

**WHAT CAN A**

**FORENSIC REPORT EXAMINER**

**DO FOR YOU?**

**TELL YOU WHAT YOU DON'T KNOW!**

**ANTHONY F. MOLLICA, MAI, CRE, ASA**

1601 Bethel Road, Columbus, Ohio 43220

(614) 459-1140

[AFMollica@AOL.COM](mailto:AFMollica@AOL.COM)

## ***The Role of the Forensic Report Examiner***

The term forensic is defined as “ belonging to, used in, or suitable to courts of judicature or to public discussion and debate...relating or dealing with the applications of science, pathologists, and experts.” The term forensic is commonly used as “in depth” by the legal profession.<sup>1</sup>

A forensic report examination is often confused with an appraisal review. They are not the same.

A ***reviewer*** makes an objective review of another appraiser’s work to determine whether or not reason, logic, and judgement has been applied in a sufficient manner to warrant the valuation conclusion.

A ***forensic report examination*** is an in depth analysis of all facts, statements and theory contained in the report with a secondary examination to determine whether or not the data, comments, and appraisal theory used as support for conclusions are ***defensible***.

A ***forensic report examination*** is ***not*** an appraisal review. In the event that a forensic report examiner discovers elements, facts or calculations in an expert’s appraisal report that summarily defeats the expert’s conclusions, the forensic report examiner will ***not replace*** the appraisers’ opinion with his/her own.

The role of the ***forensic report examiner*** is to point out mistakes that may make an expert’s report (totally) unreliable, not to establish another value opinion.

For example, a statement in a report that a comparable sale is in a good location signals a ***forensic report examiner*** to investigate whether or not this is an unsupported conclusion or if it is actually based on an in-depth examination of the sale’s neighborhood.... and all of the ***elements*** that should be considered before making this statement.

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<sup>1</sup> Black’s Law Dictionary, 7<sup>th</sup> Edition

A *reviewer* would most probably not visit the neighborhood, site or the comparable sales when doing a technical review. A *forensic report examiner* would always visit the site and comparable sales.

It is important to note that *forensic report examiners act independently*. *Forensic report examiners* scrutinize appraisal reports to determine whether or not the expert witness has used his/her training and expertise to arrive at the conclusions in his/her appraisal reports.

The conclusions in the experts' appraisal reports are not limited to the final correlation of market value. There are many steps in the appraisal report prior to the conclusion of market value. A *forensic report examiner* systematically goes through these steps to determine the credibility of the data and the reliability of the *conclusions*.

### ***Litigation Team***

A litigation team is generally made up of a litigation attorney, the client, and the expert witness. Some types of litigation also require civil engineers, architects, accountants, and public administrators.

Eminent domain proceedings often require other experts, such as land planners and sanitation engineers. The data and work product of other experts is often the support for the valuation expert's opinion of value. A *forensic report examiner* can "*help connect the dots*" to other experts' data and work product.

## *Litigation Attorneys*

Attorneys come with various degrees of experience and proficiency in the presentation of evidence in real estate valuation matters. Valuation matters can range from the market value of a single-family residence to eminent domain matters which require the before and after value of commercial properties (where access, highest and best use, and residual effects require an in-depth analysis). While attorneys are expected to be proficient in presenting evidence in real estate valuation, they are not expertly trained to know the quality of the reports presented by expert witnesses. The experts' appraisal reports require a forensic report examiner to analyze and *translate* the data and findings for the litigator. The *forensic examiner's* report can afford a litigator the opportunity to completely understand the data and theories in every expert's report.

## *Expert Witness*

“A person who through education or experience has developed skill in a particular subject, so that he/she may form an opinion that will assist the fact finder<sup>1</sup>.”

Appraisers qualify as expert witnesses by certification, license or professional designations. While an appraiser may meet the qualifications for any of these processes, he/she may not have sufficient experience and training in every type. A *forensic report examiner* can detect these elements instantly.

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1. Black's Law Dictionary, 7<sup>th</sup> Edition

***A recent case points out reasons for different valuation opinions.***

A condemnee's attorney, upon recommendation of another attorney in his firm, selected his client's appraiser in an eminent domain case. The recommendation was based upon the appraiser's work before a board of tax revision in a matter of a single-family residence.

The condemnor selected two highly qualified, professionally designated appraisers, each with fifteen or more years of appraisal experience. The condemnor's two appraisers produced valuation conclusions close in value. The condemnee's appraiser produced a valuation approximately three times higher than the condemnor's appraisers. The parties were unable to reach a settlement as each party thought that his appraiser had produced reports superior to the others. The condemnee's attorney, prior to deposition, engaged a ***forensic report examiner***. The ***forensic report examiner*** reported that the property owner's appraiser had ***misused the appropriate theory*** and that neither of the condemnor's appraisers ***applied the appropriate theory***.

The condemnee's attorney had a clear advantage at the deposition of the condemnor's appraiser. This case has not yet reached a conclusion; however, the deposition clearly underscored the fact that the property owner's appraiser had applied the correct theory ***incorrectly*** and that the condemnor's appraisers had neglected to apply the ***correct*** theory (facts not known by the client's attorney).

Prior to deposition, the condemnor hired an expert appraisal ***reviewer*** whose report cited several weaknesses, but no serious errors in the valuation theories. The ***reviewer*** (of the condemnor's expert's report) was not aware of all of the facts about the property and the comparable sales. The condemnor's attorney only knew what his reviewer and valuation experts had reported to him.

***Your own expert can hurt you.***

Experienced appraisers may write very good reports, but their reports are written as a basis for their opinion. When read by themselves or others, they may *seem* to have a proper foundation for their opinion. In litigation, this is not enough. Why? ***Because they are not often written to be defensible!***

Mediocre appraisers may write mediocre reports that are poor bases for their opinions; however, their reports may be *defensible* because the opposing litigant does not know just how *indefensible* the report is.

***Requirements for being a forensic report examiner.***

A *forensic report examiner* should have experience in real estate appraisal, business valuation and litigation. It is also helpful to have experience in appraisal reviewing and teaching appraisal theory.

***Frequently asked questions.***

1) Why use a *forensic report examiner*?

A *forensic report examiner* is of great service to the attorney and his appraiser by comparing both experts' reports and then reporting errors, omissions or inaccurate assumptions. This information is especially important when any of the appraisers' errors positively or negatively affect their opinion of market value.

You will know what you have! If you have a weak or indefensible report, you may want to change appraisers or send the appraisal back to the expert for reconsideration.

2) When should the services of a *forensic report examiner be engaged*?

If you are the attorney for a condemnor, it should be after you have received your expert's appraisal but before you have given the appraisal report to the property owner. If there are weaknesses, omissions or mistakes in the appraisal, you should know about it first. This will give you the opportunity to have the appraisal corrected, amended or to select another appraiser if the appropriate guidelines have not or will not be followed by your original appraiser.

If you are a condemnee's attorney, you should engage a forensic appraiser after you have received the condemnor's appraisal and construction and right-of-way plans, if the subject is a partial taking.

3) Does the *forensic report examiner* furnish a detailed analysis of the strengths and weaknesses of the expert appraisal report?

Yes. The *forensic report examiner* will furnish a detailed analysis of the strengths and weaknesses in both experts' appraisal reports. This is a work product generally classified as a trial consultant's work product, which I am told, in most instances, is privileged work.

4) Is that the end of the *forensic report examiner's* role in litigation?

No. The *forensic report examiner* will, if employed to do so, review the transcripts with you and assist you in preparing inquiries for trial.

- 5) Do *forensic report examiners* assist litigators in preparing for direct testimony of his/her witness?

Yes. After reviewing both appraisal reports, citing weaknesses, and reading the depositions, the *forensic appraiser* can help you develop a thematic line of inquiry.

- 6) Do *forensic report examiners* attend trials and are available to assist the litigators?

Yes. Depending upon the venue (at the discretion of the individual judge), *forensic report examiners* can give trial assistance, either by being in the court room or sitting at the counsel table.

- 7) Do *forensic report examiners* work on contingent fees?

No. Most *forensic report examiners* are members of professionally accredited organizations that prohibit or discourage their members or designees from giving service contingent upon valuation or results of litigation. Most *forensic report examiners* charge an hourly fee and have no contemplated interest in the results of the litigation in which they are involved.

- 8) How do *forensic report examiners* charge for their services?

The *forensic report examiner* will give you the estimated time and hourly rate to examine the appraisal reports and to write the follow up analysis. You may engage a *forensic report examiner* for each step in the litigation process separately.



9) What is the hourly rate charged by a *forensic report examiner*?

*Forensic report examiners* hourly fees are based upon their experience and (multiple) expertise. We have *three forensic report examiners* in our group.

a) Anthony F. Mollica has five professional designations and four areas of expertise:

Real Estate Appraiser, Business Appraiser, Real Estate Broker, Real Estate Counselor - and is a Diplomat in the American College of Forensic Examiners Institute.

b) Sandra K. Martin has four areas of expertise:

Certified Public Accountant, Real Estate Appraiser, Business Appraiser, Real Estate Reviewer

c) G. Franklin Hinkle, II has three areas of expertise:

Residential Real Estate Appraiser, Commercial Real Estate Appraiser and holds a Juris Doctorate.

Depending upon the complexity of the litigation issues, all or one of us could work on an assignment.

Anthony F. Mollica, MAI, ASA, CRE, is one of the few appraisers who is professionally designated as a real estate and business appraiser and as a Counselor of Real Estate.

Mr. Mollica has been active in the valuation field for forty (40) years and has appeared as a witness in depositions and court testimony over 700 times.

Mr. Mollica has been published in *The Appraisal Journal* and has served as adjunct faculty at a number of universities.