulting, and review practices, many of which are outlined in the Standards of Professional Appraisal Practice, the Guide Notes, Appraisal Institute courses, and appraisal textbooks such as *The Appraisal of Real Estate*.

A Member is prohibited from knowingly preparing a report that contains a biased analysis or opinion and from preparing a report that does not accurately communicate the Member's analyses or opinions.

The communication of an assignment in a manner that is biased or that fails to communicate the Member's analyses and opinions accurately is also prohibited. For example, assume that A and B have a dispute as to the market value of Blackacre on X-date and that it is to A's advantage to have the market value as high as possible. A retains an appraiser to estimate the market value of Blackacre on X-date and requests that the value estimate be "as high as possible." The appraiser subsequently delivers a report with a cover letter stating that "subject to the terms and conditions in the full report, the market value of Blackacre on X-date was \$1,000,000," with a footnote on page 97 of the full report indicating that this value was based upon a change in the established definition of market value, or was based upon an assumption or limiting condition that had a substantial effect upon the value conclusion. In this example, the opinion may have been technically correct but the opinion was knowingly communicated in a manner that was biased in favor of the client.

This rule also applies when a Member signs a report without reading it. In this situation, the Member is making an affirmative representation to the public that he or she has formed an opinion when, in fact, he or she has not.

Comment E.R. 3-2

Reserved.

Comment E.R. 3-3

A Member Must Not Accept or Perform an Assignment if the Assignment is Contingent Upon Reporting a Predetermined Analysis or Opinion.

Since the Appraisal Institute requires each Member, in the performance of an assignment, to develop each analysis and conclusion concerning real property without bias, it is clear that under ordinary circumstances a Member could not accept and perform an assignment if the assignment was contingent upon reporting a predetermined analysis or opinion. Nothing

in this Ethical Rule, however, should be construed to prohibit a Member from accepting employment in phases, with the right to continue with a subsequent phase of the assignment being contingent upon the results of a prior phase, as long as each phase of the total assignment is performed without bias in favor of the client and without the accommodation of the personal interests of the Member.

To illustrate the point involved, assume the following facts. The highway department offers to pay property owner A the sum of \$400,000 for a partial taking and damages to the remainder. In support of this offer, the highway department delivers to A a report indicating just compensation of \$400,000. A believes that the value of the taking and the damage to the remainder was much greater; however, it is a very complicated issue and A does not have the expertise needed to evaluate the highway department's offer. A then contacts B, an appraiser, and offers to hire B on the following basis: B is to review the report submitted by the highway department for an hourly or fixed fee. If B reports that he or she agrees with the appraisal, the assignment is completed.

If B reports disagreement with the appraisal and believes that an appraisal prepared by B would result in an estimate of just compensation significantly higher than \$400,000, A may then give B an assignment to prepare an appraisal at an additional fixed or hourly fee.

If B accepts the proposal of A, B will not be in violation of the rule that prohibits the acceptance and performance of an assignment if such assignment "is contingent upon reporting a predetermined analysis or opinion." In reviewing the report and reporting the results of that review under the first assignment and in preparing an appraisal and reporting the results of that appraisal under the second assignment, B must arrive at an unbiased opinion and communicate his opinion to A in an unbiased manner. It should be noted that there may be other rules applicable to the assumed facts and B would have to carefully consider and comply with all such rules before accepting the assignment.

Comment E.R. 3-4

Members May Not Accept an Assignment if the Compensation to be Paid for the Performance of such Assignment is Contingent Upon the Opinion or Conclusion Reached, the Results of such Assignment, or the Occurrence of a Subsequent Event.

All professional disciplines require their members to use their best efforts on behalf of their patients, clients, and customers in the performance of their professional activities; however, all professions also acknowledge that, when the public interest so requires, there are limits upon what the professional may do for the benefit of his or her patient, client or customer. This is also true for the appraiser, the consultant and the review appraiser. In certain situations, it might be deemed by the client to be beneficial to retain a Member on a contingent fee basis. In this way, if the results achieved by the Member were beneficial to the client, the client would be in a position to pay a generous fee; however, if the client did not benefit from the results achieved by the appraiser, then the client would not have an obligation to pay. The benefit to the client under this type of arrangement is obvious.

There is, however, an overriding public interest in having available to the public appraisers, consultants, and review appraisers of unquestionable competence and integrity whose professional judgments cannot and will not be compromised by contingent fee arrangements. The vital role of appraisers, consultants, and review appraisers in our complex modern economy demands freedom from bias. To accommodate these competing public interests (benefit to clients vs. benefits to the public), the Appraisal Institute has adopted the basic rule that Members are prohibited from accepting a contingent fee for the performance of an assignment.

There is an important difference between performing an impartial consulting service as a disinterested third party and responding to a client's stated objective and performing a consulting service that is intended to facilitate the achievement of the client's objective. While both are legitimate business activities within the realm of consulting practice, the Member must recognize the distinction and the consequent obligations.

A Member retained to act as a disinterested third party (or reasonably perceived by the public as acting as a disinterested third party) and performing an unbiased consulting service, cannot be compensated in a manner that is contingent on the results. However, a Member retained to perform a legitimate consulting service, such as brokerage, mortgage banking, tax counseling, or zoning advice may be compensated by a fee contingent on the results achieved, but only when a proper

disclosure of the role being performed by the Member is made. The disclosure, including the basis for the contingency, must be in the report and in any transmittal letter in which conclusions are stated.

It should also be noted that the use of a corporation, partnership, or other business entity (or multiple business entities) will not shield a Member from the ethical requirements of this Canon. For example, if (i) a business entity owned or controlled (in whole or in part) by a Member enters into a contract with a third party to perform real estate tax assessment work for such third party on a contingent fee basis; and (ii) such business entity then tenders to such Member (either as an employee or as an "outside contractor") a contract to perform an appraisal assignment on a fixed fee basis; and (iii) the work product resulting from such fixed fee assignment will then be used by the business entity in connection with its contingent fee tax assessment work for the third party, the Member is prohibited from accepting such appraisal assignment.

In the example set forth above, the Member who owns or controls the business entity (in whole or in part) will anticipate the receipt of compensation from two sources: the fixed fee to be paid to such Member for the performance of the appraisal assignment plus all or some part of the contingent fee to be paid to the business entity for the tax assessment work. Since Members may not perform an assignment if all or any part of the compensation to be received is contingent upon the results of the assignment, the Member in the example above would be prohibited from entering into any contract with the business entity to perform such appraisal assignments. In addition, the Member could not sign or co-sign an appraisal report made in the name of the business entity and used in connection with the tax assessment work.

Comment E.R. 3-5

In the Performance of an Assignment, Members Must Observe Certain Rules Relating to Hypothetical Conditions.

A Member of the Appraisal Institute is permitted to accept an assignment that is based upon a hypothetical condition posited by a client or required by a legal instruction from the client's attorney only if

- (a) the Member makes a careful investigation of the relevant economic, legal, and physical factors and concludes that such hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison and would not be misleading; and
- (b) the report or file memoranda setting forth the results of such assignment clearly and accurately describes the investigation made and explains the basis for such conclusion; and
- (c) the report or file memoranda clearly explains the hypothetical condition and its effect upon the analyses and opinions. In such case, the Member must use great care to make certain that the report or file memoranda is designed to prevent any misunderstanding by the users of the report or the public.

Comment E.R. 3-6

A Member is Prohibited from Accepting an Assignment if Such Member Has a Personal Interest in the Subject Matter or Personal Bias Towards the Parties Unless Certain Conditions are Met.

To protect both clients and the public from inaccurate, unreliable, and misleading appraisals, consultations, or reviews and reports, Canon 3 requires that, in the performance of an assignment, each analysis or opinion of a Member must be arrived at and communicated "without accommodation of his or her own interests." This rule not only prohibits the acceptance of assignments in which the personal interest or bias of a Member may affect his or her objectivity, but it also requires a high degree of frankness and objectivity in written and oral statements concerning the qualifications of the Member.

If a Member of the Appraisal Institute has any direct or indirect, current or prospective personal interest in the subject matter or outcome of a proposed assignment, or any personal bias toward the parties involved in such proposed assignment, then prior to accepting such assignment the Member must

- (a) carefully consider the facts and determine the degree in which such personal interest or bias may affect his or her professional judgment;

- (b) disclose such personal interest or bias to the client prior to acceptance of the assignment; and
- (c) accurately disclose such personal interest or bias in each written and oral report resulting from such assignment.

If the Member concludes that his or her professional judgment would be affected, or might be affected, the Member must refuse the proffered assignment. In review assignments, "parties involved in the assignment" includes the author of the report being reviewed.

As used in this Canon, the prohibition against the accommodation of the Member's personal interest is not intended to apply to a Member who prepares a report or testifies on his or her own behalf as a property owner when property owned by such Member is involved in a judicial or quasi-judicial proceeding and such ownership is fully and completely disclosed.

Comment E.R. 3-7

Rules Governing the Acquisition of Property or a Change of Position by a Member Who Has Accepted or Performed an Assignment.

If, in the course of an assignment, a Member knowingly acquires property or assumes a position that could possibly affect his or her personal judgment or violate his or her fiduciary duty to the client, the Member must

- (a) carefully consider the facts and determine the degree to which such acquisition or change of position may affect his or her professional judgment;
- (b) disclose such acquisition or change of position to the client;
- (c) give to the client at the time of such disclosure the right to terminate the assignment without the payment of any fee or other charge; and
- (d) accurately disclose such acquisition or change of position in each written or oral report resulting from such assignment.

Comment E.R. 3-8

Identification of Appraisers Who Participate in an Assignment

To avoid misleading the client and the public, each written report that results from an assignment and is signed by a Member of the Appraisal Institute, must acknowledge by name each individual who rendered significant professional assistance in arriving at the analyses and opinions contained in such report. This rule does not require a Member of the Appraisal Institute to acknowledge (i) assistance received in obtaining the data upon which the report is based; (ii) assistance received in the physical preparation of the report (such as taking photographs; preparing charts, maps, or graphs; or typing or printing the report); or (iii) any other assistance that does not directly involve the exercise of judgment in arriving at the analyses or opinions set forth in the report.

An accurate identification of the person or persons who rendered significant professional appraisal assistance in arriving at the analyses or opinions contained in a report resulting from an assignment and signed by a Member, will enable the client and the public to evaluate the professional qualifications of the person or persons who arrived at the analyses or opinions in such report.

CANON 4

A MEMBER MUST NOT VIOLATE THE CONFIDENTIAL NATURE OF THE APPRAISER-CLIENT RELATIONSHIP

Explanatory Comments to Canon 4

Comment E.R. 4-1 and E.R. 4-2

Members Must Carefully Observe the Appraisal Institute's Rules Governing Disclosure of the Confidential Portions of a Report and Confidential Factual Data Furnished the Appraiser by a Client.

The client has a legitimate interest in controlling the disclosure and use of a report commissioned by such client. This legitimate interest results in part from the fact that the client is obligated to pay a fee for services rendered and is, therefore, entitled to some measure of control over the use of the work product produced for this fee. It also results in part from the fact that an improper disclosure of the results of an assignment or the improper disclosure of any confidential information furnished to the Member in connection with an assignment could severely damage the client. The Member has a fiduciary obligation to the client, which requires that the rules governing disclosure of the confidential portions of a report be carefully observed.

At the same time, market data is necessary to the profession and it is essential that the nonconfidential portions of a report be available to the Member for future use and, at the option of the Member, for the future use of other members of the profession. To assist its Members in distinguishing between the confidential and nonconfidential portions of a report, and to aid its Members in observing the requirements of confidentiality that flow from the appraiser-client relationship, the Appraisal Institute has developed various rules relating to the disclosure of the contents of a report. The rules set forth in Ethical Rule 4-1 deal with the confidential portions of the report, which include the Member's analyses, opinions, and conclusions.

The nonconfidential portions of a report that may be disclosed or used by the Member who prepared the report include, but are not limited to, all factual and statistical data secured by the Member from his or her own sources; general conclusions concerning the community in which the subject real estate is located; and general charts, maps and graphs that relate to more than the subject matter of the assignment.

Comment E.R. 4-2

Combined with Comment to E.R. 4-1 above.

Comment E.R. 4-3

Reserved.

Comment E.R. 4-4

Rules Governing Disclosure of Confidential Information Obtained While Serving on Appraisal Institute Committees.

The Appraisal Institute's professional standards can be maintained only if the Appraisal Institute, acting through its duly authorized committees under the limitations imposed by the Appraisal Institute's Bylaws and Regulations, has access to certain reports and other information prepared or assembled by its Members. Since the committees and individuals authorized by the Appraisal Institute to obtain such reports and other information are required by the Bylaws and Regulations of the Appraisal Institute to keep strictly confidential all information coming to them in an official capacity, the confidential nature of the appraiser-client relationship is not violated by the requirements of Ethical Rule 4-4.

Reports, file memoranda and other information prepared or assembled by its Members must, upon request, be submitted to a duly authorized committee of the Appraisal Institute or member or agent thereof when and to the extent that such committee or member or agent thereof is acting within the scope of its, his, or her authority. The Appraisal Institute requires its Members to take appropriate steps to avoid any misunderstanding in this regard. Therefore, except as noted below, each Member is required to state in each written report and each written contract for an assignment that the report has been or will be prepared in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute and will be subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

The requirements that a statement substantially in the form discussed above be included in all written contracts for assignments is not absolute. When the benefits to the public to be derived from this rule are weighed against the public detriment that would result from prohibiting Members from entering into written contracts for assignments with certain major employers (such as government bodies and regulated insurance companies), who are well aware of the Appraisal Institute's peer review procedures but have a standard form of contract for assignments that is prescribed by statute or is extremely difficult to change, it is clear that a limited exception must be made to the general rule concerning a mandatory statement to be included in all written contracts for assignments. Therefore, in the event that a Member is tendered a written contract for an assignment by a major employer (such as a government body or regulated insurance company) that has a standard form of contract for assignments that is prescribed by statute, or is extremely difficult to change, the Member is required to use his or her best efforts to comply with the Appraisal Institute's general rule relating to the mandatory statement; however, if such efforts are not successful, such Member is permitted to enter into the standard form contract of such major employer.

CANON 5

A MEMBER MUST USE CARE TO AVOID ADVERTISING OR SOLICITATIONS THAT ARE MISLEADING OR OTHERWISE CONTRARY TO THE PUBLIC INTEREST

Explanatory Comments to Canon 5

Comment E.R. 5-1

Members are Prohibited from Utilizing Misleading Advertising.

A hallmark of every profession is that its members acknowledge the profession's duty to make its services available to the general public. To serve the public effectively, however, such services must not only be available, but the public must also be properly and accurately informed as to the functions of the profession and the qualifications and credentials of its members. In this way, members of the public requiring such services will be in a position to select a member of the profession upon the basis of an individual's reputation for competence or the confidence that the public has come to place in a professional designation. The public interest is not served by the distribution or use of misleading or deceptive advertising material, or by practices which impair the confidence of the public in the profession.

Members of the Appraisal Institute may utilize advertising media not only to inform prospective clients and the public that their services are available but also to advise such parties as to the range, nature, and cost of such services. At the same time, however, it is essential that such advertising not be misleading or calculated to create unrealistic expectations in the minds of the parties to whom the advertising is directed. In promoting an appraisal practice to secure assignments, Members are required to take particular care not to indicate or imply that anything but the highest standards of objectivity and impartiality will be observed.

Comment E.R. 5-2

Members of the Appraisal Institute Must Observe the Appraisal Institute's Rules Relating to References to Its Membership Designations and Emblems.

A Member of the Appraisal Institute must use care when referring to membership in the Appraisal Institute or to the designation conferred on such Member by the Appraisal Institute. The Appraisal Institute's name, membership designations, and emblems are solely the property of the Appraisal Institute and must be used in a manner that preserves and respects the full extent of the Appraisal Institute's rights and interests therein. Further, the designations and emblems are the subjects of federal registrations in the United States Patent and Trademark Office, and any misuse of these marks is actionable in the federal courts. The authorized or permitted uses of the Appraisal Institute's name and the membership designations are governed by the Bylaws, the Code of Professional Ethics, and various other Regulations of the Appraisal Institute. The authorized or permitted uses of the Appraisal Institute's emblems and designations are specifically set forth in the Appraisal Institute's Regulation No. 5.

The general rule governing any reference to or use of the name of the Appraisal Institute and its membership designations is that such reference or use must not be misleading or deceptive. For example, the name of the Appraisal Institute may be used to refer factually and accurately to an individual's membership, but such usage must never suggest that a business organization is a member. Similar care must be used in referring to the Appraisal Institute's membership designations. The designations are conferred only on an individual Member and must never be used to give the impression that a business organization holds a designation. Further, any advertisement, leaflet, pamphlet, brochure, or other material used for promotional or solicitation purposes which refers to the Appraisal Institute or to the Appraisal Institute's membership designations must be dignified, conservative, and in keeping with the highest professional standards. The Appraisal Institute requires that its membership designations be used only in strict conjunction with the name of the Member to whom it has been granted and also requires that the designation not appear in type or lettering larger than that of the Member's name.

Comment E.R. 5-3

Rules Governing the Solicitation of Appraisal Business.

The Appraisal Institute recognizes the right of its Members to engage in the personal solicitation of clients and business in any manner which does not offend the legitimate interests of the public and the profession. Hence, such personal solicitation is prohibited only when it violates the standards set for advertising in general, or when such solicitation implies that the impartiality and objectivity of the Member in performing assignments will be adjusted to accommodate the desires of the client.

The use of a corporation, partnership, or other business entity (or multiple business entities) will not shield a Member from the ethical requirements of this Canon. Even though the name of a Member is not mentioned directly, it is unethical for a Member of the Appraisal Institute to knowingly permit a business entity that is wholly or partially owned or controlled by such Member to solicit assignments in a manner that is misleading or otherwise contrary to the public interest.

Comment E.R. 5-4

The Public Interest Prohibits Members from Paying Undisclosed Fees, Commissions or Things of Value to Third Parties for Referral of an Assignment.

Competency, rather than financial incentives, should be the primary basis for referring an assignment. At the same time, federal law prohibits a professional organization from prohibiting all referral fees. Therefore, Members are prohibited solely from paying an undisclosed fee, commission, or thing of value in connection with the procurement of an assignment. The disclosure must include the fact that a fee, commission, or thing of value was paid.

In construing this rule, disclosure is required only if the payment made is a condition of the referral. For example, if the party to who a referral is made subsequently invites the referring party to dinner as a token of thanks, this act would not be payment of a "thing of value" and disclosure would not be required.

Comment E.R. 5-5

Reserved.

Rules Relating to the Preparation and Use of Statements of Qualifications and Resumes.

A Member may utilize a statement of qualifications or resume in connection with advertising, personal solicitation, and other promotional activities designed to inform potential clients and the public that he or she is available to perform assignments.

Resumes and qualification statements, however, as with other promotional materials, must be factual and comply with the general rules governing advertising and personal solicitation. Members are required to use the highest degree of care in preparing any such resume or statement to ensure that such resume or statement is not misleading. In addition, an Associate or Affiliate Member must comply with the specific rules of the Appraisal Institute relating to the manner in which he or she may refer to his or her membership.

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