Burgos, Alexander N

Subject: FW: [External] comments for rules hearing March 19
Attachments: total loss rules comments.pdf; dis-interested appraiser defintion comments.pdf; Online __ Court Clarifies Definition of 'Disinterested' Appraiser in Insurance Dispute _ Daily Business Review - law.com.pdf; Does Edmunds provide historical used car values (i.e. the value of a car on a specific date in the past)_ – Edmunds Help Center.pdf; IRS ON APPRAISERS CFR-2005-title26-vol3-sec1-170A-13.pdf; volume kkb Gmail - Your Inquiry to KBB [ref__00Df2NesT._500f21WBeVL_ref].pdf

From: Danny Wyatt <csi.dwyatt@gmail.com>
Sent: Tuesday, March 10, 2020 2:55 PM
To: rrc.comments <rrc.comments@oah.nc.gov>
Cc: Peace-Bunch, Loretta Y <loretta.peace-bunch@ncdoi.gov>
Subject: [External] comments for rules hearing March 19

Please see 2 attached comments and supporting documents on 11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES
11 NCAC 04 .0425 DEFINITIONS -Dis- interested Appraiser for March 19th hearing.

Danny Wyatt

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March 9, 2020

Danny Wyatt
190 Archer Road
Salisbury NC.28147

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6700

RE: 11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES

Members of the Commission:

As a professional motor vehicle damage appraiser being in the business since 2003 of appraising damage vehicles for diminished value and total loss value claims, I wish to comment and recommend changes to the following proposed rules.

Beginning with (b) For the purposes of this Rule, the following terms shall mean:

(3) "Published Regional **Average** **v**alues" means values derived from printed or electronically published pricing[~~guides including Edmunds, Kelley Blue Book, and National Automobile Dealers Association Pricing Guide Book.~~] guides.

Recommended Change

(3) "Published Regional **Retail** **v**alue" means values derived from printed or electronically published pricing of **(NADA) National Automobile Dealers Association Pricing Guide Book at time of loss**.

Reasons Why:

1. DAMAGE DISCLOSURE STATEMENT MVR-181 (Rev. 12/2011)

   Salvage Motor Vehicle - Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor; or a vehicle for which an insurance company has paid a claim that exceeds 75% of the fair market retail value. Fair market retail values shall be as found in the **NADA Pricing Guide Book** or other publications approved by the Commissioner.

2. When paying vehicle property tax on a vehicle n North Carolina count tax offices and NCDMV use the NADA per value.

3. In collision repair industry the estimating software systems, Audatex, CCC and Mitchell is set-up by using NADA to establish percentage of damages to the vehicle and when damage to vehicle reaches 75% to vehicle value.

4. NADA (owned by JD Powers) offers archive value packages at reasonable prices which an appraiser can go back at several years to obtain vehicle value and having values in minutes. Edmunds only offers current month value. (KKB) Kelly Blue Book used-car values vary and obtaining an archive value the appraiser or vehicle owner has to contact KKB and pay $35 for two-three day or $50 one day turn around on the vehicle value. Variation of KKB new/used car dealer value example below:

Used 2018 Chevrolet Camaro LS Coupe -- Typical Mileage: 30,685

Fair Market Range **$17,646 - $19,857 --** Fair Purchase Price **$18,752 --** Typical Listing Price **$19,275**

Private Party

Private Party Range **$16,554 - $18,589** -- Private Party Value **$17,572**

As recommended; "Published Regional **Retail value**" **by NADA** should be used throughout entire rule where applicable.

1. Conflicting Wording

[~~(5)~~] (4) **"Substantially Similar Motor Vehicle"** means a motor vehicle of the same make, model, year, or year newer. [~~options, equipment, condition, and mileage~~] of the damaged motor vehicle. If unable to identify substantially similar motor vehicles, documentation in subsection (d) shall be sufficient proof of compliance for the purposes of this Rule.

(d) If the insurance company and the claimant are initially unable to reach an agreement as to the actual cash value of the total loss motor vehicle, the actual cash value shall be calculated using the following methods and adjusted for condition, **options, equipment, and mileage**, less the cost of unrepaired damage that pre-existed the accident:

Recommended Change Definition of Substantially Similar Vehicle

Source https://www.lawinsider.com/dictionary/substantially-similar-vehicle

1. **Substantially similar** vehicle means a motor vehicle of the same make, model, year and substantially the same condition, including all major options of the insured vehicle. Mileage may not exceed that of the insured vehicle by more than 4,000 miles unless mutually acceptable to both the insurer and the insured.

2. **Substantially similar** vehicle means a vehicle of the same make, model, year and condition, including all major options of the insured vehicle. Mileage must not exceed that of the insured vehicle by more than 4,000 miles. Mileage differences of more than 4,000 miles may, at the option of the insured, be exchanged for the presence or absence of options or a cash adjustment.

3. Conflicting Wording Continue Under (d)

(1) The published regional **average value** of substantially similar motor vehicles; and

(2) The **retail cost** of two or more substantially similar motor vehicles in the local market area when substantially similar motor vehicles are available **or were available within the last ninety (90) days** to consumers in the local market area; or

Recommended Change

(2) The **retail cost** of two or more substantially similar motor vehicles in the local market area when substantially similar motor vehicles **currently available;** or

Reason Why: It is very difficult to obtain info on vehicles sold in past ninety (90) days.

(3) **One of two or more quotations** obtained by the insurance company from two or more licensed motor vehicle dealers located within the local market area.

Recommended Change

(3) **One of two or more written quotations on dealer's company letter head with name of person providing quote** obtained by the insurance company from two or more licensed motor vehicle dealers located within the local market area.

Reason Why: Anyone can say they have a dealer quote, and auto insurers take advantage of this by providing bogus quotes. It needs to be put into writing by dealer.

(h) **If requested by the claimant,** a total loss payment by an insurance company shall be accompanied by a written statement listing the estimates, evaluations, and any deductions used in calculating the payment, and the source of these values.

Recommended Change

(h) A total loss payment by an insurance company shall be accompanied by a written statement listing the estimates, evaluations, and any deductions used in calculating the payment, and the source of these values.

Thank you for your consideration.

Danny H. Wyatt

Collision Service Investigators of North Carolina
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NCDOI License No: 10006764
Member of the NCDOI External Appraiser and Repair Task Force

March 9, 2020

Danny Wyatt
190 Archer Road
Salisbury NC.28147

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6700

Re: 11 NCAC 04 .0425 DEFINITIONS

Members of the Commission:

As a professional motor vehicle damage appraiser being in the business since 2003 of appraising damage vehicles for diminished value and total loss value claims, I wish to comment and recommend changes to the following proposed rules or definition.

(4) "Disinterested appraiser," as that term is used in G.S. 20-279.21, means a motor vehicle damage appraiser who:

(a) Is not employed by either the claimant or the insurer;

(b) Has no financial interest in the outcome of the appraisal; and

(c) Did not participate in the original appraisal

Recommended Change

(4) "Disinterested appraiser," as that term is used in G.S. 20-279.21, means a motor vehicle damage appraiser who:

(a) Is not employed by either the claimant or the insurer nor has an ongoing business relationship with either the claimant or the insurer;

(b) Has no financial interest in the outcome of the appraisal, and;

(c) Did not participate in the original appraisal of repairing or an employee or subcontractor of the appraisal company who provided the original appraisal of repairing.

Reasons for Change

1. Most insurance companies use the same motor vehicle damage appraiser and by having an ongoing business relationship the so-called dis-interest appraiser intentionally low balls the loss and in most cases forces appraisal clause to have umpire rule in order to keep insurer's business. The majority of the appraisers hired by insurance companies do not have websites and for the ones that do, their website is clear they are hiring out for insurance work. Below the IRS and Florida Fourth District Court of Appeal defines a dis-interested appraiser. IRS and Florida Fourth District Court of Appeal information attached.

   (1a.) The IRS code § 1.170A–13 (Pages 140 – 141) evens states who is not qualified.

   (iv) Qualified appraiser exclusions. The following persons cannot be qualified appraisers with respect to particular property:

   (F) An appraiser who is regularly used by any person described in paragraph (c)(5)(iv) (A), (B), or (C) of this section and who does not perform a majority of his or her appraisals made during his or her taxable year for other persons.

   (1b.) Florida Fourth District Court of Appeal

   A Florida appellate court has stated in no uncertain terms that a public adjuster previously retained by a policyholder cannot be considered a "disinterested appraiser" during subsequent appraisal proceedings.

2. (c) Did not participate in the original appraisal of repairing and is not an employee or subcontractor of appraisal company who provided the original appraisal of repairing.

   Reason for Change

   Insurance companies hire out-side appraisal companies to appraise damaged vehicle, diminished value and total loss values. The same out-side appraisal company could turn the claim over to a different appraiser with-in the company, therefore appraiser is not truly dis-interested.

Thank you for your consideration.

Danny H. Wyatt______________________________

Gmail

Danny Wyatt <csi.dwyatt@gmail.com>

Your Inquiry to KBB [ref:_00Df2NesT._500f21WBeVL:ref]

1 message

Customer Support 3 <support@autotrader.com> Mon, Dec 23, 2019 at 6:30 PM
To: "csi.dwyatt@gmail.com" <csi.dwyatt@gmail.com>

Dear Danny,

Thank you for contacting Kelley Blue Book.

As it turns out we don't offer a "Volume Package". I truly apologize for the inconvenience this may have caused.

If you have additional questions, please call us at 1-866-851-2285. We're here to help Monday through Friday, 8am – 8pm and Saturday, 9am – 7pm Eastern Time. Or, you may email Kelley Blue Book Private Seller Customer Support any time at privatesellerhelp@kbb.com.

Thank you for choosing Kelley Blue Book,

Calypso

Kelley Blue Book Private Seller Customer Support

--------------- Original Message ---------------
From: Danny Wyatt [csi.dwyatt@gmail.com]
Sent: 12/22/2019 4:20 PM
To: kbb.consumerresponse@coxautoinc.com
Subject: Re: Your Inquiry to KBB [ref:_00Df2NesT._500f21VOCei:ref]

Deidre so there is no miss understanding of things I am an auto appraiser constantly buying NADA archive values on vehicles and NADA does offer me a volume package, does KKB offer a archive values volume package? If so how much?

Danny

On Mon, Nov 25, 2019 at 1:58 PM KBB Consumer <kbb.consumerresponse@coxautoinc.com> wrote:

> Dear Danny,
>
> Thank you for contacting Kelley Blue Book,

We received your email and sincerely apologize for the delayed response. To receive a past value, please give us a call at the number below.Were are able to provide past values up to 10/2017. Also, there is a one time fee of $35 for a standard report that comes back with in 48 to 72 business hours. Or, a one time fee of $50 for a rush report that comes back with in 24 business hours.

If you have additional questions, please call us at 1-866-851-2285. We're here to help Monday through Friday, 8am – 8pm and Saturday, 9am – 7pm Eastern Time. Or, you may email Kelley Blue Book Private Seller Customer Support any time at privatesellerhelp@kbb.com.

Thank you for choosing Kelley Blue Book,

Deidre

Kelley Blue Book Private Seller Customer Support

--------------- Original Message ---------------
From: Kelley Blue Book [kbb.consumerresponse@coxautoinc.com]
Sent: 11/23/2019 10:17 AM
To: csi.dwyatt@gmail.com
Subject: Your feedback has been received

Thank you for your feedback.

Your feedback has been submitted to Kelley Blue Book's KBB.com website team. You can expect a response within 24 business hours from a KBB.com website specialist.

Thank you,

Your friends at Kelley Blue Book

ref:_00Df2NesT._500f21VOCei:ref

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Collision Service Investigators of North Carolina
Salisbury, NC 28144
Phone 704-216-0081
Email address: csi.dwyatt@gmail.com

Edmunds Help Center > Navigating and Using Edmunds > Used Car Values on Edmunds

Search

Does Edmunds provide historical used car values (i.e. the value of a car on a specific date in the past)?

No. Edmunds does not provide Historical True Market Value. We have pulled our Historical TMV service as of April 1, 2016 due to very high demand and limited resources for a service that isn't necessarily our business goal, which is to help car buyers throughout the shopping process.

We've found that NADA Guides offers this service and it appears they sell individual reports for $100.

Was this article helpful?

Yes No

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What is "Edmunds Suggested Price"?

of the depreciable property. However, since remainder interests in that part of any property which is depletable cannot be valued on a purely actuarial basis, special factors will not be furnished with respect to such part. Requests should be forwarded to the Commissioner of Internal Revenue, Attention: OP:E:EP:A:1, Washington, DC 20224.

[T.D. 7370, 40 FR 34337, Aug. 15, 1975, as amended by T.D. 7955, 49 FR 19975, May 11, 1984; T.D. 8540, 59 FR 30102, 30104, June 10, 1994; T.D. 8819, 64 FR 23228, Apr. 30, 1999; T.D. 8886, 65 FR 36909, 36943, June 12, 2000]

§ 1.170A–13 Recordkeeping and return requirements for deductions for charitable contributions.

(a) *Charitable contributions of money made in taxable years beginning after December 31, 1982*—(1) *In general.* If a taxpayer makes a charitable contribution of money in a taxable year beginning after December 31, 1982, the taxpayer shall maintain for each contribution one of the following:

(i) A cancelled check.

(ii) A receipt from the donee charitable organization showing the name of the donee, the date of the contribution, and the amount of the contribution. A letter or other communication from the donee charitable organization acknowledging receipt of a contribution and showing the date and amount of the contribution constitutes a receipt for purposes of this paragraph (a).

(iii) In the absence of a canceled check or receipt from the donee charitable organization, other reliable written records showing the name of the donee, the date of the contribution, and the amount of the contribution.

(2) *Special rules*—(i) *Reliability of records.* The reliability of the written records described in paragraph (a)(1)(iii) of this section is to be determined on the basis of all of the facts and circumstances of a particular case. In all events, however, the burden shall be on the taxpayer to establish reliability. Factors indicating that the written records are reliable include, but are not limited to:

(A) The contemporaneous nature of the writing evidencing the contribution.

(B) The regularity of the taxpayer's recordkeeping procedures. For example, a contemporaneous diary entry stating the amount and date of the donation and the name of the donee charitable organization made by a taxpayer who regularly makes such diary entries would generally be considered reliable.

(C) In the case of a contribution of a small amount, the existence of any written or other evidence from the donee charitable organization evidencing receipt of a donation that would not otherwise constitute a receipt under paragraph (a)(1)(ii) of this section (including an emblem, button, or other token traditionally associated with a charitable organization and regularly given by the organization to persons making cash donations).

(ii) *Information stated in income tax return.* The information required by paragraph (a)(1)(iii) of this section shall be stated in the taxpayer's income tax return if required by the return form or its instructions.

(3) *Taxpayer option to apply paragraph (d)(1) to pre-1985 contribution.* See paragraph (d)(1) of this section with regard to contributions of money made on or before December 31, 1984.

(b) *Charitable contributions of property other than money made in taxable years beginning after December 31, 1982*—(1) *In general.* Except in the case of certain charitable contributions of property made after December 31, 1984, to which paragraph (c) of this section applies, any taxpayer who makes a charitable contribution of property other than money in a taxable year beginning after December 31, 1982, shall maintain for each contribution a receipt from the donee showing the following information:

(i) The name of the donee.

(ii) The date and location of the contribution.

(iii) A description of the property in detail reasonably sufficient under the circumstances. Although the fair market value of the property is one of the circumstances to be taken into account in determining the amount of detail to be included on the receipt, such value need not be stated on the receipt.

A letter or other written communication from the donee acknowledging receipt of the contribution, showing the date of the contribution, and containing the required description of the property contributed constitutes a receipt for purposes of this paragraph. A receipt is not required if the contribution is made in circumstances where it is impractical to obtain a receipt (*e.g.*, by depositing property at a charity's unattended drop site). In such cases, however, the taxpayer shall maintain reliable written records with respect to each item of donated property that include the information required by paragraph (b)(2)(ii) of this section.

(2) *Special rules*—(i) *Reliability of records.* The rules described in paragraph (a)(2)(i) of this section also apply to this paragraph (b) for determining the reliability of the written records described in paragraph (b)(1) of this section

(ii) *Content of records.* The written records described in paragraph (b)(1) of this section shall include the following information and such information shall be stated in the taxpayers income tax return if required by the return form or its instructions:

(A) The name and address of the donee organization to which the contribution was made.

(B) The date and location of the contribution.

(C) A description of the property in detail reasonable under the circumstances (including the value of the property), and, in the case of securities, the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.

(D) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

(E) In the case of property to which section 170(e) applies, the cost or other basis, adjusted as provided by section 1016, the reduction by reason of section 170(e)(1) in the amount of the charitable contribution otherwise taken into account, and the manner in which such reduction was determined. A taxpayer who elects under paragraph (d)(2) of § 1.170A–8 to apply section 170(e)(1) to contributions and carryovers of 30 percent capital gain property shall maintain a written record indicating the years for which the election was made and showing the contributions in the current year and carryovers from preceding years to which it applies. For the definition of the term ''30-percent capital gain property,'' see paragraph (d)(3) of § 1.170A–8.

(F) If less than the entire interest in the property is contributed during the taxable year, the total amount claimed as a deduction for the taxable year due to the contribution of the property, and the amount claimed as a deduction in any prior year or years for contributions of other interests in such property, the name and address of each organization to which any such contribution was made, the place where any such property which is tangible property is located or kept, and the name of any person, other than the organization to which the property giving rise to the deduction was contributed, having actual possession of the property.

(G) The terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or other disposition of the property contributed, including for example, the terms of any agreement or understanding which:

(*1*) Restricts temporarily or permanently the donee's right to use or dispose of the donated property,

(*2*) Reserves to, or confers upon, anyone (other than the donee organization or an organization participating with the donee organization in cooperative fundraising) any right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or

(*3*) Earmarks donated property for a particular use.

(3) *Deductions in excess of $500 claimed for a charitable contribution of property other than money*—(i) *In general.* In addition to the information required under paragraph (b)(2)(ii) of this section, if a taxpayer makes a charitable contribution of property other than money in a taxable year beginning

after December 31, 1982, and claims a deduction in excess of $500 in respect of the contribution of such item, the taxpayer shall maintain written records that include the following information with respect to such item of donated property, and shall state such information in his or her income tax return if required by the return form or its instructions:

(A) The manner of acquisition, as for example by purchase, gift bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer or, if the property was created, produced, or manufactured by or for the taxpayer, the approximate date the property was substantially completed.

(B) The cost or other basis, adjusted as provided by section 1016, of property, other than publicly traded securities, held by the taxpayer for a period of less than 12 months (6 months for property contributed in taxable years beginning after December 31, 1982, and on or before June 6, 1988, immediately preceding the date on which the contribution was made and, when the information is available, of property, other than publicly traded securities, held for a period of 12 months or more (6 months or more for property contributed in taxable years beginning after December 31, 1982, and on or before June 6, 1988, preceding the date on which the contribution was made.

(ii) *Information on acquisition date or cost basis not available.* If the return form or its instructions require the taxpayer to provide information on either the acquisition date of the property or the cost basis as described in paragraph (b)(3)(i) (A) and (B), respectively, of this section, and the taxpayer has reasonable cause for not being able to provide such information, the taxpayer shall attach an explanatory statement to the return. If a taxpayer has reasonable cause for not being able to provide such information, the taxpayer shall not be disallowed a charitable contribution deduction under section 170 for failure to comply with paragraph (b)(3)(i) (A) and (B) of the section.

(4) *Taxpayer option to apply paragraph (d) (1) and (2) to pre-1985 contributions.* See paragraph (d) (1) and (2) of this section with regard to contributions of property made on or before December 31, 1984.

(c) *Deductions in excess of $5,000 for certain charitable contributions of property made after December 31, 1984*—(1) *General Rule*—(i) *In general.* This paragraph applies to any charitable contribution made after December 31, 1984, by an individual, closely held corporation, personal service corporation, partnership, or S corporation of an item of property (other than money and publicly traded securities to which § 1.170A–13(c)(7)(xi)(B) does not apply if the amount claimed or reported as a deduction under section 170 with respect to such item exceeds $5,000. This paragraph also applies to charitable contributions by C corporations (as defined in section 1361(a)(2) of the Code) to the extent described in paragraph (c)(2)(ii) of this section. No deduction under section 170 shall be allowed with respect to a charitable contribution to which this paragraph applies unless the substantiation requirements described in paragraph (c)(2) of this section are met. For purposes of this paragraph (c), the amount claimed or reported as a deduction for an item of property is the aggregate amount claimed or reported as a deduction for a charitable contribution under section 170 for such items of property and all similar items of property (as defined in paragraph (c)(7)(iii) of this section) by the same donor for the same taxable year (whether or not donated to the same donee).

(ii) *Special rule for property to which section 170(e) (3) or (4) applies.* For purposes of this paragraph (c), in computing the amount claimed or reported as a deduction for donated property to which section 170(e) (3) or (4) applies (pertaining to certain contributions of inventory and scientific equipment) there shall be taken into account only the amount claimed or reported as a deduction in excess of the amount which would have been taken into account for tax purposes by the donor as costs of goods sold if the donor had sold the contributed property to the donee. For example, assume that a donor makes a contribution from inventory of clothing for the care of the needy to which section 170(e)(3) applies. The cost of the property to the donor was $5,000, and, pursuant to section 170(e)(3)(B), the donor claims a charitable contribution deduction of $8,000 with respect to the property. Therefore, $3,000 ($8,000–$5,000) is the amount taken into account for purposes of determining whether the $5,000 threshold of this paragraph (c)(1) is met.

(2) *Substantiation requirements*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, a donor who claims or reports a deduction with respect to a charitable contribution to which this paragraph (c) applies must comply with the following three requirements:

(A) Obtain a qualified appraisal (as defined in paragraph (c) (3) of this section) for such property contributed. If the contributed property is a partial interest, the appraisal shall be of the partial interest.

(B) Attach a fully completed appraisal summary (as defined in paragraph (c) (4) of this section) to the tax return (or, in the case of a donor that is a partnership or S corporation, the information return) on which the deduction for the contribution is first claimed (or reported) by the donor.

(C) Maintain records containing the information required by paragraph (b) (2) (ii) of this section.

(ii) *Special rules for certain nonpublicly traded stock, certain publicly traded securities, and contributions by certain C corporations.* (A) In cases described in paragraph (c)(2)(ii)(B) of this section, a qualified appraisal is not required, and only a partially completed appraisal summary form (as described in paragraph (c)(4)(iv)(A) of this section) is required to be attached to the tax or information return specified in paragraph (c)(2)(i)(B) of this section. However, in all cases donors must maintain records containing the information required by paragraph (b)(2)(ii) of this section.

(B) This paragraph (c)(2)(ii) applies in each of the following cases:

(*1*) The contribution of nonpublicly traded stock, if the amount claimed or reported as a deduction for the charitable contribution of such stock is greater than $5,000 but does not exceed $10,000;

(*2*) The contribution of a security to which paragraph (c)(7)(xi)(B) of this section applies; and

(*3*) The contribution of an item of property or of similar items of property described in paragraph (c)(1) of this section made after June 6, 1988, by a C corporation (as defined in section 1361(a)(2) of the Code), other than a closely held corporation or a personal service corporation.

(3) *Qualified appraisal*—(i) *In general.* For purposes of this paragraph (c), the term ''qualified appraisal'' means an appraisal document that—

(A) Relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property nor later than the date specified in paragraph (c)(3)(iv)(B) of this section;

(B) Is prepared, signed, and dated by a qualified appraiser (within the meaning of paragraph (c)(5) of this section);

(C) Includes the information required by paragraph (c)(3)(ii) of this section; and

(D) Does not involve an appraisal fee prohibited by paragraph (c)(6) of this section.

(ii) *Information included in qualified appraisal.* A qualified appraisal shall include the following information:

(A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;

(B) In the case of tangible property, the physical condition of the property;

(C) The date (or expected date) of contribution to the donee;

(D) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding that—

(*1*) Restricts temporarily or permanently a donee's right to use or dispose of the donated property,

(*2*) Reserves to, or confers upon, anyone (other than a donee organization or an organization participating with a donee organization in cooperative fundraising) any right to the income from the contributed property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or

(*3*) Earmarks donated property for a particular use;

(E) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser; and, if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnerships), or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number (if a number is otherwise required by section 6109 and the regulations thereunder) of the partnership or the person who employs or engages the qualified appraiser;

(F) The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations;

(G) A statement that the appraisal was prepared for income tax purposes;

(H) The date (or dates) on which the property was appraised;

(I) The appraised fair market value (within the meaning of § 1.170A–1 (c)(2)) of the property on the date (or expected date) of contribution;

(J) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and

(K) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

(iii) *Effect of signature of the qualified appraiser.* Any appraiser who falsely or fraudulently overstates the value of the contributed property referred to in a qualified appraisal or appraisal summary (as defined in paragraphs (c) (3) and (4), respectively, of this section) that the appraiser has signed may be subject to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability and, moreover, may have appraisals disregarded pursuant to 31 U.S.C. 330(c).

(iv) *Special rules*—(A) *Number of qualified appraisals.* For purposes of paragraph (c)(2)(i)(A) of this section, a separate qualified appraisal is required for each item of property that is not included in a group of similar items of property. See paragraph (c)(7)(iii) of this section for the definition of similar items of property. Only one qualified appraisal is required for a group of similar items of property contributed in the same taxable year of the donor, although a donor may obtain separate qualified appraisals for each item of property. A qualified appraisal prepared with respect to a group of similar items of property shall provide all the information required by paragraph (c)(3)(ii) of this section for each item of similar property, except that the appraiser may select any items whose aggregate value is appraised at $100 or less and provide a group description of such items.

(B) *Time of receipt of qualified appraisal.* The qualified appraisal must be received by the donor before the due date (including extensions) of the return on which a deduction is first claimed (or reported in the case of a donor that is a partnership or S corporation) under section 170 with respect to the donated property, or, in the case of a deduction first claimed (or reported) on an amended return, the date on which the return is filed.

(C) *Retention of qualified appraisal.* The donor must retain the qualified appraisal in the donor's records for so long as it may be relevant in the administration of any internal revenue law.

(D) *Appraisal disregarded pursuant to 31 U.S.C. 330(c).* If an appraisal is disregarded pursuant to 31 U.S.C. 330(c) it shall have no probative effect as to the value of the appraised property. Such appraisal will, however, otherwise constitute a ''qualified appraisal'' for purposes of this paragraph (c) if the appraisal summary includes the declaration described in paragraph (c)(4)(ii)(L)(*2*) and the taxpayer had no knowledge that such declaration was false as of the time described in paragraph (c)(4)(i)(B) of this section.

(4) *Appraisal summary*—(i) *In general.* For purposes of this paragraph (c), except as provided in paragraph (c)(4)(iv)(A) of this section, the term *appraisal summary* means a summary of a qualified appraisal that—

(A) Is made on the form prescribed by the Internal Revenue Service;

(B) Is signed and dated (as described in paragraph (c)(4)(iii) of this section) by the donee (or presented to the donee for signature in cases described in paragraph (c)(4)(iv)(C)(*2*) of this section);

(C) Is signed and dated by the qualified appraiser (within the meaning of paragraph (c)(5) of this section) who prepared the qualified appraisal (within the meaning of paragraph (c)(3) of this section); and

(D) Includes the information required by paragraph (c)(4)(ii) of this section.

(ii) *Information included in an appraisal summary.* An appraisal summary shall include the following information:

(A) The name and taxpayer identification number of the donor (social security number if the donor is an individual or employer identification number if the donor is a partnership or corporation);

(B) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was contributed;

(C) In the case of tangible property, a brief summary of the overall physical condition of the property at the time of the contribution;

(D) The manner of acquisition (*e.g.*, purchase, exchange, gift, or bequest) and the date of acquisition of the property by the donor, or, if the property was created, produced, or manufactured by or for the donor, a statment to that effect and the approximate date the property was substantially completed;

(E) The cost or other basis of the property adjusted as provided by section 1016;

(F) The name, address, and taxpayer identification number of the donee;

(G) The date the donee received the property;

(H) For charitable contributions made after June 6, 1988, a statement explaining whether or not the charitable contribution was made by means of a bargain sale and the amount of any consideration received from the donee for the contribution;

(I) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser who signs the appraisal summary and of other persons as required by paragraph (c)(3)(ii)(E) of this section;

(J) The appraised fair market value of the property on the date of contribution;

(K) The declaration by the appraiser described in paragraph (c)(5)(i) of this section;

(L) A declaration by the appraiser stating that—

(*1*) The fee charged for the appraisal is not of a type prohibited by paragraph (c)(6) of this section; and

(*2*) Appraisals prepared by the appraiser are not being disregarded pursuant to 31 U.S.C. 330(c) on the date the appraisal summary is signed by the appraiser; and

(M) Such other information as may be specified by the form.

(iii) *Signature of the original donee.* The person who signs the appraisal summary for the donee shall be an official authorized to sign the tax or information returns of the donee, or a person specifically authorized to sign appraisal summaries by an official authorized to sign the tax or information returns of such done. In the case of a donee that is a governmental unit, the person who signs the appraisal summary for such donee shall be the official authorized by such donee to sign appraisal summaries. The signature of the donee on the appraisal summary does not represent concurrence in the appraised value of the contributed property. Rather, it represents acknowledgment of receipt of the property described in the appraisal summary on the date specified in the appraisal summary and that the donee understands the information reporting requirements imposed by section 6050L and § 1.6050L–1. In general, § 1.6050L–1 requires the donee to file an information return with the Internal Revenue Service in the event the donee sells, exchanges, consumes, or otherwise disposes of the property (or any portion thereof) described in the appraisal summary within 2 years after the date of the donor's contribution of such property.

(iv) *Special rules*—(A) *Content of appraisal summary required in certain cases.* With respect to contributions of nonpublicly traded stock described in paragraph (c)(2)(ii)(B)(*1*) of this section, contributions of securities described in paragraph (c)(7)(xi)(B) of this section, and contributions by C corporations described in paragraph (c)(2)(ii)(B)(*3*) of this section, the term *appraisal summary* means a document that—

(*1*) Complies with the requirements of paragraph (c)(4)(i) (A) and (B) of this section,

(*2*) Includes the information required by paragraph (c)(4)(ii) (A) through (H) of this section,

(*3*) Includes the amount claimed or reported as a charitable contribution deduction, and

(*4*) In the case of securities described in paragraph (c)(7)(xi)(B) of this section, also includes the pertinent average trading price (as described in paragraph (c)(7)(xi)(B)(*2*)(iii) of this section).

(B) *Number of appraisal summaries.* A separate appraisal summary for each item of property described in paragraph (c)(1) of this section must be attached to the donor's return. If, during the donor's taxable year, the donor contributes similar items of property described in paragraph (c)(1) of this section to more than one donee, the donor shall attach to the donor's return a separate appraisal summary for each donee. See paragraph (c)(7)(iii) of this section for the definition of similar items of property. If, however, during the donor's taxable year, a donor contributes similar items of property described in paragraph (c)(1) of this section to the same donee, the donor may attach to the donor's return a single appraisal summary with respect to all similar items of property contributed to the same donee. Such an appraisal summary shall provide all the information required by paragraph (c)(4)(ii) of this section for each item of property, except that the appraiser may select any items whose aggregate value is appraised at $100 or less and provide a group description for such items.

(C) *Manner of acquisition, cost basis and donee's signature.* (*1*) If a taxpayer has reasonable cause for being unable to provide the information required by paragraph (c)(4)(ii) (D) and (E) of this section (relating to the manner of acquisition and basis of the contributed property), an appropriate explanation should be attached to the appraisal summary. The taxpayer's deduction will not be disallowed simply because of the inability (for reasonable cause) to provide these items of information.

(*2*) In rare and unusual circumstances in which it is impossible for the taxpayer to obtain the signature of the donee on the appraisal summary as required by paragraph (c)(4)(i)(B) of this section, the taxpayer's deduction will not be disallowed for that reason provided that the taxpayer attaches a statement to the appraisal summary explaining, in detail, why it was not possible to obtain the donee's signature. For example, if the donee ceases to exist as an entity subsequent to the date of the contribution and prior to the date when the appraisal summary must be signed, and the donor acted reasonably in not obtaining the donee's signature at the time of the contribution, relief under this paragraph (c)(4)(iv)(C)(*2*) would generally be appropriate.

(D) *Information excluded from certain appraisal summaries.* The information required by paragraph (c)(4)(i)(C), paragraph (c)(4)(ii) (D), (E), (H) through (M), and paragraph (c)(4)(iv)(A)(*3*), and the average trading price referred to in paragraph (c)(4)(iv)(A)(*4*) of this section do not have to be included on the appraisal summary at the time it is signed by the donee or a copy is provided to the donee pursuant to paragraph (c)(4)(iv)(E) of this section.

(E) *Statement to be furnished by donors to donees.* Every donor who presents an appraisal summary to a donee for signature after June 6, 1988, in order to comply with paragraph (c)(4)(i)(B) of this section shall furnish a copy of the appraisal summary to such donee.

(F) *Appraisal summary required to be provided to partners and S corporation shareholders.* If the donor is a partnership or S corporation, the donor shall provide a copy of the appraisal summary to every partner or shareholder, respectively, who receives an allocation of a charitable contribution deduction under section 170 with respect to the property described in the appraisal summary.

(G) *Partners and S corporation shareholders.* A partner of a partnership or shareholder of an S corporation who receives an allocation of a deduction under section 170 for a charitable contribution of property to which this paragraph (c) applies must attach a copy of the partnership's or S corporation's appraisal summary to the tax return on which the deduction for the contribution is first claimed. If such appraisal summary is not attached, the partner's or shareholder's deduction shall not be allowed except as provided for in paragraph (c)(4)(iv)(H) of this section.

(H) *Failure to attach appraisal summary.* In the event that a donor fails to attach to the donor's return an appraisal summary as required by paragraph (c)(2)(i)(B) of this section, the Internal Revenue Service may request that the donor submit the appraisal summary within 90 days of the request. If such a request is made and the donor complies with the request within the 90-day period, the deduction under section 170 shall not be disallowed for failure to attach the appraisal summary, provided that the donor's failure to attach the appraisal summary was a good faith omission and the requirements of paragraph (c) (3) and (4) of this section are met (including the completion of the qualified appraisal prior to the date specified in paragraph (c)(3)(iv)(B) of this section).

(5) *Qualified appraiser*—(i) *In general.* The term *qualified appraiser* means an individual (other than a person described in paragraph (c)(5)(iv) of this section) who includes on the appraisal summary (described in paragraph (c)(4) of this section), a declaration that—

(A) The individual either holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis;

(B) Because of the appraiser's qualifications as described in the appraisal (pursuant to paragraph (c)(3)(ii)(F) of this section), the appraiser is qualified to make appraisals of the type of property being valued;

(C) The appraiser is not one of the persons described in paragraph (c)(5)(iv) of this section; and

(D) The appraiser understands that an intentionally false or fraudulent overstatement of the value of the property described in the qualified appraisal or appraisal summary may subject the appraiser to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability, and, moreover, the appraiser may have appraisals disregarded pursuant to 31 U.S.C. 330(c) (see paragraph (c)(3)(iii) of this section).

(ii) *Exception.* An individual is not a qualified appraiser with respect to a particular donation, even if the declaration specified in paragraph (c)(5)(i) of this section is provided in the appraisal summary, if the donor had knowledge of facts that would cause a reasonable person to expect the appraiser falsely to overstate the value of the donated property (*e.g.*, the donor and the appraiser make an agreement concerning the amount at which the property will be valued and the donor knows that such amount exceeds the fair market value of the property).

(iii) *Numbers of appraisers.* More than one appraiser may appraise the donated property. If more than one appraiser appraises the property, the donor does not have to use each appraiser's appraisal for purposes of substantiating the charitable contribution deduction pursuant to this paragraph (c). If the donor uses the appraisal of more than one appraiser, or if two or more appraisers contribute to a single appraisal, each appraiser shall comply with the requirements of this paragraph (c), including signing the qualified appraisal and appraisal summary as required by paragraphs (c)(3)(i)(B) and (c)(4)(i)(C) of this section, respectively.

(iv) *Qualified appraiser exclusions.* The following persons cannot be qualified appraisers with respect to particular property:

(A) The donor or the taxpayer who claims or reports a deductions under section 170 for the contribution of the property that is being appraised.

(B) A party to the transaction in which the donor acquired the property being appraised (*i.e.*, the person who sold, exchanged, or gave the property to the donor, or any person who acted as an agent for the transferor or for the donor with respect to such sale, exchange, or gift), unless the property is donated within 2 months of the date of acquisition and its appraised value does not exceed its acquisition price.

(C) The donee of the property.

(D) Any person employed by any of the foregoing persons (*e.g.*, if the donor acquired a painting from an art dealer, neither the art dealer nor persons employed by the dealer can be qualified appraisers with respect to that painting).

(E) Any person related to any of the foregoing persons under section 267(b), or, with respect to appraisals made after June 6, 1988, married to a person who is in a relationship described in section 267(b) with any of the foregoing persons.

(F) An appraiser who is regularly used by any person described in paragraph (c)(5)(iv) (A), (B), or (C) of this section and who does not perform a majority of his or her appraisals made during his or her taxable year for other persons.

(6) *Appraisal fees*—(i) *In general.* Except as otherwise provided in paragraph (c)(6)(ii) of this section, no part of the fee arrangement for a qualified appraisal can be based, in effect, on a percentage (or set of percentages) of the appraised value of the property. If a fee arrangement for an appraisal is based in whole or in part on the amount of the appraised value of the property, if any, that is allowed as a deduction under section 170, after Internal Revenue Service examination or otherwise, it shall be treated as a fee based on a percentage of the appraised value of the property. For example, an appraiser's fee that is subject to reduction by the same percentage as the appraised value may be reduced by the Internal Revenue Service would be treated as a fee that violates this paragraph (c)(6).

(ii) *Exception.* Paragraph (c)(6)(i) of this section does not apply to a fee paid to a generally recognized association that regulates appraisers provided all of the following requirements are met:

(A) The association is not organized for profit and no part of the net earnings of the association inures to the benefit of any private shareholder or individual (these terms have the same meaning as in section 501(c)),

(B) The appraiser does not receive any compensation from the association or any other persons for making the appraisal, and

(C) The fee arrangement is not based in whole or in part on the amount of the appraised value of the donated property, if any, that is allowed as a deduction under section 170 after Internal Revenue Service examination or otherwise.

(7) *Meaning of terms.* For purposes of this paragraph (c)—

(i) *Closely held corporation.* The term *closely held corporation* means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of the Code is met.

(ii) *Personal service corporation.* The term *personal service corporation* means any corporation (other than an S corporation) which is a service organization (within the meaning of section 414(m)(3) of the Code).

(iii) *Similar items of property.* The phrase *similar items of property* means property of the same generic category or type, such as stamp collections (including philatelic supplies and books on stamp collecting), coin collections (including numismatic supplies and books on coin collecting), lithographs, paintings, photographs, books, nonpublicly traded stock, nonpublicly traded securities other than nonpublicly trade stock, land, buildings, clothing, jewelry, funiture, electronic equipment, household appliances, toys, everyday kitchenware, china, crystal, or silver. For example, if a donor claims on her return for the year deductions of $2,000 for books given by her to College A, $2,500 for books given by her to College B, and $900 for books given by her to

College C, the $5,000 threshold of paragraph (c)(1) of this section is exceeded. Therefore, the donor must obtain a qualified appraisal for the books and attach to her return three appraisal summaries for the books donated to A, B, and C. For rules regarding the number of qualified appraisals and appraisal summaries required when similar items of property are contributed, see paragraphs (c)(3)(iv)(A) and (c)(4)(iv)(B), respectively, of this section.

(iv) *Donor.* The term *donor* means a person or entity (other than an organization described in section 170(c) to which the donated property was previously contributed) that makes a charitable contribution of property.

(v) *Donee.* The term *donee* means—

(A) Except as provided in paragraph (c)(7)(v) (B) and (C) of this section, an organization described in section 170(c) to which property is contributed,

(B) Except as provided in paragraph (c)(7)(v)(C) of this section, in the case of a charitable contribution of property placed in trust for the benefit of an organization described in section 170(c), the trust, or

(C) In the case of a charitable contribution of property placed in trust for the benefit of an organization described in section 170(c) made on or before June 6, 1988, the beneficiary that is an organization described in section 170(c), or if the trust has assumed the duties of a donee by signing the appraisal summary pursuant to paragraph (c)(4)(i)(B) of this section, the trust.

In general, the term, refers only to the original donee. However, with respect to paragraph (c)(3)(ii)(D), the last sentence of paragraph (c)(4)(iii), and paragraph (c)(5)(iv)(C) of this section, the term *donee* means the original donee and all successor donees in cases where the original donee transfers the contributed property to a successor donee after July 5, 1988.

(vi) *Original donee.* The term *original donee* means the donee to or for which property is initially donated by a donor.

(vii) *Successor donee.* The term *successor donee* means any donee of property other than its original donee (*i.e.*, a transferee of property for less than fair market value from an original donee or another successor donee).

(viii) *Fair market value.* For the meaning of the term *fair market value,* see section 1.170A–1(c)(2).

(ix) *Nonpublicly traded securities.* The term *nonpublicly traded securities* means securities (within the meaning of section 165(g)(2) of the Code) which are not publicly traded securities as defined in paragraph (c)(7)(xi) of this section.

(x) *Nonpublicly traded stock.* The term *nonpublicly traded stock* means any stock of a corporation (evidence by a stock certificate) which is not a publicly traded security. The term stock does not include a debenture or any other evidence of indebtedness.

(xi) *Publicly traded securities*—(A) *In general.* Except as provided in paragraph (c)(7)(xi)(C) of this section, the term *publicly traded securities* means securities (within the meaning of section 165(g)(2) of the Code) for which (as of the date of the contribution) market quotations are readily available on an established securities market. For purposes of this section, market quotations are readily available on an established securities market with respect to a security if:

(*1*) The security is listed on the New York Stock Exchange, the American Stock Exchange, or any city or regional exchange in which quotations are published on a daily basis, including foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis;

(*2*) The security is regularly traded in the national or regional over-the-counter market, for which published quotations are available; or

(*3*) The security is a share of an open-end investment company (commonly known as a mutual fund) registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 to 80b–2), for which quotations are published on a daily basis in a newspaper of general circulation throughout the United States.

(If the market value of an issue of a security is reflected only on an interdealer quotation system, the issue shall not be considered to be publicly traded unless the special rule described in paragraph (c)(7)(xi)(B) of this section is satisfied.)

(B) *Special rule*—(*1*) *In General.* An issue of a security that does not satisfy the requirements of paragraph (c)(7)(xi)(A) (*1*), (*2*), or (*3*) of this section shall nonetheless be considered to have market quotations readily available on an established securities market for purposes of paragraph (c)(7)(xi)(A) of this section if all of the following five requirements are met:

(*i*) The issue is regularly traded during the computational period (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iv*) of this section) in a market that is reflected by the existence of an interdealer quotation system for the issue,

(*ii*) The issuer or an agent of the issuer computes the average trading price (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iii*) of this section) for the issue for the computational period,

(*iii*) The average trading price and total volume of the issue during the computational period are published in a newspaper of general circulation throughout the United States not later than the last day of the month following the end of the calendar quarter in which the computational period ends,

(*iv*) The issuer or its agent keeps books and records that list for each transaction during the computational period involving each issue covered by this procedure the date of the settlement of the transaction, the name and address of the broker or dealer making the market in which the transaction occurred, and the trading price and volume, and

(*v*) The issuer or its agent permits the Internal Revenue Service to review the books and records described in paragraph (c)(7)(xi)(B)(*1*)(*iv*) of this section with respect to transactions during the computational period upon giving reasonable notice to the issuer or agent.

(*2*) *Definitions.* For purposes of this paragraph (c)(7)(xi)(B)—

(*i*) *Issue of a security.* The term *issue of a security* means a class of debt securities with the same obligor and identical terms except as to their relative denominations (amounts) or a class of stock having identical rights.

(*ii*) *Interdealer quotation system.* The term *interdealer quotation system* means any system of general circulation to brokers and dealers that regularly disseminates quotations of obligations by two or more identified brokers or dealers, who are not related to either the issuer of the security or to the issuer's agent, who compute the average trading price of the security. A quotation sheet prepared and distributed by a broker or dealer in the regular course of its business and containing only quotations of such broker or dealer is not an interdealer quotation system.

(*iii*) *Average trading price.* The term *average trading price* means the mean price of all transactions (weighted by volume), other than original issue or redemption transactions, conducted through a United States office of a broker or dealer who maintains a market in the issue of the security during the computational period. For this purpose, bid and asked quotations are not taken into account.

(*iv*) *Computational period.* For calendar quarters beginning on or after June 6, 1988, the term *computational period* means weekly during October through December (beginning with the first Monday in October and ending with the first Sunday following the last Monday in December) and monthly during January through September (beginning January 1). For calendar quarters beginning before June 6, 1988, the term *computational period* means weekly during October through December and monthly during January through September.

(C) *Exception.* Securities described in paragraph (c)(7)(xi) (A) or (B) of this section shall not be considered publicly traded securities if—

(*1*) The securities are subject to any restrictions that materially affect the value of the securities to the donor or prevent the securities from being freely traded, or

(*2*) If the amount claimed or reported as a deduction with respect to the contribution of the securities is different than the amount listed in the market quotations that are readily available on an established securities market pursuant to paragraph (c)(7)(xi) (A) or (B) of this section.

(D) *Market quotations and fair market value.* The fair market value of a publicly traded security, as defined in this paragraph (c)(7)(xi), is not necessarily equal to its market quotation, its average trading price (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iii*) of this section), or its face value, if any. See section 1.170A–1(c)(2) for the definition of *fair market value.*

(d) *Charitable contributions; information required in support of deductions for taxable years beginning before January 1, 1983*—(1) *In general.* This paragraph (d)(1) shall apply to deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer the requirements of this paragraph (d)(1) shall also apply to all charitable contributions made on or before December 31, 1984 (in lieu of the requirements of paragraphs (a) and (b) of this section). In connection with claims for deductions for charitable contributions, taxpayers shall state in their income tax returns the name of each organization to which a contribution was made and the amount and date of the actual payment of each contribution. If a contribution is made in property other than money, the taxpayer shall state the kind of property contributed, for example, used clothing, paintings, or securities, the method utilized in determining the fair market value of the property at the time the contribution was made, and whether or not the amount of the contribution was reduced under section 170(e). If a taxpayer makes more than one cash contribution to an organization during the taxable year, then in lieu of listing each cash contribution and the date of payment the taxpayer may state the total cash payments made to such organization during the taxable year. A taxpayer who elects under paragraph (d)(2) of §1.170A–8 to apply section 170(e)(1) to his contributions and carryovers of 30-percent capital gain property must file a statement with his return indicating that he has made the election and showing the contributions in the current year and carryovers from preceding years to which it applies. For the definition of the term *30-percent capital gain property,* see paragraph (d)(3) of §1.170A–8.

(2) *Contribution by individual of property other than money.* This paragraph (d)(2) shall apply to deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer, the requirements of this paragraph (d)(2) shall also apply to contributions of property made on or before December 31, 1984 (in lieu of the requirements of paragraph (b) of this section). If an individual taxpayer makes a charitable contribution of an item of property other than money and claims a deduction in excess of $200 in respect of his contribution of such item, he shall attach to his income tax return the following information with respect to such item:

(i) The name and address of the organization to which the contribution was made.

(ii) The date of the actual contribution.

(iii) A description of the property in sufficient detail to identify the particular property contributed, including in the case of tangible property the physical condition of the property at the time of contribution, and, in the case of securities, the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.

(iv) The manner of acquisition, as, for example, by purchase, gift, bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer or, if the property was created, produced, or manufactured by or for the taxpayer, the approximate date the property was substantially completed.

(v) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

(vi) The cost or other basis, adjusted as provided by section 1016, of property, other than securities, held by the taxpayer for a period of less than 5 years immediately preceding the date on which the contribution was made and, when the information is available, of property, other than securities, held for a period of 5 years or more preceding the date on which the contribution was made.

(vii) In the case of property to which section 170(e) applies, the cost or other basis, adjusted as provided by section 1016, the reduction by reason of section 170(e)(1) in the amount of the charitable contribution otherwise taken into account, and the manner in which such reduction was determined.

(viii) The terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or disposition of the property contributed, as, for example, the terms of any agreement or understanding which:

(A) Restricts temporarily or permanently the donee's right to dispose of the donated property,

(B) Reserves to, or confers upon, anyone other than the donee organization or other than an organization participating with such organization in cooperative fundraising, any right to the income from such property, to the possession of the property, including the right to vote securities, to acquire such property by purchase or otherwise, or to designate the person to have such income, possession, or right to acquire, or

(C) Earmarks contributed property for a particular charitable use, such as the use of donated furniture in the reading room of the donee organization's library.

(ix) The total amount claimed as a deduction for the taxable year due to the contribution of the property and, if less than the entire interest in the property is contributed during the taxable year, the amount claimed as a deduction in any prior year or years for contributions of other interests in such property, the name and address of each organization to which any such contribution was made, the place where any such property which is tangible property is located or kept, and the name of any person, other than the organization to which the property giving rise to the deduction was contributed, having actual possession of the property.

(3) *Statement from donee organization*. Any deduction for a charitable contribution must be substantiated, when required by the district director, by a statement from the organization to which the contribution was made indicating whether the organization is a domestic organization, the name and address of the contributor, the amount of the contribution, the date of actual receipt of the contribution, and such other information as the district director may deem necessary. If the contribution includes an item of property, other than money or securities which are regularly traded on a stock exchange or in an over-the-counter market, which the donee deems to have a fair market value in excess of $500 ($200 in the case of a charitable contribution made in a taxable year beginning before January 1, 1983) at the time of receipt, such statement shall also indicate for each such item its location if it is retained by the organization, the amount received by the organization on any sale of the property and the date of sale or, in case of any other disposition of the property, the method of disposition. In the case of any contribution of tangible personal property, the statement shall indicate the use of the property by the organization and whether or not it is used for a purpose or function constituting the basis for the donee organization's exemption from income tax under section 501 or, in the case of a governmental unit, whether or not it is used for exclusively public purposes.

(e) [Reserved]

(f) *Substantiation of charitable contributions of $250 or more*—(1) *In general*. No deduction is allowed under section 170(a) for all or part of any contribution of $250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee organization. A taxpayer who makes more than one contribution of $250 or more to a donee organization in a taxable year may substantiate the contributions with one or more contemporaneous written acknowledgments. Section 170(f)(8) does not apply to a payment of $250 or more if the amount contributed (as determined under § 1.170A–1(h)) is less than $250. Separate contributions of less than $250 are not subject to the requirements of section 170(f)(8), regardless of whether the sum of the contributions made by a taxpayer to a donee organization during a taxable year equals $250 or more.

(2) *Written acknowledgment.* Except as otherwise provided in paragraphs (f)(8) through (f)(11) and (f)(13) of this section, a written acknowledgment from a donee organization must provide the following information—

(i) The amount of any cash the taxpayer paid and a description (but not necessarily the value) of any property other than cash the taxpayer transferred to the donee organization;

(ii) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for any of the cash or other property transferred to the donee organization;

(iii) If the donee organization provides any goods or services other than intangible religious benefits (as described in section 170(f)(8)), a description and good faith estimate of the value of those goods or services; and

(iv) If the donee organization provides any intangible religious benefits, a statement to that effect.

(3) *Contemporaneous.* A written acknowledgment is contemporaneous if it is obtained by the taxpayer on or before the earlier of—

(i) The date the taxpayer files the original return for the taxable year in which the contribution was made; or

(ii) The due date (including extensions) for filing the taxpayer's original return for that year.

(4) *Donee organization.* For purposes of this paragraph (f), a donee organization is an organization described in section 170(c).

(5) *Goods or services.* Goods or services means cash, property, services, benefits, and privileges.

(6) *In consideration for.* A donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment. Goods or services a donee organization provides in consideration for a payment by a taxpayer include goods or services provided in a year other than the year in which the taxpayer makes the payment to the donee organization.

(7) *Good faith estimate.* For purposes of this section, good faith estimate means a donee organization's estimate of the fair market value of any goods or services, without regard to the manner in which the organization in fact made that estimate. See § 1.170A–1(h)(4) for rules regarding when a taxpayer may treat a donee organization's estimate of the value of goods or services as the fair market value.

(8) *Certain goods or services disregarded*—(i) *In general.* For purposes of section 170(f)(8), the following goods or services are disregarded—

(A) Goods or services that have insubstantial value under the guidelines provided in Revenue Procedures 90–12, 1990–1 C.B. 471, 92–49, 1992-1 C.B. 987, and any successor documents. (See § 601.601(d)(2)(ii) of the Statement of Procedural Rules, 26 CFR part 601.); and

(B) Annual membership benefits offered to a taxpayer in exchange for a payment of $75 or less per year that consist of—

(*1*) Any rights or privileges, other than those described in section 170(l), that the taxpayer can exercise frequently during the membership period. Examples of such rights and privileges may include, but are not limited to, free or discounted admission to the organization's facilities or events, free or discounted parking, preferred access to goods or services, and discounts on the purchase of goods or services; and

(*2*) Admission to events during the membership period that are open only to members of a donee organization and for which the donee organization reasonably projects that the cost per person (excluding any allocable overhead) attending each such event is within the limits established for ''low cost articles'' under section 513(h)(2). The projected cost to the donee organization is determined at the time the organization first offers its membership package for the year (using section 3.07 of Revenue Procedure 90–12, or any successor documents, to determine the cost of any items or services that are donated).

(ii) *Examples.* The following examples illustrate the rules of this paragraph (f)(8).

Example 1. Membership benefits disregarded. Performing Arts Center *E* is an organization described in section 170(c). In return for a payment of $75, *E* offers a package of basic membership benefits that includes the right to purchase tickets to performances one week before they go on sale to the general public, free parking in *E*'s garage during evening and weekend performances, and a 10% discount on merchandise sold in *E*'s gift shop. In return for a payment of $150, *E* offers a package of preferred membership benefits that includes all of the benefits in the $75 package as well as a poster that is sold in *E*'s gift shop for $20. The basic membership and the preferred membership are each valid for twelve months, and there are approximately 50 performances of various productions at *E* during a twelve-month period. *E*'s gift shop is open for several hours each week and at performance times. *F*, a patron of the arts, is solicited by *E* to make a contribution. *E* offers *F* the preferred membership benefits in return for a payment of $150 or more. *F* makes a payment of $300 to *E*. *F* can satisfy the substantiation requirement of section 170(f)(8) by obtaining a contemporaneous written acknowledgment from *E* that includes a description of the poster and a good faith estimate of its fair market value ($20) and disregards the remaining membership benefits.

Example 2. Contemporaneous written acknowledgment need not mention rights or privileges that can be disregarded. The facts are the same as in Example 1, except that *F* made a payment of $300 and received only a basic membership. *F* can satisfy the section 170(f)(8) substantiation requirement with a contemporaneous written acknowledgment stating that no goods or services were provided.

Example 3. Rights or privileges that cannot be exercised frequently. Community Theater Group *G* is an organization described in section 170(c). Every summer, *G* performs four different plays. Each play is performed two times. In return for a membership fee of $60, *G* offers its members free admission to any of its performances. Non-members may purchase tickets on a performance by performance basis for $15 a ticket. *H*, an individual who is a sponsor of the theater, is solicited by *G* to make a contribution. *G* tells *H* that the membership benefit will be provided in return for any payment of $60 or more. *H* chooses to make a payment of $350 to *G* and receives in return the membership benefit. *G*'s membership benefit of free admission is not described in paragraph (f)(8)(i)(B) of this section because it is not a privilege that can be exercised frequently (due to the limited number of performances offered by *G*). Therefore, to meet the requirements of section 170(f)(8), a contemporaneous written acknowledgment of *H*'s $350 payment must include a description of the free admission benefit and a good faith estimate of its value.

Example 4. Multiple memberships. In December of each year, *K*, an individual, gives each of her six grandchildren a junior membership in Dinosaur Museum, an organization described in section 170(c). Each junior membership costs $50, and *K* makes a single payment of $300 for all six memberships. A junior member is entitled to free admission to the museum and to weekly films, slide shows, and lectures about dinosaurs. In addition, each junior member receives a bimonthly, non-commercial quality newsletter with information about dinosaurs and upcoming events. *K*'s contemporaneous written acknowledgment from Dinosaur Museum may state that no goods or services were provided in exchange for *K*'s payment.

(9) *Goods or services provided to employees or partners of donors*—(i) *Certain goods or services disregarded.* For purposes of section 170(f)(8), goods or services provided by a donee organization to employees of a donor, or to partners of a partnership that is a donor, in return for a payment to the organization may be disregarded to the extent that the goods or services provided to each employee or partner are the same as those described in paragraph (f)(8)(i) of this section.

(ii) *No good faith estimate required for other goods or services.* If a taxpayer makes a contribution of $250 or more to a donee organization and, in return, the donee organization offers the taxpayer's employees or partners goods or services other than those described in paragraph (f)(9)(i) of this section, the contemporaneous written acknowledgment of the taxpayer's contribution is not required to include a good faith estimate of the value of such goods or services but must include a description of those goods or services.

(iii) *Example.* The following example illustrates the rules of this paragraph (f)(9).

Example. Museum *J* is an organization described in section 170(c). For a payment of $40, *J* offers a package of basic membership benefits that includes free admission and a 10% discount on merchandise sold in *J*'s gift shop. *J*'s other membership categories are for supporters who contribute $100 or more. Corporation *K* makes a payment of $50,000 to *J* and, in return, *J* offers *K*'s employees free admission for one year, a tee-shirt with *J*'s logo that costs *J* $4.50, and a gift shop discount of 25% for one year. The free admission for *K*'s employees is the same as the benefit made available to holders of the $40 membership and is otherwise described in paragraph (f)(8)(i)(B) of this section. The tee-shirt given to each of *K*'s employees is described in paragraph (f)(8)(i)(A) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is not required to include a description or good faith estimate of the value of the free admission or the tee-shirts. However, because the gift shop discount offered to *K*'s employees is different than that offered to those who purchase the $40 membership, the discount is not described in paragraph (f)(8)(i) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is required to include a description of the 25% discount offered to *K*'s employees.

(10) *Substantiation of out-of-pocket expenses.* A taxpayer who incurs unreimbursed expenditures incident to the rendition of services, within the meaning of § 1.170A–1(g), is treated as having obtained a contemporaneous written acknowledgment of those expenditures if the taxpayer—

(i) Has adequate records under paragraph (a) of this section to substantiate the amount of the expenditures; and

(ii) Obtains by the date prescribed in paragraph (f)(3) of this section a statement prepared by the donee organization containing—

(A) A description of the services provided by the taxpayer;

(B) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for the unreimbursed expenditures; and

(C) The information required by paragraphs (f)(2) (iii) and (iv) of this section.

(11) *Contributions made by payroll deduction*—(i) *Form of substantiation.* A contribution made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization may be substantiated, for purposes of section 170(f)(8), by both—

(A) A pay stub, Form W–2, or other document furnished by the employer that sets forth the amount withheld by the employer for the purpose of payment to a donee organization; and

(B) A pledge card or other document prepared by or at the direction of the donee organization that includes a statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.

(ii) *Application of $250 threshold.* For the purpose of applying the $250 threshold provided in section 170(f)(8)(A) to contributions made by the means described in paragraph (f)(11)(i) of this section, the amount withheld from each payment of wages to a taxpayer is treated as a separate contribution.

(12) *Distributing organizations as donees.* An organization described in section 170(c), or an organization described in 5 CFR 950.105 (a Principal Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity, that receives a payment made as a contribution is treated as a donee organization solely for purposes of section 170(f)(8), even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in section 170(c). This paragraph (f)(12) does not apply, however, to a case in which the distributee organization provides goods or services as part of a transaction structured with a view to avoid taking the goods or services into account in determining the amount of the deduction to which the donor is entitled under section 170.

(13) *Transfers to certain trusts.* Section 170(f)(8) does not apply to a transfer of property to a trust described in section 170(f)(2)(B), a charitable remainder annuity trust (as defined in section 664(d)(1)), or a charitable remainder unitrust (as defined in section 664(d)(2) or (d)(3) or § 1.664(3)(a)(1)(i)(*b*)). Section 170(f)(8) does apply, however, to a transfer to a pooled income fund (as defined in section 642(c)(5)); for such a transfer, the contemporaneous written acknowledgment must state that the contribution was transferred to the donee organization's pooled income fund and indicate whether any goods or services (in addition to an income interest in the fund) were provided in exchange for the transfer. The contemporaneous written acknowledgment is

not required to include a good faith estimate of the income interest.

(14) *Substantiation of payments to a college or university for the right to purchase tickets to athletic events.* For purposes of paragraph (f)(2)(iii) of this section, the right to purchase tickets for seating at an athletic event in exchange for a payment described in section 170(l) is treated as having a value equal to twenty percent of such payment. For example, when a taxpayer makes a payment of $312.50 for the right to purchase tickets for seating at an athletic event, the right to purchase tickets is treated as having a value of $62.50. The remaining $250 is treated as a charitable contribution, which the taxpayer must substantiate in accordance with the requirements of this section.

(15) *Substantiation of charitable contributions made by a partnership or an S corporation.* If a partnership or an S corporation makes a charitable contribution of $250 or more, the partnership or S corporation will be treated as the taxpayer for purposes of section 170(f)(8). Therefore, the partnership or S corporation must substantiate the contribution with a contemporaneous written acknowledgment from the donee organization before reporting the contribution on its income tax return for the year in which the contribution was made and must maintain the contemporaneous written acknowledgment in its records. A partner of a partnership or a shareholder of an S corporation is not required to obtain any additional substantiation for his or her share of the partnership's or S corporation's charitable contribution.

(16) *Purchase of an annuity.* If a taxpayer purchases an annuity from a charitable organization and claims a charitable contribution deduction of $250 or more for the excess of the amount paid over the value of the annuity, the contemporaneous written acknowledgment must state whether any goods or services in addition to the annuity were provided to the taxpayer. The contemporaneous written acknowledgment is not required to include a good faith estimate of the value of the annuity. See § 1.170A–1(d)(2) for guidance in determining the value of the annuity.

(17) *Substantiation of matched payments*—(i) *In general.* For purposes of section 170, if a taxpayer's payment to a donee organization is matched, in whole or in part, by another payor, and the taxpayer receives goods or services in consideration for its payment and some or all of the matching payment, those goods or services will be treated as provided in consideration for the taxpayer's payment and not in consideration for the matching payment.

(ii) *Example.* The following example illustrates the rules of this paragraph (f)(17).

Example. Taxpayer makes a $400 payment to Charity *L*, a donee organization. Pursuant to a matching payment plan, Taxpayer's employer matches Taxpayer's $400 payment with an additional payment of $400. In consideration for the combined payments of $800, *L* gives Taxpayer an item that it estimates has a fair market value of $100. *L* does not give the employer any goods or services in consideration for its contribution. The contemporaneous written acknowledgment provided to the employer must include a statement that no goods or services were provided in consideration for the employer's $400 payment. The contemporaneous written acknowledgment provided to Taxpayer must include a statement of the amount of Taxpayer's payment, a description of the item received by Taxpayer, and a statement that *L*'s good faith estimate of the value of the item received by Taxpayer is $100.

(18) *Effective date.* This paragraph (f) applies to contributions made on or after December 16, 1996. However, taxpayers may rely on the rules of this paragraph (f) for contributions made on or after January 1, 1994.

[T.D. 8002, 49 FR 50664 and 50666, Dec. 31, 1984, as amended by T.D. 8003, 49 FR 50659, Dec. 31, 1984; T.D. 8199, 53 FR 16080, May 5, 1988; 53 FR 18372, May 23, 1988; T.D. 8623, 60 FR 53128, Oct. 12, 1995; T.D. 8690, 61 FR 65952, Dec. 16, 1996]

§ 1.170A–14 Qualified conservation contributions.

(a) *Qualified conservation contributions.* A deduction under section 170 is generally not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust (see § 1.170A–6 relating to charitable contributions in trust and § 1.170A–7 relating to contributions not in trust of partial interests in property). However, SIGN IN

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Court Clarifies Definition of 'Disinterested' Appraiser in Insurance Dispute | Daily Business Review - law.com

By: admin **On**: 07/26/2019 11:50:53 **In:** Blog Posts

The appellate court ruled a couple's public adjuster could not serve as their "disinterested" appraiser in a lawsuit against State Farm.

By **Zach Schlein** | July 25, 2019 at 02:29 PM

A Florida appellate court has stated in no uncertain terms that a public adjuster previously retained by a policyholder cannot be considered a “disinterested appraiser” during subsequent appraisal proceedings.

The Third District Court of Appeal vacated a Miami-Dade Circuit Court order allowing homeowners Charles and Diana Sanders to use their claims agent, Gian Franco Debernardi with 911 Claims Corporation, in their appraisal proceedings against State Farm Florida Insurance Co. The appellate court found that Debernardi's preexisting relationship with the plaintiffs and financial stake in the appraisal's outcome violated the conditions of the Sanders' homeowner policy with State Farm.

"The appraisal condition in State Farm's Homeowner policy states that, 'Each party will select a qualified, disinterested appraiser,'" the court said. The opinion noted Debernardi's contract with the Sanders provided for him to earn a 10% contingency fee from whatever amount his clients received from State Farm.

"Mr. Debernardi cannot be disinterested, as he has a financial interest in whether or not the insureds recover from State Farm and how much they recover," the court found.

Steven Gurian and Joe De Prado, litigators with Coconut Grove-based law firm Marin, Eljaiek, Lopez & Martinez, represented the Sanders in the Third DCA. Neither attorney responded to requests for comment by deadline.

The trouble between the Sanders and State Farm began in the wake of Hurricane Irma, which struck Florida in September 2017. The Sanders filed a breach of contract complaint against State Farm in August 2018. The couple alleged the insurance provider did not abide by their homeowners' insurance policy and failed to provide for property damage caused by Irma.

The parties subsequently agreed to enter appraisal negotiations. However, State Farm took issue with the Sanders' naming of Debernardi as their appraiser as he had been previously hired by the couple and generated the

$88,536.41 estimate at the source of the conflict between the Sanders and their insurance provider. State Farm cited the clause in the homeowner policy calling for a “disinterested appraiser” to be used by both parties and contended Debernardi's history with the Sanders, as well as the money he stood to gain from the appraisal disqualified him from participating.

Miami-Dade Circuit Judge Martin Zilber issued an order April 9 allowing Debernardi to serve as the Sanders' appraiser during their talks with State Farm. The insurance company subsequently entered their appeal with the Third DCA.

The appellate court quashed the lower court's order, reasoning in part that any harm resulting from Debernardi's hiring in violation of the parties' original agreement could not be rectified on appeal, as “pursuant to the policy language the appraisal process is binding and cannot be undone.”

The court also ruled arrangements such as the one between Sanders and Debernardi do not qualify as “disinterested” under Florida law.

“We hold that a fiduciary, such as a public adjuster who is in a contractual agent-principal relationship with the insureds, cannot be a disinterested appraiser as a matter of law,” Wednesday's opinion said, reiterating that Debernardi would receive a portion of any money given to the Sanders by State Farm. “In the case before us, Mr. Debernardi has previously inspected the loss, and he was the person who prepared the written estimate of damages the insureds used to file their claim. It is hard to imagine that Mr. Debernardi is going to reach a different amount from the initial $88,56.41 estimate he already reached.”

A State Farm representative said the company was satisfied with the appellate court's order in a statement.

"We're pleased with the court's ruling on the plain language of the insurance contract," the emailed remarks said. "We have nothing further to share beyond the information available in the court filings."

State Farm's legal counsel, Kara Rockenbach and David Andrew Noel with West Palm Beach law firm Link & Rockenbach, did not return requests for comment.

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