

# How Appraisers Get Into Trouble and How To Stay Out Of It

Phoenix Arizona Chapter – Appraisal Institute  
2024 Appraisal Fall Forum on Real Estate Trends  
November 14, 2024

Steven F Bauer  
Gaglione, Dolan & Kaplan, P.C.  
Woodland Hills, CA  
sbauer@gaglione-dolan.com  
818-704-1464



LIA Administrators & Insurance Services

# What Are We Going to Talk About?

- ✓ Who sues appraisers and what are the most common claims
- ✓ Loss Prevention ideas
- ✓ Discrimination and Bias Complaints
- ✓ Syndication Conservation Easements
- ✓ Answers to your questions



# Who sues appraisers and what are the most common claims?

- For the past several years, almost 90% of new claims have been made by third parties...mostly borrowers.
- The 2 most common reasons for borrower claims are failure to discover and disclose defects and errors in square footage. How can the appraiser be more defensible?
- Always include specific intended use and intended user language in the report
- Consider language like this to help defend against “defect” claims:
  - *“This appraisal report is not a home inspection. It does not guarantee that the home is free of defects. The appraiser is not a home inspector, an environmental inspector, a pest inspector, or an engineer. The appraiser can only view accessible areas of the property. It is suggested that the borrower secure all necessary inspections, done by qualified professionals, in order to determine if the property is acceptable to them.”*



# What about square footage claims?

- Always double check calculations and sketches. Many claims arise from simple math errors, or typos.
- Don't rely on measurements done by others. If you must rely on others...make sure to include appropriate exculpatory language in the report...
- Often the appraiser's measurements differ from what is stated in public records, tax records, MLS, builder's plans, etc. Don't ignore discrepancies. Consider adding additional explanatory language to the report as necessary.
- Lender claims re square footage errors can involve higher exposure to damages.



# Other Common Claimants

- AMCs: Mostly State Board complaints but seeing more claims/litigation, asserting negligence in failing to properly supervise panel appraiser and/or note errors in the report.
- Sellers: Mostly complaints about undervaluation. Also, an appraisal done for a borrower's lender does not support the contract price. Mostly involve state board complaints. Also, some small claims court lawsuits and sometimes a demand for damages/lawsuit where the difference is large.
- Lenders: Minimal lender activity due to generally strong markets across the country. Lender claims typically allege overvaluation. Borrower defaults and the lender takes back the property from the investor. When the lender tries to resell, they claim the property is not worth enough to cover the outstanding loan balance. However, that could be due to other reasons, such as deteriorated condition of the property or a downturn in the market, etc.
- Strong defense to lender claims is comparative fault due to sloppy underwriting or lack of due diligence in liquidating the assets.



# How to help alleviate liability concerns

- **Additional “intended use” and “intended user” language:**
  - **Bad:**
    - *“The intended user of this report is the lender/client and the intended use is to provide an opinion of Market Value”*
  - **Better:**
    - *“The intended user of this report is the named lender/client. Use of this report by any other party, for any purpose, whatsoever, is not intended or authorized by the appraiser. The only intended use of this appraisal is for the named lender/client’s evaluation of the property with respect to a lending decision. No other use is intended or authorized by the appraiser”*
- **Additional language to clarify the fact that property inspection was not done by the appraiser:**
  - *“The appraiser did not personally inspect the property or take any of the photographs included in this report. Photographs and information about the property, including, but not limited to measurements, room count, condition, etc. were provided by the client. All information is presumed to be accurate and is being relied upon by the appraiser. The appraiser cannot verify the information provided and the appraiser assumes no responsibility for any inaccurate, incomplete, or incorrect information reported as a result of the property inspection”.*



# Discrimination Update

2023 ended on a positive note. The feared avalanche of bias related litigation never materialized. We have seen only one “whitewash” lawsuit involving one of the program insureds, that was settled last year.

Every state fair housing or licensing board complaint alleging discrimination/bias, that has been decided, has been dismissed.

While a few federal HUD discrimination-based complaint matters have been closed, the majority of them are still pending, some for over three years. We believe this is due to the fact that the investigators do not know what to do and/or are awaiting further guidance from their superiors in D.C.

The pace of new complaints has been slowed considerably over the last 12 months and we remain hopeful that we will see some favorable findings by the end of this year or in the new year. We are also waiting to see whether the November elections may have any impact on the future timing and/or disposition of these complaints by the federal government.



LIA Administrators & Insurance Services



# Syndication Conservation Easement Claims

We have seen over the last few years a number of federal IRS claims and lawsuits involving appraisers, relating to assignments where the appraiser completed a conservation easement report on behalf of a taxpayer/donor and the IRS challenged the amount of the claimed charitable deduction and pursued statutory penalties against the appraiser.

Although the program carrier excludes coverage for claims arising out of syndication conservation easements, we have been assisting insureds with defending against the efforts by the IRS to assess penalties against the appraisers and in order to protect them against potential claims made by the donors/investors, for negligence in preparing those reports, that were utilized to support tax deductions for the charitable contributions.

In 2021, criminal indictments of two appraisers, along with promoters, attorneys and other defendants, were filed in federal district court by the IRS, which scared some appraisers from further involvement in handling conservation easement assignments and emboldened others. One appraiser ultimately entered a guilty plea to the charges against him and, in November of 2023, he was sentenced to 12 months in prison and ordered to pay \$129M in restitution. The other appraiser defendant, who took the witness stand and testified at the criminal trial, was subsequently acquitted of all charges by the jury. We are waiting to see if the IRS will be pursuing any further criminal indictments against appraisers involved in these assignments.



LIA Administrators & Insurance Services





# Any Questions?



**LIA Administrators & Insurance Services**

