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Editor's Note: AMC bad debt- slow pay or no pay- is a growing issue for appraisers. According to one appraiser, federal guidelines may make lenders responsible.

AMC Bad Debt – Lenders Responsible?

By David Brauner, Editor

Appraiser Kim L. Herzfeldt is mad as hell at being stiffed by AppraiserLoft and by the lender's refusal to redress the loss. His course of action offers hope and possible precedence for every appraiser owed money by an AMC.

"It felt like your best friend stealing your daughter's college fund" says 30-year appraiser Herzfeldt, referring to the cold shoulder he got from his long-time lender/client, when he suggested they take responsibility for the monies owed him by the lender's "agent" AppraiserLoft- the now defunct appraiser management company (AMC).

Here's why Herzfeldt is so mad: he warned his credit-union client in advance that there was a growing body of evidence, easily found online, which cast doubt on the reputation of AppraiserLoft*. But Herzfeldt says the warnings were ignored. Believing that one of Colorado's top credit unions had done its due diligence and not wanting to lose a substantial portion of his income from one of his best clients, Herzfeldt agreed to work for AppraiserLoft. Today he has over \$10,000 in unpaid invoices from about two month's work.

Herzfeldt , past chairman of the Colorado Board of Real Estate Appraisers, says he has received calls from many appraisers in Colorado who are in the same boat. He estimates outstanding fees owed to Colorado appraisers from this one lender could be as much as \$200,000.

Take it or Leave it

The back story is familiar: Herzfeldt was notified one day by his credit-union/client that all their work would be going through an AMC: take it or leave it. "What hurt is that they were such a great client," he says. "They paid full fees, were professional, no pressure, quick pay, expected quality and respected our work." AppraiserLoft took 25 percent of the appraisal fee for "pass through" work, according to Herzfeldt. "Other top credit unions were not taking appraiser fees to pay for these services," he says.

And then there was the issue of quality. "The questions the staff reviewers at AppraiserLoft asked were obviously uninformed and showed serious ignorance of the appraisal process. They were boilerplate- follow-the-prompt-on-the-computer-screen type of responses. All through this process we made the lender aware of our concerns. We continued to try and protect our client and our work but we were ignored," Herzfeldt said.

Fighting Back

Based on language in the Interagency Appraisal and Evaluation Guidelines (2010), Herzfeldt believes lenders are responsible for the "agents" they hire and that this responsibility may extend to fees. From the Guidelines (**link- the doc is in 29) (beginning page 36): "An institution that engages a third party to perform certain collateral valuation functions on its behalf is responsible for understanding and managing the risks...including compliance, legal, reputational and operational risks." Further: "If an institution outsources any part of the

collateral valuation function, it should exercise appropriate due diligence in the selection of the third party...The process should include sufficient analysis by the institution to access whether the third party provider can perform the services."

"Clearly the credit union did not do its due diligence under these Guidelines," Herzfeldt says. "When I asked them to make good on the lost fees from the AMC they vouched for, they basically said 'tough luck.' Their position is that the appraisals are already paid for by them and that my contract was with AppraiserLoft, not with them. But our position is that *their* contract was with AppraiserLoft, which places the responsibility on them. One or both of them are likely in breach of the agreement."

According to Herzfeldt, a number of attorneys agree that there may be a basis for making the lender responsible for the monies lost. "The attorneys say that the contract between the lender and AMC may include specific requirements and protections that either or both parties breached and that since I can demonstrate monetary harm as a result of such breaches, I may have a cause of action. In other words, if the lender had a clear duty to oversee the third party and how it dealt with appraisers, which it did, then I may be able to go after the lender for failing to perform the required oversight, which resulted in my being out \$10,000."

Big Picture

The failure of AppraiserLoft is sending shock waves through the industry for several reasons. Many see this as a tipping point that will force the hand of regulators to step up AMC oversight. AMCs appear to be backing off a bit and in a more conciliatory mood as a result. With the new Consumer Financial Protection Bureau now in charge of oversight, there is a fresh and more independent set of eyes to review and revisit issues of appraiser independence, transparency and customary and reasonable fees and the impact on consumers.

Herzfeldt sees the failure of AppraiserLoft from the perspective of an independent fee appraiser. "Appraisers can't worry about getting paid and be independent," he says. "The protections need to be enforced, otherwise appraisers have no recourse. I can and have gone to state authorities over local lenders who wouldn't pay and have gotten satisfaction. But in this case, I can't go to California (where AppraiserLoft was located) to collect from them and they know that."

Besides the money he's out, Herzfeldt says he is worried that this is part of a larger trend. "This (local) credit union was one of our best clients," he said. "Historically credit unions have provided the best services to their members and they have respected the professional relationship between lender/appraiser. I hope this is not a dark sign of things to come."

Herzfeldt has been contacted by numerous appraisers on this issue and directed their concerns, along with his own, to state and federal regulators, Congress, his state Attorney General and the media. "I suggest all appraisers do the same. The light of day may makes the difference," he said. "Many small, independent appraisers have been harmed. All have been damaged by the actions of this lender and the AMC. We have been patient waiting for the lender to do the right thing. We hope they will."

Find the Interagency Appraisal Guidelines posted at WorkingRE.com under Sidebar Information-left column. Contact stopfeetheft@gmail.com if you have been harmed in Colorado.

About the Author

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