

## How to Protect an Appraiser's Fee in Bankruptcy Appraisals

---

Bankruptcies can represent a significant opportunity for appraisers to provide professional services. However, appraisers who neglect to take the necessary steps to protect their fees may fail to obtain the reimbursement they are entitled to receive. These steps involve, among other things, the submission to court of an affidavit that contains detailed information concerning the experience and qualifications of the appraiser, the nature of the assignment, the fee schedule, and all potential expenses. A detailed log of all activities performed on the debtor's behalf also can provide critical documentation. Appraisers who follow the steps discussed in this article can both correctly estimate and protect their fees.

---

**B**ankruptcies are common in the current troubled economy and often represent a significant opportunity for an appraiser to provide professional services. When a client is a debtor, however, a bankruptcy assignment carries one obvious hazard: that an appraiser may not be paid for an assignment or reimbursed for expenses. This article suggests several ways to minimize that risk.

Before filing for bankruptcy, a debtor typically contacts an appraiser to obtain an opinion of the value of his or her assets. As soon as an appraiser learns that a client or prospective client intends to file for bankruptcy, it is essential to institute a meticulous system of recordkeeping. In addition, fees for professional services as well as all travel and other out-of-pocket costs

that may be incurred should be carefully estimated.

The next step is to prepare a comprehensive contract agreement for the assignment. It is important to state that the fee is estimated based on per-diem rates and to request the total fee and expenses in advance. While the assignment is in progress, an appraiser should keep a detailed log of all tasks performed (with time spent for each) and collect receipts for all expenses as well as reasons for the expenses.

Once the actual bankruptcy proceeding begins, the situation changes dramatically. Immediately after a client has filed for bankruptcy protection, all as yet unreimbursed work must be stopped—otherwise payment may never be made. It is then necessary to notify

**William F. Schoenhut, Jr., MAI**, is regional vice president of Marshall and Stevens Inc. of Philadelphia. He received a BBA from the University of New Mexico and an MBA from Rutgers, the State University, New Jersey. Mr. Schoenhut writes and lectures on real estate valuation and investment for numerous professional journals as well as for business and professional groups.

*While some jurisdictions permit the inclusion of attorney fees as legitimate expenses when they are incurred to defend fees and time spent, others consider them normal business expenses and do not permit their inclusion.*

the client that work is being stopped until the debtor's attorney files a statement with the court requesting that the appraiser be approved as appraiser of record for the debtor. Some jurisdictions will permit the resumption of appraisal services as soon as the application for appointment has been filed. It is wiser, however, not to start work until officially appointed by the bankruptcy judge.

### **APPLICATION FOR COURT APPROVAL**

The application for court approval is prepared by the debtor's attorney, and should include an affidavit signed by the appraiser containing the following information:

- *Experience and professional qualifications.*
- *Nature of appraisal assignment.* The application may include: 1) a description of the property being appraised and the type of value; and 2) a list of any other services being requested (e.g., an estimation of tenant-improvement costs, marketing costs for lease-up, leasing commissions, damages from shoddy construction, or an evaluation in a workout plan of the feasibility of the property's cash flow). It is a good idea to leave an open clause in the application to allow for any other valuation service the debtor or the court may require in the future.
- *Fee schedule.* Some jurisdictions require a fixed fee, but most will accept an appraiser's per-diem schedule. It should be possible to demonstrate that the appraiser's rates are reasonable in the marketplace and typical of what clients are usually charged.
- *List of all potential travel and other out-of-pocket expenses*

*to be reimbursed.* In addition to the large-scale purchases of air and rail fares, travel expenses include mileage or car rental; meals (in some jurisdictions); and expenses for obtaining comparable data, tax cards, deeds, and maps. Clerical costs are also included in professional fees.

Generally, it is easier to get court approval for payment when most items are covered in the professional fee. According to bankruptcy procedures, an appraiser is entitled to request interim payments every 120 days. The debtor's attorney may, as a courtesy, file a request for appraiser payment. However, it is unwise to rely merely on the goodwill of the debtor's attorney. Attorney costs to file for payments can average \$300 to \$500. While some jurisdictions permit the inclusion of such attorney fees as legitimate expenses when they are incurred to defend fees and time spent, others consider them normal business expenses and do not permit their inclusion.

### **DAILY LOG PROVIDES CRITICAL DOCUMENTATION**

The most important guideline is to keep a detailed daily log of all activities performed on the debtor's behalf. It should be noted that these activities are not limited to an eight-hour day. Many judges prefer to see time increments calculated to the one-tenth of an hour (six-minute increments). These should be recorded as shown in Table 1.

While few appraisers are in the habit of detailing their work time to this degree, in bankruptcy appraisal work detailed records are necessary to obtain payment approval.

As previously mentioned, work