



# nerej

## Three strategies to reduce your liability risk

November 04, 2010 - Spotlights

Most claims against appraisers at this time - whether frivolous or justifiable- relate to appraisals completed at the height of the bubble in 2004-2007. Whether someone will assert a claim now depends mostly on factors like: has the loan gone into default, has the lender been taken over by the FDIC, or has the borrower succumbed to lawyer advertising suggesting that a lawsuit? There is little an appraiser can do about these factors, but there are still a few ways that an appraiser can minimize his or her risk from prior work.

**\*Keep Workfiles at Least Seven to Eight Years.** A good workfile is the best tool you have in your defense of a claim. In light of the claim trends we are seeing, we feel it is very important that appraisers keep their workfiles longer than the five-year period required by USPAP. For the last few years, we have experienced a significant number of claims about appraisals more than five years old. This is particularly true about claims by the FDIC. We are sometimes seeing claims by the FDIC, and also by some lenders and borrowers, about appraisals dating back to 2003 and 2004. USPAP's five-year minimum has no relevance to any applicable statute of limitations period. Accordingly, we suggest that appraisers keep their workfiles in paper or electronically for at least seven to eight years.

**Potential Claim Awareness.** The first telltale of a potential claim is usually not a process server or a letter demanding money. The first signs are often something like: a request from a lender for information regarding an appraisal done years before or a request that you aid a lender in defending your appraisal against a negative review. These contacts should be taken seriously.

Of course, if the party is not your client or client's agent, you cannot discuss assignment results or other confidential matters and you may have to politely indicate this to the party contacting you. In some of these situations, however, it may be in your best interest to seek permission from your client to respond substantively to the contact. If the request is threatening a potential claim against you in any way, I would suggest that you discuss how to respond with your E&O carrier or legal counsel.

Other requests may come from your client. Two very frequent situations where this is happening are mortgage repurchase demands and mortgage insurance claim denials based on alleged appraisal problems. In these situations, your client may ask you to assist in rebutting a negative review of your report. We feel it is in your best interest to assist with such requests if they are from your client and also find that many of these situations can be resolved favorably because the review appraisals are often very low quality. These are also situations that should be reported to your E&O provider to obtain possible assistance and preserve your insurance coverage benefits.

**Keep Your E&O Information Private.** Most claims don't have anything to do with whether you have E&O insurance. Most lenders or borrowers will sue anyway because they don't care if money comes from you or an insurance carrier. There are, however, some plaintiffs who make claims because

they wrongly believe that if an appraiser has insurance, an easy settlement will follow. For these plaintiffs, finding evidence of your E&O coverage publicly posted on the internet or attached to your appraisal report serves as an invitation to sue you. We strongly advise appraisers to keep their insurance information off of publicly accessible websites and off of their reports. Making it available privately to your clients or on secure website portals, however, is reasonable and does not pose the same risks.

Peter Christensen is general counsel at LIA Administrators and Insurance Services, Santa Barbara, CA.

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