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Valuation: The Challenges, The Law & Risk Management

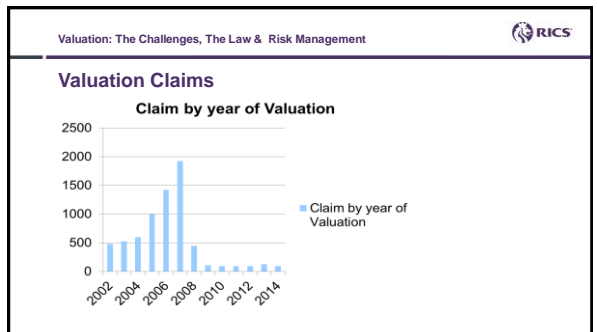
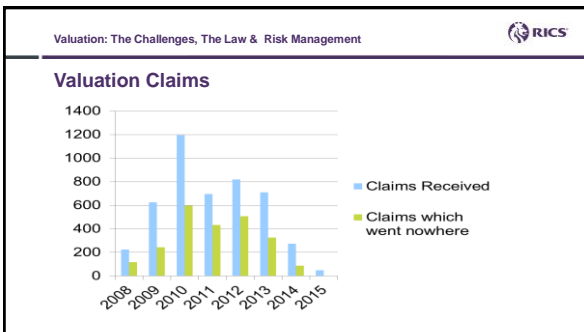
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Agenda

- Challenges
- Valuation claims: where are we now?
- Valuation claims and how are losses calculated
- Recent decisions
- Why is effective risk management important?
- Common problems
- Top tips
- What next?



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Valuations – Key Legal Principles


- Why are claims made?
- Breach of duty
- Example: Property valued at £5m, true value is £3m
 - Actual loss: £4.5m
 - But SAAMCO capped loss: £2m

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The SAAMCO Cap

- Valuers only responsible for the loss for which they had assumed responsibility to lender, i.e. the adequacy of the security
- Valuers are not responsible for all the lender's losses (e.g. collapse in market values)
- Valuer's liability capped by reference to the amount of the overvaluation (if less than actual loss)

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The Bracket (Margin of Error)

- Valuation is an art; not a science
- Courts now apply the following permissible margins of error, either side of a notional "correct" valuation:
 - Standard residential property: +/- 5%
 - An unusual property: +/- 10%
 - An exceptional property: +/- 15% (or even higher in an appropriate case)


See *K/S Lincoln and others v CB Richard Ellis Hotels Limited* [2010] EWHC 1156, per Mr Justice Coulson

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Trends – Recent Decisions


- Bank of Ireland v Watts Group Plc (2017)
- Barclays Bank Plc v TBS & V Ltd (2016)
- Triuta International v De Villiers (2016)
- Canada Square v Kinleigh Folkard & Hayward (2015)
- Bridging Loans v Toombs (2014)




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Why is Effective Risk Management Important?


- "Why do you have brakes on a car? So you can go faster. Why do you have a good risk management policy? So you can pursue your business goals more energetically."*
- John Hurrell, Chief Executive, Association of Insurance and Risk Managers




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Why is Effective Risk Management Important?


- Time commitment
- Loss of profit
- Increased excess(es)
- Increased premiums
- Damage to reputation




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Common Problems - Valuation


- Lack of expertise
- Valuing over the purchase price
- Unique properties
- Justify / explain the valuation
- Methodologies / inputs




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Common Problems – Responsibilities to Third Parties


- "Our valuation report is only for the use of our Client and no responsibility is accepted to any third party for the whole or any parts of its contents"*
- Reliance by third parties



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Common Problems – Reliance on Third Party Information


- Build costs
- Floor areas
- Planning information
- Comparables
- Assumptions

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Common Problems

- Over-influence by borrower/broker/lender
- Failing to take account of recent sale prices
- Compliance with instructions/scope of duty
- Being helpful! (follow-up advice)
- Failure to flag information you do / do not have.



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Common Problems - Planning

- Planning – advising on probability of planning
- Checking planning permission / restrictions




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Common Problems - Valuation

- Comparables




- VPV as an afterthought...

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Top Tips – Quoting for Valuations


- Conflicts
- Risk vs Reward
- Liability caps vs fee levels
- Third party reliance
- Type of client

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Avoiding Claims – Top Tips


- Terms & Conditions + SLA's
- Clear retainer letters
- Stick to your area of expertise
- Establish correct facts
- Explain methodology and assumptions
- Highlight issues to be addressed




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Avoiding Claims – Top Tips


- Attention to detail
- Contemporaneous records
- Electronic records – written/photographic
- Being helpful! (Follow up advice)
- Use of email
- Document all handovers



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Avoiding Claims - Vetting

- All valuation reports need to be vetted
- Provides invaluable risk management to claims exposure
- Errors more likely to be picked up
- Opinions should be challenged
- Ensure you are not vetting outside of your area of expertise

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Professional Indemnity Insurance

- Don't sit on bad news!
- Notify:
 - all claims [whatever the merit]
 - any circumstances that might give rise to claims
- Retain all relevant documents/electronic records
- Co-operate fully in defending claims
- Do nothing that could prejudice the defence




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What Next?


- Brexit
- The bubble
- RICS Guidance – the valuation of buy-to-let properties and HMO properties
- Risk, Liability and Insurance in Valuation Work 2017
- New Red Book (in Autumn)
- RICS conflicts of interest (Jan 2018)




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Discussion



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