

Hot Topics and Myths in Appraiser Liability

REAA
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Sacramento, CA

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Where Are We Going Today?

- Overview of appraiser professional liability claims:
 - ✓ Cover key legal elements of negligence claims against appraisers and help you understand key liability issues.
 - ✓ Cover a few hot topics and dispel a few myths.
 - ✓ Offer liability prevention suggestions.
 - ✓ Assure you that liability for appraisers in general is not out of control.

Appraiser Liability Claims

What Is a Professional Negligence Claim?

- Duty owed by the defendant *to the plaintiff* to conform his or her conduct to a standard of care.
- Breach of that duty – e.g., providing an inflated valuation or failing to produce a USPAP-compliant appraisal.
- Reliance by the plaintiff.
- Actual damages to the plaintiff.

Who Sues Appraisers?

- Borrowers/purchasers (>50%)
- Lenders (small v. big, bank v. alternative lenders)
- FDIC
- Sellers
- Other parties
 - Real estate agents and brokers
 - Other appraisers
 - Litigants (expert work)
 - Random third parties
- Very few AMCs (so far)



Let's Consider a Real Appraiser Claim Situation

- Review appraiser retained by lender prepares review that is highly critical of another appraiser's work and also opines to a significantly lower value.
- Lender drops the appraiser from panel, costing the appraiser tens of thousands of dollars in lost work. Other lenders learn of the "blacklisting" and more work is lost.
- Reviewer on his own reports the appraiser to the state for USPAP violations and submits the review. However, the state finds no errors and actually disciplines the reviewer for a poorly supported review.
- In sum, the reviewer's review was negligent.
- Can the damaged appraiser who lost tens of thousands in income because of the negligent review sue the reviewer for damages? For negligence? For defamation?

"Typical" Buyer's Remorse Case

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10 TYP, LLC, CHESLEY B. SULLENBERGER III, and
11 LORRAINE SULLENBERGER

FILED Superior Court of California
County of Butte
APR 23 2010
Kimberly Fleneg, Clerk
Deputy

8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF BUTTE

9 **BY FAX**

10 C 10-01879

11 TYP, LLC, CHESLEY B. SULLENBERGER
12 III, and LORRAINE SULLENBERGER,

13 Plaintiffs,

14 v.

15 GRUBB & ELLIS COMPANY, CHERIE
16 HULLADE, STERLING SAVINGS BANK as
17 successor in interest by merger to SONOMA
18 NATIONAL BANK, BECKI ROBERTS, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO. 150077

FIRST AMENDED COMPLAINT FOR:

1. DECLARATORY AND INJUNCTIVE RELIEF;
2. FRAUD AND DECEIT;
3. FRAUD AND NEGLIGENT MISREPRESENTATION;
4. CONSTRUCTIVE FRAUD;
5. BREACH OF FIDUCIARY DUTY;
6. BREACH OF COVENENT OF GOOD FAITH AND FAIR DEALING;
7. UNJUST ENRICHMENT;
8. NEGLIGENCE;

Allegations from “Typical” Buyer’s Remorse Case

1 22. On or around October 2009, Plaintiffs obtained a forensic appraisal of the Subject
2 Property. The appraisal verified that Defendants’ representations regarding the fair market value
3 of the Subject Property when it was purchased in 2002 had been significantly overstated. The
4 forensic appraisal indicated in pertinent part as follows:

5 It is our opinion that the market value of the Leased Fee Interest in the subject property,
6 as of October 20, 2002, should fall within a value range of \$680,000 to \$720,000. This
7 range of value has been based on a review and analysis of numerous sales and rent
8 comparables of auto-service related facilities in the Northern California marketing area
9 which had closing dates between 2000 and early 2003 (and also included an analysis of
10 the four sales and four rent comparables utilized in the original appraisal report – which
were represented by the same four properties). It appears that the original appraised value
of \$920,000 and contract sales price of \$935,000 were substantially above market value.
This may have occurred for a number of reasons from both an appraisal perspective, but
also from a lack of fiduciary responsibility on the part of the other real estate
professionals involved in the transaction.

So Who Can Sue an Appraiser for Negligence? Or, To Whom Does an Appraiser Owe a Legal Duty?

In most states, a professional may be liable to third parties for negligent misrepresentation despite the absence of “privity” . . . If the professional knew or reasonably expected that the third party would use or rely on the information being supplied.

“What Can I Do?”

Include a specific advisory in reports directed to purchasers/borrowers and sellers. Example:

The appraiser has not identified any purchaser, borrower or seller as an intended user of this appraisal and no such party should use or rely on this appraisal for any purpose. Such parties are advised to obtain an appraisal from an appraiser of their own choosing if they require an appraisal for their own use. This appraisal report should not serve as the basis for any property purchase decision or any appraisal contingency in a purchase agreement relating to the property.

Recent Commercial Appraisal Case *Willemssen* – CA Court of Appeal (2014)

report stated: “The function of this appraisal report is to provide Farmers and Merchants Bank with a Summary Appraisal Report.” It further stated: “The intended use of this appraisal is to assist Farmers and Merchants Bank in analyzing a new loan for the subject property. The intended users of this appraisal are Farmers and Merchants Bank and/or its designated representatives.” Another portion of the report said: “The report may not be used for any purpose by any person other [than] the party to whom it is addressed without the written consent of the appraiser and the appraiser specifically disclaims any liability to such unauthorized third parties.” The appraisal report was addressed to the bank.

“Wait . . . What About the Statute of Limitations? That appraisal was 8 years old.”

Statutes of limitation for claims against appraisers:

- Have no relationship to USPAP’s 5-year recordkeeping requirement
- May be subject to the “discovery rule”
- Are extended for the FDIC and some others
- Vary by the type of claim
- Vary by state

So how long is it here in CA? Does a discovery rule apply here in CA?

WELCOME TO LLANO, TEXAS



Mass Litigation Phenomenon

- Spoken about a phenomenon the last several years that has been evolving: litigation investors suing appraisers for profit.
- All goes back to brothers in Texas, Chris and Ben Ganter.
- First Heritage Pacific Financial, then Mutual First LLC, then First Mutual Group LLC and Carrington Capital.
- Now, it's mostly Llano Financing Group LLC.

What is Fueling This Phenomenon?

PURCHASE OF RIGHTS AGREEMENT

This Assignment of Rights Agreement is dated and effective as of ~~March 31st, 2014~~, as amended on November 19, 2014, by and between **Savant LG LLC** ("Assignee"), and **Impac Funding Corporation** ("Assignor") (collectively, "Parties", individually, a "Party").

RECITALS

WHEREAS, Assignor desires to assign and Assignee desires to acquire certain legal rights to sue and recover damages from real estate appraisers for real estate appraisals upon which certain mortgage loans were based; and,

WHEREAS, Assignor and Assignee desire to enter into this Agreement to establish the definitive terms and conditions governing the assignment and acquisition of such rights.



475+ cases overall

350+ filed by Llano
in last 24 months

200 in Florida

50+ in Illinois

37 in Las Vegas

600+ appraisers
sued overall by the
entities

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Alvin D. Johnson
CLERK OF THE COURT

6 DISTRICT COURT
7 CLAR COUNTY, NEVADA

8

9 LLANO FINANCING GROUP LLC)
Plaintiff,)
10 vs.)
11)
12)
13) an individual,
DOES I through X, inclusive,)
14)
15) Defendant)

Case Number: A-15-723652-C
Dept. No.: VI

Date of Hearing: N/A
Time of Hearing: N/A

Exempt from Arbitration:
Damages in Excess of \$50,000.00

16 COMPLAINT

17
18 COMES NOW, LLANO FINANCING GROUP LLC, by and through its attorney,

What's in a Complaint?

3. Plaintiff is suing in its capacity as agent for Impac Funding Corporation, (“Impac”), the master servicer for DEUTSCHE BANK NATIONAL TRUST COMPANY, (“Trust”) a national bank association, which owns the loan that is the subject of this suit. As master servicer, Impac had the authority and right to assign certain servicing functions and other duties to Savant LG, LLC (hereinafter “Savant”).

What's in a Complaint?

3 10. Defendants appraised the Property as of February, 2007, and determined the
4 value was \$600,000.00 which indicated that the Property was adequate to secure the loan (the
5 "Appraisal"). A true and correct copy of the Appraisal is attached hereto as Exhibit "1" and
6 incorporated herein by reference.
7

8 11. Based on Defendants' appraisal certifying the value of the Property covered
9 the amount of the loan, Original Lender issued a promissory note secured by a mortgage on the
10 property to Borrower(s) for \$420,000.00. A true and correct copy of the Promissory Note
11 is attached hereto as Exhibit "2" and incorporated herein by reference.
12

What's in a Complaint?

13 12. Despite the Defendants' appraisal certifying the value of the Property sufficiently
14 secured the loan issued by the Original Lender the Plaintiff discovered the inflated appraisal
15 provided by the Defendant after a subsequent sale of the property did not yield proceeds to satisfy
16 Impac's loan amount.

17 13. The sale of the Property did not produce proceeds to cover the loan amount
18 resulting in damages of \$302,885.71.
19

What's in a Complaint?

Cookie Cutter Allegation of Negligence

20. Upon review of Defendants' appraisal by a Certified Appraiser following the sale of the Property, Plaintiff determined that, among various errors and omissions, Defendants incorrectly used improper sales comparables that were locationally, functionally, and dissimilar to the Property, which resulted in a gross over valuation of the Property.

Sometimes a Cookie Cutter Review is Attached – Watch Out for Appraiser Karma

Summary Appraisal Report
FOR INTERNAL USE ONLY

URAR APPRAISAL DESK REVIEW FNMA/FHLMC SINGLE FAMILY COMPLIANCE

Client File # 1103434772

Client SAVANT CLAIMS MANAGEMENT

Property Address 899 HAMILTON DRIVE 0

City HOMESTEAD

State FL

Zip Code 33034

Appraiser

Effective Date of Appraisal 7/20/2005

Appraised Value: \$99,000.00

This URAR Appraisal Desk Review Form assists the Reviewer in determining if the appraisal is well written, the calculations correct, the reasoning sound and the value conclusion well supported.

I have reviewed the appraisal. I do not know of any changes since the appraisal's date which would significantly affect the subject property's value.

The appraisal is acceptable. The market value estimate has been properly supported, and the property description is complete and accurate. While it is not necessary the appraisal meet every specific guideline, the appraisal is supported by sound reasoning and any variations from FNMA/FHLMC standards have been explained.

The appraisal requires additional information to be acceptable. The items requiring additional information are:

X The appraisal is unacceptable. Market value estimates are not sufficiently supported and the subject property description is not accurate and/or complete. CONDID COMPARISONS WERE FROM A NON COMPARABLE COLO COMPLEX

Reviewer's Name FAYE DUNNAWAY

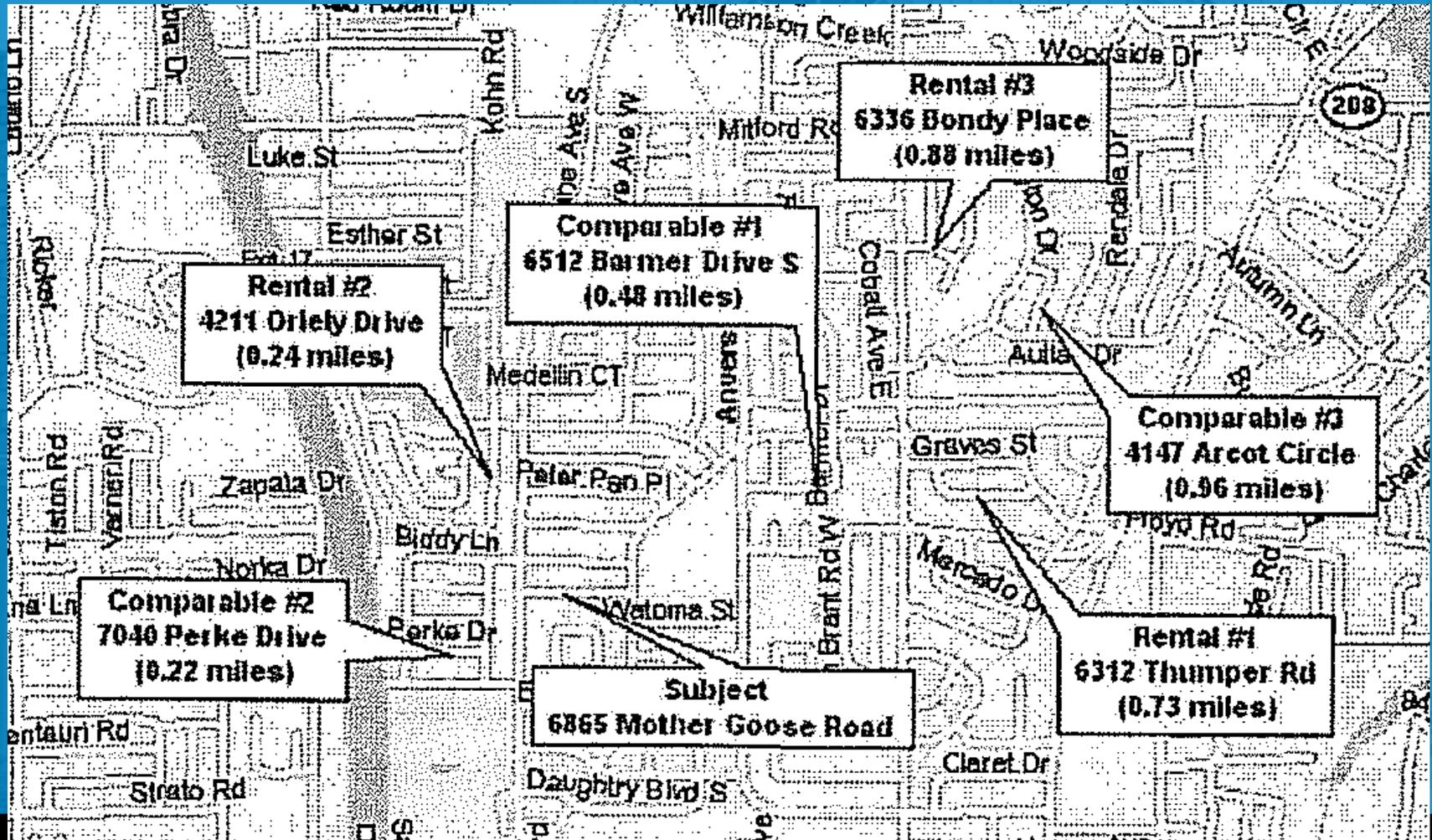
Date Reviewed 4/13/2015

Did

X Did Not

Inspect Property

Often the Allegations Are Obviously Flawed



What To Do if It Happens to You?

- Don't ignore it
- Get legal assistance
- Handle the lawsuit appropriately if you are served



Get Legal Advice – Not Internet Advice

Yesterday at 12:28pm - [REDACTED], IL - 

Anyone have experience with that **Llano** company trying to come after you for an old appraisal completed? I have a buddy who is no longer in the business getting letters from them on something he completed as an associate in late 2007.



[REDACTED] Just tell him to tell them he burned the files a few years back and have no idea what they are talking about? If they want a new appraisal, maybe he can recommend you but do you really want to hear from these guys years from now on an old report?

Like - Reply -  1 - Yesterday at 12:45pm

after. Like I said tho, he was just a trainee, so I can't see how much of anything could fall on him legally, even if within discovery.

Like - Reply - Yesterday at 1:49pm

[REDACTED] It would be on the supervisor that signed the report

Like - Reply - Yesterday at 2:40pm

Common Reasons Why Appraisers Don't Have Coverage for Claim Under Their E&O

- No current policy or no "tail" coverage.
- The "prior acts" or "retroactive" date on the appraiser's E&O policy does not cover the time when the appraisal was performed.

REAL ESTATE APPRAISERS ERRORS & OMISSIONS INSURANCE POLICY

DECLARATIONS PAGE

This is a claims made and reported policy. Please read this policy and all endorsements and attachments carefully.

Policy Number: NJA313536

Renewal of Number:

1. **NAMED INSURED:** [REDACTED]
STREET ADDRESS: [REDACTED]
[REDACTED]e
Gainesville, VA 20155

2. **POLICY PERIOD:** Inception Date: 12/18/2014 Expiration Date: 12/18/2015
Effective 12:01 a.m. Standard Time at the address of the Named Insured.

3. **LIMITS OF LIABILITY:**
Each Claim: \$1,000,000
Aggregate: \$1,000,000
Claim Expenses have a separate Limit of Liability:
Each Claim: \$1,000,000
Aggregate: \$1,000,000

4. **DEDUCTIBLE:** Each Claim: \$0 Aggregate: \$0

5. **RETROACTIVE DATE:** 12/18/2012
If a date is indicated, this policy will not provide coverage for any **Claim** arising out of any act, error, omission or personal injury which occurred before such date.



Common Reasons Why Appraisers Don't Have Coverage for Claim Under Their E&O

- The appraiser is sued for an appraisal he or she signed as a supervisor, or
- The appraiser is sued for an appraisal by an employee or subcontractor,
- And, the appraiser has an “individual only” policy:

Appraisal Services does not include the supervision of, subcontracting to, assignment to or referral of any portion of any contract, project or engagement by the **Named Insured**.

X. **Professional Services** rendered by any person or entity other than the **Named Insured**;

Y. **Professional Services** rendered by the **Named Insured** if such claim was based on or arising out of such **Named Insured's** supervision, subcontracting, assignment or referral of any portion of any contract, project or engagement.



Telltale of a Claim

- Telephone call
- Requests for information
- Subpoena for deposition testimony or documents (appraisal, work file)
- Administrative/licensing complaint
- Demand letter
- Served with a lawsuit

U.S. v. 2,091.712 Acres of Land, U.S. District Court, E.D. North Carolina 2010

- Federal condemnation case.
- Government taking a restrictive easement over land adjacent to a Marine Corps air station.
- Government subpoenaed all appraisals by landowner's appraiser of similar properties near military air bases and civilian airports.
- Court ruled USPAP confidentiality did not provide basis for appraiser refusing to disclose appraisals.

“The law does not afford an evidentiary privilege to professional appraisers. Moreover, the USPAP rules themselves explicitly contemplate the production of such documents to ‘third parties as may be authorized by due process of law.’ ”

Hot Topic: Square Footage Claims

- Number #1 claim issue after pure value claim
 - Get the measurement right
 - Double check your calculations and sketches
 - Proof for typos
 - Don't trust borrowers, sellers, MLS, public records
 - Use plain English for special situations:

Example language: Appraiser notes that public building records, tax records and information supplied by the owner differ with respect to the square footage of the building structure. Floor plan is unique and difficult to measure. Appraiser's measurement is approximate.

“Hot” Topic: Septic Tanks

- **Number #2 non-value claim issue**
- **Claim usually made by property purchaser – property on failing septic tank but appraiser reported property was served by sewer**
- **Appraiser’s error in report commonly caused by:**
 - **Using template report that always states sewer**
 - **Blindly relying on MLS**
 - **Actual error in the field**
- **When there is doubt or special issue, use plain English to disclose the situation.**



“Hot” Topic: Septic Tanks

- **Example plain English disclosure:**

Appraiser is unable to verify whether property is serviced by sewer or septic due to inconsistent information provided in public records/data sources and the property owner. Owner advises he thinks property is connected to public sewer; however, connection cannot be confirmed in available public records. Further inspection is recommended if the issue is material to the client’s decision making.



What About This?



Use Plain English Disclosures

Marijuana Issue: *“The appraiser observed approximately 60 plants believed to be marijuana growing in basement under lighting strung from bare wires suspended from ceiling. See photo.”*

Some Basic Liability Prevention Advice

- Proofread reports
- Keep strong work files
- Keep work files for longer than USPAP requires
- Be vigilant in narrowly identifying your clients, intended users and uses in your reports and cover letters
- Use plain English in your report to describe conditions and issues that concern you – don't rely on canned phrases
- Follow your gut instinct about clients or situations that pose a high risk

How to Turn a Potential Claim into an Actual Claim

Part 1 – Chase “Quality Review” Letter

Dear Appraiser:

Your appraisal was selected for a quality review analysis by Chase Appraisal Panel Management. During the course of our review our analysis uncovered the following possible USPAP violations:

1. USPAP Standards 1-2(e)(i), 2-1(a), 2-2(b)(iii): The appraisal appears to be in violation of USPAP standard rules regarding proper identification and reporting of subject’s property data and characteristics as well as reporting in a manner that will not be misleading.
 - a) In the neighborhood section on page one, no box is checked for subject location; however it is noted as rural per comments. It is noted to be built up “over 75%” yet comments state rural area with properties of 2-20 acres and satellite imagery shows a very sparsely populated area.
 - b) No zoning information is provided. Per public record, the subject is zoned LCA11 – residential with light agriculture and farm animals acceptable. However use code per public record indicates “quadruplex”. Public record living area is noted as 4,858sf with 12BR, 4 bath and 4 separate units. The report provides no discussion of this data.

How to Turn a Potential Claim into an Actual Claim

Part 2 – Appraiser's Appeal

“Dear Appraisal Panel,

I would like to appeal your previous decision to place me on your Exclusionary list.

The appraisal in question was admittedly sketchy and very lacking in detail and clarity of presentation. I was truly appalled myself preparing the rebuttal to your review and I acknowledge that it did not meet the appropriate standards of reporting that it should have.

However, this was truly not representative of my work in 2007, nor does it have any similarity at all to the work that I do currently . . .”

How to Turn a Potential Claim into an Actual Claim

Part 3 – Chase Form Letter Demanding Indemnification

Dear [REDACTED]

This correspondence serves as JPMorgan Chase Bank N.A.'s ("Chase") demand for indemnification for losses associated with your (you and /or your agent's) appraisal of the following referenced property:

[REDACTED]

Chase believes that the appraisal is inaccurate containing gross errors and/or omissions resulting in unsupported value. As a result of relying in good faith on this inaccurate appraisal, Chase has incurred and will continue to incur significant damages, costs, and attorneys' fees. Accordingly, please notify your insurance carrier of this claim and provide evidence of notification to the undersigned within 10 business days of receipt of this letter. Additionally, provide the policy and contact information of any insurance that may provide coverage for this liability.

Please contact the undersigned immediately upon receipt of this correspondence so that we may entertain resolution without the need for judicial intervention. If you fail to contact your insurance carrier and to provide Chase with the requested information within the time frame, Chase intends to pursue litigation without further notice.

Sincerely,



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

All FHA Approved Mortgagees
All Direct Endorsement Underwriters
All FHA Roster Appraisers
All FHA Approved 203(k) Consultants
All HUD Approved Housing Counselors
All HUD Approved Nonprofit Organizations
All Governmental Entity Participants

Transmittal: Handbook 4000.1

Issued: August 26, 2015

Effective Date: Varied

1. This Transmits:

Handbook 4000.1, FHA Single Family Housing Policy Handbook (Handbook 4000.1):

- *Doing Business with FHA - Other Participants - 203(k) Consultant, DE Underwriter, and Nonprofit and Governmental Entity*
- *Quality Control, Oversight and Compliance - Other Participants - 203(k) Consultant, DE Underwriter, and Nonprofit and Governmental Entity*
- *HUD REO purchasing requirements as established in Mortgagee Letter 2015-17*

FHA Assignments Do Not Overall Cause More Liability Risk – Just Different

- Lender claims overall are lower compared to non-FHA lending assignments: FHA insurance, greater scrutiny, better appraisal practices, lower loan limits – are all factors that decrease claims. The negative factors are higher LTV and lower borrower credit ability.
- Borrower claims are where we do see increased claims, as compared to “regular” assignments. Thus, let’s focus liability prevention there.

FHA Liability Prevention: Use and Build on the FHA's Guidance about Intended Use and Intended Users

b. Intended Use and Intended Users of Appraisal

The intended use of the appraisal is solely to assist FHA in assessing the risk of the Property securing the FHA-insured Mortgage ([24 CFR § 200.145\(b\)](#)).

FHA and the Mortgagee are the intended users of the appraisal report.

The FHA Appraiser does not guarantee that the Property is free from defects. The appraisal establishes the value of the Property for mortgage insurance purposes only.

And, the FHA's Advisory to Borrowers

U.S. Department of
Housing and Urban
Development
Federal Housing Administration (FHA)



OMB Approval No: 2
0538 (exp. 04/30/2018)

For Your Protection: Get a Home Inspection

Why a Buyer Needs a Home Inspection

A home inspection gives the buyer more detailed information about the overall condition of the home prior to purchase. In a home inspection, a qualified inspector takes an in-depth, unbiased look at your potential new home to:

- Evaluate the physical condition: structure, construction, and mechanical systems; Identify items that need to be repaired or replaced; and
- Estimate the remaining useful life of the major systems, equipment, structure, and finishes.

You Must Ask for a Home Inspection

A home inspection will only occur if you arrange for one. FHA does not perform a home inspection.

Decide early. You may be able to make your contract contingent on the results of the inspection.

Appraisals are Different from Home Inspections

An appraisal is different from a home inspection and does not replace a home inspection. Appraisals estimate the value of the property for lenders. An appraisal is required to ensure the property is marketable. Home inspections evaluate the condition of the home for buyers.

FHA Does Not Guarantee the Value or Condition of your Potential New Home

If you find problems with your new home after closing, FHA cannot give or lend you money for repairs, and FHA cannot buy the home back from you. Ask a qualified home inspector to inspect your potential new home and give you the information you need to make a wise decision.

#1 Point for FHA Liability Prevention: Use and Build on Guidance about Intended Use/User

In your report, be sure to use the express wording given to appraisers in the FHA handbook regarding intended use and user:

"The intended use of the appraisal is solely to assist FHA in assessing the risk of the Property securing the FHA-insured Mortgage (24 CFR § 200.145(b)). FHA and the Mortgagee are the intended users of the appraisal report. The FHA Appraiser does not guarantee that the Property is free from defects. The appraisal establishes the value of the Property for mortgage insurance purposes only."



#1 Point for FHA Liability Prevention: Use and Build on Guidance about Intended Use/User

Include additional language further restating and clarifying these issues – my suggestion:

“Notwithstanding the pre-printed language on the fill-in form used to report this appraisal: (1) Pursuant to the requirements of HUD Handbook 4000.1, the intended use of this appraisal is solely to assist FHA in assessing the risk of the Property securing the FHA-insured mortgage; (2) FHA and the identified Lender/Client (the mortgagee) are the only intended users of the appraisal, and no borrower is intended to, or should, use or rely on the appraisal; (3) the appraisal establishes the value of the subject property for FHA’s and the Lender/Client’s mortgage underwriting only, (4) the appraisal is not a home inspection and does not replace the services of a home inspector, and (5) the appraiser does not guarantee that the subject property is free of defects.”



Myth: “Only Appraisers who work for lenders get sued.” So, Who Sues Appraisers Engaged as “Experts” or Who Perform Other Non-Lending Work?

- Client(s) of the Appraiser. Examples:
 - Taxpayer who hired appraiser to provide value for 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
- Opposing Parties. Examples:
 - Divorcing spouse on the other side of the case
 - Opposing party who lost in litigation
- Other Appraisers
 - Defamation, malicious prosecution, etc.

Common Issues Underlying Claims Related to Expert Assignments

- Clients and parties already in litigation are likely under stress, angry or about to have worse problems, and they are already around lawyers – all of which makes them more likely to be potential claimants. (Follow your gut instincts about clients and matters.)
- Most common issues:
 - Failure to disclose relevant information during retention.
 - Plain errors and oversights (negligence) are exposed in the adversarial process.
 - Acting as an advocate, overreaching, losing objectivity – leading to a poor result.
 - Fee disputes leading to counterclaims about the quality of the work.

Case Example: Conservation Easement Appraiser

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. 1:13-cv-

- M 31. Continually and repeatedly, ██████████ substantially overstates the fair market value of the
JE easements by hundreds of thousands, if not millions, of dollars.
32. In his appraisals, ██████████ cites the professional standards applicable to real estate appraisers, and purports to value the subject property before and after the easement using generally accepted appraisal practices. But his analysis is mere form over substance. ██████████ distorts data and provides misinformation or unsupported personal opinions to achieve artificially high values for conservation restrictions that are often completely out of line with actual property values in the market area.

Case Example: Conservation Easement Appraiser

38. The total purported value of the easements, as determined by ██████████, is more than \$1.3 billion. The total purported value of easements that encumber buildings in ██████████, according to ██████████, is more than \$400 million.
39. The amount of improper charitable contribution deductions resulting from ██████████'s flawed appraisals could reach hundreds of millions of dollars.

Case Example: Conservation Easement Appraiser

- (2) provide a copy of the order of injunction to all former and current clients who retained Defendants since January 1, 2007 to appraise property for any federal tax purpose; and
- (3) provide to counsel for the United States a list of clients (including each client's address, phone number, e-mail address, and federal tax identification number) for whom they have prepared appraisal reports for tax purposes on or since November 1, 2009.

8 Basic Liability Prevention Tips

1. “Appraise” clients, parties and assignments for unreasonable risk – follow your survival instinct.
2. Focus on precise, narrow descriptions of intended use and intended user – can a party who you really don’t intend to rely on your report (like a borrower) twist your language?
3. Include a more detailed scope of work statement – consider stating what was not done.
4. Proofread your reports – even better, have another person proof them.
5. Get square footage right.
6. Disclose special conditions in clear plain English – don’t rely on canned phrases to explain unique issues.
7. When you use your own engagement agreements, be sure to get them signed.
8. Keep good workfiles – for several years longer than required by USPAP.