

# CIVIL REMEDIES

Geoffrey K. Milne

Partner

Hunt Leibert

Hartford, CT

# APPRAISERS

80% OF ALL MORTGAGE FRAUD  
INVOLVES APPRAISERS.AVERAGE  
PER OCCURRENCE LOSS IS IN EXCESS  
OF \$60,000.

-2005 FBI INFORMATION

# INCREASED LITIGATION

- OVER-VALUATION ERRORS MATERIALLY INCREASE DEFAULT RISK AT THE RATE OF 2-3 PERCENT FOR EACH PERCENTAGE POINT OF UPWARD APPRAISAL BIAS.

Lacour-Little and Malpezzi, *Journal of Real Estate Finance and Economics*, 27:2, 211-233(2003).

# FRAUD OR NEGLIGENCE

- Multiple loans or isolated instance;
- Insurance companies are required to defend and indemnify for any negligence claim covered under an insurance policy. Imperial Cas. & Indemn. Co. v. State, 246 Conn. 313 (1998).
- Negligence claims require lower burden of proof but typically are tempered by comparative negligence.

# CASES

- Appraiser can owe a fiduciary duty to a lender;
- Appraiser who intentionally inflates an appraisal report commits an unfair trade practice [allows for punitive damages and attorneys fees];
- Non-delegable duty ? Cornelius v. Department of Banking, 94 Conn. App. 547 (2006).
- Appraisers still liable even if they do not charge a fee. Massachusetts Asset Financing Corporation v. Harter, Secrest & Emery, 430 F. 3d 59 (1<sup>st</sup>. Cir. 2005).

# PREDATORY LENDING ?

- SUBPRIME LOAN + INFLATED APPRAISAL = PREDATORY LENDING ?  
Hoffman v. Stamper, 385 Md. 1 (2005).  
Jury verdict for economic and non-economic damages against loan officer, lender and appraiser for properties lost in foreclosure. Underlying loans involved “flips” with inflated appraisals.

# MANAGEMENT

- Require all appraisers with whom you conduct business to carry insurance coverage [have declarations page for each year];
- Create independence zones between loan officers and appraisers [decreases risk of collusion and helps to defeat claims of comparative negligence]
- Technology, review appraisals, and MLS history of subject property.

# MANAGEMENT (Cont.)

- Mortgage Brokers
    - Broker Agreements should provide for liability for acts of all third party agents;
    - Minimum capital requirements to honor loan repurchases; fidelity [dishonesty] bonds; errors and omissions coverage.
- Why ? Brokers hire appraisers and have no “skin in the game”.

# WAREHOUSE LENDING

- Greater risk of being defrauded by broker;
- “upstream” liability against funders who have knowledge of improper practices by brokers;
- Defalcation bonds a necessity to guard against embezzlement and theft;
- Agency- test is control and whether actions benefit the principal.