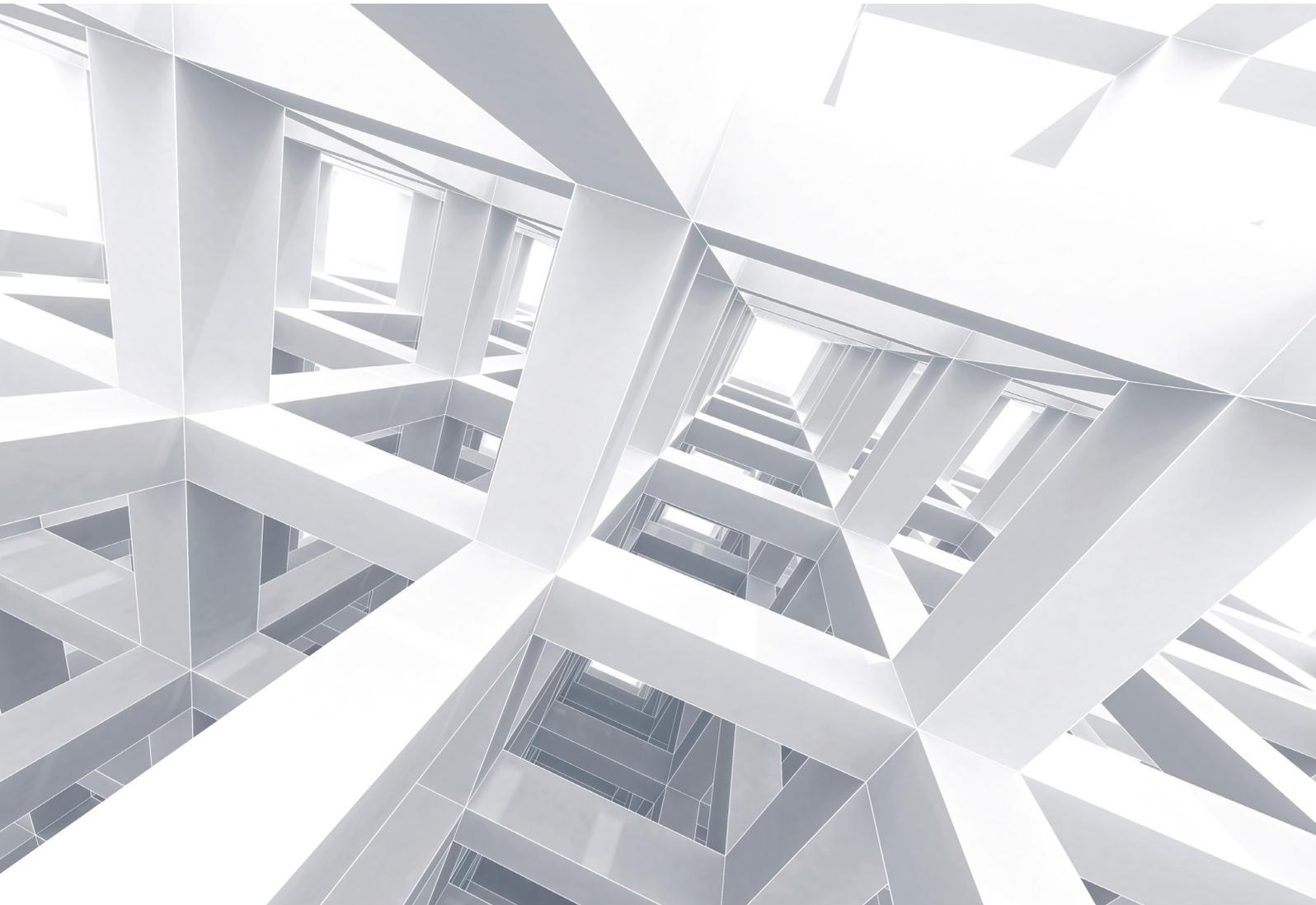




RICS professional standards and guidance, USA

**RICS Valuation – Global
Standards 2017 jurisdiction
guide: USA**

1st edition, May 2019



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RICS jurisdiction guide

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RICS jurisdiction guides

Since its first publication in 1976, the *RICS Valuation – Global Standards 2017*, generally known as the ‘Red Book’, has set standards for property valuation that are designed to ensure consistency, objectivity and transparency in the valuation process. The primary aim of these standards has always been to sustain public confidence and trust in a valuation undertaken by a member of RICS or a valuer working for an RICS regulated firm.

Over the past 40 years the Red Book has become global in its application, reflecting the growing internationalisation of the property market and its clients’ requirement for worldwide consistency of standards. A Red Book-compliant valuation is consistent with the International Valuation Standards (IVS) and it is augmented in a growing number of markets by national supplements, which provide guidance designed to ensure that a Red Book-compliant valuation also meets local legal requirements, regulations and practice.

The global Red Book and, where they apply, the national supplements are written primarily for valuers. By contrast, jurisdiction guides will be of use especially to property owners and professionals who are involved in the valuation process, either by commissioning a valuation or by providing advice in relation to its outcome. Owners and their advisers do not usually need to know the full detail of the valuation process and the regulations that govern it (which are set out in the Red Book), but their understanding of the outcome of the valuation is likely to benefit from a better understanding of the key factors that will influence a valuer, and thus the value of the property.

These factors include:

- legislation governing the holding and valuation of real estate
- ownership structures
- lease terms
- planning regulations and development control
- taxation affecting real estate and
- valuation regulations, standards and the application of the Red Book.

These factors will vary significantly between one country and another. Jurisdiction guides therefore aim to examine each factor in its local context and to highlight those that are likely to have a significant impact on the valuation of a property located in the country concerned.

It is important to emphasise that jurisdiction guides are designed to provide a short overview of what in many cases and countries is a complex situation. They have been prepared by RICS and based on information from a variety of sources. The content of this jurisdiction guide is for general guidance only, and the reader is advised not to act on it without consulting an appropriately qualified and experienced professional.

Document status defined

The following table shows the categories of RICS professional content and their definitions.

Publications status

Type of document	Definition
<i>RICS Rules of Conduct for Members and RICS Rules of Conduct for Firms</i>	These Rules set out the standards of professional conduct and practice expected of members and firms registered for regulation by RICS.
International standard	High-level standard developed in collaboration with other relevant bodies.
RICS professional statement (PS)	Mandatory requirements for RICS members and RICS regulated firms.
RICS guidance note (GN)	A document that provides users with recommendations or an approach for accepted good practice as followed by competent and conscientious practitioners.
RICS code of practice (CoP)	A document developed in collaboration with other professional bodies and stakeholders that will have the status of a professional statement or guidance note.
RICS jurisdiction guide	This provides relevant local market information associated with an RICS international standard or RICS professional statement. This will include local legislation, associations and professional bodies as well as any other useful information that will help a user understand the local requirements connected with the standard or statement. This is not guidance or best practice material, but rather information to support adoption and implementation of the standard or statement locally.

1 Background

The United States of America (USA) property market is the largest in the world by a substantial margin, comprising some 37 per cent of the total global investment market with a value of US\$2,974 billion, according to the **MSCI Real Estate Market Size 2017** survey.

Real estate data for the USA is generally widely accessible, and the market was placed 3rd in the **JLL Global Real Estate Transparency Index 2018** and rated as 'highly transparent'.

Individual states within the USA enjoy significant autonomy in areas of real estate law and practice. This guide is written from a federal perspective; readers need to be aware that local state practice may influence real estate valuation and ought to undertake further investigation as necessary.

2 Legislation

2.1 Principal laws governing real estate

Most real estate law in the USA is state law. Some is set by statute, but much is common law, deriving from judicial decisions.

Real estate law varies significantly from state to state. Landowners, tenants and their advisers therefore need to be aware of the specific real estate laws in the state in which a property is located.

2.2 Types of ownership

There are four types of ownership in the USA:

- Fee ownership (lease fee). This is the highest category of ownership, where the owner has full rights to possess, lease and dispose of the property.
- Leasehold. This provides the rights to possess and use the property for a limited period of time, defined by the terms of the lease.
- Condominium. This enables fee ownership of a self-contained unit in a building, with rights in common with other occupiers to common areas, etc. Condominium laws vary from state to state.
- Easements. These are non-exclusive rights granted by a real estate owner to allow third parties to use the land – for example, by the grant of a right of way.

2.3 Registration

There is no federal requirement in the USA for registration of title to land.

Land sales are recorded in the property register or recording office of the county in which the property is situated. Recording requirements are state-specific and, sometimes, county-specific. Mortgages, liens, easements and other encumbrances are also recorded, and the record will be a protection against third party claims. Records are publicly available.

Title insurance is available to protect against recording errors. Compensation cannot be claimed from the recording authority.

2.4 Development control

Development control in the USA is undertaken at a local level by municipal and county governments, acting in accordance with state law.

Controls can therefore vary widely according to location. In general, local zoning regulations will identify permitted uses within a district, and a change of use will usually require approval. The local building department approves plans for new construction and refurbishment. The final decision may be a matter for planning staff, a local reviewing body or elected officials.

2.5 Commercial leases

Leasehold law and custom also varies from state to state. Typical terms for occupational leases are as follows:

- Term: five to ten years is common, with three years for smaller transactions.
- Rent: this is payable monthly in advance.
- Rent review: this may be included in longer leases. Fixed uplifts can be agreed; regular appraisal of market rent by an independent expert is also found.
- Maintenance and repair: in multi-tenanted buildings, tenants are usually responsible for the repair and maintenance of the interior, with the landlord being responsible for the exterior, common parts and structure.
- Payment for operating expenses: the landlord's costs of operating a multi-occupied building, repairing, insuring and providing the services is often recoverable from tenants via a service charge provided for in the lease (known as a 'triple net' lease). In retail malls, tenants will often be directly responsible for the costs of air conditioning, heating and sometimes water supply for their premises.
- Assignment and subletting: where permitted, this will require landlord's consent.
- Insurance: the landlord is usually responsible for insuring against damage, for example fire, with costs recoverable from tenants via the service charge.
- Termination: a tenant's rights on lease expiry may be influenced by local state law. Options to extend can be agreed, usually at a set base rent – for example, at 95 per cent of market value.

Ground leases are found especially in larger cities, whereby the landlord grants a long lease of the land to a developer who is responsible for constructing a building on the site. Leases are typically for 30 or more years, with the tenant responsible for all costs of construction, maintenance and operation of the building.

2.6 Residential leases

There are relatively few restrictions imposed by the federal or state governments on residential lease agreements.

Leases may be either periodic, automatically renewed at the end of the period (weekly, monthly or yearly) or for a fixed term (typically one year).

Tenants do not usually enjoy statutory protection at the end of a residential lease. No justification for refusal to renew the lease is required. In some jurisdictions, a tenant can become a tenant-at-will at the end of the term if no action is taken by either party, but legal protection is limited.

Most state jurisdictions do not restrict residential rents. However, rent control ordinances exist in California, New Jersey, Washington, D.C. and New York state. These are being phased out, though the process is likely to be very lengthy.

2.7 Property measurement

International Property Measurement Standards (IPMS) for Office Buildings, Residential Buildings and Industrial Buildings were published in 2014, 2016 and 2018 respectively. RICS members must adopt IPMS in line with the RICS professional statement **RICS**

property measurement (2nd edition). RICS members are expected to advise their client or employer on the benefits of using IPMS, unless there is a significant reason for departure. It is accepted that in some circumstances IPMS may not be suitable. If IPMS are not to be used, RICS members must document the reasons for departure.

IPMS for other asset types will be published in due course. In the interim all RICS members must follow *RICS property measurement* (2nd edition) Section 1 *Application of the professional statement*. In some instances other measurement standards can be used, such as the RICS guidance note **Code of measuring practice** (6th edition), providing the reason for departure is stated.

A variety of methods of measurement are utilised in the USA, with some variation between states, cities and property types.

For offices, rentable square feet (RSF) is the measure of the usable area of a tenant's premises plus a proportion of common areas of the building. Usable square feet (USF) is the area of the leased premises alone. The net usable area (also known as the carpetable area) excludes washrooms, heating/air conditioning equipment and circulation. In most states the BOMA (Building Owners and Managers Association International) method of measurement is used, but in New York the REBNY (Real Estate Board of New York) approach is adopted.

The area of retail premises generally includes everything within the footprint of the accommodation. Zoning is not used.

Residential property is usually measured on a gross living area (GLA) basis. Garages and basements are usually excluded.

Area measurements are usually expressed in square feet.

3 Taxation

3.1 Value-added tax (VAT)

VAT does not apply in the USA.

3.2 Real estate transfer tax

No federal taxes are imposed on real estate purchases. However, cities and counties can impose taxes, sometimes called documentary stamp taxes, when transfers are officially recorded. Some will also levy a tax when recording mortgages or deeds of trust.

3.3 Property taxes

Most cities and counties impose a tax on the ownership of real property, typically based on a percentage of the assessed fair market value. Many states impose limitations on how local governments can impose property tax. The property owner is responsible for payment, but commercial property leases often make provision for the cost (or a pro rata share) to be reimbursed by the tenant.

4 Regulation and standards

4.1 Regulation of valuation/appraisal professionals

Under the provisions of the *Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)* 1989, all states are required to develop licensing and certification procedures for real estate appraisers. All real estate appraisers practicing in the USA have to be licensed and certified. Individual states have powers to regulate and discipline appraisers.

The appraisal subcommittee (ASC) of the **Federal Financial Institutions Examination Council (FFIEC)** reviews the appraiser regulation and certification programmes of individual states to ensure uniformity of principles and standards.

4.2 Membership organisations

A list of the principal organisations representing appraisers in the USA is included in Appendix A.

RICS has been active in the Americas region for more than 40 years and has had a New York office since early this century. There are about 2,900 members in the region across all disciplines and approximately 500 valuers in the USA. RICS was established in 1868 in London and is now the largest international regulator of property professionals.

4.3 National valuation standards

The Appraisal Foundation (TAF) is the primary standards body. It is overseen by the ASC and is a member of the **International Valuation Standards Council (IVSC)**.

TAF sets congress-authorized common professional standards and qualifications for real estate appraisers and provides guidance on valuation methods and approaches. Its appraisal standards board (ASB) promotes best practice, while the appraisal qualifications board (AQB) sets minimum standards for appraiser certification and licensing. There are three levels of qualification, beginning with Licensed Residential Appraiser and leading on to Certified Residential Appraiser and Certified General Appraiser.

TAF is responsible for producing and maintaining the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP are recognised ethical and performance standards for appraisal in the USA. They are updated every two years.

All state-licensed and state-certified appraisers are required to comply with the USPAP. TAF also publishes the *Uniform Appraisal Standards for Federal Land Acquisitions* (the 'Yellow Book').

Courts and lender regulators adopt USPAP. Individual states have to set state standards that meet or exceed TAF and USPAP recommended standards.

4.4 International standards

The two recognised global standards for valuation are:

- **International Valuation Standards (IVS):** these are published by the IVSC, which comprises about 100 member organisations dedicated to setting generic global standards for valuation practice and valuation professionals.
TAF and the IVSC have published *A bridge from USPAP to IVS 2018: a guide to producing IVS-compliant appraisals* for appraisers familiar with USPAP requirements.
- **RICS Valuation – Global Standards 2017 (the Red Book):** this sets out global valuation standards for valuations undertaken by RICS members and RICS regulated firms. RICS is a member of IVSC, adopts and applies the IVS and imposes certain additional requirements, with particular reference to ethics, competency, objectivity, conflicts of interest and disclosures.

5 Application of the RICS Valuation – Global Standards 2017 in the USA

5.1 User’s perspective

Global standards:

- The Red Book is written to ensure that valuation assignments undertaken by RICS members and RICS regulated firms (see PS1 sections 1 and 2) are fully in accordance with the IVS.
- The Red Book complements the IVS by providing detailed guidance and specific requirements regarding the practical implementation of the IVS.
- All valuations provided in writing by RICS members and RICS regulated firms must comply with the requirements of the Red Book. Valuers must be suitably trained and have appropriate qualifications and adequate experience for the task.
- Valuers must be independent, objective and transparent in their approach.
- The adoption of the Red Book ensures consistency of approach and aids understanding of the valuation process and the value reported.
- A Red Book-compliant valuation must provide clarity regarding terms of engagement, basis of value (including any assumptions or material considerations taken into account) and reporting.

National supplements:

- National supplements (also known as national chapters) of the Red Book are published by RICS in a growing number of countries to ensure compliance with local legal requirements, regulations and practice.

5.2 Red Book – implementation in the USA

5.2.1 Red Book application in the USA context

The Red Book is written from an international perspective, in accordance with the IVS. It expressly recognises (in PS 1 section 4) that in individual jurisdictions, compliance with specific statutory, regulatory or other authoritative requirements is necessary and doing so does not preclude a valuation from being declared as performed in accordance with the Red Book.

A Red Book-compliant valuation should therefore fully meet the requirements of almost all organisations and individuals who own property in the USA.

5.2.2 Red Book national supplement for the USA

In the USA, federal, state and local laws and regulations affect an appraiser’s (valuer’s) obligations when providing a valuation service under the USA’s jurisdiction.

The USA’s national supplement (RICS guidance note *Application of RICS Valuation – Professional Standards in the United States*) provides detailed guidance to RICS

members on the approach to appraisals that have to be adopted in order to comply with the Red Book, USPAP and the USA's laws and regulations. In summary, its main provisions are as follows:

- a** Date of publication – July 2012.
- b** International Valuation Standards – the IVS (with which the Red Book complies) are acknowledged as internationally accepted high-level valuation principles and definitions. IVS 2011 Asset Standards and Valuation Applications are listed.
- c** Compliance with legislation – the need for RICS members to comply with the USA's laws and regulations when providing valuation services under the USA's jurisdiction is emphasised. Specifically, clients' requirements for compliance with USPAP for many types of appraisal are recognised.
- d** Terms – a glossary of the USA's real estate terms and the equivalent Red Book terms, where these differ, is provided.
- e** Professional and performance standards – the national supplement provides detailed guidance to appraisers on how to comply with specified Red Book professional and performance standards, while also complying with the USA's laws and regulations.

Guidance is also provided in relation to valuations reported orally.

The most recent edition of the global Red Book was published in July 2017. However, the specific USA guidance set out in this 2012 USA national supplement remains generally applicable.

Appendix A: Other principal professional organisations representing property valuers/appraisers in the USA

- **Appraisal Institute** – a USA-based professional association with a membership of 19,000 throughout the USA and abroad. The Appraisal Institute publishes its own set of valuation standards and is a member of the IVSC.
- **American Society of Appraisers (ASA)** – a multi-disciplinary organisation whose membership includes business, jewellery, machinery, personal property and real estate property appraisers, with a membership of about 5,000. The ASA is a member of the IVSC.
- **Appraisers Association of America** – mainly specialising in personal property, but some members deal with real estate.
- **National Association of Real Estate Appraisers** – represents residential real estate valuers.



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RICS promotes and enforces the highest professional qualifications and standards in the valuation, development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to markets and effecting positive change in the built and natural environments.

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