The big question

Mistakes happen, but which ones will most likely get an appraiser sued?

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"what alleged mistakes will most likely get an appraiser sued?" That's the big question asked at every presentation concerning appraiser liability — which makes sense because practicing fee appraisers can better manage their risks when they recognize the hazards.

The answers come from reviewing the data of more than 8,200 claims filed against appraisers over the past 30 years. I've organized the alleged mistakes into two lists: one for lending and the other for non-lending, such as litigation or tax.

Lending (in order of frequency)

1. Value: The appraiser's opinion of value was alleged to be too high or too low because incorrect information about the subject property was used, inappropriate comparable sales were selected or inappropriate adjustments were made. (It's not surprising that the "wrong" value would be the top complaint.)

2. Measurement: The appraiser made an error in determining or reporting the square footage of a structure or the land area of the subject property. (Yes, square footage and land area mistakes are this common. If one item deserves extra attention, this is it.)

3. Property: The appraiser allegedly failed to discover or report a unique issue or problem with the subject property. The most common alleged issues and problems:

- The property suffers from a condition problem, such as a leaky roof, mold, foundation settlement, vermin infestation or unrepaired damage from a fire or flood.
- Structures on the property were built without proper permits or in violation of zoning rules.
- The appraiser misreported that the property is served by a public sewer when it's actually served by a septic system (or a pipe running to a creek), and that system has failed. (Again, a very specific mistake that's easily prevented by paying careful attention.)
- The vacant land or other property slated for development cannot be developed in the manner or to the extent underlying the appraiser's valuation.

4. Income approach: The appraiser, utilizing the income approach, developed or used faulty information and overstated revenue or understated expenses (mainly involving multifamily and commercial appraisals).

5. Construction: The appraiser overstated the degree of completion or failed to identify problems with construction in a construction progress report for loan disbursement.

Non-lending (in order of frequency)

1. Miscalculation: The appraiser made an outright error or computational mistake in a valuation used for litigation or tax, and the appraiser's client suffered a negative outcome as a result.

2. Substandard work: The appraiser failed to produce admissible expert testimony, or failed to meet the minimum technical requirements for the appraisal or the report. For example, the appraiser failed to apply legally acceptable methods or analysis in a condemnation case, or failed to produce a "qualified appraisal" that meets IRS requirements.

3. Credibility: The appraiser overreached and the testimony or valuation was not credible and was rejected by the court or taxing authority.

4. Disclosure: The appraiser failed to disclose alleged conflicts of interest or other matters that undermined the credibility or usability of the testimony or valuation.

5. Qualifications: The appraiser was not appropriately licensed in the relevant jurisdiction as necessary for the assignment.

Do any of these surprise you? Are you rethinking how much attention you're giving or should be giving to a specific issue in your day-to-day work?

Of course, knowing what the most common mistakes are and working hard to avoid them won't entirely shield you from liability lawsuits, nor will the obvious advice to just be diligent. Mistakes can happen no matter how knowledgeable and how careful an appraiser is. Also, in many instances — I'd say the majority, but I'm biased — claims alleging appraiser error are baseless or they concern matters outside an appraiser's scope of work. In other words, a lot of claims are frivolous.

Therefore, my general advice on liability prevention goes beyond “follow applicable standards and be careful,” and includes four things appraisers should do to successfully fend off many of the common legal claims listed above:

1. Be as precise as possible when describing intended use and user(s) in your appraisal reports, which can reduce the risk of third party (“unintended user”) claims or claims relating to unexpected uses of the appraisal.
2. When disclosing your scope of work in a report, add extra detail and disclose research, analysis and activities not performed, especially if you think a user of the appraisal would expect something to have been performed.
3. Use plain English in reports and, if applicable, include photos to disclose and illustrate specific issues or problems with the subject property — things like detrimental conditions or zoning or permitting problems.
4. Proofread and fact-check your work.