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Today's R.E. climate and it's effects on liability insurance

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Much of the attention given to current economic conditions and the subsequent effects on the real estate market has focused on residential sales. This is true also from an insurance liability perspective, due primarily to very significant increases in claims and complaints from the public caught in the downward spiral of property valuations and what is seen as overly aggressive sales and lending tactics. But how have real estate agents and appraisers working in the commercial markets been affected by these trends?

To best answer this question, an overview of "where we are and how we got here" is in order. We know that financial markets are cyclical, whether it is stocks on Wall Street or the values of houses on Elm Street or commercial buildings on Main Street. Typically, this is a good thing and checks and balances generally lead to long term growth and stability. The real estate-related upheaval bucks this tradition in its characteristics of too-rapid increases followed by similarly rapid decreases in property values. Now, it is not only one's bank account or IRA showing a decrease in value. The security of the very roofs over peoples' heads is threatened by upside-down mortgage debt, foreclosures and an overall sluggish economy.

The public's response to all of this has resulted in increased insurance claims against all real estate professionals, including agents, appraisers and lenders. The government has responded with new regulations affecting lending and appraisal activities. Appraisers especially have had to adapt to the demands of HVCC and its' impact on how they get work, get paid and perform their responsibilities. Liability insurance claims against appraisers have significantly increased over the last several years, but indications are that they might be leveling off. Insurance claims against real estate agents, however, continue to rapidly increase. Professionals practicing in commercial real estate historically have significantly less liability claims brought against them.

The nature of the claims brought against commercial vs. residential sales agents and appraisers differs as well. Claims made against real estate agents for residential sales predominantly include "failure to disclose" (leaky roof, wet basement, etc). Claims alleging fraud are also dominant in residential sales (example: an agent withholds a better offer, instead sells the property to a friend who then sells it to the plaintiff at a higher price). By contrast, claims involving commercial transactions are predominantly due to "negligent misrepresentation." Failure to disclose is an omission where the agent failed to perform or do some act, while negligent misrepresentation implies that an agent acted but did so incorrectly or poorly. Other common claims involving commercial sales include zoning and easements.

Claims against commercial appraisals represent only about 5% of total appraisal claims and again are mostly related to Negligent Misrepresentation, while claims relating to residential appraisals include negligent misrepresentation, errors in calculation, intentional misrepresentation and ethics and fraud related acts. Claims experts relate the lower number of claims involving commercial

properties to more sophisticated buyers or sellers who are less likely to rely solely on the information or advice provided by a sales agent.

Real estate professionals involved in commercial transactions appear to have missed the huge spike in insurance claims being seen in the residential sales market, though time will tell if the long-term effects of a depressed market will change that.

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