



September 9, 2008

Dear valued AppraisalPort® user,

There seems to be quite a bit of buzz concerning AP's new User Agreement. To ensure that we reach as many of you as possible, we've asked Neil Olson, FNC's Chief Legal Officer, to put together some answers to the most common questions. Facts are never as interesting as what the rumor mill produces, but I hope this newsletter will provide some clarity.

1. What has changed in the new User Agreement?

Although there are several minor changes, the main changes include changing "subscriber" to "user," clarifying how notices are given, and reinstating the language of the 2002 agreement by replacing "litigation" with "arbitration."

2. Do the changes to the AppraisalPort User Agreement affect an appraiser's errors and omissions (E&O) insurance coverage?

No. The new User Agreement does not in any way affect an appraiser's E&O insurance coverage. Errors and omissions coverage is intended to cover the appraiser in the event that he or she makes an error in judgment in the preparation of an appraisal or engages in some other professional error related to appraisal assignments.

Injury to someone else's property (including intellectual property such as software or a website – i.e., Adobe Acrobat or the AppraisalPort website) are covered by general liability insurance, *not* professional liability insurance (E&O).

3. Why is the "hold harmless" clause present in the new agreement?

FNC did not change any of the language regarding the "hold harmless" clause in the new agreement. In fact, most companies selling software or offering services or products (i.e. Adobe; FNC; appraisal forms companies) operate under a *user agreement*, not an *employment agreement*. Most *user agreements* contain "hold harmless" clauses. The "hold harmless" clause has a different meaning based on the type of agreement.

There have been a number of questions within the appraiser community regarding the updated AppraisalPort User Agreement. The questions seem to be based on the belief that FNC/AppraisalPort is an appraisal management company (AMC). We are not. While Appraiser Management Companies may engage appraisers through means of an **employment agreement**, as a technology company, FNC's is a **user agreement**, not an **employment agreement**.

FNC and AppraisalPort provide an automated, secure connection between lender clients and appraisers through which appraisers receive assignments from their clients and through which they deliver their appraisal reports back to their clients electronically.

Because FNC/AppraisalPort is a technology company, not an AMC, they operate under a **user agreement**. Therefore, there is no need for concern over the lack of E&O coverage as it pertains to the "hold harmless" clause. (see #2 above).

4. Does this new agreement contain language that will prevent me from participating in the lawsuit against FNC?

No.

5. Does this new agreement apply retroactively?

No.

6. Does this new agreement prevent me from suing FNC for any future grievance?

Under the new agreement you may still bring an action against FNC for any future grievance. The difference is that under the new agreement, the dispute would be resolved through arbitration, not litigation.

As always, we welcome your input and hope the information provided allays any concerns.

Thanks and have a great week,

-Kagan

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