

**Audio/video will begin at 9:30 a.m.**

You can minimize the webinar screen by hitting your “esc” button

Free Webinar:  
**Legal and Risk Issues 2.0  
for Real Estate Appraisers  
Relating to the COVID-19 Crisis**



**An overview of legal and risk issues for  
appraisers stemming from the COVID-19 crisis.  
Key suggestions for reducing risk.  
Example language for appraisal reports.**

*Audio/video will begin at 9:30 a.m.*



# Legal and Risk Issues for Appraisers Stemming from the COVID-19 Crisis

**Peter Christensen**  
Christensen Law Firm  
Santa Barbara, CA

Peter is an attorney and member of the California and Washington State Bars. He maintains a law practice focused on legal and regulatory issues concerning real estate valuation. His clients include appraisal firms, management companies and other providers and users of valuation services.

**Claudia Gaglione**  
Gaglione, Dolan & Kaplan LLP  
Woodland Hills, CA

Claudia Gaglione is an attorney. She and her firm serve as the national claims counsel for the appraiser E&O program managed by LIA Administrators & Insurance Services. She has overseen the legal defense of more than 8,200 appraiser professional liability claims and disciplinary matters over 20+ years.

Peter and Claudia wrote ***Risk Management for Real Estate Appraisers and Appraisal Firms***, published by the Appraisal Institute (2019).

More information about the book is here:

<https://www.valuationlegal.com/riskmanagementbook/>



# Legal and Risk Issues for Appraisers Stemming from the COVID-19 Crisis

## LIA Administrators & Insurance Services

is the sponsor of this educational event.

LIA is the Appraisal Institute's endorsed provider of professional liability insurance for appraisers.

[www.liability.com](http://www.liability.com)



# Where We Going This Morning?

- Discussion of potential liability concerns in relation to COVID-19 disease issues – that is, liability specifically for sickness issues.
- Potential economic liability issues – the more probable risk for most appraisers.
- Suggestions for decreasing liability risk.
- Insurance-related issues.
- Aiming for 45-60 minutes.



# Light Housekeeping

- Claudia and I will be the only speakers today.
- Don't worry I can't turn your microphone or video on – unless you ask me to.
- The slides I am using today are available later today in the blog on of [www.valuationlegal.com](http://www.valuationlegal.com).
- A recording will be there too.

The screenshot shows the website valuationlegal.com with a navigation menu including HOME, SERVICES, CAL. AB 5, NEW LAWS, MY BOOK, BLOG, CONTACT, RESOURCES, and PAY INVOICE. The main content area features a teal header with the title "Legal and Risk Issues 2.0 for Real Estate Appraisers Relating to the COVID-19 Crisis" and a sub-header "Published by Peter Christensen on April 2, 2020". Below this is a large image with text: "Free Webinar: Legal and Risk Issues 2.0 for Real Estate Appraisers Relating to the COVID-19 Crisis", "An overview of legal and risk issues for appraisers stemming from the COVID-19 crisis.", "Key suggestions for reducing risk.", and "Example language for appraisal reports." A logo for Peter Christensen CHRISTENSEN LAW FIRM is also visible. On the right side, there is a search bar and a "Recent Posts" section listing two articles: "Legal and Risk Issues 2.0 for Real Estate Appraisers Relating to the COVID-19 Crisis April 2, 2020" and "Valuation Legal Webinar: 'Legal and Risk Issues for Appraisers Stemming from the COVID-19 Crisis' March 18, 2020". At the bottom of the image, there is a small text box: "Free video webinar: 'Legal and Risk Issues 2.0 for Real Estate Appraisers Stemming from the COVID-19 Crisis.' Scheduled for April 10, 2020 at 9:30 a.m. Pacific. For those who cannot".

## **Q&A**

**We have about 550 people signed up for the today's webinar.**

**For that reason, Q&A is not feasible today because we would miss too many people's important questions and answering only a few could mislead people about what is most important.**

**I hope attorneys in your local area are be open to fielding questions in a time such as this.**



# “Stay at Home” and “Shelter in Place” Orders

- There are very good resources for the orders on the Appraisal Institute’s website and a great deal of discussion of those has been occurring.  
<https://www.appraisalinstitute.org/news/coronavirus/>
- The varying details of “stay at home” or “shelter in place” orders in states, counties and cities aren’t the focus of our discussion.
- Everyone should be familiar with the orders in areas in which they are managing or performing appraisals, and health and safety should come first.
- Our discussion is focused on liability matters going forward.

# Legal and Liability Issues

- Let's start with a frequent issue I am being asked about in regard to legal issues for appraisal work stemming from the COVID-19 crisis.
- Questions about this issue are really the hardest to answer for me at least – not just in a legal sense but also in terms of "what is right?"
- Here's an example: an appraiser performing residential appraisals in the Seattle, WA area emailed me this question last Friday.



## Legal and Liability Issues

*“Many the lenders are still requiring interior inspections here, can the bank be held liable if I acquire the virus while doing an inspection and I die or one of my family members dies because I subsequently infected them?” - Seattle area appraiser*

Another version of the question is:

*“Can an appraiser, the bank or an AMC be liable to a borrower if the borrower later claims the appraiser sickened them?”*


An appraiser recently reported to me that on her way inside a home for an interior inspection, the borrower threatened *“If you make me sick, I’ll sue you.”*

## Legal and Liability Issues

- I'm not a plaintiff's lawyer, but to me - such claims are *plausible* if given good proof of compelling facts.
- The predominant claim would likely be for some form of negligence.
- What do you think Claudia?
- In the context of home appraisals . . . the reality is that such claims would be difficult claims to prove. Most claimants would find it very difficult to establish that a specific person or business is specifically responsible for infecting them. There is a vast array of community exposures through which the virus may have been contracted. (And other defenses would apply too.)

# Legal and Liability Issues

- ✓ But, here in California, the California Association of Realtors is concerned enough about similar liability issues that they've developed a special advisory form.
- ✓ Property visitors and service providers (such as appraisers) are being asked to sign the form.
- ✓ What do you think about appraisers signing this form? Or similar forms? Could it benefit appraisers if other parties sign the form (or similar forms in other states)?
- ✓ If you are asked to sign one, consider asking for copies of the forms signed by the seller and agent/broker.
- ✓ There are much worse forms out there – mainly be watchful for indemnification language.



CALIFORNIA  
ASSOCIATION  
OF REALTORS®

**CORONAVIRUS PROPERTY ENTRY  
ADVISORY AND DECLARATION**  
(C.A.R. Form PEAD, 4/20)

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Property Address \_\_\_\_\_ Date \_\_\_\_\_

1. **RISKS OF EXPOSURE:** The Coronavirus (COVID-19) pandemic is a worldwide risk to human health. COVID-19 is highly contagious and has a mortality rate many times greater than the flu. COVID-19 can spread easily and exponentially. While people of all ages are at risk of catching COVID-19, persons especially at risk are those with compromised immune systems and the elderly. Persons over 65 of age may be at particular risk.
2. **"STAY HOME ORDERS":** In order to reduce the spread of COVID-19, the State of California, as well as many California cities and counties have issued "Safer at Home" or "Shelter in Place" orders, with exceptions for essential activities.
3. **REAL ESTATE SALES ACTIVITIES AS ESSENTIAL SERVICES:** Under Federal and State guidelines, activities required to facilitate a real estate transaction have been deemed essential activities. Nevertheless, designation of some real estate activities as essential activities does not make them free from COVID-19 risks. All persons must still practice "social distancing" and take all steps necessary to protect themselves and others. Finally, some county and city orders are more restrictive than Federal and State guidelines and may take precedence over Federal and State guidelines.
4. **REPRESENTATION AND AGREEMENT:** By signing below, you make the following representations and agree as follows:
  - A. You are either:
    - (1) The seller, landlord, tenant, or occupant, voluntarily allowing someone to enter the Property for viewing, walk-through, inspections, or otherwise facilitating the real estate transaction; or
    - (2) A prospective or actual buyer, tenant, real estate agent, or other person whose services facilitate the completion of a real estate transaction and are voluntarily entering the Property for the purpose of viewing, inspecting, or performing an activity or providing services in furtherance of a real estate transaction.
  - B. You understand that showing and visiting properties may be dangerous or unsafe and could expose you or others to Coronavirus or COVID-19.
  - C. If applicable, you understand that your showing or visiting activities are part of an exception to Federal or State "Safer at Home" or "Shelter in Place" orders and that you are conducting those activities at your own risk.
  - D. **You understand that if you engage in any activities in violation of the law, including Federal, State, county or city orders, you are acting against the advice of Broker.**
  - E. You agree to take all reasonable and necessary precautions to protect yourself and others from the spread of COVID-19, including, but not limited to the following:
    - (1) You are aware of and agree to follow all Federal, State, and local laws and orders, including Stay Home, Safer at Home, Shelter in Place orders, even though such laws and orders may be changing rapidly.
    - (2) You agree and understand that it is your responsibility to exercise care to protect yourself, such as assessing your own risks, which may include age, underlying health conditions, recent travel, possible exposure to COVID-19, doctor's recommendations, and State or Federal recommendations.
    - (3) You represent that (i) to the best of your knowledge, you are not currently afflicted with, and have not knowingly, within the last 14 days, been in contact with someone afflicted with COVID-19, and (ii) you are not experiencing a fever, or signs of respiratory illness such as cough, shortness of breath or difficulty breathing, or other COVID-19 symptoms.
    - (4) You believe that you are not likely to transmit or contract COVID-19.
    - (5) When visiting or allowing someone to visit the Property, and if available, you agree to wash your hands with soap and water or use hand sanitizer, and to wear rubber gloves, a protective face mask, and protective shoe coverings. Remember to not touch your eyes, nose or mouth.
    - (6) You agree to practice social distancing by keeping at least 6 feet between yourself and others. Do not gather in groups, and do not touch surfaces or items in the Property. If you believe it necessary to touch surfaces or items in the Property, consider the risks of doing so. You are reminded that wearing protective gloves, face masks, shoe coverings, and washing and sanitizing hand are steps you can take to protect yourself and others.
    - (7) After showing the Property, sellers, landlords, and occupants should clean and disinfect the Property, paying attention to any areas that may be commonly touched, such as door knobs, handles and counter tops.
    - (8) After viewing the Property, visitors should discard any gloves, masks or shoe coverings worn during the visit and wash their hands with soap and water for at least twenty seconds.
5. **AGREEMENT, DECLARATION AND ASSUMPTION OF RISK:** By signing below, you are declaring the foregoing is true, that you agree to take all recommended and reasonable actions to protect yourself and others from exposure to COVID-19, and that you assume the risk, as applicable, of entering the Property, or allowing someone to enter the Property. You understand and agree that no one, including but not limited to real estate brokers and agents, can guarantee that you will not be exposed to or contract COVID-19.

**By signing below, I acknowledge that I have read, understand, voluntarily agree to the foregoing, and have received a copy of this Coronavirus Property Entry Advisory and Declaration.**

\_\_\_\_\_  
(print name) \_\_\_\_\_ (signature) \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
(print name) \_\_\_\_\_ (signature) \_\_\_\_\_ Date \_\_\_\_\_

If the person signing above is a real estate licensee, complete the following:


Brokerage Company name: \_\_\_\_\_ DRE License # \_\_\_\_\_

Salesperson or broker-associate name: \_\_\_\_\_ DRE License # \_\_\_\_\_


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525 South Virgil Avenue, Los Angeles, California 90020

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# Legal and Liability Issues



**CALIFORNIA  
ASSOCIATION  
OF REALTORS®**

**CORONAVIRUS PROPERTY ENTRY  
ADVISORY AND DECLARATION**  
(C.A.R. Form PEAD, 4/20)

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**Property Address** \_\_\_\_\_

**Date** \_\_\_\_\_

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By signing below, I acknowledge that I have read, understand, voluntarily agree to the foregoing, and have received a copy of this Coronavirus Property Entry Advisory and Declaration.

(print name) \_\_\_\_\_


(signature) \_\_\_\_\_

Date \_\_\_\_\_

NATIONAL ASSOCIATION OF REALTORS® WHO SUBSCRIBE TO ITS CODE OF ETHICS:

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325 South Virgil Avenue, Los Angeles, California 90020

PEAD 6/20 (PAGE 1 OF 1)



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- (2) A prospective or actual buyer, tenant, real estate agent, or other person whose services facilitate the completion of a real estate transaction and are voluntarily entering the Property for the purpose of viewing, inspecting, or performing an activity or providing a services in furtherance of a real estate transaction.

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**What is the more likely legal risk?**

## Economic Fallout Leading to Liability Issues

- In key ways relating to liability and risk issues, the COVID-19 crisis is like a replay of the 2007-2009 financial crisis, but in *fast forward*.
- All at once, we have massive monetary losses, fears of wide scale unemployment (potentially greater than the financial crisis), and disruptions of lending.
- Will real estate price declines occur?
- *What happens when conditions like this occur with respect to claims against appraisers?*
- *Who files them most frequently?*
- *Let's talk about some suggestions on what appraisers should be doing going forward.*

# Suggestions on Language for Reports

Slide 15

➤ **Short statement about COVID-19 and market conditions.**

*This appraisal was performed following public awareness that COVID-19 was affecting residents in the United States. At the time of the appraisal, COVID-19 was beginning to have widespread health and economic impacts. The effects of COVID-19 on the real estate market in the area of the subject property were not yet measurable based on reliable data. The analyses and value opinion in this appraisal are based on the data available to the appraiser at the time of the assignment and apply only as of the effective date indicated. No analyses or opinions contained in this appraisal should be construed as predictions of future market conditions or value.*

**Of course, appraisers will must adjust such language as market impacts begin to be observed and become measurable. It's the failure to observe and report on those impacts when they become measurable that could be the underpinning to future legal claims (as they were for appraisers who failed to identify changing markets during the financial crisis 2007-2009).**



# Suggestions on Language for Reports

Slide 16

- What about how appraisers should handle the new “flexible” ways of reporting appraisals - generally with no interior inspection by the appraiser and sometimes solely a desktop?
- You’ve suggested: it’s important to restate the obvious . . .
- When preparing a Desktop or Exterior Only appraisal, it is important to restate the obvious within the report, that being ... the appraiser:

*“...did not perform a personal visual inspection of the interior or the exterior of the subject property...”, or*

*“...performed a personal visual inspection of the exterior of the subject property from the street and did not conduct any interior visual inspection of the subject property, whatsoever...”*





# Suggestions on Language for Reports

Slide 17

- **Explain what you did in the report and make sure you have support in the work file...**
- **This is not the time to rely on just “canned” or vague language...the same general language should not be dropped into every report. Saying the appraiser reviewed “existing public and private sources” is not sufficient. There should be facts, information and details in plain English.**
- **This is not the time to cut corners.**
- **It is recommended that the appraiser further supplement this part of the assignment with work file notes. Remember that claims are rarely made within weeks of a report being completed. Rather, you may be called upon to defend a report months or years after it was prepared.**



## Additional Key Language in Reports

- **How to deal with the prospect of increased borrower and purchaser claims.**

*The appraiser has not identified any purchaser, borrower or seller as an intended user of this appraisal and such parties should not rely on the appraisal for their own purposes. Neither payment for the appraisal nor receipt of a copy of the appraisal by such a party or any other third party means that the party is an intended user of the appraisal. Such parties are advised to obtain an appraisal from an appraiser of their own choosing if they require an appraisal for their own use. This appraisal report should not serve as the basis for any property purchase decision or any appraisal contingency in a purchase agreement relating to the property.*

## A Reminder About Traditional Key Language in Reports

- **Never forget to include the equivalent to language similar to the following:**

*This appraisal report is not a home inspection. It does not guarantee or imply that the house is free of defects or property condition problems. The appraiser is not a home inspector. It is suggested that the borrower secure a professional inspection of the property and take the necessary steps to insure the house is acceptable to them prior to closing escrow.*

# Suggestions on Language for Reports

- **If you are preparing residential appraisals under the various new guidelines Fannie Mae and Freddie Mac or other flexible report options on a form being used for a different purpose than originally intended, explain something similar to the following:**

*Because of the impacts of COVID-19, the appraiser has been requested to report this appraisal on a pre-printed form that was contemplated for a different scope of work by the appraiser that may normally have included a personal inspection by the appraiser of the property. Accordingly, this appraisal report (particularly the pre-printed information concerning the appraiser's scope of work, limiting conditions and certifications) should be read in the context of the changes requested and the modified language and text adopted in response to the impacts of COVID-19.*



# Lessons from the Financial Crisis

- **Post-COVID-19 may be similar to the appraisals performed in 2007-2008 when data began indicating that real estate markets were declining in price and condition.**
- **The toughest appraisals to defend in claims following the financial crisis were those in which the appraisers failed to identify the changed markets and declining prices (typically, by utilizing older comparable sales).**
- **Don't let that be you as an appraiser. Stay on top of markets and data. Identify and report the changing markets and price effects as changes become measurable.**



# Be Mindful of Your E&O Insurance

Slide 22

- During the financial crisis, a significant number of appraisers left active fee appraising for staff employment, took a hiatus, or just quit.
- Others dropped their E&O to save a bit of money.
- Be careful with your E&O.
- Don't let your coverage lapse unintentionally.
- If you're retiring, make sure to explore retirement tail coverage – which is often free.

Policy Period: From 11/28/2016 To 11/28/2017  
(Month, Day, Year) (Month, Day, Year)

Retroactive Date (if applicable): 11/28/1994

**DECLARATIONS**  
for  
**REAL ESTATE PROFESSIONAL  
ERRORS & OMISSIONS INSURANCE POLICY**

**THIS IS A CLAIMS MADE INSURANCE POLICY.**

THIS POLICY APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST AN INSURED DURING THE POLICY PERIOD. ALL CLAIMS MUST BE REPORTED IN WRITING TO THE COMPANY DURING THE POLICY PERIOD OR WITHIN SIXTY (60) DAYS AFTER THE END OF THE POLICY PERIOD.

Insurance is afforded by the company indicated below: (A capital stock corporation)

[REDACTED]

Note: The Insurance Company selected above shall herein be referred to as the **Company**.

Policy Number: **RAB3874668-16** Renewal of: **RAB3874668-15**

Program Administrator: [REDACTED]

---

Item 1. **Named Insured:** [REDACTED] **Appraisal Services**

Item 2. **Address:** **PO Box 336**  
City, State, Zip Code: [REDACTED]  
Attn:

Item 3. **Policy Period:** From 11/28/2016 To 11/28/2017  
(Month, Day, Year) (Month, Day, Year)  
(Both dates at 12:01 a.m. Standard Time at the address of the **Named Insured** as stated in Item 2.)

4. **Limits of Liability:** (inclusive of claim expenses):  
A. \$ 1,000,000 Limit of Liability - Each Claim  
B. \$ 2,000,000 Limit of Liability - Policy Aggregate  
C. \$ 500,000 Limit of Liability - Fair Housing Claims  
D. \$ 500,000 Limit of Liability - Fungi Claims

Item 5. **Deductible:** (inclusive of Claim Expense): \$ 5,000 Each Claim

Item 6. **Premium:** \$ 2,459.00

Item 7. **Retroactive Date** (if applicable): 11/28/1994

Item 8. **Forms, Notices and Endorsements attached:**  
D43100 (03/15) D43300 MA (05/13)  
D43425 (05/13) D43421 (03/15) D43432 (05/13)  
D43408 (05/13) IL7324 (08/12)

*Betsy A. Magnuson*  
Authorized Representative

D43101 (03/15) Page 1 of 1



# Thank You

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