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# PAUL TITTL

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STATE REPRESENTATIVE • 25<sup>TH</sup> ASSEMBLY DISTRICT

Assembly Committee on Housing and Real Estate  
Assembly Bill 340  
September 7, 2021

First of all, I would like to thank you, Chairman Summerfield and committee members, for allowing me to testify before you concerning Assembly Bill 340.

Current Wisconsin law does not effectively protect real estate appraisers from liability resulting from services performed. As a result, they can be sued many years after the work has been completed.

For example, if an appraiser performed an appraisal on a property in 2003, a third-party could sue the appraiser in 2020 for damages alleged to have arisen out of the 2003 appraisal. The lawsuit could be allowed under current Wisconsin law, because the statute of limitations begins at the time of discovery rather than at the time of performance.

This situation greatly limits the ability of real estate appraisers to adequately defend themselves and places undue hardship on them, many of whom operate as small businesses.

A statute of limitations is designed to provide fairness, because after a period of time, evidence may be lost, memories fade and witnesses may be deceased. A five-year statute of limitations is more than enough time for a party to bring a lawsuit against an appraiser.

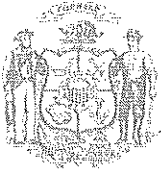
The bill limits the time a lawsuit can be brought against a real estate appraiser to five years following the date of the report. This change is consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) record-keeping requirements which permit appraisers to destroy records after five years if state law allows.

Thank you for this opportunity to testify before you today. I will be pleased to take any questions you might have.

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*Testimony before the Assembly Committee on Housing and Real Estate  
State Senator André Jacque  
September 7, 2021*

Chairman Summerfield and Committee Members,

Thank you for holding this hearing on Assembly Bill 340, relating to limitations on actions regarding real estate appraisal services.

Current Wisconsin law unreasonably subjects real estate appraisers to liability for services performed several years prior, without complaint, at a point when records can be difficult to locate, resulting in undue stress for these small business persons and virtually unlimited risk.

As an example, if an appraiser performed an appraisal on a property in 2003, a third-party could sue the appraiser in 2020 for damages alleged to have arisen out of the 2003 appraisal. Under current Wisconsin law, the lawsuit could be allowed, because the statute of limitations begins at the time of discovery rather than at the time of performance.

This situation greatly limits the ability of real estate appraisers to adequately defend themselves. It places undue hardship on them, resulting in lost money and production, legal fees, future insurance premium increases and potential future lost business. There are law firms that have purchased the rights to sue appraisers in relation to defaulted mortgages. These firms have not purchased the bad loans themselves, just the rights to sue the appraiser(s) involved. The holders of the defaulted mortgage see this as a way to recover some of their losses, with virtually no risk. In some cases, appraisers have been forced to settle these lawsuits just to make them go away and to limit their defense costs.

Several other states including Minnesota, Illinois, Oregon, Tennessee, North Carolina, Kentucky, and South Dakota have recently enacted or proposed legislation to limit appraiser liability.

Thank you for your consideration of Assembly Bill 340.

Assembly Committee on Housing and Real Estate  
Assembly Bill 340  
September 7, 2021

My name is Kevin Dumman, and I am a real estate appraiser in Algoma, Wisconsin. I have been a real estate appraiser for 29 years. I would like to thank you, Chairman Summerfield and committee members, for holding a hearing on Assembly Bill 340 and allowing me to testify before you concerning Assembly Bill 340.

We are requesting your consideration to support Assembly Bill 340 relating to limitations of actions regarding real estate appraisal services. This bill would essentially be similar to legislation that already exists for Certified Public Accountants as per W.S.A. 893.66 in addition to other professions. Several other states including Minnesota, Oregon, Tennessee, North Carolina, Kentucky, South Dakota, Louisiana, Mississippi, Texas, and Illinois have recently enacted legislation to limit appraiser liability. Pennsylvania currently has a bill pending.

A statute of repose for appraisers is necessary to protect the integrity of the real estate appraisal profession and would also allow it to align with record-keeping rules as per the Uniform Standards of Professional Appraisal Practice (USPAP), to which all licensed appraisers must comply. USPAP is the generally accepted standard for all licensed appraisers in the United States, whether they are real property appraisers, personal property appraisers, or business valuers. The purpose of USPAP is to promote and maintain a high level of public trust in appraisal practice by establishing minimum standards and requirements for appraisers.

The present legislation in Wisconsin does not effectively protect real estate appraisers from liability resulting from work they have previously performed. The current legislation employs the discovery rule, which means that the statute of limitations for being sued from past work performed starts at the time of discovery, not the time at which the work was actually performed. This allows appraisers to be sued for past work many years after it was performed, greatly limiting their ability to adequately defend themselves. This seemingly open-ended timeframe for discovery is unreasonable for real estate appraisers. It poses unlimited risk for appraisers, most of which are small business owners. In addition, it does not align with record-keeping rules as per USPAP, to which all licensed appraisers must comply. Lastly, it is not consistent with current legislation in-place for other professions in Wisconsin, such as Certified Public Accountants (as per W.S.A. 893.66).

The discovery rule is not congruent with the record keeping rule in USPAP, which requires that an appraiser retain a work file for each appraisal for a period of five years after the appraisal was prepared or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last. Many appraisers purge their files of all information related to an appraisal after five years. As a result, it is difficult for an appraiser to defend themselves against a lawsuit that is in relation to an appraisal that was done longer than 5 years ago.

As an example, an appraiser performed an appraisal on a property in 2003. In 2021, a third-party believes that the appraiser committed an error in the appraisal performed in 2003. The third-party decides to sue the appraiser for damages in 2021 based on the 2003 appraisal and

is allowed to under present Wisconsin statutes because the statute of limitations begins as of the time of discovery in 2021.

The appraiser is not able to adequately defend themselves from the claim due to the time that has passed since the work was performed. Since the appraiser is likely unable to provide an adequate defense, a judgement is filed in favor of the plaintiff resulting in lost money and production, judgement fees, legal fees, future increased errors and omission insurance premiums, and future lost business for the appraiser as a result of the judgement.

Real estate appraisers have been faced with frivolous lawsuits by overly litigious law firms alleging defects in appraisals performed for mortgage transactions originated during the 2005-2008 "real estate bubble" that have gone into default. These law firms have purchased the rights to sue the appraiser from a financial institution that is desperate to limit their losses. Similarly, many of these allegedly defective appraisals result in administrative complaints to state appraiser regulatory agencies and potential disciplinary action against appraisers. These lawsuits generally allege professional negligence, fraud, breach of contract, etc. Currently, the statute of limitations on a claim against an appraiser is going to vary based on the legal theory that forms the basis for the complaint. However, under the discovery rule, the time for filing a claim does not commence until the alleged defect is discovered, or should have been discovered. The most notable and widespread occurrence of this was by Llano Financing and the Ganter brothers. We are including a summary of this incident prepared by Attorney Craig Capilla of Franklin, Greenswag, Channon & Capilla, LLC for you to review at your convenience.

Most appraisers carry general liability insurance and errors and omissions insurance. However, these policies often have limits of liability that are far below the damages being requested in the lawsuits. In addition, defense costs often erode an appraiser's coverage very quickly. In some cases, appraisers have been forced to settle these lawsuits or agree to administrative sanctions just to make them go away and to limit their defense costs.

In conclusion, we urge you to support Assembly Bill 340 relating to limitations of actions regarding real estate appraisal services to allow our profession to have similar liability limits that presently exist for other professions in Wisconsin.

Thank you for this opportunity to testify before you today. I will be pleased to take any questions you might have.

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# Lessons From Llano:

a Review and Reflection on Mass  
Litigation in the Appraisal Industry

Presented by:  
Craig M. Capilla

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● ICAP - Lisle

August 1, 2016 ● 1

## What's a Llano?



Llano is a city in Llano County, Texas. As of 2010, the city population was 3,232. It is the county seat of Llano County. Located deep in the heart of the scenic central Texas Hill Country, Llano is the home of enchanted rock, and the deer capitol of Texas.

● ICAP - Lisle

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**LAW GROUP**

August 1, 2016 ● 2

# The Brothers Ganter

- PayDirt REIT
  - Bought foreclosed properties for pennies on the dollar
  - Re-sold properties at profit
  - Sought bankruptcy protection in 2010
- Heritage Pacific Financial
  - Bought charged-off second-mortgage loans for pennies on the dollar
  - Tried to collect on debts
  - Target of class action litigation, sanctioned by courts, closed
- Savant Claims Management (Savant LG)
  - Began sending letters to appraisers accusing them of, among other things, overvaluation

# Friends Of...

- Mutual First, LLC/First Mutual Group, LP
  - Began suing appraisers in 2014
  - Over 100 lawsuits filed
  - Mostly in Florida, some in Texas and New Jersey
  - Almost all appraisals more than 7 years old at time lawsuit filed
- Llano Financing Group
  - Began suing appraisers in 2015
  - Claimed right to sue from Savant LG/Impac Funding
  - Over 300 lawsuits filed
  - More states involved including Illinois
    - Over 50 lawsuits filed in state and federal courts in IL
- Carrington Capital Management/Carrington Mortgage

# Impac Funding

- Impac Funding/Impac Mortgage Holdings, Inc.
  - A corporate affiliate of Impac Mortgage Corp.
  - Originated loans as CashCall Mortgage
- Impac sold "right to sue" to Savant LG
  - Under agreement, Impac would receive percentage of recovery
  - Can recall "right to sue"
    - Presumably could reassign right to sue
- Impac retains control of some aspects of litigation
  - Can be brought into litigation

# Here and Abroad

- Over 100 filed by First Mutual/Mutual First
  - Over 300 filed by Llano/Carrington
  - Multiple lawsuits in Florida, Texas, New Jersey, Arizona, Nevada, Illinois, Colorado, Indiana, Iowa, New Hampshire
- In Illinois:
- Cook County (40 filed, 8 remain)
  - Lake County
  - Kane County
  - Winnebago County
  - United States District Court – Northern District of Illinois (8 filed, 2 remain)
  - United States District Court – Central District of Illinois

# The reviewer

- In some instances, an “appraisal review” accompanied the complaint
- In many cases, the “review appraiser” was not disclosed
- Where there was disclosure, the appraiser was often “Faye Dunnaway”



# The Attack

- Lack of Standing
  - Does Llano really have ability to file suit?
  - Forces Llano to prove assignment of rights
- Statute of Limitations
  - There is a limit to how long a party has to sue for harm
  - Public policy to allow the defendant to adequately prepare a defense
  - Statutes of Limitations vary by cause of action and by state
- Duplicative charges
  - Llano filed multiple counts in various complaints alleging essentially the same action in different ways
  - Courts may limit the counts to avoid duplicative findings



# The Discovery Rule

- A rule in tort law: the statute of limitations for a cause of action does not begin to run until the time that the injured party discovers or reasonably should have discovered the injury
- Often utilized to extend the applicable statute of limitation cutoff date in a negligence or malpractice claim
- Illinois is a “discovery rule” state

# What to do

- Contact your insurance carrier
  - You must notify them of any pending or potential claim
  - Find out if you have coverage
  - Fight for coverage if there is question
- Call an attorney
  - Do not respond directly to demand letter or complaint
  - Do not wait or ignore
  - Locate your complete file or as much of it as you still have
- Call your professional association
  - They may be able to direct you to legal help
  - They may be able to put you in contact with others in the same situation

# Ounces and Pounds

- Protect yourself and your business
  - Pay attention to where your work comes from
    - If you are unfamiliar with the lender/client/intended user, research them before accepting the assignment
    - When in doubt, turn it down
  - Limit your liability
    - Use appropriate restrictions when able
    - Limit/restrict intended users to greatest degree possible
    - Keep good records of the work you perform
  - Know your exposure and how you're covered
    - When in doubt, ask a professional

# Are you covered?



- Know your insurance policy
- Are you current?
- Are you an additional insured?
- Is your policy covering anyone else?
- Do you have prior acts coverage?
- Do you have tail coverage?

# Stick together

- The majority of cases have been dismissed
- A number of others have settled at low cost
  - Primarily uninsured appraisers
  - Many representing themselves
- Thousands of additional foreclosed loans are still out there for Impac/Savant
- The profession must stand united against these tactics or they will be repeated
- Protect yourself and don't hesitate to ask for help

## FRANKLIN LAW GROUP

### Bio-Contact Information

Craig Capilla is a trial lawyer, concentrating his practice in a wide range of civil litigation, including professional liability and commercial claims. He has successfully defended residential and commercial appraisers and appraisal firms accused of negligence or improper activity in their valuation services. Craig has also represented numerous licensed professionals in state licensing matters including real estate brokers, real estate appraisers, and medical doctors, process servers, mortgage loan originators and brokers. He has appeared for clients in various courts throughout Illinois in both state and federal matters. He has also assisted professionals with licensing proceedings in Wisconsin, Iowa, and Missouri.

Craig earned a B.A. from the University of Michigan in 2004, majoring in History and Political Science. He then earned a Juris Doctor from the DePaul University College of Law in 2007. Craig is authorized to practice law in the State of Illinois and is a member of the trial bar of the United States District Court for the Northern District of Illinois.

Craig can be reached at [ccapilla@charlesfranklinlaw.com](mailto:ccapilla@charlesfranklinlaw.com)

**Assembly Committee on Housing and Real Estate**  
**Assembly Bill 340**  
**September 7, 2021**

My name is Andrew Bussen, and I am a Certified General Real Estate Appraiser in the state of Wisconsin. I have been a commercial real estate appraiser since 1992 and currently own a real estate appraisal business here in Madison. I would like to thank you, Chairman Summerfield and committee members, for holding a hearing on Assembly Bill 340 and allowing me to testify before you concerning Assembly Bill 340.

Just to expand upon a few points presented previously, my testimony includes what I have identified as **Exhibit A**. This is an excerpt from Chapter 458 of the Wisconsin Statutes which indicates that all Wisconsin licensed appraisers are subject to a Code of Professional Conduct established by the State of Wisconsin Department of Safety and Professional Services (DSPS). As part of this code of professional conduct, the department has essentially adopted the Uniform Standards of Professional Appraisal Practice (USPAP) established by The Appraisal Standards Board of the Appraisal Foundation. Although this has been mentioned, I simply wanted to expand on this point and provide the sources of the information.

**Exhibit B** is the Record Keeping Rule of the Uniform Standards of Professional Appraisal Practice (USPAP). Lines 282-284 indicate that an appraiser must retain an appraisal workfile for a period of at least five years after preparation or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last. Although this has been mentioned, I simply wanted to provide the source of the information to show how state statutes are tied to federal regulations and the appraiser's five-year time limit to retain workfiles. This mirrors the requested legislation and is also similar to legislation that already exists for Certified Public Accountants.

I have been asked why this legislation is necessary. Most appraisers are sole proprietors or small businesses with less than 10 employees and cannot absorb the cost of lawsuits. Real estate appraisers have been faced with frivolous lawsuits by overly litigious law firms.

Most appraisals are performed for banks related to lending decisions. Every lender or Appraisal Management Company (AMC) typically has a legitimate internal appraisal review department that should discover any deficiencies in an appraisal on the front end before the mortgage

lending transaction is completed, and not on the back end after something bad has happened with the loan (i.e., a default) and the lender, or more likely a subsequent entity in interest, is looking for someone to blame. Rather than blame their internal employees, the bank may look to the appraiser given that it is difficult for the appraiser to defend themselves after five years, and the bank knows that the appraiser has Errors and Omissions (E&O) insurance.

In addition, most of the lawsuits that occur outside of five years are NOT by consumers, but rather by lenders and other subsequent entities in interest (i.e., Llano Financing example cited in the Kevin Dumman testimony). Generally, a consumer will discover whatever it is that they want to sue the appraiser over within the first five years.

Lastly, Wisconsin is unique in that it is one of only a few states that allows someone other than the client of an appraiser or an intended user of an appraisal to sue an appraiser. Most states don't allow third-parties to sue appraisers, which we believe is very unfair and unjustified.

In conclusion, we urge you to support Assembly Bill 340 relating to limitations of actions regarding real estate appraisal services to allow our profession to have similar liability limits that presently exist for other professions in Wisconsin.

Thank you for this opportunity to testify before you today. Kevin Dumman and I will be pleased to take any questions you might have.

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## Exhibit A

**458.24 Code of professional conduct.** The department may promulgate rules establishing standards for appraisal practice. In promulgating rules under this section, the department shall consider including as part or all of the standards part or all of the "Uniform Standards of Professional Appraisal Practice" established by the appraisal standards board of the appraisal foundation. The department shall periodically review the "Uniform Standards of Professional Appraisal Practice" and, if appropriate, revise the rules promulgated under this section to reflect revisions to the "Uniform Standards of Professional Appraisal Practice."

**History:** 1989 a. 340; 1991 a. 39, 78; s. 35.17 correction.

**Cross-reference:** See also ch. SPS 86, Wis. adm. code.

## Exhibit B

### RECORD KEEPING RULE

265 An appraiser must prepare a workfile for each appraisal or appraisal review assignment. A  
266 workfile must be in existence prior to the issuance of any report or other communication of  
267 assignment results. A written summary of an oral report must be added to the workfile within a  
268 reasonable time after the issuance of the oral report.

FAQ

See also  
FAQ 82-110

269 The workfile must include:

- 270 • the name of the client and the identity, by name or type, of any other intended users;
- 271 • true copies of all written reports, documented on any type of media. (A true copy is a replica of the report  
272 transmitted to the client. A photocopy or an electronic copy of the entire report transmitted to the client  
273 satisfies the requirement of a true copy);
- 274 • summaries of all oral reports or testimony, or a transcript of testimony, including the appraiser's signed and  
275 dated certification; and
- 276 • all other data, information, and documentation necessary to support the appraiser's opinions and  
277 conclusions and to show compliance with USPAP, or references to the location(s) of such other data,  
278 information, and documentation.

279 A workfile in support of a Restricted Appraisal Report or an oral appraisal report must be sufficient for the  
280 appraiser to produce an Appraisal Report. A workfile in support of an oral appraisal review report must be  
281 sufficient for the appraiser to produce an Appraisal Review Report.

282 An appraiser must retain the workfile for a period of at least five years after preparation or at least two years  
283 after final disposition of any judicial proceeding in which the appraiser provided testimony related to the  
284 assignment, whichever period expires last.

285 An appraiser must have custody of the workfile, or make appropriate workfile retention, access, and retrieval  
286 arrangements with the party having custody of the workfile. This includes ensuring that a workfile is stored in a  
287 medium that is retrievable by the appraiser throughout the prescribed record retention period.

288 An appraiser having custody of a workfile must allow other appraisers with workfile obligations related to an  
289 assignment appropriate access and retrieval for the purpose of:

- 290 • submission to state appraiser regulatory agencies;
- 291 • compliance with due process of law;
- 292 • submission to a duly authorized professional peer review committee; or
- 293 • compliance with retrieval arrangements.

294 Comment: A workfile must be made available by the appraiser when required by a state appraiser regulatory  
295 agency or due process of law.

296 An appraiser who willfully or knowingly fails to comply with the obligations of this RECORD KEEPING RULE is in  
297 violation of the ETHICS RULE.