

## APPRAISER RETAINED BY LENDER OWES DUTY OF CARE TO BORROWER AND PROSPECTIVE BUYER OF HOME

April 30, 2009 | Law Alerts

*Sage v. Bragg Appraisal*

Ct. Appeals, Div. One, April 30, 2009

Authored by the [JSH Appellate Team](#)

Plaintiff buyer made an offer to purchase a home for \$605,200. Buyer's obligation to complete the purchase was contingent upon an appraisal of the premises by an appraiser acceptable to the lender for at least the sales price.

After buyer's offer was accepted, on the advice of the seller's real estate agent, buyer asked her lender to retain defendant appraiser to perform an appraisal. Buyer signed a form requesting her lender to provide her with a copy of the appraisal, which she received prior to closing. The appraisal recited the livable area of the home as 2,440 square feet and estimated its market value to be \$620,000.

A year and a half after she bought her home, Buyer obtained another appraisal in connection with a refinancing. That appraisal stated that the livable area of the home was 1,871 square feet, 569 fewer square feet than stated in defendant's appraisal. Buyer sued the appraiser's company, alleging his appraisal negligently misrepresented the value of her home at the time of her purchase. Buyer alleged that if defendant's appraisal had calculated the home's value based on the correct amount of livable space, she would have realized the home was worth less than she had contracted to pay for it and would have exercised her right to cancel the deal.

The defendant moved for summary judgment, arguing he owed Buyer no duty of care. The trial court agreed and granted summary judgment for the appraiser. Buyer appealed. The court of appeals reversed. The Restatement (Second) of Torts § 552 states that under certain circumstances liability for negligent representation can be imposed upon one who, in the course of his business, supplies false information for the guidance of others in their business transactions. Here, Buyer's contract allowed her to cancel if the property did not appraise at the purchase price or greater. Appraiser knew this because he reviewed a copy of the purchase contract. The public policy underlying the Restatement §522 provides a basis for imposing a duty of care on the appraiser not only to the lender that contracted for the appraisal but also to the prospective buyer who intends to purchase the home.