



NATIONAL ASSOCIATION OF APPRAISERS

www.naappraisers.org ♦ (800) 766-1936
The Association for All Professional Appraisers

DIRECTORS

April 18, 2018

John T. Dingeman, MNAA
Sacramento, CA
President

Presiding Justice Raye
Justices Hoch and Nicholson
California Court of Appeal, Third Appellate District
914 Capitol Mall, 4th Floor
Sacramento, California 95814

Craig Morley, MNAA
St. George, UT
Vice President

Re: Request for Publication of Opinion in Tindell v. Murphy,
Case No. C081424

Gregory E. Stephens, MNAA
Dallas, TX
Secretary

Dear Honorable Justices of the Court of Appeal:

Catherine E. Putegnat, MNAA
Honolulu, HI
Treasurer

The National Association of Appraisers (NAA) respectfully and timely requests that the Court certify for publication its Opinion filed on April 6, 2018 in Tindell v. Murphy, Case No. C081424. The NAA believes that publication is justified under the criteria set forth in California Rule of Court 8.1105(c). The publication of this decision would fill a gap in applicable judicial guidance regarding the liability of residential real estate appraisers in California to non-clients.

Timothy C. Andersen, MNAA
Palm Beach Gardens, FL

NAA's Interest in Publication of the Opinion

Bryan S. Reynolds, MNAA
Owensboro, KY

Joshua H. Walitt, MNAA
Grand Junction, CO

We write on behalf of the members of the NAA. The NAA is a nationwide association of professional real estate appraisers and has appraiser-members located in the State of California. One of the purposes of the NAA is to promote high and consistent standards in the appraisal practices of its members and to education members about the standards that apply to their work. The most important set of such standards to real estate appraisers is the Uniform Standards of Professional Appraisal Practice (USPAP) issued by the Appraisal Standards Board. Licensed and certified appraisers are required to follow USPAP under California law. A continuing problem for both appraisal professionals themselves and the users of appraisal services is the lack of clear legal guidance on the potential liability of appraisers to third-parties (non-clients) when, as explained below, such third parties have not been identified as "intended users" of an appraisal pursuant to the specific requirements in USPAP. Both appraisers and the users of their services would benefit from the clarity that the Court's Opinion brings to the subject – especially because the situation considered in the Opinion involving a borrower suing an appraiser over an appraisal performed for a lender is the among the most common types of liability claims asserted in relation to appraisals.

Laurie E. Egan, MNAA
Portland, OR
Past President

Association Manager:
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San Antonio, TX

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The Court's Opinion Meets the Standards for Publication

The NAA respectfully asks that the Court publish its Opinion because the decision fills a gap in existing California law. There is no caselaw in California specifically applicable to determination of a residential real estate appraiser's potential liability to third parties who are not identified by the appraiser as "intended users" under USPAP.

Drafted and maintained by the Appraisal Standard Board, USPAP sets forth the minimum professional standards that licensed and certified appraisers legally must adhere to under California law. An appraiser's identification of his or her client and the "intended user(s)" of his or her appraisals is an express requirement under USPAP in the performance and reporting of appraisals. The two applicable USPAP standards are:

- (1) USPAP Standards Rule 1-2 which states that "[i]n developing a real property appraisal, an appraiser must: (a) identify the client and other intended users . . ." and
- (2) USPAP Standards Rule 2-2 which requires that an appraisal report "state the identity of any intended users by name or type."

These two requirements are at the core of an appraiser's professional work because under other parts of USPAP, the appraiser is charged with the responsibility of providing an appraisal that is appropriate for his or her intended users. The intended user requirements stated above have been a key part of USPAP since they were first introduced by the Appraisal Standards Board in the 1997 USPAP edition.

Notwithstanding the express requirements under USPAP for identification of clients and intended users, an appraiser's express fulfillment of the requirements is often lost from consideration at the trial court level when negligence and negligent misrepresentation claims are asserted by non-clients in California courts. This happens because of the lack of clear guidance in California caselaw specifically applicable to such claims against appraisers. Publication of the Court's Opinion will fill that gap.

As mentioned above, the dispute addressed in the Opinion, in so far as it relates to the appraiser, concerned an appraisal prepared for a mortgage lender. Years after the appraisal was delivered to the lender, the borrowers sued the appraiser claiming damages resulting from the appraiser's alleged misreporting in the appraisal report that their home was a "modular" home rather than a "manufactured" home. The borrower-plaintiffs, however, were not identified as the client or as intended users by the appraiser in the appraisal report.



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Against the appraisers, there were two legal claims primarily at issue in the Opinion – negligence and negligent misrepresentation – and the Court looked to the two published decisions that are currently most relevant to the claims: *Willemsen v. Mitrosilis* (2014) 230 Cal.App.4th 622 (*Willemsen*) and *Soderberg v. McKinney* (1996) 44 Cal.App.4th 1760 (*Soderberg*).

This Court's opinion fills a gap in the caselaw left by *Willemsen* and *Soderberg*. First, the Court's Opinion extends the general reasoning of *Willemsen* (which concerned a commercial appraisal) to appraisals in the residential lending context – this is a needed and logical clarification to avoid needless further wasted arguments at the trial court level and to provide proper guidance to attorneys considering the filing of new cases. Second, the Court's Opinion acknowledges the important role that an appraiser's identification of intended users plays in determining the key of element of duty for a negligent misrepresentation claim, as the Court here looked squarely in its Opinion to this key undisputed fact: "As the trial court noted, the appraisal was prepared for the lender, not the Tindells." Third, the *Soderberg* decision (rendered as it was in 1996) is no longer very relevant to deciding cases about current appraisal work because it was decided before the adoption of the intended user requirement in USPAP that appraisers must now follow.

For these reasons, we respectfully request that the Court certify for publication its Opinion in *Tindell v. Murphy*.

Sincerely,


John T. Dingeman, MNAA
President

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Proof of Service
U.S. Mail

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 1420 E Roseville Pkwy, Ste 140-215, Roseville, CA 95661.

On April 19, 2018, I served the document(s) described as **Request for Publication of Opinion in *Tindell v. Murphy*** by placing a copy of such document(s) in a sealed envelope with first class postage fully paid, in the United States mail in Roseville, California, addressed as follows:

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Wade Law Group
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Peter Christopher Catalanotti
Freeman Mathis & Gary, LLP
44 Montgomery Street, Suite 2080
San Francisco, CA 94104

Honorable Michele Verderosa
Judge of the Lassen County Superior Court
2610 Riverside Drive
Susanville, CA 96130

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 19, 2018, in Roseville, California.


Name: _____