



NATIONAL ASSOCIATION OF APPRAISERS

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The Association for All Professional Appraisers

October 7, 2014

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Acting Presiding Justice O'Leary
Justices Moore and Bedsworth
California Court of Appeal, Fourth Appellate District, Division Three
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

Re: *Willemsen v. Mitrosilis*
Fourth District Court of Appeal, Case No. G050075
Request for Publication of Opinion Filed September 24, 2014

Dear Honorable Justices of the Court of Appeal:

The National Association of Appraisers (NAA) respectfully requests, pursuant to California Rule of Court 8.1120, that the Court certify for publication its Opinion filed on September 24, 2014, in *Willemsen v. Mitrosilis*, Case No. G050075. The NAA believes that the standards for publication set forth in California Rule of Court 8.1105(c) have been met and that publication of this decision is essential to providing needed guidance in the area of real estate appraiser liability in California.

Statement of Interest 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 educate members about the standards that apply to their work. The most important set of such standards to the work of our members is the Uniform Standards of Professional Appraisal Practice (USPAP) issued by the Appraisal Standards Board. A significant problem for the appraisal professional is the lack of clear legal guidance on the interaction between appraisal practices under USPAP and the potential liability of appraisers to clients and third-parties. The NAA's members both in and outside of California, as well as users and providers of appraisal services in general, would benefit from the well-written clarity that the Court's Opinion brings to this subject.

The Court’s Opinion Should Be Published Because It Meets the Standards for Publication and Addresses Important Legal Issues Relating to Appraisal Practice

The NAA encourages the Court to publish its Opinion because the decision involves an issue of continuing public interest and fills a gap in existing California law – namely, the Opinion squarely addresses the boundaries of appraiser liability to non-clients when appraisers specifically identify the Intended Users and Intended Uses of their appraisal reports (as they must do in accordance with USPAP). Without publication of this Opinion, the absence of the Court’s discussion in the Opinion in published decisions will lead to the issue being litigated in the trial courts repeatedly and with inconsistent results.

The Opinion considers an appraisal report that contains two of the most important concepts that appraisers must address in an appraisal under USPAP – identification of the Intended User of the appraisal and identification of the Intended Use. As the Opinion notes:

In the introduction, the appraisal 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.”

Identification of Intended Uses and Intended Use is something that is found – and under USPAP must be found – in virtually all real estate appraisal reports. Based in part on the appraiser’s clearly expressed intended user and use in the appraisal before it, the Court found that the appraiser did not have liability for negligent misrepresentation to a plaintiff who was not identified as an intended user and who had used the appraisal for a different purpose than expressed by the appraiser.

The Opinion is valuable as guidance on the subject of appraiser liability because it thoroughly discusses the legal relevance of these bedrock appraisal principles regarding Intended User and Intended Use and how these appraisal practice concepts relate to an appraiser’s potential liability. With different or broader identification of user and use, of course, a different conclusion might be reached, but the importance of the Opinion is its careful consideration of how the concepts directly tie into an appraiser’s potential liability.

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No other published decision in California has addressed these concepts in such a manner in consideration of a professional negligence or negligent misrepresentation claim against an appraiser. Indeed, the Court refers to the two most often cited California appellate decisions in regard to this subject: *Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089 and *Soderberg v. McKinney* (1996) 44 Cal.App.4th 1760. While useful to reaching the conclusion in the Court's Opinion here, these two cases don't speak clearly to the bedrock concepts of Intended User and Intended Use and their relationship to appraiser liability. First, *Nymark* concerned the alleged liability of a lender, not an appraiser. Second, neither *Nymark* nor *Soderberg* involved any factual discussion of an appraisal report that clearly presented the Intended User and Intended Use concepts that appraisers employ in their work on a daily basis. That factual presentation is only contained in this Court's Opinion and the legal analysis in the Opinion is therefore unique in its widespread application to appraiser liability issues.

As such, we respectfully request that the Court certify for publication its Opinion in *Willemsen v. Mitrosilis*.

Sincerely,



Michael Brunson, MAA
President, National Association of Appraisers

cc: Service list of counsel for all parties