

Mortgage fraud conspiracy and other bad habits

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The FBI has three major issues on their website. Whitie Bulger, Bin Laden, and mortgage fraud. The attorneys general in a dozen states have hundreds of mortgage fraud cases piling up. Subprime is not the cause, it is only one of a dozen issues causing the rise in mortgage fraud cases.

How will appraisers fare in this litigation turmoil? Most appraisers perform with professional ethics. Most always try to do what is right. However, there are those who through negligence, incompetence, or purposeful action violate the Uniform Standards of Professional Appraisal Practice (USPAP) state codes of regulations, statutes and various supplemental standards.

The greatest occurrence of transgression appears in the residential-mortgage appraiser's work. Transgressions also occur in commercial appraisals. The fault seems to lie in the application of routine customary procedures, adherence to misunderstood appraisal dogma, and fitting the scope of work into the fee. Routine procedures include the selection of comparable sales that are not comparable, but made comparable by the application of subjective unsupported adjustments. The adherence to dogma includes making the three approaches into a sort of religious trinity, deriving and applying percentage adjustments out of a metaphysical thought process, and using units of comparison which may not be market driven. The scope of work should drive the fee. The fee should not drive the scope of work. During a federal grand jury, the 20-year experienced general certified appraiser was asked where he obtained the adjustments in a routine URAR appraisal. He said from the book. He was asked, what book? He said from the book on the shelf. How did the adjustment numbers get in the book? I put them there. Foolish? Maybe. But then every appraiser seems to have and use routine subjective dollar figures or percentage adjustments.

The typical Fannie Mae URAR appraiser is paid half the fee to perform an appraisal. The current fee range is \$300 to \$350 for a single family and \$400 to \$600 for a multi-family. The appraiser doing the work receives plus or minus \$150 to inspect the home, obtain and analyze the deed, assessor record, research the neighborhood, purchase and sales agreement, inspect, analyze the comparable sales and write the report in accord with USPAP and Fannie Mae guidelines. So, it is no surprise that the typical Fannie Mae appraiser shrinks the work to fit the fee. Add to the scope of work dilemma, the pressure from the lender, broker, buyer, and seller to enable the loan and the go-along to get-along attitude becomes custom and routine. Do appraisers purposefully make faulty appraisals? Or is it just the customary short-cutting and the attitude and excuse that everybody does it this way. No, some appraisers actually push the ethical barrier past reasonableness and cross over into intentional fraud under the guise of what I did is what everyone does. Routine unthinking robot-like appraisal procedures coupled with bad habits of thinking will shortly put some appraisers in jail and others losing their livelihood and everything else they own.

Let me premise further remarks by saying I have experience with these issues. I served on the American Society of Appraisers peer review committee for six years, the Mass. board of bar overseers for six years as a hearing officer, I regularly teach USPAP around the country since 1992, taught USPAP in Mexico and Lithuania, practice appraisal in the litigation field, and our law practice works for the defense and plaintiff in appraisal malpractice. Much of that experience is confidential material.

The appraiser's errors and omissions insurance may not protect the appraiser. It will defend any suit against the appraiser that seeks damages even if the suit is groundless.

The insurance company will select its own attorney, respond to the complaint, negotiate a settlement, without the appraiser's consent or it may chose to contest the claim. The insurance company will not defend you against a suit where the insurance does not apply. It does not apply where the claim is for dishonesty, fraud, intentional misrepresentations, or deceptive trade practices.

All claims alleging interrelated acts, errors and omissions, regardless of the number of claims, are just one claim with the limits of the policy. The limit of the insurance company's liability is the excess over the deductible. Most E&O policies are \$500,000 per claim with a deductible of \$500 and an aggregate coverage of \$1 million with a deductible of \$1,000. The insurance does not cover prior acts. Sounds like the typical appraiser is covered for making a mistake. Maybe? Remember, the E & O does not apply to any claims arising out of dishonesty, fraud, or violations of state deceptive trade practices laws (Mass. Gen. Laws. Ch. 93A), or violation of rules committed by the insured, at the direction of the insured, or with the insured's knowledge.

The insurance company typically does not have liability (will not pay) any compensatory, punitive, or exemplary damages. If the appraiser does not immediately notify the insurance company when he or she becomes aware of any act, error, omission in rendering professional services which could (not did) reasonably be expected to be the basis of a claim, then the insurance company's obligation to pay is contractually limited to the excess of any and all of the appraiser's assets.

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