

Appraiser Law in the Real World: Key Laws, Professional Liability and Appraisal Bias

Real Estate Appraiser Continuing Education

**7 Hours Appraiser CE
Approved in AK and WA**

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About Your Instructor

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Attorney-Principal



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I'm an attorney. I graduated from U.C. Berkeley's Law School.

My legal practice is entirely focused on real estate valuation services. My clients are primarily appraisal firms, AMCs and financial institutions.

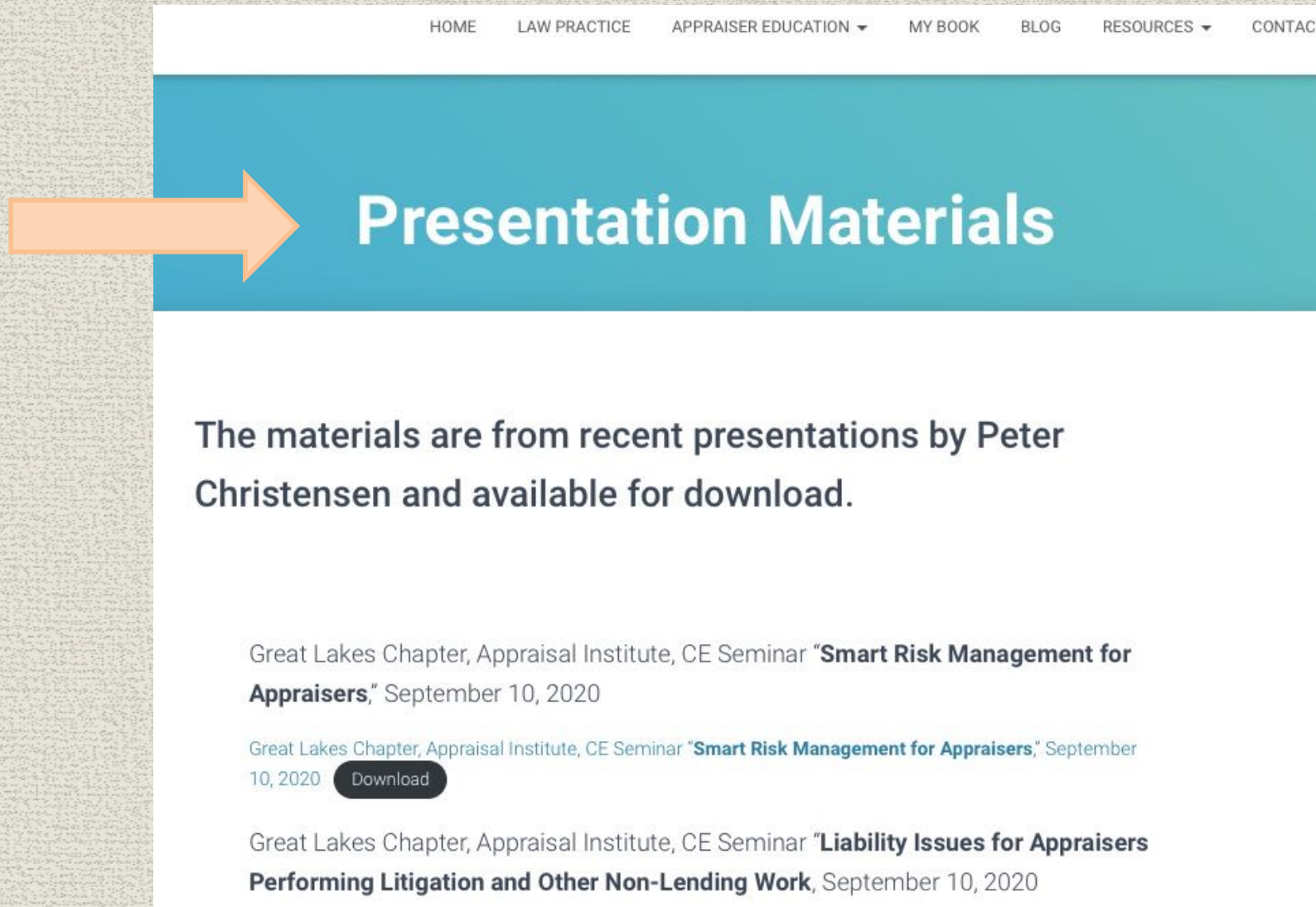
My book ***Risk Management for Real Estate Appraisers and Appraisal Firms*** was published by the Appraisal Institute in 2019.

Our roadmap – where are we going?

- In part 1, we're going to look at a number of legal situations involving appraisers and appraisal firms and see what we can learn from each situation – the issues range from borrower claims to appraisers suing review appraisers.
- Along the way, we'll also look at some key laws that appraisers often have questions about and should know.
- In part 2, we'll address issues concerning appraisal bias and discrimination – a topic that is very much a current concern.



www.valuationlegal.com under Resources tab



The screenshot shows the website's navigation bar with links: HOME, LAW PRACTICE, APPRAISER EDUCATION ▼, MY BOOK, BLOG, RESOURCES ▼, and CONTACT. Below the navigation bar is a teal banner with the text "Presentation Materials" and a large orange arrow pointing to it from the left. Under the banner, a paragraph states: "The materials are from recent presentations by Peter Christensen and available for download." Below this, there are two entries for seminars. The first entry is for a seminar titled "Smart Risk Management for Appraisers" held on September 10, 2020, with a "Download" button. The second entry is for a seminar titled "Liability Issues for Appraisers Performing Litigation and Other Non-Lending Work" held on September 10, 2020.

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Presentation Materials

The materials are from recent presentations by Peter Christensen and available for download.

Great Lakes Chapter, Appraisal Institute, CE Seminar **"Smart Risk Management for Appraisers,"** September 10, 2020

Great Lakes Chapter, Appraisal Institute, CE Seminar **"Smart Risk Management for Appraisers,"** September 10, 2020 [Download](#)

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The Basic Elements of an Appraiser Negligence Claim – Where Does USPAP Fit In?

- The Uniform Standards of Professional Appraisal Practice (USPAP), of course, are the standards that appraisers are required to follow when performing appraisal assignments (with some exceptions in some states).
- USPAP has the force of law and regulation for appraisers under state appraiser licensing laws.
- It's also very relevant to some of the legal situations we'll been talking about – where an appraiser is being accused of professional negligence.
- USPAP forms a large part of what is called the “**standard of care**.”
- And, as we'll see, the USPAP concepts of “intended use” and “intended user” also largely define who can sue an appraiser.

What Is a Professional Negligence Claim?

The key legal elements of an appraisal negligence claim are:

- 1) a **legal duty** owed to the plaintiff by the defendant appraiser,
- 2) failure of the defendant appraiser to follow the applicable **standard of care** required for the assignment,
- 3) reliance by the plaintiff on the appraisal work, and
- 4) damages to the plaintiff proximately caused by the appraiser's breach of the standard of care.

The Overarching Key Issue in a Majority of Cases: To Whom Does the Appraiser Owe a Legal Duty?

Law in most states:


a professional like an appraiser owes a legal duty for the purpose of negligence claim to their client and to those additional parties they know or reasonably expect will use or rely on their work.

Let's now see how that works in a real case.

The Value of Precise Intended Use and User Language ***Willemssen* – California Court of Appeal (2014)**

- **Willemssen contracted to purchase 4.8 acre vacant land in San Bernardino County in 2007.**
- Purchase price \$1.6m.
- **F&M Bank hired appraisers.**
- Appraisers valued property at \$1.78m.
- **Five years later, Willemssen was unhappy with purchase and sued.**
- He alleged the value was inflated because appraisers failed to consider impact of earthquake fault and easement.
- But the **appraisal had some key language:**

The Value of Precise Intended Use and User Language *Willemssen* – California Court of Appeal (2014)

report stated: “The function of this appraisal report is to provide Farmers and Merchants Bank with a Summary Appraisal Report.” It further stated: “The intended use of this appraisal is to assist Farmers and Merchants Bank in analyzing a new loan for the subject property. The intended users of this appraisal are Farmers and Merchants Bank and/or its designated representatives.” Another portion of the report said: “The report may not be used for any purpose by any person other [than] the party to whom it is addressed without the written consent of the appraiser and the appraiser specifically disclaims any liability to such unauthorized third parties.” The appraisal report was addressed to the bank. 

The Value of Precise Intended Use and User Language *Willemssen* – California Court of Appeal (2014)

- Trial court granted summary judgment and dismissed case.
- Court of appeal affirmed. Key finding:

Furthermore, the Appraisal [REDACTED] Defendants did not manifest an intent to supply information for Willemssen's use in determining whether the property was suitable for his purposes. Rather, the appraisal report specifically limited its intended use to the use of the bank. Finally, the purpose of the appraisal report was to aid the bank in determining whether the proposed collateral had a value sufficient to support the contemplated loan, not to assure Willemssen that it was suitable for use as a recycling facility or free from earthquake faults, or to disclose planned roadways to him.

The Value of Precise Intended Use and User Language *Willemssen* – California Court of Appeal (2014)

Takeaways:

- In addition to being a USPAP compliance requirement, your descriptions of intended use and user in appraisal reports are specifically relevant to determining the parties to whom you owe legal duties.
- The descriptions help frame who can sue you and what they can sue you about.
- For risk reduction, narrower and more precise is better.

The Appraiser's Most Common Actual Mistake

The next case relates to a legal claim by a residential borrower in relation to an appraisal reported on the 1004 form. Let's keep this language from the form in mind as we look at the case:

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.

**Most Common Mistake:
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”).

Slide 14

**Most Common Mistake:
Miami Appraiser Sued - The
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(Filed June 5, 2020)**



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.”

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”).

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.

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.”*¹

25. Relying on the Negligent Appraisal, the [REDACTED] took out a mortgage loan from the Bank for \$540,000.00,² 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.

Public Records		×
Beds		3
Baths		2
Sq. Ft.		1,394
Stories		1
Lot Size		7,850 Sq. Ft.
Style	Single Family Residential	
Year Built		1938
Year Renovated		2003

PROPERTY DETAILS	
INTERIOR	EXTERIOR
1,692 Sq Ft.	.18 Acres
PROPERTY TYPE	MONTHLY REAL ESTATE TAX
Single Family Home	\$315
YEAR BUILT	MLS/LISTING ID
1938	A10436499

Most Common Mistake: 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").³

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

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

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

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

Most Common Mistake: Miami Appraiser Sued The House is Not as Big as He Reported

What happened in the case?

Takeaways:

- Square footage errors are the single-most common actual mistakes for which appraisers are sued.
- Pay extra attention to measuring and reporting square footage.

More Takeaways – Mitigating the Risk of Borrower Claims with Specific Additional Language

Takeaways:

- Borrowers are the most common claimants.
- Use additional language in reports directed at claims by borrowers (and sellers).

Suggested Language for for Residential Appraisers Regarding the 1004 and Similar Report Forms?

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 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.

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.



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.



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.

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.

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."

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.
- Takeaways:
1. What’s the statute of limitations period for appraiser negligence here in **Alaska**? (2 years) Is a discovery rule followed? (yes)
 2. Keep your workfiles for longer than the minimum USPAP requires.
 3. Again, borrowers/other third parties are the most common source claims (60-65%).
 4. It sounds silly – but septic/sewer issues are way too common in claims (and mostly preventable).

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 Chart Link](http://www.valuationlegal.com/limitations/)

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	2	Yes	Alaska Code of Civil Proc. § 09.10.070
Arizona	2	Yes	Ariz. Rev. Stat. Ann. § 12-542
Arkansas	3	No. Arkansas has adopted an appraiser-specific statute of limitations intended to protect appraisers.	Ark. Code § 17-14-206(c)(1) (as amended by SB 394 in 2015)
California	2	Yes	Cal. Civ. Code § 337.2
Colorado	2	Yes	Colo. Rev. Stat. Ann. § 13-20-101
Connecticut	2	Yes	Conn. Gen. Stat. § 54-260
Delaware	3	Yes	Del. Code Ann. tit. 10, § 2303
Florida	2, for claims by clients	Yes, for claims by clients. For claims by others, the statute of limitations is 4 years.	Fla. Stat. § 95.11
Georgia	4	The limit applies unless the claim is for fraud, in which case the statute of limitations is 2 years.	Ga. Code Ann. § 9-2-284
Idaho	2	Yes	Idaho Code § 5-216
Indiana	2	Yes	Ind. Code § 34-11-2-4
Iowa	2	Yes	Iowa Code Ann. § 614.1
Kansas	2	Yes	Kan. Stat. Ann. § 60-513
Kentucky	1	Yes	Ky. Rev. Stat. Ann. § 413.140(3)
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
Maine	6	Yes	Me. Rev. Stat. Ann. Tit. 14, § 752
Maryland	3	Yes	Md. Cts. & Jud. Proc. Code Ann. § 5-101
Massachusetts	3	Yes	Mass. Ann. Laws ch. 260, § 4
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.

Use Plain English Disclosures and Photos to Minimize Liability Risk



Understand Review Appraiser Liability to the Original Appraiser -- Let's Apply What We Just Learned about the Elements of Negligence to Another Real Appraiser Claim Situation

- Review appraiser retained by lender prepares a review that is highly critical of another appraiser's work.
- Lender drops the appraiser from panel, costing the appraiser tens of thousands of dollars in lost work. Other lenders learn of the "blacklisting" and more work is lost.
- Reviewer on his own reports the appraiser to the state for USPAP violations and submits the review. However, the state finds no errors and actually disciplines the reviewer for a poorly supported review.
- Can the damaged appraiser who lost tens of thousands in income because of the bad review sue the reviewer for professional negligence?



Let's Look at Some Laws That Appraisers Sometimes Ask Me About

- **Gramm Leach Bliley Act**
- **RESPA**
- **Do you have any others in mind?**

- **We'll be talking about fair housing and anti-discrimination laws in part 2.**

The Gramm Leach Bliley Act (GLB)

Congress enacted the **Gramm Leach Bliley Act** (“GLB”) in 1999.

The GLB provides a framework for regulating the privacy and data security practices of a broad range of financial institutions. Among other things, the GLB requires “financial institutions” to:

- 1) Maintain security safeguards pertaining to nonpublic personal information about consumers, and
- 2) Provide certain notifications to consumers of the institution's privacy policies and practices with respect to information sharing.*

* 15 U.S.C. 6801(b), 15 U.S.C. 6805(b)(2)

Gramm Leach Bliley Act (GLB) – a High Level Summary of its Application to Appraisers

This law applies to you as an appraiser because, as the regulations published by the FTC and CFPB explain:

(h)(1) Financial institution means any institution the business of which is engaging in an activity that is financial in nature or incidental to such financial activities . . .

(2) Examples of financial institutions are as follows: . . .

(iii) A personal property or **real estate appraiser is a financial** institution because real and personal property appraisal is a financial activity listed in 12 CFR 225.28(b)(2)(i) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

It also applies to AMCs – here's another listed example:

(x) An entity that provides real estate settlement services is a financial institution because providing **real estate settlement services is a financial activity** listed in 12 CFR 225.28(b)(2)(viii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

* 16 CFR 314.2 Definitions.

Gramm Leach Bliley Act (GLB) – a High Level Summary of its Application to Appraisers

For appraisers, the GLB's application can be summarized in these very general rules:

An appraiser cannot distribute nonpublic personal information about consumers and customers to nonaffiliated third parties unless such consumers and customers have been given a privacy notice (by the lender, if it's their consumer/customer or by you if it's your direct consumer/customer) and the opportunity to opt-out of such distribution.

For appraisers, nonpublic personal information would be things like:

- Name of borrower.
- Loan/case/application number.
- Interior details; photos of personal items.
- Opinion of value.

A “consumer” is a person who has sought or received a single or incidental service from you for personal, family or household purposes. A “customer” is consumer who has an ongoing relationship with you – such as purchasing appraisals from you on a routine basis.

**Who enforces
these
requirements?
CFPB**

**Can a borrower sue
for violation?**

**Are there any real
cases involving
appraisers?**

* 16 CFR 314.2 and 16 CFR 314.3.

Gramm Leach Bliley Act (GLB) – a High Level Summary of its Application to Appraisers

Do appraisers need to give “privacy notices” under the GLB to their consumers and customers?

In sum, a real estate appraiser needs to provide a privacy notice to a consumer if:

- The appraiser has performed an appraisal **directly** for that consumer, **and**
- The appraiser wants to disclose nonpublic personal information about the consumer to nonaffiliated third parties. (Why would you want to do that?)

If you want to do that, please research the requirements for privacy notices carefully.

If you routinely perform appraisals for an individual, then you probably have a “customer” relationship with that person and you must give a privacy notice to the customer (if you want to comply with the law).

- Regardless of notice requirements, you still must abide by the privacy protections.



In general, appraisers have few direct consumer transactions.

* 16 CFR 314.2 and 16 CFR 314.3.

Gramm Leach Bliley Act (GLB) – a High Level Summary

➤ Safest Privacy Advice re GLB:

Regardless of how you receive the information and regardless of whether you have a “consumer” or “customer” relationship with the borrower or another party, don’t disclose nonpublic personal information to third parties, who are not necessary to your performance and delivery of the appraisal.

Please also remember that you have additional confidentiality duties under USPAP (2020-21):

CONFIDENTIALITY:

An appraiser must protect the confidential nature of the appraiser-client relationship. An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results. An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

An appraiser must not disclose: (1) confidential information; or (2) assignment results to anyone other than:

- the client;
- parties specifically authorized by the client;
- state appraiser regulatory agencies;
- third parties as may be authorized by due process of law; or
- a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation.

...

Real Estate Settlement Procedures Acts (RESPA)?

Can you, as an appraiser, give a \$100 gift card to a chief appraiser at an FDIC-insured bank for every 5 residential mortgage appraisal assignments she sends you?

In other words, can you pay or compensate someone for sending you residential lending work?

The short answer is “No!” (for most lending appraisals). The reason why is the federal **Real Estate Settlement Procedures Acts (RESPA)**.

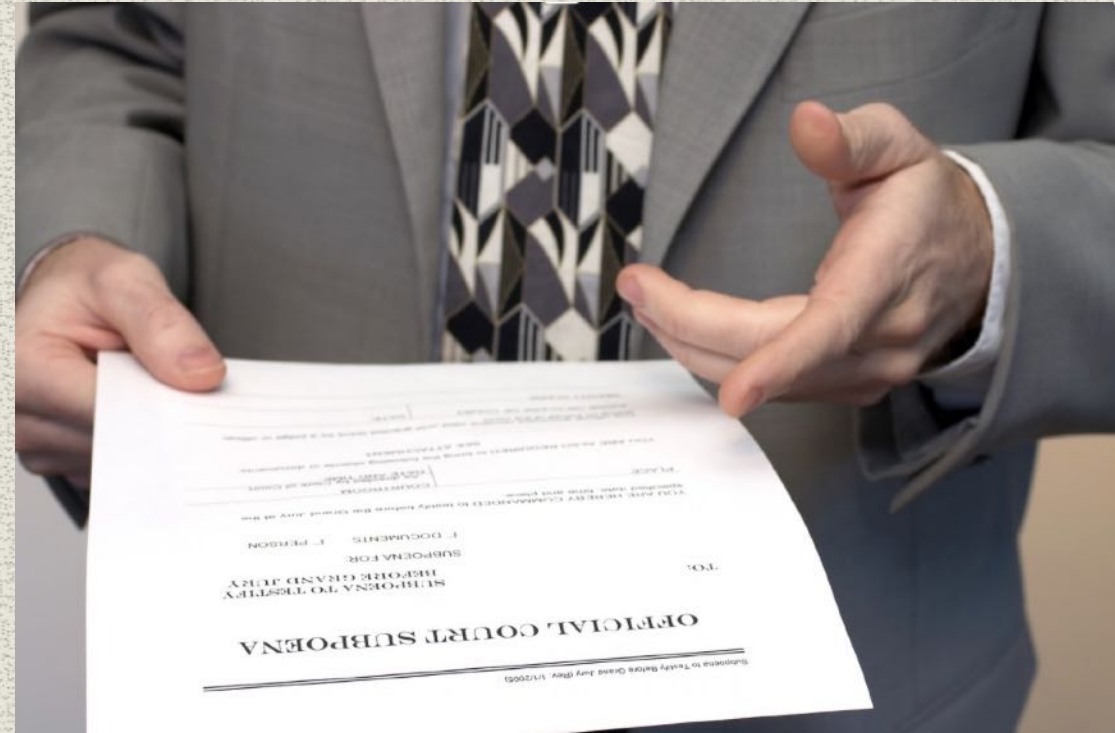
RESPA Section 8(a) prohibits kickbacks for business referrals related to or part of settlement services involving federally related mortgage loans.

The definition of real estate settlement services in RESPA includes appraisals. To be a violation, however, the referral must be related to or part of a settlement service involving a federally-related mortgage loan.

* 12 USC § 2602 and 2607(a); 12 CFR § 1024.2 and 1024.14.

A Process Server is Knocking at Your Door

- What should you do?
- Flee to Canada?
- Accept service?
- E&O?



Handling a Subpoena

- Understand difference between fact and expert witness.
- Know USPAP confidentiality rule.
- Use a practical approach in discussing subpoena with the attorney.
- Seek assistance if the subpoena may be hinting at a potential claim.

USPAP Confidentiality

USPAP's Ethics Rule re Confidentiality

“An appraiser must not disclose: (1) confidential information; or (2) assignment results to anyone other than: the client; persons specifically authorized by the client; state appraiser regulatory agencies; third parties as may be authorized by due process of law; or a duly authorized professional peer review committee ...”

U.S. v. 2,091.712 Acres of Land, U.S. District Court, E.D. North
Carolina 2010

- Federal condemnation case.
- Government taking a restrictive easement over land adjacent to a Marine Corps air station.
- Government subpoenaed all appraisals by landowner's appraiser of similar properties near military air bases and civilian airports.
- Court ruled USPAP confidentiality did not provide basis for appraiser refusing to disclose appraisals.

“The law does not afford an evidentiary privilege to professional appraisers. Moreover, the USPAP rules themselves explicitly contemplate the production of such documents to ‘third parties as may be authorized by due process of law.’ ”

What To Do If a Claim or Lawsuit Happens to You?



- **Don't ignore it**
- **Get legal assistance**
- **Handle the lawsuit appropriately if you are served**
- **Report to E&O**

3 Pieces of Bad Advice From the Internet

- **“Don’t report that disciplinary complaint to your E&O.”**
- **“Since my firm is organized as a limited liability company, I don’t have personal liability for my appraisals.”**
- **“Only appraisers who do appraisals for mortgage lending get sued.”**

How to Turn a Potential Claim into an Actual Claim

Part 1 – Chase “Quality Review” Letter

Dear Appraiser:

Your appraisal was selected for a quality review analysis by Chase Appraisal Panel Management. During the course of our review our analysis uncovered the following possible USPAP violations:

1. USPAP Standards 1-2(e)(i), 2-1(a), 2-2(b)(iii): The appraisal appears to be in violation of USPAP standard rules regarding proper identification and reporting of subject's property data and characteristics as well as reporting in a manner that will not be misleading.
 - a) In the neighborhood section on page one, no box is checked for subject location; however it is noted as rural per comments. It is noted to be built up “over 75%” yet comments state rural area with properties of 2-20 acres and satellite imagery shows a very sparsely populated area.
 - b) No zoning information is provided. Per public record, the subject is zoned LCA11 – residential with light agriculture and farm animals acceptable. However use code per public record indicates “quadruplex”. Public record living area is noted as 4,858sf with 12BR, 4 bath and 4 separate units. The report provides no discussion of this data.

How to Turn a Potential Claim into an Actual Claim

Part 2 – The Appraiser's "Appeal"

"Dear Appraisal Panel,

I would like to appeal your previous decision to place me on your Exclusionary list.

The appraisal in question was admittedly sketchy and very lacking in detail and clarity of presentation. I was truly appalled myself preparing the rebuttal to your review and I acknowledge that it did not meet the appropriate standards of reporting that it should have.

However, this was truly not representative of my work in 2007, nor does it have any similarity at all to the work that I do currently . . ."

Let's Look at the Interplay between an Appraiser's Mistakes, a Complaint to the State Appraiser Board, and a Lawsuit – and See What We Can Learn

It's a story about an appraiser's divorce assignment that didn't go so well.

SUPERIOR COURT OF THE STATE OF CALIFORNIA	
COUNTY OF LOS ANGELES	
████████ ██████████, an individual	Case No.: 19STCV24366
Plaintiff,	COMPLAINT FOR:
vs.	(1) NEGLIGENCE
████████ ██████████, an individual and	(2) NEGLIGENCE MISREPRESENTATION
DOES 1 to 20, inclusive,	(3) FRAUD
Defendants.	(4) VIOLATION OF B&P CODE SEC. 17200 ET. SEQ.

Appraiser's Divorce Assignment Goes South

- In 2017, wife and husband are in a contentious divorce.
- They own two properties: their home in West Covina and a 4-unit rental in La Puente.
- Appraiser runs into husband who says he needs an appraiser for his divorce case.
- **Mistake #1 happens – no engagement agreement.**
- Appraiser values both properties - \$835k for the home, and \$850k for the rental property, for which he later issues a new report at \$900k.

Appraiser's Divorce Assignment Goes South

- **Mistake #2** – appraiser reports both appraisals on standard Fannie Mae pre-printed report forms.
- **Mistake #3** – appraiser doesn't do a good job identifying his client/intended user in either report and just puts the last name.
- Wife agrees to a divorce settlement in court with the husband and claims she relied on the appraiser's reports in making the settlement.

Appraiser's Divorce Assignment Goes South

- The wife soon has regrets about the property settlement she accepted – another appraiser provides retrospective appraisals that are \$175k and \$205k lower.
- She files a complaint to BREa.
- **Mistake #4** – the appraiser doesn't report the disciplinary complaint to his E&O.
- BREa cites the appraiser. Let's look at part of the citation.

Are appraisers legally required to carry E&O insurance?

No, there is no such requirement in any state, except Colorado. What's the real reason it exists? To defend you against claims.

The Appraiser Board's Findings re Appraisal of Home



- a) Respondent failed to consistently identify the intended use of the appraisal report.
The report referred to the appraisal being used to estimate market value for purposes of marriage dissolution while the form defined the intended use as being for a mortgage finance transaction (S.R. 1-2(b) and S.R. 2-2(a)(ii));
- b) Respondent failed to develop a credible Sales Comparison Approach by:
 - i. Failing to explain the use of a sale price for Comparable One which was different than the sale price noted in public records;
 - ii. Failing to report the location of Comparable Two as being in a development with home-owner's association dues;
 - iii. Failing to report the equestrian facilities for Comparable Four; and
 - iv. Failing to provide adequate support for the site and car storage adjustments.
(S.R. 1-4(a) and S.R. 2-2(a)(viii));
- c) Based on the findings in a and b above, Respondent committed a series of errors that in the aggregate affects the credibility of the appraisal assignment results
(S.R. 1-1(c));

Appraiser's Divorce Assignment Goes South

- The state cites the appraiser.
- The punishment is 15 hours of specified basic education with an exam, a 4-hour corrective education course run by the Appraisal Foundation, and a fine of \$1,000.
- But it's not over.
- The wife sues the appraiser – to recover what she thinks she should have received in value in the divorce.

Appraiser's Divorce Assignment Goes South

- So, the appraiser is:
 - Having to defend a case at his own expense that is more difficult and expensive to defend because he didn't use good intended user language or an engagement agreement.
- **Takeaways** – use an engagement agreement, don't misuse report forms, do a good job specifying who your client is, and report legal issues promptly if you're insured.

For Appraisers Who Work as Expert Witnesses: Can an Unhappy Party on the Other Side of a Case Sue You for Negligence?

**Can any unhappy party on one side of any
litigation, condemnation, arbitration, etc. sue the
other side's expert?**

Let's find out . . .

An Unhappy Property Owner in a Condemnation Case Sues the State's Expert Witness Appraiser

- An experienced appraiser and his firm were hired by the state to value a largely undeveloped parcel for highway condemnation purposes.
- He appraised the property at approximately \$1,000,000.
- Property owner declined a pre-litigation offer based on that appraisal.
- The state then commenced an eminent domain proceeding.
- At trial, the state's appraiser testified to the same \$1m valuation, while the property owner's expert appraiser testified to a \$7m value.

An Unhappy Property Owner in a Condemnation Case Sues the State's Expert Witness Appraiser

Facts of the Case (Cont'd)

- The jury split the difference and awarded approximately \$4m to the property owner.
 - The property owner was not satisfied with that outcome.
 - The owner then sued the state's expert appraiser, contending that his valuation was erroneously low and alleging various claims of negligence.
 - The owner alleged that the condemnation award at trial would have been higher but for the allegedly erroneous low value and demanded damages from the state's expert and his firm for the difference.
- ***There are two reasons why the property owner should lose.***

Appraiser Liability Claims

Remember the Elements of a Professional Negligence Claim

The key legal elements of a negligence claim:

- Duty owed by the defendant *to the plaintiff* to conform his or her conduct to a standard of care.
- Breach of that duty – e.g., providing an inflated valuation or failing to produce a USPAP-compliant appraisal or, in the case of an expert, perhaps failing to produce admissible work product.
- Reliance by the plaintiff on the appraiser's work.
- Actual damages to the plaintiff.
- **The property owner should both lose because the other side's appraiser owes them no legal duty.**

**Who is your client?
Who are your intended users?**

Always use as narrow and precise of language on user and use as possible in every report – of every type.

In a divorce, have you been retained only by one spouse or both? Be clear.

Partners have a disputed buy out. You're being retained. Are you working for one or both? Be clear.

An Unhappy Property Owner in a Condemnation Case Sues the State's Expert Witness Appraiser

The other – very important – reason the property owner should lose is something called litigation privilege or witness immunity.

The case in New Hampshire makes this point.

Legal outcome of the case in New Hampshire:

- The trial court dismissed the property owner's claims against the appraiser and his firm based on "witness immunity."
- New Hampshire's Supreme Court upheld that dismissal.
- The Court wrote in its opinion:

"The purpose of this privilege is to encourage witnesses to testify and to ensure that their testimony is not altered or distorted by the fear of potential liability."

Who Else Sues Appraisers Engaged as “Experts” or Who Perform Other Non-Lending Work?

- **Client(s) of the Appraiser. Examples:**
 - **Client in a divorce case disappointed with the result.**
 - **Taxpayer who hired appraiser to provide value for return.**
 - **Party to condemnation suit who hired appraiser as expert.**
 - **Parties who jointly engaged appraiser to determine purchase price or a rental rate for a lease renewal.**

Engagement Letters Really Work

- Let's consider a NY case – Stabilis Fund II LLC v. CBRE, Inc., (N.Y. Sup. Ct. 2019).
- Stabilis was the lender on a loan in default secured by a property in Florida.
- Defendant CBRE and its appraiser had earlier appraised the property for the loan.
- Stabilis was now contemplating foreclosure and sought a new appraisal from CBRE.
- CBRE had an existing signed engagement letter with Stabilis for appraisal services.
- The firm re-appraised the property in October 2013 shortly before the foreclosure sale.
- The appraisal fee was \$2,500.

Do Appraisers' Limitations of Liability Work?

- The crux of the legal claim is that the appraiser made a clear error in the report.
- The appraiser didn't include rental income from a new long-term tenant, resulting in a significantly lower valuation.
- The error resulted from a failure to update a spreadsheet in an earlier report.
- As a result, the lender alleges it permitted the property to be sold too cheaply at the foreclosure sale and settled litigation against the guarantor for too little.
- Stabilis has sued CBRE for \$1.1 million.

Do Appraisers' Limitations of Liability Work?

- The signed engagement letter had a relevant provision:

UNDER NO CIRCUMSTANCES WHATSOEVER SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER. IN NO EVENT WHATSOEVER SHALL EITHER PARTY'S TOTAL LIABILITY TO THE OTHER FOR DIRECT DAMAGES UNDER THE AGREEMENT OR ANY OTHER DAMAGES WHATSOEVER EXCEED IN THE AGGREGATE THE SUM OF TEN THOUSAND DOLLARS (\$10,000.00).

- In a summary judgement motion, the firm asked for the court to rule that this provision is enforceable.
- How did the court rule?

Do Appraisers' Limitations of Liability Work?

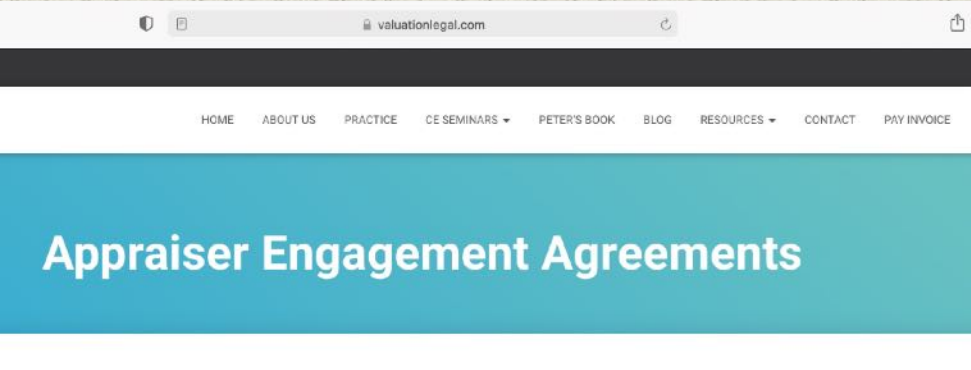
- The court described the law:

“Contractual limitations of liability are generally enforced and serve a broad public purpose by limiting a parties' exposure to liability and keeping the costs of goods and services down. In order to circumvent the limitation of liability cap with respect to its breach of contract action, plaintiff is required to demonstrate that defendant's conduct constituted gross negligence, which "must smack of intentional wrongdoing." . . . Gross negligence is conduct which "evinces a reckless indifference to the rights of others.”
- To be sure, there was a highly qualified expert witness hired by Stabilis ready to testify that the appraiser's error was “gross negligence” as opposed to a simple mistake.

Do Appraisers' Limitations of Liability Work?

- But nevertheless the court found: “that [the appraiser] made a calculation error by inserting an incorrect number in a spreadsheet does not constitute intentional wrongdoing.”
- The court ruled: “ORDERED that defendant is entitled to summary judgment fixing plaintiff's damages at a maximum of \$10,000 in accordance with the parties' contractual limitation of liability.”

Engagement Letters Really Work



The screenshot shows the valuationlegal.com website. The browser address bar displays 'valuationlegal.com'. The navigation menu includes: HOME, ABOUT US, PRACTICE, CE SEMINARS, PETER'S BOOK, BLOG, RESOURCES, CONTACT, and PAY INVOICE. A large teal banner features the text 'Appraiser Engagement Agreements'.

I've prepared the following example engagement letter for you to consider in their practices. You'll find a complete agreement details in Chapter 8 (Engagement Conditions) of my [book](#).

These materials are adaptations of the sample materials the Appraisal Institute on its website ([link](#)). I participated in a group that revised the materials available on the Appraisal Institute website.

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Professional Practice

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- [Readdressing, Reassigning, Reappraising](#)
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Ethics and Standards

PUCS

Sample Materials for Services

Although neither the Uniform Standards of Professional Appraisal Practice nor the Appraisal Institute Code of Professional Ethics requires the use of written engagement agreements, using a written agreement to set out the details of an assignment is a sound business practice.

A written agreement:

- serves to clarify terms of the assignment;
- provides written evidence of both the client and appraiser's agreement to the terms;
- provides the basis for the resolution of disputes arising from the providing of services; and
- encourages the parties to address issues that might not otherwise be addressed.

The Appraisal Institute is pleased to provide the following sample materials as resources for appraisers drafting their own engagement contracts in the non-litigation and litigation contexts. As drafted, the sample materials address non-litigation and litigation appraisal assignments, but they can easily be edited to accommodate review or other types of assignments. The sample materials are designed to be edited or modified as needed.

Some Example Provisions

12. Maximum Time Period for Legal Actions. Unless the time period is shorter under applicable law, any legal action or claim relating to the appraisal or this Agreement shall be filed in court (or in the applicable arbitration tribunal, if the parties to the dispute have executed an arbitration agreement) within two (2) years from the date of delivery to Client of the appraisal report to which the claims or causes of action relate or, in the case of acts or conduct after delivery of the report, two (2) years from the date of the alleged acts or conduct. The time period stated in this section shall not be extended by any delay in the discovery or accrual of the underlying claims, causes of action or damages. . . .

13. Limitations of Liability. To the fullest extent permitted by applicable law, the maximum monetary liability of Appraiser, Firm or Client to one another or to any third party (regardless of whether such party's claimed use or reliance on the appraisal was authorized by Appraiser) for any and all claims or causes of action relating to the appraisal or Agreement shall be limited to the total compensation actually received by Appraiser for the appraisal or other services that are the subject of the claim(s) or cause(s) of action.

A Separate Agreement for Expert Witness Work

Re:

[Name of matter or case]

Dear [Attorney]:

I/We are pleased to be retained by you as consulting experts in connection with your representation of _____ in the above matter. I/We also understand that I/we may be asked to provide expert witness services and testimony in the matter should it become necessary.

This engagement letter sets forth the terms of my/our services. If these arrangements are acceptable, please sign the enclosed copy of this letter, have your client sign it as well, and return it to me/us at your earliest opportunity along with the \$_____ retainer mentioned below.

A Separate Agreement for Expert Witness Work

Responsibility for Payment. *[See Instructions for alternative wording.]* I/we understand you are retaining my/our services in connection with the representation of your client. While we will be issuing our invoices directly to you for delivery to your client, your client shall be responsible for payment in accordance with the terms stated in this letter and has acknowledged that responsibility by signing below. However, in the event that your client fails to pay for our fees and expenses on a timely basis, your firm agrees to pay the balance owed.

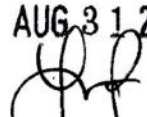
Retainer. *[See Instructions for alternative wording.]* It is my/our policy to collect a retainer and receive the fully executed engagement letter before I/we begin providing services. The retainer for this matter shall be \$_____. This retainer will be applied to my/our final invoice for time and expenses, with any unused amount refunded to the party who paid the retainer unless that party directs, in writing, that the refund be paid to a different party.

Right to Withhold Services and/or Withdraw. Without liability on my/our part and without regard to the stage of litigation, I/we shall have the right to withhold providing services (including delivering any report or providing testimony) or withdraw completely, at my/our sole option, if any of my/our invoices are not timely paid or if I/we determine that an irreconcilable conflict has arisen.

San Bernardino County, California

“the Appraiser Left the Water on”

Slide 72

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 ██████ INSURANCE COMPANY		FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT AUG 31 2020  LaShondra Richardson
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: ██████ INSURANCE COMPANY, a corporation		

DEFENDANTS ██████ APPRAISALS, LLC and ██████ (collectively "Defendants") inspected the residence of ██████. 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 ██████ residence. Defendants owed a duty of care to Mr. ██████ and others and breached that duty by, among other things, failing to safely inspect the ██████ 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.

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

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

San Bernardino County, California

“the Appraiser Left the Water on”

Slide 73

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: FOR INSU DOES 1 TO 20 COMPLAINT—Personal Inju <input type="checkbox"/> AMENDED (Numb Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> Property Damage <input type="checkbox"/> Personal Injury			



12 of 29

San Bernardino County, California

“the Appraiser Left the Water on”

Slide 74

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.

Common Reasons Why Appraisers Didn't Have Coverage for Claims Under Their E&O

- No current E&O policy.
- No “tail” coverage.

What's retirement tail coverage?

REAL ESTATE APPRAISERS ERRORS & OMISSIONS INSURANCE POLICY

DECLARATIONS PAGE

This is a claims made and reported policy. Please read this policy and all endorsements and attachments carefully.

Policy Number: NJA313536 Renewal of Number:

1. **NAMED INSURED:** [REDACTED]
STREET ADDRESS: [REDACTED] e
Gainesville, VA 20155

2. **POLICY PERIOD:** Inception Date: 12/18/2014 Expiration Date: 12/18/2015
Effective 12:01 a.m. Standard Time at the address of the Named Insured.

3. **LIMITS OF LIABILITY:**
Each Claim: \$1,000,000
Aggregate: \$1,000,000
Claim Expenses have a separate Limit of Liability:
Each Claim: \$1,000,000
Aggregate: \$1,000,000

4. **DEDUCTIBLE:** Each Claim: \$0 Aggregate: \$0

5. **RETROACTIVE DATE:** 12/18/2012
If a date is indicated, this policy will not provide coverage for any **Claim** arising out of any act, error, omission or personal injury which occurred before such date.

The Worst Risk Management Strategy I've Ever Heard

“I put all my assets in my wife's name”

Part 2

Appraisal Bias and Alleged Discrimination

McMICHAEL'S APPRAISING MANUAL

• THIRD EDITION •

While the classification which follows may be scientifically misleading from a standpoint of inherent racial characteristics, Mr. Hoyt avers that it registers an opinion or prejudice which is reflected in land values. Likewise it represents the ranking of races and nationalities with respect to their beneficial effect on land values. Those nationalities and races having the most favorable influence come first in the list and those exerting detrimental effects come last:

- | | |
|---|-------------------------------------|
| 1. English, Germans, Scotch,
Irish, Scandinavians. | 6. Greeks. |
| 2. North Italians. | 7. Russians, Jews (lower
class). |
| 3. Bohemians or Czechs. | 8. South Italians. |
| 4. Poles. | 9. Negroes. |
| 5. Lithuanians. | 10. Mexicans. |

No mention of Japanese and Chinese was made in the above classifications, probably because there were not very large colonies of these Orientals in Chicago at the time the survey was made. In Pacific coast States, however, these races create a host of problems. San Francisco has a so-

* Published by the University of Chicago Press, Chicago, Ill.

A Couple Quick Questions

- This is a ranking of nationalities and Blacks in the Chicago area in 1930s, ranking them based on their “favorable influence” on land value.
 - The ranking was created by Dr. Homer Hoyt, the Chief Land Economist at the Federal Housing Administration from 1934-40.
 - It’s reproduced here in an appraisal handbook.
 - Let’s look at this list and give honest answers to ourselves about these questions:
- ☐ **After the shock of seeing a list like this, did you find yourself thinking about his rankings – whether seriously or otherwise?**
 - ☐ **What does that say about stereotypes we might harbor? Or implicit biases we may have?**

Elimination of Bias

Where Are We Going?



- We're going to address issues concerning bias and discrimination in appraising.
- We'll learn about:
 - ✓ Implicit/unconscious bias.
 - ✓ Explicit bias and intentional discrimination.
- We'll look at real-world situations where researchers or members of the public believed there was bias by appraisers.

Elimination of Bias Where Are We Going?

- Because the law weighs heavily on matters concerning discrimination, we'll also address:
 - ✓ Relevant federal laws such as the **Fair Housing Act** and **ECOA**.
 - ✓ Applicable (and changing) professional standards.
 - ✓ Investigations and lawsuits relating to alleged discrimination in appraisals - for example, you'll hear how one appraiser ended up having to produce 1,400 appraisals and work files to a government agency (this will certainly provide one reason why this course is important).
- The topics discussed is relevant to both residential and commercial appraising – it's important to realize that these issues are not just a “residential appraiser problem.”

The Topics Are Upsetting

- When the **Appraisal Standards Board** proposed adding a non-discrimination section to the Ethics Rule in USPAP, some of the public comments included:

From: Anonymous

Sent: 7/26/2022 12:54:24 PM

This is absurd! This woke culture Crap! Nobody, cares about the people who own the home, who lives in it, or anything discriminatory. To give into any of this, undermines the whole industry. absolutely ridiculous!

From: [REDACTED]@hotmail.com>

Sent: 8/1/2022 12:20:20 PM

I oppose the amendments in their entirety as an obscene violation of human freedom, particularly against the users of appraisal services but also against appraisers. The ethics requirements should be wholly separated from governmental legislation because the latter themselves are prone to unethical tendencies and are in many jurisdictions grossly unethical. The authors of the currently adopted standards understood the need for regulation to be the least restrictive as possible for human flourishing. This exposure draft is profoundly evil and I condemn it.

[REDACTED]

[REDACTED]@hotmail.com


Some Appraisers Also Demonstrated a Lack of Knowledge of the Key Laws that We'll be Discussing

From: [REDACTED]@karschstate.com>
Sent: 8/2/2022 11:17:22 AM

66 "An appraiser must not USE, rely on, or consider assumptions, stereotypes, or proxies related to protected characteristics in an analysis, opinion, or conclusion."

Every demographics study I get USES and reports in detail all kinds of information regarding protected classes of people (especially the US Census). Does this mean I can no longer USE the census data in my report, or do I need to censor/redact the stats on protected characteristics?

Yes, there are demographic facts you can't legally consider or report in an appraisal.



An appraiser/AMC state regulator wrote:

I was stunned when I read the following statement in the third exposure notice:

"The proposed changes to the ETHICS RULE are not sufficient. It is not abundantly clear, to anyone who reads USPAP, that USPAP prohibits discrimination. More needs to be done."

How are the following statements under **Conduct**, ambiguous?


An appraiser:

- **Must not perform an assignment with bias;**
- **Must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value;**

The language appears to be plain enough even to a lay person.

We are professionals and do not need to be treated like children. Stifling and promoting censorship of certain "buzz terms" is unacceptable, and potentially a violation of our 1st Amendment right to Freedom of Speech. How can we continue to instill public trust in the appraisal profession if we do not trust ourselves?

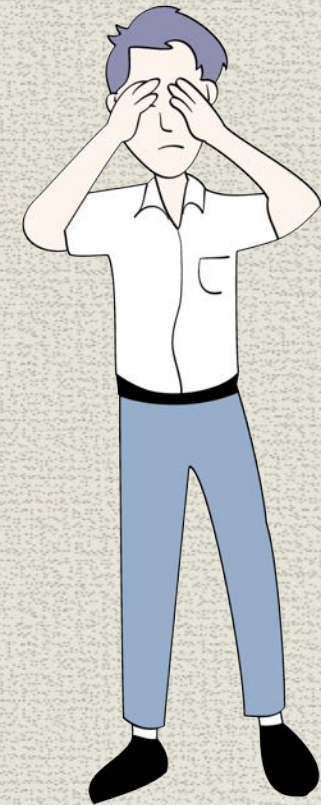
Freedom of speech in an appraisal? No.



Are Appraisers Being Unfairly Singled Out?

Is the appraisal profession being unfairly singled out with accusations of bias?

- Well – appraisers aren't the only professionals who've faced allegations about bias in their professional services?
- Professions like lawyers, therapists, nurses and doctors have all faced similar allegations – and they also are required to take education on the subject.
- Let's take a closer look at bias concerns regarding doctors.



Learning about Bias

Let's Talk about Doctors

- Doctors are accepted as well-educated professionals.
- Relying on their education and experience, they often engage in complex analyses and decision-making that impact patients' lives and families.
- If you ask doctors about whether racial or other biases affect their analyses and decisions, most will likely say something like "no, my work is unbiased and objective."
- Some doctors might admit that there are a few bad apples in their profession.
- Does that sound familiar to what appraisers are saying when asked about whether bias affects their work?



Bias Study – Doctors

- A research project at Harvard University looked at whether doctors (specifically, emergency medicine residents) and whether they held biases that impact their professional opinions about how to treat patients.*
- **Specifically, would doctors reach different opinions based on whether their patient was White or Black?**
- Doctors are an interesting group to study.
- Like appraisers, they are professionally obligated to be objective and impartial in their work.

* The findings of this study were presented in a medical journal article: “Implicit Bias Among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients.” Journal of General Internal Medicine (2007). It’s available here: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2219763/>.

Bias Study – Doctors

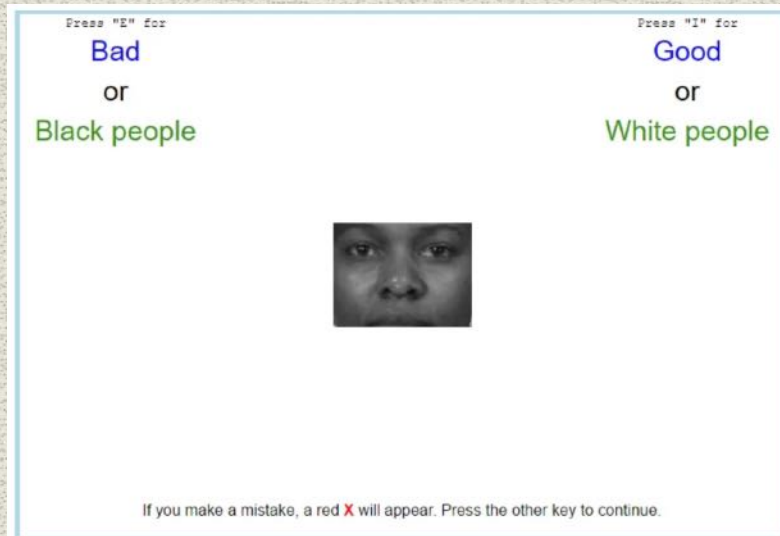


- On completing medical school, they take a version of the historic Hippocratic oath.
- Here's an example of part of one such oath (the oaths vary from one medical school to the next):

“I will not permit considerations of gender, race, religion, political affiliation, sexual orientation, nationality, or social standing to influence my duty of care.”
- That sounds a lot like part of the Ethics Rule in USPAP (as of the 2020-21 version):

“An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests...
An appraiser: must not perform an assignment with bias. . . .”

The Bias Study about Doctors



- As part of the study, in 2005, the researchers had 220 doctors at four Boston and Atlanta hospitals take a test called the Implicit Association Test (IAT).
- What is the IAT? Implicit Association Test.
- It's an online test that shows photos to test subjects of people from different social groups (for example: different races, ages or genders) and measures the time it takes the test subject to match the people in the photos to particular attributes (such as good or bad, honest or dishonest).
- The IAT is based on research showing that a test subject will match a person to an attribute more quickly if they connect the attribute in their mind, regardless of their awareness of this connection.

Bias Study – Doctors

- The researchers also presented each of the same 220 doctors with a questionnaire about their beliefs and feelings:
- “Do you feel less warm toward Black patients?”
- “Are White patients more cooperative?”
- This questionnaire was aimed at evaluating their explicit biases – meaning conscious beliefs.

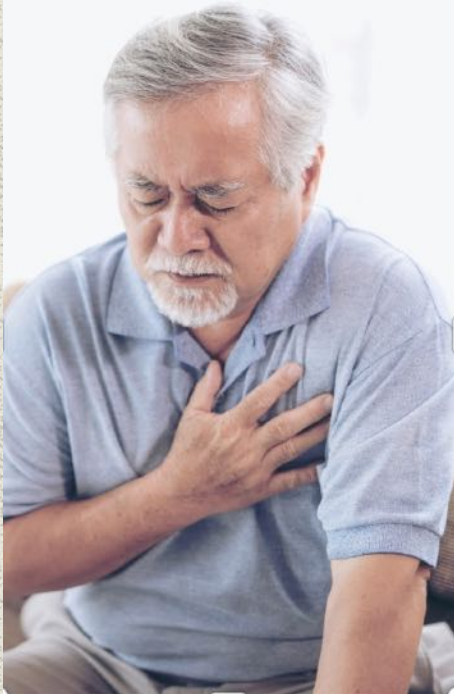


Bias Study – Doctors

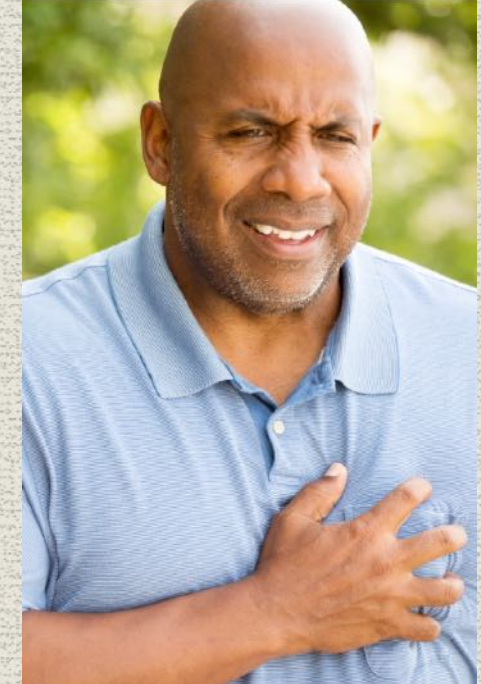


- With the testing done, the researchers then gave each doctor a clinical case study regarding a heart patient.
- The case study involved a fictional 50-year old patient reporting chest pain.
- The study included medical test information from an electrocardiogram and additional detailed medical information.
- The information pointed to a condition called “myocardial infarction” and asked whether the condition should be treated with “thrombolysis.” (Other treatments were ruled out for the study.)
- But . . . there were two versions of the case study.

Bias Study – Doctors



- Each version was identical except:
 - One version included photos of **White** patients.
 - The other version included photos of **Black** patients.
- Half of the doctors received a study with a photo of a White patient.
- The other half received a study with a Black patient's photo.



Did the doctors give different professional opinions regarding treatment based on the patient's race?

Did Doctors in Give Different Opinions Regarding Treatment Based on Whether the Patient Was White or Black?

Before we answer that, let's look at how did the doctors did on the IAT implicit test and the questionnaire with respect to explicit Black or White bias?

- Doctors, other than Black doctors, showed a White bias on the IAT. Overall, they showed an implicit bias in favor of Whites.
- On the questionnaire the doctors as a whole showed no explicit bias. The doctors reported, for example, feeling equally “warm” to both White and Black patients.
- Thus, other than the Black doctors, the doctors appeared to have implicit bias in favor of Whites, but as is the case with implicit biases, they had no awareness (or admission) of such bias.



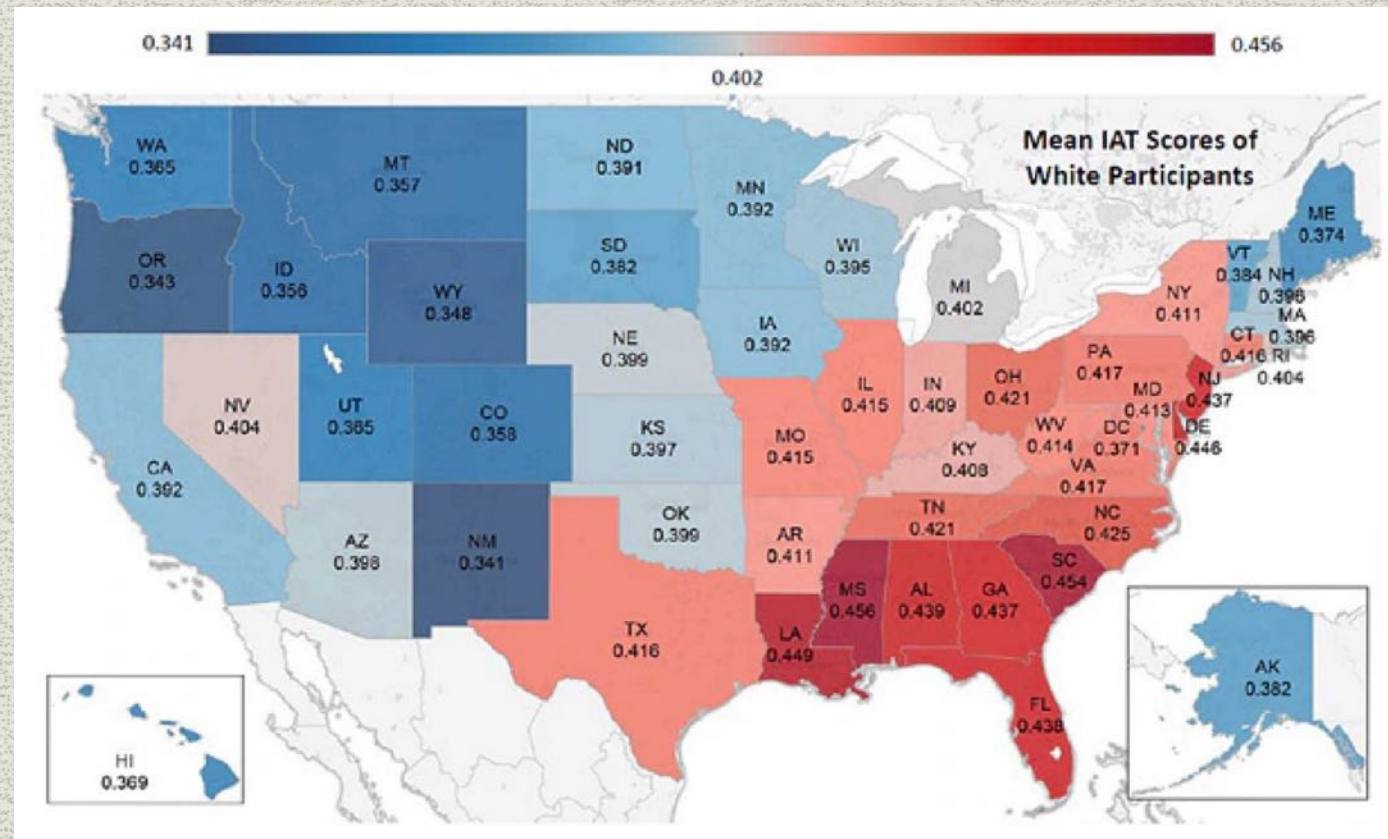
Did the Doctors Have Different Opinions Regarding Treatment Based on Whether the Patient Was White or Black?

So, did the doctors give different professional opinions based on a patient's race? Yes.

- Doctors prescribed more aggressive treatment for the White patients over the Black patients.
- Doctors recommended thrombolysis 58.2% of the time for a White patient, but only 42.7% of the time for a Black patient.
- That's significant – 15% fewer Black patients would be recommended for treatment than Whites.



Implicit Bias Against Blacks Across the United States – As Measured by the Race IAT



* The map reflects the scores of 1.51 million individuals, ranging from a high of 99,660 test takers from California to a low of 1,722 test takers from Hawaii.

Causes of Bias – Whether Implicit or Explicit?

What may cause biases?

- Personal experience/upbringing, leading to the formation of stereotypes.
- The influence of others (family/friends).
- The culture in which a person lives in (what is considered normal).
- Information we process (media).
- Our educational system.

With respect to implicit bias, there's another key cause: our development as humans . . .

An Additional Key Causes of Implicit Bias

Our development as humans has led us to rely on implicit biases:

- Our brains, on average, receive 11 million bits of information every second, but we can only consciously process 40-50 bits of information per second.
- Biases are shortcuts that our brains create to make sense of all this information in an easy way – though sometimes deeply flawed and unfair.
- So, we make associations, and based on these associations, we have feelings and preferences towards some individuals or groups over others.

* From State Bar of California: “Disrupting Implicit Bias” citing the book *Sway: Unravelling Unconscious Bias* by Pragma Agarwal.

Additional Key Causes of Implicit Bias

The evolutionary component of bias means that it's most likely to show up when we are:

- stressed,
- constrained by time,
- uncertain,
- fatigued,
- or anxious.

In these situations, we may be more susceptible to leaning into our unconscious biases.*

* From State Bar of California course: "Disrupting Implicit Bias" and based on the book *Sway: Unravelling Unconscious Bias* by Pragma Agarwal.

What About Implicit Bias and Value?

Could implicit biases impact opinions about value?

Let's start with the eBay baseball card study:

- Cards held in Black hands in eBay auctions sold for 20% less on average than the same cards held in White hands.
- The race effect was more pronounced in sales of Black player cards.



An Example of How Implicit Bias Can Affect an Appraiser's Judgment

Is this house a Q4: “Dwellings with this quality rating meet or exceed the requirements of applicable building codes. Standard or modified standard building plans are utilized . . .”

Or is it a Q5: “Dwellings with this quality rating feature economy of construction and basic functionality as main considerations. Such dwellings feature a plain design using readily available or basic floor plans featuring minimal fenestration and basic finishes with minimal exterior ornamentation . . .”



Examples of Allegations of Bias in Appraising

Individual Stories in the News

Jacksonville Appraisal Situation

Alleged Racial Bias

- A situation in Jacksonville, FL is representational of more than two dozen recent similar stories concerning alleged discrimination in appraisals around the country.
- Originally some argued “these are just anecdotes . . .”
- But, when you are the person who believes they have been discriminated against – or when your firm is accused in the anecdote, it doesn’t matter so much to you whether “it’s just anecdotal.”
- No one wants to be a discrimination anecdote.



Jacksonville Appraisal Situation Alleged Racial Bias

- A mixed race Black/White couple – she's Black, he's White -- was seeking to refinance. She's an HR attorney and he's an artist
- After receiving an initial appraisal of \$330,000, the couple removed all photos of the Black wife and her side of the family, books by Black authors, and holiday cards from Black friends.
- The home was then re-appraised.
- When the White husband greeted the second appraiser, the home appraised at \$465,000, which was an increase of more than 40 percent.
- After posting the story on Facebook, the homeowners received over 2,000 comments, many of which were from Black homeowners saying that they had a similar experience.
- The wife stated, "[I]n the Black community, it's just common knowledge that you take your pictures down when you're selling your house."



It's Not Just Individual Stories – Freddie Mac Study

In a study released in 2021, researchers at Freddie Mac analyzed millions of appraisals for purchase transactions and found unexplained racial disparities in the percentage of properties that received an appraisal value lower than the contract price (the “appraisal gap”).

Freddie research showed that an appraisal gap is more likely to occur in Black or Latino census tracts than in White census tracts.

Specifically, Freddie Mac’s researchers reported:

- 12.5% of the properties in Black census tracts received an appraisal value lower than the contract price, as compared to 7.4% of the properties in White census tracts. 15.4% of properties in more Hispanic tracts received values lower than the contract price.
- As the concentration of Black or Latino individuals in a census tract increased, there was a corresponding increase in the appraisal gap.

Comps Chosen by Appraisers – Freddie Mac Study

EXHIBIT 7

Comp distance

Appraisals for the purchase of single-family one-unit homes, 2015–2020

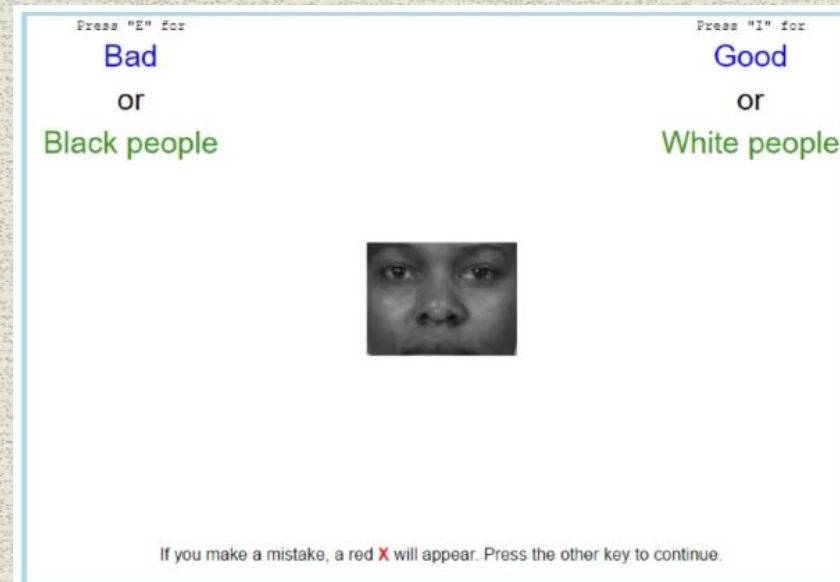
Minority Threshold	Property Tract	Count	Average Distance (Miles)	Gap vs. White	
				Absolute	Relative
50-100%	Overall	12,752,779	1.29	-	-
	White	10,632,616	1.40	-	-
	Latino	553,470	0.73	-0.67	-48%
	Black	373,747	0.82	-0.58	-41%

One Strategy to Reduce Implicit Bias

This section presents strategies for short and long-term reduction of implicit bias. The suggestions are based on training for attorneys, medical professionals and law enforcement.

Take an Implicit Association Test. They are free:
<https://implicit.harvard.edu>

- The IAT is open to the public. Millions of people have completed IATs. The data recorded anonymously (except for studies such as the doctor study).
- There are IATs on different subjects of potential bias – race is just one.



Gender-Science IAT

Skin-tone IAT

Arab-Muslim IAT

Race IAT

Age IAT

Weight IAT

Transgender IAT

Weapons IAT

Sexuality IAT

Discrimination in Appraising – the Legal Side

Key Laws Relevant to Discrimination in Appraising

Two key federal laws that apply to alleged discrimination in appraising are:

- The **Fair Housing Act (FHA)** enacted as part of the Civil Rights Act of 1968. Applies to appraisers, firms, AMCs, lenders – all parties.
- The second key law is the **Equal Credit Opportunity Act (ECOA)**, which similarly makes it “unlawful for any creditor to discriminate against **any applicant**, with respect to any aspect of a credit transaction ... on the basis of race, color, religion, national origin, sex or marital status, or age...” (15 U.S.C. § 1691.)
- Notes:
 - The Fair Housing Act applies broadly to properties containing dwellings – not just single family.
 - ECOA is not limited to residential; it applies to commercial lending as well.



Current Fair Housing Act Law

In 1988, the FHA 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 FHA defines the term “residential real estate-related transaction” as:

- (1) The making or purchasing of loans or providing other financial assistance —
 - (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - (B) secured by residential real estate.
- (2) The selling, brokering, or **appraising** of residential real property. (42 U.S.C. § 3605(a).)

Notable Regulations under Fair Housing Act

- Implementing regulations under the Fair Housing Act, promulgated by HUD, broadly define the term “appraisal.”
- Under the regulations, appraisal means:
 - “an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.” 24 C.F.R. § 100.135(b).
- The definition includes not just appraisals, but also BPOs and AVMs.

Notable Regulations under Fair Housing Act

- The regulations also make clear it's not just the appraising that may violate the law but it's also "using" a discriminatory appraisal.
- Under the regulations, prohibited practices include:
 - “[u]sing an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.” 24 C.F.R. § 100.135(d)(1).

Proposed USPAP Changes (as of 4th Exposure Draft, Dec. 13, 2022)

There's a problem here –
this markup shows a
proposed deletion in the
current version of USPAP
that will be replaced with a
whole new Ethics section:

CONDUCT:

An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

An appraiser:

- must not perform an assignment with bias;
- must not advocate the cause or interest of any party or issue;
- must not agree to perform an assignment that includes the reporting of predetermined opinions and conclusions;
- must not misrepresent his or her role when providing valuation services that are outside of appraisal practice;
- must not communicate assignment results with the intent to mislead or to defraud;
- must not use or communicate a report or assignment results known by the appraiser to be misleading or fraudulent;
- must not knowingly permit an employee or other person to communicate a report or assignment results that are misleading or fraudulent;
- ~~must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value;~~
- must not engage in criminal conduct;
- must not willfully or knowingly violate the requirements of the RECORD KEEPING RULE; and
- must not perform an assignment in a grossly negligent manner.

This ETHICS RULE is divided into four sections: **Nondiscrimination**, **Conduct**, **Management**, and **Confidentiality**, which apply to all appraisal practice.

NONDISCRIMINATION:

An appraiser must not engage in unethical discrimination. As part of this prohibition:

- **An appraiser must not develop and/or report an opinion of value that, in whole or in part, is based on the actual or perceived race, national origin, or other protected characteristics of any person(s).**

Proposed USPAP Changes (as of 4th Exposure Draft, Dec. 13, 2022)

- An appraiser must not perform an assignment with bias with respect to the actual or perceived race, national origin, or other protected characteristics of any person(s).
- Notwithstanding the above, an appraiser may use or rely upon a protected characteristic in an assignment only where:
 1. laws and regulations expressly permit or otherwise allow the consideration of that characteristic; and
 2. use of or reliance upon that characteristic is essential to the assignment and necessary for credible assignment results; and
 3. consideration of that characteristic is not based on bias, prejudice, or stereotype.

An appraiser must not engage in illegal discrimination.

An appraiser must not use or rely upon a non-protected characteristic as a pretext to conceal the use of or reliance upon protected characteristics when performing an assignment.

Fair Housing Act – Basic Theories of Liability

Two different theories of liability:

Disparate Treatment:

- A person within a protected group is shown to have been singled out and treated differently than others similarly situated – their appraisal is lower or their treatment was different because of race. This is often simplistically framed as “intentional discrimination” but that’s not quite it.
- It’s “discriminatory motive” that needs to be shown – that the defendant acted in a way “because of race.”
- It doesn’t require proving “animus” or that a defendant is a racist.

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.
- Disparate impact – which requires no discriminatory motive.
- Disparate impact claims are usually be directed at larger businesses or organizations that create policies or practices followed by employees, staff, professionals, etc.

Fair Housing Claims/Investigations

Four Primary Pathways for Fair Housing and Discrimination Complaints and Claims:

1. Complaint to HUD – Office of Fair Housing and Equal Opportunity.
2. Complaint to a state agency.
3. Legal action in court, asserting Fair Housing Act, ECOA and related legal claims.
4. And now – CFPB investigations.

United States of America
Consumer Financial Protection Bureau

Civil Investigative Demand

This demand is issued pursuant to Section 1052 of the Consumer Financial Protection Act of 2010 and 12 C.F.R. Part 1080 to determine whether there is or has been a violation of any laws enforced by the Consumer Financial Protection Bureau.

Notification of Purpose Pursuant to 12 C.F.R. § 1080.5

The purpose of this investigation is to determine whether appraisers, and the lenders that rely on their appraisals, or associated persons, in connection with origination of home mortgages, have: (1) improperly relied on race, ethnicity, or national origin in their appraisals in a manner that is unfair, deceptive, or abusive in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act, 12 U.S.C. §§ 5531, 5536; or (2) engaged in unlawful discrimination in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691, and Regulation B, 12 C.F.R. Part 1002. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

2 Example Lawsuits Involving Alleged Discrimination

Marin County, CA

- Black couple
- Home purchased 2016 \$550k.
- Substantial improvements + ADU.
- Refi appraisals in 2018 and 2019 = \$864k and \$1.45m.
- Loan refi sought in January 2020.
- 1st appraisal = \$995k.
- Home “Whitewashed.”
- 2nd appraisal = \$1.48m.
- Notable allegations: “tight comp selection” and code words “distinct marketability ... from surrounding areas.”
- Lawsuit against appraiser and AMC (AMC has settled).

Baltimore, MD

- Black couple – PHD professors.
- Home purchased 2017 \$450k.
- Some improvements made.
- Loan refi sought in May 2021.
- 1st appraisal = \$472k.
- Home “Whitewashed.”
- 2nd appraisal in early 2022 = \$750k.
- Notable allegations: appraiser “indifferent and aloof” – different than on phone, “restricted comps,” selected key comp from majority Black area.
- Not fully advised of ROV process.
- Lawsuit pending against appraiser and lender.

6	Julia Howard-Gibbon (SBN 321789)	
7	FAIR HOUSING ADVOCATES OF	
8	NORTHERN CALIFORNIA	
9	1314 Lincoln Ave., Suite A	
10	San Rafael, CA 94901	
11	Tel: (415) 483-7516	
12	Fax: (415) 457-6382	
13	julia@fairhousingnorcal.org	
14	Attorneys for Plaintiffs	
15		
16	UNITED STATES DISTRICT COURT	
17	NORTHERN DISTRICT OF CALIFORNIA	
18	TENISHA TATE-AUSTIN; PAUL	Case No.
19	AUSTIN; and FAIR HOUSING	
20	ADVOCATES OF NORTHERN	
21	CALIFORNIA,	COMPLAINT FOR INJUNCTIVE,
22	Plaintiffs,	DECLARATORY, AND MONETARY
23	v.	RELIEF; JURY TRIAL DEMAND
24	JANETTE C. MILLER; MI	
25	PEROTTI REAL ESTATE	
26	INC., AMC LINKS LLC;	
27	Defendant	

What Does an Appraisal Discrimination Lawsuit Look Like?

52. Race was a motivating factor in Miller's unreasonably low valuation of the Austins' house, in violation of the Fair Housing Act and related federal and state laws. There are at least five indicia of racial bias in the Miller Appraisal: (1) unreasonably and inexplicably low market value ascribed to the Pacheco Street House; (2) unsupportable adjustments to value made based solely on the Pacheco Street House's location in Marin City; (3) the selection of properties as "comparable" based on racial demographics; (4) comments regarding the "distinct marketability" of Marin City; and (5) the race or perceived race of the homeowners.

It's Not Just About Low Values

- While many of the stories so far have been about allegedly **low values**, that's not the only issue.
- Service standards and pricing of services are at issue too – and they can be lower hanging fruit.
- A complaint filed with HUD on 11-4-22 regarding an appraiser in Baltimore highlights the issue – a Black homeowner (a tester) had to wait 75 days for an appraisal while a White tester waited 17 days for an appraisal (and received a friendly note from the appraiser).
- Differences in ROV treatment are also now being investigated.



And, It's Also Not Just a Residential Problem – Examples of Recent Allegations of Discrimination Affecting Commercial Appraisers

- HUD complaint filed by owners of multi-family property alleging undervaluation.
- Lawsuit complaint alleging violation of ECOA in connection with appraisal of multi-family property.
- Black farmer alleging undervaluation of his farm for an ag loan based on his race (home on the farm makes it a Fair Housing Act claim).
- State appraiser licensing board complaint relating to appraisal of a school facility.
- Threatened regulatory complaints and lawsuit by owner of national chain restaurant property.
- Threatened HUD complaint and lawsuit regarding mixed-use property.

Reducing the Risk of Discrimination Claims

Key Items to consider:

- Most common trait of appraisals in discrimination claims observed by me: basic errors, lack of true analysis and genuine summary, boilerplate work.

From a recent HUD racial bias complaint:

██████████ erroneously reduced the Gross Living Area (sq footage) of my home to 2,874 sq ft, which decreased the value of her home. The assessor's property report card on File that Complainant received from ██████████ Tax Assessors Office on December 13, 2021 has her Gross Living Area (sq footage) recorded as 3,094 sq ft. This report card also provides sketch, site and building information among other things. This Gross Living Area (sq footage) for her home was available to the appraiser and he chose to blatantly ignore it, but he had no problem using the Gross Living Area (sq footage) listed online for the COMP Homes he used, which he didn't physically measure or inspect.

- Let's look at some things to make sure are getting right – most are actually easy.

What Can You Do to Avoid Discrimination and Accusations of Discrimination?

- Recognize the laws, as we are doing.
- Get education, as you are doing.
- Focus on key areas – which are most controllable:
 - ✓ Content of appraisal reports indicative of bias.
 - ✓ Handling of complaints/requests for reconsideration of value.

Federal Housing Finance Agency (FHFA) Study



What We Observed

From millions of appraisals submitted annually, a keyword search resulted in thousands of potential race-related flags. Individual review finds many instances of keywords to be false positives, but the following are examples of references when the appraiser has clearly included race or other protected class references in the appraisal.

The racial and ethnic composition of the neighborhood should never be a factor that influences the value of a family's home. Our observation of appraisals suggests that racial and ethnic compositions of a neighborhood are still sometimes included in commentary, clearly indicating the writer thought it was important to establishing value.

Federal Housing Finance Agency (FHFA) Study

Examples of problematic words and phrases found in appraisal reports:

"The racial makeup of the city was 86.28% White, 12.46% Black or African-American, 0.52% Native American, 0.22% Asian, and 0.52% from two or more races. 0.56% of the population were Hispanic or Latino of any race."

"Commercial strip featuring storefronts supplying Jewish Households."

A town was described as having a "Black race population above state average."

"Koreatown is considered 'highly diverse' ethnically."

"one spicy neighborhood."

A neighborhood described as "predominately Hispanic."

Noting that "there is more Asian influence of late" buying the market.

Noting the area's first Asian mayor.

An area that was "originally founded as a Whites-only city or sundown town" but had become "fairly diverse" with a "diverse school system."

An area that was "'not especially-diverse' ethnically, with a high percentage of White people."

A reference to a neighborhood being originally "White-Only," before becoming a "White-Flight Red-Zone" to explain why the neighborhood is mostly "Working-Class Black" now.

Federal Housing Finance Agency (FHFA) Study

Examples of problematic words and phrases found in appraisal reports:


"The racial makeup of the city was 86.28% White, 12.46% Black or African-American, 0.52% Native American, 0.22% Asian, and 0.52% from two or more races. 0.56% of the population were Hispanic or Latino of any race."


➤ Where did this come from?

Carlisle, Arkansas

From Wikipedia, the free encyclopedia

Carlisle is a city in [Lonoke County, Arkansas](#), United States. It is the easternmost municipality within the [Little Rock–North Little Rock–Conway Metropolitan Statistical Area](#). Carlisle was incorporated in 1878. As of the [2010 census](#) it had a population of 2,214.^[3]

Coordinates:  34°47′10″N 91°44′41″W

Carlisle, Arkansas
City
Motto(s): "Land here"


Contents [\[hide\]](#)

- Geography
- Demography
 - 2010
 - 2020
- Education
- Notable people
- References
- External links

2000 census [\[edit\]](#)

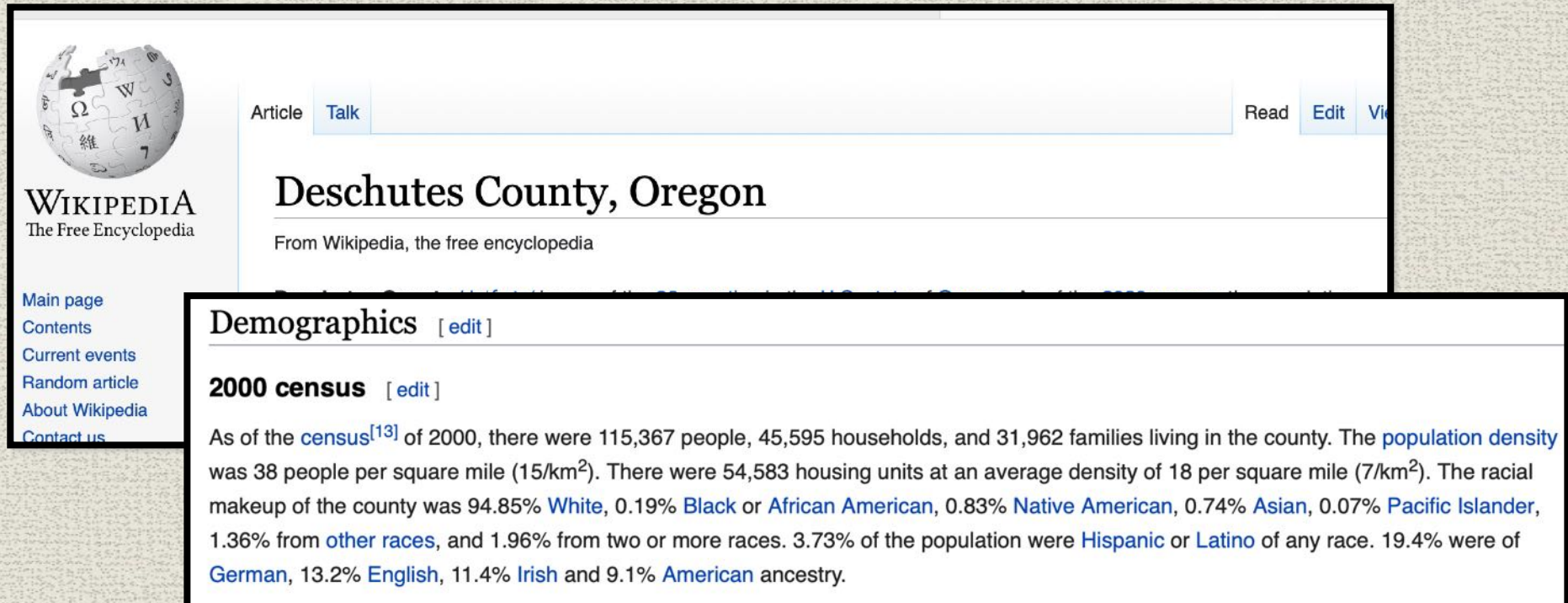
As of the [census](#)^[9] of 2000, there were 2,304 people, 955 households, and 645 families residing in the city. The population density was 471.7 inhabitants per square mile (182.1/km²). There were 1,029 housing units at an average density of 210.7 per square mile (81.4/km²). The racial makeup of the city was 86.28% [White](#), 12.46% [Black or African American](#), 0.52% [Native American](#), 0.22% [Asian](#), and 0.52% from two or more races. 0.56% of the population were [Hispanic or Latino](#) of any race.

Where Did These Descriptions Come From?

Examples of problematic words and phrases found in appraisal reports:

“The county was 94.85% white, 0.19% Black or African-American, 0.83% Native American, 0.74% Asian, 0.07% Pacific Islander, 1.36% from other races, and 1.96% from two or more races. 3.73% of the population were Hispanic or Latino of any race. 19.4% were of German, 13.2% English, 11.4% Irish and 9.1% American ancestry.”

➤ Where did this come from?



The image is a screenshot of the Wikipedia article for Deschutes County, Oregon. The page layout includes the Wikipedia logo and navigation links on the left, and the article content on the right. The article title is "Deschutes County, Oregon". Below the title, it says "From Wikipedia, the free encyclopedia". The "Demographics" section is highlighted, and the "2000 census" subsection is also highlighted. The text in the "2000 census" subsection describes the population, households, families, and racial makeup of the county as of the 2000 census.

Demographics [edit]

2000 census [edit]

As of the ^[13]census of 2000, there were 115,367 people, 45,595 households, and 31,962 families living in the county. The population density was 38 people per square mile (15/km²). There were 54,583 housing units at an average density of 18 per square mile (7/km²). The racial makeup of the county was 94.85% White, 0.19% Black or African American, 0.83% Native American, 0.74% Asian, 0.07% Pacific Islander, 1.36% from other races, and 1.96% from two or more races. 3.73% of the population were Hispanic or Latino of any race. 19.4% were of German, 13.2% English, 11.4% Irish and 9.1% American ancestry.

Looking for Discriminatory References

Examples words/phrases to be identified - common examples of words found in improper, potentially discriminatory text in appraisal reports.

These are examples only. Any words with similar effect should be identified if they can be understood as referring to the race or ethnicity of persons.

Race/Ethnicity/Color

Black
White
Hispanic
Chicano
Minorities
Culturally diverse
Diverse
Ethnically Diverse
Integrated
Spanish-Speaking

National Origin

Indian
Melting Pot
Migrant Workers
Nationality
Seasonal Workers

“Code Words”

Crime-Ridden Neighborhood
Desirable Neighborhood
Exclusive Neighborhood
High Crime Area
Prestigious Neighborhood
Pride of Ownership
Quality Neighborhood
Traditional Neighborhood

PM Sign-In Sheet

What Does Fannie Mae Say About Describing Neighborhoods – It's Good Advice

The Fannie Mae Selling Guide states:

“Fannie Mae requires the appraiser to perform an objective neighborhood analysis by identifying neighborhood boundaries, neighborhood characteristics, and the factors that affect the value and marketability of properties in the neighborhood.”

“[F]actors that are not appraisal factors, such as the racial or ethnic composition of a neighborhood or the age or sex of the individuals who live in a particular neighborhood, must not be considered in the valuation process.”

Other Commonalities in Fair Housing Claims

- ROVs - most reported situations of alleged racial bias in residential appraising in 2020-22 began with the ROV process.
- Non-responsive stances create anger, complaints and claims: “The Appraiser’s opinion of value stands.”
- The appraiser’s “inspection-side manner.”



Kindness
MATTERS

Showing Respect for the Borrowers/Occupants

Allegations from a Maryland case against an appraiser

44. When Defendant [REDACTED] arrived, his demeanor was indifferent and aloof. Plaintiffs tried to engage with Defendant [REDACTED] to improve the mood, but their efforts were not reciprocated. [REDACTED] did not smile or make eye contact with Plaintiffs and said little other than noting that the home had a tankless water heater. Defendant [REDACTED]'s demeanor at their home seemed significantly different to Dr. Mott than it was when she spoke to Defendant [REDACTED] on the telephone to schedule the appraisal, which was prior to when he would have had occasion to see Dr. Connolly and Dr. Mott in person.

Showing Respect for the Borrowers/Occupants

Allegations from North Carolina case against an appraiser

Kindness
MATTERS

31. Plaintiff Brigid Washington was present in her home when the appraisers visited and communicated that she was the homeowner. The home was decorated with proud markers of the family's identity, including family photos, that identified the owners of the home to be Black.

32. The appraisal team was curt, abrupt, and dismissive toward Plaintiff Brigid Washington. The appraisers spent approximately 10 minutes at the Plaintiffs' home.

Do Appraiser Floor Plans Violate Copyright Law?

- Appraisers often create floor plans of the structures located on properties they appraise and include those floor plans in their reports. It's sometimes an assignment condition.
- Companies are selling services that utilize walk-through videos taken by appraisers and other parties to create interior plans that depict precise room measurements and layouts.
- Do such floor plans potentially violate copyrights held by the designers of the houses and buildings?
- This questions was posed to a federal appellate court last summer – and the answer didn't come out the right way for professionals and companies that create and use floor plans of existing structures in their work.
- The decision is entitled ***Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.***, 9 F.4th 803 (8th Cir. 2021).
- The losing defendants asked the U.S. Supreme Court to consider the issue but the Court didn't take the case.

Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.

- From the petition for review:
“[T]he need for quick review is urgent. Until reviewed and reversed, the Eighth Circuit’s decision will cast legal doubt over every use of a floor plan in ... preparing an appraisal for a mortgage, ... The decision will affect millions of transactions in one of the most important sectors of our economy.”
- The case actually relates to floor plans used by real estate brokers and agents in their sales listings.
- The facts of the case go back to the 1990s, when a developer named Charles James built and sold ranch style houses in Columbia, Missouri.



Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.

- More than 10 years later, the owners of two of the houses hired real estate brokerages to help them sell their homes.
- One brokerage hired a contractor to measure and produce a computer-aided drawing of the home's floor plan. The other brokerage had one of its agents measure the home's dimensions herself. She drew the floor plan on graph paper.
- The MLS listing for each home included these floor plans for potential buyers to consider.



Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.

Main
Fin. Sq. Ft.
2,341

Lower
Fin. Sq. Ft.
1,600


Total
Fin. Sq. Ft.
3,941

Directions: South on Bethel to Right on Sudbury to Left on Melrose.

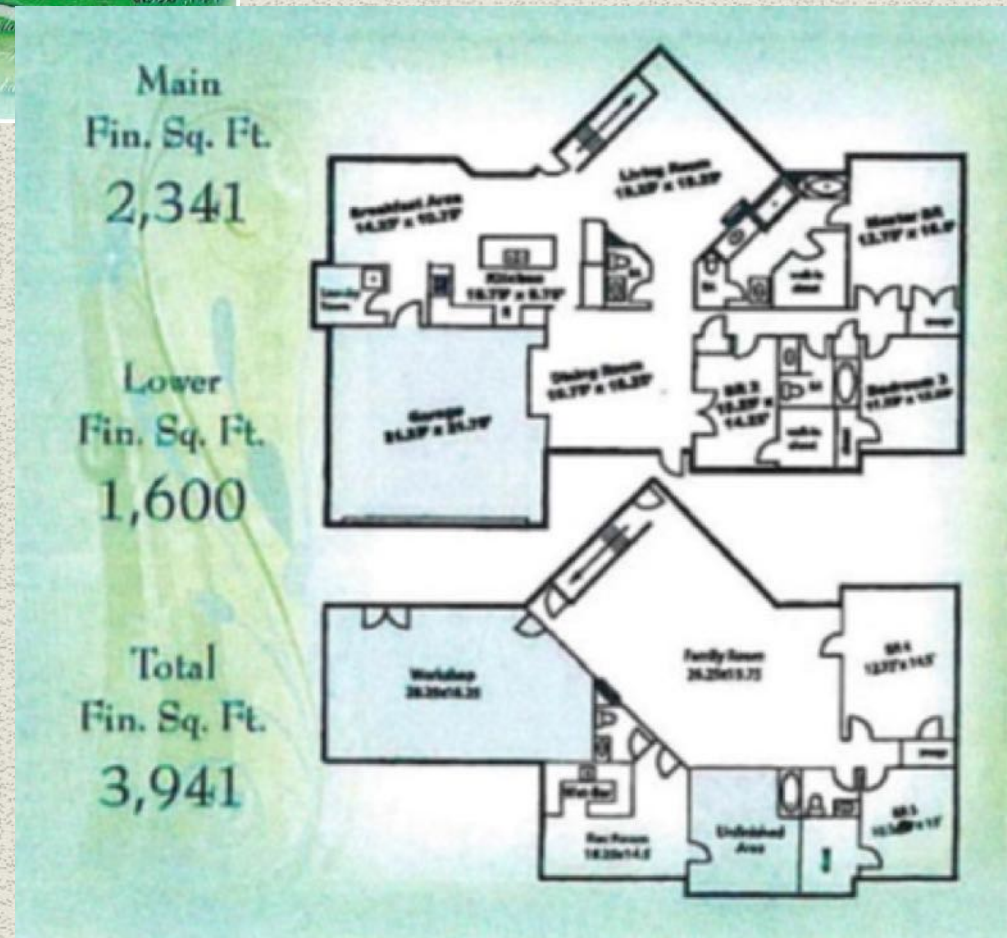
4306 Melrose Drive

\$550,000

SUSAN HORAK
Group
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4306 Melrose Drive
Columbia, Missouri



Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.



Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.



Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.

- Several years later – in fact, eight years after one of the listings – Mr. James and his company Designworks Homes sued the brokers and agents in 2018 in separate lawsuits for alleged infringement of their copyrights in the “architectural works.”
- It’s important to understand here that the lawsuits did not claim the defendants copied any of the original architectural drawings for the homes.
- The defendants never saw those drawings or had access to them.
- They were sued for creating and disseminating their own floor plans – just as appraisers would measure a property and then create their own drawing to include in a report.



Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.

- But there is an important and common sensical limit.
- The copyright protection for architectural works “does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.” (17 U.S.C. § 120(a).)
- In other words, people are permitted to take pictures of houses and buildings and use those pictures (and paintings and other “pictorial representations”).



Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.

- Initially things looked good for the defense, the federal district court dismissed the builder's claims, holding that floor plans fell within the exemption for "pictures" or "other pictorial representations" of an architectural work.
- In the summer of 2021, however, the Eighth Circuit Court of Appeals reversed that dismissal, finding the opposite – that the exemption did not apply to floor plans.
- The subsequent request filed with the Supreme Court to review the case was denied.

Is this a serious real-world risk for appraisers?

- Fortunately, most appraisals reports aren't publicly displayed and, therefore, not as likely to find the attention of attorneys seeking to enforce architectural copyrights.
- That the likelihood of “getting caught” is low may perhaps be unsatisfying.
- But there is another plausible defense – “fair use.” Four factors:
 - 1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
 - 2) the nature of the copyrighted work;
 - 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - 4) the effect of the use upon the potential market for or value of the copyrighted work. 17 U.S.C. § 107.

Appraisal Language re Measurements and Floorplans?

In general, consider something like this:

The appraiser's measurement and reporting of square footage, as well as any sketches or floor plans included in the report, are solely for the purpose of the appraiser's analysis and should not be used or relied on by any party in connection with a different purpose, such as (without limitation) for a property purchase decision or determining a sales price. A property purchaser, borrower or seller should engage a professional of their own choosing, such as an architect or contractor, if the measurement of the property or a sketch or floor plan is needed for their own use.

Any measurements, sketches or floor plans included in this report may not be republished or distributed outside of the report, such as in connection with a listing of the property or in other sales information.

Quick Liability Prevention Tips

1. “Appraise” clients, parties and assignments for unreasonable risk – follow your gut instinct.
2. Focus on precise, narrow descriptions of intended use and intended user – can a party who you really don’t intend to rely on your report (like a borrower) twist your language?
3. Watch out for “reliance” language.
4. Proofread your reports.
5. Get square footage right.
6. Disclose special conditions in clear plain English.

Thank You

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