

# Licensing Tree Appraisers



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Should individuals who appraise trees be subject to licensing requirements imposed by state regulatory agencies? There is reason to believe that this very issue may be examined by the Personal Property Resource Panel (PPRP) of the Appraisal Foundation (which publishes USPAP—the *Uniform Standards for Professional Appraisal Practice*). ACF Executive Director Lynn Wilson received notice from a member of the PPRP, which is reaching out to stakeholder organizations whose members could be affected.

The Appraisal Subcommittee oversees the federal mandate for real property appraisal, and authorizes the Appraisal Foundation to develop minimum standards for licensing and appraisal practice, including publication of USPAP. Individual states have enacted statutes and regulations for real property licensing and enforcement.

Setting tree appraisal aside for the moment, the more general issue being examined by the PPRP is some sort of national registration for personal property appraisers. Our PPRP contact noted that the Internal Revenue Service is one agency that has expressed concern over the credibility of appraisal work conducted on behalf of taxpayers seeking federal income tax deductions for charitable contributions.

ACF member involvement in charitable donation valuation is usually limited to real property assets. However, the vast majority of charitable giving is in the form of personal property: cash, art work, jewels, coins, books, etc. The IRS requires appraisers of *real property* to have a state license, whereas *personal property* appraisers must have “successfully completed college or professional-level course that is relevant to the property being valued, [and] obtained at least two years of experience in the trade or business of buying, selling, or valuing the type of property being valued.” (Internal Revenue Bulletin: 2006-46)

For the broader context of all this, it is important to note that some states have *mandatory* licensing for real estate appraisers, and if you are licensed, you must follow USPAP for all real property appraisal assignments, no exceptions. Other states have *voluntary* licensing where only licensed real estate appraisers may appraise “federally related” transactions (i.e., involving lending institutions backed by FDIC, etc., where the Feds have a carried interest).

The State of Massachusetts Board of Real Estate Appraisers limits its regulatory reach to real estate appraisal and real estate appraisal review (USPAP Standards 1, 2, and 3). Here, no one needs to follow USPAP Standard 7, which applies to the appraisal of personal property.

In contrast, the Maine real estate appraisal statute requires licensed real estate appraisers to follow all USPAP standards. However, there is no licensing specifically for personal property appraisal. Therefore—and ironically—a Maine licensed real estate appraiser must follow USPAP Standard 7 when appraising personal property in Maine, but an individual who is not licensed as a real estate appraiser is *not* obliged to follow any statutory rules when appraising personal property. So, we have an uneven playing field in states like Maine.

Real estate appraiser licensing dates back to the savings and loan debacle in the late 1980s. Initially, the Appraisal Subcommittee explored whether personal property appraisers should be licensed, and in 1991 decided that it was not advisable. Appraisers specializing in personal property valuation have since escaped the talons of government regulation. As the IRS increasingly holds taxpayers accountable for estate and gift tax valuations, and other agencies raise their level of interest in the issue, the question arises as to whether there should be licensing for the broad practice of valuing personal

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property, and whether this might extend to tree appraisal.

### IMPLICATIONS FOR FORESTERS

Standing trees in the forest or yard are real estate; they are permanently affixed to the land. A nursery seedling or tree is personal property because it is inventory held to be transplanted; but once planted in a clearcut or a yard, it becomes real estate.

So where does all this currently leave foresters? In nearly all 50 states, foresters appraising timber are exempt from real estate appraisal licensing, despite the fact that timber is real estate. A small group of forestry consultants appealed to the

domestic, commercial or natural settings—is even less clear.

In 1993 representatives of the Council of Tree & Landscape Appraisers (CTLA) asked the Appraisal Subcommittee to opine on the following: (a) whether trees and landscape plants are real estate or personal property; (b) whether tree and landscape appraisers are intended to be exempt from real estate appraisal licensing; and, (c) whether the Appraisal Committee would exempt tree and landscape appraisers from regulation.

The Subcommittee responded in somewhat ambiguous terms, stating that “most real property appraisers would

for which markets exist, and shade trees which have no value once cut. But arborists and others who appraise shade trees have thus far avoided regulation.

### SEEKING RESOLUTION

Several years ago CTLA asked the Appraisal Subcommittee for their current thinking on the issue of regulating shade tree appraisers, and they declined to comment, referring us to the state boards. We discussed the issue with the State of Maine Board of Real Estate Appraisers and found little enthusiasm for squarely addressing the simple fact that arborists are appraising real estate and yet remain unregulated. It is not surprising that regulators have not wanted to open this Pandora’s box.

Meanwhile, the PPRP continues to discuss the possibility of registration for personal property appraisers. Interested readers should check out the minutes from the September 2014 Roundtable Meeting.<sup>1</sup>

What happens next remains to be seen. Attempts to regulate personal property appraisers will likely be met with enthusiastic complaints from many quarters. ACF will endeavor to monitor the activities of the PPRP and keep our members apprised of developments that could have a significant impact on their businesses. Should these discussions morph from personal property into the realm of tree appraisal, ACF should seek to have a voice in deliberations. ©

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## It is not surprising that regulators have not wanted to open this Pandora’s box.

Appraisal Subcommittee when it became apparent that real estate licensing was inevitable. We argued that certain real estate assets like timber and minerals are “severable” and their value derives from the fact that they can be removed from a property and sold into specific markets. Fortunately, the Appraisal Subcommittee saw fit to leave the valuation of severable interests to uniquely qualified experts like foresters.

Ongoing discussions by the PPRP suggest that there may be reason to wonder whether foresters will continue to enjoy this exemption from real estate licensing. If there is concern over personal property appraisers, will this extend to tree appraisers? Our contact with PPRP noted situations where a crop value (e.g., corn, which is personal property) is worth as much or more than the land underneath it. The same is commonly true with timber. Is it not possible that timber appraisers could be required to become licensed as real estate appraisers, or fall under some sort of registration that includes both personal property and trees?

### IMPLICATIONS FOR ARBORISTS

The situation for arborists, foresters, and others who appraise shade trees, landscaping, and other plants—whether in

consider a tree or plant to be part of the real estate while attached (rooted) to the land, but personal property when valued separately from the land.” Rather than offer its own opinion, the Subcommittee merely characterized what appraisers believe. Moreover, the word “but” would seem to set apart trees and plants rooted from the land as real estate, and those not rooted to the land as personal property, yet we are left with some degree of ambiguity. What does “valued separately from the land” mean? Valued only if not rooted to the land, or valued without consideration of the land to which it is rooted?

As for exempting tree and plant appraisal from regulation, the Subcommittee responded that this “is a misnomer because no such requirement exists. However, you may contact the various state appraiser regulatory agencies since their laws and regulations may be different.”

The evasive character of this response offers little of value to the person seeking a clear understanding of where the preeminent regulatory body in the land stands on the issue of whether people appraising standing trees should be regulated.

There is certainly a distinction between “severable” assets like timber and minerals,

<sup>1</sup> <https://appraisalfoundation.sharefile.com/download.aspx?id=s2aafad52e774cf7b>