

A Serious Warning for Appraisers and AMCs/Lenders about E&O; Insurance

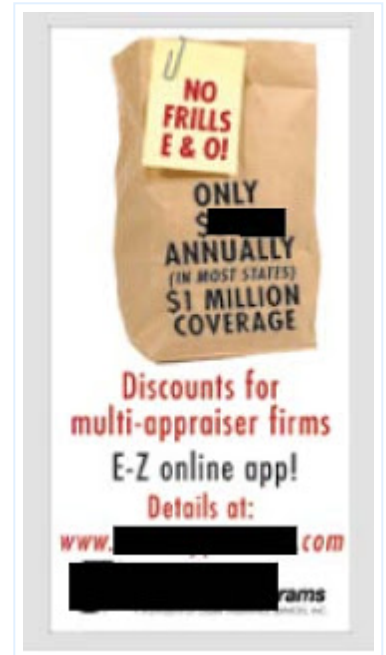
By Peter C

Some new E&O insurance policies being marketed to appraisers pose serious liability risks to appraisers and to the lenders and AMCs that hire them. No one can deny that appraisers, lenders and AMCs are the subject of record levels of appraisal liability claims. The most frequent source of claims as a group continues to be financially troubled borrowers, who collectively account for more than 50% of appraisal-related claims, and most claims continue to relate to appraisals delivered between 2004-2008.

The reaction to this crisis by a few E&O insurance providers has been to pull back from the risk faced by appraisers and limit appraisers' coverage. This reaction is exposing many appraisers and the parties who hire them to risks for which the appraisers have no coverage. In the most extreme example, the Five Star Appraisers E&O program and certain underwriters at Lloyd's of London decided in late 2010 that they would not renew any insurance policies for appraisers who needed coverage for appraisal work they did in the past (aka "prior acts") and discontinued their existing policy. Instead, appraisers are offered the chance to purchase a new "no frills" policy which does not cover any of the appraisers' "prior acts" before the date of the new policy. This means that appraisers who choose this policy have no coverage under that policy for any appraisal work they have done in the past.

Some appraisers have actually moved from policies which covered their prior appraisal work to this new policy offered by Five Star. In most cases, this means that these appraisers have lost insurance coverage for their prior appraisal work. Even if they move to another insurance provider now, they will not be able to obtain coverage for work prior to the date in their new Five Star policy.

The new Five Star/Lloyd's policy is cheap -- and can be cheap -- because it provides no coverage for most of the claims that appraisers are now experiencing. If LIA applied the same policy terms to the appraisers LIA insures, I estimate that 98% of the claims it currently receives from appraisers would not be covered under the Five Star policy terms. Some appraiser publications are accepting advertising for this new policy (see example ad at right).



This new E&O policy presents a serious risk to AMCs and lenders too. The reason is that if an appraiser regularly used by an AMC or lender jumps to the "no frills" policy without prior acts coverage, that appraiser will no longer have any E&O coverage for all work that the appraiser did in the past for that AMC or lender. The appraiser's future appraisal work is also left largely unprotected because of the long list of new exclusions in the policy discussed below. Nevertheless, this policy is sold basically as an "E&O ticket" for the purpose of getting on AMC or lender panels. The marketing for this policy states: "This program was designed to meet your lender's requirements. Lenders do not require prior acts coverage." This marketing angle works because most AMCs and lenders fail to consider whether the appraiser's policy actually covers anything and look no further than a declarations page.

In addition to not providing any coverage for prior appraisal work, the Five Star/Lloyd's E&O policy also introduces a number of critical new liability exclusions that will leave many appraisers without coverage for claims about appraisal work they do in the future.

In all, the new Five Star/Lloyd's policy contains 78 total exclusions, but the most important for appraisers and their clients to be aware of are:

- Exclusion of coverage for **"any economic loss"**
- Exclusion of claims arising out of an appraiser's negligence in the "preparation or approval of maps, plans, **opinions, reports**, surveys, designs, or specifications"

The above two pretty much make coverage under the policy seem illusory -- but the list of relevant exclusions continues:

- Exclusion of claims relating to **"municipal zoning or code"** issues
- Exclusion of claims relating to an appraiser's "failure to investigate any facts and/or circumstances of any lawsuits or any defect or **alleged defect in the general area of the premises** or the tract in which the real property is located, where the 'Professional Services' were rendered, that may affect the value of the premises being appraised"
- Exclusion of claims relating to **mold**

- Exclusion of claims relating to any services by any person other than the named appraiser (for example, for services rendered by **subcontractors, trainees or supervised appraisers**)
- Exclusion of **ERISA-related claims** (for example, some types of claims from the trustee of a pension fund, 401K or IRA)
- Exclusion of claims for an appraiser's **failure to disclose prior claims or lawsuits** affecting the subject property
- Exclusion of claims for an appraiser's **failure to disclose prior claims or lawsuits" affecting homes in the neighborhood or tract"**
- Exclusion of claims against the appraiser relating to the **appraiser's misuse of a client's data**
- Exclusion of **Chinese drywall** or other foreign drywall claims

[LIA Administrators & Insurance Services'](#) response to this liability crisis has been different: (1) education for appraisers, AMCs and lenders about how to reduce their appraisal liability exposure -- more than 1,250 appraisers have taken LIA's live CE class on this topic in the last year and LIA will give its class more than 25 times this year -- LIA never charges to send its management and lawyers into the field to give the classes; (2) continued strong defense against unfair appraisal liability claims that affect not just appraisers but also the AMCs and lenders who hire them; (3) creating READI (readimember.org); and (4) keeping in place comprehensive professional liability coverage for appraisers.