



## VACANT LAND: *A Nightmare for an Appraiser*

For many appraisers, the biggest nightmare of their career begins when someone requests a vacant land appraisal. The problem is that the appraiser does not even know the nightmare has begun until the appraisal is complete and the claim served. For a fact, too many appraisers accept vacant land assignments when they lack the experience to approach these assignments correctly.

It may or may not be surprising to learn that most claims arising from vacant land appraisals are caused by the appraiser ***actually appraising the wrong property.*** It is especially frustrating when, after the claim is made or the lawsuit is filed, the appraiser admits that he or she was not certain they inspected the correct parcel, but went ahead and did the report anyway.

Other claims problems arise from this misidentification, one being to determine the access. The appraiser drives up to what he/ she thinks is the right property on a paved road, so it is assumed that access is not an issue.

Counsel comes to learn that the lot that was supposed to be appraised is the adjacent, inland lot, which does not have access to that road.



There may be unrecorded easements or other issues that the appraiser would not and could not discover during the course of the inspection. Besides looking at the right parcel, make sure there is sufficient scope of work language in the report:

***“Appraiser cannot guarantee that property is free of encroachments or easements, and recommends further investigation and survey.”***

Whether or not a parcel of land is buildable will likely have significant impact on value. And again, a problem arises when the lot the appraiser looks at is flat and seemingly buildable, while the lot assigned to be appraised is a 90-degree slope. A flat parcel may be buildable, but not always. There could be soil problems, water table issues, etc., that the appraiser would know nothing about. Because these

Robert C. Wiley, President  
 Karlene K. Deinhard, Vice President

Administered By  
 Liability Insurance Administrators  
 P.O. Box 1319, Santa Barbara, CA  
 93102-1319  
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 Fax (805) 962-0652  
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concerns might not be covered by the limiting conditions it is important to include language declaring the appraiser is not responsible for and has not undertaken an investigation of unapparent conditions, and cannot render a definitive opinion about buildability. It should be stated that the value is given based on the assumption that the land is buildable:

***“Appraiser's conclusion of value is based upon the assumption that there are no hidden or unapparent conditions of the property that might impact upon buildability. Appraiser recommends due diligence be conducted through the local building department or municipality to investigate buildability and whether property is suitable for intended use. Appraiser makes no representations, guarantees or warranties.”***



## **Summary**

No appraiser should take on an assignment to estimate the value of vacant land without requisite experience, and unless willing to do the level of research necessary to complete the assignment. If you accept such an assignment, this is not the time to shortcut any step of the appraisal process. In fact, it may mean a lot more research, a lot more contact with city records and officials, and communication with local real estate brokers and other appraisers familiar with vacant land in their area, and the past history of the site. It may be necessary to provide either a narrative appraisal or an addendum to the one-page vacant land appraisal form many appraisers continue to use. If you don't believe the fee you charge will compensate you for the amount of work that is required, you are better off to not accept the assignment in the first place.



**ACTUAL  
CLAIMS  
FROM  
LIA FILES**

# **TELL TALE CLAIMS...**

## **No Access**

An appraiser in Arizona estimated value for 2.0 acres of vacant land at \$160,000 for his client, a mortgage broker. This broker, unbeknownst to the appraiser, worked with a hard money lender. The borrower defaulted on the \$88,000 loan, declaring bankruptcy 90 days after the hard money lender provided the loan. A second appraiser was retained by the lender to determine value after the foreclosure was finalized. This appraiser estimated value to be approximately \$90,000 for the land, based on the fact that the lot had no access, i.e., it was land-locked.



The hard money lender first filed a complaint with the Arizona State Board. The Board concluded the appraisal did violate USPAP and imposed certain discipline. The hard money lender used the findings as a springboard to file a civil lawsuit against the appraiser for damages, contending professional negligence.

It became clear that the appraiser did not properly research the land he was appraising. The appraiser had been shown the wrong property by the owner/borrower, who knew that there was no access to the site, but failed to tell the appraiser. Instead he led the appraiser to think he was supposed to inspect an adjoining parcel. The appraiser could have easily discovered the problem had he consulted the appropriate maps, clearly showing the location of the 2 acres serving as security for the loan.

Despite the liability problem, damages were nominal because the value of the land was still about enough to cover the lender's hard money loan.

### ***The Wrong Lot***

An appraiser in California accepted a vacant land assignment from a mortgage broker despite the fact that the appraiser had done no more than 2 or 3 such appraisals in his young career. When he tried to do his inspection, the appraiser was confused by the undeveloped, and narrow, winding streets in the hillsides of an affluent community. Finally the appraiser came upon what looked to be the lot he was supposed to appraise, which was flat and fronting a public street. He had some doubts but figured this had to be the site. Comparing similar vacant land sales, he valued the lot for \$465,000.

When the borrower defaulted, the lender had the property appraised by another appraiser, who was very familiar with the area in question. He quickly determined his client had a big problem. The actual lot that secured the loan was land-locked and far up a slope, obviously rendering it unbuildable, even if access could be secured. The mortgage company had loaned \$190,000 on a lot that could only sell for \$5,000 to an adjoining landowner.

Needless to say, a lawsuit for damages was filed. The appraiser had to admit to us that he only guessed where the lot was located.

No one met him on the site to show him where it was, and he never questioned, or told his client about the difficulties he had encountered when trying to locate the lot. As it turned out the appraiser had not even been on the right street!

To defend the appraiser, we were able to shift some of the blame to the mortgage broker. It turned out that the broker knew there was a problem with the lot because another appraiser retained to do an appraisal had reported being unable to locate the property. This information was not passed along to the insured or to the lender. The mortgage broker also failed to convey to the lender that the borrower had credit problems. The lender violated its own guidelines by agreeing



to a loan on property located outside the acceptable geographic area stated in its own lending guidelines. The lender from northern California would not have ordinarily made a loan on property outside its area without performing a second inspection, or without having the property inspected by one of its own loan officers.

In the end, despite showing negligence on the parts of both lender and mortgage broker, the insurer for the appraiser settled for over \$100,000.

## ***Verdict for the Appraiser***

Not every vacant land appraisal results in a big settlement. An appraiser in Ohio was asked to appraise a 135-acre vacant land site. He estimated value to be \$3.24 million. The lender made a loan to the borrower of over \$3 million. Only 37 days after the money was disbursed to the borrower, the loan defaulted. The borrower was an internet company whose business failed. The lender took possession of the land, but made no real effort to resell. Instead of marketing it with a professional commercial realtor, a little wooden “For Sale” sign was posted on the property, and the appraiser was sued for negligence.

The Bank had an appraisal done estimating the value of the property to be only \$515,000. At trial, the Bank claimed the actual value was \$0 because it had never been sold.

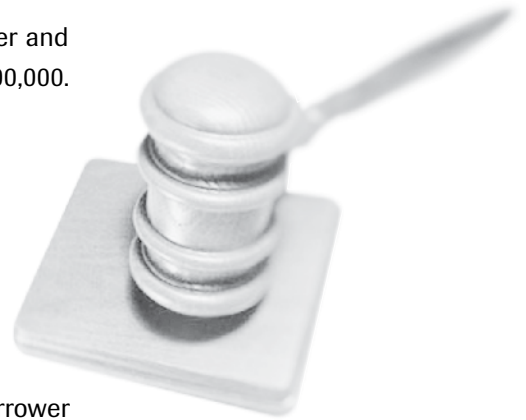
Our appraiser expert supported the original estimated \$3.24 million value. In addition, we retained a banking expert who severely criticized many aspects of the bank's conduct in

qualifying the borrower for the loan. We had a realtor testify about the value of a large parcel with freeway access, that was zoned commercial, and the efforts required to market such property appropriately.

In order to avoid the uncertainties of trial, settlement was actively discussed. The Bank's insistence that nothing less than \$1 million would be acceptable made trial unavoidable.

The jury rendered a 9-0 verdict in favor of the appraiser, and did not see fit to reward the Bank

for its failure to mitigate damages by properly attempting to resell the security. As it turned out, the working class jury related to the appraiser who they saw as just “doing his job” rather than to the Bank who they thought had “dropped the ball”.



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.