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APPRAISAL TODAY

2018 E&O Insurance Update - where to get E&O insurance, state board complaints, your biggest risks, etc.

I have been writing this article annually since 1992 and have seen some big changes, depending on the lender market.

Complaints are very cyclical, driven by the mortgage industry status. Lots of REOs and foreclosures mean more appraisal claims. In today's market, there are very few lender complaints, even though Dodd-Frank required reporting appraiser complaints to state boards.

Whenever an appraiser calls me about a problem, I always tell them don't risk having a state board discipline them. If you lose your appraisal license, your appraisal career is over. If you get your name published by your state board, AMCs and lenders will check to see if you are listed. The ASC national registry publishes the information for the past year.

Complaints by state boards are increasing as a percent of claims, as lender complaints have declined significantly. Per Liability Insurance Administrators, 60% of their inquiries are about state board complaints. Your E&O does not cover this, but some insurers offer a $2,500 to $5,000 and help finding an attorney. If lenders and AMCs ever start complying with Dodd-Frank and turning in appraisals to state boards, this will go way up. Per Landy, they are seeing a more professional appraisal industry than during the boom days pre-2008, decreasing complaints.

Buying appraiser E&O insurance is very different from auto or home insurance. There are relatively few brokers and insurance companies that handle appraiser E&O. Don't shop just for price. Shopping for price is not a good idea in today's changing liability problems for appraisers. Instead, you need to check out the exclusions, limits, etc. The cheapest is not always the best, especially when you have a claim.

E&O policies have become more homogeneous, making it easier to compare them.

Most of us hate dealing with insurance of any type, so we usually just stay with our current insurance company. There are some benefits to remaining with the same company, such as sometimes lower premiums if you stay with the company, plus familiarity with the services they provide.

Note: The final version of Barry Bates' 2018-2018 USPAP Enforcement Guide will be available next month as a separate report. It combines last month's material plus new material finishing the full report. Reading is lots easier to do with both in one document.

In the past, some companies offered cheap E&O premiums as they did not include prior acts. There are few, if any left. But, if you change insurers, be sure that prior acts for at least 5 years are covered. E&O without prior acts isn't worth anything for liability protection, as you are typically sued up to 5 years after the event occurred. Be certain to ask if your state is covered.

Many thanks to Peter Christensen of Liability Insurance Administrators (www.liability.com) and John Torvi of Landy (www.landy.com) for the

In This Issue

information they provided for this article.

Note: much of this article is reprinted/updated from last year's E&O update. But, we all need reminders of what we need to know about E&O insurance.

If lenders did not require it, I wonder how many appraisers would have E&O insurance?

What about appraisers who are thinking about quitting appraising or retiring?

If you qualify, you can get lifetime coverage for free from some E&O companies. Landy, LIA and Intercorp offer this. Requirements vary widely - number of years with company, years of experience, etc. Check with your E&O company. Coverage is available through Navigators and Genstar insurance companies.

The cost is typically 3 times the price of your last year's coverage. Be sure to get 5 years. A one year policy is not worth much. Check with your E&O company.

Unfortunately, very few of the appraisers who are quitting the business get "tail coverage". They just let their insurance lapse. This means that they are self-insuring for all claims for appraisals done before they quit paying for insurance.

What if you're not renewing now?

The appraiser E&O market is fairly stable now, so much of the information will be useful until next year's update.

I only do this update once a year, but the phone numbers and Web site links should still be accurate.

It is also a useful source of information for topics such as what is a claim, how to handle communication with an upset borrower, tips on liability reduction, etc.

What is covered in your policy?

Who reads their insurance policy? Not many of us. But, be sure to read what is covered, and not covered. Carefully read the policy exclusions, such as development and right of way. What professional services are covered?

For example, if you do reviews and measurements-only be sure to call your E&O provider to see if these are covered as they will probably not be listed in your policy.

Be sure to check your policy for when claims can be reported during your policy period (claims made and reported). This is on the first page of your policy.

When do appraisers get sued?

If there is a buyer defect, within a couple of months. Few lender complaints now. Typically within the last 3-5 years. Lender complaints from pre-2008 are gone.

Sometimes there are lender complaints. One is an FHA loan where the appraiser did not inspect the attic, which had a significant hazard. The borrower refused to move in and "gave the property back" to the lender, who sued the appraiser.

For commercial appraisers, conservation easements can be risky.

What about statute of limitations?

Currently, OR, TN, MN, NC AND SD have limits on appraiser liability. If you work in these states, or want to change the limits in your state, Google them. Texas is working on one. This is set up by a state appraiser group getting a new law. The Appraisal Institute has been very helpful with this.

The statute of limitations laws start the day the problem is discovered, not the date of the appraisal. That is why banks sue for over-valuations longer than 5 years old. The older the appraisal, the harder it is to prove negligence. That is why lenders rushed to file claims during the mortgage meltdown.

In California, they have two years after discovery (finding out about the appraisal) to file a claim. States vary, so check your state's laws.

Damages vs. claims

Anyone can file a claim for any reason. Damages is when the person receives money. Few claims result in damages.

What is a claim?

A claim is any demand for money or services or a notice of breach of duty. What does "knowledge or information" mean? These terms are interpreted differently, state by state, but it is reasonable to assume that if you've been sent a letter about a possible claim, you've been informed.

If you want to change insurance companies, but think you may have a claim filed against you, check with your attorney or current insurance company. You will not be able to change insurance companies until your claim is resolved.

Who files claims?

Now, most are filed by borrowers who did not get their loans, usually due to "low" appraisals. Sometimes borrowers file complaints because the appraisal was too high and they paid too much.

These are not difficult to defend as the damages are often limited, if any, as they could have obtained another appraisal.

What total policy limit amount should you have?

For most appraisers, LIA says $300,000 is adequate. However, some lender/AMC clients require $1,000,000. If you are in a high cost area, consider at least $500,000.

It does not cost much more to get a $1,000,000 policy and make all your clients happy.

For most appraisers, clients tell you how much insurance you must have to work for them.

Why have any type of insurance, including E&O?

The purpose of insurance is asset protection so that you don't lose your home, savings, etc. Plus the cost of defense, which can be substantial.

You decide which level of risk to take. For example, auto insurance with no deductible or a high deductible. For appraisers, E&O with minimal coverage and many exclusions would be a high risk. I have never had the cheapest E&O as it is a risk I don't want to take.

Don't EVER let your E&O insurance lapse!!!

Claims made coverage is the only type of appraisal E&O insurance available now. In this type of coverage, the claim must occur while the policy is in effect. The error or omission causing the claim may occur during the policy period, or if "prior acts" coverage is applicable, prior to the policy period. If you don't have prior acts coverage, both the claim and the error or omission must occur when the policy is in effect.

In contrast, many types of insurance, such as fire insurance on your home, is made on an occurrence basis. In this type of policy, the insurance company covers any act or omission that occurred during the period the policy was in force - whenever the claim is filed. This type of coverage is not available for appraisers' E&O insurance.

For most appraisers, unless they're just starting self-employment, prior acts coverage is almost mandatory as claims are usually filed long after the alleged error or omission.

Prior acts coverage cannot go further back than the last uninterrupted claims made policy.

Remember, if you have had a lapse in coverage, you cannot get prior acts coverage for any appraisals done prior to that time.

What about having no E&O insurance?

The reason for having any type of insurance is risk reduction. The risk is losing your assets (house, stocks, savings, etc.), plus paying defense costs. E&O is the same. Without lenders' requirements, probably many appraisers would not have E&O insurance.

Some commercial appraisers don't have any, as few of their clients require it.

If you don't have E&O coverage, I strongly recommend taking measures to protect your assets. Many appraisers say they don't have any assets. But, this applies to savings, retirement accounts, real estate, etc.

The best way to protect your assets is to put them all into a trust, managed by someone else, such as a spouse. You will need an attorney to set this up. Another option is to put all your personal assets in a spouse's name. Unfortunately, changes such as a divorce can make this messy.

Myth - "If I don't have E&O insurance, I won't get sued"

I have heard this from many commercial appraisers, as long as I have been an appraiser, over 40 years now.

This is false.

Peter Christensen, before working for LIA, was a lawyer who sued people (probably few, if any, appraisers) for various reasons. These attorneys typically work on contingency. Below is his advice.

Attorneys that sue individuals often look to the assets of the person, not necessarily their E&O coverage. For example, you are in a lawsuit with a $100,000 claim and you have no insurance. It is much easier for an attorney to get the money if they don't have to hassle with an E&O insurance company. The appraiser can pay them off using home equity, savings, retirement accounts, borrowing from friends and relatives, etc.

Myth: "My business is incorporated, LLC, etc."

Incorporation and other business structures do not help reduce appraiser liability risk. You are sued directly as a professional appraiser.

Those structures can protect you from other types of lawsuits, but typically appraisers are sued because of an appraisal.

Commercial appraisals - the largest claims

E&O premiums for commercial appraisers are higher than for residential. Dollar loss from claims is much higher than for residential.

Commercial appraisers are much more likely than residential to not have E&O insurance, as only a few clients require it. Instead, they self insure.

New developments are also risky for appraisers, especially vacation homes with a limited market. They are also risky for residential appraisers if the development fails and buyers are left with uncompleted amenities, such as roads, landscaping, etc.

Some E&O companies will not cover any commercial appraisals because of their high risk.

Commercial appraisals are risky because the dollar amounts of the properties are often significantly higher than for residential.

E&O prices for commercial appraisals are higher than for residential, but not by that much. For example, I have a $1,000,000 policy (commercial and residential) that cost me $1,476 in 2010 and $1,142 in 2012 (lots of lender lawsuits). My 2014 premium was $995, 2015 premium was $1,204, 2016 premium was $1,075, 2017 was $989, reflecting changes in the numbers of lender lawsuits. In contrast, a $1,000,000 residential policy is around $700.

If you do many appraisals for development loans, or other loans that are well over your policy limits, you will have to pay whatever is over your policy limit.

FYI, commercial loans are typically for about 5 years, not 30 years.

What about AMC complaints?

Very few complaints, if any, are filed by AMCs. This may change in the future, if lenders decide to "go after" AMCs. FYI, AMC lender agreements are usually much more stringent than agreements between AMCs and appraisers.

What about Dodd-Frank's requirement for lenders/AMCs to turn in complaints on appraisers to state boards?

Very few lenders and AMCs are paying any attention to this requirement.

If this ever starts happening, there will be many, many complaints filed against appraisers to their state boards.

This could be a big risk for AMCs as the state regulator could revoke their license and cause significant financial difficulty if a major client is lost. A few years ago, a large AMC purchased a smaller one whose state board license had lapsed in a state. The state suspended the larger AMCs license for 2 weeks. Per the AMC they lost $10,000,000.

This is one of the major risks for appraisers in the future.

Policy exclusions

Check what your policy includes and what you can get for an additional fee. Exclusions have been increasing. Before renewing or changing insurers be sure to carefully check the exclusions. All policies have exclusions.

Risky exclusions include claims for financial damage and prior acts.

Some companies are excluding FDIC claims, plus the typical new construction, etc.

Ask for a sample policy and carefully check the policy exclusions before renewing or changing companies. You could have your business attorney review your policy.

Other types of exclusions are claims based on discrimination, pollutants, mold, or waste. Call the broker or insurance company and ask for an explanation of any exclusions not mentioned in the application.

Most exclude appraisals for certain types of development.

Don't ever lie or misrepresent on an E&O application

Why? They may not cover you if there is a claim.

It's never a good idea to lie or misrepresent on an application. If there's a question you don't understand, call and ask them what they mean and why they are asking the question. If the questions could cause you problems, look for another insurer who doesn't ask that question. But, they all ask if you've had any claims filed against you, or know of any circumstances which may cause a claim to be filed, or if you have been disciplined by any professional organization, agency, or court.

What about getting insurance with previous claims or damages?

A prior claim or damages does not mean automatic denial. The appraiser may not have been guilty and the suit was settled out of court. Most cases are settled. Very few cases go to trial.

What about trainees and independent contractors?

The supervisor who co-signed the report is equally liable. If your E&O did not include trainees, you will have to pay for their mistakes.

If you have an appraiser or trainee that you co-sign for, be sure they are covered under your policy. Or, get a copy of the appraiser's policy.

Most frequent reasons for claims today

1. Square footage
2. Under-valuation (Borrower doesn't get the loan.)
3. If there is a buyer defect, within a couple of months. Both the agent and the appraiser are sued.
4. Septic vs. sewer (Borrower failure to disclose) Unfortunately, some appraisers don't check for this. It can occur in urban areas. Be very careful to check if this is an issue in your area.

State appraisal board cases

Per LIA, about 60% of their inquiries from appraisers are about state board complaints. (Much fewer lender complaints, thus the higher percentage.)

RELS was sending appraisal complaints to state boards, both staff and independent contractor appraisals. It is no longer owned by Wells Fargo and was sold to another company last year and has not been filing complaints. Dodd-Frank did require mandatory reporting, but very few lenders are doing it.

Just like all claims, appraisal board complaints are from dissatisfied borrowers. Lawyers are becoming more savvy about filing complaints with state boards.

This type of coverage is becoming more important.

Check to see what your E&O provider offers.

Coverage for state board complaints is very limited, as compared with other features of appraiser E&O policies. It only helps with your attorney costs. You will need to hire your own attorney.

Your E&O company hopefully can advise you on who to hire.

Several companies who offer state board financial assistance have staff attorneys who can advise you for no additional costs. Check with your company.

I always strongly advise getting an attorney to help you. Don't reply without one. Don't argue with the borrower or your state regulator. Penalties are a bigger problem as they must be reported when you fill out an E&O application.

Why it is important not to get a public admonishment/fine from your state board

Savvy attorneys (and maybe some AMCs and lenders) will check with your state board to see if your name has been published with a fine, fees, etc.

AMCs check the ASC public list to see if an appraiser is licensed. This list has suspensions, etc. listed for only for one year.

Real Estate Appraiser Disciplinary Complaints: Who Is Filing Them? What for? What's the Outcome? By Peter Christensen

"We were doing some research for a project and came up with some basic data that appraisers may find interesting about disciplinary complaints to state appraiser licensing agencies. Who files the complaints? What's the basis? What's the outcome?"

"Well, here's a summary from claims reported to LIA Administrators & Insurance Services in the last three years -- appraisers in our program might feel better knowing that 88% of complaints against our insureds do not result in public or formal discipline: "

"It's important to emphasize that this data comes from matters involving appraisers insured in our E&O program (about 15,000+ appraisers in all, working in small firms to very large firms), rather than the full population of appraisers. "

"Source of disciplinary complaints reported by LIA insured appraisers, April 2015 to April 2018:

61% Borrower or purchaser
16% Seller
8% AMC
6% Lender
5% Miscellaneous (litigation party, estate beneficiary, other appraiser, etc.)
3% Real estate agent
1% Government (HUD)

Alleged basis of complaints filed by borrowers/purchasers:

53% Appraiser undervalued property
24% Appraiser failed to discover problem with property
19% Appraiser overvalued property
4% Other problem (appraiser offended borrower, appraiser late, appraiser didn't show up)

Alleged basis of complaints filed by sellers:

93% Appraiser undervalued property
7% Other problem (appraiser offended seller, didn't take shoes off, used toilet and didn't flush)

Outcome of closed disciplinary complaints reported by LIA insured appraisers, April 2015 to April 2018:

88% No public or formal discipline (other than warning or minor education)
12% Discipline"

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Estate and trust appraisals - IRS penalties

Appraisers can have penalty assessments, up to 125% of the appraisal fee, for undervaluation resulting in reduced estate taxes. Be careful. This is not covered by your E&O insurance.

How many claims go to court?

The vast majority just go away as they are not valid. For example, the value was too low and they didn't get their loan. Most are dismissed, some settle and under 5% go to court. Almost all lawsuits, whatever they are for, get settled before trial, often just before the trial starts. Appraisers who do litigation work see this regularly.

Many appraisers think that the E&O companies want to settle to avoid litigation costs. This may happen sometimes, but many appraisers just don't want to go to court and prefer to settle and "get on with their lives", so they agree to settle, typically after 1.5 years. Some appraisers are unwilling to admit they made a mistake and are hard to defend.

Why do appraisers get sued?

Under-valuation (borrowers)..

Most complaints are from third parties, such as buyer, seller, and real estate agents.

Per John Torvi of Landy, issues are:

- Undervaluation with over 5% difference in opinion of value.
- Unpermitted additions
- Measurement (sq.ft.)
- Cess pools (Editor's note: also septic tanks)
- Mechanical problems

Sometimes buyers complain about overvaluation. They paid too much.

Torvi advises stating what you observed and taking lots of photos. You are not a home inspector. For example, don't say the roof is okay or needs a new roof. State what you see, not what the problem is. Claims can be about anything. He recently had a claim that said the appraiser did not disclose defects covered by drywall.

John Torvi says "Disclose, Don't Diagnose."

How to handle the first contact from a borrower

Sometimes it can start with a phone call, such as a nice or nasty borrower. Keep your composure. Your client is the lender. Don't say "Sorry, I made a mistake. How do we fix it?" You may not have caused the problem, such as a trashed foreclosure. Don't "do a favor" and offer to pay for the damage.

Your first contact can also be a letter.

Be sure to contact your E&O company. Don't ever try to handle it yourself.

Recent claims from LIA files

Editor's note: None of these are new topics.

- Accepting an appraisal and turning it in late or not at all.
- Expert witness appraiser turning in complaint on appraiser for the other side.

Unpermitted additions

There are claims on this, usually by the buyer. Information is much more easily available online, from local jurisdictions or online services that compile and sell the data.

When I started appraising in the mid-1980s, most of my lender clients said to not go to city hall to verify permits, because the borrower "may get into trouble." But, now lots of permit info is available online. When I get permit info at a building department I just get the records and look to see if a permit was taken out and finaled.

Whether or not an appraiser is liable is somewhat controversial, but be sure to prominently disclose what you did, or did not do, in your report.

Peter Christensen advises:

- If you see poor quality construction, beware.
- State in your report what you saw and did. For example, the addition appears to be lower quality (include photos). Per the owner, no permits were obtained. I did (or did not) check permits at the local building department.

Attic and basement conversions

State "in plain English" what you saw and determined. For example, public records has 5 bedrooms, but two of the bedrooms were in the basement, which is not included in the GLA. It was in a college town and was purchased by an investor. The number of bedrooms made a big difference.

Assessors and lenders can have different ways to evaluate finished basements. Also, lender requirements (and local preferences) can change over time. With the wide availability of free public records online, lenders and lots of other people, unfortunately, think they are correct.

What if you do 1-4 unit residential plus sometimes small commercial?

Be sure to check to see if the policies cover these additional property types. Some don't.

What about deductibles?

Look for no deductible for defense (see above), minimal deductible for damages, which applies only if you lose the case.

If you have a claim will your E&O get cancelled?

"It depends" per LIA. The farther back in the past, the better. Whether or not you were at fault, and how you were at fault also matter, i.e., a mistake vs. intentional deception.

Typically, they don't immediately stop your coverage. Instead, they won't renew your policy. You must find another company, which can be tough if you have had a claim that resulted in damages. You may have to go to a high cost policy with a company that has them available at $5,000 or more per year.

Another major factor is if the claim is still open. Insurance companies don't know what they will be getting into if they insure an appraiser. So, you won't be able to change insurance companies until it is resolved.

If none of the regular appraiser E&O insurance companies will insure you, there are companies of the last resort that will insure appraisers who have had a claim. The annual cost? One appraiser reported getting a policy for $5,000 a year

Intercorp, Landy and Liability Insurance Administrators have a special program for appraisers with claims. Other E&O insurers also offer this insurance. The cost is high, typically $2,500 to over $10,000, but it is available.

How can you reduce your risk?

- Check out your clients, particularly their financial health. You don't want to be dragged into a lawsuit.
- Adequate supervision of less experienced appraisers.
- Not relying on information provided by the owner, Realtor, or developer. Check it out.
- Document, document, document. Put it in writing. Take photographs. Otherwise, you won't be able to remember, or prove, something that happened several years ago. Keep your photo negatives and digital images. Keep a diary of who you've called and what they said.
- Document all property deficiencies in your report.
- Don't attempt an assignment beyond your expertise. Split the fee with a more experienced appraiser.
- Investigate the qualifications and experience of a potential new hire or independent contractor. Be sure they're not in a lawsuit.
- Check for clerical errors. They can be very expensive. Flood zone, and as is/as completed boxes are a common source of errors.
- If you are unable to inspect something, such as the type of foundation or insulation, put down "unknown".
- Turn down high risk appraisal assignments.
- Carefully screen new clients.
- You get a "feeling" about a prospective assignment or client. Most appraisers have them. I learned the hard way to just say no, after getting badly burned a few times.

What should you look for in a policy?

If you're a solo residential appraiser, price shopping is easy. Often, the rates our posted on the insurance broker's web site. Don't select the company on price alone. Be sure to evaluate the company as well as the policy.

Also check out:

• Prior acts coverage for as long as you have had continuous coverage without any lapse.

• Deductible, per occurrence, and aggregate dollar limits. Most policies lump together the defense and loss into one total dollar limit. For example, the first $2,500 is paid by you. Or, the policy does not apply for defense, only for 75% of the damages.

• Coverage for both the claim and the legal defense.

• Any exclusions. Be sure to investigate both the application, and the policy itself.

• Assistance if you have a question. This is the main reason why I have stayed with LIA. I have only called them a few times over the past 30 years, but I will never forget that they advised me on what to do. They also help with state board problems and have a full time attorney on staff, Claudia Gaglione, to help. She has many years of appraisal liability experience. I also knew they would not cancel my policy if I called.

* No deductible on defense expense ("First dollar defense")

* Coverage appropriate for your past and current business. For example, covering trainees who used to sign on reports that you co-signed. There are still claims being filed for appraisals done during the "boom years" when there were lots of trainees.

Price, of course, is also a consideration. Be sure to get several quotes, especially for firm and commercial coverage, as there can be wide variations.

What insurance brokers should you use for E&O?

All the companies listed in this article are insurance brokers who work with two or more insurance companies. Typically they have one, or a few, insurance companies that they use for most appraisal polices. They have other companies they use for states where those companies don't cover appraisers, there are multiple appraisers in the appraisal company, or other appraiser issues.

I always recommend using a company that specializes in appraiser E&O insurance. Most, if not all, advertise in appraisal publications. Brokers who insure real estate agents and related professionals can also work. However, they are not always the best choice as they are not familiar with appraisal issues, which are very different than real estate agent issues.

A general insurance broker, who handles your auto, home, general liability, etc. is not a good choice, as they are not familiar with the issues. Of course, they could place your coverage with one of these insurance companies, but they would not be able to help you with questions and give advice on issues that come up when doing appraisals, such as strange AMC requests.

What is a Program Administrator?

Program administrators can write policies and handle claims, so they are able to provide much more information than the other brokers.

Intercorp, LIA and Landy are also program administrators for their primary insurance companies.

Per Peter Christensen of Liability Insurance Administrators, "There is no bright line between broker and program administrator, but, a program administrator will usually have authority from the insurer to underwrite and bind policies, a program administrator will usually issue the policies (not the insurer), and a program administrator may be the one to whom claims are reported (as we are at LIA). But, note program administrators are always also brokers too (they must be licensed as brokers to sell insurance)."

What does this mean for you? I prefer a program administrator as they are very familiar with the policies and procedures of the insurers they represent. I also like that they receive the claim requests.

My E&O insurance

When I started my appraisal company in 1986 I used Liability Insurance Administrators. A few years later, they were not active in this market, so I went with an insurance broker affiliated with NAREA, which had a great "occurrence" insurance policy which was similar to car or fire insurance - if you had it, you were covered for any claims at any time. When they shifted to claims made in 1991, I switched back to LIA.

I stayed with LIA because I knew if I had a claim, they would not cancel on renewal. Also, they gave good advice when I had a question, from an attorney very familiar with appraiser E&O issues. They were never the cheapest, but the prices were reasonable for me as I do both commercial and residential. Their prices went up and down over the years.

I also like the state board complaint assistance and the state board financial assistance coverage.

E&O Insurance Companies - 2018

5 Star Appraisers/Target Professional Programs
Note: 5 Star is now Target Professional. All states through Lloyds of London. *Only offers prior acts back to 1-1-10 and tail coverage back 1 year.* Offers 1-4 unit residential coverage, light commercial property (less than 50,000 sq.ft./maximum 4 stories), and agricultural property. Only offers
Contact:
5 Star Appraisers/Target Professional Programs
1230 East Diehl Road, Suite 350
Naperville, IL 60563
800-497-4644
www.targetappraisers.com

Alia
Coverage through Lexington, Navigators, Genstar, plus others.
Contact:
2645 Financial Ct., Suite A
San Diego, CA 92117
800.882.4410
www.aliains.com

CRES Insurance Services
Coverage through HQI Global.
Contact:
CRES Insurance Services
15010 Avenue of Science #100
San Diego, CA 92128
P: 858.618.1648
F: 858.618.1655
www.cresinsurance.com

Intercorp Insurance Program Managers
Coverage through Lexington.
Contact:
Intercorp Insurance Program Managers
1438-F West Main Street
Ephrata, PA 17522-1345
Phone: 800.640.7601
www.intercorpinc.net

Landy Insurance Agency
Coverage through Great American Insurance Company.
Contact:
Herbert L. Landy Insurance Agency, Inc.
75 2nd Ave. Suite 410
Needham, MA 02494-2876
800-336-5422
www.landy.com

Liability Insurance Administrators
Coverage through Aspen Insurance Holdings Limited. Contact:
1600 Anacapa St.
Santa Barbara, CA 93102-1319
800-334-0652
www.liability.com

Proliability (formerly Mercer)
Coverage through Genstar
Contact:
Mercer (formerly Marsh) Affinity Group Services
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P.O. Box 8146
Des Moines, IA 50301-8146
Phone: 800-375-2764
Fax 515-365-3043
www.proliability.com

OREP (Organization of Real Estate Professionals)
Insurance though about 4-5 difference insurers
Contact:
OREP (Organization of Real Estate Professionals)
6760 University Ave. #250
San Diego, CA 92115
Phone: 888-347-5273
www.orep.org

John Pearl & Associates
Coverage through Intercorp, Lexington and other insurers.
Contact:
John Pearl & Associates
1200 East Glen Ave., Peoria Heights, IL 61614
Phone: (309) 688-9000.
Fax: (309) 688-5444.
www.pearlins.com

J.A. Price Agency, Inc.
Coverage through Proliablity, Lexington, Genstar and Navigators
6640 Shady Oak Road, Suite 500
Eden Prairie, MN 55344
Phone: 952-944-8790
Toll Free: 800-279-1623
www.japrice.com

Victor O. Schinnerer
Coverage through CNA (Continental Casualty Company) insurance company.
Contact:
Victor O. Schinnerer
Two Wisconsin Circle
Chevy Chase, MD 20815
301-961-9800
www.schinnerer.com

RealCare Insurance Marketing, Inc.
Coverage through Navigators
430 West Napa Street, Suite F
Sonoma, California 95476
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Valuation by Comparison, 2nd Edition Finally a Good New Residential Book. Buy This Book!

There are very few books written for practicing residential appraisers offering good advice, especially on today's issues such as market volatility and increased appraiser oversight.

As an appraiser, you are an interpreter of human behavior. This book focuses on human behavior, what buyers and sellers do and why. It goes back to the basics of appraising from an experienced appraiser's point of view. It does not go over "how to complete a form". Ratterman has written several other very good books on form filling itself, in the late 1990s, and they are still very useful. One of them is "*Using Residential Appraisal Report Forms: URAR, Form 2055, and the Market Conditions Form, 2nd Ed.*" Written by Mark Ratterman.

We all sometimes get bogged down in numbers and deadlines, especially in the fast paced residential lending world. We focus on the "whats" not the "whys". This book has many alternative methods and logic when there is limited comp data. For example, how to use listings, pendings and expireds.

Fortunately 2-4 unit examples are included. There is very, very little good analysis methods available in written material.

This book has practical advice on many, many topics that appraisers encounter, such as MLS problems, lack of sales and bidding wars.

How does the second edition differ from the first edition?

When CU came out in 2015 appraisers were asked to support adjustments properly. I looked at what had been written for residential appraisers. The only useful book, written in 2007, was *Valuation by Comparison, Residential Analysis and Logic*, also by Mark Ratterman. The first edition covered many methods of supporting adjustments.

The book has been completely updated and reflects today's very strong real estate market plus hot issues such as rural appraisals, multiple offers over list, etc.

Focusing on the Fannie forms for lending appraisals really helps, as that is how the vast majority of residential appraisals are written. Ratterman also discusses the issues of lenders who have rigid requirements.

Both editions concentrated on the analysis of the market. The first edition had many detailed techniques for adjustments. The second edition has fewer detailed adjustment examples. Since this book came out in 2007, this information can be obtained in classes, seminars and other books.

Both editions discussed matched paired sales and using the Income and Cost Approaches to make adjustments. Neither book discusses statistical analysis.

Sample paragraph

"Consistency in the market is important to the appraiser. In markets where the results of sales give erratic indications of value, the appraisal may look poorly prepared when in fact it reflects a market with few options for buyers whose behavior is less predictable. Buyers who have many options usually take the opportunity to pursue the best one, which gives the market consistency. (Exhibit 5.3 has an example sales grid, not included in this article)."

What is the book like?

It is not "text book like" with lots of theories and academic style writing, which is common in appraisal books.

There are many short examples to illustrate what is discussed. For example, the chapter Market Consistency covers what to do when lack of competition (and comps) leads to inconsistency in the market. Examples included are properties with lots of similar sales (good for statistical analysis) and dissimilar sales (in many of today's markets). Other examples are how do you handle side deals, MLS mis-reporting, out of state investors, etc. All have short, practical example case studies.

In the chapters there are good 2-4 unit examples and analysis, such as new investors who don't really understand investment properties and sometimes pay too much.

Rural properties analysis, advice and samples are included. These more difficult appraisals are usually just skimmed over in other books.

Many issues are discussed which I have never seen written about, such as getting the correct details on a comp from market participants.

Overall book contents (from Appraisal Institute web page)

"When market volatility and increased oversight create problems, experienced residential appraisers find solutions by developing and implementing new strategies grounded in appraisal fundamentals."

"Valuation by Comparison, second edition, will help appraisers get back to basics by exploring the reasons behind current market behavior and the logic of the sales comparison approach. With the information in this book, appraisers can develop a deeper understanding of the valuation process and a greater ability to handle a wide variety of appraisal assignments."

"Residential appraisers need to know their markets and how to research comparable transactions. Data collection and analytical skills are both essential."

"This book examines common pitfalls encountered by appraisers when searching for data and presents helpful online research tips that can help practitioners find data in markets where data is scarce, inconsistent, or misleading."

A few sample topics from the Table of Contents

These topics were not covered in your appraisal textbooks.

Inconsistency in Markets

- Can I Ever Get All the Details of a Comparable Sale?
- Sales That Do Not Get Reported Correctly
- Why Do Clients Want Appraisals?
- What Does "Value" Mean?
- Can I Ever Get All the Details of a Comparable Sale?
- The Psychology of Sales Comparison Analysis
- The Back Stories of the Sales Comparison Approach
- The Psychology Behind the Adjustment Grid
- What Does a Prior Sale or Listing Tell the Appraiser About the Subject?

What other books are available for experienced residential appraisers?

The only other good, practical book I know about is *Appraising the Tough Ones, Creative Ways to Value Complex Residential Properties* by Frank Harrison, written in 1996. (Available from the Appraisal Institute.)

I don't really know why so few residential appraisal books have been written. There are many commercial appraisal books available.

Why should you buy this book?

It is very practical with lots of good advice and short examples of issues. Every residential appraiser should buy and read it. Keep it handy on your bookshelf or on your computer (pdf version).

Google the title and the Appraisal Institute page for it will come up. The price is $50 ($40 for Appraisal Institute members) print or PDF. Both print at pdf for $70.00($55 for Appraisal Institute members).

Personally I prefer a PDF version so I can find what I need easily, especially since the book is not a textbook and covers a lot of different topics, such as private and non-MLS sales, possible errors when doing an MLS search, etc. etc. There is no index, so finding what you want be difficult.

About the author

Mark R. Ratterman, MAI, SRA, is a self employed appraiser in Indiana and has a Certified General Appraiser appraisal license. He became a licensed real estate broker in 1979 and soon started appraising, receiving his SRA designation in 1982, SRPA in 1989 and MAI in 1989. He has written 8 books about real estate and appraisal, plus taught and authored many appraisal seminars and courses.

Tips, Trends & Takeaways: What is Happening with E&O Insurance Today

By Elaine Matternas

Editor's note: Anyone can file a claim for any reason. Damages is when the person receives money. Few claims result in damages.

Errors and omissions claims? They are probably not the most burning issue on the minds of most appraisers these days. We are some ten years beyond the dark days of 2007-2009, when it seemed that appraisers became the target for all things that went wrong in the real estate market and its ultimate crash.

But, memories tend to be short, and it is human nature to ride the more moderate current wave and think that we won't encounter another crash or market disruption.

This is not a "doom and gloom" prediction. Just a suggestion that now is not the time to be lulled into a sense of complacency. When things are going well, there is a tendency to think it can't happen again.

While the number of claims, as well as the severity of those claims, against appraisers may have decreased, they haven't disappeared. Undervaluation has taken the place of overvaluation as a major cause for claims, but overvaluation still comes up frequently.

Other causes tend to be more of the traditional culprits that have dogged appraisers over the years:

- Measurements; square footage.
- Zoning or land use/permit issues.
- Connectivity to public services such as sewer.
- Unreported easements that impact the property's use.
- Property defects that impact value, or failure to address a particular condition.
- Evaluation and selection of comps.

Some of these claims are easier to resolve than others. I refer to these as the black and white claims. A question about the availability of public sewage, for example, results in a "yes" or "no" answer. There is not much gray area on this type of claim. This also applies to such issues as easements or zoning. These claims are generally not difficult to defend and likely will not result in significant legal defense costs.

The thornier claims deal with differences of opinion-on value, on interpretation of permissible usage, on interpretation of whether a defect really is a defect, and probably the most frequent-on the selection and evaluation of comps.

Let's take a look at some recent real-life claims. Some are legitimate claims, some may seem unfair, and some are a bit quirky. But the important point to remember is that all of them need a response or defense in order to avoid having a default judgment entered against the appraiser for failing to respond.

FHA appraisals can be challenging

The additional requirements of an FHA appraisal can often be a source for claims against an appraiser. In one particular case, the buyer of a property, financed via an FHA loan, sued the real estate appraiser and two real estate agents, alleging that the property had defects (foundation, mechanical systems, etc.) that had not been corrected.

The appraiser had completed the appraisal while repairs were in progress, but returned to verify completion. Once a lawsuit is filed, of course it has to be defended, and in this case the plaintiff's attorney does not seem to be in any hurry and his delaying tactics have built up some $40,000 in defense and legal costs.

Appraisers are oftentimes reluctant to settle a case when they believe they have produced a credible appraisal. However, as a practical matter, it may be a better business decision to settle the matter instead of allowing costs and possible settlement demands to mount.

In another case involving an FHA appraisal, and with similar allegations, the appraiser's defense attorney was able to successfully use the FHA guidelines themselves to successfully get the appraiser dismissed from the lawsuit.

Public Sewer Lines or Private Septic?

Claims in this area never seem to go away and oftentimes surprise appraisers in locations that would seem likely to have public sewer systems.

A recent case in a well populated municipality alleged failure to "properly investigate the subject premises for proof of a public sewer connection." Because the appraiser was one of six defendants (realtors, home inspector, etc.), a quick settlement divided among the parties provided an early resolution to this lawsuit.

When is a Claim not a Claim?

Errors and omissions insurance responds to claims for financial harm caused by an insured in carrying out their professional duties. Most E&O policies do not respond to claims that seek other than monetary relief.

In one situation, there was a demand letter (that had not reached an actual lawsuit) where a lender sought damages for a speculative loss that hadn't actually materialized. This involved Lender #1 selling off a loan to Lender #2 immediately after closing for the same amount as the original loan.

A retrospective review appraisal a year later challenges the comp selection, and comes in at a considerably lower value than the original appraisal. Lender #2 deems that the loan is underwater and seeks damages from the original appraiser for the difference, even though the buyer/mortgage holder is making payments and there has been no default, so Lender #2 has not actually incurred a financial loss.

This brings to mind the practice that some lenders followed during the period following the real estate crash when they would simply send a demand letter and an invoice to appraisers for the difference between their appraisal and a second or review appraisal.

Of course, all of these matters need to be reviewed, analyzed, and defended.

Mis-, Missed, or Just Downright Wrong Measurements

One basis for claims against appraisers year in and year out involves errors in square footage. It doesn't seem to matter what method of measurement is used. This cause for claims just keeps coming up.

I recently reviewed a claim where there was a 28% variance among three appraisals performed on the same property within an 18-month period when there were no renovations impacting square footage. An investigation is being conducted to determine the reasons for the discrepancy and how to resolve the lawsuit.

Appraising for Fellow Professionals

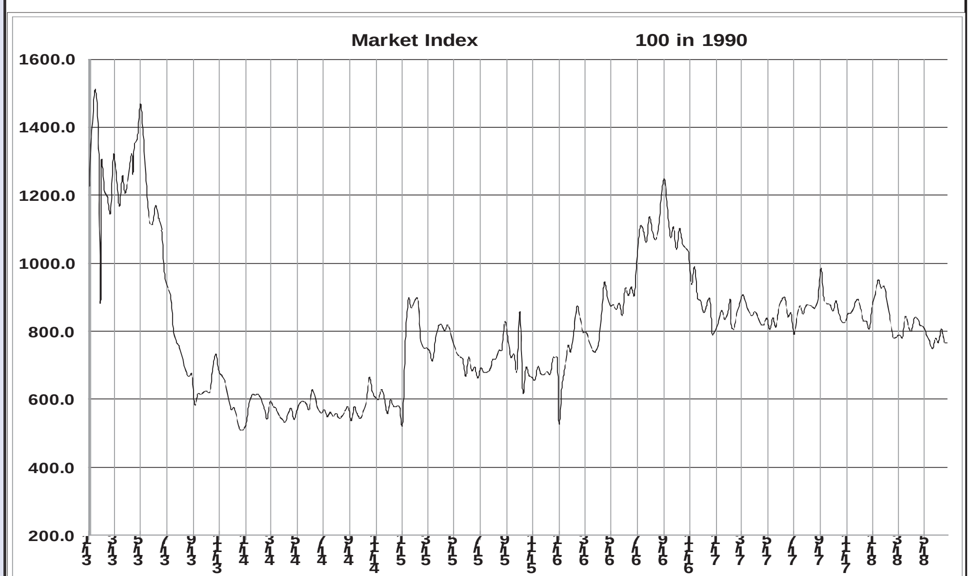
While not singling out any particular class of clients, appraising properties owned by others in the real estate field, such as real estate agents or brokers, home inspectors, or property managers, can be challenging. While these individuals have more in-depth knowledge of a real estate transaction, they also have a different perspective which can either support or inhibit the appraisal process.

One Hiccup Can Lead to Another….

When an appraisal is scrutinized because of one potential error or fault, it usually leads to more intense scrutiny in its entirety. An appraisal that is the subject of litigation may go through several reviews; it may be analyzed by an expert witness.

Thus, the importance of double-checking your work, reading any narratives to make sure they communicate clearly and cannot be misunderstood, and simply proofreading.

MBA Loan Volume Application Index – 1/13 to 6/18



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The State Boards Remain Active

While claim activity against appraisers may have moderated, the level of complaints filed with state boards continues at a brisk pace. Although mandatory reporting as the result of Dodd-Frank and other regulatory measures has not occurred as expected, there is still a regular flow of complaints being filed with state boards.

One positive sign regarding state board complaints: There are fewer suspensions and revocations of licenses these days, and fines are not as severe as they were five or ten years ago, with a bit of an uptick in dismissals without penalties as well.

Tips and Reminders

- File Documentation-Feedback from claims examiners reinforces the need for a well-documented appraisal file as the first line of defense against a claim.
- Photographs-more rather than fewer, including pictures of comps that you did not select and the reasons why you rejected them.
- Confirm in writing-changes that are requested and approved, especially if you are dealing with more than one person on the client side.
- Established procedures-even if you are a staff of one. Solid procedures help to make sure a step in the process is not overlooked.
- Guard your passwords and signature controls. Identity theft rears its ugly head in this field on a regular basis.
- Stick to your areas of expertise-whether geographic or types of appraisals, you are selling your professional expertise. Make sure it really qualifies as expert.
- As a follow-up to the previous tip, by all means develop new areas of proficiency, but do so after appropriate study, education, and guidance from a good mentor.
- Choose your words carefully. Terms like "as is" and "as improved" can have different meanings to different people.
- Don't forget common sense-Do the numbers add up? Does my reasoning make sense? Are there any red flags that cause me to take a second look or double-check that fact?
- When an appraisal is questioned or challenged-don't fire off a response without carefully reviewing and researching the file. Consult your E&O provider if necessary. Some programs offer a risk management hotline service for this purpose.
- Read your E&O policy carefully-if there are terms or conditions that you do not understand, ask your agent or broker to explain.

One final suggestion: Avoid including a copy of your E&O declaration page in with the appraisal. First of all, it is not professional. If you hire a lawyer to draft a contract for you, does he or she attach a copy of the firm's E&O to your letter of engagement? No, of course not, and it is not recommended for appraisers either. Your client-the lender or management company or whoever-should be responsible for verifying your credentials.

About the author

Elaine Matternas brings many years of diverse business experience to her current role as principal owner of Intercorp. Trained and educated initially as a journalist and communicator, she became involved in the insurance industry in 1980, first in an administrative capacity, and later as a producer, underwriter, and program manager.

At Intercorp, she has been instrumental in the development of Errors & Omissions insurance programs for Real Estate Appraisers, Appraisal Management Companies, and Home Inspectors. She oversees underwriting, coordinates claims handling, writes loss control articles, and has taught courses on loss prevention for appraisers.

She also handles marketing for all of Intercorp's programs, which center on professional liability, environmental liability, and alternative insurance funding mechanisms.

Intercorp, founded in 1991, operates as an insurance program manager and wholesale broker in all 50 states.