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Loose Lips Cause Claims (Loose Lips Lead to Lawsuits)

**By Claudia Gaglione, Esq., National Claims Counsel LIA Administrators &
Insurance Services: Provider of Professional Liability for Real Estate
Professionals**

We've seen multiple claims, lawsuits, and licensing board complaints arise simply because an appraiser-or someone close to the appraiser-said too much. Sometimes, confidential information was explicitly disclosed. Other times, the appraiser believed they were just making polite conversation, only to be blindsided later.

Let's take a look at several real-world scenarios that illustrate just how easily this can happen.

The Importance of Confidentiality

Every appraiser knows that USPAP's Ethics Rule requires confidentiality-not just in the written report but in **all aspects** of the assignment. Unfortunately, appraisers sometimes let their guard down during friendly or informal discussions.

According to **USPAP (2024 Edition)**:

Confidential information is defined as information that is either:

- identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or
- classified as confidential or private by applicable law or regulation.

USPAP's Confidentiality Rule further states:

An appraiser must protect the confidential nature of the appraiser-client relationship.

An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results.

An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

An appraiser must not disclose: (1) confidential information; or (2) assignment results to anyone other than:

- the client;
- parties specifically authorized by the client;
- state appraiser regulatory agencies;
- third parties as may be authorized by due process of law; or
- a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation.

An appraiser must take reasonable steps to safeguard access to confidential information and assignment results by unauthorized individuals, whether such information or results are in physical or electronic form;

An appraiser must ensure that employees, co-workers, sub-contractors, or others who may have access to confidential information or assignments results, are aware of the prohibitions on disclosure of such information or results.

A member of a duly authorized professional peer review committee must not disclose confidential information presented to the committee.

Case Study 1: A Costly Conversation About a Sound System

An appraiser must be careful when discussing the details of an assignment with third parties

A Nevada appraiser was retained by an AMC to prepare a "subject to completion" appraisal for a lavish custom home near Henderson. The borrower, who was also the builder, provided extensive plans and a \$22 million construction budget. The project included over 10,000 square feet of living space, an indoor theatre, multiple guesthouses, a six-car garage, a pool with speakers, cabanas, sport courts, and a high-end audio system.

After reviewing the plans, the appraiser had questions about the cost breakdown, particularly since the borrower and builder were the same person. He raised these concerns in a meeting with the AMC and a loan officer. The borrower, a long-time local builder, was candid-he knew many custom features wouldn't be fully supported by market value and was prepared to pay the difference in cash.

The appraiser, impressed by the property, casually discussed the elaborate sound system with a friend in the audio installation business. The friend, intrigued by the project, created his own design and-without the appraiser's knowledge-contacted the borrower directly to pitch his services.

The borrower liked the proposal and signed a contract with the friend, bypassing the original audio vendor. That vendor, upon learning he'd lost a potential \$800,000 contract, filed a lawsuit against the appraiser and his friend for interference with contractual relations and conspiracy.

The appraiser didn't instruct the friend to act on the information and received no financial benefit. The borrower testified that no contract had been signed with the original vendor and that he had solicited multiple bids.

Though the appraiser was ultimately found not liable, he **endured a long, expensive, and emotionally taxing lawsuit**-all sparked by one offhand comment.

Case Study 2: A Slip at Home Leads to a Lawsuit

An appraiser has to make sure that employees, and family members, understand what must be kept confidential.

A Florida appraiser was engaged to appraise a small commercial building tied to a purchase money loan. The buyer was a well-known local veterinarian. The appraiser recognized the name-he took his own dogs to the same clinic, and his wife's sister had worked there for years.

After completing the report, the appraiser casually mentioned to his wife that their favorite vet might be buying a building. They speculated that he might be planning to leave the clinic and start his own practice.

Unfortunately, the appraiser's wife shared this speculation with her sister, who repeated it to former co-workers at the clinic. Word spread quickly.

The veterinarian later sued the appraiser, alleging over \$200,000 in damages. He claimed that:

- The appraiser had a duty of confidentiality that extended to him as the borrower.
- The appraiser's disclosure harmed his professional reputation and caused emotional distress.
- Gossip at the clinic led to premature exposure of his plans, undermining his ability to leave on his own terms.

The defense uncovered that the building purchase had closed by the time the gossip occurred-and that the transaction was now public record. The case was eventually dismissed, but not before **significant legal expenses** were incurred.

Case Study 3: Small Talk Sparks a Bias Complaint

An appraiser should resist the urge to engage in any sort of gossip, or to offer any personal opinions.

In Arkansas, an appraiser was assigned to appraise a new home in a subdivision for a purchase loan. During the inspection, the listing agent was present and eager to point out every upgrade. The two engaged in what the appraiser considered "friendly" conversation.

The agent brought up the builder's personal life, joking, "At least I'm not married to him." She went on to mention his three ex-wives, divorce rumors, child support issues, and suspected girlfriends. The appraiser mostly listened, not contributing much, and did not try to steer the conversation back to business.

Later, when the appraised value came in below the contract price, the builder filed a complaint with the state licensing board, claiming the appraiser was biased against him. The agent reportedly told the builder that the appraiser had "issues" with his personal life and had expressed judgmental views.

The builder also hired legal counsel, who sent a cease-and-desist letter accusing the appraiser of defamation and threatening to sue if any future comments were made.

The appraiser responded that she had not initiated or encouraged the gossip and had appraised multiple properties for the builder in the past with no issue-many at or above contract price. She believed the complaint was retaliatory.

The licensing board's investigation remains open. In hindsight, the appraiser acknowledged she should have shut down the gossip immediately. Going forward, she said, if anyone is present during an inspection, she plans to say little beyond "Hello."

Final Thoughts: Lessons Learned

These examples show how even **well-meaning or passive conversation can lead to major headaches**-from licensing board investigations to full-blown lawsuits.

Key takeaways:

- **Confidentiality applies at all times**, not just in the written report.
- Be mindful of who's around-family, **friends, co-workers, and vendors** must also respect confidentiality.
- Avoid gossip, speculation, and personal opinions, even if others initiate the conversation.
- When in doubt, say less. A simple "I'm not at liberty to discuss that" goes a long way.

There's no guaranteed way to avoid being falsely accused-but minimizing casual conversation, especially around third parties, greatly reduces your risk.

Loose lips-no matter how innocent-can cause claims.

Learn from these cases and protect yourself accordingly.

About the author

Claudia Gaglione, Esq., National Counsel for Liability Insurance Administrators

Claudia Gaglione is a partner at Gaglione, Dolan & Kaplan, and the National Claims Counsel for LIA's Errors & Omissions program.

She graduated from the University of Southern California Law Center in 1982 and specializes in the defense of professional malpractice claims.

Since 1987, Claudia and her colleagues have supervised over 8,500 claims and lawsuits filed against real estate appraisers, and other real estate professionals, across the country.

By virtue of this experience, Claudia can discuss the types of errors that are avoidable and how real estate professionals can take steps to make themselves more defensible in the event they are the subject of a claim, and making her the authority on appraiser litigation and defense.



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2025 E&O Insurance Update - Claims, Payment Options, Lawsuits, etc.

By Claudia Gaglione, Esq. & Magda Pretorius, Risk and Claims Analyst with LIA Administrators & Insurance Services (LIA)

Editor's Notes: This article includes the latest claims updates from LIA, plus some additional examples and comments written by Magda Pretorius, LIA's Risk and Claims Analyst and Claudia Gaglione, Esq.

The next article in this newsletter, "Where to get Insurance etc," is longer and has general information such as What is a claim, What to look for in a policy, List of available E&O companies, etc.

Discrimination claims

To date, there is no judgment of discrimination entered against an appraiser in civil court. Several appraisers were dismissed from discrimination cases and other discrimination cases were settled out of court for undisclosed amounts. LIA does not publicize the outcome of specific insured's discrimination matters to respect customers' privacy and business concerns.

Allegations of discrimination are very difficult to prove. Instead, attorneys focus on negligence; it is easier to prove that there are errors in the appraisal report.

There has been no HUD determination of discrimination based on their investigations on any of the matters reported to LIA.

Several complaints were made to appraiser licensing authorities, alleging discrimination by the appraiser. There has been no finding of, or discipline imposed because of, discrimination by an appraiser.

Even where there is no finding of discrimination, there might still be USPAP errors for which the appraiser might face discipline.

Advice on how to avoid problems

Editor's Comments: All appraisers make mistakes, even if just typos. An appraisal review, by an appraiser, could find appraisal mistakes.

Appraisers have been sued for discrimination, but the primary legal issues are about how the appraisal was done.

Borrower claims low value due to bias or discrimination. The appraiser needs to have well documented work file to support comp choice, adjustments and value.

Investigators will request other appraisals of properties in the same area looking for patterns. Work needs to be consistent.

During property visit, avoid conversation of a personal nature with borrower/homeowner that could be misconstrued.

Carefully choose language to be used in report/neighborhood description, etc.

Consider Fair Housing training. Explore education offerings put on by local appraisal organizations. Be proactive.

LIA has had very few HUD matters finalize. One matter was closed because the complainant withdrew the allegations and another was closed because the complainant failed to cooperate with the HUD investigation.

What if you can't afford your E&O policy now? Check with your E&O insurance broker for options

See what you can work out financially, such as monthly payments.

Retirees are eligible for "tail coverage" which covers claims from appraisals done before they retired.

Appraisers who are not doing appraisals now and drop their insurance for financial reasons may be able to get a more limited "tail coverage" for a period of time, for example 1, 2, 3 or 5 years.

You may be able to start your insurance again and not lose prior acts coverage.

Lawsuits, Claims, etc.

Less than 10% of overall "claims" activity comes from lawsuits.

Sometimes sellers sue when the buyer's appraisal comes in below the contract price (this is a somewhat new phenomenon in this age of frantic bidding caused by low inventory that often results in contract prices that exceed list prices).

Most lawsuits are still filed by borrowers. They sue most often claiming the appraiser (and other parties such as the sellers, agents, home inspectors, etc.) failed to disclose certain defective conditions present at the property. Borrowers also sue over square footage errors.

LIA has seen several claims involving alleged misrepresentations about utilities running to the subject property. For example, the appraiser reports the property is serviced by public water and sewer because that is what is stated in public records and MLS. It is later discovered that the home is serviced by a private water well or a septic system.

In another matter, the septic was located close to the home and, unbeknownst to the owners, it was beneath a newly constructed screened in sunroom. This was not discovered until the septic backed up and could not be accessed for service.

In all of these situations, the borrowers claim the appraisers are partly responsible for their "loss".

These claims can be defended because the appraiser does not owe a duty to the borrower and because the appraiser is not an inspector and is entitled to rely upon public records/third parties, etc.

Licensing Board Complaints

State License Board Complaint activity remains high. In some states the investigations get resolved quickly... in less than 6 months. In other states it can take between 2 and 3 years.

Only about 10% of these complaints result in discipline. The rest are either dismissed or there is some kind of "conditional dismissal" meaning the State tells the appraiser if they agree to take certain classes the complaint will be dismissed.

Most of the complaints have to do with value. Sellers and listing agents complain when the appraisal does not support an inflated contract price. Refinance borrowers complain when the appraisal does not come in with what they think their house is worth.

Sometimes complaints have nothing to do with value and they can be "personal". The property owner might complain that the appraiser was "rude" because he or she showed up late for the appointment or because they did not answer questions during the inspection.

One complaint criticized the appraiser's "dirty" clothing and even attached a photo of the appraiser captured by their Ring doorbell camera. The appraiser responded that she never knows if she will be crawling around an attic or a crawlspace when going on inspections so she dresses accordingly.

Appraisers are angry that the State would even open a file when the complaint has nothing to do with value or with USPAP. In some states, the rules say every complaint has to be investigated, no matter the reason, and every report has to be reviewed for USPAP compliance, even if that is not the basis of the original complaint.

Editor comments: Fortunately, in California, where I live, the state regulator reviews all complaints and decides most are not valid.

Residential vs. commercial claims

Percentage of claims arising from residential work is up to 90%...only 10% of all activity arises from commercial reports. But, commercial claims have more financial exposure because the properties are higher value. The highest settlements, to date, are all in claims involving commercial property appraisals.

Even simple errors (like a mistake measuring square footage) can result in a large loss if it involves a commercial property. A 10% error in a residential report (typical 2000 square foot home) could mean +/- 200 square feet, which, in some cases, might not even impact value.

A 10% error in a commercial warehouse property appraisal could have a significant impact on value.

Fannie Mae repurchase demands

These demands typically are on unusual properties, Fannie may allege that the opinion of value is not supported by the comparables, and/or allege that the appraiser did not consider the correct comparable, and/or allege inadequate adjustment support.

Lenders or mortgage brokers often resell these loans on the secondary market, but a few filed claims against the appraiser alleging damages; majority of these claims are defensible as the loan is still performing.

Foreclosures

Despite the high interest rates, especially for variable rate loans, there has not been an influx of claims as a result of damages due to foreclosures.

How many lenders file claims?

The vast majority of claims are filed by third parties. Less than 10% of claims are from lenders. Relatively few recent claims.

When do appraisers get sued?

It depends. Typically, within a year of the appraisal date because most often it is the borrower that is suing over some kind of defect or square footage error.

Statutes of limitation sometimes run from the date of the appraisal and sometimes from the date of "discovery". We assert a statute of limitations defense whenever possible.

How many lawsuits go to trial?

Very few lawsuits go all the way to trial. It takes years to get there and it costs a lot in attorney's fees. The cases that do go to trial typically result in a defense verdict for the appraiser, but the winner still has to pay all of their own attorney's fees.

Most lawsuits get dismissed prior to trial after a motion gets filed. The judge decides that there is not enough evidence.

Cases do get settled. It is not just that the insurance company wants to settle cases. Many times, the appraiser does not want to wait for 2 or 3 years for a case to be finished. Most settlements are for amounts less than \$50,000, which is far less than the attorney's fees that would be spent to go to court.

Attorney's fees are higher in cases involving commercial property appraisals. Expert fees are higher to review commercial reports.

Additional Advice from the Legal Experts

Subpoena advice

Appraisers are often served with subpoenas asking them to produce documents or to testify at a deposition or a trial. If you have experience as an expert, maybe you are comfortable handling this alone. If not, contact your E&O because you probably have coverage under your policy and can get an attorney appointed to help with this.

Sometimes the request for production of documents can be overly broad and objectionable.

In the past, we had several appraisers in West Virginia contact us due to concerns about the amount of time it would take to comply with a subpoena request for production of documents.

This subpoena request was sent to many appraisers and requested specific documents from all VA appraisal workfiles for purchase and refinance transactions completed the last 5 years.

The insurance company hired a local law firm to intervene on behalf of our insureds and the result was that the subpoenaing law firm confirmed that there was no need for these documents. This law firm is well known for their class action suits and they believed they had zoned in on a potential misstep by the VA; once they realized that they were mistaken they no longer had any desire to receive further documents.

Unfortunately, a couple of appraisers had already spent many hours going through years of work files and copying the documents requested from VA loan transactions.

Another subpoena asked for copies of all residential appraisals prepared within the past 10 years that were located within a 5 mile radius of a particular address. The appraiser would have had to map out the 5 mile radius and figure out what streets were located within this area and then search his records for any properties he had appraised that were located on those streets. That was far too much work.

The insurance company hired local counsel to help narrow the scope of the request to get it down to something more manageable and to negotiate some hourly pay for the appraiser during the time it took him to go through his records.

Things to remember about your E&O Insurance

- Make sure your insurance covers the work that you do. There is no point in paying for insurance that excludes the kind of work you do like reviews, arbitrations, right of way, or progress inspections. Read the policy and the exclusions and speak to your broker.
- Never make a misrepresentation on your application for coverage. The question asks if you have EVER had a claim made against you...answer truthfully! If you omit prior claims, the insurance company could rescind your coverage.
- Don't let your insurance coverage lapse. You have to renew every year before your policy runs out. If there is a lapse in coverage you could lose your PRIOR ACTS, which means you lose your coverage history and you won't be covered for the appraisals you have done in the past.
- If you are retiring, speak to the broker about TAIL COVERAGE. Just because you are no longer preparing new appraisal reports doesn't mean you can't be sued. You still have assets that need to be protected, so you should keep some E&O insurance in place.

Who makes the most claims against an appraiser's E&O policy?

Remember that most claims come from third parties/borrowers. Make sure reports have good disclaimer language.

Always have clear and specific INTENDED USE/INTENDED USER language.

The only intended user of this appraisal is the client _____. There is no other intended user. No purchaser, seller, or borrower are intended users of this report. No party, other than the intended user, should rely upon this appraisal for any purpose, whatsoever. The fact that some party, other than the client, paid for the appraisal, either directly, or indirectly, does not make them an intended user.

Stating that the intended use of this appraisal is for market value is too vague. It is essential to ask your client what they are going to do with your opinion of value, are they going to use it for their divorce, or use it to list the property for

sale, or use it to place the property in a trust, etc. Once you have a clear explanation formulate your intended use, for example: The intended use of this appraisal report is to establish a market value for estate planning and transfer of the subject property into a trust. No other intended use is authorized and reliance on the report by any individual or entity for any other intended use is done at their own risk.

Always state somewhere in the report that the appraisal is NOT a home inspection, etc.

"This appraisal report is not a home inspection. It does not guarantee or imply that the house is free of defects. The appraiser is not a home inspector. It is suggested that the borrower secure a professional inspection of the property and take the necessary steps to insure the house is acceptable to them prior to closing escrow."

Note: "The term "Inspected" within this appraisal report shall be deemed to mean "VIEWED". The appraiser is not a professional home inspector or environmental inspector. The appraiser can only view reasonably accessible areas of the property in order to observe the overall condition. The appraiser is not qualified to warrant the mechanical, electrical, structure/roof, foundation, or any condition of any part or whole of the subject property."

Another example:

"The appraiser has been retained to arrive at an opinion of value for the subject property and is not a Home Inspector. The 'inspection' performed by the appraiser is more of an observation and is not intended to reveal defects in the mechanical systems, plumbing, electrical systems, structural integrity, roofing, or other components of the home and the appraiser does not claim to be an expert in those areas. There could be defects hidden behind floors or wall coverings or inside cabinets or closets or behind furniture or under rugs. It is not the responsibility of the appraiser to perform the kind of inspection designed to find those kinds of problems nor would he have the expertise to detect or diagnose many of those issues even if something was discovered."

"The appraiser does not guarantee that the home is free of environmental problems. The appraiser can only observe areas that are visually accessible. Mold could be present in areas of the home the appraiser could not see."

"The appraiser is not inspecting the property to determine the current presence of wood destroying or other insects nor is he looking for evidence of any past infestation."

"The appraiser is not an expert in the identification of adverse environmental factors such as radon gas, lead based paint, mold, fungi, asbestos, formaldehyde, ground water contamination, underground storage tanks, etc. If the client has any concerns about or questions about such conditions an expert in this field should be called to do an inspection."

Adding some language specifically geared to the FHA/VA inspection could also be helpful, such as:

"The appraisal only establishes the value of the property to assist FHA/VA in assessing the risk of the property securing the FHA/VA-Insured mortgage and is not a home engineering or environmental inspection. The appraiser has made a visual observation of the improvements & site. However, the subject property has not been inspected in the true sense."

"The appraiser's inspection of the property is an observation which is for valuation purposes only. This appraisal is not an engineering or environmental inspection report and the appraiser is not acting as an inspector when preparing the report. An expert in this field should be consulted if an analysis of these issues is desired."

"As part of the visual inspection of the property, the appraiser has not inspected inaccessible areas. The appraiser is not required to disturb or move anything that obstructs access or visibility. The borrower, the client and any other interested party not only has the right to have the property inspected by professional home or other inspectors, but is encouraged to do so."

"The appraiser is required to photograph the crawlspace and attic if they are present. The appraiser is not required to fully inspect those spaces. The appraiser does not guarantee or warranty that those spaces have been inspected or that they are free of defects. The borrower, the client and any other interested party not only has the right to have the property inspected by professional home or other inspectors, but is encouraged to do so."

About the authors

Magda Pretorius is LIA's Risk and Claims Analyst and spends her time helping clients with coverage questions and liability concerns.

She is the first point of contact when they report a claim, a possible claim, or disciplinary matter.

Magda works closely with Claudia Gaglione, Esq., LIA's National Counsel, to ensure that issues are taken care of promptly.

For Claudia's bio, see the first article in this newsletter.

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2025 E&O Insurance - Where to Get E&O Insurance, What to Look for in a Policy, etc.

Editor's notes: my primary source for information is Liability Insurance Administrators (LIA). I have been using them for my own E&O insurance and as an information and advice source for over 35 years.

Thanks to Claudia Gaglione Esq., attorney, and Magda Pretorius, Risk and Claims Analyst. Both have been working for LIA for a long time.

My advertising clients and all article submissions are completely separate from any influence. I wish I had more E&O companies that could regularly write appraisal liability articles.

Since my last annual article in July, 2024, there have been few changes. For recent updates, such as discrimination and who is filing claims, see the previous update article in this newsletter.

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 lower loyalty premiums, free tail coverage, plus familiarity with the services they provide.

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.

Shopping only for price is not a good idea. 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 are more homogeneous, making it easier to compare them.

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 if you can't afford your E&O policy? Check with your E&O insurance broker

See what you can work out financially, such as monthly payments.

Retirees are eligible for "tail coverage" which covers claims. Appraisers who are not doing appraisals now and drop their insurance for financial reasons may be able to get a more limited "tail coverage" for a period of time, for example 1, 2 or 5

years. You may be able to start your insurance again and not lose prior acts coverage.

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

Business has been slow for a while. Some appraisers have dropped their E&O coverage. When they purchase E&O insurance again, they will have no prior acts. It will be useless for any claims that were from appraisals done before their new policy was effective.

When rates go down, there will be a boom in appraisal business. You will need your E&O policy in order to work for lenders.

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, very unlikely for appraisals.

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.

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. I have been very, very careful over the years to never let my E&O policy lapse.

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 appraisers who are thinking about quitting appraising or retiring - Get a tail coverage policy!

If you qualify, you can get lifetime tail coverage for free from the E&O companies that offer this benefit. Requirements vary widely - number of years with company, years of experience, etc. Check with your E&O company.

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

Unfortunately, few of the appraisers who are leaving the business get "tail coverage". They just let their insurance lapse. This means that they are

self-insuring for all possible claims for appraisals done before they discontinued paying for insurance.

What if you get tail coverage and want to start appraising again? Check with your E&O company. They may allow you to come back as an insured appraiser.

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, it may pay for the cost of defense depending on the type of coverage you select.

You decide which level of risk to take. For example, auto insurance with no deductible or a high deductible. For appraisers, inexpensive 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 am unwilling to take.

My home is now worth over \$1,000,000 and is my major asset. I don't want to risk losing it for any reason, including losing an appraisal lawsuit and have an inadequate E&O coverage limit. I have expensive earthquake insurance, my greatest risk.

What if you're not renewing now?

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

I only do this update once a year, but the phone numbers and Web site links at the end of this article are accurate now.

This newsletter issue 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 about lender-related questions?

Magda Pretorius of LIA said that she gets frequent questions about lender appraisal problems.

What about the statute of limitations? The appraisal was 5+ years old

Statutes of limitation for negligence claims against appraisers:

- Have no relationship to USPAP's 5-year recordkeeping requirement
- In California, the time period for negligence claims is 2 years, but the time period is subject to the "discovery rule" (when the appraisal issue was discovered)
- Time periods are also extended for the FDIC and some others

Per Claudia 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."

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.

Per Peter Christensen "For mortgage lenders in California, the time does not start running until a foreclosure has occurred: "the cause of action does not accrue until the lender acquires the property by foreclosure or power of sale and thereby resorts to the security. This is an unalterable and definitive event which will fairly fix the starting point for commencing the running of the statute of limitations." *Slavin v. Trout*, 18 Cal.App.4th 1536 (Cal. Ct. App. 1993)."

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

For more info and statues of limitations in other states
www.valuationlegal.com/limitations

Damages vs. claims

Anyone can file a claim for any reason. Damages are when that person receives money. Few appraiser 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.

My experience with advice on a possible liability issue on an appraisal

I have heard in the past about E&O companies that won't renew if you ask a question, but have not heard much recently. Hopefully, only one or a few did this.

I have been insured with LIA for over 35 years. Whenever anyone asks why, I always say that I can call them on the phone with any question and they will not cancel my insurance at renewal. I have actually called a few times.

I did an appraisal for estate purposes. The executor told me he was going to use it for getting a mortgage. I had not done any mortgage appraisals for a long time and did not want to have my appraisal used. I called LIA. After a short wait I spoke with Magda Pretorius. She explained what to say to the executor. After speaking with the executor, his lender engaged another appraiser.

Don't ever put a copy of your E&O policy on your website and avoid attaching it to your appraisal if you can

Why? A borrower, client, attorney, or anyone else who reads your appraisal may see it and be encouraged to file an unnecessary complaint.

What total policy limit amount should you have?

A policy limit of \$300,000 to \$500,000 is likely adequate. You can consider doubling the aggregate limit if you have a lower limit and are concerned about the risk of multiple claims per year.

If you are in a higher priced area for homes, consider at least \$500,000.

Since mid-2020, home prices skyrocketed all over the country but have stabilized or gone down in some areas. The median price in my county is presently over \$1,400,000. I have a \$1,000,000 E&O policy limit.

If prices decline, there will be more lawsuits. No one knows when, or if, this will happen. I am preparing for the future if it happens where I appraise. I keep good work files, screen clients, decline risky assignments, etc.

AMC, credit union and lender clients often require a \$1,000,000 policy. LIA recommends that if an appraiser completes multiple \$1,000,000 appraisals per year that they purchase a \$1,000,000 policy.

It does not cost much more to get a \$1,000,000 policy and it makes your lender clients happy. It also gives you peace of mind.

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

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

I have heard this from many commercial appraisers for many years. This is false. Attorneys look at your assets first.

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.

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. and I am safe from lawsuits"

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

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

What if you sometimes do small commercial and 5+ apartment properties?

Be sure to check to see if your policy covers these additional property types if you appraise them. Some policies don't. If there is a claim, you will not be covered.

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

If you're licensed, you must know how to appraise these types of properties or per USPAP, you will obtain the knowledge from other sources when accepting the assignment.

What about reviews?

If you do reviews, be sure to check if your policy covers them. If you don't have it, contact your E&O company about adding this coverage now.

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 or reviews? Or, you sometimes appraise 5+ unit properties, mixed use, or small commercial.

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

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 also have your business attorney review your policy.

Other types of exclusions are claims based on discrimination, pollutants, mold, or waste.

Per LIA, 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.

What about getting insurance with previous claims or damages?

A prior claim 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 their policy.

Myth: "Only appraisers who work for lenders get sued."

Examples:

- Taxpayer who hired appraiser to provide value for Estate tax return
- Divorcing spouse who hired appraiser
- Party to condemnation suit who hired appraiser as expert
- Parties who jointly engaged appraiser to determine purchase price or a rental rate for a lease renewal

How many claims go to court?

Most claims are dismissed, some settle and under 5% 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.

Almost all lawsuits, whatever they are for, get settled before trial, often just before the trial starts. Appraisers who do litigation work regularly see this.

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 more difficult to defend.

How long should you keep your workfiles?

This is another common question, related to liability.

From Peter Christensen's book, "Risk Management for Real Estate Appraisers and Appraisal Firms" Chapter 7: "... A good workfile is a key part of an appraiser's defense tool kit when a claim is filed. Without that file, the appraiser and his or her defense counsel will usually be hampered in their ability to defend a claim. Our bottom line advice is simple: Keep your files for at least 9 to 10 years (unless a longer period is required under USPAP's special requirement for assignments for which the appraiser has provided testimony. Keeping your files for longer is even better."

How to purchase the book is at the end of this article. It was reviewed in the August, 2022 issue of Appraisal Today, available on the subscriber web page.

Editor's comment. Some appraisers say their best defense is "good" appraisals. But:

- 1. You can be sued for anything, at any time, by anyone.*
- 2. All appraisers make mistakes in reports, even if only a typo.*

What about deductibles?

Look for no deductible for defense and minimal deductible for damages, which applies only if you lose the case.

Policies can be difficult to understand. If you have any questions, call your E&O company.

If you have a claim will you 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.

"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 will 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.

Many E&O companies have a special program for appraisers with claims. Check with your E&O broker. The cost is high, typically \$2,500 to over \$10,000, but it is available.

How to avoid claims

- Check out your clients. You don't want 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 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.

After a short wait 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. For example, 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 having big problems a few times when I first started my appraisal business.

What should you look for in a policy?

If you're a solo residential appraiser, price shopping is easy. Often, the rates are 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.
- Premises Liability: Does your E&O policy include a sublimit for Bodily Injury & Property Damage caused by the appraiser during the inspection of the real property that is the subject of the professional services. It is not recommended that appraisers cancel their general liability insurance policy if their policy includes this benefit. A general liability policy provides much wider coverage than this benefit. I have always had a general liability policy.
- Specifically under policy exclusions, appraisers should note if their policy includes a mold and/or fungi exclusion.
- Assistance if you have a question.
- They also help with state board problems and have an attorney to help.
- No deductible on defense expense ("First dollar defense"). Coverage appropriate for your past and current business. For example, does it cover cover trainees who sign on reports that you co-signed.
- 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?

A general insurance broker, who handles your auto, home, general liability, etc. is NOT a good choice, as they are not familiar with appraisal issues. They cannot answer your appraisal questions. 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.

I don't recommend buying a policy directly from the insurance company. Use an E & O insurance broker instead. If you have a claim, you need a broker with experience in appraiser claims.

All the companies listed in this article are insurance brokers who work with one or more insurance companies (or other E&O brokers).

Typically the brokers have one, or a few, insurance companies that they use for most appraisal policies. They also have other companies they use for states where the E&O insurance company does not cover appraisers.

I used to recommend using companies that only do appraiser E&O insurance. Now, all have other types of clients, usually real estate related.

Resources

If you subscribe to my free Friday email newsletter, every week LIA has a Q and A with many topics. The articles are also available at www.liability.com . The link to subscribe to my free newsletter is on the upper right of the home page at www.appraisaltoday.com .

The best book is "Risk Management for Real Estate Appraisers and Appraisal Firms" by Peter Christensen. Price: \$60.00 AI Members: \$50.00

Peter's website is www.valuationlegal.com . I have known him for a long time and have heard him speak numerous times live and in webinars. He worked as an appraiser defense attorney for many years for Liability Insurance Administrators, then started his own business.

My Recommendation: Buy This Book!! Well written and understandable. It is on my appraisal bookshelf. To purchase, go to www.valuationlegal.com and click on Peter's Book link at the top of the page.

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2025 E&O Insurance Brokers

Liability Insurance Administrators

Coverage through Aspen American Insurance Company

Contact: 1600 Anacapa St.

Santa Barbara, CA 93102-1319

800-334-0652

www.liability.com

Client types: appraisers and AMCs, real estate agents and brokers

Intercorp Insurance Program Managers, A division of Norman-Spencer

Coverage through Hanover Insurance Company

10050 Innovation Dr. Ste. 340, Miamisburg, OH 45342

Contact:

Intercorp Insurance Program Managers

717-721-3500

www.appraisers.norman-spencer.com

Client types: appraisers, AMCs, other professionals

Landy Insurance Agency

Coverage through Great American Insurance Company. Contact:
Herbert L. Landy Insurance Agency, Inc.
100 River Ridge Dr., Suite 301, Norwood, MA 02062
800-336-5422

www.landy.com

Other Client types: real estate related

OREP (Organization of Real Estate Professionals)

Insurance through various insurers

Contact:

OREP (Organization of Real Estate Professionals)
6353 El Cajon Bl., Ste 124-605
San Diego, CA 92115
888-347-5273

www.orep.org

Other Client types: real estate related and private investigators

CRES Insurance Services

Coverage through HDI Global.

Contact:

CRES Insurance Services
P.O. Box 29502,
Las Vegas, NV 89126-9502
800-880-2747

www.cresinsurance.com

Other Client types: real estate related

J.A. Price Agency, Inc.

Coverage through various companies.
6640 Shady Oak Road, Suite 500
Eden Prairie, MN 55344
800-279-1623

www.japrice.com

Other Client types: business, personal

Alia/Riverton

Coverage through Hudson Insurance Company (Current Information not available before our deadline.)

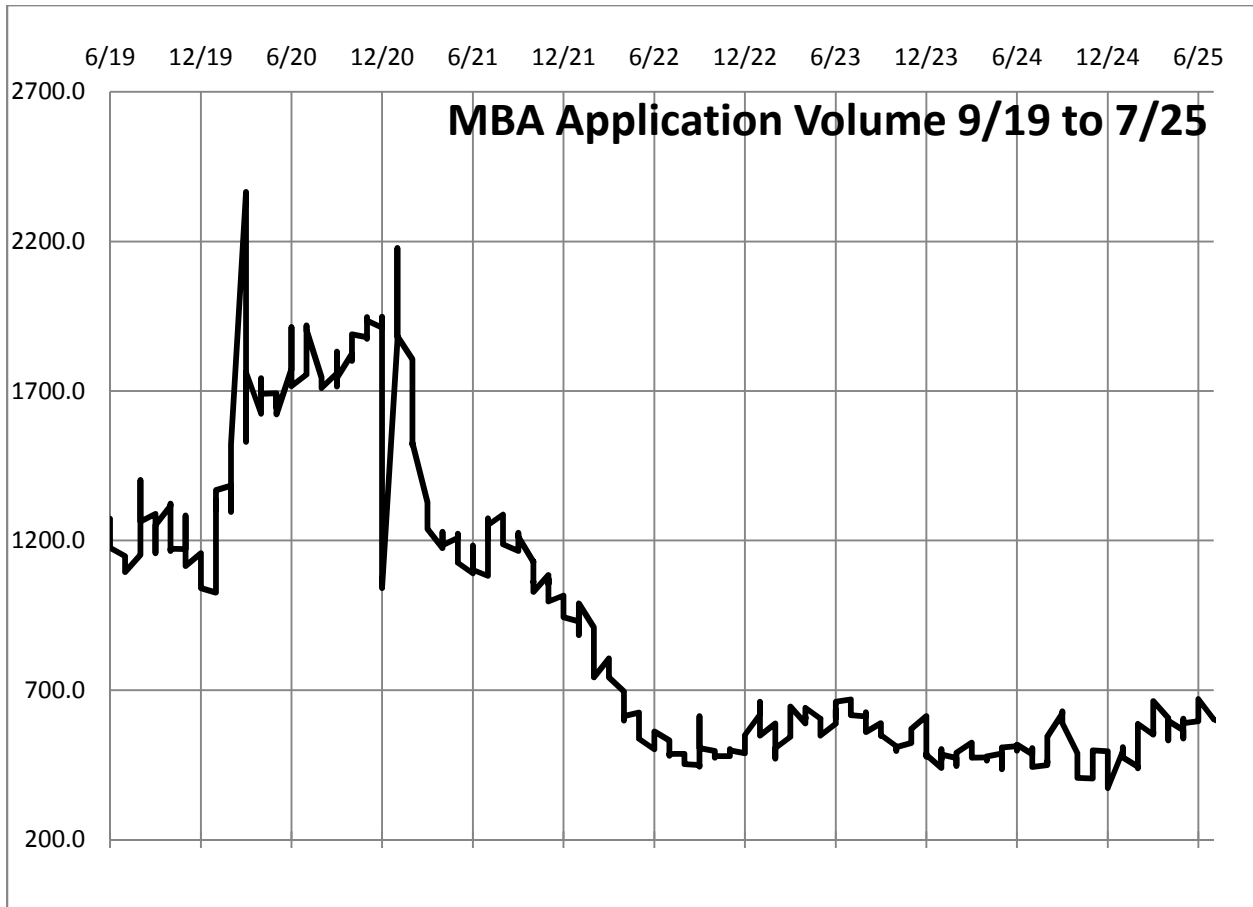
600 Main Street Suite 2

Riverton, NJ 08077

800-882-4410 Extension #1

<https://rivertoninsuranceagency.com/alia-affinity-insurance>

Other Client types: AMCs, real estate related



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