

Audio/video will begin at 9:30 a.m.

**California Legal Update**  
**just for Appraisers**



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# California Legal Update Just for Appraisers!

January 31, 2020  
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## Where Is Our California Legal Adventure Taking Us This Morning?

- Cover ~~four~~ three new 2020 California law changes relevant to appraisers (other than AB 5), including the California Consumer Privacy Act.
- Update on Assembly Bill 5– our new independent contractor classification in California.
- Share single-most important thing that appraisers can do in 2020 in every report of every type (whether residential, commercial, lending or non-lending) to avoid liability – based on the great caselaw we have in California.
- Aiming for 45 minutes.



# A Message from Our Sponsor

That would be me.

- ❖ If you're an appraiser in California, please check out "Appraiser Law" on [www.appraiserlaw.com](http://www.appraiserlaw.com). It's my new legal resource for individual appraisers and small firms to bring affordable legal counsel within your reach.
- ❖ I also work for many large appraisal firms, lenders and AMCs – please reach out to me to if you need legal counsel in my niche.
- ❖ Lastly, please also consider signing up for my online CE seminar "Appraiser Liability 101" on [www.valuationeducation.com](http://www.valuationeducation.com). It's 4 hours of appraiser CE approved in CA, OR, WA and HI.



# Three New Laws in California

## #1 California Consumer Privacy Act (CCPA).

Basics of the law: CCPA grants specific new rights to California consumers in regard to certain “businesses”:

- The right to know what personal information is collected, used, shared or sold, both as to the categories and specific pieces of personal information;
- The right to delete personal information held by businesses and by extension, a business’s service provider;
- The right to opt-out of sale of personal information. Consumers are able to direct a business that sells personal information to stop selling that information.
- The right to non-discrimination in terms of price or service when a consumer exercises a privacy right under CCPA.

Under the CCPA, “businesses” are required to give very specific notices to consumers about the information they collect and have clear ways for them (links and phone numbers) to request deletion and opting out.



# #1 California Consumer Privacy Act

Does the CCPA apply to appraisers and AMCs?

The primary parts of the law only apply to certain “businesses.”  
Unlikely that you or your appraisal firm are one of them.

To fall under CCPA, a business must:

- (i) do business in California,
- (ii) collect personal information of California residents (or have such information collected on its behalf),
- (iii) determine “the purpose and means” of processing that information,
- (iv) meet one or more of the following criteria:
  - (i) annual gross revenues in excess of \$25 million, adjusted for inflation;
  - (ii) annually buys, receives for a commercial purpose, sells or shares the personal information of 50,000 or more consumers, households or devices; or
  - (iii) derives 50 percent or more of annual revenues from selling consumers’ personal information.



# #1 California Consumer Privacy Act

What's the impact of CCPA on appraisers (and AMCs) then?

You are most likely "service providers" under the law – which is what you want to be – provided that you are providing your services to a client (e.g., lender or AMC) under a written agreement that contains certain minimum restrictions:

- You can't sell or disclose the information you collect on behalf of the business to a third party.
- You will – within your other legal responsibilities – return or destroy the information when requested by the business.

The businesses you are working for have the direct responsibility for items like consumer notices and responding to consumer requests for deletion.

- As a service provider, you don't need any special notices on your website or in other materials.
- If for some reason, a consumer contacted you to delete information (like an appraisal), you should refer the consumer to lender (or AMC).
- Of course, you should also never misuse the information you collect.



## #2 Expiration of SB 70 and the 2020-21 USPAP Change

Senate Bill 70 was sponsored by the Appraisal Institute, enacted in October 2018, took effect on January 1, 2019, and then promptly expired on January 1, 2020.

What is it?

It amended Business and Professions Code section 11319. This is the part of the California real estate appraiser law that establishes USPAP as a requirement for California appraisers.

The amendment addressed the use of "restricted appraisal reports" under USPAP. It stated:

*"Until January 1, 2020, . . . a licensee shall not be required to comply with provisions of the Uniform Standards of Professional Appraisal Practice that provide a limitation on restricted appraisal reports to intended users other than or in addition to the client if all of the following are met . . . : [(1) consent of the client, (2) not related to (i) a federally related real estate transaction, (ii) purchase or refinance of a residential dwelling of one to four units, or (iii) real estate broker arranged loan]."*



## #2 Expiration of SB 70 and the 2020-21 USPAP Change

So, the law expired – what’s the big deal?

Answer: USPAP has been changed in the 2020-21 version to permit the identification of intended users of restricted appraisal reports other than your client. Importantly, under the change (in Standard 2-2(b)), you must identify the intended users by name.

This change in USPAP expands the use of restricted reports far beyond the expired California law enacted by SB 70 – now permitted for residential and non-federally related loans, etc.

Where am I seeing restricted report forms actually used in practice: (a) as replacements for non-appraiser “evaluations,” (b) (maybe unfortunately in the view of appraisers) in connection with bifurcated residential appraisals, and (c) sometimes for litigation assignments.



## #2 Expiration of SB 70 and the 2020-21 USPAP Change

Here are some key warnings about the greater freedom for use of the restricted report format:

- The report must clearly and conspicuously state a restriction that limits use of the report to the client and the named intended user(s) and must warn that the report may not contain supporting rationale for all of the opinions and conclusions set forth in the report.
- The development standards of an appraisal are the same for a Restricted Appraisal Report as they are for "regular" Appraisal Report.
- The research and analysis required to support your opinions are no less.
- And, the record keeping rule requires that "a workfile in support of a Restricted Appraisal Report . . . must be sufficient for the appraiser to produce an Appraisal Report."

Don't cut corners on development or on your workfile – if your restricted report winds up before BREa (as the result of a complaint by a borrower or an expert witness on the other side of a case), I'm sure the investigators will be looking closely at what's in your workfile.



# #3 AB 1018 – The Home Inspector Is Not an Appraiser, and Vice Versa, Law

Effective January 1, 2020, this bill:

Added Business and Professions Code section 7195.7:

- “A home inspector shall not give an opinion of valuation on a property.”

As relevant to appraisers, amends Business and Professions Code section 7196.1 to include this:

- “Except as required to comply with standards set forth in law or regulation, a real estate appraiser licensed under Part 3 (commencing with Section 11300) of Division 4, performing a real estate appraisal, shall not engage in the activity of a home inspector performing a home inspection.”



## 2-Minute Legal Update on AB 5

Basic summary of the law (watch recording of January 10 webinar for the full story):

- Effective January 1, 2020, AB 5 codified the “ABC” test for whether a worker is a contractor or employee.
- Makes it harder for firms and AMCs to treat appraisers as contractors.
- No exception in the law for appraisers.
- Most recent public impacts – two large AMCs ceased using contractor appraisers in California and a large commercial firm did the same.
- A fair number of smaller firms scrambling to try to make adjustments with their contractor appraisers.

Will there be a legislative fix relevant to appraisers?

- AB 1850 – general fix-it placeholder bill introduced by AB 5’s original sponsor. The line to get a fix for a particular industry is “very, very, very” long. Keep watching. The Appraisal Institute’s lobbyist is the only one working on it for appraisers.
- AB 1925 – a bill that would create an exception for “small businesses” has been introduced by a Republican. (Independently owned and operated, not dominant in its field of operation, fewer than 100 employees, average gross receipts \$15,000,000 or less over the previous three years.)
- Check my “New Laws” tab and map on [www.valuationlegal.com](http://www.valuationlegal.com) for daily updated info.



# The Single-Most Important Thing Appraisers Should Do in All Reports to Reduce Liability Risk

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# Key California Commercial Appraisal Case *Willemssen* – CA Court of Appeal (2014)

- Borrower named Willemssen contracted to purchase 4.8 acres of vacant land in San Bernardino County in 2007.
- Purchase price was \$1.6m.
- F&M Bank hired appraisers.
- Appraisers valued property at about \$1.7m.
- Several years later, Willemssen was unhappy with his purchase and sued appraisers (of course, it was painfully obvious that something had happened to real estate prices in general after his purchase).
- Nevertheless, he alleged value was too high and sued.
- But the appraisal had some key language:



# Key California Commercial Appraisal Case *Willemssen* – CA 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.



# Key California Commercial Appraisal Case *Willemssen* – CA Court of Appeal (2014)

- Trial court dismissed case.
- Court of appeal affirmed.

Court of Appeal's opinion became citable precedent following requests for publication that I ghost wrote for the Appraisal Institute, RICS and National Association of Appraisers.

This case is now the key for getting borrower and other non-intended user cases against commercial appraisers dismissed in California.



## For residential appraisers, we now have this case **Tindell v. Murphy**

- On May 7, 2018, the California Court of Appeal, Third Appellate District certified for publication its decision in a case entitled *Tindell v. Murphy*.
- The case involved mortgage borrowers who sued a real estate appraiser blaming the appraiser for a purchase they made in 2005.
- There was, in this case, a real mistake in the appraisal: the appraiser (not my client) failed to recognize that the home was originally a manufactured home.
- The trial court, however, dismissed the borrowers' suit because they were not intended by the appraiser to use the appraisal, as the appraisal was prepared for the lender.
- **Court of appeal upheld that decision.**



# Tindell v. Murphy

Key points from the case:

- Extends the general reasoning of *Willemssen* to appraisals in the residential lending context.
- Gives clear recognition to the importance of an appraiser's identification of intended users – as the Court wrote:

*“We are not convinced by the Tindells' efforts to distinguish Willemssen. As the trial court noted, the appraisal was prepared for the lender, not the Tindells.”*



# What Should You Do?

- **Always define your client and intended users in every report as narrowly as possible. And, include some extra language reinforcing the meaning of that identification.**
- **Example intended user language for a commercial report:**

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



# What Should You Do?

- **Example intended use language for a report for a client in a divorce:**

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



# What Should You Do?

## ➤ Additional language to add to residential form reports:

*The appraiser has not identified any purchaser, borrower or seller as an intended user of this appraisal and no such party should use or rely on this appraisal for any purpose. Receipt of a copy of the appraisal by such a party or any other third party does not mean that the party is an intended user of the appraisal. Such parties are advised to obtain an appraisal from an appraiser of their own choosing if they require an appraisal for their own use. This appraisal report should not serve as the basis for any property purchase decision or any appraisal contingency in a purchase agreement relating to the property.*



# Thank You

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