

Real Estate Appraisal Malpractice: Liability and Damages

by Peter J. Mastaglio

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Traditionally, most professionals strive to produce accurate results, such as legal opinions or medical diagnoses, measurable by accepted objective standards. Assuming equal diligence and expertise, the results of similar efforts by two professionals in the same field should be consistent. On the other hand, consistency among (real estate) appraisals usually is not one of the attributes claimed for the appraisal profession For example, one of the principal reasons the accounting profession has refused to adopt current market value as the basis for financial accounting is the inability of appraisers to produce consistent value conclusions.¹ It is this belief in the inexactness of their science that has until recently virtually insulated real estate appraisers from liability for the negligent preparation of an appraisal report—in short, from liability for malpractice.

The scarcity of reported decisions in this area is changing due to forces generated by an increasing public tendency to hold all professionals responsible for negligence services and by the movement within the appraisal community to attain public recognition of its professional

stature and the education, training and experience required of its members.² With the growing acceptance of the professional stature of real estate appraisers, their clients may be less inclined to accept the commonly-held belief that two real estate appraisers with equal training, experience and effort, may, when evaluating the same property at the same time, reach widely disparate opinions of value rather than substantially similar ones. When there is great disparity between valuations, the party relying to his detriment on one of these appraisals has the right to know why.

Standing

Since the incidence of malpractice in the real estate appraisal profession is probably as prevalent as in other professions, the number of aggrieved parties with valid but unasserted claims is necessarily substantial. The transformation of such claimants into litigants will depend upon the extent of the damages suffered and an appreciation of the reality that appraisers can be made to account for lack of professionalism.

The two most likely groups of potential plaintiffs are prospective purchasers of real estate seeking advice as to market value and lending

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institutions retaining an "outside appraiser" for the same purpose prior to the issuance of a mortgage commitment. To be added to these groups are persons, with no direct contractual relationship to the appraiser, whom the appraiser knows will rely on the appraisal.³ While a purchaser may not ordinarily rely on statements of value made by his seller,⁴ he may rely on the opinion of an appraiser retained by the seller when it is known to the appraiser that the appraisal would be relied on by the purchaser.⁵ The same is true as to a lender relying on an appraisal furnished to the borrower.⁶

Decisions

Litigation in the professional malpractice field has been expanding rapidly from its early concentration on the medical profession into virtually every other area of expertise. There are reported decisions involving malpractice claims against engineers,⁷ surveyors,⁸ and even attorneys acting as title examiners.⁹ Although there are relatively few reported decisions involving real estate appraisers, what may be the first reported decision dates back more than ninety years to Victorian England. In *Cann v. Willson*¹⁰ mortgagees, relying on an appraisal, successfully sued the appraiser when it