



# CLAIMS DO'S & DON'TS

Nobody likes being accused of making mistakes. Imagine the panic and fear that an appraiser might feel when served with a lawsuit alleging errors, negligence, misrepresentation and often fraud resulting from his professional services. If you ever find yourself in this position, we advise that you take a deep breath, try not to take the allegations personally and call your insurance company for sound legal advice.

A “claim” does not necessarily start with a lawsuit. Often it begins with a nasty letter or phone call from someone questioning your appraisal or your conduct and asking that you do something or pay them some money.



Sometimes a “claim” begins with a complaint made to the state licensing board. Whoever thinks you made a mistake might want to see what the board thinks before they decide to file a lawsuit. Or, maybe that person or company wants the board to do the investigation so they don't have to spend the time and money doing it for themselves.

A “claim” might start when the appraiser receives a subpoena to produce documents or to testify at a deposition. The parties to the ongoing lawsuit might want to look through the appraiser's workfile or ask him a few questions before they decide to add him as a party in the case.

How an appraiser responds to any of the above situations is most important. His comments or conduct could either help to avoid a lawsuit or could virtually guarantee that a lawsuit will follow.

- **DON'T ignore the nasty letter, subpoena or board complaint.**  
Ignoring something rarely makes it go away and often makes it worse.
- **DON'T talk to anyone, other than your client, about the appraisal report.**  
Remember that your client's report is confidential and the appraiser is not obligated to discuss that report with a third party, not even an attorney!
- **DON'T offer to re-measure when accused of making a square footage error.**  
The only time it is okay to re-measure a property is at the request of your client, never re-measure it out of your own accord or at the request of another party.
- **DON'T admit liability.**  
When accused of something, human nature often drives us to try and correct the situation. Despite the accusations, you might not have liability. Making admissions could make it harder to defend you and could also jeopardize your insurance coverage.

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continued on page 2...

- **DON'T agree to return the appraisal fee or to pay an amount of money to make the problem “go away” unless it is handled correctly.**

There are situations that absolutely warrant the appraiser agreeing to return the fee or to make a small payment to make the problem “go away”. However, be sure to require that the complaining party sign a “release” before any money is paid. A “release” is an agreement that the complaining party will not make any further claims against you in connection with the same appraisal once the money is paid. Always ask for a receipt or acknowledgement of payment. If you are trying to buy “peace” make sure you get what you pay for!

- **DO try to get as much information as possible.**

If someone traps you on the phone and starts making demands, use the opportunity to ask them questions. It is important that you find out as much as possible about why they are calling and yelling at you. Remember, you should not answer their questions because you do not have your file in front of you and besides the information may be confidential. Before answering any questions call your insurer.

- **DO deal with the situation as soon as possible.**

All of the above situations should be reported to your insurer promptly. They can help you respond to a nasty letter, or determine if it would be best to have an attorney go with you to a deposition. Handling matters alone, even if you think it is “nothing”, is not usually the best way to go.

Sometimes an appraiser’s first notice of a “claim” is when he is served with a summons and complaint; this is a lawsuit and is a serious matter. If not treated as such, grave consequences could follow.

- **DON'T ignore it.**

Putting the complaint in a drawer because it is too “upsetting” is not the way to deal with a lawsuit. Ignoring it will not make it disappear. Rather, the court might enter a default judgment against you and your insurance company might decline to provide coverage.

- **DON'T respond on your own without an attorney.**

There are rules in place in every state that dictate how to properly respond to a lawsuit. Unless you are an attorney, it is foolish to try and handle a lawsuit on your own.

- **DON'T discuss the lawsuit with anyone other than your insurer and your attorney.**

After being served with the lawsuit the appraiser should resist the urge to call the plaintiff’s attorney or to call any of the other parties named in the case. Let your attorney ask the questions for you. If you call these persons there is a chance you might say something that could be damaging to your case and defense.

- **DO note the day you were served.**

A lawsuit has to be responded to within a specified period of time. Your attorney needs to know when you were served so he knows when to file an answer. Saying you were served “a few weeks ago” is not good enough!

- **DO notify your insurer promptly.**

Every insurance policy requires that the insured give notice of a lawsuit within a certain period of time. The insurer needs to retain an attorney so that an answer can be filed in a timely manner. Failing to notify the insurer within the time period required by the policy could serve to jeopardize your coverage.

- **DO get your appraisal report and workfile in order.**

Once you are served, it is important to have all the relevant documents available, as your attorney will want to see them right away. You need to act quickly to locate the file or files that are at issue, and make sure they are complete and organized.



- **DO try your best to relax.**

Being served with a lawsuit is a stressful experience. Feeling angry and worried is normal, however, you are crucial to your own defense but you will be of no use to your attorney if you are unable to maintain your composure.



# TELL TALE CLAIMS...

## *Better Safe than Sorry*

An appraiser was served with a summons and complaint. This was his first experience with a lawsuit and he did not really know what to do. He read over the complaint and became furious.

The borrower was accusing him of all sorts of things and was telling complete and total lies.

The appraiser addressed a four-page letter to the judge whose name appeared on the first page of the summons. He explained that he owed no duty to this borrower, that the complaint contained numerous lies, he denied that he did anything wrong and asked the judge to dismiss the lawsuit immediately. The appraiser did not notify his insurer or even discuss the lawsuit with an attorney.

A few months went by and the appraiser heard nothing more about the disturbing complaint. He assumed the judge had received his letter and that he had nothing more to worry about. The insured did not mention this lawsuit on his professional liability renewal application because he assumed the issue of his involvement was resolved.

Some time later the appraiser received mail concerning the lawsuit. He looked at some of the mail but did not understand the legal mumbo-jumbo and decided to disregard it. Eventually the appraiser received a document stating that a judgment was entered against him. He called the attorney for the plaintiff to explain that he had done nothing wrong. The plaintiff's attorney requested that he answer some questions under oath and the appraiser agreed. He testified at a deposition for several hours and volunteered the name of his insurance company. At the conclusion of the deposition, the plaintiff's attorney refused to dismiss the appraiser and refused to set aside the judgment; he indicated that he intended to call the appraiser's insurance company to demand payment of the judgment.

The appraiser's insurance company declined coverage due to late notice (they first found out about the lawsuit almost 2 years after it had been filed and served) and due to the appraiser's failure to disclose the lawsuit on his subsequent renewal application.

## ***Mistake Does Not Equal Liability***

One of our insured's received a nasty call from a lender. The loan officer referred to an appraisal assignment that was completed about 3 years ago. He alleged that the insured overstated the square footage and the value of the property. The lender had foreclosed on the defaulted loan and sold it for almost \$100,000 less than the loan balance. The loan officer wanted to know what the insured intended to do about their loss and also threatened to make a complaint to the state board asking that her appraisal license be revoked.

continued from page 3

The loan officer's threats and accusations frightened the insured. She found the appraisal file and was sickened to see that she had made a mistake. She had added the square footage from the guesthouse twice and therefore the report did overstate square footage and value.

The first call the insured appraiser made was to the lender. She apologized for the error and said she would report the incident to her insurance company and "they would make it right". We investigated the allegations; it was true that the appraisal overstated square footage and value; however, the loan amount was low. The property would have still qualified for the loan even with the correct square footage and lower value.

After the loan was made, the borrower relocated due to his employment and decided to rent the property. The new tenants did significant damage and it was their damage that caused the property to sell for less than the loan amount. If it had remained in good condition, the property could have resold for far more than the outstanding loan balance. We explained that the appraiser was not the cause of any loss and declined to pay the claim. The lender filed suit because the appraiser had "promised" the insurance company would pay.

The case was dismissed after a great deal of attorney fees were paid. We suspect a lawsuit would not have been filed if the insured had not made assurances to the lender at the outset. The first call to make should always be to your insurance company, and never make any admissions.



### ***Philanthropy Misinterpreted***

An appraiser called to report that he had been served with a summons and complaint. The borrower sued him and several other parties claiming that they failed to disclose various defects in the property she had purchased. The appraiser was furious about the case and insisted he had no duty to the borrower and that he had done nothing wrong. He was also insistent that the insurer pay nothing to the plaintiff.

The lawsuit progressed for a few months and plaintiff's counsel sought to take the deposition of the appraiser. During the deposition it emerged that the plaintiff contacted the appraiser a few weeks after the mortgage closed to complain that her roof was leaking. In response to her request, the appraiser paid her about \$8,000 to help with the roof repairs. The appraiser's defense attorney was surprised by this revelation.

After the deposition the appraiser admitted that he spoke to the plaintiff just after the mortgage closed. She was a single mother and did not have money to repair the roof. She insisted that someone had to help her and because the appraiser felt sorry for her, he agreed to pay for the repairs. He never asked her to sign a release. When the plaintiff experienced other problems with her home she reasoned that the appraiser must be the responsible party because he paid to fix her roof. She called the appraiser to ask for additional money and became angry when the appraiser refused.

The appraiser's benevolence probably served to instigate the filing of the lawsuit. It also got him in trouble with his insurance company as the policy states that no insured is to admit liability nor did he disclose his dealings and settlement with the plaintiff on his renewal application. The insurance company declined coverage.



It is not the intent of the article to establish an appraiser's standard of due care. Instead, the article makes suggestions about conduct that may be well above the standard of due care. This article is intended for general information purposes. It does not imply or warrant that implementation of suggestions will prevent claims. If you have specific questions after reading the article, you should consult an experienced local attorney to determine how applicable law relates to your specific facts or situation. No material contained herein may be reproduced in any manner without written permission.