

Webinar audio begins at 8:30 a.m. Pacific (you'll see me milling around until then)

Webinar:
**Valuation Legal Update
for California Appraisers**
June 11, 2020, 8:30 a.m. Pacific

- Proposed amendment of AB 5 to include an exemption for independent contractor appraisers. That's good news!
- Recent notable appraiser cases:
 - California appraiser sued over two divorce appraisals wins.
 - Settled and pending overtime class actions - involving both residential and commercial appraisers.
 - A class action against appraisers.



Where Are We Going Today?

- Discuss California Assembly Bill 1850 – legislation amending California’s tough independent contractor law AB 5 that became effective January 1, 2020.
- Talk about a few interesting recent cases.
- About 45 minutes.



Consider Virtual CE From Me This Month

Live Virtual Appraiser CE Classes
approved by BREAA
from Attorney Peter Christensen

2 and 3-hour live classes online about
current real-world appraiser cases

*Every California appraiser who takes
a class in June receives a
free copy of my book
Risk Management for Real Estate
Appraisers and Appraisal Firms!
(published by the Appraisal Institute)*



- June 12 “Hot Topics and Myths in Appraiser Liability” (*residential* focus, 3 CE hours).
- June 16 “Hot Topics and Myths in Appraiser Liability” (*commercial* focus, 3 CE hours).
- June 23, “Disasters, Hybrids and Weed: Special Legal Issues for Appraisers” (2 CE hours).
- June 30, “Liability Issues for Appraisers Performing Litigation and Other Non-Lending Work” (3 CE hours).

Like regular live classes, there are **no quizzes** to pass. These are live.

The classes are approved by BREAA for appraiser CE credit.

The 3-hour classes qualify for an E&O discount with LIA (one discount per year).

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

Think About Expanding the Services of Your Appraisal Firm – “Evaluations”

www.eval.com



FREE ONLINE TRAINING

Evaluation Secrets

Friday, June 19, 2020 9:00 AM PDT

Forget everything you think you know about evaluations.

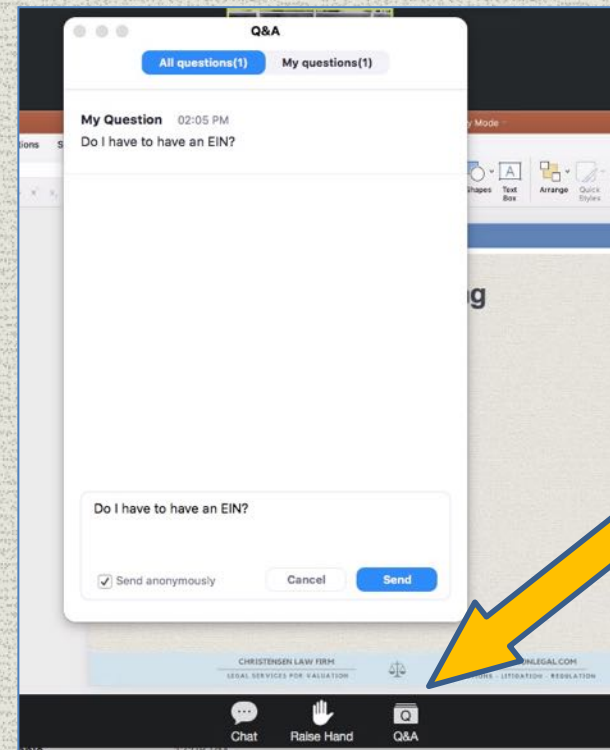
You, as an appraiser, can take advantage of this huge market segment. My name is Deb Clark. I'm a Certified General Appraiser and CEO/Co-Founder of Eval.com. I increased revenues in my business by 71% the first year I started offering evaluations and you can too, regardless of which state your license is in. Register for this free webinar to learn how!

- Millions of evaluations are used each year by lenders and other financial institutions.
- Almost all are not delivered by appraiser-owned firms.
- Eval.com is a training resource and platform for appraisers to seize the business opportunity by expanding their firm's services to include evaluations by non-appraisers working and producing revenue for them.



Quick Housekeeping

- Please feel free to submit Q&A along the way – I will see them and try answer any that come up, as I go along if they relate to the topics.
- The slides I am using today are available in the same place that you signed up for the webinar
www.valuationlegal.com/blog



Assembly Bill 1850

- **Addresses needed changes to California AB 5 that went into effect on January 1 and that makes it much more difficult to treat any person performing services as an independent contractor rather than employee.**
- **AB 5 codified the “ABC test” in a California Supreme Court case called *Dynamex*.**
- **It replaced for most situations a previous, vaguer but easier to satisfy test, under a case called *Borello*.**
- **AB 5 has a number of specific exceptions – examples “real estate licensees” and “referral companies.” But these do not apply to appraisers or AMCs (in relation to appraisers).**



The Old Test Under Borello

The Borello test looks first at whether the potential employer has control over the manner and means of accomplishing the work and evaluates a number of additional factors (none of which are themselves determinative), including such things as:

- Whether the worker performing services holds themselves out as being engaged in an occupation or business distinct from that of the employer;
- Whether the employer or the worker supplies the instrumentalities, tools, and the place for the worker doing the work;
- Whether the service provided requires a special skill;
- The worker's opportunity for profit or loss depending on their managerial skill;

In practice a lot details come up – business cards, hours, websites, how much work is done for the firm?



The “ABC Test” Under *Dynamex* and AB 5

For a worker to be properly treated as a contractor under AB 5, an “employer” must establish all three of the following:

(A) that the worker is free from the control and direction of the hiring firm in connection with the performance of the work, both under the contract for the performance of the work and in fact; and

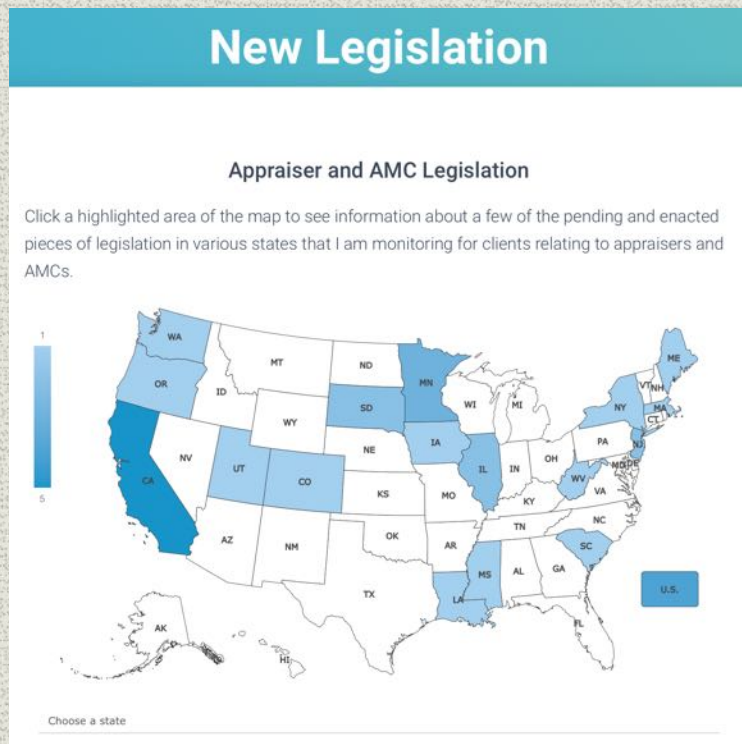
(B) that the worker performs work that is outside the usual course of the firm’s business; and

(C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.



AB 1850 – Potential Amendment

Track new law here (under “Resources” tab):
<https://www.valuationlegal.com/bill-map/>



- Proposed amendment adds appraisers to the existing exemptions from the ABC test for “professional services.”
- Would likely be effective January 1, 2021.
- Under the proposed amendment, “Professional services” would include: “(ix) Services provided by an appraiser, as defined in Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code.”

Let's Look Closer at the Change

What Are The Other Factors/Requirements?

- “(d) (1) Subdivision (a) and the holding in *Dynamex* do not apply to a **contract** for “professional services” as defined below, and instead the determination of whether the individual is an employee or independent contractor shall be governed by **Borello** if the hiring entity **demonstrates that all of the following factors are satisfied**:
- (A) The individual maintains a business location, which may include the individual’s residence, that is separate from the hiring entity. Nothing in this subdivision prohibits an individual from choosing to perform services at the location of the hiring entity.
 - (B) If work is performed more than six months after the effective date of this section, **the individual has a business license**, in addition to any required professional licenses or permits for the individual to practice in their profession.
 - (C) The individual has the ability to **set or negotiate their own rates** for the services performed.
 - (D) Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual’s **own hours**.
 - (E) The individual is **customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work**.
 - (F) The individual customarily and regularly **exercises discretion and independent judgment** in the performance of the services.”



A Very Bad Piece of Risk Management Advice

“I put all my assets in my wife’s name” = bad risk management



While We're on the Subject of Divorce

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

| | |
|--|---|
| <p>██████████ ██████████, an individual</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>██████████ ██████████, an individual and DOES 1 to 20, inclusive,</p> <p style="text-align: center;">Defendants.</p> | <p>Case No.: 198 ██████████</p> <p>COMPLAINT FOR:</p> <p>(1) NEGLIGENCE (2) NEGLIGENCE MISREPRESENTATION (3) FRAUD (4) VIOLATION OF B&P CODE SEC. 17200 ET. SEQ.</p> |
|--|---|



Thank You

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