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RE-THINKING, A 21ST CENTURY DICTATE

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WHAT WAS KNOWN IS NOW QUESTIONED- As years go by, the phrase “new and improved” is more than a catch TV commercial phrase. It is the real life daily experience of every person. The *millennials* don’t recognize this phenomenon that us “older folk” do, as they have been living in a quickly ever changing world for all their lives. So, many changes are not as dramatic in their eyes as in the eyes of those not of their age group. Maybe it is their saving grace. Or maybe it creates for them the ostrich syndrome leaving them unaware of that which is happening, and possibly too late. But that’s a psychological conundrum for discussion another day.

Those of us involved with real estate, brokers, attorneys, assessors, bankers, mortgage brokers and of course appraisers have over the years encountered many changes which were to bring about “new and improved” scenarios. To name a few, the mortgage debacle of the 1980’s which began as President Clinton decided that to create a robust economy banks and lenders had to open the flood gates for lending. And, it did. Housing sales and refinances increased at double digit percentages quickly. And, it did what it was intended to accomplish. Possibly, not to the extent that he had intended or at the expense of the safety of homeowners several years later. But to make things happen Clinton took an aggressive approach and almost overnight created the robust economy that he sought. In retrospect it was a bad idea because runaway anything is never good; and, the mortgage crisis was no exception. So, Clinton’s novel idea was one of the ill conceived “new and improved” ideas for our economy. At that time I was very involved in the review of appraisals for one of the top 10 mortgage lenders in the U. S. I remember at an off-site work session with the sales people capitalizing on this burgeoning lending bubble, telling them that this super hyperactivity was going to come crashing down. They saw me as a heretic and I did feel hermetic for quite awhile. And, unfortunately, I was able to say, “I told you so” which was of no comfort for me and certainly not them. I didn’t want to be right but I was.

After the collapse of the mortgage market and escalating foreclosures and bankruptcies, the finger pointing

began which accomplished nothing because it was a typical juvenile reaction when children are caught doing something wrong and when mom asks who did this, they did what? Yup, they all point to another kid. What it also created was a legion of professionals who thought they were better than they really were. A prominent attorney who was recognized as a real estate genius believed his own press and was conned into a real estate deal that became his downfall, literally. New and Improved, doesn’t exist for business. Maybe you can buy a better garden hose, or fry pan, but not a better way to sell concepts and to create other means of calculating and forecasting results. (CON’T)

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(CON'T) Let's bring this to another level. Those who are involved in real estate valuation which is the attorneys, appraisers, assessors and lenders and the public in tax appeals. Now, this is a thought provoking topic, not legal or novel formula to arrive at a value.

For all of my real estate career, I have heard and used the term, Comparable Sale. Last year, a very astute attorney who is also a licensed real estate appraiser, said the term "comparable" is not the best term to describe a property used in a valuation analysis. He suggested the term be changed to "comparative". That was intriguing. I did some research and the man was correct at least in my opinion. The term "comparable" in adjectival form which is from the noun written and pronounced the same is translated to "equal" having the same quantity, value or measure as another, (i.e., on equal terms, all men are equal before the law, of equivalent quality), clearly setting forth an "exactness" of being. This leaves no activity to compare to another property that is not the "exact" same as the property to which one is comparing. Now, that leaves a quandary. The only property that is exactly the same is the property itself. Hence, it is known in appraisal circles that the only true *comparable* property is the subject itself, which in various legal interpretation is not considered an acceptable property to be used in the analysis of itself. Sound like a run around. Well, it is. A subject property, if in a valuation analysis, is truly the best property to reflect the value of itself then it should be used "as a comparable". Yes, there are some caveats. Simplistically, if the subject in its sale meets all the requisites of a Market Value transaction, then it certainly can and should be used as a comparative property. Now this brings us to the "*new and improved*" term we should be using, recognizing and accepting.

The word I believe more appropriate for a property that is used in a valuation analysis to derive the value of another property is "comparative". The cognizant determinant for this term is "the middle degree of comparison". Simply, it invites comparison for difference unlike, "comparable". Some other understandings are, denoting or involving comparison; judged by comparison, relative; and, the best is, **estimated by comparison, not positive or absolute**". Thus, in my appraisals, I set forth the "*Comparative Sales Approach*" using comparative properties to complete my comparative analysis. I have only one regret. I am not the one to have discovered this. So, Mr., if you are reading this, you are smarter than you thought. Send me \$2 and I'll tell who you are in the next edition of this newsletter.

IS SELLER DISCLOSURE A MUST?- It is quite likely that the majority of the states in the U.S. require some disclosures. I'm am only aware that Alabama, Arkansas and Virginia are "caveat emptor" states which means "buyer beware" or you're on your own, Pal. In New Jersey and likely many other states the sellers responsibilities are tantamount to a successful transaction and one in which it may move forward without concern. This is known as "caveat venditor", "let the seller beware". Yes, the seller has responsibility to the buyer in New Jersey.

There are many issues in this seller and buyer responsibilities in a sale transaction. I'm an appraiser not an attorney and I make no suggestions as to the actions buyers and sellers are responsible. I am aware that one needs to seek a real estate attorney who can properly advise the public. In New Jersey home inspectors are now licensed and the public should hire one. I do not and will not recommend one. Buyers should take every precaution available to them to insure the structure / dwelling is in safe and operable condition. One should know if appliances are realty or personalty items. Hidden defects are typically not the responsibility of the seller. Any indication of a cover-up of a defect will certainly fall on the seller. The courts have been filled with lawsuits involving housing defects and lack of honest reporting by the seller. I do suggest that in any matter when you are represented by an attorney, that you ask to see the law and cases on which he / she is basing the opinion for your case. If it doesn't make sense to you then get a second opinion. Within the past month I have been involved with two matters in which the attorneys were not basing their opinions on supportable evidence. One came forward almost immediately and corrected the position. Now that's a good attorney. Don't be negative about that. Which of us hasn't made a wrong decision and discovered it later. If we were honest we owned up to it also. Right?

An often asked question and one appraiser should be aware, if there is a house which is stigmatized, haunting, violent death or death, does the seller have to report it? In New Jersey my understanding is "no". For appraisers, I suggest you put it in the appraisal and let nature take it's course, because you will be sued.