Valuation Magazine
Q2 2019

Pushing Limits

Some states have clarified and improved the statutes of limitations for claims against real estate appraisers

By Peter T. Christensen

Alleged errors concerning sewage disposal systems are a surprisingly common source for legal claims against appraisers. Even murkier, though, are statutes of limitations, which vary by state and can leave appraisers vulnerable to lawsuits after years after performing an appraisal.

Its been seven years since I addressed this topic in *Valuation,* and since then, some legal developments pertaining to statutes of limitations have been positive for appraisers. Let me illustrate why such changes are important with, yes, a case involving a sewage disposal system.

In March 2005, the plaintiff obtained a mortgage from a national lender to purchase a home on an island in Washington state. The appraisal for the loan was performed by a valuation firm that the lender regularly engaged.

More than three years later, the plaintiff experienced problems with the home's septic system and hired a contractor to investigate. The contractor determined that the septic system was inoperable and that over time it had caused serious damage to the home's foundation. The county health department prohibited occupancy of the home until the system was replaced and the foundation repaired. Because of the unique island environment, estimated repair costs were in the hundreds of thousands of dollars.

As a result, the homeowner determined the property was worthless, stopped making mortgage payments, and sued the bank and the valuation firm for negligence because the appraisal report indicated that the property was served by a septic system and did not identify any deficiency. He filed the lawsuit in June 2011 – more than six years after completion of the appraisal.

The valuation firm moved to dismiss the case based on Washington's three-year statute of limitations period. Washington, like most states, follows a "discovery rule" when applying statutes of limitations, meaning the three-year time frame begins when the plaintiff "discovered or, in the exercise of due diligence, should have discovered the misrepresentation."

The valuation firm argued that the plaintiff should have discovered the alleged mistake concerning the septic system at the time of closing or during the three years following the purchase. The court, however, found that there was no indication the plaintiff had reason to suspect that the appraisal was negligent or that he was aware of a problem with the septic system prior to the contractor's report. Therefore, the court ruled that the statute of limitations did not begin until June 2008, when the plaintiff first "had a reason to suspect that [the] appraisal was faulty." Because that date was within three years of when the plaintiff filed the lawsuit, the motion to dismiss was denied and the case advanced toward trial.

The bank and the valuation firm eventually settled the lawsuit, with the bank agreeing to forgive the entire $504,000 balance owed on the mortgage. Quite a large sum for an alleged septic tank error!

The defendants in the Washington lawsuit were LandSafe Appraisal and Bank of America. This case shows that if the largest firms and banks can't win a statute of limitations defense against a claim related to a septic system in a six-year-old appraisal, then solo practitioners should expect a very tough time. The basic problem in most states comes down to the discovery rule and how it works.

Recognizing the scary situation that appraisers face with regard to claims about old appraisals and the potentially unfair process that the discovery rule may create, the Appraisal Institute and state appraiser groups have recently succeeded in persuading legislators in some states to enact maximum time frames in which lawsuits against appraisers can be filed. This legislation generally involves creating a statute of repose, which is perhaps best described as a statute of limitations on steroids. Statutes of repose are different from statutes of limitations because they establish a clear deadline for filing a claim.

A good example of an appraiser-specific statute of repose was enacted in North Carolina in 2015. It read:

…[N]o suit, action, or proceeding shall be brought or maintained against a real estate appraiser …unless the suit, action, or proceeding is commenced within (i) five years of the date the appraisal was performed or (ii) until the applicable time period for retention of the work file for the appraisal giving the rise to the action as established by the Record Keeping Rule of the Uniform Standards of Professional Appraisal Practice has expired, whichever is greater. (N.C. Gen. Stat. 1-41(4).)

Other states have enacted a statute of repose or similar fixed-time rule applicable to professional negligence claims against appraisers, including South Dakota (three years from date of appraisal); Tennessee (five years from date of appraisal); Oregon (six years from the appraiser's act or omission); and Minnesota (six years from date of appraisal). Legislation is pending or proposed in several other states. Review the statute of limitations for appraiser negligence claims in your state and see if a discovery rule applies at www.valuationlegal.com/limitations.