

# Code of Professional Ethics of the Appraisal Institute

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## DEFINITIONS

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The following definitions apply to the Code of Professional Ethics. Each Member must know and understand each defined term in the Code of Professional Ethics. Where a definition in the Code of Professional Ethics is used verbatim or adapted from a definition in the Uniform Standards of Professional Appraisal Practice (USPAP), such source is noted. Since the Code of Professional Ethics applies to Members of the Appraisal Institute, whereas USPAP applies solely to appraisers as defined by USPAP, some references in USPAP definitions to “appraiser” have been changed to “member.” Further, because the Code of Professional Ethics also applies to “real property consulting,” some USPAP definitions have been adapted to incorporate “real property consulting” where appropriate.

### **Admissions Matter**

Any action relating to a requirement for admission to Appraisal Institute Affiliate, Associate, or Designated Membership.

### **Appraisal** (Source: USPAP definition of “appraisal” as a noun only)

The act or process of developing an opinion of value; an opinion of value.

Complete Appraisal: the act or process of developing an opinion of value or an opinion of value developed without invoking the DEPARTURE RULE.

Limited Appraisal: the act or process of developing an opinion of value or an opinion of value developed under and resulting from invoking the DEPARTURE RULE.

Comment: An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value).

### **Appraisal Consulting** (Source: USPAP)

The act or process of developing an analysis, recommendation, or opinion, where an opinion of value is a component of the analysis leading to the assignment results.

Comment: An appraisal consulting assignment involves an opinion of value but does not have an appraisal or an appraisal review as its primary purpose.

### **Appraisal Review** (Source: Adapted from USPAP)

The act or process of developing and communicating an opinion for a client about the quality of another appraiser’s work.

Comment: The subject of an appraisal review assignment may be all or part of an appraisal report, workfile, or a combination of these.

### **Assignment**

An appraisal, appraisal review, or appraisal consulting service provided for a client.

### **Assumption** (Source: USPAP)

That which is taken to be true.

## DEFINITIONS (continued)

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### **Biased**

Not reasonably supported, and favoring or promoting the cause or interest of the client, one's self, or another.

Comment: A Member may never develop, prepare, use, or report a biased analysis, opinion, or conclusion.

Evidence that a Member developed, prepared, used, or reported a biased analysis, opinion, or conclusion may include, but is not limited to, deviation from reasonable appraisal, appraisal review, appraisal consulting, or real property consulting practices resulting in an analysis, opinion, or conclusion that is not reasonably supported and that favors or promotes the client's, the Member's, or another's interest or cause. Many of these reasonable practices are outlined in the Standards of Professional Appraisal Practice of the Appraisal Institute, Guide Notes to the Standards of Professional Appraisal Practice, and Appraisal Institute courses, seminars, and textbooks such as *The Appraisal of Real Estate*. The intended use of the analysis, opinion, or conclusion is relevant in determining the direction of a client's interest.

### **Client** (Source: Adapted from USPAP)

The party or parties who engage a Member (by employment or contract) in a specific service.

Comment: The client identified by the Member in an appraisal, appraisal review, appraisal consulting service (or in the service workfile), or real property consulting service is the party or parties with whom the Member has a relationship in the related service, and may be an individual, group, or entity.

### **Committee**

Any Board, Committee, Subcommittee, Council, or Panel formed pursuant to the Bylaws or Regulations of the Appraisal Institute.

### **Confidential Information** (Source: Adapted from USPAP by changing "appraiser" to "Member")

Information that is either:

- identified by the client as confidential when providing it to a Member and that is not available from any other source; or
- classified as confidential or private by applicable law or regulation\*.

\*NOTICE: For example, pursuant to the passage of the Gramm-Leach-Bliley Act in November 1999, some public agencies have adopted privacy regulations that affect Members. As a result, the Federal Trade Commission issued a rule focused on the protection of "non-public personal information" provided by consumers to those involved in financial activities "found to be closely related to banking or usual in connection with the transaction of banking." These activities have been deemed to include "appraising real or personal property." (Quotations are from the Federal Trade Commission, Privacy of Consumer Financial Information; Final Rule, 16 CFR Part 313)

**Consulting**

See appraisal consulting and real property consulting.

**Extraordinary Assumption** (Source: Adapted from USPAP)

An assumption, directly related to a specific service, which, if found to be false, could alter the Member's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

**Hypothetical Condition** (Source: USPAP)

That which is contrary to what exists but is supposed for the purpose of analysis.

Comment: Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

**Intended Use** (Source: Adapted from USPAP)

The use or uses of a Member's reported appraisal, appraisal review, appraisal consulting, or real property consulting service analyses, opinions, and conclusions, as identified by the Member based on communication with the client at the time of the service.

**Intended User** (Source: Adapted from USPAP)

The client and any other party as identified, by name or type, as users of the appraisal, appraisal review, appraisal consulting, or real property consulting report by the Member on the basis of communication with the client at the time of the service.

**Know or Knowingly**

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, 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 methods and techniques such as those set forth in Appraisal Institute 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**

A Designated Member, Associate Member, or Affiliate Member of the Appraisal Institute.

### **Peer Review Committee**

The Ethics and Counseling Committee, the Appellate Division, the Ethics Administration Division, any Grievance Committee, or any Hearing Committee duly constituted under Regulation No. 6 of the Appraisal Institute.

### **Peer Review Proceeding**

All actions taken pursuant to Regulation No. 6 of the Appraisal Institute to determine whether a Member may have violated or did violate the requirements of the Code of Professional Ethics or Standards of Professional Appraisal Practice of the Appraisal Institute and to take appropriate remedial or disciplinary measures. The term “peer review proceeding” also applies to actions taken pursuant to this Regulation to determine whether a Member has failed to comply with the terms of suspension; has been convicted of a crime committed prior to becoming a Member; or has knowingly made false statements, submitted false information, or failed to fully disclose information requested in an application for admission to membership, candidacy, or affiliate status and to take appropriate disciplinary action.

### **Real Property Consulting**

The act or process of developing and reporting an analysis, recommendation, or opinion concerning real property, where an opinion of value is not a component of the analysis, recommendation, or opinion.

### **Report** (Source: Adapted from USPAP)

Any communication, written or oral, of an appraisal, appraisal review, appraisal consulting, or real property consulting service that is transmitted to the client.

Comment: Most reports are written and most clients mandate written reports. Oral report requirements (see the Record Keeping section of the Ethics Rule of USPAP) are included to cover court testimony and other oral communications of an appraisal, appraisal review, appraisal consulting, or real property consulting service.

### **Service**

Work that a Member performs for a client that is subject to the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute. Services include appraisal, appraisal review, appraisal consulting, and real property consulting.

### **Value** (Source: USPAP)

The monetary relationship between properties and those who buy, sell, or use those properties.

Comment: *Value* expresses an economic concept. As such, it is never a fact but always an opinion of the worth of a property at a given time in accordance with a specific definition of value. In appraisal practice, value must always be qualified for example, market value, liquidation value, or investment value.

## **DEFINITIONS (continued)**

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### **Workfile** (Source: Adapted from USPAP)

Documentation necessary to support a Member's analyses, opinions, and conclusions. A workfile must include at minimum the following:

- the name of the client and the identity, by name or type, of any other intended users;
- true copies of any written reports, documented on any type of media;
- summaries of any oral reports or testimony, or a transcript of testimony, including the Member's limiting and hypothetical conditions, and the Member's signed and dated certification; and
- all other data, information, and documentation necessary to support the Member's analyses, opinions, and conclusions and to show compliance with the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, or references to the location(s) of such other documentation accessible to the Member.

## **EXCEPTIONS TO ETHICAL RULES**

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If any part of an Ethical Rule is contrary to the law or public policy of any jurisdiction, such part shall be void and of no force or effect in such jurisdiction.

When a Member violates an Ethical Rule due to an event beyond the Member's control, such as an act of God or illness, the peer review committee(s) (or any member or duly authorized agent thereof) reviewing the Member's conduct should consider such event and all the relevant facts about the case to avoid an inequitable result.

## **A Member Must Refrain from Conduct that is Detrimental to the Appraisal Institute, the 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 analysis, opinion, conclusion, or report;
- (c) communicate, or permit an employee or third party to communicate, any analysis, opinion, conclusion, or report in a manner that is misleading;
- (d) contribute to or participate in the development, preparation, or use of an appraisal, appraisal review, appraisal consulting, or real property consulting analysis, opinion, or conclusion 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, appraisal review, appraisal consulting, or real property consulting analysis, opinion, or conclusion 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.

#### **E.R. 1-3**

It is unethical to fail to properly identify the issue to be addressed and have the knowledge and experience to complete the service competently prior to agreeing to perform any service, or alternatively, to:

- (a) disclose the lack of knowledge and/or experience to the client before agreeing to perform the service;
- (b) take all steps necessary or appropriate to complete the service competently; and
- (c) describe the lack of knowledge and/or experience and the steps taken to complete the service competently in the report.

## **A Member Must Assist the Appraisal Institute in Fulfilling Its Role Relating to Member Qualifications and Member Compliance with Ethics and Standards**

### **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 an admissions matter or the confidentiality of a peer review proceeding; or
- (b) for a Member who has made a referral initiating a peer review proceeding, 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 an admissions matter or peer review proceeding if the Member is unable or unwilling to fulfill the responsibilities of a member of said committee.

#### **E.R. 2-3**

It is unethical to knowingly:

- (a) make false statements or submit misleading information to the Appraisal Institute, an Appraisal Institute committee or member thereof, or one of their duly authorized agents;
- (b) fail or refuse to promptly submit any relevant documentation or information that is or should be in the possession or control of such Member when requested to do so by the Appraisal Institute, an Appraisal Institute committee or member thereof, or one of their duly authorized agents;
- (c) fail or refuse to promptly answer all relevant questions when requested to do so by the Appraisal Institute, an Appraisal Institute committee or member thereof, or one of their duly authorized agents;
- (d) fail or refuse to appear for a personal interview or participate in an interview conducted by telephone when requested to do so by the Appraisal Institute, an Appraisal Institute committee or member thereof, or one of their duly authorized agents;
- (e) fail to comply with the terms of a summons issued by a duly authorized Hearing Committee;
- (f) fail or refuse to cooperate with the Appraisal Institute, an Appraisal Institute committee or member thereof, or one of their duly authorized agents; or

**CANON 2 (continued)**

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- (g) fail or refuse to fulfill each of the Member's obligations under the Bylaws, Regulations, and policies of the Appraisal Institute.

**E.R. 2-4**

It is unethical to fail to prepare a workfile for each service (appraisal, appraisal review, appraisal consulting, or real property consulting). The workfile must be prepared for each service prior to the issuance of an oral or written report.

**E.R. 2-5**

It is unethical to fail to preserve each workfile for:

- (a) a period of five years from the date of preparation of such workfile;
- (b) a period of two years following final disposition of a proceeding in which the Member gave testimony pertaining to the subject matter of the workfile;
- (c) a period commencing upon notification that a service is the subject of a peer review proceeding under Regulation No. 6 until notification by the Appraisal Institute of final disposition of such peer review proceeding;
- (d) a period commencing upon a request from Admissions relating to a service (appraisal, appraisal review, appraisal consulting, or real property consulting) 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 a service (appraisal, appraisal review, appraisal consulting, or real property consulting) by a state licensing and/or certification board,

whichever period shall be the last to expire.

**E.R. 2-6**

It is unethical to enter into a contract that:

- (a) places one or more obligations on the Member that are inconsistent with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice, Bylaws, or Regulations of the Appraisal Institute; or
- (b) does not provide that the Member will develop and report a service (appraisal, appraisal review, appraisal consulting, or real property consulting) in conformity with and subject to the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute.

**E.R. 2-7**

It is unethical to fail to sincerely and demonstrably seek other employment if:

- (a) the Member's employer prevents such Member from complying with the requirements of the Code of Professional Ethics or Standards of Professional Appraisal Practice of the Appraisal Institute; or
- (b) the Member knows that the Member's employer fails to comply with the Code of Professional Ethics or Standards of Professional Appraisal Practice of the Appraisal Institute.

## **In Providing Services (Appraisal, Appraisal Review, Appraisal Consulting, or Real Property Consulting), A Member Must Develop and Report Unbiased Analyses, Opinions, and Conclusions**

### **Ethical Rules**

#### **E.R. 3-1**

It is unethical to knowingly contribute to or participate in the development, preparation, use, or reporting of an analysis, opinion, or conclusion that is biased.

#### **E.R. 3-2**

It is unethical to knowingly permit an entity that is wholly or partially owned or controlled by a Member to contribute to or participate in the development, preparation, use, or reporting of an analysis, opinion, or conclusion that is biased.

#### **E.R. 3-3**

It is unethical to agree to provide or provide a service (appraisal, appraisal review, appraisal consulting, or real property consulting) that is contingent upon reporting a predetermined analysis, opinion, or conclusion.

#### **E.R. 3-4**

It is unethical to agree to or accept compensation for an appraisal, appraisal review, or appraisal consulting assignment when such compensation is contingent on the analysis, opinion, or conclusion reached, the attainment of a stipulated result, or the occurrence of a subsequent event.

#### **E.R. 3-5**

It is unethical to agree to or accept compensation for a real property consulting service when such compensation is contingent on the analysis, opinion, or conclusion reached or the occurrence of a subsequent event, unless:

- (a) the Member is not acting in a disinterested manner and would not reasonably be perceived as performing a service that requires impartiality; and
- (b) the Member clearly and conspicuously discloses the existence and basis of any contingent fee in reporting the results of the service.

E. R. 3-5 does not apply to a Member when providing real property consulting services that are subject to the requirements of another licensed occupation or profession.

**E.R. 3-6**

It is unethical to agree to provide or provide a service (appraisal, appraisal review, appraisal consulting, or real property consulting) that includes a hypothetical condition, unless:

- (a) use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison;
- (b) use of the hypothetical condition results in a credible analysis; and
- (c) the Member complies with the applicable disclosure requirements set forth in USPAP for hypothetical conditions.

**E.R. 3-7**

It is unethical to agree to provide or provide a service (appraisal, appraisal review, appraisal consulting, or real property consulting) that includes an extraordinary assumption, unless:

- (a) the extraordinary assumption is required to properly develop credible opinions and conclusions;
- (b) the Member has a reasonable basis for the extraordinary assumption;
- (c) use of the extraordinary assumption results in a credible analysis; and
- (d) the Member complies with the applicable disclosure requirements set forth in USPAP for extraordinary assumptions.

**E.R. 3-8**

It is unethical to agree to provide or to provide a service (appraisal, appraisal review, appraisal consulting, or real property consulting) if a Member has any direct or indirect, current, or prospective personal interest in the subject or outcome of the service or with respect to the parties involved in the service, unless:

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

**E.R. 3-9**

It is unethical, during the period that commences at the time that a Member is contacted concerning a service (appraisal, appraisal review, appraisal consulting, or real property consulting) and expires a

**CANON 3 (continued)**

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reasonable length of time after the completion of such service, to knowingly acquire an interest in property or assume a position that could possibly affect the Member's judgment or violate the Member's responsibilities 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 the Member's judgment or violate the Member's responsibilities to the client;
- (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;
- (c) at the time of such disclosure, the Member gives the client the right to terminate the service without payment of any fee or other charge; and
- (d) the facts concerning such acquisition or change of position are fully and accurately described in each report resulting from the service.

## **A Member Must Not Violate the Confidential Nature of the Member-Client Relationship**

### **Ethical Rules**

#### **E.R. 4-1**

It is unethical to disclose confidential information or an analysis, opinion, or conclusion specific to a service (appraisal, appraisal review, appraisal consulting, or real property consulting) to anyone other than:

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

#### **E.R. 4-2**

If a Member is furnished confidential information by a client and a third party subsequently requests a service (appraisal, appraisal review, appraisal consulting, or real property consulting) that will be materially affected by the use of, or the failure to use, such confidential information, it is unethical to agree to provide such subsequent service, unless:

- (a) the source that provided such confidential information permits the information to be used in the subsequent service;
- (b) such information has subsequently been made public or is available from another source and therefore is no longer confidential.

#### **E.R. 4-3**

It is unethical for a current or former Appraisal Institute committee member to discuss or disclose confidential information, analyses, opinions, conclusions, or factual data, derived through committee activities with anyone other than:

- (a) the Member whose report or workfile contains the confidential information, analyses, opinions, conclusions, or factual data;
- (b) such Member's client and those persons specifically authorized by that client to receive the confidential information, analyses, opinions, conclusions, or factual data;
- (c) third parties, when and to the extent that the committee member is legally required to do so by statute, ordinance, or court order; and

**CANON 4 (continued)**

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- (d) committee members and their duly authorized agents within the scope of the Bylaws and Regulations of the Appraisal Institute.

## **A Member Must Not Advertise or Solicit in a Manner that is 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, logos, or emblems of the Appraisal Institute in a manner contrary to Regulation No. 5.

#### **E.R. 5-3**

It is unethical to solicit services (appraisal, appraisal review, appraisal consulting, or real property consulting) in a misleading manner. Further, it is unethical to knowingly permit an entity wholly or partially owned or controlled by a Member to solicit services in a misleading manner.

#### **E.R. 5-4**

It is unethical to fail to disclose the payment by the Member, or by an entity wholly or partially owned or controlled by the Member, of a fee, commission, or thing of value for the procurement of a service (appraisal, appraisal review, appraisal consulting, or real property consulting). The disclosure of fees, commissions, and things of value paid in connection with the procurement of a service must appear in the certification of any resulting written report and in any transmittal letter in which an analysis, opinion, or conclusion is 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. 5-4 does not apply to a Member when providing real property consulting services that are subject to the requirements of another licensed occupation or profession.

#### **E.R. 5-5**

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

## **CANON 1 COMMENT**

Public confidence and trust in the Appraisal Institute, Members, and the profession is essential to the well-being of our society and the global economy. The Appraisal Institute serves a vital public need by educating and training professionals concerning real property, by conferring professional membership designations on individuals who meet stringent requirements, and by conducting peer review that enhances the quality of Members' work product, and disciplines and deters unethical conduct. In turn, the services of Appraisal Institute Members foster economic growth and stability. If a Member engages in conduct that is detrimental to the Appraisal Institute, the profession, or the public, the Member undermines the public confidence and trust that is necessary for the Appraisal Institute, Members, and the profession to perform their vital roles in our society and the global economy.

### **E.R. 1-1(a) Comment**

If an Appraisal Institute Member knowingly acts in a misleading or fraudulent manner when providing a service or when engaged in an activity unrelated to a service, the Member harms the reputation of the Appraisal Institute, its Members, and the profession, thereby undermining the confidence and trust that the public and clients must have in the integrity of the Appraisal Institute, Members, and the profession. Therefore, the prohibition in Ethical Rule 1-1(a) against acting in a misleading or fraudulent manner applies to all activities of a Member, including appraisal, appraisal review, appraisal consulting, and real property consulting, as well as activities unrelated to such services.

For example, if a Member prepares a report that includes information that the Member knows or should know will lead the intended users of the report to an improper conclusion, the Member acts in a manner that is misleading, in violation of Ethical Rule 1-1(a).

A second example is that if a Member acts in a misleading or fraudulent manner while engaged in real estate brokerage, such Member violates Ethical Rule 1-1(a). Any such misleading or fraudulent conduct will be contrary to the public interest, and will reflect adversely upon the Member, the Appraisal Institute, Members generally, and the profession.

A third example is that if a Member misleads the Appraisal Institute, by an act of omission or commission, as to the Member's eligibility for a particular membership status or category, the Member violates Ethical Rule 1-1(a). Such conduct undermines the confidence that the public and clients must have in the integrity of the Member's services, Members generally, the Appraisal Institute, and the profession. If a Member acts in a misleading or fraudulent manner in activity unrelated to a service, the public and clients can legitimately question whether such a lack of personal integrity will impact the services a Member provides.

### **E.R. 1-1(b) Comment**

A misleading analysis, opinion, conclusion, or report harms the public interest and undermines the confidence of the public and clients in Members, the profession, and the Appraisal Institute. Furthermore, because the public and clients rely on a Member's expertise and integrity, they will give credibility to any analysis, opinion, conclusion, or report that a Member uses, or permits an employee or third party to use, even if it is misleading. Therefore, Ethical Rule 1-1(b) prohibits a Member from knowingly using an analysis, opinion, conclusion, or report that is misleading. Further, to the extent that such Member is in a position to control such use, Ethical Rule 1-1(b) prohibits a Member from knowingly permitting an employee or third party to use a misleading analysis, opinion, conclusion, or

report. A Member cannot avoid ethical responsibility by doing indirectly that which the Member cannot do directly. Further, a Member who uses, or permits an employee or third party to use, a misleading analysis, opinion, conclusion, or report, but who does not take the appropriate steps to ascertain whether such analysis, opinion, conclusion, or report is in fact misleading, is responsible for the use of the misleading analysis, opinion, conclusion, or report under this Ethical Rule.

One example of a violation of Ethical Rule 1-1(b) is if in the performance of an appraisal a Member knowingly develops a misleading analysis of comparable sales.

A second example is that if a Member knowingly develops a misleading opinion concerning the appropriate depreciation for an industrial building and provides the opinion to another appraiser to use in developing a conclusion as to the value of the industrial building, such Member violates Ethical Rule 1-1(b) even though the Member did not develop the final conclusion.

A third example is that if a Member incorporates a misleading conclusion prepared by the Member's partner into a report prepared by the Member, such Member is in violation of Ethical Rule 1-1(b) if the Member found or should have found the misleading conclusion given the Member's training and background, as well as all of the relevant facts and circumstances.

### **E.R. 1-1(c) Comment**

A misleading analysis, opinion, conclusion, or report harms the public interest and undermines the confidence of the public and clients in Members, the profession, and the Appraisal Institute. Furthermore, because the public and clients rely on a Member's expertise and integrity, they will give credibility to any analysis, opinion, conclusion, or report that a Member communicates, or permits an employee or third party to communicate. Therefore, Ethical Rule 1-1(c) prohibits a Member from knowingly communicating an analysis, opinion, conclusion, or report in a manner that is misleading. Further, to the extent that such Member is in a position to control such use, Ethical Rule 1-1(b) prohibits a Member from knowingly permitting an employee or third party to communicate an analysis, opinion, conclusion, or report in a manner that is misleading. A Member cannot avoid ethical responsibilities by doing indirectly that which the Member cannot do directly. Further, a Member who communicates, or permits an employee or third party to communicate, an analysis, opinion, conclusion, or report in a manner that is misleading, but who does not take the appropriate steps to ascertain whether such analysis, opinion, conclusion, or report is in fact communicated in a manner that is misleading, is responsible for the communication of the misleading analysis, opinion, conclusion, or report under this Ethical Rule.

Under this Ethical Rule, a Member must pay particular attention to a client's request for permission to quote all or a portion of an analysis, opinion, conclusion, or report to ensure that the client will not communicate the analysis, opinion, conclusion, or report in a misleading manner.

**E.R. 1-1(d) Comment**

A Member must use the Member’s expertise to develop, prepare, and use analyses, opinions, and conclusions that are justified. To do otherwise harms the public interest and undermines public and client confidence in the Member, Members generally, the Appraisal Institute, and the profession. Therefore, Ethical Rule 1-1(d) prohibits a Member from knowingly contributing to or participating in the development, preparation, or use of an appraisal, appraisal review, appraisal consulting, or real property consulting analysis, opinion, or conclusion that reasonable appraisers would not believe to be justified. This Ethical Rule applies to a Member regardless of whether the Member is publicly identified with the analysis, opinion, or conclusion because the ethical issue is the same in either situation.

The test under Ethical Rule 1-1(d) is whether reasonable appraisers would believe the analysis, opinion, or conclusion to be “justified,” rather than “misleading.” Members can and do differ as to the appropriate solutions to a real property issue. If, however, reasonable appraisers conclude that an analysis, opinion, or conclusion is not reasonably supported, then such analysis, opinion, or conclusion would not be “justified” under this Ethical Rule. Evidence that a Member did not develop, prepare, or use an analysis, opinion, or conclusion that reasonable appraisers would believe to be justified may include, but is not limited to, deviation from reasonable appraisal, appraisal review, appraisal consulting, or real property consulting practices such as those outlined in the Standards of Professional Appraisal Practice of the Appraisal Institute, Guide Notes to the Standards of Professional Appraisal Practice of the Appraisal Institute, and Appraisal Institute courses, seminars, and textbooks such as *The Appraisal of Real Estate*.

One example of a violation of Ethical Rule 1-1(d) is if a Member knowingly develops an opinion that is not reasonably supported and the Member provides such opinion to another appraiser to use in the performance of an appraisal service, even if the Member does not sign the final report.

A second example is if in the performance of an appraisal service that requires a sales comparison approach, a Member knowingly makes inappropriate adjustments to the sales comparables resulting in a conclusion that is not reasonably supported, the Member violates Ethical Rule 1-1(d).

**E.R. 1-1(e) Comment**

A Member must utilize the Member’s expertise to prepare or deliver reports that contain analyses, opinions, and conclusions that are justified. To do otherwise harms the public interest and undermines public and client confidence in the Member, Members generally, the Appraisal Institute, and the profession. Therefore, Ethical Rule 1-1(e) prohibits a Member from knowingly contributing to or participating in the preparation or delivery of an appraisal, appraisal review, appraisal consulting, or real property consulting analysis, opinion, or conclusion that reasonable appraisers would not believe to be justified. This Ethical Rule applies to a Member regardless of whether the Member signs or delivers the report because the ethical issue is the same in either situation.

The test under Ethical Rule 1-1(e) is whether reasonable appraisers would believe the analysis, opinion, or conclusion to be “justified,” rather than “misleading.” Members can and do differ as to the appropriate solutions to a real property issue. If, however, reasonable appraisers conclude that an analysis, opinion, or conclusion is not reasonably supported, then such analysis, opinion, or conclusion would not be “justified” under this Ethical Rule. Evidence that a Member did not develop, prepare, or use an analysis, opinion, or conclusion that reasonable appraisers would believe to be

justified may include, but is not limited to, deviation from reasonable appraisal, appraisal review, appraisal consulting, or real property consulting practices such as those outlined in the Standards of Professional Appraisal Practice of the Appraisal Institute, Guide Notes to the Standards of Professional Appraisal Practice of the Appraisal Institute, and Appraisal Institute courses, seminars, and textbooks such as *The Appraisal of Real Estate*.

One example of a violation of Ethical Rule 1-1(e) is if a Member knowingly develops an opinion of the highest and best use of a property that is not reasonably supported and the Member provides such opinion to another appraiser to use in a report, even if the Member does not sign the final report.

A second example is if a Member prepares an appraisal report that contains a sales comparison approach that is not reasonably supported because the Member knowingly makes inappropriate adjustments to the sales comparables, the Member violates Ethical Rule 1-1(e).

### **E.R. 1-2 Comment**

The public and clients must have confidence in the personal honesty and integrity of Members, whom they entrust with matters of critical personal, corporate, and public importance. If a Member fails to comply with the Member's legal obligations to society in all activities, not just in the services the Member performs, the public and clients will lose confidence and trust in the honesty and integrity of the Member, Members generally, and those who practice the profession. The public and clients will also lose confidence and trust in the Appraisal Institute. As a consequence, the ability of Members, the profession, and the Appraisal Institute to perform their vital roles in our society and the global economy will be adversely affected. If a Member fails to comply with the Member's obligations to society, particularly those relating to fraud, dishonesty, false statements, or moral turpitude, the public and clients can legitimately question whether such Member will fail to comply with the Member's obligations under the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute when providing services. Therefore, a Member must not engage in misconduct of any kind that leads to conviction of a crime involving fraud, dishonesty, false statements, or moral turpitude. 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.

One example of a violation of Ethical Rule 1-2 is if a Member prepares a fraudulent appraisal as part of a "flipping scheme" resulting in a conviction of the Member of a crime. A second example is if a Member knowingly underreports income received for work as a general contractor that leads to a conviction of the Member of a crime, such Member violates Ethical Rule 1-2.

Under Regulation No. 6 of the Appraisal Institute, a violation of Ethical Rule 1-2 will result in automatic expulsion from membership in the Appraisal Institute subject to the right of appeal.

**E.R. 1-3 Comment**

Ethical Rule 1-3 generally relates to the competency that a Member must have or obtain to accept and perform a service. While a similar requirement appears in the Competency Rule of USPAP, the Appraisal Institute has adopted this requirement as an Ethical Rule in its Code of Professional Ethics because a Member's failure to comply with its requirements constitutes a lack of integrity and so that violation can result in disciplinary action.

**CANON 2 COMMENT**

The Appraisal Institute serves a vital public need by conferring professional membership designations on individuals who meet stringent requirements and by conducting peer review that enhances the quality of Members' work product, and disciplines and deters unethical conduct. As a result of these programs, the public associates Appraisal Institute membership with a high degree of personal integrity and a commitment to professionalism. To facilitate these critical objectives and maintain the reputation of the Appraisal Institute and its Members, a Member must preserve confidentiality in admissions matters and peer review proceedings, fulfill committee responsibilities, cooperate with appropriate committees, prepare and preserve their workfiles, and ensure that they do not place themselves in a position where they cannot comply with the Code of Professional Ethics & Standards of Professional Appraisal Practice.

**E.R. 2-1 Comment**

Confidentiality encourages Associate Members to advance their qualifications through the admissions process, encourages peer review to occur, fosters candid and valuable interchange on the issues of qualifications and the quality of services, and ensures that the consequences of an admissions matter or peer review proceeding are proper and proportionate. Therefore, each Member who has contact with or is involved in an admissions matter or peer review proceeding must scrupulously observe the rules governing the confidentiality of those functions. If a Member fails to observe such confidentiality rules, the judicial protection given to the Appraisal Institute with respect to admissions matters and peer review proceedings may erode, thereby impairing the Appraisal Institute's ability to carry out these critical functions. Such a result would harm the public, the Appraisal Institute, its Members, and the profession.

**E.R. 2-2 Comment**

While the Appraisal Institute recognizes that Members who serve on committees dealing with admissions matters and peer review proceedings are volunteers, such Members must fulfill their responsibilities diligently, objectively, and completely for the Appraisal Institute to effectively fulfill the vital functions of admissions and peer review. If after appointment to a committee dealing with an admissions matter or a peer review proceeding, a Member is unable or unwilling to fulfill any of the Member's responsibilities on such committee, the Member must immediately resign from the committee.

**E.R. 2-3 Comment**

For the Appraisal Institute to effectively fulfill the vital functions of admissions and peer review, as well as continuing education and other programs, Members must honestly and fully cooperate with the Appraisal Institute, its committees, and their authorized agents. Such cooperation includes but is not limited to Members fulfilling the obligations they have under the Bylaws and Regulations of the Appraisal Institute, submitting full and accurate documentation and information promptly upon request and when otherwise required, participating in requested interviews, responding fully and honestly to any questions, and fully complying with the terms of a summons issued by a Hearing Committee. Members may not mislead any Appraisal Institute committee, or member or authorized agent thereof.

Therefore, for example, a Member violates Ethical Rule 2-3 if the Member submits a continuing education log to the Appraisal Institute representing that the Member took a course that the Member did not in fact take or represents that the course provided a greater number of hours of continuing education than it actually did. As another example, a Member violates Ethical Rule 2-3 if the Member fails or refuses to submit relevant information in the Member's possession about the status of litigation related to a peer review file, when requested to do so by a peer review committee or authorized member or agent thereof.

A Member violates Ethical Rule 2-3 if the Member fails to promptly comply with a request for information or documentation that the Member was required to preserve under Ethical Rule 2-5, even if such information is not physically in the Member's possession or control. 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. As used in Ethical Rule 2-3, "relevant question" means a question that the appropriate committee (or member or duly authorized agent thereof) reasonably believes may be relevant in fulfilling its responsibilities.

Ethical Rule 2-3 also uses the phrase "Appraisal Institute, an Appraisal Institute committee, or member thereof, or one of their duly authorized agents." The Articles of Incorporation, Bylaws, and Regulations of the Appraisal Institute provide the authority for the Appraisal Institute and the establishment, powers, and duties of various committees. As a corporate entity, the Appraisal Institute will carry out its functions and exercise its authority through various agents. Committees of the Appraisal Institute will sometimes fulfill their powers and duties as committees of the whole, but such committees may also carry out some powers and duties through individual members of the committees and authorized agents. For the Appraisal Institute to effectively carry out critical functions, including, but not limited to, peer review, admissions, and continuing education, Members' obligations under Ethical Rule 2-3 extend not only to the Appraisal Institute and its committees, but to their authorized agents as well. Authorized agents of the Appraisal Institute and its committees include but are not limited to appropriate Appraisal Institute staff such as the Director of Screening, a paralegal in the Legal Department, the Director of Experience Screening, a coordinator in the Membership Services Department, and a Continuing Education Specialist.

Under Regulation No. 6 of the Appraisal Institute, a violation of Ethical Rule 2-3(b), (c), or (d) will result in automatic expulsion from membership in the Appraisal Institute subject to the right of appeal.

### **E.R. 2-4 Comment**

The Appraisal Institute has promulgated the Code of Professional Ethics & Standards of Professional Appraisal Practice in part to establish requirements that will help ensure that Members will develop and report credible analyses, opinions, and conclusions. Such requirements also give the public and clients confidence that Members' analyses, opinions, and conclusions are based on sound data and reasoning, and that such analyses, opinions, and conclusions are not predetermined or mere speculation.

Ethical Rule 2-4 requires that Members prepare a workfile for each service and that Members prepare such workfile prior to the issuance of an oral or written report. This Ethical Rule helps ensure that Members have sound bases for their analyses, opinions, and conclusions prior to issuance of a report. The Rule also ensures that Members can provide support for their analyses, opinions, and conclusions to clients, courts, the Appraisal Institute, regulatory agencies, and others. By providing such support when needed or requested, the public and clients will have greater confidence in Members' analyses, opinions, and conclusions, and the rules to which Members are subject can be enforced. A Member's workfile provides evidence of whether the Member complied with the Code of Professional Ethics & Standards of Professional Appraisal Practice.

**E.R. 2-5 Comment**

For the Appraisal Institute to effectively fulfill the vital functions of admissions and peer review, appropriate committees, as well as members and authorized agents thereof, must have access to relevant workfiles of the Members. Therefore, the Appraisal Institute not only has adopted Ethical Rule 2-4 requiring Members to prepare a workfile for each service, but it also has adopted Ethical Rule 2-5 requiring Members to preserve their workfiles for specified periods of time.

Members have a responsibility to consider and correctly apply the factors that can affect the retention period for a workfile before disposing of such workfile. For example, if a Member prepares an appraisal on April 30, 2002, the Member must initially maintain the workfile relating to that appraisal until at least April 30, 2007. If, however, the Member then gives testimony on April 15, 2005 in a judicial proceeding concerning the appraisal and the judicial proceedings are not completed until May 30, 2006, the retention period changes and the workfile must be maintained until at least May 30, 2008.

**E.R. 2-6 Comment**

As a condition of membership in the Appraisal Institute, Members agree to comply with the Bylaws, Regulations, and Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute. Members cannot avoid this obligation by entering into a contract that is inconsistent with their agreement with the Appraisal Institute. Therefore, Ethical Rule 2-6(a) prohibits Members from entering into any contract that places one or more obligations on the Member that are inconsistent with the Bylaws, Regulations, or Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute. Ethical Rule 2-6(b) places an affirmative obligation on Members to include in their written contracts for services a statement that they will develop and report their services in conformity with and subject to the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute. For oral agreements for services, Members must ensure that their clients understand and agree that the Members will develop and report their services in conformity with and subject to the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute.

**E.R. 2-7 Comment**

As a condition of membership in the Appraisal Institute, Members agree to comply with the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute. Further, the Code of Professional Ethics & Standards of Professional Appraisal Practice serve the public interest by establishing requirements for the ethical and competent provision of services. Because of this agreement and the importance of each Member's resulting obligations, Ethical Rule 2-7 requires a Member to seek other employment if the Member's employer prevents the Member from complying

with the requirements of the Code of Professional Ethics or Standards of Professional Appraisal Practice. A Member cannot avoid responsibility for his or her failure to comply with such requirements because the Member's employer prevents the Member from complying. Therefore, for example, a Member must demonstrably seek other employment if the Member's employer mandates that the Member not identify extraordinary assumptions necessary in an assignment.

Because the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute elevate the quality of services provided in the marketplace and enhance confidence of the public and clients in the profession, Ethical Rule 2-7 also requires that a Member demonstrably seek other employment if such Member knows that the Member's employer fails to comply with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice.

For example, if a Member sees an advertisement that the Member's employer plans to place and that advertisement refers to an Appraisal Institute designation in a misleading manner, the Member must demonstrably seek other employment if the employer proceeds to run the advertisement.

A second example is if a Member's employer implements a workfile retention policy that results in the disposal of workfiles that must be retained under Ethical Rule 2-5 and the Record Keeping section of the Ethics Rule of USPAP, the Member must demonstrably seek other employment.

Evidence that a Member sincerely and demonstrably sought other employment may include but not be limited to a significant number of letters seeking employment with other companies, correspondence received from potential employers, a log of calls made to potential employers, or documents indicating the Member's efforts to form a new business.

### **CANON 3 COMMENT**

Given the role that Members serve in our society and the global economy, the public interest demands that each Member develop and report unbiased analyses, opinions, and conclusions. Therefore, Canon 3 and its associated Ethical Rules prohibit a Member from rendering an analysis, opinion, or conclusion that is not reasonably supported and that favors or promotes the cause or interest of the client, the Member, or another. The Ethical Rules associated with this Canon prohibit Members from developing and reporting biased analyses, opinions, and conclusions and address how a Member must handle issues that may offer an incentive to provide biased analyses, opinions, or conclusions or can create a perception that analyses, opinions, or conclusions are biased. The Ethical Rules set forth requirements concerning how a Member must address situations where a client requests a predetermined analysis, opinion, or conclusion as a condition of engaging the Member; where the Member has a personal interest in the subject or outcome of the service or with respect to the parties involved; and where the Member acquires an interest in property or assumes a position that could possibly affect the Member's judgment. The Ethical Rules also provide requirements relating to contingent fees, hypothetical conditions, and extraordinary assumptions. Actual and perceived bias can undermine the confidence that the public and clients must have in the integrity of Members.

### **E.R. 3-1 Comment**

Ethical Rule 3-1 contains the basic prohibition on a Member from knowingly contributing to or participating in the development, preparation, use, or reporting of an analysis, opinion, or conclusion that is biased. Violation of Ethical Rule 3-1 is one of the most serious ethical violations a Member can commit.

A Member may never develop, prepare, use, or report a biased analysis, opinion, or conclusion. A biased analysis, opinion, or conclusion is: a) not reasonably supported; and b) favors or promotes the cause or interest of the client, one's self, or another.

Evidence that a Member developed, prepared, used, or reported a biased analysis, opinion, or conclusion may include, but is not limited to, deviation from reasonable appraisal, appraisal review, appraisal consulting, or real property consulting practices resulting in an analysis, opinion, or conclusion that is not reasonably supported and that favors or promotes the client's, the Member's, or another's interest or cause. Many of these reasonable practices are outlined in the Standards of Professional Appraisal Practice of the Appraisal Institute, Guide Notes to the Standards of Professional Appraisal Practice of the Appraisal Institute, and Appraisal Institute courses, seminars, and textbooks such as *The Appraisal of Real Estate*. The intended use of the analysis, opinion, or conclusion is relevant in determining the direction of a client's interest.

For example, assume that a seller and a prospective buyer have a dispute as to the market value of Blackacre on X-date. The seller would benefit from a high opinion of value. The seller retains a Member to develop an opinion of the market value of Blackacre on X-date and requests that the value opinion be "as high as possible." The intended use is to assist in establishing a sale price. The Member subsequently delivers a report with a cover letter stating that "subject to the terms and conditions in the report, the market value of Blackacre on X-date was \$1,000,000," with a footnote on page 97 of the report stating that the Member's opinion of value is based upon the hypothetical condition that the zoning allows development when, in fact, it does not. The hypothetical condition was not required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison.

The hypothetical condition had a substantial effect upon the Member's opinion of value. In this example, the Member developed and reported a biased opinion of value in violation of Ethical Rule 3-1. The Member deviated from recognized appraisal methods and techniques, resulting in an opinion of value that was not reasonably supported and that deviated in a direction favoring the client's interest. This Member also violated Ethical Rule 3-6 concerning extraordinary assumptions and Ethical Rule 1-1 (misleading opinion that reasonable appraisers would not believe to be justified).

A Member can violate Ethical Rule 3-1 by signing a report that the Member has not read or has partially read, and that contains a biased analysis, opinion, or conclusion. Not only is the Member responsible for the report by signing it, but the Member has knowingly contributed to or participated in the use and reporting of an analysis, opinion, or conclusion that is biased. The Member acted knowingly because the Member acted in disregard of the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, as well as recognized methods and techniques. The Member reasonably should have known about the biased analysis, opinion, or conclusion given the all the facts and circumstances and the Member's training, background, and experience.

### **E.R. 3-2 Comment**

A Member cannot avoid ethical responsibility by doing indirectly that which the Member cannot do directly. Therefore, Ethical Rule 3-2 prohibits a Member from knowingly permitting an entity that is wholly or partially owned or controlled by a Member to contribute to or participate in the development, preparation, use, or reporting of an analysis, opinion, or conclusion that is biased. The discussion in the E.R. 3-1 Comment concerning an analysis, opinion, or conclusion that is biased also applies to Ethical Rule 3-2.

### **E.R. 3-3 Comment**

A Member must use the Member's expertise and independent judgment to develop and report a reasonably supported analysis, opinion, or conclusion in accordance with the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute. Therefore, a Member clearly cannot accept or provide a service that is contingent upon reporting a predetermined analysis, opinion, or conclusion. Doing so would undermine the trust and confidence that the public must have in Members to provide unbiased and credible analyses, opinions, and conclusions.

Nothing in Ethical Rule 3-3 should be construed to prohibit a Member from accepting services in phases, with the right to provide a subsequent service contingent upon the results of a prior service, as long as the Member does not render an analysis, opinion, or conclusion that is biased and the Member complies with the requirements of Ethical Rules 3-8 and 3-9, where applicable. Those Ethical Rules concern a Member's personal interest and a Member assuming a position that could possibly affect the Member's judgment or violate the Member's responsibilities to the client.

To illustrate the point involved, assume the following facts. A government agency makes an offer to a property owner to purchase the owner's property in order to expand a roadway. The agency has not begun condemnation proceedings at this point, but may in the future. The attorney working with the property owner contacts a Member to obtain the Member's opinion as to whether the market value of the property is more than the amount of the agency's offer. The Member prepares a Restricted Use

Appraisal Report, for the attorney's use only, in which the Member's value opinion is "not less than" the amount of the offer. Subsequently, the attorney asks the Member to prepare a Self-Contained Appraisal Report, for which the intended users will be both the government agency and the attorney for the property owner, for purposes of the condemnation litigation. Note that these are two separate assignments, with different, though related, intended uses and different intended users. If the Member accepts these assignments, the Member will not violate Ethical Rule 3-3. The Member was required to develop and report both the first and second service in an unbiased manner. The second service was in essence contingent on the results of the first service, but was not contingent on a "predetermined" analysis, opinion, or conclusion.

### **E.R. 3-4 Comment**

All professional disciplines require that their practitioners use their best efforts to fulfill their obligations to clients. All professional disciplines also acknowledge that there are limits upon what a practitioner may do for the benefit of a client given the public interest. This principle is applicable to Members and the issue of contingent fees.

For some appraisal, appraisal review, or appraisal consulting assignments, the client may believe that retaining a Member on a contingent fee basis would best serve the client's interests. For example, if as a result of the Member's analyses, opinions, or conclusions, the client benefits financially, the client would be in a position to pay a generous fee. However, if the client did not benefit financially as a result of the Member's analyses, opinions, and conclusions, then the client would not have an obligation to pay. The benefit to the client under this type of arrangement is obvious.

However, given the role of Members in our society and the global economy when providing appraisal, appraisal review, and appraisal consulting services, the public has an overriding interest to a client's potential interest in contingent fee arrangements. Contingent fee arrangements place the Member's personal interest at potential conflict with the Member's professional obligations in appraisal, appraisal review, and appraisal consulting services. The public must have trust and confidence that a Member's professional judgment cannot and will not be compromised by contingent fee arrangements. The public must have confidence and trust that Members will develop and report unbiased analyses, opinions, and conclusions.

Therefore, to address these competing interests (benefit to clients vs. benefits to the public), Ethical Rule 3-4 prohibits a Member from agreeing to or accepting compensation for an appraisal, appraisal review, or appraisal consulting assignment when such compensation is contingent on the analysis, opinion, or conclusion reached, the attainment of a stipulated result, or the occurrence of a subsequent event.

### **E.R. 3-5 Comment**

While Ethical Rule 3-4 prohibits contingent fee arrangements in appraisal, appraisal review, and appraisal consulting assignments because of the public's overriding interest in such a prohibition, Ethical Rule 3-5 permits contingent fee arrangements under certain circumstances in real property consulting services because the issues involved can be different. For example, when performing a real property consulting service, a Member is not necessarily acting in a disinterested manner and is not necessarily perceived as performing a service requiring impartiality. In addition, real property consulting does not involve the development and reporting of an opinion of value.

Under Ethical Rule 3-5, a Member may agree to or accept compensation for a real property consulting service when such compensation is contingent on the analysis, opinion, or conclusion reached or the occurrence of a subsequent event if: a) the Member is not acting in a disinterested manner and would not reasonably be perceived as performing a service that requires impartiality; and b) the Member clearly and conspicuously discloses the existence and basis of any contingent fee in reporting the results of the service.

Ethical Rule 3-5 does not apply to a Member when providing real property consulting services that are subject to the requirements of another licensed occupation or profession. For example, a Member who is acting as a broker will likely accept a fee for brokerage services that is contingent upon the amount of the sale price achieved for the property sold.

**E.R. 3-6 Comment**

The requirements set forth in Ethical Rule 3-6 concerning hypothetical conditions reflect those set forth in USPAP. The Appraisal Institute has placed these requirements in the Code of Professional Ethics because a Member's failure to comply with such requirements constitutes a lack of integrity and so that a violation can result in disciplinary action.

**E.R. 3-7 Comment**

The requirements set forth in Ethical Rule 3-7 concerning extraordinary assumptions reflect those set forth in USPAP. The Appraisal Institute has placed these requirements in the Code of Professional Ethics because a Member's failure to comply with such requirements constitutes a lack of integrity and so that a violation can result in disciplinary action.

**E.R. 3-8 Comment**

If a Member has a personal interest in the subject or outcome of a service or with respect to the parties involved in the service, such interest may provide an incentive for the Member to render an analysis, opinion, or conclusion that is biased, misleading, or otherwise unreliable. At a minimum, such a personal interest may create an appearance that any resulting analysis, opinion, or conclusion may be biased, misleading, or otherwise unreliable. An analysis, opinion, or conclusion that is biased, misleading, or otherwise unreliable, or that may be perceived to be so, undermines the confidence and trust that the public and clients must have in Members.

In deciding whether to accept a service when the Member has a direct or indirect, current or prospective personal interest in the subject or outcome of the service or with respect to the parties involved in the service, the Member must make a reasonable determination as to whether the Member's judgment will be affected. A Member's determination is reasonable if reasonable persons in the same circumstances would reach the same determination. If the Member concludes that the Member's judgment will be affected or if reasonable persons in the same circumstances would conclude that judgment will be affected, the Member must refuse the proffered service. In appraisal review assignments, "parties involved in the service" includes the individual who prepared the report being reviewed.

Prior to accepting a service where the Member has a personal interest in the subject or outcome of a service or with respect to the parties involved in the service, a Member must also fully and accurately disclose the personal interest to the client so that the client can make an informed decision as to whether to retain the Member. Should the Member ultimately accept the service, the Member must fully and accurately disclose the personal interest in each report resulting from such service so that any reader can consider any analyses, opinions, and conclusions in the context of the Member's personal interest.

**E.R. 3-9 Comment**

If a Member knowingly acquires an interest in property or assumes a position that could possibly affect the Member's judgment or violate the Member's responsibilities to the client between the time the Member is contacted concerning a service and expires when the Member completes the service, such interest or change in position may provide an incentive for the Member to render an analysis, opinion, or conclusion that is biased, misleading, or otherwise unreliable and harms the client. At a minimum, such interest or change in position may create an appearance that any resulting analysis, opinion, or conclusion may be biased, misleading, or otherwise unreliable and that the Member's interest or position is at conflict with the Member's responsibilities to the client.

If a Member knowingly acquires an interest in property or assumes a position that could possibly affect the Member's judgment or violate the Member's responsibilities to the client between the time the Member completes a service and expires a reasonable length of time after the completion of such service, such interest or change in position, if anticipated, may provide an incentive for the Member to render an analysis, opinion, or conclusion that is biased, misleading, or otherwise unreliable and harms the client. If acquiring such an interest or the change in position was not anticipated, the Member at a minimum may create an appearance that the Member's analysis, opinion, or conclusion may be biased, misleading, or otherwise unreliable and that the Member's interest or position is at conflict with the Member's responsibilities to the client.

An analysis, opinion, or conclusion that is biased, misleading, or otherwise unreliable, or that may be perceived to be so, can undermine the confidence and trust that the public and clients must have in Members, the profession, and the Appraisal Institute. Further, a Member who violates or appears to violate the Member's responsibilities to the client also undermines the confidence and trust that the public and clients must have in Members, the profession, and the Appraisal Institute.

In deciding whether to acquire an interest in property or assume a position that could possibly affect the Member's judgment or violate the Member's responsibilities to the client, the Member must make a reasonable determination as to whether the Member's judgment will be affected or the Member's responsibilities to the client will be violated. A Member's determination is reasonable if reasonable persons in the same circumstances would reach the same determination. If the Member concludes that the Member's judgment will be affected or the Member's responsibilities to the client will be violated, or if reasonable persons in the same circumstances would so conclude, the Member must not acquire the interest in property or assume the position.

### **EXPLANATORY COMMENTS TO CANON 3 (continued)**

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Even if the Member reasonably concludes that the proposed acquisition or change of position will not affect the Member's judgment or violate the Member's responsibilities to the client, the Member still cannot go forward with such acquisition or change in position without fulfilling a number of other requirements. The Member must make full and accurate disclosure to the client and give the client the right to terminate the service without payment, and the client must provide written permission to the Member consenting to or approving the acquisition or change of position. Finally, if the Member meets all of these conditions and is able to proceed with the service, the Member must fully and accurately describe the acquisition or change of position in the Member's report so that the analyses, opinions, and conclusions can be understood in the context of such information.

## **CANON 4 COMMENT**

Confidentiality is a critical component of any relationship between a professional and a client. For a Member providing services, confidentiality fosters full and candid disclosure of relevant information by the client. Such disclosure enables the Member to provide credible analyses, opinions, and conclusions to the client.

The client has a legitimate interest in controlling the disclosure of confidential information, analyses, opinions, and conclusions in part because the client pays for services rendered and because the disclosure of such information, analyses, opinions, and conclusions may harm the client. At the same time, a Member must be able to use market data and, at the Member's option, provide other Members and the profession with access to such data, to serve the public and clients generally.

To facilitate these objectives, the Appraisal Institute has adopted a definition of confidential information and a series of Ethical Rules relating to and protecting the confidentiality of the Member-client relationship.

### **E.R. 4-1 Comment**

Ethical Rule 4-1 sets forth the general requirements relating to the confidentiality of the Member-client relationship. It is unethical for a Member to disclose confidential information or an analysis, opinion, or conclusion specific to a service except under specified circumstances. Confidential information is defined as information that is either identified by the client as confidential when providing it to a Member and that is not available from any other source; or is classified as confidential or private by applicable law or regulation. Therefore, for example, information that is not confidential includes data secured from public records and information a Member can obtain from a source other than the client. General analyses, opinions, and conclusions about the community in which the subject property is located are also not confidential.

One example of the application of Ethical Rule 4-1 is where a Member is provided with information about the sale of a property from a client, who tells the Member that the information is confidential and the information is not available from any other source. If the Member subsequently shares this information with another appraiser seeking comparable data, the Member is in violation of this Ethical Rule.

Another example would be if a Member casually states at a social function that the Member appraised a certain property for \$X. This Ethical Rule prohibits the disclosure of service results in such a manner without the client's express permission.

### **E.R. 4-2 Comment**

Ethical Rule 4-2 addresses the situation where a client requests a service that will be materially affected by the Member's use of, or failure to use, confidential information the Member has received from another client. A Member may only accept such service if the previous client permits the Member to use such information or the information is no longer confidential.

**E.R. 4-3 Comment**

For the Appraisal Institute to effectively fulfill the vital functions of admissions and peer review, appropriate Appraisal Institute committees must and will have access to confidential information provided to Members by their clients. Clients understand and are on notice that appropriate Appraisal Institute committees will have access to their confidential information, as well as confidential analyses, opinions, and conclusions, because Members must inform their clients that their reports are subject to review by the Appraisal Institute's duly authorized representatives. Further, clients retain Appraisal Institute Members because of the Appraisal Institute's admissions and peer review functions and such clients benefit from the resulting increased quality of the services that Members provide. At the same time, Members who serve on committees relating to admissions and peer review functions must not act in a manner that would harm a client or take advantage of serving in these important roles to obtain professional advantage by discussing or disclosing confidential information, analyses, opinions, and conclusions, as well as factual data, derived from such activities. Therefore, Ethical Rule 4-3 provides that it is unethical for a Member to discuss or disclose confidential information, analyses, opinions, conclusions, and factual data with limited exceptions. Since committee members must keep strictly confidential the information, analyses, opinions, conclusions, and factual data derived through committee activities, the client is protected.

**CANON 5 COMMENT**

To serve the public and clients effectively, members of a profession must not only offer their expertise, but they must also properly and accurately inform the public and prospective clients about their qualifications and the functions of the profession. In this way, prospective clients can make informed decisions as to the type and extent of services they need and can identify competent and ethical professionals to provide such services. Such information can also help clients evaluate a service and help hiring parties evaluate potential employees or contractors. Advertising, solicitations, promotions, resumes, and statements of qualifications that are misleading or are otherwise contrary to the public interest undermine these important goals.

**E.R. 5-1 Comment**

Members of the Appraisal Institute may utilize advertising to inform the public and prospective clients of the services they offer, the cost of such services, and their qualifications. However, Member advertising must not be misleading or calculated to create unrealistic expectations in the minds of the parties to whom the advertising is directed. In promoting their services, Members must take particular care not to state or imply that they will develop, prepare, use, or report an analysis, opinion, or conclusion that is biased or that they will deviate from the strict Standards and Ethical requirements that they have agreed to comply with as Appraisal Institute Members.

A Member cannot avoid ethical responsibility by using a corporation, partnership, or other entity (or multiple entities) to advertise services in a misleading manner. Therefore, a Member may not knowingly permit an entity that is wholly or partially owned or controlled by such Member to utilize misleading advertising, even if the name of a Member is not specifically mentioned in the advertisement.

**E.R. 5-2 Comment**

The Appraisal Institute has established the categories of Designated, Associate, and Affiliate Membership in part to help the public and clients understand the qualifications that Members hold and the requirements to which they are subject. The different Appraisal Institute designations serve a similar purpose.

The Appraisal Institute is the sole owner of its name, corporate logo, membership designations, and emblems (“marks”), which are registered with the United States Patent and Trademark Office.

Based on these considerations, the Appraisal Institute has established rules for the use of its name, corporate logo, designations, and designation emblems. The authorized or permitted uses of these marks are set forth in the Bylaws, Code of Professional Ethics, Regulation No. 5, Trademark Usage Manual, and various other Regulations of the Appraisal Institute, and are subject to federal law.

The general rule governing any reference to or use of the name, corporate logo, membership designations, and designation emblems of the Appraisal Institute is that such reference or use must be authorized or permitted and must not be misleading or deceptive.

Therefore, for example, under Ethical Rule 5-2, a Member may only use a membership designation and its associated emblem if the Member currently holds such designation and is a Member in good standing. A Member may not use such designation in a manner that suggests that a partnership, corporation, or other organization holds such designation.

A second example is that under Ethical Rule 5-2, a Member may use or refer to the Appraisal Institute name to convey membership, but must do so in a manner that clearly and accurately sets forth the type of membership held. Therefore, for example, a General Associate Member can use the words “General Associate Member, Appraisal Institute,” but cannot place those words under a heading entitled “Professional Designations” or abbreviate those words to appear like a designation.

A third example is that the Appraisal Institute permits some Designated Members to use the Appraisal Institute corporate logo under very limited circumstances to convey a very specific message to the public. If a Member uses the corporate logo but does not meet the requirements for such use, the Member misleads the public and potential clients, thereby violating Ethical Rule 5-2.

The Appraisal Institute name, corporate logo, membership designations, and designation emblems must be used in a manner that preserves and respects the federal trademark rights and interests therein of the Appraisal Institute. Appropriate use ultimately strengthens these marks, which benefits Appraisal Institute members. Therefore, for example, Designated Members who use the corporate logo and designation emblems must use exact reproductions of the official versions in the appropriate colors and in an appropriate size.

Finally, when a Member uses an advertisement or promotion that refers to the Appraisal Institute marks, such use must be dignified, conservative, and in keeping with the highest professional standards.

### **E.R. 5-3 Comment**

Members may solicit for services in a manner consistent with the public interest. Therefore, a Member may not solicit for services in a manner that is misleading.

For example, a Member may not inform a prospective client that the Member has qualifications or expertise that the Member does not possess. As another example, a Member may not state or imply that the Member can develop, prepare, use, or report an analysis, opinion, or conclusion that is biased.

A Member cannot avoid ethical responsibility by using a corporation, partnership, or other entity (or multiple entities) to solicit services in a misleading manner. Therefore, a Member may not knowingly permit an entity that is wholly or partially owned or controlled by such Member to solicit services in a manner that is misleading, even if the name of a Member is not specifically mentioned in the solicitation.

**E.R. 5-4 Comment**

The primary basis for someone to refer a service to a Member should be the Member's qualifications, rather than financial incentive. At the same time, federal law prohibits a professional organization from prohibiting all referral fees. Therefore, a Member may pay a fee, commission, or thing of value to procure a service, but the Member must disclose such payment in the certification of any resulting written report and in any transmittal letter in which an analysis, opinion, or conclusion is stated. The intended user(s) is entitled to know that the Member paid a fee, commission, or thing of value to procure the service and to consider such information in evaluating the service.

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

Ethical Rule 5-4 does not apply to a Member when providing real property consulting services that are subject to the requirements of another licensed occupation or profession. Therefore, for example, if a Member is licensed as a real estate broker and is acting in a capacity as a real estate broker, the Member's payment and disclosure of a fee, commission, or thing of value for procurement of a real property consulting service is governed by the laws and regulations governing real estate brokers, rather than Ethical Rule 5-4.

**E.R. 5-5 Comment**

Potential clients, parties hiring employees and contractors, as well as others, need clear and accurate information on which to evaluate Members' qualifications and work product. Therefore, a Member may not prepare or use in any manner a resume or statement of qualifications that is misleading.