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Claims do's and don'ts: How an appraiser responds can either help prevent or guarantee a lawsuit

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Nobody likes being accused of making mistakes. Imagine the panic and fear that an appraiser might feel when served with a lawsuit alleging errors, negligence, misrepresentation and often fraud resulting from his professional services. If you ever find yourself in this position, we advise that you take a deep breath, try not to take the allegations personally and call your insurance company for sound legal advice.

A "claim" does not necessarily start with a lawsuit. Often it begins with a nasty letter or phone call from someone questioning your appraisal or your conduct and asking that you do something or pay them some money.

Sometimes a "claim" begins with a complaint made to the state licensing board. Whoever thinks you made a mistake might want to see what the board thinks before they decide to file a lawsuit. Or, maybe that person or company wants the board to do the investigation so they don't have to spend the time and money doing it for themselves.

A "claim" might start when the appraiser receives a subpoena to produce documents or to testify at a deposition. The parties to the ongoing lawsuit might want to look through the appraiser's workfile or ask him a few questions before they decide to add him as a party in the case.

How an appraiser responds to any of the above situations is most important. His comments or conduct could either help to avoid a lawsuit or could virtually guarantee that a lawsuit will follow.

- * Don't ignore the nasty letter, subpoena or board complaint. Ignoring something rarely makes it go away and often makes it worse.
- * Don't talk to anyone, other than your client, about the appraisal report. Remember that your client's report is confidential and the appraiser is not obligated to discuss that report with a third party, not even an attorney!
- * Don't offer to re-measure when accused of making a s/f error. The only time it is okay to re-measure a property is at the request of your client, never re-measure it out of your own accord or at the request of another party.
- * Don't admit liability. When accused of something, human nature often drives us to try and correct the situation. Despite the accusations, you might not have liability. Making admissions could make it harder to defend you and could also jeopardize your insurance coverage.
- * Don't agree to return the appraisal fee or to pay an amount of money to make the problem "go away" unless it is handled correctly. There are situations that warrant the appraiser agreeing to return the fee or to make a small payment to make the problem "go away." However, be sure to require that the complaining party sign a "release" before any money is paid. A "release" is an agreement that the complaining party will not make any further claims against you in connection with the same appraisal once the money is paid. Always ask for a receipt or acknowledgment of

payment. If you are trying to buy "peace" make sure you get what you pay for!

- * Do try to get as much information as possible. If someone traps you on the phone and starts making demands, use the opportunity to ask them questions. It is important that you find out as much as possible about why they are calling and yelling at you. Remember, you should not answer their questions because you do not have your file in front of you and besides the information may be confidential. Before answering any questions call your insurer.

- * Do deal with the situation as soon as possible. All of the above situations should be reported to your insurer promptly. They can help you respond to a nasty letter, or determine if it would be best to have an attorney go with you to a deposition. Handling matters alone, even if you think it is "nothing," is not always the best way to go.

Sometimes an appraiser's first notice of a "claim" is when he is served with a summons and complaint, this is a lawsuit and is a serious matter. If not treated as such, grave consequences could follow.

- * Don't ignore it. Putting the complaint in a drawer because it is too "upsetting" is not the way to deal with a lawsuit. Rather, the court might enter a default judgment against you and your insurance company might decline to provide coverage.

- * Don't respond on your own without an attorney. There are rules in place in every state that dictate how to properly respond to a lawsuit. Unless you are an attorney, it is foolish to try and handle a lawsuit on your own.

- * Don't discuss the lawsuit with anyone other than your insurer and attorney. After being served with the lawsuit the appraiser should resist the urge to call the plaintiff's attorney or to call any of the other parties named in the case. Let your attorney ask the questions for you. If you call these persons there is a chance you might say something that could be damaging to your case and defense.

- * Do note the day you were served. A lawsuit has to be responded to within a specified period of time. Your attorney needs to know when you were served so he knows when to file an answer. Saying you were served "a few weeks ago" is not good enough!

- * Do notify your insurer promptly. Every insurance policy requires that the insured give notice of a lawsuit within a certain period of time. The insurer needs to retain an attorney so that an answer can be filed in a timely manner. Failing to notify the insurer within the time period required by the policy could serve to jeopardize your coverage.

- * Do get your appraisal report and workfile in order. Once you are served, it is important to have all the relevant documents available, as your attorney will want to see them right away. You need to act quickly to locate the file or files that are at issue, and make sure they are complete and organized.

- * Do try your best to relax. Being served with a lawsuit is a stressful experience. Feeling angry and worried is normal, however; you are crucial to your own defense but you will be of no use to your attorney if you are unable to maintain your composure.

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