

# Six Recent Appraiser Lawsuits and the Lessons from Each

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

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# Who is Peter?

**Peter Christensen**  
Attorney-Principal



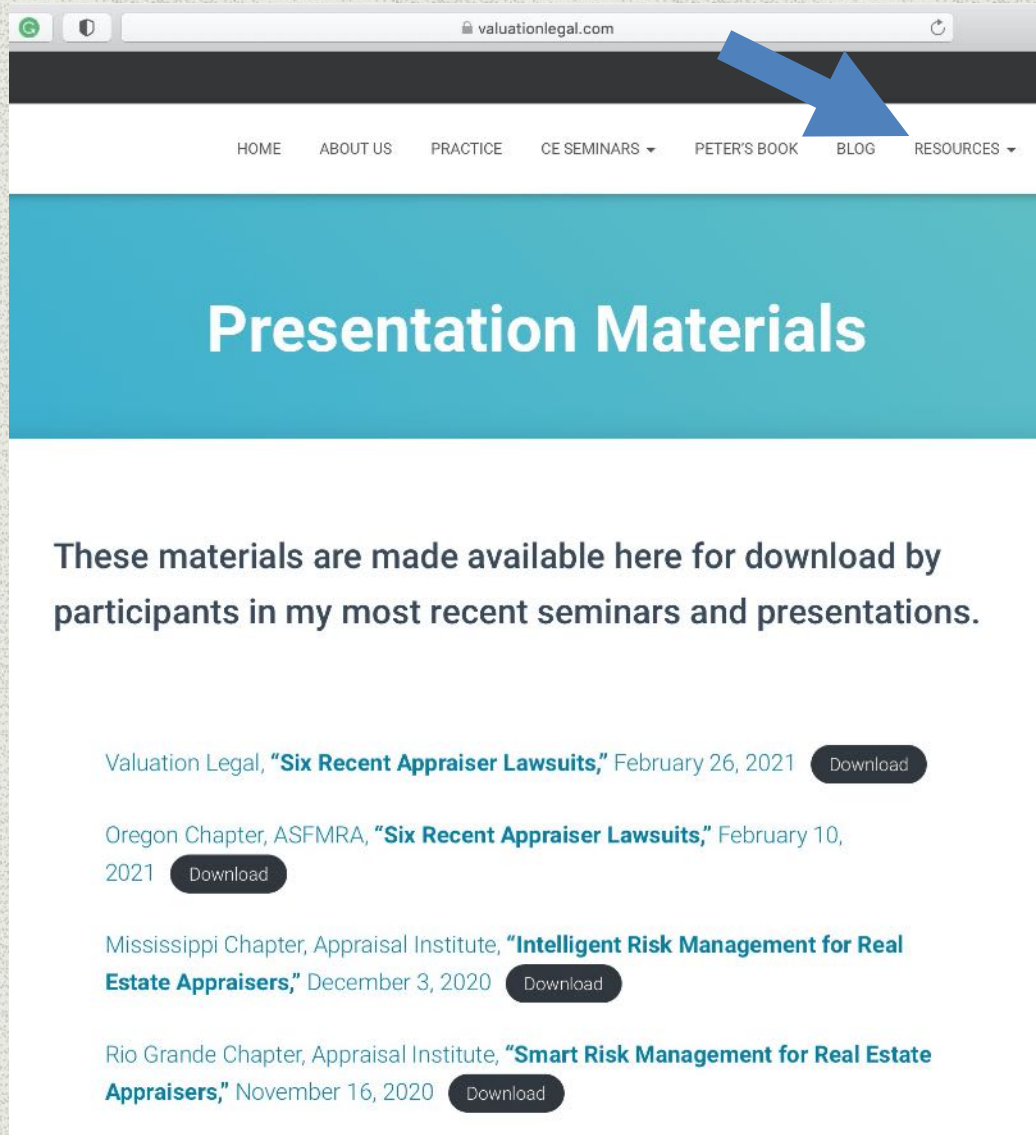
I'm member of the California and Washington state bars, as well as a licensed insurance broker. My legal practice is entirely focused on real estate valuation issues and businesses. I wrote a book called ***Risk Management for Real Estate Appraisers and Appraisal Firms***, published by the Appraisal Institute.

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Presentation materials can be downloaded under the “resources” tab on [www.valuationlegal.com](http://www.valuationlegal.com)



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## Presentation Materials

These materials are made available here for download by participants in my most recent seminars and presentations.

Valuation Legal, **“Six Recent Appraiser Lawsuits,”** February 26, 2021 [Download](#)

Oregon Chapter, ASFMRA, **“Six Recent Appraiser Lawsuits,”** February 10, 2021 [Download](#)

Mississippi Chapter, Appraisal Institute, **“Intelligent Risk Management for Real Estate Appraisers,”** December 3, 2020 [Download](#)

Rio Grande Chapter, Appraisal Institute, **“Smart Risk Management for Real Estate Appraisers,”** November 16, 2020 [Download](#)





# Where Are We Going?

- We're going to look at 6 (or more) recent lawsuits involving appraisers and appraisal firms – most were filed during the pandemic.
- We'll see what we can learn from each of them and from them overall.
- We'll start with an introduction to the basic legal elements of a professional negligence claim – the most common legal claim against appraisers.





# Appraiser Liability Claims

## What Are We Talking About?

Elements of a professional negligence legal claim?

1. the existence of a legal duty of care owed to the plaintiff,
2. breach of that duty (e.g., providing an inflated valuation or failing to produce a USPAP-compliant appraisal), and
3. damage resulting from that breach.

Other legal claims commonly made against appraisers:

- Negligent Misrepresentation
- Fraud/conspiracy
- Libel/defamation
- Breach of contract





## **So Who Can Sue an Appraiser for Negligence? To Whom Does an Appraiser Owe a Legal Duty?**

In most states, a professional may be liable to third parties for negligent misrepresentation despite the absence of “privity” . . . If the professional knew or reasonably expected that the third party would use or rely on the information being supplied.





# **Case #1, GA Court of Appeal Opinion (2014)**

**In 2008, a loan officer at First National Bank (“FNB”) contacted a developer named Anthony Adams and asked him if Adams would be interested in looking at a property under development on Tybee Island, consisting of 25 residential lots.**

**FNB was trying to help the present development entity find someone to take over the property and to assume responsibility for a loan.**





# **Case #1, GA Court of Appeal Opinion (2014)**

**A somewhat complicated plan emerged.**

**Adams formed an entity named North Beach LLC that purchased the existing loan.**

**Adams and FNB understood that North Beach would foreclose on the property, purchase it in foreclosure, and then obtain a new development loan from FNB.**





# **Case #1, GA Court of Appeal Opinion (2014)**

**By letter dated April 4, 2008, FNB engaged a local appraisal firm and its appraiser to perform an appraisal of the property.**

**FNB's engagement letter described the function of the appraisal as follows: "Bank will rely upon this appraisal for internal use, including but not limited to, rendering a decision relative to a financial transaction."**





## **Case #1, GA Court of Appeal Opinion (2014)**

**Pursuant to the engagement letter, the retained appraiser appraised the property and prepared an appraisal report showing an “as is” valuation of \$5,000,000.**

**The report stated: “This report is intended for use by . . . [FNB]. Use of this report by others is not intended by the appraiser. This report is intended only for use in providing data upon which the client may analyze the property as collateral for a mortgage loan. This report is not intended for any other use.”**





## **Case #1, GA Court of Appeal Opinion (2014)**

**The report also stated: “It is our understanding [that] this appraisal will be utilized by the client as the basis for decision making purposes regarding the underwriting criteria for a mortgage loan.”**

**There were are also two key limiting conditions:**

**1. “No environmental site assessment (ESA) was provided to the appraiser. The site is assumed to be free of any contamination of any kind including any fill which may or may not exist.”**





# **Case #1, GA Court of Appeal Opinion (2014)**

**2. “This development was built over an abandoned landfill. This valuation assumes that all environmental issues have been or will be resolved.”**

**North Beach initiated foreclosure proceedings and ultimately purchased the property at a foreclosure sale on May 6, 2008.**

**On the same day, FNB extended a loan to North Beach of about \$4 million develop the property.**





# **Case #1, GA Court of Appeal Opinion (2014)**

**North Beach never completed the project.**

**Work ceased due to buried waste on the site and the cost of the clean up work the City of Tybee Island demanded North Beach to perform.**

**Adams soon sued the appraiser and his firm alleging they overvalued the property and failed to account for the development problems stemming from the prior waste disposal on the site.**





# Case #1, GA Court of Appeal Opinion (2014)

**The appraiser's testimony was:**

- **He knew nothing about North Beach and never met Adams until after Adams and North Beach filed their lawsuit against him.**
- **He did not intend for North Beach or Adams to use or rely upon his appraisal.**
- **He never gave the appraisal to anyone other than the employee at FNB who ordered it.**
- **He was not aware that any representative of the bank was going to give a copy of it to Adams.**





# Case #1, GA Court of Appeal Opinion (2014)

**On a summary judgment motion, the trial court dismissed the case, and the court of appeal affirmed that dismissal. Why?**

***“The evidence in this case establishes that [appraiser] knew a borrower existed, but it cannot support an inference that [appraiser] actually was aware that the borrower received the appraisal much less actually relied on it. Adams admitted that [appraiser] did not give him the appraisal. [Appraiser] did not know of North Beach and had not met Adams at the time he performed the appraisal, and he was not aware that anyone at FNB intended to give Adams the appraisal. The evidence also fails to raise an inference that [appraiser] intended for the borrower to rely on his appraisal.***





# Case #1, GA Court of Appeal Opinion (2014)

***[Appraiser] stated that he did not intend for North Beach or Adams to use or rely upon his appraisal. The appraisal report, on its face, negates any such intention, stating expressly: “This report is intended for use by . . . [FNB]. Use of this report by others is not intended by the appraiser. This report is intended only for use in providing data upon which the client may analyze the property as collateral for a mortgage loan. This report is not intended for any other use.”***





# Significance of the Case?

- Intended use and user language in reports has paramount importance to the appraiser's ability to manage risk.
- Intended use and user language should be as precise and narrow as possible for each assignment.





# Very Bad Intended *Use* Language

No. Do not say this:

*The intended use of this appraisal is to provide an opinion of market value.*





# Good Intended *Use* Language

## Divorce Appraisal:

*The intended use of this appraisal is to provide the client in this report with an opinion of the market value of the subject property for the client's sole use in contesting the division of assets in the client's marital dissolution proceeding. The appraiser does not intend, know of or authorize any other use of this appraisal or content in this report. The appraisal and content of this report should not be used for any other purpose.*





# Good Intended *User* Language

## Lending Appraisal:

*The intended user of this appraisal is solely the lender/client named in this report. This appraisal has been prepared for the sole use and benefit of only that client. No other party should use or rely on the appraisal or any content in this report for any purpose.*





## Problems with the 1004 and Similar Forms

**INTENDED USE:** The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

**INTENDED USER:** The intended user of this appraisal report is the lender/client.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.



# My Most Important Risk Management Suggestion?

**Key language for residential lending appraisal reports:**

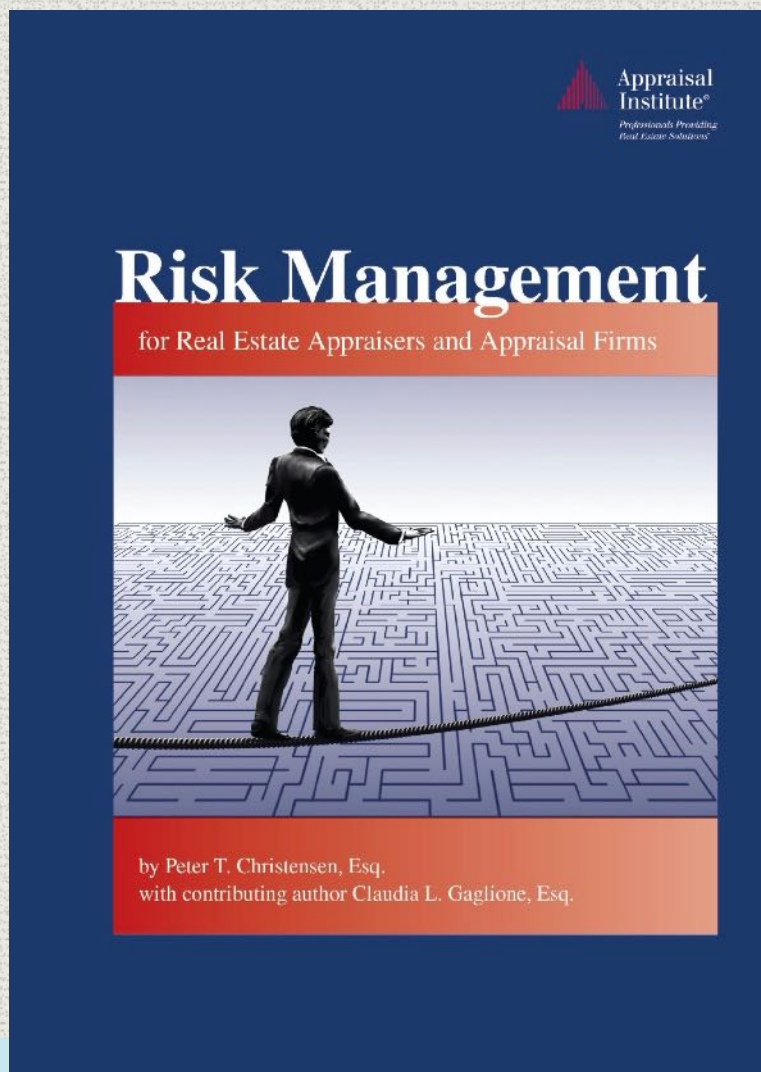
***The appraiser has not identified any purchaser, borrower or seller as an intended user of this appraisal, and no such party should use or rely on this appraisal for any purpose. Such parties are advised to obtain an appraisal from an appraiser of their own choosing if they require an appraisal for their own use. Any reference to or use of this appraisal report by a purchaser, borrower or seller for their own purposes, including without limitation for the purposes of a property purchase decision or an appraisal contingency in a purchase agreement, is at such party's own risk and is not intended or authorized by the appraiser.***

**Even though appraisal forms contain some similar language, it's proven that having it written out separately is most effective.**





# Drawing for a “prize”



**You must be  
conscious and  
alert to win!**





## Case #2 – Miami Appraiser Sued The House is Not as Big as He Reported (Filed June 5, 2020)

10. On or about May 23, 2018, the [REDACTED] entered into an “AS IS” Residential Contract For Sale And Purchase (“Contract”) for the Property with a sales price of \$675,000.00

13. The Contract also contained an appraisal contingency, which provided, in pertinent part, that in the event the Property was appraised for less than \$650,000.00, the [REDACTED] could terminate the Contract, have any paid deposits returned, and be free from any obligations under the Contract (“Appraisal Contingency”).

18. On June 12, 2018, Mr. [REDACTED] issued a Uniform Residential Appraisal Report, which appraised the Property as of June 7, 2018 (“Negligent Appraisal”). A true and correct copy of the Negligent Appraisal is attached hereto as Exhibit “B.”



## Case #2 – Miami Appraiser Sued The House is Not as Big as He Reported

20. Of significance, the Negligent Appraisal notes that Mr. [REDACTED], and thus [REDACTED], were aware of and had reviewed the Contract, and further provides that the [REDACTED] could rely on the appraisal in connection with their mortgage loan. *See* Exhibit “B.”

21. The Defendants thus either knew or should have known about the Financing Contingency and the Appraisal Contingency, and that the [REDACTED] would rely, and were allowed to rely, on the Negligent Appraisal in connection with same.

22. The Negligent Appraisal valued the Property at \$678,000.00 (“Negligent Valuation”).





## Case #2 – Miami Appraiser Sued The House is Not as Big as He Reported

23. The Negligent Valuation was predicated on Mr. [REDACTED]'s opinion that the Property was worth \$411.59 per square foot of living area and had a living area of approximately 1,640 square feet. *See Exhibit "B."*<sup>1</sup>

25. Relying on the Negligent Appraisal, the [REDACTED] took out a mortgage loan from the Bank for \$540,000.00,<sup>2</sup> closed on the Contract, and acquired the Property.

26. Unfortunately and unbeknownst to the [REDACTED], Mr. [REDACTED], and by extension [REDACTED], had committed an error in the Negligent Appraisal.

27. Contrary to the Negligent Appraisal, the Property's approximate living area was not 1,640 square feet.





## Case #2 – Miami Appraiser Sued The House is Not as Big as He Reported

28. Instead, the Property's approximate living area was 1,394 square feet.

29. Had Mr. [REDACTED] applied his \$411.59 per square foot of living area formula to the Property's true living area of approximately 1,394 square feet, the Negligent Appraisal would have valued the Property at approximately \$573,000.00 ("Correct Valuation").<sup>3</sup>

30. The Defendants thus overvalued the Property *by more than \$100,000.00*.<sup>4</sup>

<sup>1</sup> 1,640 square feet \* \$411/59 square foot = \$675,007.60 = ~ \$675,000.00.

<sup>3</sup> 1,394 square feet \* \$411/59 square foot = \$573,756.46 = ~ \$573,000.00.

<sup>4</sup> \$675,000.00 - \$573,000.00 = \$102,000.00 = > \$100,000.00.





## Case #2 – Miami Appraiser Sued The House is Not as Big as He Reported

### Takeaways:

- Borrowers are the most common claimants.
- Square footage errors are the single-most common actual mistakes for which appraisers are sued.
- Pay extra attention to measuring and reporting square footage.
- Use additional language in reports directed at claims by borrowers (and sellers).



# Case #3 - San Bernardino County, California

## “the Appraiser Left the Water on”

Slide 29

GIBSON ROBB & LINDH LLP 201 Mission Street, Suite 2700 San Francisco, CA 94105 TELEPHONE NO: (415) 348-6000 FAX NO. (Optional): (415) 348-6001 E-MAIL ADDRESS (Optional): jkirsch@gibsonrobb.com; rhollister@gibsonrobb.com ATTORNEY FOR (Name): Plaintiff [REDACTED] INSURANCE COMPANY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: 247 West Third Street CITY AND ZIP CODE: San Bernardino, 92415-0210 BRANCH NAME: San Bernardino District - Civil Division	
PLAINTIFF: [REDACTED] INSURANCE COMPANY, a corporation	

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

AUG 31 2020

LaShondra Richardson

DEFENDANT	Defendants [REDACTED] APPRAISALS, LLC and [REDACTED] (collectively "Defendants") inspected the residence of [REDACTED]. During said inspection, Defendants turned on the water in the master bathroom bathtub, and subsequently failed to turn off the faucet before leaving the premises, which resulted in significant water damage to the [REDACTED] residence. Defendants owed a duty of care to Mr. [REDACTED] and others and breached that duty by, among other things, failing to safely inspect the [REDACTED] residence, failing to ensure that all water sources were properly turned off prior to leaving the premises, failing to properly train and supervise its employees, and failing to warn of unsafe conditions.
<input checked="" type="checkbox"/> DOES 1	
COMPLAIN	
<input type="checkbox"/> A	
Type (check)	
<input type="checkbox"/> MOTO	
<input checked="" type="checkbox"/> P	
<input type="checkbox"/> P	

The injuries to Mr. [REDACTED] were proximately caused by Defendants' breaches of duty and the injuries were reasonably foreseeable.

As a result of the injuries, Plaintiff [REDACTED] INSURANCE COMPANY became obligated to pay and has paid Mr. [REDACTED] pursuant to his applicable insurance policy for the property damage he sustained.





# San Bernardino County, California

## “the Appraiser Left the Water on”

Slide 30

GIBSON ROBB & LINDH LLP  
201 Mission Street, Suite 2700  
San Francisco, CA 94105

TELEPHONE NO: (415) 348-6000

FAX NO. (Optional): (415) 348-6001

E-MAIL ADDRESS (Optional): jkirsch@gibsonrobb.com; rhollister@gibsonrobb.com

ATTORNEY FOR (Name): Plaintiff

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

SUPERIOR COURT OF CALIFORNIA

STREET ADDRESS: 247 West Th

MAILING ADDRESS: 247 West Th

CITY AND ZIP CODE: San Bernardi

BRANCH NAME: San Bernardi

PLAINTIFF: FOR INSU

DEFENDANT:

, an individual:

☒ DOES 1 TO 20

COMPLAINT—Personal Inju

☐ AMENDED (Numb

Type (check all that apply):

☐ MOTOR VEHICLE ☒

☒ Property Damage

☐ Personal Injury





# San Bernardino County, California

## “the Appraiser Left the Water on”

Slide 31

### Takeaways:

- Know that “regular” professional liability insurance doesn’t cover property damage or bodily injury/death.
- Some E&O policies, however, have begun to include useful coverage on this issue for appraisers at no extra charge.
- Consider looking for policies with the coverage.





# Case #4 – Four Separate Cases – Same Lessons

CAUSE NO. \_\_\_\_\_

SHARESTATES INVESTMENTS, LLC § IN THE JUDICIAL DISTRICT COURT  
 AND PALLASITE REO 2018-1, LLC §  
 §  
 V. § OF HARRIS COUNTY, TEXAS  
 §

UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF MICHIGAN  
 SOUTHERN DIVISION

**FIX & FLIP FINANCING, LLC,**  
 a Michigan limited liability company,

Plaintiff,

v. Case No. 2020 -

**APPRAISAL**

SUPERIOR COURT OF THE STATE  
 FOR THE COUNTY OF LOS ANGELES

ACF FINCO I LP, a Delaware limited  
 partnership,

Plaintiffs,

v.

GREAT AMERICAN GROUP ADVISORY &  
 VALUATION SERVICES, LLC, a California  
 limited liability company, and DOES 1 through  
 10, inclusive,

Defendants.

Case No. 2020 CV 37455

**COMPLAINT FOR:**

(1) NEGLIGENCE;  
 (2) BREACH OF CONTRACT; AND  
 (3) NEGLIGENT MISREPRESENTATION

**JURY TRIAL DEMANDED**

## Elmsford appraiser sued for \$8.7M for allegedly overvaluing Greenwich home

By Bill Heltzel - April 9, 2021

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An Elmsford real estate appraiser accused of inflating the value of a Greenwich, Connecticut home by \$1.8 million is being sued for \$8.7 million.

Pallasite Asset Trust of Evanston, Illinois has



## Alternative Lenders = More Risk

- Alternative, “hard-money” or “asset-based” lenders pose a much higher risk to appraisers than traditional bank and mortgage lenders – especially in the economic environment of COVID.
- “Appraise” your clients and assignments for risk.
- Follow your gut instinct about risky clients or assignments.
- Your survival instinct is usually right.





## Case #5 – Statute of Limitations + More

*Amini v. BAC Home Loans Servicing LP, LandSafe Appraisal Services, Inc. (2012)*

- In March 2005, the plaintiff obtained a mortgage loan from BofA to purchase a property on Camano Island in the Puget Sound.
- A staff appraiser employed by LandSafe Appraisal performed the appraisal.





## Case #5 – Statute of Limitations + More

*Amini v. BAC Home Loans Servicing LP, LandSafe Appraisal Services, Inc. (2012)*

- More than three years later, in July 2008, the plaintiff was having problems with the property's waste system and hired a contractor to investigate the issue.
- The contractor determined that the existing septic system was not operable and had not been operable since before 2005.





## Case #5 – Statute of Limitations + More

*Amini v. BAC Home Loans Servicing LP, LandSafe Appraisal Services, Inc. (2012)*

- The system had caused serious damage to the home's foundation.
- The county public health department prohibited any further occupancy of the property until installation of an approved functional septic system and repair of the foundation.
- With repair costs estimated in the hundreds of thousands of dollars, the plaintiff determined that the property was essentially worthless and stopped making payments on the loan.





## Case #5 – Statute of Limitations + More

*Amini v. BAC Home Loans Servicing LP, LandSafe Appraisal Services, Inc. (2012)*

- The borrower then sued the bank and LandSafe Appraisal for negligent misrepresentation and other claims, alleging that the firm's appraiser reported in the appraisal that the property was served by a working septic system and failed to identify or report any deficiency.
- The borrower filed this lawsuit in 2011, about six years after the initial appraisal.





## Case #5 – Statute of Limitations + More

*Amini v. BAC Home Loans Servicing LP, LandSafe Appraisal Services, Inc. (2012)*

- LandSafe Appraisal moved to dismiss the case based on Washington's three-year statute of limitations period.
- The court hearing the motion pointed out that Washington follows the discovery rule and that the statute of limitations begins to run when the plaintiff "discovered or, in the exercise of due diligence, should have discovered the misrepresentation."





## Case #5 – Statute of Limitations + More

*Amini v. BAC Home Loans Servicing LP, LandSafe Appraisal Services, Inc. (2012)*

- The court ruled that the statute of limitations did not begin to run until June 2008 when the plaintiff first “had a reason to suspect that LandSafe’s appraisal was faulty.”
  - That date was within three years of when the borrower filed its lawsuit.
  - Accordingly, the motion to dismiss was denied and the case advanced toward trial.
- Lessons:
1. Keep your workfiles for longer than the minimum USPAP requires.
  2. Borrowers/other third parties are the most common source claims (60-65%).
  3. It sounds silly – but septic/sewer issues are way too common (and mostly preventable).





## Case #5 – Statute of Limitations + More

*Amini v. BAC Home Loans Servicing LP, LandSafe Appraisal Services, Inc. (2012)*

**That was an expensive septic system issue.** Bank of America and LandSafe Appraisal ultimately settled the case with the borrower – by agreeing to forgive the entire \$504,000 balance owed on the mortgage.





# Statute of Limitations Changes in Some States

**New laws passed in 2019, for example, in Oregon**

**ORS 674.145 – with respect to appraiser discipline**

...

(7) The board may not commence disciplinary proceedings under ORS 674.140 after the later of:

(a) Five years after the date the real estate appraisal activity or other act giving rise to the disciplinary proceedings was completed or should have been completed; or

(b) The expiration of the time period specified in ORS 674.150 for the retention of the records for the appraisal or real estate appraisal activity giving rise to the disciplinary proceedings.



# Statute of Limitations Changes in Some States

## **ORS 12.132 – legal claims against appraisers:**

...

12.132. (1) Except as provided in subsection (2) of this section, an action arising out of real estate appraisal activity, . . . must be commenced before the earlier of:

- (a) Two years after the date on which the person commencing the action knew or should have known the facts on which the action is based; or
- (b) Five years after the date on which the real estate appraisal activity or appraisal review on which the action is based was completed or should have been completed.



# Statute of Limitations Changes in Some States

**Other states with specific protections for appraisers:**  
KY, LA, MN, MS, NC, SD and TN.

How long in:

**Georgia** – 4 years. Discovery rule? Undetermined for appraisers.

**Florida** – 2 years for claims by clients. Discovery rule? Yes.

4 years for claims by non-clients. No discovery rule.

**South Carolina** – 3 years. Discovery rule? Yes.



# [Statute of Limitations Chart Link](http://www.valuationlegal.com/limitations/)

## [www.valuationlegal.com/limitations/](http://www.valuationlegal.com/limitations/)

State	Years	Does a "discovery rule" potentially apply to a professional negligence claim against an appraiser?		Underlying State Statutory Source
Alabama	2	No, unless fraud		Alabama Code § 6-2-38
Alaska	Indiana	2	Yes	Ind. Code § 34-11-2-4
Arizona	Iowa	2	Yes	Iowa Code Ann. § 614.1
Arkansas	Kansas	2	Yes	Kan. Stat. Ann. § 60-513
California	Kentucky	1	Yes	Ky. Rev. Stat. Ann. § 413.140(3)
Colorado	Louisiana	1	Yes; however, with an effective date of January 1, 2020, Louisiana has enacted a statute of limitations providing that any action against an appraiser or appraisal management company must be filed at the latest within three years from the date of the relevant act, omission or neglect.	La. R.S. § 9:5610
Connecticut	Maine	6	Yes	Me. Rev. Stat. Ann. Tit. 14, § 752
Delaware	Maryland	3	Yes	Md. Cts. & Jud. Proc. Code Ann. § 5-101
Florida	Massachusetts	3	Yes	Mass. Ann. Laws ch. 260, § 4
Georgia	Michigan	2	Yes, but the discovery rule is limited - an action must be filed within 6 months of the plaintiff's discovery of the claim.	MCL 600.5805(9) and MCL 600.5838(2)
	Minnesota	6	Yes; however, under Minn. Stat. § 82B.24, Subd. 4, an action must be filed no later than 6 years from the date of the appraisal.	Minn. Stat. § 82B.24, Subd. 4

Screenshot



# What “Mistakes” Do Appraisers Most Commonly Get Sued Over?

In any presentation about liability issues, most appraisers want to know “what do appraisers get sued for?”

What are the most common alleged mistakes that lead to lawsuits against appraisers?

Here are the answers – based on 8,200 claims:





# The Most Common Bases of Legal Claims Against Appraisers

The most common *alleged* mistakes at the core of professional liability lawsuits concerning appraisals for mortgage lending (either residential or commercial) are:

1. **Value.** The appraiser's opinion of value allegedly was too high or too low because the appraiser used incorrect information about the subject property, selected inappropriate comparable sales or made inappropriate adjustments.

20. Upon review of Defendants' appraisal by a Certified Appraiser following the sale of the Property, Plaintiff determined that, among various errors and omissions, Defendants incorrectly used improper sales comparables that were locationally, functionally, and dissimilar to the Property, which resulted in a gross over valuation of the Property.

2. **Measurement.** The appraiser made an error in determining or reporting the square footage of a structure or the land area of the subject property.





- 3. Property condition/characteristics.** The appraiser failed to discover or report a unique issue or problem with the subject property. The most common alleged issues and problems include:
- The property suffers from a condition problem such as leaky roof, mold, foundation settlement, vermin infestation or unrepaired damage from fire or flood.
  - The appraiser misreported that the property is served by public sewer, when, in fact, the property is served by a septic system (or a pipe running to a creek) and that system has failed.
- 4. Construction progress reports.** In a construction progress report for loan disbursement, the appraiser overstated the degree of completion or failed to identify problems with the construction.

*Example language: This construction progress report is for the use and benefit of the lender to assist in making loan disbursements. It is not prepared for the use or benefit of the owner/borrower. The purpose of this inspection is to determine the approximate degree of completion and not the quality of construction, workmanship or materials, or adherence to applicable building or planning codes or requirements.*



## Case #6 – the “Inadequate” Inspection Filed May 2020

### Background

8.

██████████ Bank was the mortgagee on a mortgage that encumbered certain immovable property located at 6007 Financial Plaza Drive in Shreveport, Louisiana [the “Property”] and secured debt owed to ██████████ Bank in the original principal amount of \$2,250,000.00, plus accrued interest, fees, and costs.

9.

██████████ Bank’s borrower and the mortgagor on the mortgage failed to make its required loan payments in June, July, August, and September of 2017, which qualified as events of default under the loan and mortgage.





## Case #6 – the “Inadequate” Inspection Filed May 2020

On October 18, 2017, the Appraisers, working in the course and scope of their employment for [REDACTED], conducted an inspection of the Property. The Appraisers, working in the course and scope of their employment for [REDACTED], prepared, signed, and issued the initial appraisal report to [REDACTED] Bank on November 10, 2017 [“2017 Appraisal Report”]. The 2017 Appraisal Report contains the October 5, 2017 Engagement Letter.

After continued failures by the borrower, [REDACTED] Bank filed an executory process foreclosure suit against its borrower in this Court on January 18, 2019 to foreclose on the Property. On January 29, 2019, this Court issued an Order of Executory Process directing the Clerk of Court to issue a writ of seizure and sale commanding the Sheriff for the Parish of Caddo to seize and sell with appraisal the Property.





## Case #6 – the “Inadequate” Inspection Filed May 2020

Through an engagement letter dated May 6, 2019 [“May 6, 2019 Engagement Letter”] and signed by [REDACTED] as an employee and agent of [REDACTED], [REDACTED] Bank retained [REDACTED] to perform an updated appraisal of the Property and to prepare an updated appraisal report, for purposes of estimating the “as is” market value of the Property, as well as the disposition value of the Property.

The May 6, 2019 Engagement Letter further provided that any appraisal produced was to be based on a personal inspection of the Property and without reliance on any past appraisals.

16.

The May 6, 2019 Engagement Letter expressly stated that [REDACTED] Bank was “looking for sufficient due diligence, data collection, data verification, and analysis in appraisals completed for [REDACTED] Bank” and specifically identified “the inspection of the real estate with verification of physical information and condition” as an important item in the performance of the appraisal.



## Case #6 – the “Inadequate” Inspection Filed May 2020

The 2019 Appraisal Report stated that the personal inspection performed by the Appraisers “included both the interior and exterior of the Property.”

In reliance on the 2019 Appraisal Report and the appraised valuations therein, [REDACTED] Bank prepared and submitted a bid at the July 31, 2019 judicial sale of the Property, in the amount of two-thirds of the appraised value — \$1,050,000.00 — in order to preserve [REDACTED] Bank’s deficiency balance rights against its borrower and guarantors. No other person bid on the Property, and thus [REDACTED] Bank purchased the Property for that credit bid amount.





## Case #6 – the “Inadequate” Inspection Filed May 2020

After the judicial sale, Plaintiffs learned that the 2019 Appraisal Report had been negligently prepared and contained material misrepresentations.

26.

Specifically, on or around August 6, 2019, Plaintiffs discovered that the Property's basement had been flooded and that the Property had significant damage from the flooding, including a severe mold infestation. In an email exchange that same day between [REDACTED] Bank and [REDACTED], [REDACTED] admitted that he had not inspected the basement on the May 24, 2019 site visit referenced in the 2019 Appraisal Report. This omission was not disclosed in the 2019 Appraisal Report. A copy of the e-mails between [REDACTED] Bank and [REDACTED] is attached as Exhibit “B.”

Wow. I did not go into the basement on my last visit. I've been down there on one of my previous inspections, however, and did not see any standing water. Manager did not mention standing water.



## Case #6 – the “Inadequate” Inspection Filed May 2020

Notwithstanding the existence of the flooded and mold-infested condition of the basement, the 2019 Appraisal Report includes a photograph of the basement showing it to be dry and not flooded. However, in that same photograph, the basement lights appear to be on, while the 2019 Appraisal Report indicates that there was no power to the Property at the time the Appraisers allegedly re-inspected the Property on May 24, 2019. The photograph of the basement included in the 2019 Appraisal Report also appears to be identical to the photograph of the basement included in the 2017 Appraisal Report.

### Count I Negligence





# Case #6 – the “Inadequate” Inspection

## Filed May 2020

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### Takeaways:

- Engagement letters/agreements form a contract with your client – they are important.
- Business may be great and you may be super busy.
- It's appraisals during peak times such as we've had for the last several years that create claims down the road.
- Don't be complacent about the details.





# #7 Complaints and Lawsuits Accusing Appraisers of Discrimination





# In the News – Jacksonville Appraisal Situation Alleged Racial Discrimination

- The situation in Jacksonville, FL reported in various media is very representational of other stories concerning alleged discrimination around the country – Hartford, Chicago, Denver, the San Francisco Bay Area.
- More individual stories keep coming.
- Some argue “these are just anecdotes . . .”
- But, when you are the defendant appraiser in the anecdote, it doesn’t matter so much to you whether “it’s just anecdotal.” You are the anecdote.
- What’s the legal side of this issue for appraisers?
- What happens in a complaint situation concerning alleged discrimination in appraising?





# Let's First Look a Little Closer at the Jacksonville Matter Based on Public Information

- Abena Horton and her husband Alex own a home near the water in Jacksonville, FL.
- Their home is on a small peninsula where two waterways meet. In my eyes, the neighborhood looks like comfortable Florida suburbia.
- The home was purchased in July 2017 for \$295,000.
- She is an HR attorney for Black Knight, Inc. – a major mortgage technology company. He is an artist.
- She is black. He is white.
- In June 2020, they were seeking to refinance their mortgage.





# Looking Closer at the Jacksonville Matter Based on Public Information

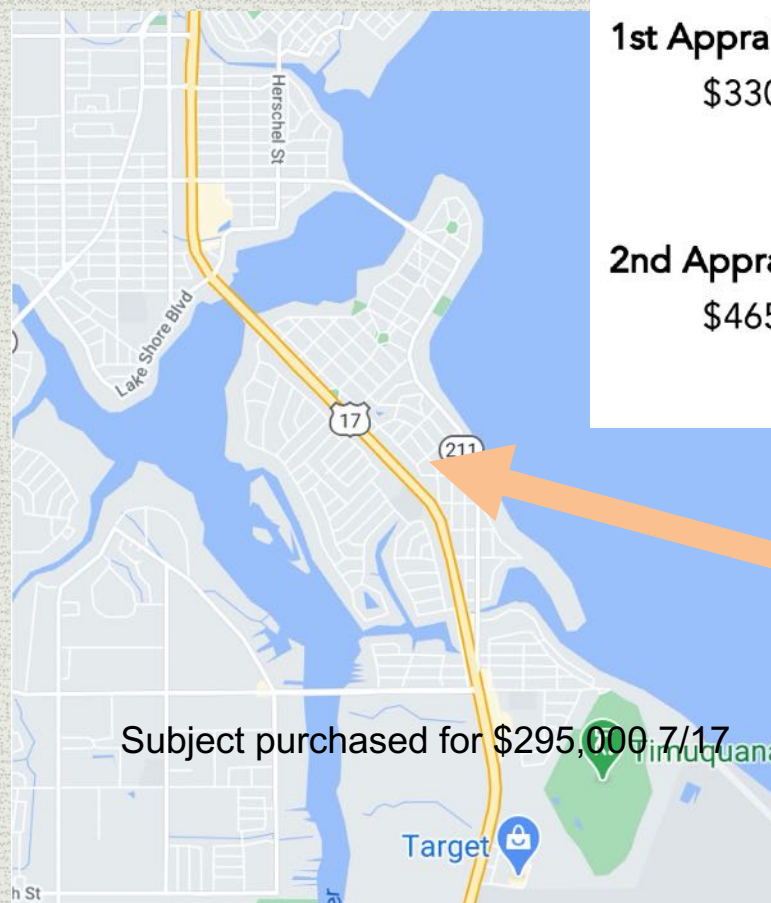
- The lender ordered an appraisal from a local appraisal firm.
- The Hortons anticipated the value would be about \$450,000.
- Instead, the lender's appraiser valued it at \$330,000.
- Believing there was racial discrimination involved, the Hortons removed what they referred to as "Blackness" from their home – certain family photos, art, books.
- A new appraisal was ordered. This time, Mr. Horton greeted the appraiser. His wife was not present.
- The 2<sup>nd</sup> appraiser valued the home at \$465,000, cementing for the Hortons a belief that the first appraisal was discriminatory.





# Looking Closer at the Jacksonville Matter on Public Information

From publicly available information:



## 1st Appraisal Comps

\$330,000

## 2nd Appraisal Comps

\$465,000

Date	Distance	GLA	Sales Price
8/19	0.68	+100	\$350,000
2/19	0.71	+100	\$330,000
10/19	1.19	-300	\$314,000
1/20	1.23	-300	\$355,000
3/20	0.7	+400	\$579,000
9/19	0.72	-200	\$407,000
4/20	0.82	-100	\$539,000



# The Legal Side of Alleged Discrimination in Appraising – Key Considerations

It's been publicly reported that a complaint about the Jacksonville situation has been filed with the U.S. Department of Housing and Urban Development (HUD).

HUD's Office of Fair Housing and Equal Opportunity (FHEO) is the part of HUD that investigates such allegations. It is the principal government agency that investigates alleged discrimination in residential real estate, including appraising.

Let's look at the key laws and cases ...





# The Legal Side of Alleged Discrimination in Appraising – Key Laws

Historically, it's been the federal Fair Housing Act that has been the key law in proceedings or actions concerning alleged discrimination in appraisals for residential lending.

- The Fair Housing Act becomes relevant in two ways:
- HUD investigates and prosecutes Fair Housing Act complaints in relation to appraising.
- Plaintiffs may file their own legal actions alleging violations of the Fair Housing Act.





# The Legal Side of Alleged Discrimination in Appraising – Key Laws

In 1988, the Fair Housing Act was amended to include a specific prohibition against discrimination in appraising and now reads:

“It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.” (42 U.S.C. § 3605(a).)

The Fair Housing Act defines the term “residential real estate-related transaction” as including:

- ...
- (2) The selling, brokering, or appraising of residential real property. (42 U.S.C. § 3605(a).)





# Fair Housing Act – Basic Theories of Liability

Two different theories of liability:

Intentional discrimination:

- A person within a protected group is shown to have been singled out and treated less favorably than others similarly situated. This would be intentional discrimination.

Or Disparate impact:

- This is where a more general policy or practice which may be neutral on its face has a statistically significant negative effect on a protected group of persons.
- Disparate impact – without discriminatory motivation – began to be recognized courts routinely in the early 80s with respect to the Fair Housing Act.
- Disparate impact claims would usually be directed at large businesses or organizations.



# HUD Investigations and Lawsuits

United States Department of Housing and Urban Development  
Office of Fair Housing and Equal Opportunity

COMPLAINANT )  
 )  
v. ) HUD Case Number: )  
RESPONDENT )  
 )  
and )  
Real Property )  
RESPONDENT )

**SUBPOENA TO TESTIFY AND SUBPOENA DUCES TECUM**

TO: )  
Real Property )  
 )

CASE OF: U.S. Department of Housing and  
Urban Development  
Office of Fair Housing and Equal Opportunity  
415 Seventh Street, S.W., Room 5208  
Washington D.C. 20410

Pursuant to Section 811(a) of the Fair Housing Act, 42 U.S.C. § 3611(a), and 24 C.F.R. §103.215 and 24 C.F.R. § 180.545, and in connection with the conduct of the above-captioned investigation under Section 804 of the Fair Housing Act, 42 U.S.C. § 3604, you, [REDACTED] are hereby directed to appear before [REDACTED] an Equal Opportunity Specialist with the U.S. Department of Housing and Urban Development, [REDACTED] within 10 days of the date of service. The telephone number for [REDACTED] is [REDACTED].

In addition, at the time of your meeting with [REDACTED] you are hereby commanded to produce and make available for review and copying the documents listed below for [REDACTED] Office of Fair

- Let's consider what typically occurs in a HUD investigation regarding allegations of discrimination in appraising by a single appraiser or small appraisal firm:
  - HUD provides notice of the complaint to the appraiser and/or appraisal firm and solicits a response.
  - Seeks to engage in a conciliation (settlement) process.
  - HUD will usually subpoena records concerning the appraisal assignment. It will also likely obtain records relating to other assignments – to investigate whether there was discrimination in the appraisal at issue or whether a pattern exists.
  - At the conclusion of investigation, HUD issues a determination and may issue a “Charge of Discrimination.”
  - If a charge is issued, either side may decide to have the charge litigated in U.S. District Court. If neither party seeks that, then a trial may occur before a HUD administrative judge.
  - Actual damages and civil penalties are available; punitive damages may only be awarded in federal court.



# A Fresh Report on a HUD Complaint

## March 8, 2021

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UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### TITLE VIII

#### CONCILIATION AGREEMENT

Between

**Redacted Name**  
(Complainant)

and

JPMorgan Chase Bank, N.A., et al.  
(Respondents)

### G. RELIEF IN THE PUBLIC INTEREST

14. **Training:** All of Respondent Chase's Home Lending Advisors and Client Care Specialists nationwide will receive additional mandatory training on the Reconsideration of Value ("ROV") process and Fair Lending Issues related to appraisals within the calendar year 2021. The training includes specifics regarding how to handle complaints of discrimination in the appraisal process and the process for customers to submit a ROV request, including the

comparable sales. Respondent must submit the training within thirty (30) days prior to the effective date of this Agreement. Respondent shall email [karnaukhov@hud.gov](mailto:karnaukhov@hud.gov) and

### 17. **Changes to Notices:**

- a. **Changes to appraisal transmittal letter:** Within ninety (90) days of the effective date of this Agreement, Respondent Chase will release for coding and implementation revised language for the cover letter accompanying all appraisal reports it sends to its customers to include the following language:

*Chase is committed to maintaining appraiser independence and preventing attempts to influence appraisers in the preparation of appraisal reports, as well as avoiding any discrimination or bias in the appraisal process. If you believe that any person has attempted to influence the appraiser in the preparation of the appraisal of your property, or have any concerns with the reliability or credibility of the appraisal, please contact Chase mortgage support by calling 1-855-242-7346 Option "0", Option "0" as soon as possible to report any concerns of discrimination or bias or to discuss your options to contest the reliability of the appraisal.*



# A Fresh Report on a HUD Complaint

## March 8, 2021

Slide 66

### F. RELIEF FOR COMPLAINANT

13. Within fifteen (15) days of the effective date of this Agreement, Respondent Chase agrees to pay by wire transfer the amount of fifty thousand dollars (\$50,000) to Complainant. The wire shall be made payable to Complainant and sent using the bank and account information provided by Complainant. Respondent Chase will send a confirmation of payment via email to [yana.karnaukhov@hud.gov](mailto:yana.karnaukhov@hud.gov) and [R5FHEOConciliation@hud.gov](mailto:R5FHEOConciliation@hud.gov).



UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### TITLE VIII

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Between

**Redacted Name**  
(Complainant)

and

JPMorgan Chase Bank, N.A., et al.  
(Respondents)



# Observations and Suggestions

- ❑ Complaints to HUD and lawsuits about alleged discrimination in appraising are still small in number.
- ❑ Even if you feel that you are beyond any accusation about your valuations, it is important to be aware and sensitive to the first signs of an issue.
- ❑ Most alleged discrimination that I've observed began with a borrower's request for **reconsideration of value** that was not handled well or given genuine respect.
- ❑ Upgrade your attention to reconsideration requests – provide genuine feedback and respect.





## Q&A

# Will an LLC protect me from personal liability for appraisal claims?





# Big Picture Takeaways from the Lawsuits Filed During the Pandemic?

What about Covid-19?

Overall takeaways:

- Claims stemming from the Covid-19 crisis are much more likely to be the result of the economic turmoil impacting some borrowers/property owners and lenders, than about specific valuation errors in relation to/because of Covid-19.
- Parties in financial distress or lenders with loan losses are more prone to file lawsuits against appraisers.





# So, what are the keys for liability avoidance for all types of work during (or after) the pandemic?

- No appraiser will be sued as a result of not having a magic or lengthy “disclaimer” about COVID-19.
- It’s far more important that appraisers:
  - ✓ Use narrow and precise intended user and use in every report.
  - ✓ Watch for changing markets and respond with good analysis.
  - ✓ Use plain English in reports to explain special issues: such as incomplete information, information supplied by other parties, changed inspection SOWs.





# So, what are the keys for liability avoidance for all types of work during (or after) the pandemic?

- If claims result in relation to COVID-19, they will far more likely be because the appraiser missed a changing market and allegedly didn't get the valuation right.
- But you may still want to consider some brief COVID-19 wording. **Example:** *This appraisal was performed during a period of economic uncertainty stemming from COVID-19. 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.*





# Thank You

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