



Memo from the Board to Nebraska Real Property Appraisers

September 2012

APPRAISAL MANAGEMENT COMPANY INDEMNIFICATION CLAUSES

By Tyler Kohtz, Director

At its regular meeting on September 20, 2012 the Nebraska Real Property Appraiser Board ("Board") discussed the legal impact that indemnification clauses found in appraisal management company ("AMC") contracts might have on you as an appraiser. Although such clauses serve a purpose, many AMCs have put an unreasonable liability on appraisers.

The Board is concerned that many appraisers may be signing contracts with AMCs without reading the entire document first. The problem is that many of these indemnification clauses go beyond holding an appraiser accountable for a faulty appraisal and place the entire legal liability on the appraiser. By indemnifying itself from any legal liability, the AMC shifts any liability for claims, damages, losses, penalties, fines, judgments, costs, attorney fees, and expenses related to the appraisal report to the appraiser. Some indemnification clauses go as far as holding the appraiser responsible for an amount equal to the repurchase price paid by a mortgage lender for repurchase of a mortgage loan. The following is an actual indemnification clause that the Board reviewed at its meeting:

Indemnification. *Appraiser shall hold harmless and indemnify AMC, its directors, officers, employees, agents and representatives, and any AMC client for whom the Appraisal Services are performed, including that client's officers, directors, employees, agents and representatives, against all loss, liability, penalty, damage, expense, costs, including attorneys' fees of any kind, to person, property or both arising out of any action or inaction of the Appraiser in connection with this agreement and the Appraiser's services under this Agreement, including without limitation non-compliance with applicable laws and regulations in the performance of the Appraisal Services, whether or not suit is brought. Appraiser assumes all risk of property loss or damage and of personal injury or death which its own officers, directors, employees, agents and representatives may sustain or cause in connection with this Agreement.*

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The Board is not advising against entering into a contract with an AMC that has an indemnification clause, but advising you to read the entire contract and make a sound decision using reasonable professional judgment. The Board currently has no plans to address AMC indemnification clauses in the statutes or rules, but will continue to monitor indemnification clauses found in AMC contracts. The purpose of this Memo from the Board is to bring awareness to the indemnification clauses that may be found in the contracts that you are signing with AMCs. If you have any information that you would like to provide to the Board regarding indemnification clauses, please feel free to contact the Board's office.

The two links below have been provided for additional reading on indemnification clauses. The first is an Appraiser Law Blog article titled "What's Wrong with Most Indemnification Clauses in AMC Contractor Agreements?", and the second is a National Association of Realtors letter to the heads of the Department of Housing and Urban Development, Federal Institutions Examination Council, Veteran's Administration, and the Federal Housing Finance Agency.

<http://www.appraiserlawblog.com/2011/08/whats-wrong-with-most-indemnification.html>

<http://www.scribd.com/doc/62112626/Letter-to-Regulators-on-AMC-Indemnification-Clauses>

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