



CELEBRATING
55 YEARS

narej

The surest way for appraisers to get sued: Things to consider before suing a client for unpaid fees

February 24, 2010 - Front Section

We see this time and time again: one of our insured appraisers has sued a client for unpaid appraisal fees, and now the unhappy client has filed a counterclaim in the same lawsuit against the appraiser alleging professional negligence or other claims and seeking damages that far exceed the unpaid fees. What seemed like a clean-cut collection case to the appraiser has turned into a much bigger dispute that will now involve broad discovery, depositions and expert witnesses - and also a claim under the appraiser's E&O insurance policy. We have seen appraisers who sued a client for several thousand dollars in unpaid fees receive counterclaims seeking hundreds of thousands of dollars.

This scenario more frequently occurs with commercial appraisers. Generally, they are more likely than residential appraisers to consider suing a client for unpaid fees because their fees for a single engagement are higher, sometimes \$10,000 or more. Residential appraisers, however, occasionally also face the decision when unpaid fees have accumulated with a single client. When it is only a single unpaid residential fee, most residential appraisers seem to let it go.

The question of whether to sue a client for unpaid fees should be evaluated carefully. Suing a client for unpaid fees very frequently results in a counterclaim against the appraiser not only with regard to the appraisal at issue in the appraiser's collection complaint but also quite likely alleging negligence in connection with other work by the appraiser as well. All of the appraiser's past work for that client is a potential target in a counterclaim. Basically, if the client - or the client's lawyer - thinks there is mud to throw back at you, the client will start slinging it.

A typical scenario begins with a commercial appraiser who sues to collect an unpaid fee from a lender for whom he's done several appraisals in the last few years. In the intervening months since the unpaid assignment, the loan went into default. Upon receipt of the collection complaint, the bank sues right back and files a counterclaim alleging that the appraiser overvalued the property and alleging that the bank incurred 50 times more damage than the appraiser's unpaid fee.

We've also seen commercial appraisers who rendered expert witness services have significant unpaid fees at the end of a litigation assignment. When the final bill remains unpaid, the expert witness appraiser sues the client for the fees. The client sues back blaming the appraiser for an unsatisfying result in the litigation. (When your client's already in litigation - that is a client who is more predisposed to suing you.)

Appraisers are not the only professionals who suffer from whiplash when trying to collect unpaid fees. The American Bar Association has published statistics showing that about 20% of negligence claims against lawyers are made in counterclaims when lawyers sue for unpaid legal fees.

I recommend that appraisers realistically assess any plan to sue a client for unpaid fees and carefully consider:

- *Will the time, effort and cost of suing for the fees be worth the possible recovery?
- *Are the fees worth the risk of having the client sue you back for professional negligence?
- *What has happened with the subject property and loan since the appraisal? (If the loan is in default and you sue to collect, your chances of being sued back are nearly certain.)
- *Have you reviewed your work file for the appraisal to assess whether there are any potential problems with your work?
- *What's the status of other properties that you appraised for that client?
- *Has the client ever indicated to you any issues with the subject appraisal or other assignments?
- *If the assignment involved litigation, was the client satisfied with the outcome of the case?

All of the above factors should be weighed realistically before heading down to the courthouse to sue your client.

Peter Christensen, general counsel at Liability Insurance Administrators, Santa Barbara, CA.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540