

## “You’ve Been Sued. . . What’s Next?”

The sheriff, process server, or maybe the mail carrier with a certified letter has just exited your office, leaving you with a thick sheaf of papers labeled: ABC Bank vs. Mary Q. Appraiser. What do you do next?

First, let’s talk about what you should *not* do:

1. **Don’t** stuff the envelope in a drawer and hope that it goes away. It won’t. There is a time frame for responding to the lawsuit—usually 20 or 30 days—and the clock starts ticking when you receive the papers.
2. **Don’t** take the sheaf of papers to the divorce attorney whose office is next door and ask him or her to respond for you. Like most other professionals in today’s society, lawyers have specialties, and you want someone with a specialty in defending real estate appraiser errors & omissions claims defending you.
3. **Don’t** take it upon yourself to call the claimant and explain to them that you have done nothing wrong, that your appraisal is sound, and you made no mistakes—even if you believe that to be correct. Don’t admit guilt or innocence. Once a lawsuit has been filed, you are in an adversarial situation, and anything you say—even innocently or well-intentioned—may be used against you.
4. **Don’t** try to answer the lawsuit directly by yourself—what is called a *pro se* defense in legal terms. Would you remove your appendix without the help of a doctor?
5. **Don’t** take it personally. When you read terms such as “negligence,” “fraud,” “grossly overstated value,” there is a tendency to see red. Any assault on your professional integrity and capability is hard to swallow. Stifle the urge to vent, and put your energies into helping your attorney mount the best possible defense.
6. **Don’t** panic! The sky hasn’t fallen, and the world isn’t coming to an end. Lawsuits are a fact of life in the 21<sup>st</sup> century. Take a deep breath, gather your facts and files, and start on the “Do” list.

Some tips on what you *should* do when a claim is made against you:

1. Note the date that the lawsuit was received, and the method of service (i.e., certified mail, process server, etc.) This information should be included in your claim report. (If you are following the appropriate documentation steps in your office, you date-stamp all incoming mail. This is no exception.) Keep a written record/log of any additional communications received that relate to the legal action.

2. Make a copy of the lawsuit for your records. If you are going to be helpful to the attorney who represents you, you will need to read the lawsuit carefully and know and understand the charges against you.
3. Review your file for the appraisal in question, and have it ready to be used by the attorney in preparing for your defense. *Do not change anything in your file.* Your defense attorney may ask you to prepare a chronology of events related to the appraisal. (This is where you will thank your lucky stars that you read the article entitled “Document, Document, Document” in the Spring 2005 issue of Real Estate Valuation Magazine, and you have a well-documented appraisal file. P.S.—If you did not happen to read the article, you can find it at [www.intercorpinc.net/programs/reappraisers.asp](http://www.intercorpinc.net/programs/reappraisers.asp), by clicking on the “Document” article.)
4. Run—don’t walk—to the nearest post office or overnight mail delivery service and submit the claim to your Errors & Omissions insurance carrier. There is a section of your policy that details how to file a claim, or you can usually file it through your agent. As an extra precaution, call your agent, and alert him or her that a new claim is on the way. Remember that the clock is ticking, and you want your defense team to have plenty of time to adequately respond to the charges against you. Failure to report in a timely fashion might also jeopardize the defenses available to you.
5. Read carefully and follow the terms and conditions of your E&O policy, usually found in the “Conditions” section of your policy, and labeled “Duties in the event of a loss” or “Notice of Claim.” Insurance coverage can be denied if an insured does not adhere to these requirements.
6. Cooperate and respond promptly to all requests for information, documentation, and or other details from the claims examiner or defense attorney. Be open and direct with them—after all, they are defending you and your work.

Some claims are made in the form of a demand letter instead of a lawsuit. Others may be in the form of a letter asking you to put your E&O insurance company on notice of a claim or potential claim. The same procedures should be followed in these circumstances.

What if you want to handle the claim yourself, and don’t want to present a claim to your E&O insurance company? In a word—Don’t! Insurance companies require that they be involved in the claim quickly, so that they impact the defense and ultimate payment of the claim, once coverage for the claim is confirmed.

What follows is a true story that happened to one insured who thought he could handle a claim by himself, without reporting it to the insurance company. As you will see, failing to do so resulted in serious consequences.

*An appraiser received notice of a lawsuit shortly before completing the renewal paperwork for his Errors & Omissions insurance policy. He thought it was a nuisance claim, and he would just “take care of it,” so when he completed his renewal application, he did not disclose the claim when asked if he was aware of any claims made against him. Instead, he answered “no” to this question.*

*Fast forward three months. The “nuisance” claim had grown into something a little larger than a “nuisance,” so he filed a claim with his E&O insurance company. However, because he was aware of the claim when he signed his renewal application, and because he did not disclose it, the claim was denied. (This is called lying on the application, or—if you want to be more politically correct—misrepresentation.)*

*The bottom line? Claim denied. No coverage for the claim. Plus—no coverage, period. His policy is subject to cancellation or nonrenewal because he lied on the application.*

The entire situation snowballed on this appraiser, because of his lack of judgment in failing to notify the insurance company when the claim was made against him. A claim is a fact that can not be ignored. You can't pretend that it doesn't exist.

If you have any questions about the specific terms and conditions of your policy, you should contact your insurance agent and get proper advice.

The purpose of your Errors & Omissions insurance policy is to protect you. Now, why would you want to go it alone?