

APPRAISAL TODAY

2019 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, few have occurred.

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.

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 information they provided for this article.

Thanks also to Claudia Gaglione from Liability Insurance Administrators. I use "Claudia" below rather than her full name.

This update has more information on state boards, as they are the source of most of the complaints. In

the past, after the mortgage meltdown, most complaints were from lenders.

Note: much of this article is reprinted/updated from last year's E&O update. I added some additional comments and examples, particularly regarding state boards. 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?

State board complaints

Now that lender complaints are down, state board complaints are up to about 60% to 70% of the complaints, per Liability Insurance Administrators.

About 1/3 of the states require confidentiality on who filed the complaint. The other 2/3 does not require confidentiality. This is difficult for the appraiser, who does not know who filed the complaint and maybe why it was filed.

Per Claudia Gaglione, "The state

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boards make the complaint process so easy. Any disgruntled person can log onto the website and fill out a simple form. Most of the states provide the appraiser with a copy of the complaint and ask for a response. There are still states that keep this information confidential (such as CA). The appraiser is told that a complaint has been made and they are asked to provide a copy of the report and the workfile. They are not told who made the complaint, or why."

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.

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. Now that lender complaints are down, state board complaints are about 60% of the total complaints, per Liability Insurance Administrators.

State board issues - strict or lenient, reviewers, "sunset" for published complaints

Is your state appraisal board strict or lenient on USPAP?

State boards can change over time, depending on the members. Some like "Give her a break" and others say "Lock him up (in USPAP jail)." Others are somewhere between. Who does the reviews for your state appraisal board? Is it a full time paid professional appraiser experienced and trained reviewer? Or is it

appraisers who may, or may not, have any review training or experience?

Does your state board have a "sunset" for published penalties? Some have 5 years. Some have none. If it is none, be sure to do all you can to keep your discipline from being published. I strongly recommend using an attorney for assistance in negotiating.

State board complaints vs. E&O claims - very different

E&O is about monetary damages and is handled through the courts or by negotiating a settlement.

State boards cannot award damages. They cannot get the appraiser fee to the borrower. They look at USPAP issues primarily. The appraiser did not do what he or she was supposed to do. Unless you file a complaint to appeal the state board's decision to a court, which all states allow, the legal system is not involved.

State boards can go beyond the original complaint issue. For example, the complaint is not an issue, but many are closely looking at support for adjustments.

90% of state board complaints are dismissed or dismissed with a warning.

Do not lie on your certification about who inspected the property. If someone else did the inspection, do not say that you did also. Do not say you were in the car, were sick, was running late, etc.

State boards look at repeat complaints from the same appraiser. For example, an appraiser did not complete an appraisal. First a warning, next another complaint with discipline, then another complaint - big trouble for the appraiser.

Some states allow anonymous complaints and/or always notify the appraiser when there is a complaint. Others pre-screen the complaints and only notify the appraiser when they decide to move forward with the complaint.

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 to 1.5 years. 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?

Per Claudia Gaglione of LIA, "statutes that run from the date of the appraisal are the best for us to argue when defending an appraiser because it is a date certain. For example the statute in NY is 3 years from the date of the report and in OH it is 4 years from the date of the report. When the date of "discovery" is involved it can be difficult to pin that down."

Currently, OR, TN, MN, LA, 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. For example, in LA the lawsuit has to be filed either 1 year from the date of the report, or 1 year from the time a wrongful act was discovered... but in no event can it be more than 3 years from the date of the appraisal.

In Texas, the state appraiser group is working on getting a new law.

Many statute of limitations laws start the day the problem is discovered, not the date of the appraisal. That is why banks sued for over-valuations longer than 5 years old after the mortgage meltdown in 2008. 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.

Some state boards have limitations, such as 5 yers from the date of appraisal.

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, lender clients tell you how much insurance you must have in order to work for them.

Who files state board complaints and what happens?

Per Claudia "The majority of the licensing board complaints we see are made by borrowers. Behind the borrower complaints are those made by sellers."

"With the borrower and seller complaints, the biggest reason for the complaint is that the appraiser undervalued their property. Often the complaining party does not understand that the licensing board does not award any kind of "damages". Borrowers will ask the board to order a refund of the appraisal fee. Sellers will ask the board to order the appraiser to pay the difference between the original contract price and the appraised value."

"We are continuing to see discipline in about 20% of the state board complaints we are monitoring. That means at least 80% are dismissed, outright, or the appraiser is given a warning of some kind."

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.

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 - fewer claims, but much larger than residential

About 80% of E&O claims are for residential appraisals and 20% for commercial.

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.

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. My premium dropped to \$871 in 2018 as I was doing fewer appraisals. 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 Dodd-Frank's requirement for lenders/AMCs to turn in complaints on appraisers to state boards?

Very few complaints, if any, are sent to E&O companies by AMCs. About 5% of claims to state boards are from AMCs.

This is one of the major risks for appraisers in the future during the next inevitable downturn.

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

Be sure to check to see if your policy covers these additional property types. Some don't. If there is a claim, you will not be covered. This is particularly important if you do not have a general certified license.

Per USPAP, you can do these assignments. Fannie makes loans on mixed use properties.

Be sure to check your policy exclusions

Make sure your policy covers the work you do. For example, does it cover you for expert witness work?

Before renewing or changing insurers be sure to carefully check the exclusions. All policies have exclusions.

What is excluded and what you can get for an additional fee. Exclusions have been increasing. Risky exclusions include claims for financial damage and prior acts.

Some companies exclude the typical new construction, vacant land, 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.

Per Claudia, "Sometimes the policy language is hard to understand, but you need to make sure that the sort of work you do is not excluded from coverage. If you can't understand the policy language, then call the broker. If they can't explain things to you: that is a problem."

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

When filling out your annual E&O application, do you just check the boxes no or yes and don't read the questions? Big mistake.

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.

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, even if many years ago.

If you don't say anything about it in your application, your E&O may not cover you.

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

The highest number of claims involve an allegation that the square footage stated in the appraisal was wrong or that the appraiser failed to discover and/or disclose defective conditions in the property.

1. Square footage
2. If there is a buyer defect, within a couple of months. Both the agent and the appraiser are sued. Per Claudia, "Defect claims, in general, are often easy to defend due to the limited nature of the appraisal inspection. It helps when the appraisal has some strong disclaimer language that says the appraisal is NOT a home inspection, etc."

Septic vs. sewer (Failure to disclose to borrower) 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. Per Claudia "There are still a good number of sewer vs septic claims...the appraiser says the property is connected to the public sewer, but the property owner later discovers it is really serviced by a septic tank. We also see claims arising from other issues with the septic system such as...the appraiser didn't advise that the septic needed to be serviced, that it was not large enough to accommodate the size of the home, or that it was actually located on an adjacent parcel."

Per Claudia, "Claims of undervaluation are not often the subject of a lawsuit. The refinance borrower, who thinks the appraised value came in too

low, are more likely to make a state board complaint against the appraiser or to file in small claims court arguing that they want the appraisal fee returned."

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.)

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.

Some AMCs and lenders check asc.gov for published state board disciplinary actions against an appraiser.

Go to Find and Appraiser, then Discipline Actions, then search by name, state, date, etc.

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 (Buyers and sellers about equal)
- 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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When do you need an attorney for a state board complaint?

Per Claudia sometimes the appraiser can do it, such as having expert witness experience. She gauges by speaking with the appraiser if an attorney is recommended.

Very few complaints go beyond a small fine or education.

You may need help negotiating with state regarding posting on the state web site.

I would hire an attorney if a complaint was filed against me. I like to have someone speaking for me. It is too easy to say something you regret later. It is my license. I don't want to take a chance.

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?

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.

Disclose, don't diagnose

John Torvi of Landy advises stating what you observed and taking lots of photos.

Many people don't know what appraisers look at and what they are experts on.

Be sure to state clearly in your appraisal that you are not a home inspector, roof inspector, environmental expert etc.

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.

1. Remember, even if the caller is ranting, he or she is not your client and tell this to the caller. This is frustrating, but must be done.

2. Determine yourself if it is important (judgement call). If so, contact your client, the lender or AMC.

3. Wait and see what happens - a letter or small claims subpoena, for example.

Your first contact can also be a letter or a notice for small claims court.

Be sure to contact your E&O company if you think there will be a problem. Don't ever try to handle it yourself.

Recent claims from LIA files

Per Claudia, "An appraiser was sued by the borrowers for failing to disclose the property had a pool. When I read the complaint I had to read that a few times...how did the appraiser not see a pool? Didn't everyone see a pool? What do the photos show? It turns out the pool was an inground pool that had been filled in by prior owners. The new purchasers were planning to add an addition onto their home and found out they could not do what they wanted because there was an old inground pool buried in the yard. Never had that come up before..."

"In another lawsuit, the borrower sued because no one notified her that there was a basement under her home. The appraisal said the foundation was concrete slab. The borrower found the basement when she had carpeting replaced and found the

only door to the basement was underneath the living room carpet."

"Both of these lawsuits were dismissed. But, it was still very stressful for the appraiser and the insurance company had to pay attorney fees for the defense."

Unpermitted additions

If you do not verify permits, be sure to state this in your appraisal.

Whether or not appraisers get permit information is a controversial topic. When I first started my appraisal business in 1986, the chief appraiser for a major lender told me not to contact the city building department so the owner would not "get into trouble".

There are claims on unpermitted additions, 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 property owner "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 finalized.

Per Claudia, "many appraisers are worried that if they try to get permit info, the city will inspect the property and the property owner will take action against the appraiser. Much of the time the city won't disclose permit info to anyone but the owner."

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.

Non-legal apartments in 2-4 unit properties

In my city there are many non-legal units. Some are still being built today. Fortunately, the city determines what is legal and what is not for a nominal fee. Using assessors records, number of meters, parking spaces, etc. are not reliable.

College towns also tend to have more non-legal units so the owners can get more tenants in the same property.

In other nearby cities, determining the number of legal units can be very difficult and/or time consuming.

You can say in the report that you assumes the 4 units are legal, but it is not confirmed with the city.

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 makes 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 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 lose your current E&O insurance?

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.

"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.

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 about hybrid appraisals?

If you are doing a desktop appraisal, you are covered by E&O. Just be sure to put that you used an inspection done by someone else. If you are an appraiser doing inspections, check with your E&O company.

What to put in your report to reduce risk and help your E&O company defend you

Per Claudia, "Never forget that disclaimers can be very helpful if we need to defend an appraisal. Third parties make more claims than lenders. Every report should have intended user and intended use language that goes beyond the preprinted language."

"State that the only intended user of the report is the lender/client. No third party is authorized to rely upon the report for any purpose. The appraiser is not a home inspector. The appraisal should not be relied upon to disclose any conditions in

the property. The appraiser is not an expert and only does a limited inspection of visually accessible areas."

"When your report has this kind of language it is hard for a borrower to claim that they relied on the appraisal instead of paying for a home inspection."

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 an attorney, 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 policies. 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.

Advice for appraisers

Just because you got a complaint sent to your state board or are in a lawsuit does not mean you are a "bad" appraiser. 90% of state board complaints are dismissed. 60% of lawsuits have \$0 loss. The vast majority of claims are defensible.

On the other side, don't think you are a good appraiser and will never have a problem. No appraiser is perfect. Have you ever wished you could take back and revise an appraisal after it was completed and sent?

Final comments

Use the list of E&O providers below when you are close to renewal as applicable.

Hopefully, you will never have a state board complaint filed against you. But, if you do this article and the links below will help.

State Board Links

<http://www.workingre.com/fighting-appraisal-board-complaints/> 2011 Two articles: Fighting Appraisal Board Complaints by David Brauner and Understanding State Board Enforcement By Timothy C Andersen, MAI

<https://www.appraisalbuzz.com/get-notice-state-complaint/> 2017 by Ted Whitmer, MAI - very experienced appraiser and attorney who defends appraisers

<https://www.mckissock.com/blog/appraisal/appraisal-complaints-enforced/> by Dan Bradley, SRA overall procedure when a complaint is filed.

<https://theappraisercoach.com/who-can-complain-about-appraisals/> his experience a complaint 2019 By Dustin Harris Many comments.

<https://www.mckissock.com/blog/appraisal/avoid-appraisal-disciplinary-action/> By Dan Bradley, SRA. Tips on keeping out of trouble 2018

E&O Insurance Brokers 2019

Target Professional Programs

All states through Lloyds of London.
Only offers prior acts back to 1-1-10
and tail coverage back 1 year.

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 HGI 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:

Proliability (formerly Mercer)
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.pearlinsurance.com

J.A. Price Agency, Inc.

Coverage through Proliability,
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

RealCare Insurance Marketing, Inc.

Coverage through Navigators
430 West Napa Street, Suite F
Sonoma, California 95476

Phone: (800) 996-0599
www.realcareprograms.com

Victor O. Schinnerer

Coverage through CNA (Continental
Casualty Company)

Contact:

Victor O. Schinnerer
Two Wisconsin Circle
Chevy Chase, MD 20815
301-961-9800
www.schinnerer.com

Appraisers and Cybercrimes Be Careful Out There!!

**By Robert C. Wiley,
President of LIA
Administrators &
Insurance Services**

"There are only two types of companies: those that have been hacked and those that will be."-Robert Mueller ¹

Editor's comments: see the bottom of this article for the Sacramento MLS, Corelogic property data and my own email hacks. Links to numbered references are at the bottom of this article.

Cyberattacks are showing up increasingly in the news, with hackers targeting large businesses such as Target and Amazon, and municipalities like cities and police departments. But most hackers are pursuing small businesses and organizations. Data from Osterman Research found that small and medium businesses were increasingly victimized ²:

- 35% were victims of **ransomware**
- 22% had to cease business operations immediately because of **ransomware**
- 81% of businesses have experienced a **cyberattack**

• 66% have suffered a **data breach**

Note: these numbers only represent reported attacks. The actual number is higher, since many victims do not report cyberattacks to the proper authorities.

These small and medium sized businesses include real estate appraisers. The contents of most appraisal files do not hold personal sensitive information, such as Social Security numbers and bank accounts, but that doesn't preclude appraisal firms from being targets. Businesses of all sizes will remain at risk from hackers, with

small to mid-sized businesses being lucrative, easy quarry.

A recent article from The Wall Street Journal⁴ stated, "Average ransoms grew by 89% to \$12,763 in the first quarter of this year..." and that "ransomware is a pandemic in the United States."

A hacker's goal using ransomware is to hold your data hostage by shutting down access to your own files, and demanding typical ransom amounts from \$2,000 to \$50,000 in bitcoin currency. Once the ransom is paid, they release your files. Add to that the cost of recovery, and it's no wonder that within 6 months of an attack, 60% of small companies go out of business.³

Here are valuable tips from the Department of Homeland Security on protecting your data from hackers and ransomware attacks:

What can I do to protect my data and networks?

- **Back up your computer.** Perform frequent backups of your system and other important files, and verify your backups regularly. If your computer becomes infected with ransomware, you can restore your system to its previous state using your backups.
- **Store your backups separately.** Best practice is to store your backups on a separate device that cannot be accessed from a network, such as on an external hard drive. Once the backup is completed, make sure to disconnect the external hard drive, or separate device from the network or computer. (See the Software Engineering Institute's page on Ransomware ⁵)
- **Train your organization.** Organizations should ensure that they provide cybersecurity awareness training to their personnel. Ideally, organizations will have regular, mandatory cybersecurity awareness

training sessions to ensure their personnel are informed about current cybersecurity threats and threat actor techniques. To improve workforce awareness, organizations can test their personnel with phishing assessments that simulate real-world phishing emails.

What can I do to prevent ransomware infections?

- **Update and patch your computer.** Ensure your applications and operating systems (OSs) have been updated with the latest patches. Vulnerable applications and OSs are the target of most ransomware attacks. (See Understanding Patches and Software Updates ⁶)
- **Use caution with links and when entering website addresses.** Be careful when clicking directly on links in emails, even if the sender appears to be someone you know. Attempt to independently verify website addresses (e.g., contact your organization's helpdesk, search the internet for the sender organization's website or the topic mentioned in the email). Pay attention to the website addresses you click on, as well as those you enter yourself. Malicious website addresses often appear almost identical to legitimate sites, often using a slight variation in spelling or a different domain (e.g., .com instead of .net). (See Using Caution with Email Attachments ⁷)
- **Open email attachments with caution.** Be wary of opening email attachments, even from senders you think you know, particularly when attachments are compressed files or ZIP files, and be wary of unfamiliar files from sharing platforms such as Dropbox.
- **Keep your personal information safe.** Check a website's security to ensure the information you submit is encrypted before you provide it. (See

Protecting Your Privacy ⁸⁾

• **Verify email senders.** If you are unsure whether or not an email is legitimate, try to verify the email's legitimacy by contacting the sender directly. Do not click on any links in the email. If possible, use a previous (legitimate) email to ensure the contact information you have for the sender is authentic before you contact them.

• **Inform yourself.** Keep yourself informed about recent cybersecurity threats and up to date on ransomware techniques. You can find information about known phishing attacks on the Anti-Phishing Working Group website.⁹ You may also want to sign up for CISA product notifications,¹⁰ which will alert you when a new Alert, Analysis Report, Bulletin, Current Activity, or Tip has been published.

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• **Use and maintain preventative software programs.** Install antivirus software, firewalls, and email filters- and keep them updated- to reduce malicious network traffic. (See Understanding Firewalls for Home and Small Office Use¹¹⁾

Cyberattacks are a real threat to firms and professionals in the valuation industry. This concern is shared by LIA Administrators & Insurance Services and our legal and association partners.

Robert C. Wiley, LIA's president stated, "Our web consultants are appraisers who run a software business assisting valuation professionals. They report that on a weekly basis they receive calls from businesses that think they might be under a cyberattack, and are asked how they should handle it."

"The truth is, many individuals and businesses that have been hacked don't report it or tell anyone. I am surprised at the number of businessmen and women whom I consider as tech sophisticated who have nonetheless suffered from a ransom attack. This includes consultants, a well-known appraiser software company, real estate agency, large appraisal firms, etc."

"We even had one of our appraiser

insureds call us who said that they were hacked and that we shouldn't open any Dropbox attachments sent from his email address. It just goes to show that it's very important to take precautions and educate yourself and your business when it comes to cybercrimes."

"LIA is now including an indication for cyber coverage to all our E&O appraiser clients. This policy aims to protect you and your business from the costs of ransomware, phishing, or social engineering attacks and data breaches."

"We offer very competitive premiums combined with broad benefits including:

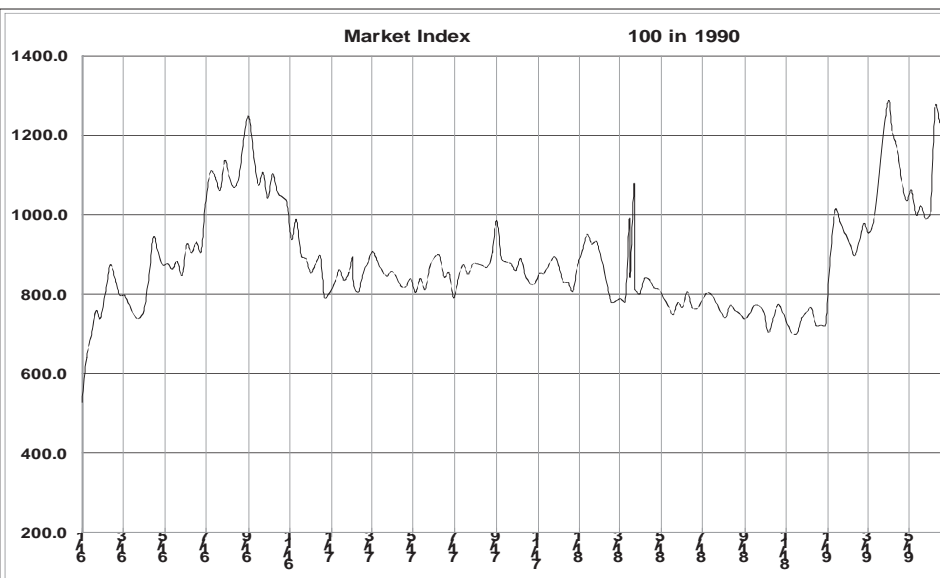
- Data Privacy Liability
- Network Security Liability
- e-Media Liability
- Notification Expense/Credit Monitoring Expense
- Crisis Management Expense
- Data Privacy Regulatory Expense
- Cyber Investigation Expense"

Editor's comments:

A few months ago, my gmail account for my primary email address, ann@appraisaltoday.com was hacked.

I could not send or receive from that account. I use gmail to store

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messages, but do not use the gmail interface as I prefer my desktop software, Thunderbird.

My tech service fixed it within 24 hours and warned me that the email address I use for a lot of web sites had been used. I changed the address. They strongly recommended using unique passwords saved through Last Pass on another method. Fortunately the hackers were not very sophisticated.

Over 80% of my paid newsletter subscribers use credit cards for recurring payments. Every week we get calls and emails from subscribers who have new credit cards as their info was stolen by hackers in big data breaches.

Recently the Sacramento CA MLS was hacked by ransomware. Appraisers and real estate agents could not get any info. Here is the message from the MLS: "The MetroList computer network that supports Prospector MLS is down as a result of a cyber-attack..."

"The cyber-attack we are experiencing is very similar to those that have impacted thousands of other businesses and governments across the country. All MetroList data is backed up and our team is working through the various issues to get the systems up and running. "

Per Inman News: " (Sacramento) MetroList allegedly paid \$10K ransom after being compromised by hackers, leaving more than 20K subscribers without a functioning system for nearly 2 days."

In early 2019, Corelogic's "Risk Meter" property database was hacked. LandMark White (or LMW), one of the largest in Australia with 350+ appraisers, announced in March 2019 that it had been victimized by an extensive cyber theft of data relating to valuation services performed over as much as an eight-year span from 2011 to 2019. Link is reference¹² in footnotes below.

References

1. Mueller, Robert. RSA Cyber Security Conference, 01 March 2012, <https://archives.fbi.gov/archives/news/speeches/combatting-threats-in-the-cyber-world-outsmarting-terrorists-hackers-and-spies>
2. Report: The State of Ransomware among SMBs. <https://blog.malwarebytes.com/101/2017/07/the-state-of-ransomware-among-smb/>
3. <https://www.denverpost.com/2016/10/23/small-companies-cyber-attack-out-of-business/>
4. Clavert, Scott. The Wall Street Journal, "U.S Cities Face Growing Cyberattack Risk." June 8, 2019
5. Volynkin, Alexander. Ransomware: Best Practices for Prevention and Response, Carnegie Mellon University, 31 May 2017, insights.sei.cmu.edu/sei_blog/2017/05/ransomware-best-practices-for-prevention-and-response.html
6. Understanding Patches and Software Updates, CISA, 28 September, 2018, <https://www.us-cert.gov/ncas/tips/ST04-006>
7. Using Caution with Email Attachments, CISA, 31 May, 2017, <https://www.us-cert.gov/ncas/tips/ST04-010>
8. Protecting your Privacy, CISA, 24 January 2017, <https://www.us-cert.gov/ncas/tips/ST04-013>
9. www.antiphishing.org
10. Mailing Lists and Feeds, CISA, <https://www.us-cert.gov/ncas/tips/ST04-004>
11. Understanding Firewalls for Home and Small Office Use, CISA, 10 September 2018, <https://www.us-cert.gov/ncas/tips/ST04-004>
12. Recent Cyber Attacks on CoreLogic and a Large Appraisal Firm Expose a Real Business Risk to Valuation Firms and Companies March 1, 2019 <https://www.appraisalbuzz.com/recent-cyber-attacks-on-corelogic-and-a-large-appraisal-firm-expose-a-real-business-risk-to-valuation-firms-and-companies/>