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## **Document, Document, Document!**

By Elaine Matternas

The buzzword for the real estate industry might be “Location, Location, Location,” but to help prevent and mitigate a potential Errors & Omission claim, the motto should be: “Document, Document, Document!”

If followed religiously without fail, this motto can save real estate appraisers from a day in court. Operating policies and procedures that are well-documented, communicated to your staff, and adhered to consistently on a day-in day-out basis will go a long way toward helping you to prevent an Errors & Omissions claim.

Let’s start at the beginning. You receive an assignment or request from a client to provide a professional opinion of the value of real property.

### Define the assignment

First, what is the scope of the assignment? Is it clearly defined? What is the time frame for performing it? (Yes, we have seen claims against appraisers for failing to perform in a timely fashion, thus resulting in a loss to the client because of changing conditions in the marketplace.)

A survey completed by October Research in 2004 showed that appraisers and lenders have different expectations for the time it takes to complete an appraisal. Most lenders responding to the survey said they expect to receive an appraisal report within one week, while appraisers indicated an average of two weeks to prepare a finished appraisal. When client expectations do not match reality, the rush and pressure to perform often results in mistakes.

If the assignment is verbal, a brief written acknowledgment is in order to confirm the assignment, scope, time frame, and any other relevant details. A misunderstanding leaves you open to charges of not performing, or not performing the required task. If discussing an assignment by telephone with a client, it is often helpful to repeat back to the person your understanding of the project and what you will do, followed by, “Is that correct?” Mark your notes accordingly, and send a follow-up note or email to confirm in writing.

### Communicate clearly

Be wary when a client or staff member says “I’ll take care of it!” That phrase can mean different things to different people. Make sure you know exactly what that person is going to do. Is your staff member taking care of it by shoving it in a drawer and ignoring it, by filing it properly, by responding to the client, or what? A good example is the procedure to be followed when you have a request for an appraisal to be reassigned. Who has the authority to do this?

What are the rules and guidelines? I've responded to more than one frantic call from an appraiser advising that a staff member had reassigned an appraisal without the authority to do so. This can be avoided if you have written procedures that all staff members must adhere to.

I used to have a quote that read: "I know you understand what you think I said, but I'm not sure you realize that what you heard is not what I meant!" Don't let miscommunication or garbled communication land you in the defense chair.

### Is it an acceptable appraisal practice?

If the assignment is for any type of limited appraisal, is it an assignment you can perform professionally, and in accordance with acceptable appraisal standards? You recognize that there are enough competitors and charlatans in the industry today who are willing to stretch the limits or try to push you beyond acceptable practices.

This is a true story that illustrates the point: An appraiser was asked to appraise a house. Preliminary investigation by the appraiser determined that the house was sheathed in dryvit stucco finish. The appraiser advised the lender that this type of finish often conceals hidden defects, so the appraiser stated he would complete the appraisal, subject to an inspection by an EIFS (Exterior Insulation and Finishing Systems) certified inspector.

The lender's response? The lender confirmed his request for an appraisal on an "as is" condition; confirmed that the owner was fully aware of and acknowledged the dryvit stucco problems; advised that the owner had opted out of a class action lawsuit and was settling with the builder and other related parties.

And finally, from the lender to the appraiser: "If you don't want to do the assignment, I will search out and find a less informed appraiser to do the work."

The appraiser appropriately declined the assignment. However, had he not clarified and documented the potential problem, he could have been setting himself up for an Errors & Omissions claim.

Last, you should determine if the assignment is one that you are qualified to perform. More than one appraiser has gotten into trouble by accepting an assignment that is beyond the scope of his or her qualifications. Just go back two paragraphs, and make sure that your client isn't seeking out an appraiser who might overlook a potentially damaging problem.

### Develop procedures manual

The need for documentation extends to all of your office procedures. These procedures should be:

In writing for all processes.  
Part of your training program for all employees.  
Followed by all employees consistently.

A good place to start, if you don't already do this, is with date stamps. Date stamp all incoming mail, checks, documents. Do the same for faxes that are not automatically dated. It establishes a record and time line of activity on any project.

I am constantly amazed by the appraiser served with a lawsuit alleging an error or omission with one of his appraisals, but who can't remember when the papers were served, or who, when asked, responds "a couple of weeks ago." This is a precise business world in which we live, and there is usually a specific (and not very lengthy) time frame in which to respond to such charges. A lackadaisical attitude toward such matters can leave you in very hot water.

If you have procedures in place, and make sure that everyone in your office follows them, you are in a better position to 1) avoid, or 2) defend an E&O claim.

#### Document phone calls/files

Document telephone conversations with notes to the file. Do this immediately following your phone conversation, so you don't forget important details. Use a standard format, showing the date and time, name of the person, and subject of the call.

Document your work files carefully and neatly with notes that back up your methodology and conclusions. Use photographs to document your files as well. With the ease of use that digital cameras provide today, together with the ease of storage, you have a valuable record that documents the way the property looked when you performed your appraisal.

A property that goes into foreclosure is also most likely a property that has not been maintained, thus giving rise to a claim from the lender that the appraiser over-valued the property. A file that is complete with notes and photographs can provide the ammunition a defense attorney needs to get you off the hook. Since most E&O claims against appraisers do not materialize until two to three years after the appraisal is performed, this file documentation takes on even more importance, as you can't be expected to remember details about every property you appraise. Besides, a documented file will stand up better in court or a deposition than an imperfect memory.

If you use electronic file documentation, that is fine, as long as you have adequate backup and safe storage. The electronic age is wonderful, but a system crash could erase your files as well as your protection from suits.

Make sure you have a written record retention policy that complies with the statute of limitations in your state and any other state laws affecting your business.

### Check your work

Finally, proofread and check your work before it leaves your office! Ask yourself: “Is this logical?” “Does it make sense?” “Is it subject to interpretation?” Don’t get so involved in plugging numbers into formulas that you miss the big picture. A review appraiser on the other side of the country doesn’t have the background on the particular community or development where the property is located that you may have. The appraisal has to stand on its own, without you to explain, “But this is what I meant...” This is particularly true of any narrative or explanatory information that is a part of the appraisal.

The good news? The policies and procedures you put in place to help prevent or mitigate an E&O claim also make good business sense. They are solid business concepts that can keep your office running smoothly and efficiently, resulting in good customer service, more sales, no down time lost in responding to claims, and increased profits.

*This article was provided by Intercorp, Inc., an insurance program management firm headquartered in Ephrata, PA. Intercorp offers appraisers attractive Errors & Omissions insurance options. Author Elaine Matternas invites your feedback and comments at [info@intercorpinc.net](mailto:info@intercorpinc.net), or check out their website at [www.intercorpinc.net](http://www.intercorpinc.net).*