



OKLAHOMA REAL ESTATE APPRAISER BOARD

Newsletter

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Attendees at the Board's November 16th seminar listening to Tim Andersen's morning presentation.

Board Seminar

On November 16th the Board held it's free day of education for Oklahoma appraisers. There was a tremendous turn out with 360 registrations received from Oklahoma's total of 771 in-state appraisers. With a nearly 40% turnout, not many appraisals were completed that day in Oklahoma! We received quite a bit of positive feedback for both the morning and afternoon speakers. Given the interest in Peter Christensen's presentation, this newsletter includes an article entitled [Appraiser Discipline and E & O Insurance](#) written by Mr. Christensen. If you did not write down Mr. Christensen's contact information at the seminar, or if you were not present at the seminar and would like additional information on E & O insurance from LIA Administrators and Insurance Services, please contact us and we can provide that to you. If you were present at the seminar, you know that LIA Administrators offered a \$25.00 discount on a \$300,000 per claim policy and a \$50.00 discount with a \$500,000 or higher per claim policy to all seminar attendees. Be prepared to show proof of attendance to the LIA underwriter in order to receive your discounted rate.

Appraiser Discipline and E&O Insurance

By Peter Christensen, General Counsel for LIA Administrators & Insurance Services

In Oklahoma, there is no legal requirement for real estate appraisers to carry errors and omissions insurance (E&O). Only one state, in fact, requires appraisers to be insured – Colorado. Nevertheless, most Oklahoma appraisers who perform fee work for clients, like most appraisers across the country, currently maintain E&O. Appraisers generally carry it for two reasons: either they want the legal defense and financial protection provided by E&O in the event of a professional liability claim, or they just buy it because their clients or AMCs require it.

Whatever the reason for having E&O, when a state disciplinary matter occurs, appraisers understandably worry about the impact that the disciplinary matter may have on their insurance. Common fears are that their insurer will not renew their policy or that the insurer will increase their premium. These fears do have a rational basis but they are sometimes excessive. The imposition of serious discipline against an appraiser – such as a license suspension based on significant violations of USPAP or intentional wrongdoing – almost certainly will result in an insurer's decision to not renew the appraiser's policy or a substantial rate increase. The insurer's reasoning is usually that, based on statistical experience, an appraiser with serious discipline is more likely to have a legal claim against them down the road and is a more risky financial bet on average for the insurer.

At the other end of the spectrum, the underwriting rules for a few appraiser E&O programs have resulted in the non-renewal of E&O (or denial of a new policy) even when no discipline is imposed after the filing of a complaint to the state. Under the rules that apply in these programs, the insurance carrier may non-renew a policy or deny new insurance coverage when only a complaint has been filed and no actual discipline has occurred. It's important to understand, however, that underwriting rules vary widely among E&O programs. One insurance carrier's reaction regarding a disciplinary matter may be different than another carrier's – it all depends on the underwriting rules that each carrier creates for a particular E&O program.

“Should I report the filing of a complaint against me with the state to my E&O insurance provider?” This question arises because of the fear that reporting the complaint will result in non-renewal or a higher premium. Regardless of those fears, however, and regardless of whether non-renewal or a higher premium may actually result, the safest course for an appraiser is always to report the filing of a complaint to his or her E&O carrier promptly upon receipt of first notice of the complaint. There are two main reasons for this.

The first reason is simply to secure the assistance and policy benefits that the appraiser may have under his or her E&O. Most E&O policies have some type of coverage for assistance in connection with defending a disciplinary complaint. Your policy may cover the cost of an attorney if legal assistance is needed in responding to the complaint or at a hearing. Some E&O programs also maintain legal departments that can help you informally by reviewing your correspondence with the state before you submit anything. This can be valuable assistance because it may come from legal counsel who have seen hundreds of other disciplinary matters and who have the experience to evaluate an appropriate response. To be eligible for such coverage benefits, an appraiser generally must report the disciplinary matter to the E&O provider within a certain timeframe. This deadline will vary from policy to policy, but it generally will be within 30 or 60 days of when the appraiser receives first notice of the complaint.

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While a majority of disciplinary investigations opened against appraisers probably do not require any attorney assistance and can be handled by the appraiser directly, it is still important to report every matter upon receipt of first notice to preserve the availability of coverage. A complaint that doesn't seem serious at the beginning might escalate into something worse down the road.

The second reason to report a complaint to your E&O provider is critical to understand. Virtually all applications for new E&O or for renewal of E&O have variations of two questions. One question addresses the existence of past or pending disciplinary investigations and asks something like this: "Have you been disciplined or investigated by any state licensing, administrative or regulatory board as a result of appraisal activities?" The other question addresses existing or potential legal claims and asks something like: "Are there any pending facts or circumstances which could result in a claim being made against you?"

If an appraiser fails to answer these questions accurately by omitting the mention of a disciplinary complaint to the state, and then receives a policy based on that application, the appraiser is jeopardizing the potential coverage under the policy not only for the omitted disciplinary matter (and any legal claim for damages in court that might be filed later) but is also potentially jeopardizing his or her coverage for any future claim. This is because the omission of the information from the application may give the insurer the right to rescind the policy if the omission is discovered later. As an attorney, I have seen heartbreaking instances (I'm not speaking about any claims handled in the E&O program for which I am general counsel) in which appraisers failed to report disciplinary matters on their applications and were later sued in serious lawsuits. When the appraisers reported the lawsuits for coverage and the E&O carriers discovered the omissions, the E&O carriers were within their legal rights to rescind the policies and deny coverage for the lawsuits. This is the reason why it's always safest for an appraiser to report a disciplinary matter to his or her E&O and include mention of it on the application – regardless of the potential impact on renewal or premium. Failing to do this creates the risk of having no coverage at all. It's important also to understand that this means reporting a complaint or investigation – regardless of whether it actually results in discipline or admonishment (whether public or private).

"What if my E&O provider non-renews me or raises my rate?" This is not the inevitable result of reporting a complaint to an E&O provider. Even when an E&O application asks for information regarding disciplinary matters or disclosure of circumstances that may lead to a claim, the insurance carrier's response is not necessarily going to be non-renewal or a premium increase. As mentioned above, the underwriting rules vary in different programs, and some carriers actually look at the seriousness of the matter to evaluate whether it is something that should affect the issuance of E&O or the premium that is charged. A complaint filed by a borrower over a claimed "low value" or a complaint resulting in no sanctions or in a minor warning, for example, may have little or no consequence in some E&O programs. There is also no "blacklist" for insurance purposes – each determination legally must be made under an insurance carrier's own underwriting rules.

When an insurance carrier decides to non-renew a policy or quotes a much higher renewal premium, however, an appraiser can shop for alternatives with other E&O providers. The suggestion that I would have for appraisers in this circumstance is to start the shopping process early (at least 30 days before the end of the appraiser's current policy)

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and to engage in actual person-to-person discussions with E&O providers to get feedback on the application process and different options, rather than trying to handle it via on-line applications. Only the most severe disciplinary punishments will make an appraiser truly uninsurable or push the E&O premium beyond a realistic range.

AUTHOR BIO

Peter Christensen is general counsel of LIA Administrators & Insurance Services, a program administrator for appraiser E&O insurance. A graduate of the University of California, Berkeley's Boalt Hall School of Law, he has been licensed as an attorney in California since 1993. LIA manages the Appraisal Institute's endorsed E&O program for appraisers.



Pictured: Betty Cagle, Board Member, Toni Bright, Compliance Officer for Coester, LLC and Christine McEntire, Board Director.

Between October 21 and 24 board members and board staff attended the Fall Conference of the Association of Appraiser Regulatory Officials ("AARO") in Washington, D.C. This conference included their attendance at the public meeting of the Appraisal Standards Board held in conjunction with the AARO conference. Attendees also heard federal updates from the Appraisal Foundation, Appraisal Qualification Board and the Appraisal Subcommittee. According to the Board's Director, the most important take away was the discussion by the Appraiser Qualification Board of the possibility of additional changes to the Criteria which would further reduce the qualification requirements making it easier for applicants to enter the appraisal field.

7-Hour USPAP Update: Submission Deadline is December 31

If you have not yet taken your 7-Hour USPAP update, your deadline is quickly approaching.

You **MUST** submit proof of completion, in the form of a course completion certificate, no later than close of business on December 31. If you do not take the course in a timely manner, or if you take the course and do not submit your certificate, you risk being fined or your license suspended. Do not rely on the education provider to submit your certificate. It is the appraiser's responsibility to submit the course completion certificate for this course. As of November 17th, 250 appraisers had not taken the 7-hour USPAP Update course. If you are one of the 250, please consider taking this course sooner rather than later to avoid potential problems at the end of the year.