

Statute of Limitations on Claims Against Real Estate Appraisers

Protect “Small Business” Appraisal Companies From Frivolous Lawsuits & Complaints

Summary: This legislation would establish a statutory limitation on the time in which civil and administrative actions against real estate appraisers can be filed following the date the appraisal was performed.

Why is this legislation needed?

Real estate appraisers have been faced with frivolous lawsuits by overly litigious law firms alleging defects in appraisals performed for mortgage transactions originated during the 2005-2008 “real estate bubble” that have gone into default. These law firms have purchased the rights to sue the appraiser from a financial institution that is desperate to limit their loss. Similarly, many of these allegedly defective appraisals result in administrative complaints to state appraiser regulatory agencies and disciplinary action against appraisers. Under current law, the “Discovery Rule” results in an almost infinite statute of limitations for claims against appraisers because the time for filing a suit does not commence until the party filing the claim discovers, or should have discovered, the alleged defect in the appraisal. Because these appraisals were performed many years ago, the appraiser does not have the ability to adequately defend themselves.

Key Points

- A statute of limitations that is specific to claims against real estate appraisers will provide the certainty of knowing the time period during which a suit or disciplinary action might be filed. The appraiser will be better able to take appropriate risk management steps, such as obtaining insurance coverage and retaining appropriate records.
- There are law firms that have purchased the rights to sue appraisers in relation to defaulted mortgages. These firms have not purchased the bad loans themselves, just the rights to sue the appraiser(s) involved. The holders of the defaulted mortgage see this as the only way to recover some of their losses, with virtually no risk.
- Lawsuits are also filed by borrowers, lenders, or investors and typically allege that an appraiser's inflated value resulted in the plaintiff borrowing, paying or loaning too much money. However, in most cases the real reason for the default is a significant reduction in the market value of the property

or poor underwriting of the borrower and the collateral at the time the loan was made.

- In many cases, the appraiser is the “last one standing” with any connection to these mortgage loans with the original mortgage lender or financial institution having failed during the real estate crash. There is no one else left to sue other than the appraiser.
- These lawsuits generally allege professional negligence, fraud, breach of contract, etc. Currently, the statute of limitations on a claim against an appraiser is going to vary based on the legal theory that forms the basis for the complaint. However, under the “Discovery Rule” the time for filing a claim does not commence until the alleged defect is discovered, or should have been discovered.
- When commencing these actions, the plaintiffs perform a review of the appraisal in question at the time the mortgage goes into default or at the time that they purchase the rights to sue the appraiser and allege that the appraisal is defective for a variety of reasons, some as simple as a minor violation of the Uniform Standards of Professional Appraisal Practice (USPAP). Generally, the statute of limitations will accrue from the time of this review that discovers the alleged defect.
- However, an adequate appraisal review program within a financial institution should have detected any defects in an appraisal at the time the appraisal was originally performed. However, many financial institutions neglected the appraisal review function during the real estate price bubble.
- USPAP requires that an appraiser retain a work file for each appraisal for a period of five years after the appraisal was prepared or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.
- Many appraisers purge their files of all information related to an appraisal after five years. As a result, it is difficult for an appraiser to defend themselves against a lawsuit that is in relation to an appraisal that was done as long as 15 years ago.
- Some appraisers carry general liability insurance and errors and omissions insurance. However, these policies often have limits of liability that are far below the damages being requested in the lawsuits. In addition, defense costs often erode an appraiser’s coverage very quickly.

- In some cases, appraisers have been forced to settle these lawsuits or agree to administrative sanctions just to make them go away and to limit their defense costs.
- Most appraisers are small businesses and a lawsuit or disciplinary action, or the threat, can be devastating.