



Northern California Chapter
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April 17, 2018

Presiding Justice Raye
Justices Hoch and Nicholson
California Court of Appeal, Third Appellate District
914 Capitol Mall, 4th Floor
Sacramento, CA 95814

Re: *Tindell v. Murphy*
Case No. C081424
Request for Publication of Opinion Filed April 6, 2018

Dear Honorable Justices of the Court of Appeal:

The Northern California Chapter of the Appraisal Institute respectfully requests, pursuant to California Rule of Court 8.1120, that the Court certify for publication its Opinion filed on April 6, 2018 in *Tindell v. Murphy*, Case No. C081424. The Northern California Chapter of the Appraisal Institute believes that the standards for publication set forth in California Rule of Court 8.1105(c) have been met and that publication of this decision is essential to providing needed guidance pertaining to the professional liability of residential real estate appraisers in California.

Statement of Interest of the Northern California Chapter of the Appraisal Institute

We write on behalf of the members of the Northern California Chapter of the Appraisal Institute. The Appraisal Institute is an international association of real estate appraisers, with nearly 19,000 valuation professionals. Its mission is to advance professionalism and ethics, global standards, methodologies and practices through the professional development of property economics worldwide.

The Northern California Chapter has approximately 520 members. The majority of our members are practicing real estate appraisers and property analysts who provide valuation-related services to such clients as mortgage lenders, financial institutions, government agencies, attorneys and financial planners as well as homeowners and other individual consumers. Our chapter's mission includes advancing the profession and increasing the quality of appraisal work for clients and other users of appraisals.

A significant problem for not only the appraisal profession but also users of appraisal services and the public in general is the lack of clear understanding and legal guidance on the interaction between appraisal practices pursuant to established appraisal standards and the potential legal liability of appraisers to their clients and third parties. Our members and users of appraisal services in general would benefit from the well-written reasoning that the Court's Opinion in this case brings to this subject.

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The Court's Opinion Should be Published Because It Meets the Standards for Publication and Addresses Fundamental Legal Issues Relating to Appraisal Practice

We ask that the Court publish its Opinion because the decision fills a gap in existing California law by clarifying the boundaries of residential appraiser liability to non-clients and third parties who are not identified as an "intended user" of the appraisal work product. This is a vital concern in the proper use and understanding of residential appraisals performed for mortgage lenders in connection with their loan decision-making.

An appraiser's identification of his or her client and the intended user(s) of his or her appraisals is a key issue in the performance and reporting of appraisals under the Uniform Standards of Professional Appraisal Practice (USPAP). Promulgated by the Appraisal Standard Board, these standards set forth the primary minimum professional standards that licensed and certified appraisers must follow under California law.

USPAP Standards Rule 1-2 sets forth requirements for how appraisers develop their appraisal opinions and states that "[i]n developing a real property appraisal, an appraiser must: (a) identify the client and other intended users . . ." USPAP Standards Rule 2-2 addresses the specific content of appraisal reports and requires that an appraisal report "state the identity of any intended users by name or type." These two requirements are fundamental to what an appraiser does because an appraiser under other parts of USPAP is responsible for providing an appraisal that is appropriate for his or her intended users. The intended user identification requirements were first adopted into USPAP by the Appraisal Standards Board in the 1997 edition of USPAP and have remained a key part of the standards ever since.

Despite the clear requirements under USPAP with respect to identification of clients and intended users, however, these fundamental appraisal concepts are often lost from consideration at the trial court level when negligence and negligent misrepresentation claims are asserted by non-clients against appraisers in California courts (whether such third parties are identified as intended users or not). One reason for this is the lack of clear appellate guidance in our state's case law applicable to such claims against appraisers. Publication of the Court's Opinion will help fill that void and avoid further misunderstanding.

In particular, the Opinion here relates to an appraisal performed by the defendant appraiser for a mortgage lender's use in deciding whether to extend a mortgage secured by the appraised property. The plaintiffs in the case were the borrowers and were not identified as the client or intended users in the report. Yet, several years after the appraisal was performed, they sued the appraiser alleging damages stemming from the appraiser's alleged misreporting that the home on the property was a "modular" home rather than "manufactured" home.

In analyzing the two key legal claims – professional negligence and negligent misrepresentation – at issue against the appraiser in the Opinion, the Court looked to the two published decisions that are most often cited in relation to such appraiser claims: *Willemsen v. Mitrosilis* (2014) 230 Cal.App.4th 622 (*Willemsen*) and *Soderberg v. McKinney* (1996) 44 Cal.App.4th 1760 (*Soderberg*).

The Court's Opinion here gives needed guidance not provided in *Willemsen* or *Soderberg* because:

1. The Court's Opinion extends the general reasoning of *Willemssen* (which concerned a commercial appraisal) to appraisals in the residential lending context – which is a needed clarification in this legal area.
2. The Court's Opinion gives clear recognition to the importance of an appraiser's identification of intended users – as the Court wrote: “We are not convinced by the Tindells' efforts to distinguish *Willemssen*. As the trial court noted, the appraisal was prepared for the lender, not the Tindells.”
3. While *Soderberg* does provide some guidance in assessing negligent misrepresentation claims and whether an appraiser owes a legal duty to a party other than his or her client, *Soderberg* is of limited actual relevance to considering current appraisal work (after the 1997 edition of USPAP) because it was written before the adoption of the intended user identification requirement that appraisers now follow. (*Soderberg* actually causes unfortunate confusion in the analysis because it was decided before the modern appraisal practices.)

No other published decisions in California provide the relevant guidance that is supplied by this Court's Opinion.

As such, we respectfully request that the Court certify for publication its Opinion in *Tindell v. Murphy*.

Sincerely,



Michelle Patton, MAI
2018 Chapter President
Northern California Chapter

Cc: Amiel Lee Wade, Wade Law Group
Eugene B. Chittock, Law Offices of Eugene B. Chittock
Peter Christopher Catalanotti, Freeman Mathis & Gary, LLP
Honorable Michele Verderosa, Judge of the Lassen County Superior Court

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**Proof of Service
U.S. Mail**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 1243 Alpine Road, Suite 102, Walnut Creek, CA 94596.

On April 19, 2018, I served the document(s) described as **Request for Publication of Opinion in *Tindell v. Murphy*** by placing a copy of such document(s) in a sealed envelope with first class postage fully paid, in the United States mail in Walnut Creek, California, addressed as follows:

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Honorable Michele Verderosa
Judge of the Lassen County Superior Court
2610 Riverside Drive
Susanville, CA 96130

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 19, 2018, in Walnut Creek, California.


Name: Lisa M. Estes