

# Tips For Lawyers When Working With Appraisers

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No matter what type of law you practice, chances are that at one time or another you have had to get an appraisal for a client. Appraisals are needed to value personal items, property, or companies for reasons such as: estate planning and estate taxes, divorce settlements, shareholder disputes, buy-sell agreements, insurance claims, civil cases, mergers and acquisitions, etc.

## **Why is it Important to Get a Professional Appraisal**

By hiring a certified appraiser who has no connection to the client, and does not have any interest (present or contemplated) in the subject entity being appraised, you should receive an independent, unbiased value for the entity (i.e. company, real property, equipment, etc.). It is very important to prove to the court, IRS, etc. that there were no conflicts of interest in the valuation process.

Another benefit to hiring an appraiser from a professional society is there is a strongly held ethical tradition and a built in dispute process. In addition, the appraisers will prepare their valuation reports in conformity with the valuation standards imposed by each of the respective societies that they are members of.

## **Learn from the Mistakes of Others**

Learning from the mistakes of others is a basic rule of business, and it should apply to situations requiring appraisals as well.

One mistake clients make is not having the entity appraised or valued. Some feel they don't need an appraisal. Others don't want to pay for one. Instead, they present the court with their opinion of how much the entity is worth based either on book value, best guess or some industry rule of thumb. Meanwhile, in a litigation setting the opposing side will often have the entity appraised, and the court will be comparing that evidence against the owner's less-than-objective opinion.

Another mistake is using the high-low strategy. This is based on the premise that one side of a litigation case will present the court with a high value, so the opposing side will come in with a low value and assume the court will split the difference. This is an erroneous assumption. The best strategy is to present the court with a well reasoned and fully documented appraisal that has been prepared by an experienced appraiser, who has the skills to testify effectively in defense of their opinion.

## **Hire an Accredited Appraiser**

It is important to hire an appraiser who is certified in their respective field of expertise. In that regard, ask the prospective appraiser for their professional affiliations and credentials. Professional organizations like the American Society of Appraisers (ASA) require that members pass extensive training and peer review processes to become credentialed. For example, in order to achieve the Accredited Senior Appraiser Designation within ASA, an appraiser must complete the following:

- Have a minimum of 10,000 hours (5 years) of full-time equivalent appraisal experience;
- Possess a college degree or its equivalent;
- Complete ASA's four-level Principles of Valuation course series;
- Pass intensive written examinations and a peer review;
- Submit two actual appraisal reports for thorough review and approval by a committee of their accredited peers.

Be sure to choose an appraiser who is certified in the correct area. Appraisers are typically certified in six areas; business valuation, personal property, machinery and technical specialties, real property, gems and jewelry, or appraisal review and management.

With the increase in legal action arising from incorrect valuation practices, qualifications, credibility and independence should be prime considerations in the selection of an appraisal firm. The following criteria will provide a sound basis for comparison during the appraiser selection process:

- How long has the individual/company been performing valuations?
- How much of the individual's/company's time is spent performing valuations?
- What experience does the individual/company have with the particular purpose of the valuation?
- What resources does the individual/company have for doing relevant economic and industry research?
- Does the individual/company have any specific expertise? For instance, within the business valuation discipline, you may want to consider working with an appraiser who has experience valuing companies in the specific industry that your client's company is involved in. Or for the personal property discipline, there are specialists in a range of things from oriental rugs, to antique airplanes, to 18<sup>th</sup> century American silver. Usually you can find a specialist in the specific area you are seeking by visiting the websites of professional appraisal organizations.
- Who in the company will be doing the valuation?
- What are the academic and professional credentials of the individuals who will be assigned to the valuation?
- What is the individual's/company's track record for withstanding challenges to its valuation opinions?

- Who will provide court testimony, if required, and what is their experience? In some instances the valuation report, which can be quite comprehensive, is not read in its entirety. Instead, the judge's decision is based primarily on the appraiser's oral testimony as an expert witness. That's why it is critical to use an appraiser who has experience testifying in court. It's one thing to be able to appraise a company, piece of property or equipment and summarize the conclusions on paper. It's something else to be able to testify effectively in defense of those findings, while opposing counsel works to discredit the appraiser and the appraisal.

Once you have located an appraiser who practices in the discipline you want and the specialty area, ask the prospective appraiser to supply a curriculum vitae and references.

If the valuation is being done in connection with litigation, it's important to select an appraiser who has the qualifications to withstand a Daubert challenge by opposing counsel. A challenge is less likely if the appraiser is experienced and has been accepted as an expert in other cases. Also, it provides an opportunity for the appraiser to state his qualifications in front of the judge or jury and perhaps make a greater impression than if opposing counsel had stipulated that the appraiser qualifies as an expert.

### **Appraisal Process**

It is helpful to understand the basics of the professional appraisal process so that you can explain it to your client, and know that you are getting a quality appraisal that will stand up to scrutiny.

A professional appraisal begins with research, which includes asking the client about the company, real estate or item's history, depending upon what the subject of appraisal is, and requesting all relevant documentation. The next step typically involves a site visit or inspection of the property in person, followed by spending time conducting the necessary research. Lastly, the appraiser utilizes all information available and determines the entity's value based upon approved and generally accepted valuation methodologies.

The appraiser then prepares a comprehensive report that must at a minimum clearly state the standard of value being determined (i.e. fair market value, strategic value, liquidation value, replacement or reproduction, etc.); describe the company, property or item being valued; discuss the valuation process in detail; discuss the valuation methodology utilized, and include a signature from the appraiser as well as details of the appraisers credentials.

Where litigation is involved, an appraiser is often retained to provide litigation support to enhance the attorney's acumen in dealing with other appraisal experts. At the outset, the appraiser's input is useful in preparing a list of financial documents and other business-related material to be obtained during discovery. Essential questions posed during the discovery process yield greater clarity for all involved. Appraisers are also retained to prepare suggested interrogatory questions, and attend depositions. Finally, the appraiser is often asked to review and comment on the opposing side's appraisal report, which can

lay the groundwork for conducting an effective cross-examination of the opposing side's appraisal expert.

### **In Closing**

Most judges and marital masters as the case may be, are not experts in valuation. They base their decisions on the written appraisal report, the appraiser's testimony, or both. That's why it is so critical to present the best possible case to substantiate the value of the business, real property or equipment, especially when the assets being appraised are one, if not the single most valuable, assets the clients may own.