

“ANYONE BUT THAT ONE”
APPRAISERS, INSPECTORS, AND ACCESS TO PROPERTY
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Several calls on the Hotline in recent months have been about one particular topic: “When can a seller or (more often), listing agent, refuse access to a Buyer’s agent, appraiser, inspector, or someone else working on behalf of the Buyer?” In reality this can be done in a very few circumstances only.

The vast majority of the Hotline calls come from an agent who feels that a specific appraiser, inspector, or service provider (mostly appraisers) truly dropped the ball on a recent transaction, and as a result the purchase and sale fell through. In an effort to avoid a similar situation for a future buyer and/or seller, the agent calls stating, for example, “The bank selected the same appraiser who killed my last deal. What can I do to make sure that doesn’t happen again?” The following outlines why it may be too late to do anything, and more importantly, why an agent should think twice before trying to interfere with appraiser independence.

Paragraph 12(A)(1) of the PAR Standard Agreement for the Sale of Real Estate (“ASR”) provides that the “Seller will provide access to insurers’ representatives and, as may be required by this Agreement or by mortgage lender(s), to surveyors, municipal officials, appraisers and inspectors...” Accordingly, unless a Seller has included language in the ASR, or in a subsequent addendum thereto, that specifically gives the Seller the right to deny Buyer’s agents, inspectors, or appraisers access to the listed property, the Seller may be in default by failing to provide the requested access.

I can already see the wheels turning in some agents’ heads, saying to themselves “Well if that’s the case, then I’ll just include language in the ASR giving my Seller that right.” Agents must keep in mind that due to having a financial interest in the transaction, the regulations and restrictions of the Dodd-Frank Act apply to the agent. In other words, an agent’s attempt to influence an appraiser’s opinion of value in a financing appraisal may not only be an ethical violation, but also a violation of Federal law. More importantly, Fannie Mae, Freddie Mac, and HUD have all published guidance on the topic of appraiser independence which strictly prohibits “withholding or threatening to withhold future business for an appraiser.”

Best practices promote respectful communication and openness with the appraiser while the report is being completed. Providing additional information may be beneficial, but keep in mind that attempts to influence the outcome of an appraisal through bullying or by threatening to refuse to work with that appraiser on future transactions is not permitted. Once completed, if an agent wishes to raise concerns about the quality of the report itself, the agent’s only remedy is to address it through the lender, or for the buyer to switch lenders altogether. The lender or buyer, however, makes the final decision, not the agent.