

# **Appraiser and Agent/Broker Law in the Real World: Professional Liability, Fair Housing and Fair Lending**

**(Includes 4-Hour Update regarding NY Fair Housing and Fair Lending  
under N.Y. CCRR tit. 19 § 1107.34(b))**

Instructor  
Attorney Peter Christensen  
Christensen Law  
[peter@valuationlegal.com](mailto:peter@valuationlegal.com)



# About Your Instructor

**Peter Christensen**

Attorney-Principal



Peter Christensen  
**Christensen Law**

[www.valuationlegal.com](http://www.valuationlegal.com)  
[peter@valuationlegal.com](mailto:peter@valuationlegal.com)

I'm an attorney. 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.

Of relevance to the Fair Housing and Fair Lending topics we'll be discussing today, I've represented clients in matters alleging discrimination before HUD, the Consumer Financial Protection Bureau (CFPB) and state appraiser regulatory agencies. I also assisted the National Fair Housing Alliance in its report to the Appraisal Subcommittee entitled ***Identifying Bias and Barriers, Promoting Equity: An Analysis of the USPAP Standards and Appraiser Qualifications Criteria*** (January 2022).

I live in Bozeman, MT and I'm a member of the Montana Real Estate Appraisers Board.



## Our roadmap – where are we going?

- In **part 1**, we're going to look at several professional liability situations involving both **appraisers** and **real estate agents/brokers** and see what we can learn from each situation.
- In **part 2**, we'll address issues concerning bias and discrimination – a topic that is very much a current concern. This part of the class will cover the topics required for NY's 4-Hour Update regarding Fair Housing and Fair Lending.





**In every case we'll be looking at in this section,  
both an agent or broker and an appraiser were  
sued or threatened with suit!**

**You may not realize it until the case is filed, but  
agents/brokers and appraisers are in the same  
liability boat.**



# The Basic Elements of a Professional Negligence Claim?

## What Is a Professional Negligence Claim?

The key legal elements of a professional negligence claim are:

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



## **The Overarching Key Issue in Many Cases: To Whom Does the Agent/Broker or Appraiser Owe a Legal Duty?**

Law in most states:

*a professional like an agent/broker or 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 advice or work product.*

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



# A Not So “Typical” Buyer’s Remorse Case Involving a Real Estate Broker and an Appraiser

January 15, 2009

People

NEWS

ENTERTAINMENT

ROYALS

LIFESTYLE

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SHOPPING

## Chesley ‘Sully’ Sullenberger Flies Again

The “Hero of the Hudson” begins his first day back on the job since saving Flight 1549

By **Nicole Weisensee Egan** | Published on October 1, 2009 10:30 AM



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# A Not So "Typical" Buyer's Remorse Case Involving a Real Estate Broker and an Appraiser

1	JOEL K. LIBERSON (SBN: 164857)	
2	JASON N. WOLFORD (SBN: 194177)	
3	LIBERSON & WOLFORD LLP	
4	660 Market Street, 5 <sup>th</sup> Floor	
5	San Francisco, CA 94104	
6	Tel.: (415) 677-4110	
7	Fax: (415) 358-8154	
8	Attorney for Plaintiffs	
9	TYP, LLC, CHESLEY B. SULLENBERGER III, and	
10	LORRAINE SULLENBERGER	
11		
12		
13		
14		
15		
16		
17		
18		

Superior Court of California  
County of Butte  
APR 23 2010  
Kimberly Fienes, Clerk  
Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF BUTTE

**BY FAX**  
C 10-01879

TYP, LLC, CHESLEY B. SULLENBERGER III, and LORRAINE SULLENBERGER,  Plaintiffs,  v.  GRUBB & ELLIS COMPANY, CHERIE HULLADE, STERLING SAVINGS BANK as successor in interest by merger to SONOMA NATIONAL BANK, BECKI ROBERTS, and DOES 1 through 10, inclusive,  Defendants.	}	CASE NO. 150077  FIRST AMENDED COMPLAINT FOR:  1. DECLARATORY AND INJUNCTIVE RELIEF; 2. FRAUD AND DECEIT; 3. FRAUD AND NEGLIGENT MISREPRESENTATION; 4. CONSTRUCTIVE FRAUD; 5. BREACH OF FIDUCIARY DUTY; 6. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING; 7. UNJUST ENRICHMENT; 8. NEGLIGENCE.
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# Captain Sullenberger's Key Allegations Against the Broker and Appraiser

1        22.     On or around October 2009, Plaintiffs obtained a forensic appraisal of the Subject  
2 Property. The appraisal verified that Defendants' representations regarding the fair market value  
3 of the Subject Property when it was purchased in 2002 had been significantly overstated. The  
4 forensic appraisal indicated in pertinent part as follows:

5             It is our opinion that the market value of the Leased Fee Interest in the subject property,  
6 as of October 20, 2002, should fall within a value range of \$680,000 to \$720,000. This  
7 range of value has been based on a review and analysis of numerous sales and rent  
8 comparables of auto-service related facilities in the Northern California marketing area  
9 which had closing dates between 2000 and early 2003 (and also included an analysis of  
10 the four sales and four rent comparables utilized in the original appraisal report – which  
were represented by the same four properties). It appears that the original appraised value  
of \$920,000 and contract sales price of \$935,000 were substantially above market value.  
This may have occurred for a number of reasons from both an appraisal perspective, but  
also from a lack of fiduciary responsibility on the part of the other real estate  
professionals involved in the transaction.

**How did this  
case work  
out for the  
broker?**

**What was the  
appraiser's  
key point of  
defense?**



# Wait ... What about the Statute of Limitations?

The Sullenbergers purchased the property in 2002.

They filed their lawsuit 8 years later!

What's the statute of limitations in New York for professional negligence?

Agents-Brokers?  
Appraisers?

How does this compare to other states?

1 JOEL K. LIBERSON (SBN: 164857)  
2 JASON N. WOLFORD (SBN: 194177)  
3 LIBERSON & WOLFORD LLP  
4 660 Market Street, 5<sup>th</sup> Floor  
San Francisco, CA 94104  
Tel.: (415) 677-4110  
Fax: (415) 358-8154

5 Attorney for Plaintiffs  
6 TYP, LLC, CHESLEY B. SULLENBERGER III, and  
LORRAINE SULLENBERGER

7  
8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF BUTTE

9  
10 BY FAX  
C 10-01879

11 TYP, LLC, CHESLEY B. SULLENBERGER  
12 III, and LORRAINE SULLENBERGER,  
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14 v.  
15 GRU  
16 HUI  
17 succe  
18 NAT  
DOE

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# Statute of Limitations Chart Link

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

State	Years	Does a "discovery rule" potentially apply to a professional negligence claim against an appraiser?	Underlying State Statutory Source
Alabama	2	No, unless fraud.	Alabama Code § 6-2-38
Alaska	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. § 13-207
Connecticut	2	Yes	Conn. Gen. Stat. § 52-557
Delaware	3	Yes	Del. Code Ann. tit. 10, § 2303
Florida	2, for claims by clients For claims by others, 4 years	Yes, for claims by clients. For claims by others, no.	Fla. Stat. § 95.11
Georgia	4	The limit applies unless the claim is for fraud, in which case the limit is 4 years.	Ga. Code Ann. § 9-2-3

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



**Another Buyer Sues both Broker and Appraisers  
*Willemssen* – California Court of Appeal (2014)**

- **Willemssen contracted to purchase 4.8 acres of vacant land in San Bernardino County, CA in 2007.**
- His real estate broker guided him to the purchase – the broker represented both buyer and seller in the transaction.
- Purchase price \$1.6m.
- **Farmers & Merchants Bank hired appraisers.**
- Appraisers valued property at \$1.78m.
- **Five years later, Willemssen was unhappy with purchase and sued – everybody – the broker and the appraisers.**



## Another Buyer Sues both Broker and Appraisers *Willemssen* – California Court of Appeal (2014)

- As against the **broker**, Willemssen alleged he wasn't properly represented by the broker, that the broker failed to draft a proper contract and that the broker passed along material misstatements without investigation.
- Willemssen alleged the broker breached fiduciary duties to him and committed negligence, with the result being that he was left with a piece of property that was not suitable for his intended purpose.
- As against the **appraisers**, Willemssen alleged that the appraisal was inflated.
- In particular, Willemssen alleged the appraisers failed to account for an earthquake fault running across the property and the loss of land if a local government entity ran a planned road over the property.



**Another Buyer Sues both Broker and Appraisers  
*Willemssen* – California Court of Appeal (2014)**

How did legal claims work out?

The appraisers got the negligence tossed out and were dismissed. Why?

The broker went to trial and lost? Why?

Let's discuss the differences.



## Another Buyer Sues both Broker and Appraisers *Willemssen* – California Court of Appeal (2014)

### The appraisal had some key language:

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 against the appraisers.
- Court of appeal affirmed. Key finding:

Furthermore, the AppraisalPacific 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.



# Takeaways

## **Takeaways for appraisers:**

- 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.

## **Takeaways for agents/brokers:**

- Dual representation is your highest risk.
- You owe professional duties to both sides.



## Let's Consider a Review Appraiser Claim Situation

- Review appraiser retained by lender prepares review that is highly critical of another appraiser's work and also opines to a significantly lower value.
- 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.
- In sum, the reviewer's review fell below the standard of care.
- Can the damaged appraiser who lost tens of thousands in income because of the negligent review sue the reviewer for damages? For negligence? For defamation?



## **Square Footage Issues**

**Who do you think gets sued more for erroneous information or statements about the square footage of a home?**

**Agents/brokers?**

**Appraisers?**

**It's a toss up!**

**Let's look at a real-world case to discuss the key issues.**



## A problem for appraisers on the URAR

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:  
The House is Not as Big as Indicated  
by the Agent/Broker or as Reported by  
the Appraiser**



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”).



**Most Common Mistake:  
The House is Not as Big as  
Indicated by the  
Agent/Broker or as  
Reported by the Appraiser**



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.”*<sup>1</sup>

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

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

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

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:  
The House is Not as Big as  
Indicated by the Agent/Broker  
or as Reported by the  
Appraiser**



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

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

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

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

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

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



**Most Common Mistake:**  
**The House is Not as Big as Indicated by the**  
**Agent/Broker or as Reported by the Appraiser**

What happened in the case?

Takeaways:

- Square footage errors are the single-most common actual mistakes for which **agents/brokers** and **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:

- Appraisers should consider additional language in reports directed at claims by borrowers (and sellers).



## **Suggested Language for for Residential Appraisers Regarding the URAR and Similar Report Forms?**

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

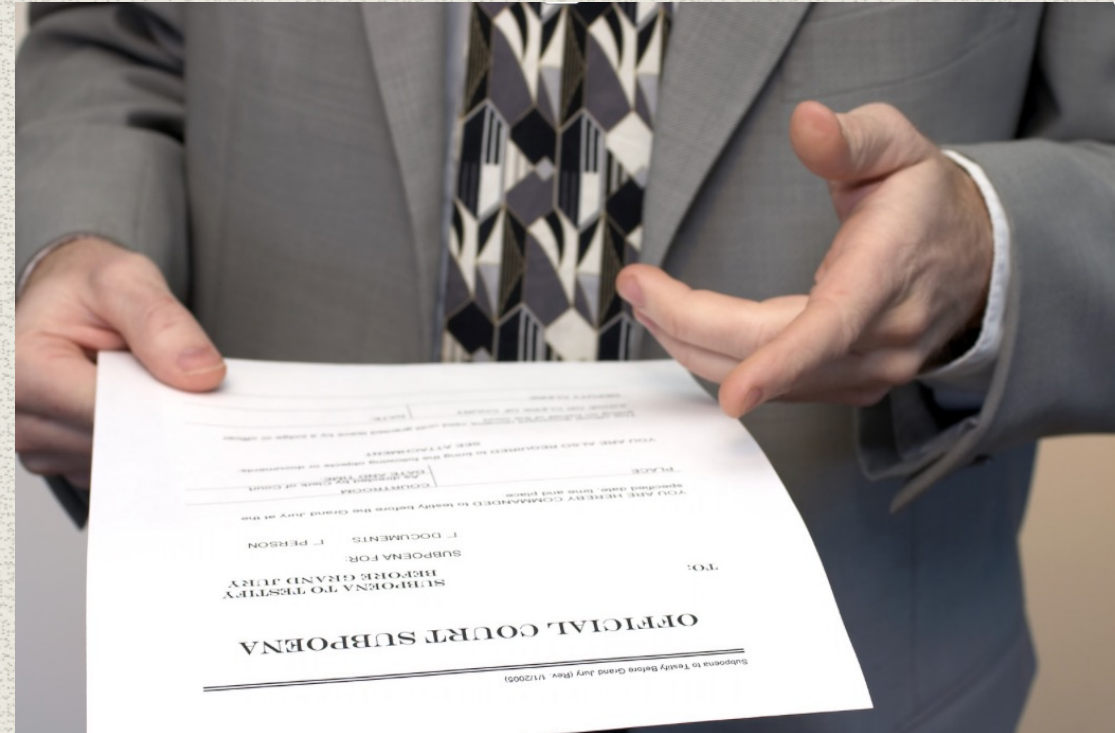
***The appraiser has not identified any purchaser, borrower or seller as an intended user of this appraisal, and no such party should use this appraisal for any purpose. Such parties are advised to obtain an appraisal from an appraiser of their own choosing if they require an appraisal for their own 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.**



# A Process Server is Knocking at Your Door

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





## 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**



## If Sued, Get Legal Advice – Not Internet Advice

Yesterday at 12:28pm - From [redacted] L - [redacted]

Anyone have experience with that Llano company trying to come after you for an old appraisal completed? I have a buddy who is no longer in the business getting letters from them on something he completed as an associate in late 2007.



[redacted] Just tell him to tell them he burned the files a few years back and have no idea what they are talking about? If they want a new appraisal, maybe he can recommend you but do you really want to hear from these guys years from now on an old report?

Like · Reply · [thumbs up icon] 1 · Yesterday at 12:45pm



## 3 More Pieces of Bad “Risk Management” 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.”**
- **“Only appraisers who do appraisals for mortgage lending get sued.”**

**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.**



# Can You Be Sued over a BPO? And, What's Difference Between Professional Liability and General Liability?

Plaintiff U.S. Real Estate Servs. sued Silver State Realty and an agent in NY state court for contribution, indemnification, breach of contract, and fraud, relating to a personal injury action where plaintiff was sued in a personal injury case for damages for an accident occurring on a foreclosed property for which it served as a managing agent.

Plaintiff alleges that Defendant was responsible for the issuance of a Broker Price Opinion which asserted the property was in good condition.

The tenant in the New Jersey accident fell on outdoor stairs that were alleged to be defective and covered with snow. Plaintiff settled the personal injury lawsuit for \$75,000.00

Plaintiff also asserts that Defendant fraudulently created accounts on Plaintiff's system in the names of licensed brokers.



# Let's Shift Gears

Let's explore copyright law for both agents/brokers and appraisers.

Here's the question: Can you – as an agent or as an appraiser – be liable for copyright violations by creating a floorplan and including the floorplan in a listing or in an appraisal report?

This case is crazy!



# Do Floor Plans in MLS Listings or Appraisal Reports Violate Copyright Law?

- Agents/brokers create floor plans for listings.
- Appraisers also sometimes create floor plans of 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 question 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. **NAR and the Appraisal Institute** joined in a brief asking for the Court to reverse. But the Court didn't take the case.



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

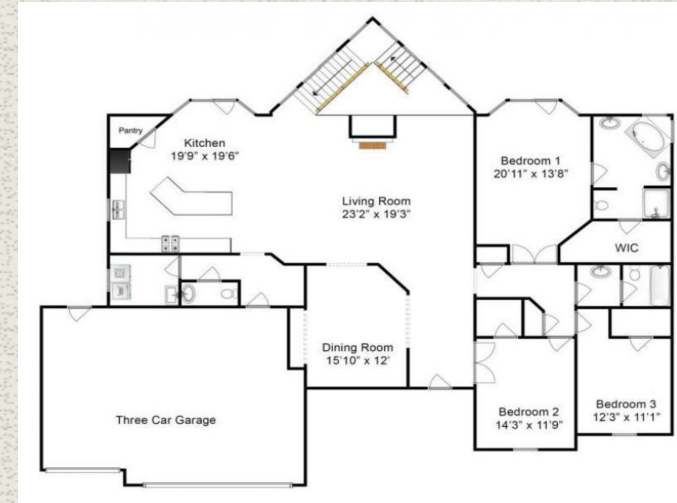
- From the petition for review:  
“[T]he need for quick review is urgent. Until reviewed and reversed, the Eighth Circuit’s decision will cast legal doubt over every use of a floor plan in ... preparing an appraisal for a mortgage, ... The decision will affect millions of transactions in one of the most 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.

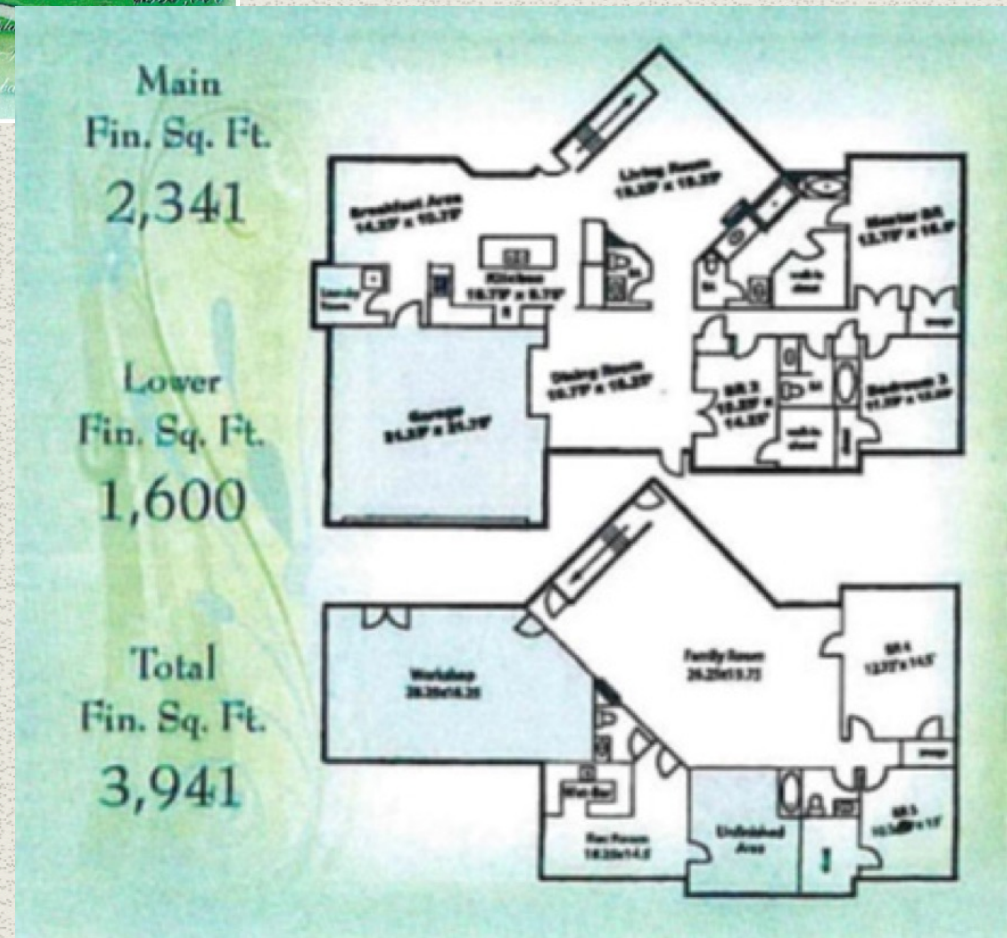
4306 Melrose Drive

\$350,000

**SUSAN HORAK**  
Group  
3422 S. Rock Quarry Rd., Columbia, MO 65201  
Office: (573) 673-2889 Email: sushorak@earthlink.net  
Fax: (573) 673-2888 Cell: (573) 673-2888  
Residence: (573) 673-2888 Email: sushorak@earthlink.net

This property is currently available and being shown by a name you can trust, Susan Horak, and a company you can trust at Columbia House of Brokers Realty. Call Susan today to schedule your own private showing.

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?

- It certainly is (or now, was) for agents/brokers.
- Fortunately, for appraisers, 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.



## 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 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 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 judgment motion, the firm asked for the court to rule that this provision is enforceable.
- How did the court rule?



## Do 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.

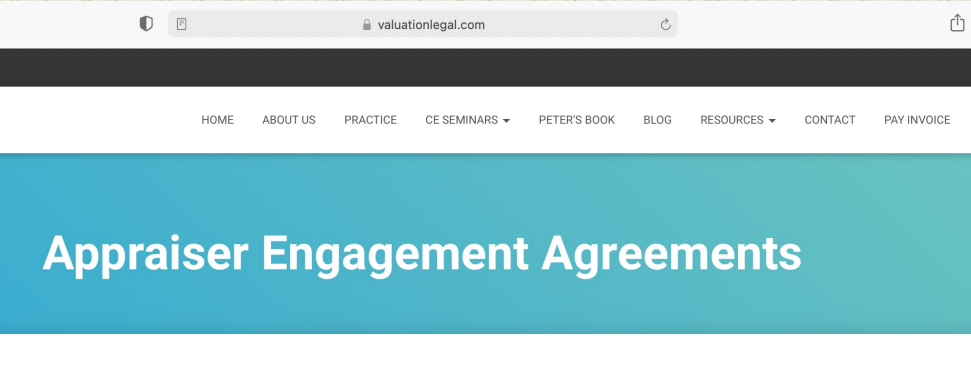


## Do Limitations of Liability Work?

- 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

### Hot Topics

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- [Common Appraisal Errors and Issues](#)
- [Sample Materials for Services](#)
- [Sample Certification Statements](#)
- [Use of Designations, Emblems, and Logo](#)
- [Readdressing, Reassigning, Reappraising](#)
- [Privacy Issues for Appraisers](#)
- [AI Reports](#)

### 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.



## Part 2

# Fair Housing and Fair Lending Update (4 CE Hours)

### Outline:

Introduction

Section 1 – Applicable Laws and Regulations

Section 2 – Bias Issues in Developing Valuations

Section 3 – Bias Issues in Reporting Valuations

Section 4 – Real World Case Studies



# 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,<br>Irish, Scandinavians. | 6. Greeks.                          |
| 2. North Italians.                                    | 7. Russians, Jews (lower<br>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 to Get Us Started

- This is a ranking of nationalities and races in the Chicago area in 1930s, rating them based on their “favorable influence” on property 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.



## The Book I Just Shared Might be History, But It's Important to Understand that Redlining Continues to Exist in Real Estate Transactions and Mortgage Lending

Newsday (NY newspaper) investigation regarding Long Island sales agents/brokers.

- 3-year program of testing agents/brokers on Long Island for racial steering and other fair housing violations.
- 86 “matched pair-tests.”
- Example: two undercover testers – one black and one white – separately solicit an agent’s assistance in buying a house. They present similar financial profiles and request identical terms for houses in the same areas. The agent’s actions are then reviewed for evidence that the agent provided disparate service.



<https://projects.newsday.com/long-island/real-estate-agents-investigation/>



## It's Important to Understand that Redlining Continues to Exist in Real Estate Transactions and Mortgage Lending

- Results: Black testers experienced disparate treatment 49 percent of the time, 39 percent for Hispanic and 19 percent for Asian testers.
- Here's an example of the disparate treatment: In 7 cases, agents refused to provide house listings or home tours to minority testers unless they met financial qualifications that weren't imposed on white counterparts – such as requiring a lender's pre-qualification letter.
- Here's another example: In 24% percent of tests, agents directed whites and persons of color into differing communities.





## What's Going On?

- Implicit bias? Stereotyping ...
- Explicit bias? Intentional discrimination ...
- Violations of law – such as Fair Housing Act and state law violations?
- Professional discipline?



# Fair Housing and Fair Lending in Relation to Real Estate Transactions and Appraising

## Where Are We Going?



- We're going to address issues concerning bias and discrimination in real estate sales and valuation.
- We'll be focused on valuation – ***it's important to realize that the laws and regulation we cover relate to all forms of valuation – appraisals, BPOs, evaluations, etc. – whether performed by appraisers or agents/brokers.***
- We'll learn about:
  - ✓ Implicit/unconscious bias.
  - ✓ Explicit bias and intentional discrimination.
- We'll look at real-world cases where researchers or members of the public believed there was bias in valuation.



## Fair Housing and Fair Lending in Relation to Real Estate Transactions and Appraising Where Are We Going?

- Because the law weighs heavily on matters concerning discrimination, we'll also address:
  - ✓ Relevant fair housing and lending laws such as the **Fair Housing Act** and **ECOA**.
  - ✓ Applicable (and changing) professional standards (USPAP).
  - ✓ Investigations and lawsuits relating to alleged discrimination - 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 are relevant to both residential and commercial transactions and valuation – it's important to realize that these issues are not just a “residential problem.”



## An Introduction to Bias

In this introductory part, we're going to discuss the general subject of bias:

- Implicit versus explicit bias.
- Can implicit bias affect professional judgment?
- Are appraisers being single out for alleged bias in their work?

• This definition comes from the U.S. Department of Justice's "[Understanding Bias: A Resource Guide.](#)"



## Defining Bias – as Addressed in this Class



- Before we begin, let's make sure we understand a few key definitions. There will be more terms to come, as we go along, but here are some central ones:

**Bias:** In the context of this class, bias has a fairly specific meaning: an inclination to treat people differently or process information differently based on social groupings, like race, national origin, gender or age (which are examples of categories that we generally recognize as legally protected from discrimination).\*

This is a more specific meaning than the general definition of bias in USPAP – which is presently “a preference or inclination that precludes an appraiser’s impartiality, independence, or objectivity in an assignment.”

Here, we’re talking about bias as it relates to inclinations regarding people – we’re not really talking about other biases such as slanting appraisal testimony in favor of a client in litigation rather than being impartial, or trashing another appraiser’s appraisal in a review assignment because of personal animosity. Those are certainly prohibited forms of bias under USPAP too, but they’re not the subject of this class.

- This definition comes from the U.S. Department of Justice’s “[Understanding Bias: A Resource Guide](#).”



## Let's be Frank: the Topics in This Part of the Class Upset People – Whether they are appraisers or agents/brokers



- The reaction among appraisers to the topics of bias and discrimination can be mixed.
- It's unsettling to have your profession accused of delivering biased – even racist – appraisals.
- Some agents/brokers or appraisers dismiss the need for discussion or learning.

"I'm not  
biased. I just  
report the  
market."



## 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:** Michael Kurschat <kurschat@kurschatco.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.**



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.**

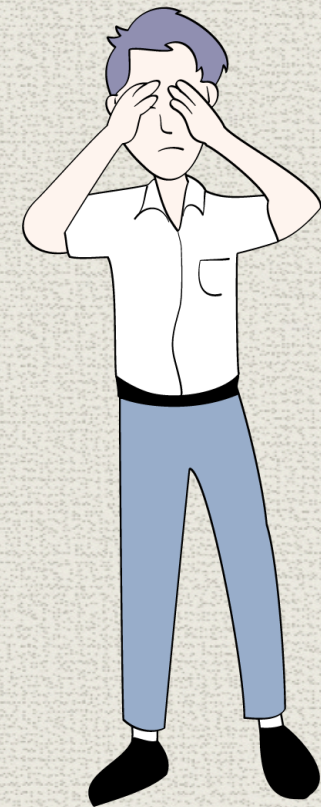




# Are Real Estate Professionals Being Unfairly Singled Out?

**Are real estate professionals being unfairly singled out with accusations of bias?**

- Well – agents/brokers and 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 agents/brokers and 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 current 2020 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. . . .”



## Let's Define Some Key Terms as We Get into the Study of Doctors: Explicit and Implicit Bias

**Explicit Bias** is where individuals are aware of their prejudices and attitudes toward certain groups. These positive or negative preferences for a particular group are conscious.

An example of explicit bias in an appraisal would be the appraiser selecting comparable sales based on the race of the home's occupants or predominant race in the neighborhood.

Overt racism and racist comments are also examples of explicit biases.

\* The definitions in this section come from the U.S. Department of Justice's "[Understanding Bias: A Resource Guide](#)."



## Explicit and Implicit Bias

**Implicit or Unconscious Bias** involves subconscious feelings, attitudes and **stereotypes** that have developed as a result of prior influences and imprints. It is an automatic positive or negative preference for a group, based on one's subconscious thoughts.

- Implicit bias does not require “animus” – in other words, it doesn't require that a person dislike certain groups; it only requires an internal **stereotype** to produce the discriminatory action.



**Stereotype** – a widely held but oversimplified image or idea of a particular type of person or thing.



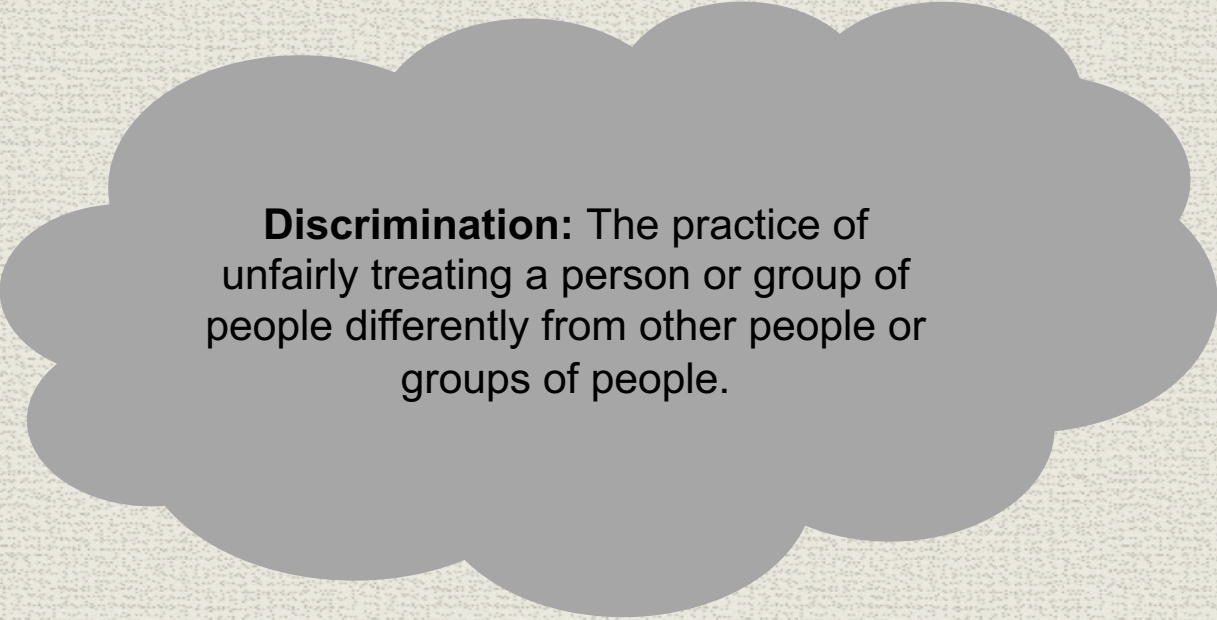
## Example of Potential Impacts of Implicit Bias

- An **appraiser's** implicit bias might lead the appraiser valuing a home owned and occupied by a Hispanic person to select comparable sales from areas with higher Hispanic populations.
- An **agent's** implicit racial bias may lead the agent to suggest only communities of color to a home purchase affiliated with such a race, ethnicity or national origin.



## Discrimination

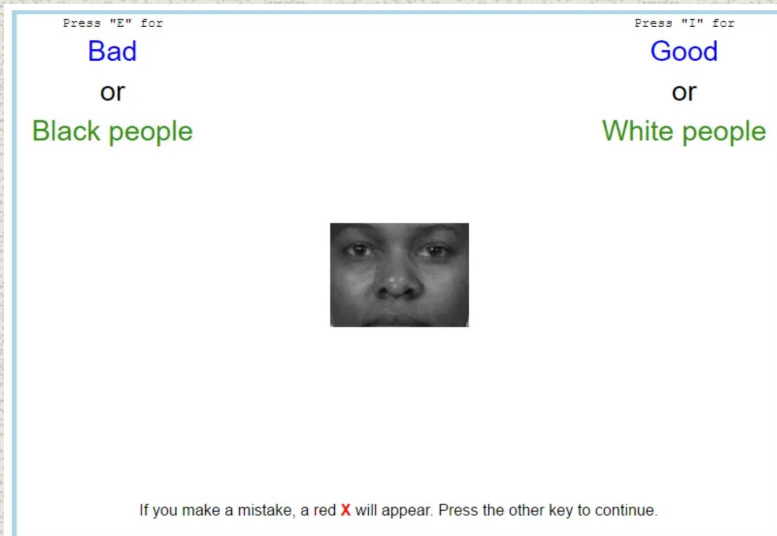
- Implicit bias and explicit bias are be equally problematic because both can produce **discrimination**.
- But the challenge with implicit bias is that the person discriminating is not aware of it – whereas, if a person is aware that they may harbor a stereotype, that person might be able to check the impact.



**Discrimination:** The practice of unfairly treating a person or group of people differently from other people or groups of people.



## Back to 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.





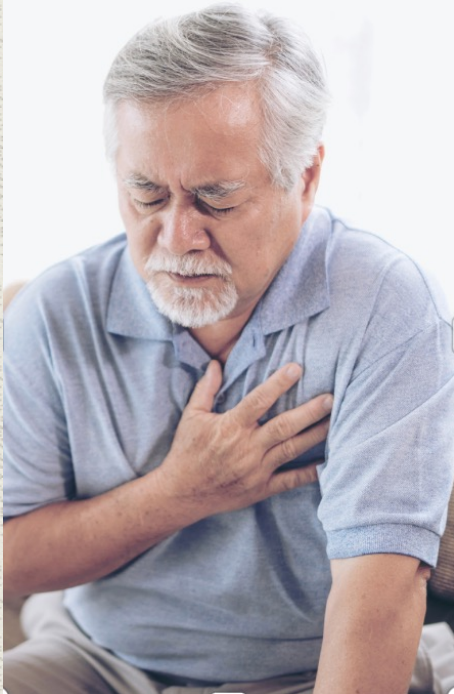
## Bias Study – Doctors



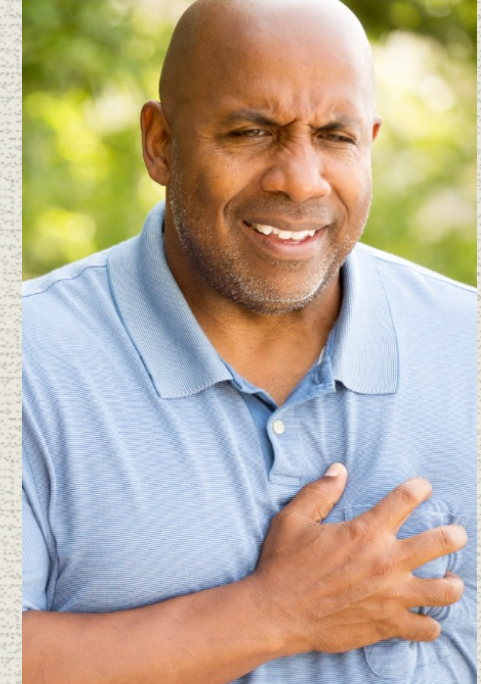
- With the testing done, the researchers then gave each doctor a clinical case study regarding a heart patient.
- The case study involved a fictional 50-year old patient reporting chest pain.
- The study included medical test information from an electrocardiogram and additional detailed medical information.
- 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, overall, 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.





## 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.





# 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 Price or 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.

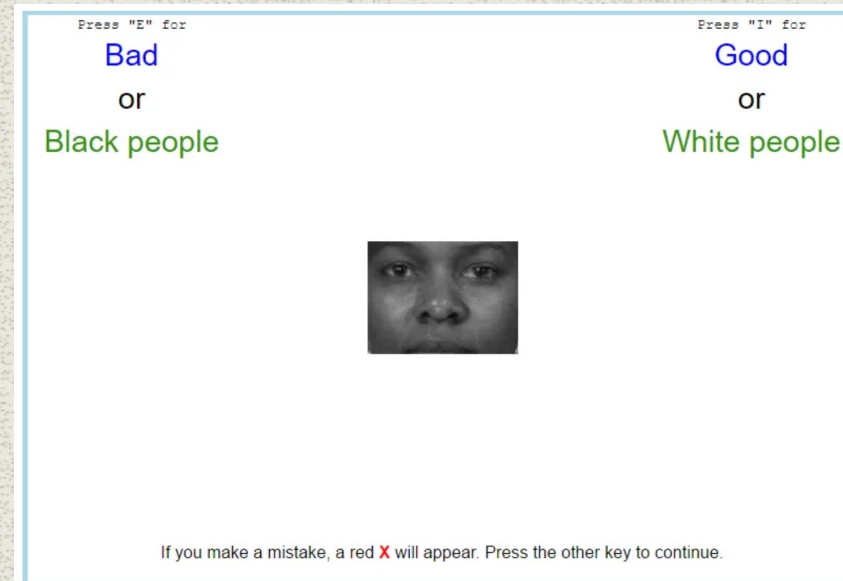




# One Strategy to Reduce Implicit Bias

**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



## Another Strategy to Work on Implicit Bias

**Take Perspective.**\* The idea behind perspective taking is to lessen automatic group-based judgments. This strategy involves taking a first-person perspective of a member of the group, which helps one to empathize and understand their point of view.

For example, if you are appraising the home of a person from a different race, place yourself in their position. What concerns might they be feeling about the appraisal? Are they concerned that the color of their skin or of the neighborhood will impact the value and their ability to obtain the loan?

- Source: U.S. Department of Justice's "Understanding Bias: A Resource Guide."



# **Section 1 - the Legal Side of Fair Housing and Fair Lending, Laws and Enforcement**



# Historic Roadblocks to Fair Housing and Fair Lending

## Redlining – Baltimore, MD Example

NS FORM-8  
6-1-37

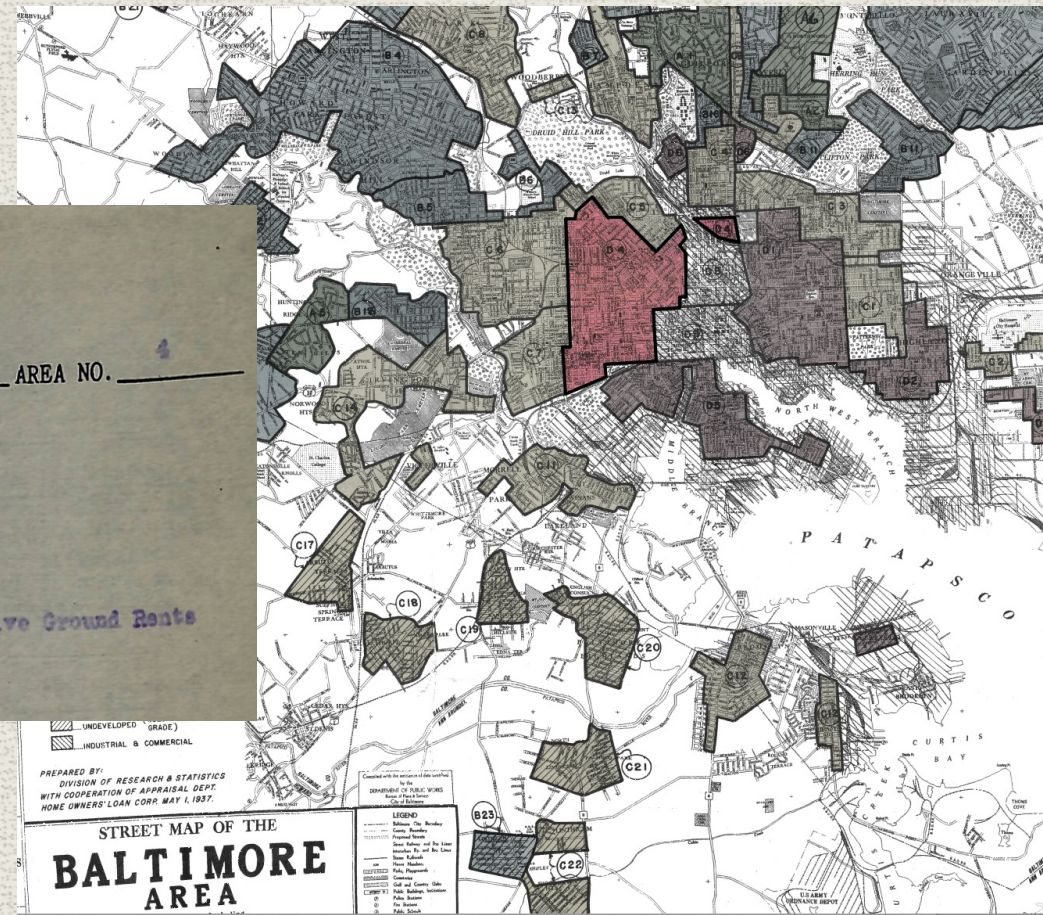
AREA DESCRIPTION  
(For Instructions see Reverse Side)

1. NAME OF CITY Baltimore, Maryland SECURITY GRADE D AREA NO. 4

2. DESCRIPTION OF TERRAIN. Holling

3. FAVORABLE INFLUENCES. Good transportation. Central location.

4. DETRIMENTAL INFLUENCES. Obsolescence. Negro concentration. Excessive Ground Rents  
in many cases.





# Redlining – Sacramento, CA Example

## Mapping Inequality Redlining in New Deal America

search

### Selections from the Area Descriptions

#### C18

The few Negro families (two known) are said to affect values of only adjacent properties. (Clarifying Remarks)

#### C9

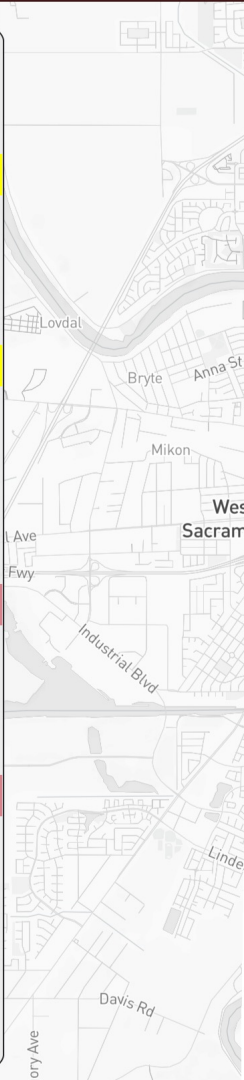
2 negro families live at 32nd and F streets, but realtors aver their presence is not detrimental except to abutting properties. (Clarifying Remarks)

#### D6

Is the "bon ton" Oriental and Negro residential district of the city. (Clarifying Remarks)

#### D2

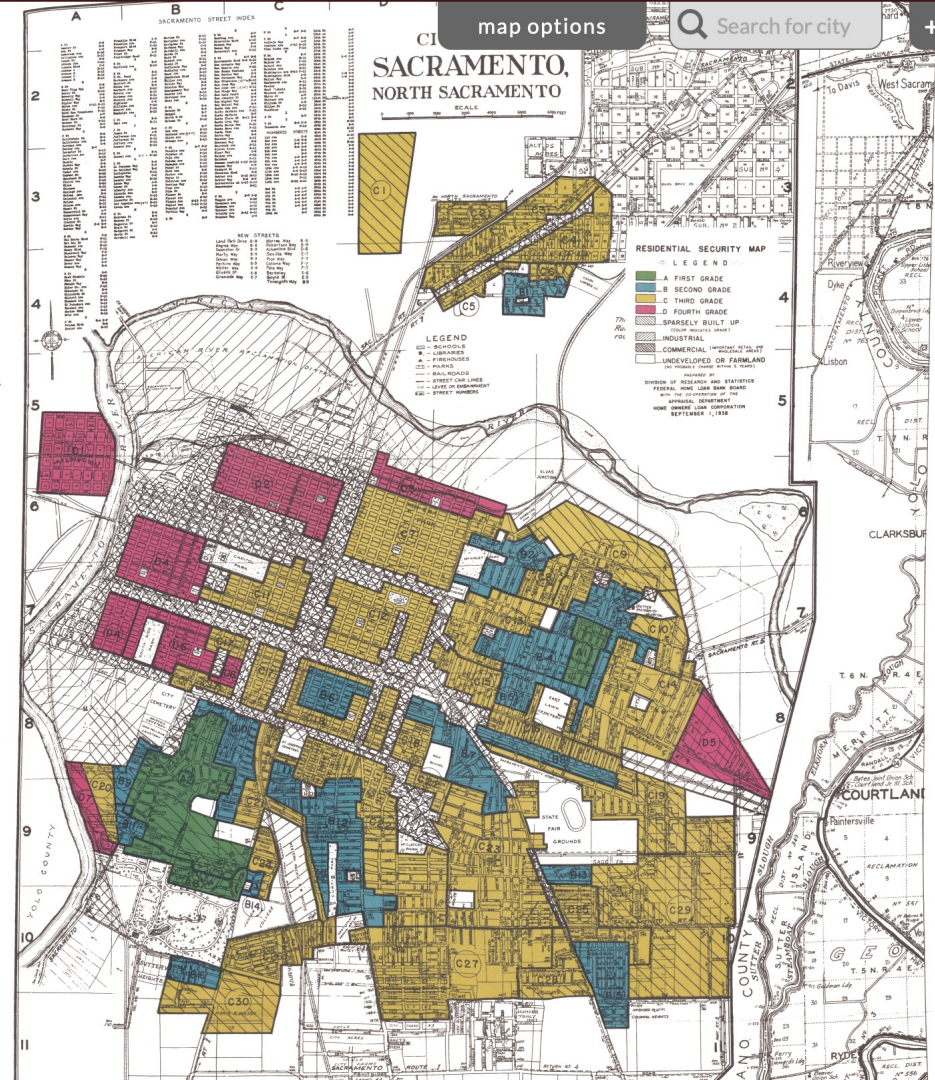
Population is very mixed. Italians predominate but with a sprinkling of Mexicans, Negroes, and Orientals. The subversive character of population constitutes the area's principal hazard. (Clarifying Remarks)



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map options

Search for city





# Redlining – Sacramento, CA Example

NS FORM 8  
10-1-37

## AREA DESCRIPTION - SECURITY MAP OF Sacramento, Cal.

1. AREA CHARACTERISTICS:
  - a. Description of Terrain. Level with favorable grade and no construction hazards.
  - b. Favorable Influences. Convenience to transportation, schools, churches, trading and amusement areas. Nearness to city center. Proximity to centers of commercial and industrial employment.
  - c. Detrimental Influences. Highly congested population whose density greatly exceeds city's average. Presence in large numbers of subversive racial elements. Encroachment of commerce and business.

4. AVAILABILITY OF MORTGAGE FUNDS: a. Home purchase Limited; b. Home building Limited
5. CLARIFYING REMARKS: This old area is the "melting pot" of Sacramento. It contains the principal Japanese colony and the greatest concentration of Negroes in the city. There are no deed restrictions, and zoning is for general commercial uses. Dwellings are very cheap to medium construction. The quality of maintenance, for a district of this character, is much above the average. It is stated that many buildings in the area violate the State Housing Act and city housing ordinances, and Grand Jury investigation is under way at the present time. Heterogeneity, age and obsolescence of improvements, and predominance of subversive racial elements are the area's chief hazards. Rated "low red" grade.
6. NAME AND LOCATION Part of Old City SECURITY GRADE D AREA NO. 4



# “Modern” Roadblocks to Fair Housing and Fair Lending

## “Digital Redlining”

Example current case: **In re Wells Fargo Mortgage Discrimination Litigation**, U.S. District Court, N.D. Cal., Case No. 3:22-cv-00990.

- In March 2022, Bloomberg News published an article entitled “Wells Fargo Rejected Half Its Black Applicants in Mortgage Refinancing Boom” (registration required).
- Bloomberg’s researchers had combed through the data for 8 million conventional loan refinance applications in 2020 reported by lenders under the Home Mortgage Disclosure Act.
- The researchers saw stark differences in Wells Fargo’s approval rates for White, Black and Hispanic refinance applicants.



## Alleged “Digital Redlining”

- The researchers found that Wells Fargo approved 72% of applications from White applicants but only 47% from Black applicants.
- For Hispanic borrowers, Wells Fargo’s approval rate was 53% versus a 79% industry average for Hispanics.
- After publication of the article, a half-dozen class actions were filed swiftly against Wells Fargo by Black and Hispanic borrowers who had been denied loans
- The Federal District Court in Northern California consolidated these cases.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

*In re Wells Fargo Mortgage  
Discrimination Litigation.*

Case No. 3:22-cv-00990-JD

Honorable James Donato

**AMENDED AND CONSOLIDATED  
CLASS ACTION COMPLAINT  
FOR:**

1. VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT, 15 U.S.C. § 1691, *ET SEQ.*
2. RACE DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT OF 1968, 42 U.S.C. § 3601, *ET SEQ.*
3. RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981
4. VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL CODE § 51
5. VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW

**DEMAND FOR JURY TRIAL**



## Alleged “Digital Redlining”

- The primary legal claims in the consolidated case are brought under the federal Fair Housing Act and Equal Credit Opportunity Act.
- The complaint in the case principally alleges a story about disparate treatment and impact in Wells Fargo’s mortgage determinations, including the bank’s use of flawed “centralized, universal, race-infected lending algorithms” or “digital redlining.”
- But part of the plaintiffs’ theory is also based on alleged bias in the appraisals relied on by the bank.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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- 4. VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL CODE § 51**
- 5. VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**

**DEMAND FOR JURY TRIAL**



## What Does the Case Say about Appraisals Used by the Bank?

- Here's a key allegation pertaining to appraisals:

*Wells Fargo knowingly incorporates, without adjustment, appraisals that have been shaped by years of race-based valuation standards or appraisals affected by race-based criteria. Homes in majority Black neighborhoods are worth an average of 23% less than homes in neighborhoods with “very few or no Black residents” and of similar home quality.*

- As a result, the plaintiffs allege that “Wells Fargo’s discrimination . . . has forced those who received below-market appraisals from Wells Fargo to abandon the process with Wells Fargo and turn elsewhere.”



# Key Federal Fair Housing and Fair Lending Laws Relevant to Alleged Discrimination in Real Estate and Appraising

As pointed to in the Wells Fargo case, there are two key federal laws that apply to alleged discrimination in appraising:

- Key fair housing law: **Fair Housing Act (FHA)** enacted as part of the **Civil Rights Act of 1968**. Applies to appraisers, firms, AMCs, lenders – all parties. High level summary: the law prohibits discrimination in residential real estate appraisals on the basis of race, color, religion, national origin, sex, disability, or familial status. Under the law, an appraiser may not use or rely upon information relating to these protected characteristics, with very limited exceptions.
- Key fair lending law: **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 lending; it applies to commercial lending as well.





# Current Federal Fair Housing Act Law (after Fair Housing Amendments Act of 1988)

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).)

Note: under the law, “sex” includes gender identity and sexual orientation.

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).)



## Fair Housing Act, Section 3604(c)

“[I]t shall be unlawful —

...

c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.”

The test is whether the statement indicates discrimination to an "ordinary reader" or "ordinary listener.”

This prohibition has been applied to appraisals.

Real-world example: “The neighborhood is a barrio.”

Case law indicates the statement must be related to the “decisional process” — no liability for just a “stray” remark.



# 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).



# An Emerging Key Federal Law – “UDAAPs”

A third key federal law is emerging with CFPB investigations:

- Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any **Unfair, Deceptive, or Abusive Acts or Practices (UDAAPs)**.
- CFPB February 2022 news release: “The CFPB is deeply troubled by the discriminatory statements the Federal Housing Finance Agency recently identified in some home appraisals, and the appraisal disparities for communities and borrowers of color recently found in both Freddie Mac and Fannie Mae studies.”





# Additional Relevant Federal Laws

**Civil Rights Act of 1866**: the foundational ant-discrimination law.

Section 1981 of the federal Civil Rights Act of 1866 prohibits many forms of discrimination based on race, ethnicity, national origin, and religion with respect to the making and enforcement of contracts. Section 1982 prohibits discrimination with respect to the purchasing, leasing, selling, holding, and conveyance of real and personal property.

Other relevant federal laws – but not frequently applied in the context of appraisals:

- **Community Reinvestment Act**
- **Housing and Community Development Act of 1974**
- **Home Mortgage Disclosure Act (HMDA)**
- **Real Estate Settlement Procedures Act (RESPA)**
- **Americans with Disabilities Act (ADA)**



# Key State and Local Laws/Regulations

The effect of state and local anti-discrimination laws is often to expand upon federal antidiscrimination requirements to protect additional characteristics and/or prohibit additional practices.

Relevant New York State Law includes: the NY's **Human Rights Law - Article 15**. It makes key additions to federal anti-discrimination protections. Among them, it adds additional protected classes – age (for fair housing) and marital status.

NY's law does have some notable exceptions (here are three):

1. Two-family exemption
2. Senior Citizen Housing
3. Drug users and alcohol abusers

Last, it's important to recognize that counties and municipalities may add their own layers of additional protection. A big one is: **New York City's Human Rights Law**. This local law adds additional protections in housing based on lawful occupation, family status, any lawful source of income, and status as a victim of domestic violence, stalking and sex offenses.



## Where Does UPSPA Fit In? USPAP Changes for 2024 Edition (from 5<sup>th</sup> Exposure Draft adopted May 5, 2023)

There was a problem here –  
this markup shows a  
deletion in 2020 (current)  
version of USPAP that will  
be replaced with a 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.



## USPAP Changes for 2024 Edition (from 5<sup>th</sup> Exposure Draft adopted May 5, 2023)

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

### 5 **NONDISCRIMINATION:**

6 **An appraiser must not act in a manner that violates or contributes to a violation**  
7 **of federal, state, or local antidiscrimination laws or regulations.<sup>1</sup> This includes**  
8 **the Fair Housing Act (FHAAct), the Equal Credit Opportunity Act (ECOA), and the**  
9 **Civil Rights Act of 1866.**

10 **An appraiser must have knowledge of antidiscrimination laws and regulations**  
11 **and when those laws or regulations apply to the appraiser or to the assignment.**  
12 **An appraiser must complete an assignment in full compliance with applicable**  
13 **laws and regulations.**



## USPAP Changes for 2024 Edition (from 5<sup>th</sup> Exposure Draft adopted May 5, 2023)

### Whether or not any antidiscrimination law or regulation applies:

1. 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, ethnicity, color, religion, national origin, sex, sexual orientation, gender, gender identity, gender expression, marital status, familial status, age, receipt of public assistance income, or disability of any person(s).

Comment: Within the context of the Nondiscrimination section of the ETHICS RULE, “person(s)” includes but is not limited to:

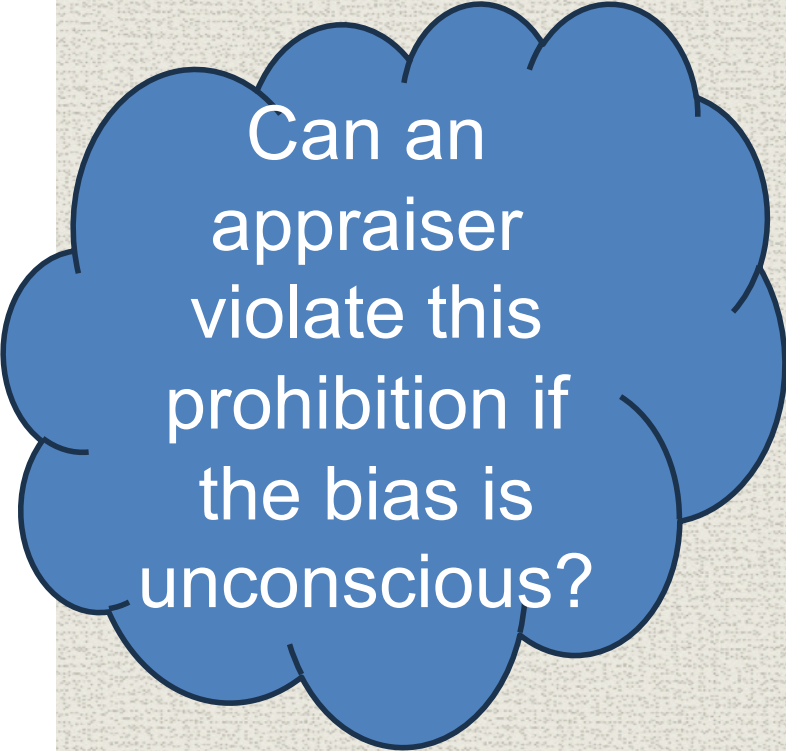
- a property or asset owner;
- a purchaser or potential purchaser of a property or an asset;
- an individual who might derive benefit from or use a property or an asset;
- a client, representative or agent of a client, or any other intended user;  
or
- the inhabitants of a geographic area.



## 2024 USPAP

2. An appraiser must not base an opinion of value upon the premise that homogeneity of the inhabitants of a geographic area is relevant for the appraisal.<sup>4</sup>
3. An appraiser must not perform an assignment with bias with respect to the actual or perceived race, ethnicity, color, religion, national origin, sex, sexual orientation, gender, gender identity, gender expression, marital status, familial status, age, receipt of public assistance income, or disability of any person(s).
4. An appraiser must not use or rely upon another characteristic as a pretext to conceal the use of or reliance upon race, ethnicity, color, religion, national origin, sex, sexual orientation, gender, gender identity, gender expression, marital status, familial status, age, receipt of public assistance income, or disability of any person(s), when performing an assignment.

Comment: Where an antidiscrimination law or regulation applies to the appraiser or the appraiser's assignment, the practices described in 1-4 immediately above may also be prohibited by applicable antidiscrimination law, including the FHAct, ECOA, and the Civil Rights Act of 1866. Any practice prohibited by an applicable antidiscrimination law or regulation is also prohibited by the preceding requirements of the Nondiscrimination section.



Can an appraiser violate this prohibition if the bias is unconscious?



# Enforcement: 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** (NY Dept. of State, **Division of Licensing**, and NY **Division of Human Rights**).
3. Legal actions in **state or 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.




# HUD Investigation Process


PUBLICSOURCE

UNBALANCED

## ‘What changed in that time?’ Two home appraisals, 3 days and \$36,000 apart, spur a housing bias complaint

One appraiser saw the homeowner’s masks and drums. The other saw it with all indications of Black ownership removed. Now the complaint becomes part of a national discussion of appraisal fairness.

 Rich Lord May 23, 2022

“Shirley Salmon-Davis decided to conduct an experiment on her way out of Pittsburgh, but hoped the findings wouldn’t be so noteworthy.

Salmon-Davis, who is Black, had her East Liberty house appraised twice. To the first appraiser, she presented as the homeowner and left her masks, drum, wooden sculptures and family photos in place. Three days later, a second appraiser was greeted by a white friend and instead examined a house with all indications of Black ownership removed.”



# HUD Investigation Process



The former home of Shirley Salmon-Davis, in East Liberty near its border with Highland Park. (Photo by Rich Lord/PublicSource)

**Case Number:****1. Complainants:**

[REDACTED]  
[REDACTED]  
Pittsburgh, PA [REDACTED]

**2. Complainant Representatives:**

Fair Housing Partnership of Greater Pittsburgh  
c/o Megan Confer-Hammond  
2840 Liberty Avenue, Suite 205  
Pittsburgh, PA 15222  
Representing: [REDACTED] (Fair housing partnership of Greater Pittsburgh)

**3. Other Aggrieved Parties:**

Fair Housing Partnership of Greater Pittsburgh  
c/o Megan Confer-Hammond  
2840 Liberty Avenue, Suite 205  
Pittsburgh, PA 15222

**4. The following is alleged to have occurred or is about to occur:**

- Discriminatory financing (includes real estate transactions)

**5. The alleged violation occurred because of:**

- Race (Black)

**6. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):**

716 North Saint Clair Street  
Pittsburgh, PA 15206



# HUD Investigation Process



Shirley Salmon-Davis, formerly of East Liberty. (Courtesy of the Fair Housing Partnership of Greater Pittsburgh)

**8. The following is a brief and concise statement of the facts regarding the alleged violation:**

Complainant alleges the Respondents violated section 805 of the Fair Housing Amendment Act of 1988 by imposing different terms and conditions in real estate appraisals because of race (Black).

Alleged violation of section 805 Discrimination in the appraising of residential real property because of race

Complainant [REDACTED] alleges on or about early November 2021, she sold her previous single-family home located at 716 North Saint Clair Street, Pittsburgh, PA 15206 (hereinafter “subject property”). Complainant also alleges she resided at the subject property since purchasing it for \$172,500 on or about February 5, 2010.

Complainant alleges on or about May 24, 2021, she and the Respondents met at the subject property and the Respondent’s representative (rep) [REDACTED] provided an appraisal value at \$400,000.

Complainant further alleges on May 27, 2021, the subject property was appraised by a separate appraisal company at \$436,000. Complainant alleges a White woman, a family friend, met with the separate appraisal company at the subject property for the appraisal.

Complainant alleges the Respondents’ appraisal occurred with the subject property as decorated by her. Whereas the separate appraisal occurred with Complainant removing her decorations. An example of the of the subject property for the separate appraisals are below.

Subject property at Respondents’ appraisal verses the subject property at appraisal by a different appraisal company:

Both appraisals were a “Sales Comparison Approach” that used the “Adjusted Sale Price of Comparables” from comparables that were less than 0.5 miles from the subject property. Both appraisals used 608 Mellon Street, Pittsburgh, PA 15206 and 529 North



# HUD Investigation Process

Euclid Avenue, Pittsburgh, PA 15206 as comparables to the subject property. Respondents determined adjusted sales prices for 608 Mellon Street and 529 North Euclid Avenue of \$403,250 and \$395,750, respectively. However, the separate appraisal company calculated adjusted sale prices of the same comparables as \$435,500 and \$435,700, respectively. Additionally, Respondents' appraisal used comparables.

On or about August 12, 2021, Complainant [REDACTED] listed the subject property for the sale price of \$475,000. On or about November 4, 2021, she sold the subject property for the sale price of \$447,000.

Overall, Respondents' appraisal was \$36,000 less than the different appraisal company's appraisal of the subject property. Further, the sale of the subject property was \$47,000 higher than Respondents' appraisal.

Respondents' appraisal calculated an Above Grade Gross Living Area (hereinafter "GLA") of 2,860 square feet for the subject property whereas the separate appraisal calculated a GLA of 2,735 square feet. Therefore, Respondents' appraisal calculated a \$139.86 price per square foot compared to the \$159.41 calculated by the separate appraisal.

Respondents oversized and undervalued the subject property compared to the separate appraisal and the home's subsequent sales price. The difference between the two appraisals was the race of individual who met with the appraiser and the decorations of the subject property, such as pictures of Black individuals or pictures of white individuals.



# HUD Investigation Process

The subject property is in East Liberty, a neighborhood in the City of Pittsburgh. Additionally, the subject property is located about a block away from Stanton Avenue which is the boundary to the adjacent neighborhood of Highland Park. Objectively and subjectively, East Liberty is known as a Black neighborhood and Highland Park is known as a white neighborhood. East Liberty is 42.25% Black alone and Highland Park is 15.89% Black alone as per the 2020 U.S. Census.

Respondents' appraisal only used comparables south of Stanton Avenue which are comparables only in East Liberty. Whereas the separate appraisal used comparables north and south of Stanton Avenue which are comparables in both the East Liberty and Highland Park neighborhoods.

Complainants allege discrimination based on the devaluation of the subject property due to the property being inhabited by a readily observable Black family.

**9. The most recent date on which the alleged discrimination occurred:**

May 24, 2021

11. The acts alleged in this complaint, if proven, may constitute a violation of the following sections:

805 of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.


  
Date



# HUD Investigations

- HUD's Office of Fair Housing and Equal Opportunity (FHEO) handles the investigations.
- HUD provides notice of the complaint to the appraiser or other respondent and solicits a response (answer).
- Seeks to have the parties engage in a conciliation (settlement) process.
- HUD proceeds with the investigation and will generally issue a "Data Request."
- As the investigation proceeds, HUD may issue additional requests for information.
- The purpose is to determine whether reasonable cause exists to believe that discrimination occurred.
- 160+ complaints have been filed to HUD since 2020 alleging discrimination in appraisals.



**U.S. Department of Housing and Urban Development**  
 New York State Office  
 Jacob K. Javits Federal Building  
 26 Federal Plaza, Rm 3532  
 New York, New York 10278-0068  
<http://www.hud.gov/local/nyn/>

## INSTRUCTIONS

The response given to each of the below inquiries must be verified through the submission of supporting documentary, testimonial, electronic and/or any other available evidentiary means.

Whenever a provided response relies on witness testimony, Respondent must provide the name, address, telephone and/or cellphone number(s) and email(s) of that person. The evidence produced should not be redacted or altered in any way that modifies its content. Under no circumstances may Respondent withhold or fail to produce a piece of evidence that is in any way relevant to a HUD inquiry.

If Respondent is unable to fully answer any of the below-listed inquiries, please describe the nature of the information and explain the reason for being unable to do so while answering the inquiry to the fullest extent possible. In such instance, Respondent must still produce the requested information and documents through alternative protective measures or safeguards.

## DATA REQUEST

1. Identify the person(s) answering this Data Request and/or who contributed information that was used to answer any of its inquiries. If more than one person provided the answers or contributed information, identify the specific inquiries answered by each person and the information provided.
2. Provide a detailed response to the allegations made in the housing discrimination complaint, along with any supporting documentation.



# Example Data Request from HUD

10. Provide all written communication between you and Complainant from [REDACTED] to the present that pertains to the appraisal at the subject property. Include the following:
- (a) all communication (such as, but not limited to email messages, call logs, text messages, letters, etc.) to/from you or any person, or third party acting on your behalf from/to Complainant or anyone acting on her behalf from [REDACTED] to the present, including any communication pertaining to the appraisal at the subject property; and
  - (b) any internal and/or external communication between you or any person, agent or third party acting on your behalf, (such as, but not limited to emails, letters, memos, text messages, notices, call logs, etc.), from [REDACTED] through the present that mentions or makes a direct or indirect reference to Complainant and the appraisal at the subject property.
11. For all residential appraisals completed by Respondent [REDACTED] between the period of [REDACTED] (including the appraisal of the subject property), provide:
- a) Property address
  - b) Race/National origin of the property owners
  - c) An indication as to whether or not the property owners were home at the time of the appraisal
  - d) Appraised value
  - e) Name of lender that ordered the appraisal
  - f) Whether the appraisal was for a refinance loan or the purchase of mortgage
  - g) Whether the property was a single-family home/detached dwelling, condominium unit, or townhome
  - h) [REDACTED]  
[REDACTED]
12. Provide a list of all appraisals completed by Respondent [REDACTED] between the period of [REDACTED] that were revised after the initial report was given to the client. Include the race/national origin of the property owners, the reason for the revision, when the client was notified, and a copy of their initial and revised appraisals.

14. Describe the policy, procedures and process/steps in conducting an appraisal. Provide documentation.
15. If you are being represented by an attorney in this matter, please provide his/her point of contact information to include business address, phone number and email.

## Examples from other HUD data requests:

2. Provide appraisal reports (Uniform Residential Appraisal Reports; Form 1004) you completed between January 1, 2020- December 31, 2021.

5. Provide appraisal reports completed for African Americans between January 1, 2020 through December 31, 2021.



# Results of HUD Investigations?

What is supposed to happen next in HUD's investigation process:

- At the conclusion of the investigation, HUD issues a determination about whether reasonable cause exists to believe discrimination has occurred and may then issue a "Charge of Discrimination."
- If a charge is issued, either side may decide to have the charge litigated in U.S. District Court. If neither party seeks that, then a trial may occur before a HUD administrative judge.
- Actual damages and civil penalties are available; punitive damages may only be awarded in federal court.

**All HUD Charges of Discrimination are published on its website:**

All Charges 2023	
Basis of Discrimination	
WARNING: The attached documents may contain graphic and explicit language that may be offensive to some readers.	
HUD Charges Landlord with Disability Discrimination <a href="#">Read the Charge</a>	9/25/2023
HUD Charges Landlord with Disability Discrimination <a href="#">Read the Charge</a>	9/18/2023
HUD Charges Nevada RV Resort with Discriminating Against Family with Minor Children <a href="#">Read the Charge</a>	9/14/2023

## Observations:

- No charges regarding appraisal discrimination published 2020-23.
- No substantive conclusions of investigations 2020-23.



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,	<b>COMPLAINT FOR INJUNCTIVE,</b>
22	Plaintiffs,	<b>DECLARATORY, AND MONETARY</b>
	v.	<b>RELIEF; JURY TRIAL DEMAND</b>
	JANETTE C. MILLER; MI	
	PEROTTI REAL ESTATE	
	INC., AMC LINKS LLC;	
	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.



## Court Actions Since 2020 Involving Alleged Appraisal Discrimination

- 8 cases alleging discriminatory appraisals filed since 2020.
- 7 name individual appraisers – all of these involve appraisals for refinances.
- 1 case names an AMC, 6 cases name lenders.
- 2 cases have borrowers representing themselves (pro se).
- 5 cases are still pending, 2 have settled, 1 was dismissed.
- 0 have reached any decision on the merits.

➤ **No recent case provides any meaningful value as a “case study” for evaluating evidence regarding alleged appraisal discrimination.**

Recent Cases Alleging Appraisal Discrimination	
Janifer v. [REDACTED], et al.	Maryland State Court, Circuit Court For Prince George's County - Civil, Case No. C-16-CV-23-003141
Washington v. [REDACTED] Bank, et al.	U.S. District, M.D. N.Car., Case No. 1:22-cv-764
Tate-Austin, Fair Housing Advocates of Northern California v. [REDACTED] Appraisals, Inc., AMC [REDACTED]	U.S. District, N.D. Cal., Case No. 3:21-cv-09319
Connolly v. [REDACTED], et al.	U.S. District, D. Md, Case No. 1:22-cv-02048
Bailey v. [REDACTED] Bank, et al.	U.S. District, D. Conn., Case No. 3:23-cv-00129
LaRoche (pro se) v. [REDACTED] Mortgage, et al.	Superior Court, Mass., Suffolk, Case No. 23-0639A
Robinson (pro se) v. [REDACTED] Bank, et al.	U.S. District, D. Arizona, Case No. 2:22-cv-00687
In re Wells Fargo Mortgage Discrimination Litigation	U.S. District, N.D. Cal., Case No. 3:2022-cv-00990



# 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 treated differently based on their protected category – e.g., 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 Act – Basic Theories of Liability

We are focusing on disparate treatment today.

But you – or your legal counsel – should be aware that the extent to which appraisal practices may be challenged under a disparate impact theory is legally unresolved.

*Some scholars have questioned whether disparate impact liability is available in appraisal discrimination cases. See, e.g., Schwemm, supra note 152, § 18:8 (“Whether appraisal practices may be challenged under a discriminatory-effect theory is unclear.”). The basis for this question is largely rooted in dicta in Inclusive Communities, which addresses the appraisal exception provision in 42 U.S.C. 3605(c). See 576 U.S. at 539 (“If a real-estate appraiser took into account a neighborhood’s schools, one could not say the appraiser acted because of race. And by embedding [ § 3605(c)’s] exemption in the statutory text, Congress ensured that disparate-impact liability would not be allowed either.”).*

Section 3605(c) “APPRAISAL EXEMPTION. Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.”

\* Abraham, *Appraisal Discrimination: Five Lessons for Litigators*, footnote 59.

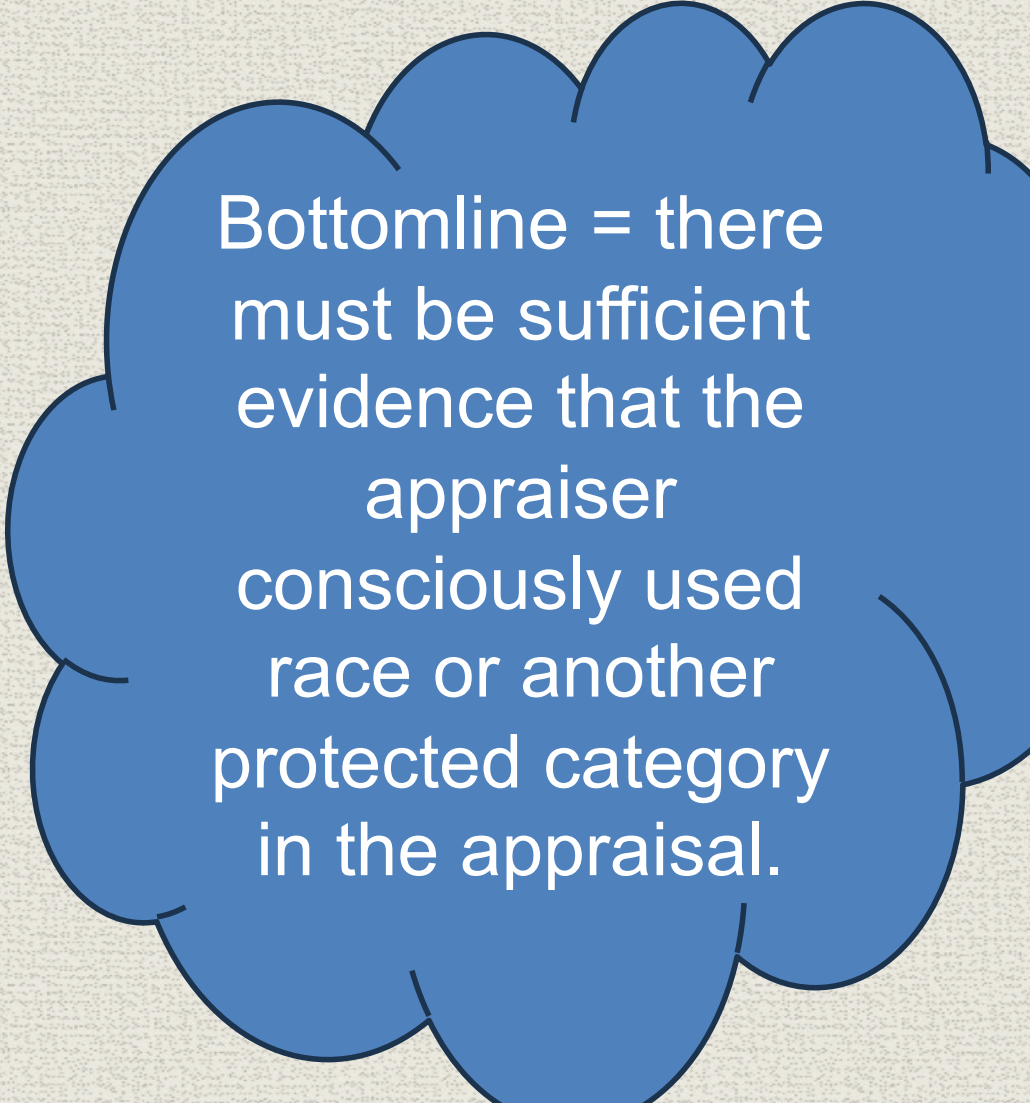


## Fair Housing Act – Evidence of Discrimination

In cases that rely on disparate treatment theory, the evidence must show that the respondent acted with a “discriminatory motive.”

A discriminatory treatment claim is most likely to concern whether the appraiser took into account: (1) a homeowner or buyer’s race or other protected characteristic, or (2) the neighborhood’s or location’s racial or other protected characteristics, or (3) both.

Evidence of the discriminatory motive may be direct or circumstantial.



Bottomline = there must be sufficient evidence that the appraiser consciously used race or another protected category in the appraisal.



# Fair Housing Act – Evidence of Discrimination

In cases that rely on disparate treatment theory, the evidence must show that the respondent acted with a discriminatory motive.

A discriminatory treatment claim is most likely to concern whether the appraiser took into account: (1) a homeowner or buyer's race or other protected characteristic, or (2) the neighborhood's or location's racial or other protected characteristics, or (3) both.

Evidence of the discriminatory motive may be direct or circumstantial.

Examples of potentially direct evidence:

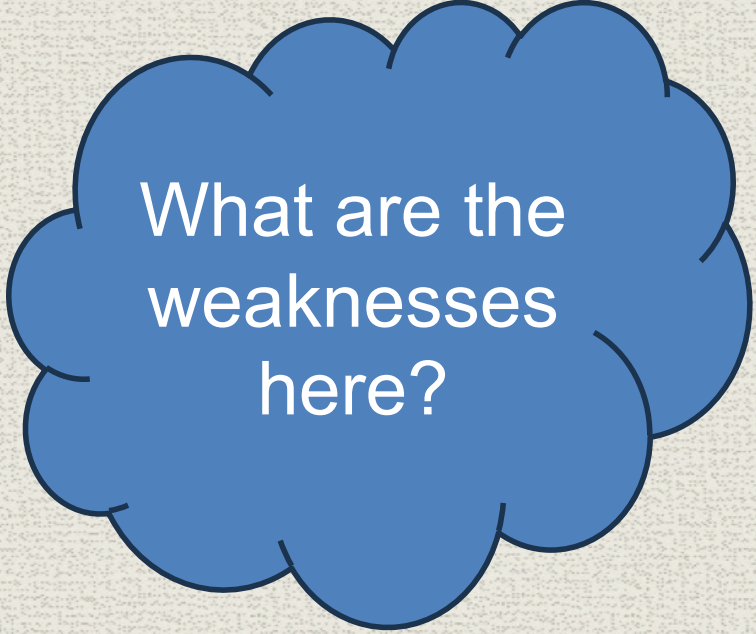
- The appraiser stated they chose comparable sales based on any protected categories.
- The appraiser's report contains overt references to a protected category and those statements are related to the appraiser's conclusions or assignment results (i.e., the remarks are “decisional” – not stray, but “stray remarks” could be taken as circumstantial evidence.
- It's acknowledged that direct evidence is rare. Most cases regarding housing discrimination are based on a “mosaic” of circumstantial evidence.



## Fair Housing Act – Evidence of Discrimination

Here are examples of items commonly cited by fair housing advocates as examples of circumstantial evidence:

- Negative comments about the neighborhood;
- Failure to include positive aspects of a neighborhood or incomplete analysis that overemphasizes negative aspects;
- Failure to follow Fannie Mae guidelines or USPAP standards;
- Failure to follow the defendant company's own established appraisal policies;
- Selection of inappropriate comparable properties;
- Questionable adjustments to comparable property values;
- Alternative appraisals estimating a higher value;
- Errors or sloppiness in the appraisal report;
- Differences in appraised values before and after a homeowner removes evidence of their race; and
- Pre-lawsuit communications or conduct.



What are the weaknesses here?

\* See Abraham, *Appraisal Discrimination: Five Lessons for Litigators*, p.29.



## **Section 2 – Specific Discrimination Issues in the Development of an Appraisal (USPAP Standard 1 Issues)**



## Let's Start with Accepting Assignments

The Fair Housing Act prohibits discrimination “in making available” an appraisal or other valuation related to housing.

How might an agent/broker, appraiser, or AMC violate that prohibition?

- Declining work on a “certain side” of town.
- Charging more for a valuation in communities of color.
- Having different turn times or service standards.



## Using or Relying on Data relating to Protected Characteristics

It is not permissible for an appraiser or agent/broker to base an opinion of value or price on race, color, religion, national origin, sex, disability, or familial status under the Fair Housing Act.

This prohibition includes not only the protected characteristics of individual people, but also the protected characteristic people residing or associated with geographic areas such as neighborhoods.



## Freddie Mac Study – Pointing to Problems in Appraisal Development Based on Potential Bias

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.



## Freddie Mac Study – Pointing to Problems in Appraisal Development Based on Potential Bias

Freddie Mac's researchers further reported:

- The majority of appraisers reviewed showed an appraisal gap.
- In other words, the appraisal difference issue was not limited to just “a few bad apples,” but rather the majority of appraisers reviewed were more likely to show an appraisal gap for properties in Black or Latino census tracts than for properties in White census tracts.
- It also found that there were key differences in the selection of comps by appraisers based on the how Black, White or Hispanic an area is.



## Freddie Mac Study: Comps Chosen by Appraisers

### 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%



## Freddie Mac Study: Differences in “appraisal gaps”

### EXHIBIT 1:

#### Appraisal gaps for minority tracts

Appraisals for the purchase of single-family one-unit homes,  
Jan. 1, 2015-Dec. 31, 2020

Property Tract	Count	% Lower Than Contract Price	Gap vs. White
<b>Overall</b>	12,752,779	8.3%	-
<b>White</b>	10,632,616	7.4%	-
<b>Latino [50% -100%]</b>	<b>553,470</b>	<b>15.4%</b>	<b>8.0%</b>
Latino [50%-80%]	443,218	15.0%	7.7%
Latino [80%-100%]	110,252	16.7%	9.4%
<b>Black [50%-100%]</b>	<b>373,747</b>	<b>12.5%</b>	<b>5.2%</b>
Black [50%-80%]	245,428	12.1%	4.8%
Black [80%-100%]	128,319	13.3%	5.9%



## Freddie Mac Study: Differences in “appraisal gaps”

### EXHIBIT 2:

#### Appraisal gaps for minority applicants

Appraisals for the purchase of single-family one-unit homes,  
Jan. 1, 2016-Dec. 31, 2020

Race/Ethnicity Applicants	Count	% Lower Than Contract Price	Gap vs. White
Overall	1,711,961	7.1%	-
White	1,043,557	6.5%	-
Latino	155,965	9.5%	2.9%
Black	73,287	8.6%	2.1%



## Importance of Documenting Sources in Relation to Issues Concerning Alleged Bias

A frequent complaint registered against appraisers in connection with allegations of bias is that the appraiser made qualitative or discretionary decisions with regard to actual data. The concern here is that potential bias (implicit or explicit) may creep into such judgments.

- A key step appraisal development, to allay concerns about such alleged bias, is therefore the careful use of data in supporting determinations.
- Vitally important is the appraiser's documentation of the selection of their comparable sales.
- For a defensible appraisal, an appraiser's workfile to contain details of the comparable sales selection process.
- USPAP FAQ 82 – Contents of a Workfile: - Workfile must include:

“all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such other data, information, and documentation.”



## **Section 3 – Alleged Discrimination Issues in the Reporting of an Appraisal (USPAP Standard 2)**

In this section, we'll look at appraisal reporting issues.

- How have appraisers found themselves under investigation for alleged bias and discrimination issues as a result of the content in their reports?
- What guidance is being given to appraisers by organizations such as the CFPB, Fannie Mae, Freddie Mac, HUD and VA?



## Let's Start with the Revised Guidance in the 2024 Version of USPAP

- We've covered the revised Ethics Rule with its new discrimination section.
- Let's talk briefly about new Advisory Opinions.
- Advisory Opinion 39, *Antidiscrimination*. This Advisory Opinion provides guidance on the new Nondiscrimination section of the ETHICS RULE.
- Advisory Opinion 40, *Antidiscrimination and the Research, Analysis, and Reporting of Location Data, including Demographics, for Residential Real Property Appraisal Assignments* to provide guidance on the new Nondiscrimination section of the ETHICS RULE.



# Federal Housing Finance Agency (FHFA) Study



The screenshot shows the FHFA website header with the agency logo and navigation links: About Us, Supervision & Regulation, Conservatorship, Data & Tools, Policy, Programs & Research, and More. Below the header, the 'FHFA INSIGHTS' section is visible on the left, with links to Releases, Speeches, Testimonies, Statements, Fact Sheets, FAQs, FHFA Stats Blog, FHFA Insights Blog, and Public Engagements. The main content area displays a blog post titled 'Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary' with a breadcrumb trail: Home / Media / Blog / Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary. The post is dated 12/14/2021 and includes a 'Key Takeaways' section with three bullet points.

**FHFA INSIGHTS**

Releases  
Speeches  
Testimonies  
Statements  
Fact Sheets  
FAQs  
FHFA Stats Blog  
FHFA Insights Blog  
Public Engagements

Home / Media / Blog / [Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary](#)

## Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary

Published: 12/14/2021

*Key Takeaways*

- Examples of overt references to race, ethnicity, and other prohibited bases under federal fair lending laws in appraisals and other property descriptions persist, indicating the continued presence of valuation bias.
- Ongoing failure to address appraiser consideration of prohibited factors like race, as indicated by prohibited basis commentary within the free-text form fields of appraisals, may result in valuation bias.
- Market participants must ensure that appraisals and other property valuations are compliant with fair lending principles, including in free-form text commentary. Appraisals are to be fair and free of bias, providing a supported value for a family's future or current home that reflects respect and equal treatment of the community and neighborhood in which the home is located.

## *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.<sup>[3]</sup>

Coordinates:  34°47′10″N 91°44′41″W

<b>Carlisle, Arkansas</b>
City
Motto(s): "Land here"


**Contents** [\[hide\]](#)

- Geography
- Demography
  - 2010
  - 2000
- Education
- Notable people
- References
- External links

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

As of the [census](#)<sup>[9]</sup> 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/km<sup>2</sup>). There were 1,029 housing units at an average density of 210.7 per square mile (81.4/km<sup>2</sup>). 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.

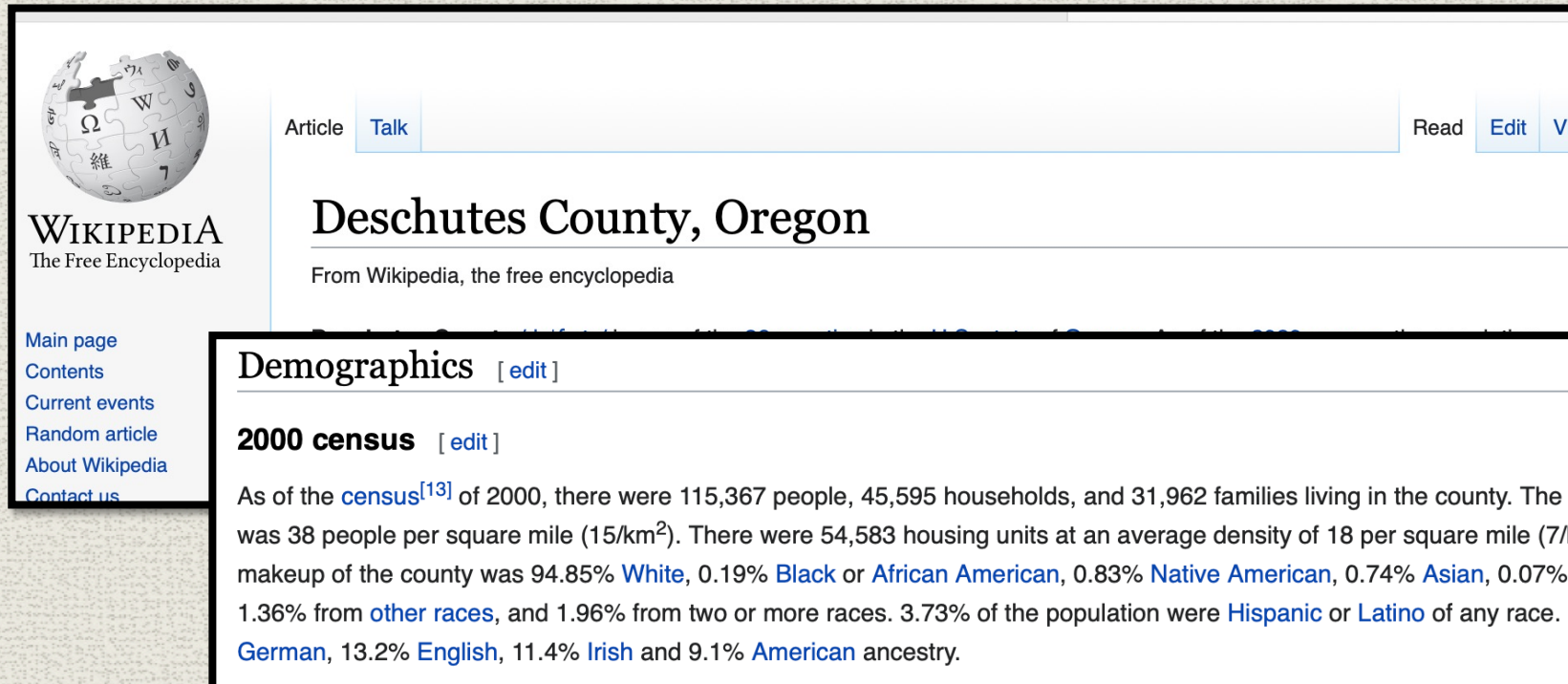


# Where Did These Descriptions Come From?

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 title and content on the right. The 'Demographics' section is highlighted, showing the '2000 census' data. The text in the census section matches the problematic text from the appraisal report shown in the slide above.

**WIKIPEDIA**  
The Free Encyclopedia

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[Current events](#)  
[Random article](#)  
[About Wikipedia](#)  
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Article [Talk](#) [Read](#) [Edit](#) [View history](#)

## Deschutes County, Oregon

From Wikipedia, the free encyclopedia

### Demographics [\[ edit \]](#)

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

As of the [census](#)<sup>[13]</sup> 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/km<sup>2</sup>). There were 54,583 housing units at an average density of 18 per square mile (7/km<sup>2</sup>). 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.



## What Has the CFPB Said about this Issue?

In a February 4, 2022, post on its website, the Consumer Financial Protection Bureau (CFPB) wrote: "The CFPB is deeply troubled by the discriminatory statements the Federal Housing Finance Agency recently identified in some home appraisals, and the appraisal disparities for communities and borrowers of color recently found in both Freddie Mac and Fannie Mae studies."

The CFPB followed up that post with a news release on March 23, 2022 in response to the PAVE report in which it warned that it would be: "We will also be taking additional steps through our research, through our supervisory examinations of financial institutions and their service providers, and through law enforcement actions."



# Looking for Discriminatory References in Appraisal Reports

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



## 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.”



# Guidance from Freddie Mac – Oct. 5, 2022



[Seller/Service  
Guide](#)

[Guide Home](#) [Seller/Service Relationship](#) [Selling](#) [Servicing](#)  [View All](#) 

5603.4 [< Prev](#) [Next >](#)

## Unacceptable appraisal practices

Effective 10/05/2022

[Guide Home](#) > [Selling](#) > [Series 5000](#)  
[Seller Requirements for Appraiser Inde](#)  
[Appraisal Practices](#)

### Unacceptable appraisal practices

The following are examples of unacceptable appraisal practices. Evidence of any of the practices listed in this section will be a breach of Seller's warranty as to the professional quality of the appraisal.

1. Consideration of the race, color, religion, sex, sexual orientation, gender identity, age, marital status, disability, familial status, exercise of any federally protected civil right, receipt of income derived from any public assistance program, birthplaces of residents at the property or in the neighborhood, national origin of the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property. (See also [Section 1301.2](#) for equal opportunity compliance requirements.)
2. Use of unsupported or subjective terms to assess or rate, such as, but not limited to, "high," "low," "good," "bad," "fair," "poor," "strong," "weak," "rapid," "slow," "fast" or "average" without providing a foundation for analysis and contextual information
3. Incorporating terminology or veiled language that may be code words that could indicate underlying bias that include, but are not limited to, "pride of ownership," "crime-ridden area," "desirable neighborhood or location" or "undesirable neighborhood or location," "gentrified," "preferred community," "up and coming," predominantly Hispanic or Black neighborhood, substantial amount of Black or Hispanic residents at the property, diverse school system, amenities specifically geared to a race, ethnic or religious group or using terms such as Millennials, Generation X or Baby Boomers
4. Inclusion of inaccurate or incomplete data about the subject property, the neighborhood or any comparable sale used in the appraisal analysis



# Guidance from the VA – Reminder about Appraisal Certifications

Veterans Benefits Administration  
Department of Veterans Affairs  
Washington, DC 20420

Circular 26-23-05  
January 18, 2023

## **Oversight of Appraisal Reports to Promote Fair Housing for All Veterans Obtaining Loans Backed by the Department of Veterans Affairs**

1. Purpose. This Circular announces enhanced oversight procedures that will better enable the Department of Veterans Affairs (VA) to identify discriminatory bias in home loan appraisals and act against participants who illegally discriminate based on race, color, national origin, religion, sex (including gender identity and sexual orientation), age, familial status, or disability.

VA reminds all VA Fee Panel appraisers of their certifications on the Fannie Mae Form 1004 URAR3:

*I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.*



## Section 4 – Case Studies

In this section, we'll look at various real-world situations.

The case studies address issues concerning:

- a) Reconsideration of value – at the genesis of many instances of bias/discrimination
- b) Improvement issues
- c) Neighborhood issues
- d) External obsolescence
- e) Conscious and Unconscious bias



# Case # 1: HUD Complaint Settlement

## March 8, 2021



UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### TITLE VIII

#### CONCILIATION AGREEMENT

Between

**Redacted Name**  
(Complainant)

and

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

### G. RELIEF IN THE PUBLIC INTEREST

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

requiremen  
Chase will  
providing

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

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

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



# HUD Complaint Settlement

## March 8, 2021

### F. RELIEF FOR COMPLAINANT

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



UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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**Redacted Name**  
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and

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

## What's the takeaway?

## Reconsiderations of value.



## 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.”



## Case #2: Another Commonality – Plain Errors and Oversights Contribute to Fair Housing Claims

### “Improvement Issues”

One of the most common trait of appraisals in discrimination claims observed by me: basic errors – such as measuring and square footage, lack of care.

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.



## Case #3: 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.
- 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.





## 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.



## Case Study #5: Showing Respect for Homeowners and Borrowers/Occupants

### Allegations from a Maryland case alleging fair housing violations

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.



## Case Study #5: Showing Respect for Homeowners and Borrowers/Occupants

**Allegations from North Carolina case alleging fair housing violations**



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.



# Thank You

Peter Christensen  
**Christensen Law Firm**  
[www.valuationlegal.com](http://www.valuationlegal.com)  
[peter@valuationlegal.com](mailto:peter@valuationlegal.com)