

Storm damages

Don't let a natural disaster become a liability problem

by Peter T. Christensen

The U.S. experienced a record number of weather-related disasters last year. Sixteen separate weather events each resulted in more than \$1 billion in losses, and nationwide weather-related damages exceeded \$300 billion, according to the National Centers for Environmental Information. A substantial amount of valuation work is required following each natural disaster, but do appraisers need to worry about liability issues? Many appraisers are specifically trained in how to respond once disaster strikes. They may work directly with the Federal Emergency Management Agency or another federal agency, or they may assist in determining losses for insurance or tax purposes. Appraisers doing this type of work typically have detailed standards and procedures to follow. Fortunately, I have not seen appraisers face liability threats from this kind of disaster work, which can be a rewarding way to aid recovery efforts.

Unfortunately, the types of appraiser liability claims I do sometimes see following a natural disaster relate to regular appraisals. These assignments involve a lender/client seeking a property appraisal immediately after a disaster, or hiring an appraiser to reinspect or recertify the value of a property that was appraised shortly before a disaster.

Let's look at one such claim and consider a few commonsense ways to mitigate the threat.

An appraiser in Tennessee working for a long-term client performed a purchase loan appraisal for a single-family residence. The assignment included the customary interior and exterior inspections, and was reported on a Uniform Residential Appraisal Report. About a year later, the same lender asked the appraiser to perform a drive-by appraisal of the same property for a refinance loan to the same borrower. Within a few months, the area suffered severe flooding that damaged hundreds of homes. The borrower defaulted a short time later, and the lender foreclosed.

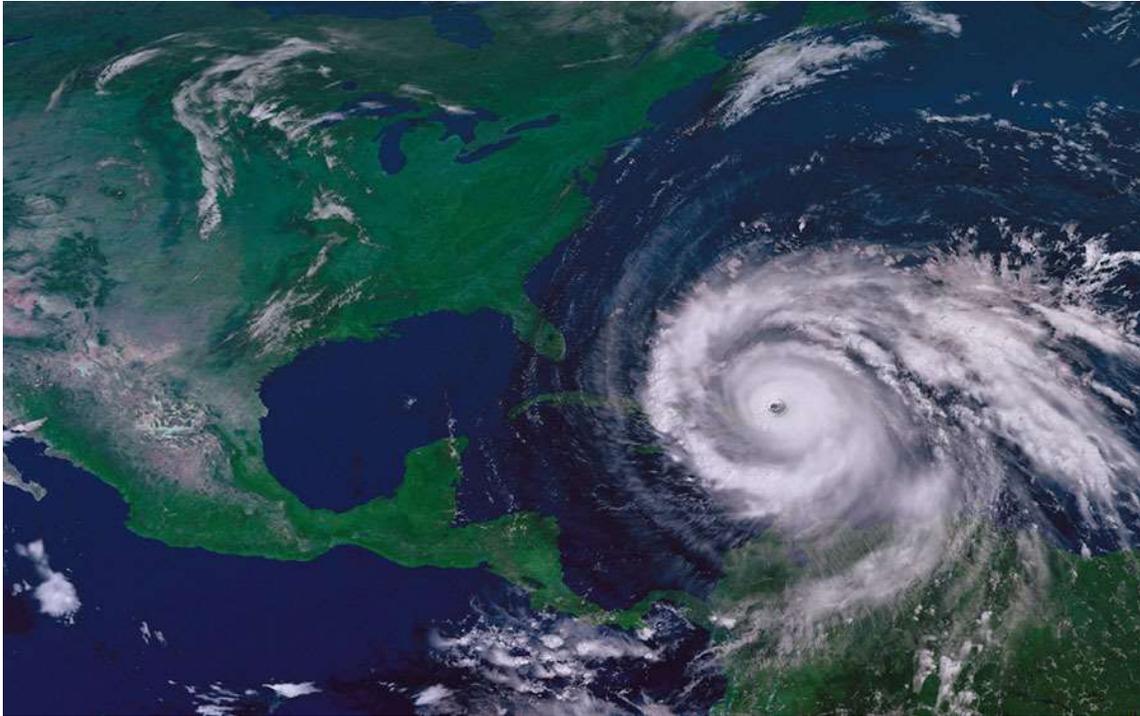
The lender then asked the appraiser to do another drive-by appraisal that it would use to help determine whether it should acquire the property in foreclosure by bidding its total

outstanding loan or if it should permit the property to sell to a third party for a lower amount. Given the recent flooding, the lender said the appraiser needed to specifically comment on whether the property showed "any evidence of exposure to recent flooding that affected the area." The appraiser was uncomfortable with this request and explained to the lender that he might not be able to make such an assessment, especially when only conducting a drive-by inspection. The lender asked the appraiser to "do your best."

The appraiser didn't want to walk away from an assignment from a longtime client — but he also didn't want to take on liability exposure. This appraiser had always included extra language in his reports for drive-by appraisals, reiterating that his inspection was limited to a simple curbside viewing of the property. In this report, the appraiser added a brief description of the area's flooding, explaining that while the property was in an area impacted by flooding, there did not appear to be any visible, external evidence (such as visible water stains) that floodwaters had touched the structure. Although he included in his report only the standard photos required for this type of assignment, he did take several extra photos of the property, which he fortunately retained.

Sometime later, the lender's attorneys threatened the appraiser with a legal claim.

The lender acted on the appraisal report and acquired the property — and shortly thereafter a major portion of the roof and ceiling collapsed into the house. An engineer hired by the lender reported that he believed a contributing cause of the collapse was flood damage to structural supports in the crawl space. The lender demanded to know why the appraiser had failed to report structural problems and insisted the appraiser compensate it for repair costs.



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Our claims counsel assisted the appraiser in dealing with this sensitive situation. The appraiser was angry with the lender for trying to place blame on him, but he wanted to maintain the long-term client relationship. He drafted a letter explaining his initial hesitancy to complete the assignment. He highlighted all the language he added to his report about only inspecting visible areas, and he included the extra photos he took, which did not show any damage to the structure or the roof. After sending his response, the appraiser heard nothing further from the lender — until he later received an assignment to perform another new appraisal. The lender never officially abandoned the claim, but never mentioned anything further about it, and never filed a lawsuit. (That’s just the way some claims die — without a climactic ending.) The appraiser continued to receive assignments from the lender, and we closed the claim file.

The appraiser in this situation did everything right to avoid liability. He took a few extra photos — and retained them for his own protection. He added a description of the disaster to his report. He included an advisement about the limits of his inspection, which in this case was only a drive-by.

When assignments involve a fuller inspection and appraisers are asked to comment on post-disaster damage, or when they’re appraising property located in an area affected by a recent disaster, I recommend they include in their reports language such as this:

Appraiser is not a building inspector, contractor or engineer. Appraiser conducted a visual inspection only of the accessible areas. Appraiser makes no guarantees about the structural integrity or condition of the property and assumes no adverse conditions exist. An expert should be consulted and further inspection conducted if there are any concerns about structural integrity or hidden damage not observable by the appraiser.

Of course, if damage is detected during the inspection, the appraiser should provide a detailed description of what he or she observed, consider whether the appraisal should be made "subject to repair" and then provide plenty of photographic evidence. We've never defended a case against an appraiser in our insurance program where we, as the defense attorney or the defense appraisal expert witness, felt the appraiser took too many photos.