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Appraiser Liability Claims
What Is 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 failing to report something that peer appraisers would have reported.
- Reliance by the plaintiff on the appraiser's work.
- Actual damages to the plaintiff.

Who is Peter?

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

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Who Sues Appraisers Most Frequently?

Who sues appraisers who perform appraisals for loans most frequently?

Presently, it's the borrower about 60% of the time – which will get me to one of my most important suggestions for preventing liability for most types of claims. This can shift somewhat to lenders when mortgage defaults increase.

How Are Lawsuit Claims Against Appraisers Currently?

- Infrequent, as a result of very low default rates on mortgages for the last 8 years and continuously rising real estate prices.
- Perhaps a slight recent increase because of financial circumstances relating to COVID.
- But keep this is mind: It's appraisals performed at or near the peak of markets that become the subject of claims years later.
  - Watch for complacency.

Who Else Sues Appraisers?

- Borrowers/purchasers (>60% currently)
- Lenders (small v. big, bank v. alternative lenders)
- FDIC
- Sellers
- Other parties
  - Real estate agents and brokers
  - Other appraisers
  - Litigants (expert work)
  - Random third parties
- Very few AMCs

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

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

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

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

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Miami Appraiser Sued
The House is Not as Big as He Reported

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

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

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

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Miami Appraiser Sued
The House is Not as Big as He Reported

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

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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.

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Case #1 – Miami Appraiser Sued
The House is Not as Big as He Reported

Takeaways:

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

WA Case re Appraiser Liability to Third Parties – Schaaf v. Highfield

*27 We conclude that a third party in Washington may state a claim for negligent misrepresentation against a real estate **appraiser** pursuant to RESTATEMENT (SECOND) OF TORTS § 552. The liability of a real estate **appraiser** in these circumstances extends only to those involved in the transaction that triggered the appraisal report, including, but not necessarily limited to, the buyer and the seller. We leave defining the precise scope of the **appraiser's** duty of care to a factual determination by a future trial court.[7] We hold that **Schaaf** stated a cause of action, pursuant to § 552, against Olson for allegedly rendering a negligent appraisal.

But No Reliance

In his verified complaint,[13] **Schaaf** stated that he "offered the lower price because the house was 16 years old and [he] thought the house would need a new roof". Clerk's Papers, at 3. As **Schaaf** already knew *before* he bought the house that it needed a new roof, he simply cannot blame the **appraiser** for failing to report the roof needed repair.

Even more compelling evidence that **Schaaf** did not rely on the **appraiser's** report is his admission in a letter that he did not even see the appraisal report until some time after April 1991, more than a year *after* he bought the *31 house. Clerk's Papers, at 70. Thus, he could not possibly have directly relied on the report at the time of purchase. *Accord* Hughes v. Holt, 140 Vt. 38, 40-41, 435 A.2d 687, 688-89 (1981) (no reliance where plaintiff did not see appraisal report before closing); *but see* Costa v. Neimon, 123 Wis.2d 410, 416, 366 N.W.2d 896, 900 (Ct. App. 1985) (reliance on appraisal report inferred from VA's acceptance of the loan amount). There was no direct contact between **Schaaf** and Olson other than the report. Clerk's Papers, at 34. While a third party may state a cause of action against a real estate **appraiser** in the appropriate factual setting, **Schaaf** failed to prove a case as he did not rely on Olson's appraisal report. We affirm the trial court's summary judgment.

RockRock Group v. Value Logic, WA Court of Appeal Opinion Published July 7, 2016

- **The reports contained the following limitations:**

This report is prepared for the sole use and benefit of the client . . . . Neither this report, nor any of the information contained herein shall be used or relied upon for any purpose by any person or entity other than the client. The appraiser is not responsible for the unauthorized use of this report.

The liability of [Value Logic] is limited to the client only and only up to the amount of the fee actually received for the assignment. Further, there is no accountability, obligation, or liability to any third party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions.

RockRock Group v. Value Logic, WA Court of Appeal Opinion Published July 7, 2016

RockRock Group v. Value Logic, WA Court of Appeal Opinion Published July 7, 2016

- **The reports contained the following limitations:**

Without prior written approval from the author, the use of this report is limited to internal decision making and financing. All other uses are expressly prohibited. Reliance on this report by anyone other than the client, [or] for a purpose not set forth above, is prohibited. The author's responsibility is limited to the client.

Recent Commercial Appraiser Liability Case: RockRock Group v. Value Logic, WA Court of Appeals Opinion Published July 7, 2016

- In mid-2006, a real estate developer had two adjacent properties near Spokane under contract for $475,000 and $300,000.
- One property was 51 acres; the other was 39 acres.
- Both were zoned partially "light industrial" and partially "rural traditional" (a classification permitting minimal use).
- The developer was seeking to flip the properties to other investors.
- LLCs were formed through which the purchases would be made with financing from RiverBank.
- RiverBank engaged Value Logic to appraise the properties – the fees paid were $3,000 and $2,000.
- The appraisals, delivered in October 2006, valued the properties at **$4,500,000** and **$4,250,000**.

RockRock Group v. Value Logic, WA Court of Appeal Opinion Published July 7, 2016

- The developer received copies of the appraisals and showed them to prospective investors.
- Some of the investors received copies.
- The developer's pitch was that the investor LLCs would be able to flip their interests quickly – the investors purportedly did not know that the developer had the properties under contract for far less than they were paying.
- Statements were made by the developer to investors such as: "*with the appraisals I got . . . an idiot could get into these properties and make a quarter million dollars.*"

RockRock Group v. Value Logic, WA Court of Appeal Opinion Published July 7, 2016

- The investor LLCs – one named RockRock Group and the other RussellRock Group – purchased 75% interests in the properties.
- RockRock paid $1.8m for its interest in the 53-acre property; RussellRock paid $1.63m for its interest in the smaller property.
- RiverBank financed the purchases based on the appraisals and with personal guarantees from the investors in each LLC.
- After acquiring their interests, RockRock and RussellRock were not successful in re-flipping the properties themselves. The market tanked almost immediately after the purchases were complete.
- In 2009, payments came due on the loans, defaults occurred, and the investors were called on their guarantees.

The Rulings Point to the Key to Winning a Majority of Negligence Cases

Using precise, narrow descriptions of intended use and user.

RockRock Group v. Value Logic, WA Court of Appeal Opinion Published July 7, 2016

- In 2009, a review appraiser for the bank found the original appraiser had overvalued the properties by applying a value per square to the entire properties based on "light commercial" zoning.
- Another appraiser valued the properties at $1,220,000 and $520,000.
- In 2011, RockRock and RussellRock sued Value Logic, LLC and its two appraisers.
- The gravamen of the complaint was that Value Logic negligently overvalued the properties in 2006 and that the LLCs would not have completed the purchases but for the overstated values.
- The primary theory was **negligence**.
- The damages demanded by the plaintiffs exceeded $5,000,000.

What About Residential Lending on the 1004?

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.

RockRock Group v. Value Logic, WA Court of Appeal Opinion Published July 7, 2016

- Value Logic moved for summary judgment, which was **granted** by the trial court on the basis that Value Logic did not owe the investors a legal duty. The WA Court of Appeals affirmed the judgment.
- Why? That good language in the appraisal reports (not contradicted by anything in the engagement agreements or by other evidence).

[redacted] as evidenced by the reports, Value Logic did not intend for anyone other than RiverBank to be guided by the reports—the reports define RiverBank as the client, state they were prepared for RiverBank's sole use and benefit, prohibit any person other than RiverBank from using or relying on them, and state the appraisals were confidential between Value Logic and RiverBank.

My Risk Management Suggestion for Residential Appraisers Regarding the 1004?

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.

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Let's Apply That What We Just Learned to Another Real Appraiser Claim Situation

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

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

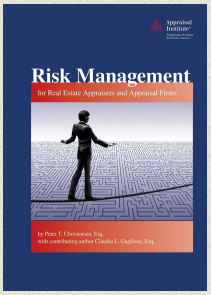
- From the petition for review:

"[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.

Slide 26

Contest for a "prize"



You must be conscious and alert to win!

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

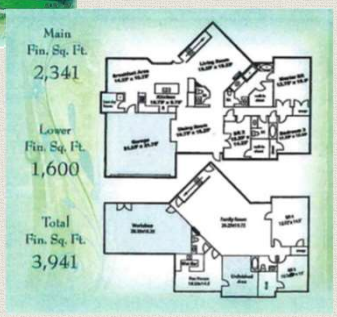
- More than 10 years later, the owners of two of the houses hired real estate brokerages to help them sell their homes.
- One brokerage hired a contractor to measure and produce a computer-aided drawing of the home's floor plan. The other brokerage had one of its agents measure the home's dimensions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

Do Appraiser Floor Plans Violate Copyright Law?

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

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

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.

- 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.

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.
- Last summer, however, the Eighth Circuit Court of Appeals reversed that dismissal, finding the opposite – that the exemption did not apply to floor plans.

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.

- If the Supreme Court does not accept review and does not reverse the Eight Circuit's opinion, things will likely get a lot more confusing and difficult in connection with the creation and use of floor plans by agents and brokers, appraisers – and really any profession or business that engages in similar practices, such as property insurance or tax assessment.
- The defendants seeking review have pointed out that "the social costs of the Eighth Circuit's interpretation of the Copyright Act are enormous."
- Focusing onbrokers and agents, the defendants' attorneys contend in the petition for writ of certiorari that the challenged appellate court decision will expose "hundreds of thousands of real estate companies and agents to suits for millions of prior advertisements featuring floor plans, each potentially resulting in a judgment of hundreds of thousands of dollars in statutory damages and attorney's fees."

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

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

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Appraiser's Divorce Assignment Goes Bad

- 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.

Appraisal Language re Measurements and Floorplans?

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.

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Appraiser's Divorce Assignment Goes Bad

- Mistake #2 happens – 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 Bad

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

[redacted], an individual

Plaintiff,

vs.

[redacted], an individual and DOES 1 to 20, inclusive,

Defendants.

Case No.: 19S[redacted]

COMPLAINT FOR:

(1) NEGLIGENCE
(2) NEGLIGENCE MISREPRESENTATION
(3) FRAUD
(4) VIOLATION OF B&P CODE SEC. 17200 ET. SEQ.

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Appraiser's Divorce Assignment Goes Bad

- 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.

BREA Findings re Appraisal of Home

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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));

Where to Find Sample Engagement Letters

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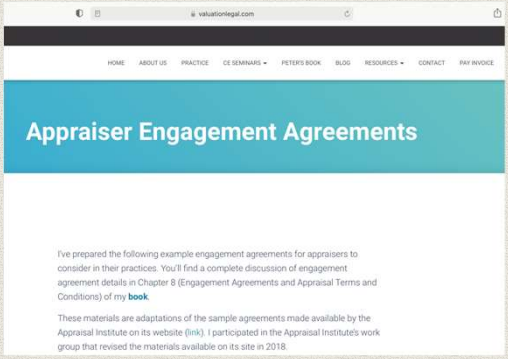

Appraiser's Divorce Assignment Goes Bad

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- BREA 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.

What About that Limitation of Liability? Do Appraisers' Limitations of Liability Work?

- Let's consider a NY case – Stabilis Fund II LLC v. CBRE, Inc., (N.Y. Sup. Ct. 2019).
- Defendant appraised a commercial property in default for a lender pursuant to a written engagement letter in October 2013 shortly before a foreclosure sale.
- The appraisal fee was $2,500.
- The crux of the claim is that the appraiser made a clear error in the report. He failed to include rental income from a 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.
- Lender then sued the appraisal firm for $1.1 million.

Appraiser's Divorce Assignment Goes Bad

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- So, the appraiser is:
  - Having to defense a case at his own expense that is more difficult, expensive to defense because he didn't use good intended user language or an engagement agreement.
- Ultimately he does win. Why? In essence, under California law, an unhappy party on one side of a case can't sue witnesses or other participants in the case, including expert witnesses. (Exceptions exist for suing your own lawyer, your own expert and for malicious prosecution.)
- Lessons – 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.

Do Appraisers' Limitations of Liability Work?

- The signed engagement letter had a relevant provision:

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

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

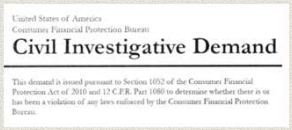
Do Appraisers' Limitations of Liability Work?

- 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."
- Court found: "that [the appraiser] made a calculation error by inserting an incorrect number in a spreadsheet does not constitute intentional wrongdoing."
- Court rules: "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."

the Fair Housing Claim/Investigation

Four Primary Forms of Legal Risk to Appraisers, AMCs and Lenders Relating to Fair Housing 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 and related claims.
4. And now – CFPB investigation.


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.

Do Appraisers' Limitations of Liability Work?

Any use of or reliance on the appraisal by any party, regardless of whether such use or reliance is authorized or known by Appraiser, constitutes acceptance of all appraisal statements, limiting conditions, assumptions, and all other terms and conditions stated in this appraisal report.

Some Historical Perspective on Discrimination Complaints Against Appraisers

From the data of 6,200 claims, court complaints and disciplinary matters involving appraisers in all 50 states from 2002-2018:

- 4 complaints to HUD about allegedly discriminatory appraisals.
- 10 complaints to state agencies, including appraiser boards.
- 2 lawsuits alleging violations of Fair Housing Act or other forms of discrimination.

2020 to the present?

- Far more complaints to HUD and state agencies than in those 16 years. (100+ complaints to HUD.)

But:

- HUD – So far, no charges of discrimination involving appraisals issued 2020 to the present.
- HUD – So far, only one conciliation agreement publicly reported (3-8-21) during this period.
- Still only a few actual lawsuits asserting legal claims.

Fair Housing Claim/Investigation

Two key federal laws:

- The first – and perhaps most common in legal actions relating to discrimination in appraisals – is the **Fair Housing Act (FHA)** enacted as part of the Civil Rights Act of 1968. Applies to appraisers, firms, AMCs, lenders – all parties:

"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 second key law is the **Equal Credit Opportunity Act (ECOA)**, which similarly makes it "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction … on the basis of race, color, religion, national origin, sex or marital status, or age…" (15 U.S.C. § 1691.)

Reducing the Risk of Bias Claims

Key Items to consider:

- Most common trait of appraisals in discrimination claims observed by me: deficient work quality/negligence, lack of true analysis, boilerplate work.
- Pay extra attention to your neighborhood descriptions.
- Most residential situations involving alleged racial bias in 2020-21 began with the ROV process. Non-responsive stances create anger and claims: "The Appraiser's opinion of value stands."
- Take a Fair Housing class, now.

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Reducing the Risk of Bias Claims

- Pay extra attention to your neighborhood descriptions!

"Sobrante Park is a neighborhood located in East Oakland, California, which is partially separated from the rest of the city by two railroad tracks and San Leandro Creek. It was built shortly after World War II, first as a White-Only Lockout and then gradually becoming a White flight red-zone in the mid to late 1950s, and in the early 1960s it became a working-class black neighborhood."

"New Salishan remains one of the regions' neighborhoods most diverse by race, language, national origin, income, homeowner-renter, age, ability and disability."

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Austin v. Miller – Current Case

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TENISHA TATE-AUSTIN; PAUL AUSTIN; and FAIR HOUSING ADVOCATES OF NORTHERN CALIFORNIA,
Plaintiffs,
v.
JANETTE C. MILLER; MILLER AND PEROTTI REAL ESTATE APPRAISALS, INC.; AMC LINKS LLC,

Case No.

COMPLAINT FOR INJUNCTIVE, DECLARATORY, AND MONETARY RELIEF; JURY TRIAL DEMAND

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.

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65. 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. Miller's valuation was influenced by the race of the Austins, or the racial demographics of Marin City, or both, when she undervalued the Pacheco Street House.

66. In the alternative, or in addition, the methods of valuation used by Miller had a disparate impact on African American homeowners or home purchasers based on their race.

67. AMC Links failed to review the Miller Report to ensure that the work was performed in accordance with USPAP standards and was not influenced by race. In the alternative, AMC Links carelessly and incompetently reviewed the Miller Report and failed to detect its breaches of USPAP and other professional norms.

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Austin v. Miller – Current Case

SEVENTH CLAIM FOR RELIEF

[Negligent Misrepresentation]

Cal. Civil Code § 1710

[Plaintiffs Tenisha Tate-Austin and Paul Austin only vs. All Defendants]

102. Plaintiffs reallege and incorporate by reference each paragraph previously alleged in this complaint.

103. Defendants represented to plaintiffs that they were providing an unbiased appraisal of the Pacheco Street House based on all information available and in full compliance with USPAP. Defendants intended for plaintiffs to rely on those representations.

104. Defendants' representations were untrue. Although one or more defendants may have honestly believed that the representations were true, those defendants had no reasonable grounds for believing the representations were true when they made them.

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The U.S. Department of Justice Takes an Interest in the Case

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TENISHA TATE-AUSTIN; PAUL AUSTIN; and FAIR HOUSING ADVOCATES OF NORTHERN CALIFORNIA,
Plaintiffs,
v.
JANETTE C. MILLER; MILLER AND PEROTTI REAL ESTATE APPRAISALS, INC.; AMC LINKS LLC,
Defendants.

CASE NO. 3:21-cv-09319-MMC
STATEMENT OF INTEREST OF THE UNITED STATES
Date: March 25, 2022
Time: 9:00 a.m.
Place: Courtroom 7, 19th Floor
Hon. Maxine M. Chesney

The United States has a strong interest in eradicating housing discrimination, which includes ensuring the correct interpretation and application of the Fair Housing Act ("FHA" or "Act"), 42 U.S.C. §§ 3601 *et seq.*, with respect to appraisal-related claims.

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Thank You

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