

Finding fault

IN SECTION: LEGAL MATTERS PROTECTING YOUR BUSINESS AND YOURSELF

Why are disciplinary complaints filed against appraisers, who files them — and who wins?

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"He urinated in a guest toilet, left the seat up and didn't flush." This complaint from a homeowner against one of our insured appraisers was lodged with a state licensing board a few years ago. The homeowner accused the appraiser of committing the misdeed during an appraisal of her home for a mortgage loan. She submitted her complaint in writing to the board a week or so later.

Though he convincingly professed his innocence, the appraiser understandably was a bit sheepish when he reported the complaint to our claims department and sought legal assistance under his E&O policy.

In a respectfully phrased defense submitted to the board, he denied using the toilet at all; the culprit must have been someone else. He stated that it was his practice to never use toilets in borrowers' homes, and even if he had hypothetically used this toilet, it was his personal practice to always flush and put the seat down afterward. To back up his own sworn statement, he submitted an affidavit from his wife, who declared under oath that her husband was well-trained and that she had never known him to fail to flush or fail to put the seat down during 25 years of marriage. The board dismissed the complaint.

Disciplinary complaints to state appraiser licensing boards usually are more serious matters, and generally bear at least a tangential relationship to professional appraisal standards. We recently reviewed more than 300 disciplinary complaints reported over the past three years by insured appraisers within our E&O program to see who files disciplinary complaints, the basis of those complaints and the eventual outcomes.

The more than 15,000 individual appraisers insured in our program cover the spectrum. Some are solo practitioners, some work at small firms and others at large firms. With few exceptions, all are fee appraisers. They are evenly divided when it comes to commercial and residential specialization. About half are Appraisal Institute professionals.

Let's take a closer look at what we found when reviewing disciplinary complaints reported to us between April 2015 and July 2018.

Overall claims

Fifty-eight percent of claims involved disciplinary complaints, while 42 percent involved lawsuits or threatened lawsuits. At first glance, the percentage of disciplinary complaints looks to have substantially increased over the past five to 10 years. However, the number of lawsuits has decreased since the end of the mortgage crisis, so disciplinary complaints make up a greater percentage of claims even though the number of such complaints has remained about the same. Currently, disciplinary complaints account for about 65 percent of all claims reported to us.

Source of disciplinary complaints

- 61% Borrower or purchaser
- 16% Property seller
- 8% Appraisal management company
- 6% Lender
- 5% Miscellaneous (litigation party, estate beneficiary, another appraiser, etc.)
- 3% Real estate agent
- 1% Government agency

Basis of disciplinary complaints filed by *borrowers/purchasers*

- 53% Alleged that the appraiser undervalued the subject property
- 24% Alleged that the appraiser failed to discover an alleged problem or defect
- 19% Alleged that the appraiser overvalued the subject property
- 4% Alleged other problems (appraiser offended borrower, was late, failed to show)

Basis of disciplinary complaints filed by *property sellers*

- 93% Alleged that the appraiser undervalued the subject property (seller was forced to reduce price; a pending sale did not close)
- 7% Alleged other problems (appraiser offended seller, left toilet seat up, tracked mud into home, etc.)

Outcome of closed disciplinary complaints

(perhaps the statistic most important to appraisers)

88% No public or formal discipline (other than warning)

12% Discipline

That's right — 88 percent of the disciplinary complaints reported to us ended without any public or formal discipline being ordered against the appraiser. This certainly seems reassuring, but it's important to note that our research sample consists of professionals with access to knowledgeable legal counsel. Also, while close to half of our insured professionals are MAIs and SRAs, only 14 percent of the disciplinary complaints reported to us involved an appraiser holding such a designation. I should caution designated appraisers that because their assignments — whether commercial or residential — often involve larger financial stakes, the claims we see in which plaintiffs are seeking monetary damages often are more threatening.

Bottom line

Appraisers need to take all complaints made to a state appraiser board seriously and, if insured, report the complaints to their E&O carrier to secure legal assistance. Your license and livelihood are on the line.