

Take action

When should appraisers notify their E&O carrier of a disciplinary complaint or legal threat? Immediately!

by Peter T. Christensen

Even if the issue is a frivolous complaint to an appraiser board from a disgruntled borrower annoyed by a “low” value, an E&O carrier should be involved because many have legal departments that can help.

Appraisers and appraisal firms aren’t the only ones with errors and omissions coverage. Insurance brokerages, such as the firm where I work, also carry E&O policies because we receive legal threats, too.

Late last year, just before the holidays, I received a demand letter from a lawyer threatening a lawsuit against me and my employer. The lawyer’s client was an infamous investment entity suing appraisers throughout the U.S., and I was accused of defaming the client by making statements about its legal tactics and its string of dismissed cases. I considered the threat frivolous because truth is an absolute defense and everything I said was backed up by fact. The first thing I did after my blood stopped boiling was to report the demand letter to our firm’s E&O carrier. As both a lawyer and someone who works in the insurance business, I knew this was the correct way to handle the situation.

Surprisingly, a large number of appraisers who face similar legal threats don’t contact their E&O carrier. Many fear their premiums will increase or their insurer will drop the policy if they report such threats, which most frequently involve complaints to licensing boards and demand letters threatening suit over allegedly deficient appraisals.

Those fears aren’t completely unfounded, but underwriting rules vary widely among E&O carriers. It’s true that serious discipline for sig-

nificant violations of the Uniform Standards of Professional Appraisal Practice probably will result in nonrenewal or a significant rate increase. There also are E&O programs where underwriting rules call for policies to be dropped at the slightest hint of legal action (even if no discipline is imposed). But these are worst-case scenarios and not an inevitability. Remember, there is no industrywide “blacklist” for E&O purposes — if an appraiser is turned away from one insurer, there almost certainly will be others that are willing to offer coverage.

That said, the safest course of action is for an appraiser to report the situation to his or her E&O carrier immediately upon receipt of first notice, and there are two major reasons why:

1. You don’t want to go it alone. I’ve seen too many appraisers suffer a complaint or try to defend a lawsuit without the help of their E&O carrier, but if a claim is covered, there’s no reason appraisers shouldn’t avail themselves of the assistance available. Even if the issue is a frivolous complaint to an appraiser board from a disgruntled borrower annoyed by a “low” value, an E&O carrier should be involved because many have legal departments that can help. If the situation is more serious, the E&O carrier should be able to provide access to appropriate legal counsel. To be eligible for such coverage, the appraiser needs to report the disciplinary matter or claim within a certain time frame, which varies from policy to policy but generally is within 30 to 60 days of the appraiser’s receipt of the complaint.

2. Not doing so could jeopardize future coverage and leave you high and dry. Almost all appraisers applying for new E&O insurance or for renewal of E&O insurance are asked whether they have

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been disciplined or investigated by a state licensing board within the last five to 10 years. Applicants also are asked about the existence of pending or threatened legal claims. When an appraiser fails to answer these questions accurately (say, by omitting a disciplinary complaint or a demand letter) and receives a policy based on misinformation, the appraiser is potentially jeopardizing coverage under the policy not only for the omitted matter but also for other claims. Any omission of information from an applicant may give the insurer the right to rescind the policy. I've seen heartbreaking instances where appraisers who failed to report such matters during the application process later have their E&O carriers rescind policies and deny cover-

age when they have a serious suit filed against them. (I am not referencing any claims handled by the E&O program for which I am general counsel.) This catastrophic outcome is why it's always safest for an appraiser to report a disciplinary matter immediately and mention it on any application for E&O insurance.

Enough with the doom and gloom. How did the lawyer's threat against me turn out? I wrote a response to the lawyer in which I pointed out the factual support for my statements. It's been a year now, and I haven't heard a peep. Reporting the threat had no impact on the renewal of our company's E&O coverage and helped me sleep better. ◀