

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

Real Estate Appraiser Continuing Education

Instructor
Peter Christensen

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1

About Peter

Peter Christensen
Attorney-Principal



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I'm an attorney. My legal practice is entirely focused on real estate valuation services. I was for over 10 years general counsel to LIA (www.liability.com) – the Appraisal Institute's endorsed E&O provider.

LIA -- E&O Discount

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

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

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2

www.valuationlegal.com under Resources tab



Presentation Materials

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

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

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

Great Lakes Chapter, Appraisal Institute, CE Seminar "Liability Issues for Appraisers Performing Litigation and Other Non-Lending Work," September 10, 2020

3

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

| | | |
|----|--------------------------------------------|--|
| 1 | JOEL K. LIBERSON (SBN: 164857) | |
| 2 | JASON N. WOLFORD (SBN: 194177) | |
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| 4 | 660 Market Street, 5 th Floor | |
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| 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 | | |
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| 17 | | |
| 18 | | |

Superior Court of California
County of Butte
APR 23 2010
Kathleen Hensel, Clerk
Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF BUTTE

BY FAX
C 10-01879

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.

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.

4

Captain Sullenberger's Key Allegations

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.

**What
would be
the
appraiser's
key
point of
defense?**

5

Wait ... What's the Statute of Limitations?

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11 LORRAINE SULLENBERGER
12
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16
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18

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also from a lack of fiduciary responsibility on the part of the other real estate
professionals involved in the transaction.

**The Sullenbergers purchased the
property in 2002.**

They filed their lawsuit 8 years later!

**What's the statute of limitations for a
professional negligence claim against
an appraiser in Kansas?**

6

Statute of Limitations Chart Link

www.valuationlegal.com/limitations/

| State | Years | Does a "discovery rule" potentially apply to a professional negligence claim against an appraiser? | | | |
|---------------|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|-----------------------------------------|
| 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 with a 3-year statute of repose effective 1/1/20 | Yes; however, effective 1/1/20, 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 | 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 |
| Mississippi | Earlier of 3 years after discovery or 5 years after intended user relies on appraisal | Yes, but subject to maximum time period of 5 years after intended user relies on appraisal | | | Miss. Code Ann. § 15-1-49 and § 15-1-83 |
| Missouri | 5 | Yes | | | Mo. Ann. Stat. § 516.120 |
| Alabama | 2 | No, unless fraud. | | | |
| Alaska | 2 | Yes | | | |
| Arizona | 2 | Yes | | | |
| Arkansas | 3 | No. Arkansas has adopted an appraiser-specific statute of limitations with no discovery rule, unless the claim is for intentional fraud. | | | |
| California | 2 | Yes | | | |
| Colorado | 2 | Yes | | | |
| Connecticut | 2 | Yes | | | |
| Delaware | 3 | Yes | | | |
| Florida | 2, for claims by clients | Yes, for claims by clients or those in "privity" with appraiser. For claims by other parties, the limitations period is 4 years with no discovery rule. | | | |
| Georgia | 4 | The limitations time period and whether a discovery rule applies for negligence claims against appraisers in Georgia has not been definitively determined. | | | |

7

Where Are We Going?

- We're going to talk about a variety of legal situations, cases and laws pertaining to appraisers and appraisal firms.
- We'll see what we can learn from each of them.
- We'll start with an introduction to the basic legal elements of a professional negligence claim – the most common legal claim against appraisers.

8

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

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

What Is a Professional Negligence Claim?

The key legal elements of an appraisal negligence claim are:

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

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9

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

Law in most states:

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

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

10

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

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

11

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

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

12

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

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

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

13

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

Takeaways:

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

14

The Appraiser's Most Common Actual Mistake

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

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

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

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

15

Most Common Mistake: Miami Appraiser Sued - The House is Not as Big as He Reported (Filed June 5, 2020)



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

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

16

**Most Common Mistake:
Miami Appraiser Sued - The
House is Not as Big as He
Reported
(Filed June 5, 2020)**



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

17

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.

18

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

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

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

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

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

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

19

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



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

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

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

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

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

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

20

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

What happened in the case?

Takeaways:

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

21

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

Takeaways:

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

22

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

Key language for residential lending appraisal reports:

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

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

23

What's the "Biggest" Appraiser Liability Case in the History of the Universe? How Did it Resolve?

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO | |
| <p>L.J. GIBSON, BEAU BLIXSETH; AMY KOENIG, DEAN FRESONKE, VERN JENNINGS, TERRI FROEHLICH, MONIQUE LEFLEUR, and GRIFFEN DEVELOPMENT, LLC, each individually, and on behalf of PROPOSED Plaintiff CLASS Members of Tamarack Resort, Yellowstone Club, Lake Las Vegas and Ginn Sur Mer,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>CREDIT SUISSE AG, a Swiss corporation; CREDIT SUISSE SECURITIES (USA), LLC, a Delaware limited liability company; CREDIT SUISSE FIRST BOSTON, a Delaware limited liability corporation; CREDIT SUISSE CAYMAN ISLAND BRANCH, an entity of unknown type; CUSHMAN & WAKEFIELD, INC., a Delaware corporation and DOES 1 through 100 inclusive,</p> | <p>Case No. 1:10-cv-00001-EJL</p> <p>FIRST AMENDED COMPLAINT</p> <ol style="list-style-type: none"> 1. Racketeer Influenced and Corrupt Organizations Act; 2. Fraud; 3. Negligent Misrepresentation; 4. Breach of Fiduciary Duty; 5. Tortious Interference with Contractual Relations; 6. Unjust Enrichment; and 7. Negligence. 8. Common Law Conspiracy <p>JURY TRIAL DEMANDED</p> |



24

What's the "Biggest" Appraiser Liability Case in the History of the Universe? How Did it Resolve?

Each report stated:

- (1) the intended use of the appraisal is "to assist in internal decision-making purposes regarding potential financing," and
- (2) "intended for use only by the client [Credit Suisse]."

➤ Ruling on negligence claim:

"the court finds neither FIRREA nor USPAP imposed a duty of care on Defendants in favor of Plaintiffs."

25

Slide 26

Review Appraiser Liability Claims

Case example: MAI in California sues another MAI who performed a review that allegedly caused the first appraiser to lose work with the client.

The bank retained defendant ..., another real estate appraiser, to perform a "technical review" of a previously submitted appraisal. . . . The 11-page letter was unrelentingly critical of the appraisal. The letter concluded: "The [appraisal] report, as reviewed, was not considered to comply with the requirements of the Uniform Standards of Appraisal Practice [sic]. This was not considered a credible report. The value conclusions were both inaccurate and misleading. The client is advised that the value conclusion presented in the report of \$4,400,000 was considered substantially overstated, relative to a current date of value or any prospective date of value in October 2006 and should not be relied upon as a basis in loan making decisions.

Is the original appraiser likely to have a successful negligence claim against the review appraiser?

26

Three Separate Cases, Same Takeaway: Trust Your Instincts

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION | |
| FIX & FLIP FINANCING, LLC, a Michigan limited liability company, Plaintiff, | |
| v. | Case No. 2020-cv- [REDACTED] |
| APPRaisal [REDACTED] | CAUSE NO. [REDACTED] |
| SHARESTATES INVESTMENTS, LLC AND PALLASITE REO 2018-1, LLC | |
| v. | IN THE JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS |
| SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT | |
| ACF FINCO I LP, a Delaware limited partnership, Plaintiffs, | Case No. 20STCV37455 |
| v. | COMPLAINT FOR: |
| GREAT AMERICAN GROUP ADVISORY & VALUATION SERVICES, LLC, a California limited liability company, and DOES 1 through 10, inclusive, | (1) NEGLIGENCE; (2) BREACH OF CONTRACT; AND (3) NEGLIGENT MISREPRESENTATION |
| Defendants. | JURY TRIAL DEMANDED |

27

Alternative Lenders = More Risk

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



28

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

- Who owns your appraisal report?
- Gramm Leach Bliley Act
- RESPA
- Do you have any others in mind?

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29

1 Patrick H. Ballew, WSBA No. 16,939 The Honorable Robert H. Whaley
 2 Quinten S. Bowman, WSBA No. 35,064
 3 STRATTON BALLEW PLLC
 4 213 S. 12th Avenue
 5 Yakima, Washington 98902
 6 (509) 453-1319
 7 Attorneys for Plaintiff
 8
 9 UNITED STATES DISTRICT COURT
 10 EASTERN DISTRICT OF WASHINGTON
 11
 12 TIM VINING REAL ESTATE
 13 APPRAISER AND CONSULTANTS,
 14 INC., a Washington corporation,
 15 Plaintiff,
 16 v.
 17 CLARK JENNINGS & ASSOCIATES,
 18 INC., a Washington corporation; STEVE
 19 WEBER, and his marital community;
 20 HENRY JOHNSON, and his marital
 21 community; SCOTT ANDERSON, and his
 22 marital community; and JIM O'CONNOR,
 23 and his marital community,
 24 Defendants.
 25

CAUSE NO. CV-04-3110-RHW
 JUDGMENT

Plaintiff having timely accepted Defendants' Offer of Judgment, and the Offer of Judgment and Plaintiff's Acceptance having been filed by the Plaintiff, it is hereby:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff owns a valid, existing copyright under U.S. Registration No. TX 5-455-482 for the work entitled, *Self-Contained Appraisal Report, A & B Hop*

Who Owns Your Appraisal Report?

1 Farms, Inc., Agricultural Properties, Grant County, Benton, County, and
 2 Walla Walla County, Washington.
 3
 4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
 5 Defendants are permanently enjoined from imitating, copying,
 6 counterfeiting, or making any unauthorized use of Plaintiff's copyrighted
 7 Appraisal Reports, or engaging in any activity constituting an infringement
 8 of Plaintiff's copyrights, or to assist, aid, or abet any other person in copying
 9 or infringing Plaintiff's copyrights.
 10 AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED
 11 that Plaintiff shall have a judgment against the Defendants on all claims and
 12 counterclaims in this action in the total amount of \$50,000.00, inclusive of
 13 costs.
 14 DATED: October 3, 2005.
 15
 16 *Robert H. Whaley*
 17 Clerk of the Court

- Appraisal client was a bank
- 250-page report
- \$20,000 fee
- Appraiser registered copyright (but this is not critical)
- Brokers used parts of report to market and sell the properties
- Summary judgment granted that appraiser held valid copyright to report – questions remained about "implied nonexclusive licenses"

30

Who Owns the Copyrights to an Appraisal Report?

In the appraiser copyright case, the court recognized accepted law that is applied to copyrighted products sold to clients:

“a seller grants a buyer an implied license to use a product for the purpose for which the seller sold it to the buyer.” *Foad Consulting Group, Inc. v. Musil Govan Azzalino*, 270 F.3d 821 (9th Cir. 2001).

This is determined by contract law, not copyright law.

Takeaway = licenses, agreements and contracts relating to ownership of appraisals and their content really matter.

31

Appraisers Grant Wide License Rights in URARs

Current URAR

21. The lender/client may disclose or distribute this appraisal report to: the borrower; ... data collection or reporting services; ...without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media)

Distribute any part, not whole?

What if just your sketch or floorplan were put in MLS?

New URAR

24. The lender/client may disclose or distribute this appraisal report to: the borrower; ... data collection or reporting services; ... Any person or entity who receives this appraisal report in accordance with the foregoing may choose to store, copy, reproduce, analyze, use and distribute this appraisal report in whole or in part in any format for internal or external purposes without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. A person or entity who receives a copy of an appraisal report does not become an intended user, unless the appraiser identifies such person as an intended user. The appraiser and supervisory appraiser (if applicable) shall have no liability for any use of this appraisal report not related to the mortgage finance transaction and related activities for which this appraisal report was prepared.

32

A Bank's Simplified Provisions Regarding Ownership of Reports and "Data" with Appraisal Firms and AMCs – Not Model Language

"Work Material." All reports, data, work product, information, documentation, ideas, concepts, research, plans, schematics and other materials created, performed, prepared or communicated by vendor under this Agreement are "Work Material."

Ownership of Work Material. Bank shall own all Work Material, including all copyrights to Work Material. Work Material shall be deemed "works made for hire" as defined in 17 U.S.C. §101 and §201(b).

Use of Work Material and Confidential Information. Vendor may not use, sell, transfer or disclose Work Material or Confidential Information for any reason other than its performance of services under this Agreement.



Firms and AMCs often sign agreements like these without objection.

33

Agreeing to Provisions Like That Can Conflict with Real World Activities – For Example, with the Use of Platforms and Their Services

Customer [AMC] hereby grants Platform a non-exclusive, worldwide, royalty-free right and license to access and use, the Customer Materials for the purposes of ... development and creation of Aggregate Data.

"Platform IP" is owned by Platform and means ... any Aggregate Data.

Takeaways = lot of conflicts, heads buried in the sand, but no real-world disputes yet.

34

Gramm Leach Bliley Act (GLB) – an Appraiser Privacy Claim



Where contract language mattered in the real world.



35

USPAP Confidentiality Section of Ethics Rule

CONFIDENTIALITY:

...

An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

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

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

...

36

Gramm Leach Bliley Act (GLB)

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

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

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

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

37

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

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

- (h)(1) Financial institution means any institution the business of which is engaging in an activity that is financial in nature or incidental to such financial activities . . .
- (2) Examples of financial institutions are as follows: . . .
- (iii) A personal property or **real estate appraiser is a financial institution** because real and personal property appraisal is a financial activity listed in 12 CFR 225.28(b)(2)(i) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

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

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

* 16 CFR 314.2 Definitions.

38

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

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

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

In appraisal reports, nonpublic personal information would be things like:

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

A "consumer" is a person who has sought or received a single or incidental service from you for personal, family or household purposes.

For lenders, does this conflict with the URAR permissions?

* 16 CFR 314.2 and 16 CFR 314.3.

39

What the AMC Said About Confidentiality in Its Engagement Letter

- 8. Confidentiality.** By accepting this appraisal order, you agree to comply with all federal, state and local laws, rules, regulations and ordinances relating to privacy rights, including the Gramm-Leach-Bliley Act (GLBA). You are expected to practice such security measures as necessary to: Ensure the security and confidentiality of nonpublic personal information of customers and consumers (as defined in GLBA).

So, what happened in the investigation?

Takeaways = ?

40

Real Estate Settlement Procedures Acts (RESPA)?

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

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

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

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

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

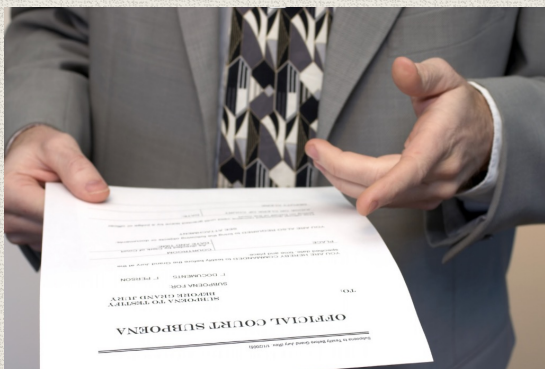
* 12 USC § 2602 and 2607(a); 12 CFR § 1024.2 and 1024.14.

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41

A Process Server is Knocking at Your Door

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



42

Handling a Subpoena

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

43

USPAP Confidentiality

USPAP's Ethics Rule re Confidentiality

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

44

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

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

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

45

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

46

3 Pieces of Bad Advice From the Internet

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

47

How to Turn a Potential Claim into an Actual Claim Part 1 – Chase “Quality Review” Letter

Dear Appraiser:

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

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

48

How to Turn a Potential Claim into an Actual Claim

Part 2 – The Appraiser's "Appeal"

"Dear Appraisal Panel,

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

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

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

49

Among the Worst Risk Management Advice I've Ever Heard

"I put all my assets in my wife's name"

50

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

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

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

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51

Appraiser's Divorce Assignment Goes South

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

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52

Appraiser's Divorce Assignment Goes South

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

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Appraiser's Divorce Assignment Goes South

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

Are appraisers legally required to carry E&O insurance?

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

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54

The Appraiser Board's Findings re Appraisal of Home



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

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Appraiser's Divorce Assignment Goes South

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

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Appraiser's Divorce Assignment Goes South

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

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57

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

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

Let's find out . . .

58

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

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

59

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

Facts of the Case (Cont'd)

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

60

Appraiser Liability Claims

Remember the Elements of a Professional Negligence Claim

The key legal elements of a negligence claim:

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

61

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

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

The case in New Hampshire makes this point.

Legal outcome of the case in New Hampshire:

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

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

Provencher v. Buzzell-Plourde Assoc., NH Supreme Court 1998

62

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

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

63

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.

64

Do Appraisers' Limitations of Liability Work?

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

65

Do Appraisers' Limitations of Liability Work?

- The signed engagement letter had a relevant provision:

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

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

66

Do Appraisers' Limitations of Liability Work?

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

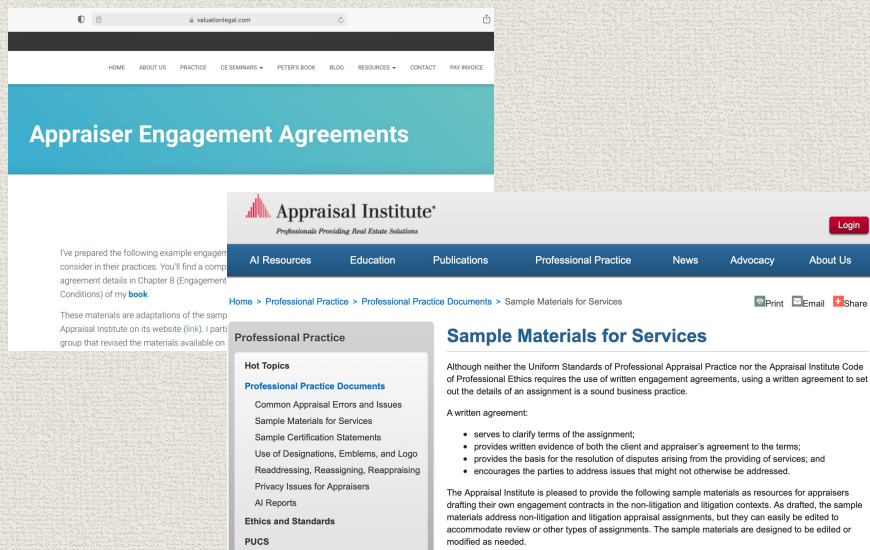
67

Do Appraisers' Limitations of Liability Work?

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

68

Engagement Letters Really Work



69

Some Example Provisions

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

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

70

A Separate Agreement for Expert Witness Work

Re:

[Name of matter or case]

Dear [Attorney]:

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

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

71

71

A Separate Agreement for Expert Witness Work

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

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

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

72

72

Current Legal Claims Regarding Alleged Appraisal Bias and Discrimination

73



**Would this narrative
in the appraisal report
violate the federal Fair
Housing Act?**



Insurrection broke at the the U.S. Capitol on 01/06/2021 between Trump troglodytes and an overwhelmed U.S. Capitol Police force. The Capitol was breached by a lynch mob, who had constructed a scaffold outside, intent upon hanging the vice president (who was engaged in his constitutional duty of certifying the vote) and anyone else to whom they took a disliking. You can't make this stuff up. Before law enforcement could take control of the situation, over 140 officers were injured and multiple deaths occurred. By all accounts, the president enjoyed watching events unfold on television. Eventually, a Select Committee of the House of Representatives was formed with the barest of Republican support (Liz Cheney and Adam Kinzinger) to investigate the January 6th Attack on the United States Capitol. The rapid response Justice Department, a year later, charged 11 members of the far-right Oath Keepers militia group with sedition, including John Wilkes Boothe wannabes, Thomas Caldwell and Stuart Rhodes who allegedly planned to ferry munitions across the Potomac River as part of operations. Chances are, we will not go down in history as America's greatest generation.

74

Let's Use a Real Case to Learn About the Key Laws

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14 Attorneys for Plaintiffs

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 TENISHA TATE-AUSTIN; PAUL
 18 AUSTIN; and FAIR HOUSING
 19 ADVOCATES OF NORTHERN
 20 CALIFORNIA,
 21 Plaintiffs,

Case No.
 COMPLAINT FOR INJUNCTIVE,
 DECLARATORY, AND MONETARY
 RELIEF; JURY TRIAL DEMAND

v.
 JANETTE C. MILLER; MILLER AND
 PEROTTI REAL ESTATE APPRAISALS,
 INC.; AMC LINKS LLC;
 Defendants.

- Tenisha Tate-Austin and Paul Austin, who are Black, purchased a house in a community called Marin City in Marin County, California in 2016. Marin City has a Sausalito mailing address and shares the same school district.
- Marin County's population is approximately 70% White ("non-Latino White"), 3% Black, 7% Asian and 17% Latino.
- Historically, a large portion of the Black population lives in Marin City (partly, because of former racially restrictive covenants in other areas of the county).

75

We'll Use a Real Case to Learn About the Key Laws



- Marin City was about 36% Black as of 2019 – in contrast, the adjacent City of Sausalito was 92% White and less than 1% Black.
- Marin City has had very few sales transactions in recent years – just 3 in 2019 and 3 in 2018.
- One of the plaintiffs' assertions was:

"The sample size of annual sales is too small to be reliable. Using Marin City sales as the primary source of comps is evidence of racial bias – i.e., that the appraiser believes that Marin City's demographics make it so much less "desirable" than surrounding areas that property in those areas cannot be used as comps."

76

We'll Use a Real Case to Learn About the Key Laws

- After purchasing the home, the Austins undertook extensive remodeling of their home – including the addition of a permitted accessory dwelling unit (ADU).
- In March 2019, they refinanced their mortgage.
- The appraisal for that refinance valued their remodeled, expanded home at \$1,450,000.
- In early 2020, the Austins sought to refinance again because of the decreased interest rates and a desire for additional funding to complete the ADU.



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77

Let's Use a Real Case to Learn About the Key Laws

- The lender engaged an appraiser through an AMC.
- The appraiser inspected the home at the end of January 2020 – while Paul Austin was home. He introduced himself by name as the owner.
- The appraisal reported reported an opinion of value of \$995,000.
- Shocked by that valuation (and after an ROV attempt), the Austins' mortgage broker ordered a second appraisal.

"The subject is located in a neighborhood known as Marin City which has a distinct marketability which differs from the surrounding areas."

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78

We'll Use a Real Case to Learn About the Key Laws

- Before the second appraiser's inspection, the Austins "white-washed" their home and then had a White friend greet the appraiser.
- That inspection took place on February 15, 2020.
- The second appraiser's opinion of value was \$1,482,500.

necessary to use comparable sales which sold in excess of 12 months and to use sales which were located in on the east side of 101. The east side of 101 in Sausalito it typically a more desirable location than Marin City and homes tend to sell higher. Therefore location adjustments were made. This adjustment is was determined through paired sales analysis and the appraiser's knowledge of the market area. The subject is also improved with ADU and due to low turnover of comparable sales with an ADU it

Does either of the appraisers' phrases "distinct marketability" or "desirable location" violate the Fair Housing Act?

79

Let's Use a Real Case to Learn About the Key Laws

In their court complaint against the appraiser and AMC, the Austins alleged the following indicia of race being a "motivating factor" in the first appraiser's lower valuation:

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.

80

Let's Use a Real Case to Learn About the Key Laws

What were the primary legal claims in Austin v. Miller?

- Fair Housing Act
- Civil Rights Act of 1866 (42 U.S.C. 1981 and 1982)
- California Fair Employment and Housing Act
- Negligent Misrepresentation

What potentially relevant claim is not on the list?
Equal Credit Opportunity Act (ECOA).

81

Fair Housing Act, Section 3605(a)

- Section 3605(a) is perhaps the key section of the federal Fair Housing Act pertaining to appraisal services and reads:

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

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

82

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.

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83

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.

84

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.

85

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.

86

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).

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87

Equal Credit Opportunity Act

A second key law often referred to in the context of alleged appraisal discrimination is the federal **Equal Credit Opportunity Act (ECOA)**, which 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.)

- ECOA is not limited to residential; it applies to commercial lending as well.

Robinson v. JPMorgan Chase Bank, No. CV-22-00687-PHX-SMB (D. Ariz. July 14, 2023) (dismissing ECOA claim against appraiser because he was not a creditor).

88

The Legal Side of Alleged Discrimination in Appraising – Key Laws

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.”



How many appraisers have been sued for discrimination since 2020?

Fair Housing Claims/Investigations

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

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

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91

Slide 92

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.
- 200+ 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.

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92

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]
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.

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93

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 trail 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 | | 9/25/2023 |
| Read the Charge | | |
| HUD Charges Landlord with Disability Discrimination | | 9/18/2023 |
| Read the Charge | | |
| HUD Charges Nevada RV Resort with Discriminating Against Family with Minor Children | | 9/14/2023 |
| Read the Charge | | |

Observations:

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

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94

HUD Update – Charge of Discrimination Issued

- On July 15, 2024, HUD issued its first appraisal-related charge of discrimination in, at least, the last 10 years.
- It names an appraiser, his firm, an AMC and a lender – Rocket Mortgage.
- The significance of the issuance of a charge is that means HUD has determined after investigating that reasonable cause exists to conclude that discrimination has occurred in violation of the Fair Housing Act.
- The underlying complaint was filed in April 2021 with a state agency by a borrower in Denver; HUD took over handling the investigation in June 2021.

www.valuationlegal.com/bias

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

| | |
|------------------------------------------------------------------------------------------------------------------|-----------------------|
| The Secretary, United States Department of Housing and Urban Development, on behalf of Valuation Legal | HUDOHA No. |
| Charging Party | FHEO No. 08-21-3530-8 |
| v. | |
| Makym Mykhailyna, Maverick Appraisal Group, Solidifi U.S. Inc., and Rocket Mortgage Fk/a Quicken Loans, LLC | |
| Respondents | |

CHARGE OF DISCRIMINATION

I. JURISDICTION

Complainant **Valuation Legal**, who is Black, alleges that Respondents Makym Mykhailyna; Maverick Appraisal Group; Solidifi U.S., Inc. ("Solidifi"); and Rocket Mortgage, LLC f/a Quicken Loans, LLC ("Rocket Mortgage") discriminated against her on the basis of race and color in violation of the Fair Housing Act ("the Act"), 42 U.S.C. §§ 3601-3619. Specifically, **Valuation Legal** alleges that Mr. Mykhailyna undervalued her property when he appraised it because she is Black and that Maverick Appraisal Group, Solidifi, and Rocket Mortgage bear responsibility for the discriminatory appraisal for bringing it about and giving it effect, in violation of subsection 804(b) and section 805 of the Act. She also alleges that Rocket Mortgage violated section 818 of the Act by terminating her refinance loan application after insisting she could only proceed with it based on the appraised value that she alleged was discriminatory.

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95

HUD Update – Charge of Discrimination Issued


- The borrower, who is Black and lives in a predominantly White area, alleges that the valuation of her duplex was low based on her race.
- Some of the alleged indicia of discrimination include:
 - The appraiser's use of comparables from areas of higher Black population when the appraiser allegedly used comparables from more White areas in other appraisals of nearby properties owned by White persons;
 - Valuing the property substantially lower than other appraisers in earlier appraisals;
 - "Incorrectly associat[ing] the Subject Property ... with a local school that had a higher concentration of Black students" but not making that mistake for appraisals of White-owned homes in the same area.
- With regard to Rocket Mortgage, a separate claim in the Charge alleges that Rocket Mortgage violated the Fair Housing Act's prohibitions against retaliation for reporting a discriminatory housing practice (42 U.S.C. § 3617). This legal allegation stems from Rocket Mortgage's alleged failure to appropriately handle the borrower's concerns about the appraisal and its denial of her loan.

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96

What About Court Actions Since 2020 Involving Alleged Appraisal Discrimination

My slide
from the
FHFA's
Summit in
Feb. 2024



FHFA Valuation Modernization Summit



"Only" 10 Court Cases 2020-24

Beneath the Surface:

- Non-Public Resolutions
- Fair Housing Organization Investigations
- HUD Investigations to be Resolved
- CFPB Investigations

Observations Regarding Court Cases

- 10+/- cases alleging discriminatory appraisals filed since 2020
- 9 name individual appraisers – none of these involve purchase loans
- 1 case is commercial
- 8 cases name lenders, 2 name AMCs
- 3 cases have borrowers representing themselves (pro se)
- 6 cases are still pending, 3 have settled, 1 was dismissed
- 0 have reached any decision on the merits

February 14, 2024 | Washington, D.C.

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97

What About Court Actions Since 2020 Involving Alleged Appraisal Discrimination

Example real cases for you to consider:

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

The following materials are for discussion in connection with the CE class **Elimination of Bias and Developing Cultural Competency – with Real World Relevance.**

Turner v. Henley Appraisals, US Bank, Fair Housing Complaint, 12-14-23

Download

Tisdale v. Commercial Property Appraisers LLC, Compliant Alleging Discrimination re Commercial Appraisal, 12-4-23

Download

Austin v. Miller, AMC Links, Fair Housing Complaint, 12-2-21

Download

4 appraisals
attached to
complaint

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98

It's Not Just About Low Values

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



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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.
- 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.

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100

Reducing the Risk of Discrimination Claims

Key Items to consider:

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

From a recent HUD racial bias complaint:

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

Federal Housing Finance Agency (FHFA) Study

The screenshot shows the FHFA Insights page. The header includes the FHFA logo and navigation links: About Us, Supervision & Regulation, Conservatorship, Data & Tools, Policy, Programs & Research, and More. The main content area is titled 'FHFA INSIGHTS' and features a sidebar with links to Releases, Speeches, Testimonies, Statements, Fact Sheets, FAQs, FHFA Stats Blog, FHFA Insights Blog, and Public Engagements. The main article is titled 'Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary', published on 12/14/2021. It includes a 'Key Takeaways' section with three bullet points: 1) 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. 2) 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. 3) 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.

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103

Federal Housing Finance Agency (FHFA) Study

Examples of problematic words and phrases found in appraisal reports:

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

➤ Where did this come from?

Carlisle, Arkansas

From Wikipedia, the free encyclopedia

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

Contents [hide]

1 Geography

2 Demographics

2.1 2010

2.2 2000

3 Education

4 Notable people

5 References


6 External links

Coordinates: 34°47′10″N 91°44′41″W

Carlisle, Arkansas

City

Motto(s): "Land here"



2000 census [[edit](#)]

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

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104

52

Other Commonalities in Fair Housing Claims

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



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105

Showing Respect for the Borrowers/Occupants

Allegations from a Maryland case against an appraiser

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

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106

Showing Respect for the Borrowers/Occupants

Allegations from North Carolina case against an appraiser



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.

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107

Quick Liability Prevention Tips

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

108

Thank You

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