



APPRAISER LIABILITY:

The Highs and Lows of Valuation

Presented by:

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1. Who are they?

The Disgruntled

▶ Those who may complain (Plaintiffs)

1. Clients

Lenders;
Sellers;
Buyers;
Attorneys, AMC's
GSE's

2. Intended Users

See #1 above and successors

3. Unintended Users/Recipients

See #1 and #2 above and Prospects

4. Others

See #1, 2 and 3 above
Property/Tax Assessors
Regulators – Disciplinarians
Insurers, Other Appraisers
Police/Government Authorities
Anonymous

2. Why are they
bothering me?

Disgruntled - Borrower – Undervaluation

Because of you they didn't get the
loan or they couldn't sell the property

Disgruntled – Lender – GSE, FDIC

Because of you “they lost money” when they foreclosed after the loan defaulted or you “contributed to the collapse of the bank.”

3. What do they want?

Satisfaction (Depends on who is asking)

1. Money
 - A) Compensatory Damages
Lost profits, Fees (both appraisal fee and attorney transaction fee)
Costs of Repairs
Interest
 - B) Punitive Damages
 - C) Statutory Damages
 - D) Attorney Fees
2. Rescission/Specific Performance
3. Your License (Public Discipline)
4. Your Time

4. When Do They Do It and Why?

- The Deal didn't pan out
- The Loan didn't go through
- The Bank foreclosed
- The secondary market approached the primary originator for reimbursement
- The Lender closed and the FDIC has taken over and is looking for reimbursement

5. Where do they go to get It?
(the Information)

Pre Suit

- Demand Letter and Requests for information/documents (from clients, intended users and others)
- Interviews
- Subpoenas/Depositions
- Other Sources of Information (Friends, Neighbors, Business Associates and Public Records. Wiretapping?)

6. How Does it Happen?

Demands Are Made

Civil/Criminal Suit is Filed/Complaint is Made

- A) Federal court
- B) State court
- C) Administrative Department

ALL can be filed contemporaneously with the intent that you have to be defended on multiple fronts, utilizing valuable resources and perhaps yielding results in one proceeding that can be used against you in the other.

Each forum has different rules of procedure and process, and may have different burdens of proof.

Burden of Proof

Reasonable Doubt – Criminal

Clear and Convincing –
Administrative/Regulatory, Civil Fraud

Preponderance of the Evidence –
Most Civil

7. What are the Causes of Action?
(It Depends on Who's Asking)

1. Breach of Contract

You did not keep your word. This may involve non-performance or poor performance (misfeasance or malfeasance)

2. Negligence
3. Negligent Misrepresentation
4. Fraud (Civil & Criminal)
5. Consumer Fraud (Statutory Cause of Action)
6. Unjust Enrichment
7. Conspiracy
8. RICO
9. Other

All may or may not be asserted as different counts in one cause of action and all may have different Statutes of Limitation.

8. What can you do about it?
(What are my defenses?)

Formal Defenses

- Statutes of Limitations
- Statutes of Repose
- (Discovery Rule)
- Lack of Privity of Contract
- Economic Loss Doctrine

Asserted Defenses

- The appraisal was accurate.
- The appraisal was USPAP compliant.
- The appraisal was just an opinion.
- They reviewed it and approved it.
- They didn't follow their own guidelines (loan procedures, requirements, or there were other intervening factors (known as comparative negligence))
- This appraisal is not mine – I was the victim of identity theft.
- Other mitigating factors; i.e. prior disciplinary history, license level at the time of the violation, personal problems, co-operation.

9. What can I (your lawyer/professional liability insurer) do about it?
And How?

How does the process work? Should you mediate, try to settle, or try the suit?

After a complaint is filed there is a discovery process.

Each side finds out about the other and depending on the forum or jurisdiction, may have certain obligations or responsibilities for the other (\$\$\$\$)

You must:

- PRESERVE everything As Is (litigation hold)
- Answer INTERROGATORIES
- Respond to DOCUMENT PRODUCTION requests and REQUESTS TO ADMIT
- Submit/Attend DEPOSITIONS
- Hire EXPERT(S)

After Discovery:

1. Dispositive Motions (\$\$\$\$)
2. Trial (\$\$\$\$)
 - judge/jury (or jury selection)
 - evidence/burdens of proof (and use of experts)
 - instructions
 - verdict
3. Appeal (\$\$\$\$)

Remember!!!

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1. A real estate appraiser is an information provider.
2. The worth of an appraisal report and opinion lies in its subjective analytical work.
3. USPAP does not require perfection.

Once you are contacted/sued, etc., Do Something!

If you receive a complaint or inquiry, do something – pull your file and contact your liability insurer and a lawyer who represents your interests – examine the allegations and exhibits closely. Ask if it is for a federally-related transaction or for federal financial institutions' regulatory agency or if USPAP ever applied to the assignment.

Finally,

Remember the “three C’s” – Candor, Contrition and Cooperation! Particularly with those trying to help you.

Ounce of Prevention (Body Guard) v. Pound of Cure (The Cleaner/Fixer: i.e. Harvey Kietel)