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SEE, HEAR AND SPEAK NO SEA LEVEL?

The Elusive Ethics of the Coastal Property Professional

By Keith W. Rizzardi¹

ABSTRACT

For the coastal landowner, the consequences of rising seas are staggering. Low-lying Florida will experience between 10 and 17 inches of sea level rise within the span of a 30-year mortgage, and worst-case models predict a staggering five feet by 2070 – without accounting for the rapidly changing conditions in Greenland. Meanwhile, planners, architects, civil engineers, appraisers, and realtors engage in coastal development projects. Although their professional codes or associated literature do consider climate risks, rising seas, and our flooded future, they may not ensure “climate competence.”

Planners are especially vocal about climate change, with the American Planning Association declaring it the most consequential worldwide environmental event that human civilization has had to confront and noting an ethical obligation to help humanity adapt. Similarly, for architects, the mandates of the architectural registration boards include a competence requirement to consider local factors. In its Code of Ethics and Professional Conduct, the American Institute of Architects emphasizes an aspirational duty to advise clients about

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a built environment that equitably supports human health and well-being and is resistant to climate change. Official statements from the leading architectural organizations call for climate leadership.

However, the ethics of other coastal property related professions, with their own incomes and livelihoods at stake, are more variable. The American Society of Civil Engineers publishes a Code of Ethics that is sometimes adopted for state licensure requirements, and it requires protection of health, safety, and welfare of the public and adherence to the principles of sustainable development. Published technical documents also warn that rising sea levels threaten transportation and infrastructure systems and increase the potential for structural failure, but the documents contain substantial disclaimers. For appraisers, the Uniform Standards of Professional Appraisal Practice require valuation to identify the physical, legal, and economic characteristics of the property. Once upon a time, a special board created by the Appraisal Foundation issued guidance explaining how appraisers should consider disaster risks and insurability. When the board became controversial, it was sunset. Finally, for the realtors, the Realtor Code of Ethics merely acknowledges a duty to consider location when preparing opinions of real property value. Publications by the National Association of Realtors suggest that competent realtors should be aware of risks associated with climate change, but realtors can avoid responsibilities simply by informing clients that they lack knowledge about the subject.

To some extent, these ethical statements and professional literature discussing best practices might comfort the individual property owner, because climate risks are being considered. Conversely, these professional statements fall short of mandating climate competence or meaningful accountability. As a result, the degree to which professional ethics and best practices will protect the landowner client “and the liability of the professional for malpractice” will depend upon the discretion of the professional, the relevant state tort law and statutes, and the decisions of judges and juries. The practical limitations of statutory and tortious liability, however, when coupled with the inadequacy of the ethical responsibilities, may grant unscrupulous professionals a license to profit. Even in the face of catastrophic climate risks, property professionals can continue Florida’s long tradition of swampland sales and development. Ethics may eventually re-emerge, but until then, when it comes to rising seas, the old adage still applies: buyer beware.

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I. INTRODUCTION

As rising seas invade the coastlines, properties will go underwater, both figuratively and literally. Owners will suffer economic and physical harm. Slowly, the design and property professions engaged in coastal property projects are adapting, and some ethical principles and best practices have emerged to protect clients from the climate risks ahead. Still, clients must be wary. This article considers the ethical codes and literature from selected professional organizations and applies them to the problem of rising seas.² Part II briefly describes current data and the threats to coastal property. Part III provides an overview of how law, ethics and best practices are changing, recognizing the climate risks, and shaping the duties of the coastal real estate professionals, including planners, realtors, appraisers, architects, and civil engineers. Part IV summarizes the combination of ethical progress and retreat, concluding that coastal property buyers and investors must carefully consider the quality of the professional advice they receive, because professional ethics, standards and best practices may not ensure climate competence.

II. FACTUAL CONTEXT: THE CHANGING COASTLINE

Rising seas threaten our coastlines and create risks for coastal developers.³ Floodwaters will cause chronic inundation,⁴ leading

² This article is, admittedly, an incomplete survey, and omits the financial and legal professions, which require separate analysis. *See, e.g.,* Keith W. Rizzardi, *Sea Level Lies: The Duty to Confront the Deniers*, 44 STETSON L. REV. 75 (2014) (discussing the ethical obligations of the lawyer related to climate risks). Nevertheless, this article provides an update of actions taken (or not) by the design and property professions in the past decade. *See* Keith W. Rizzardi, *Rising Seas, Receding Ethics? Why Real Estate Professionals Should Seek the Moral High Ground*, 6 WASH. & LEE J. ENERGY, CLIMATE, & ENV'T 402 (2015), <https://scholarlycommons.law.wlu.edu/jece/vol6/iss2/4> [<https://perma.cc/LJ47-9962>].

³ *See generally* JOHN ENGLANDER, *HIGH TIDE ON MAIN STREET: RISING SEA LEVEL AND THE COMING COASTAL CRISIS* (2012); JEFFREY PETERSON, *A NEW COAST: STRATEGIES FOR RESPONDING TO DEVASTATING STORMS AND RISING SEAS* (2019).

⁴ Union of Concerned Scientists, *Underwater Rising Seas, Chronic Floods, and the Implications for US Coastal Real Estate* (2018), <https://www.ucsusa.org/sites/default/files/attach/2018/06/underwater-analysis-full-report.pdf> [<https://perma.cc/V8GU-JURF>].

property values to decline⁵ and adaptation expenses to rise as landowners and governments seek to protect property.⁶ Additionally, storms are intensifying, rendering insurance expensive, unaffordable, or unavailable.⁷ Investing in a home with a 30-year mortgage becomes a gamble for the landowner and the financier.⁸ These concerns are not mere computer-model based possibilities: they are real and happening now. People in Louisiana and Alaska have already relocated,⁹ while officials in the Florida Keys openly plan for abandonment and

⁵ *Id.* at Figure 8; see Sydney Lake, *A \$2.3 million home listing in Nantucket slashed its price by a whopping 74% after its shoreline experienced drastic erosion in just a few weeks*, *FORBES* (Mar. 28, 2024, 2:05 PM), <https://fortune.com/2024/03/28/nantucket-home-price-drop-climate-change/> [<https://perma.cc/HJV9-TTPQ>]; Diana Olick, *Luxury homes on these beaches are losing value fast, as effects of climate change hit hard*, *CNBC* (Jun. 14, 2024, 12:50 PM), <https://www.cnbc.com/2024/06/14/luxury-homes-on-these-beaches-are-losing-value-fast-as-effects-of-climate-change-hit-hard.html> [<https://perma.cc/CVX3-VD5T>]; Francesc Ortega & Süleyman Taspınar, *Rising sea levels and sinking property values: Hurricane Sandy and New York's housing market*, 106 *J. URB. ECON.* 81 (2018), <https://doi.org/10.1016/j.jue.2018.06.005> [<https://perma.cc/8BB6-6RBM>]; Jason Beck & Meimei Lin, *Impacts of Sea Level Rise on Real Estate Prices in Coastal Georgia*, 50(1) *R. REG'L STUD.* 43 (2020); I. Avery Bick et al., *Rising Seas, Rising Inequity? Communities at Risk in the San Francisco Bay Area and Implications for Adaptation Policy*, 9(7) *EARTH'S FUTURE* 1 (2021).

⁶ See, e.g., David L. Kelly & Renato Molina, *Adaptation Infrastructure and Its Effects on Property Values in the Face of Climate Risk*, 10(6) *J. ASS'N ENV'T RES. ECONOMISTS* 1405 (2023), <https://www.journals.uchicago.edu/doi/10.1086/725109> [<https://perma.cc/GMP9-79MK>]; Thomas Ruppert & Carly Grimm, *Drowning in Place: Local Government, Costs and Liabilities for Flooding Due to Sea-Level Rise*, 87 *FLA. BAR J.* 29 (2013).

⁷ Sean B. Hecht, *Climate Change And The Transformation Of Risk: Insurance Matters*, 55 *UCLA L. REV.* 1559 (2008); Edward P. Richards, *Applying Life Insurance Principles To Coastal Property Insurance To Incentivize Adaptation To Climate Change*, 43 *ENV'T AFFAIRS* 127 (2016); Rob McBride, *The Impact of Climate Change on Florida's Insurers*, *ST. ANDREWS L. REV.* (Feb. 8, 2023), <https://www.standrewslawreview.com/post/the-impact-of-climate-change-on-florida-s-insurers> [<https://perma.cc/EA7J-5Z57>]; Walsh, P., Griffiths et al., *Adaptation, sea level rise, and property prices in the Chesapeake Bay Watershed*, 95(1) *LAND ECON.* 19–34 (2019).

⁸ Jason Huang, *Incorporating Climate Risk into ERM: A Mortgage Risk Manager's Guide*, *RISKSPAN* (Mar. 21, 2022), <https://riskspan.com/incorporating-climate-risk-into-erm-a-mortgage-risk-managers-guide/> [<https://perma.cc/LED8-CQVV>]; Peyton J. Klein, *Underwater Mortgages for Underwater Homes: The Elimination of Signals in the Coastal Lending Market*, 74 *VAND. L. REV.* 1467 (2021); Krishna Rao, *Climate Change and Housing: Will a Rising Tide Sink All Homes?*, *ZILLOW* (June 2, 2017), <https://www.zillow.com/research/climate-change-underwater-homes-12890/> [<https://perma.cc/8WRR-LBMX>].

⁹ THE NATIONAL ACADEMIES, *ASSISTED RESETTLEMENT AND COMMUNITY VIABILITY ON LOUISIANA'S GULF COAST PROCEEDINGS OF A WORKSHOP* (2023), <https://nap.nationalacademies.org/catalog/26774/assisted-resettlement-and-community-viability-on-louisianas-gulf-coast-proceedings> [<https://perma.cc/PC3G-4U7D>]; U.S. GOV'T ACCOUNTABILITY OFF., *GAO-22-104241, ALASKA NATIVE ISSUES FEDERAL AGENCIES COULD ENHANCE SUPPORT FOR NATIVE VILLAGE EFFORTS TO ADDRESS ENVIRONMENTAL THREATS REPORT TO CONGRESSIONAL REQUESTERS* (May 2022), <https://www.gao.gov/assets/gao-22-104241.pdf> [<https://perma.cc/9WTP-FQK5>]; Ekrem Korkut et al., *Addressing Climate Impacts in Alaska Native Tribes: Legal Barriers for Community Relocation due to Thawing Permafrost and Coastal Erosion*, 40(2) *UCLA J. ENV'T L. & POL'Y* 185 (2022), <https://escholarship.org/uc/item/2tp07553> [<https://perma.cc/V69B-E3BH>].

government buy out programs.¹⁰ The topic of managed retreat receives systematic literature reviews.¹¹ The economic impact is ongoing.¹²

In 2023, the Sixth Assessment Report by the International Panel on Climate Change (“IPCC”) considered the risks of rising seas on a 100 year time horizon, discussing mean sea level rise, thermal expansion of the oceans, melting glaciers and ice caps, and the Greenland and Antarctic ice sheets.¹³ Based on the actual data, the IPCC had high confidence that “global mean sea level (“GMSL”) rose faster in the 20th century than in any prior century over the last three millennia;” the IPCC noted that that GMSL rise has accelerated, increasing to 3.7 millimeters (0.145 inches) per year over the 2006–2018 period.¹⁴ Importantly, the IPCC Report emphasized the role of rapidly melting glaciers and ice sheets in Greenland and Antarctica as the largest contributor to global mean sea level rise.¹⁵ The National Aeronautics and Space Administration (“NASA”) Earth sciences program documented similar concerns.¹⁶ That data all informs the federal government’s National Climate Assessment, which warns that rising seas can – and again, already do – impact people:

Observed sea level rise (“SLR”) and changes in the frequency and intensity of extreme storms, coupled with changes in land use and land cover that can magnify flood risk, have a significant and demonstrable negative impact on people living and working along the coast.

...

¹⁰ Alex Harris, *Rising seas, flooding drive property buyouts in Florida Keys*, MIA. HERALD (Sept. 20, 2022), <https://www.miamiherald.com/news/local/environment/climate-change/article264763359.html> [https://perma.cc/3NV3-G4XV]; Daniel Cusick, *Florida tosses climate lifeline to swamped ‘Keybillies’*, E&E NEWS (May 8, 2023), <https://www.eenews.net/articles/florida-tosses-climate-lifeline-to-swamped-keybillies/> [https://perma.cc/62UJ-RH8Z].

¹¹ Tayanah O’Donnell, *Managed retreat and planned retreat: a systematic literature review*, PHIL. TRANSACTIONS OF THE ROYAL SOC’Y A (2022), <https://doi.org/10.1098/rstb.2021.0129> [https://perma.cc/WV9D-84NE]. Cf. John R. Nolon, *Land Use and Climate Change Bubbles: Resilience, Retreat, and Due Diligence*, 39 WM. & MARY ENV’T L & POL’Y R. (2015).

¹² Greg Iacurci, *Many Americans think they’re insulated from climate change. Their finances indicate otherwise*, CNBC (July 16, 2024), <https://www.cnbc.com/2024/07/16/how-climate-change-may-impact-americans-wallets.html> [https://perma.cc/T2KL-URE2].

¹³ BAYLOR FOX-KEMPER ET AL., IPCC SIXTH ASSESSMENT REPORT WORKING GROUP 1: THE PHYSICAL SCIENCE BASIS 1211, 1211–1361 (Unnikrishnan Alakkat et al. eds., 2021). Executive Summary available at <https://www.ipcc.ch/report/ar6/wg1/chapter/chapter-9/> [https://perma.cc/DEJ9-PK2N].

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ According to NASA, global mean sea level has risen 101 millimeters (roughly 4 inches) since 1992, and it currently is rising at approximately 3.9 millimeters (roughly 0.15 inches) per year. *Sea Level Rise*, NASA EARTHDATA, <https://www.earthdata.nasa.gov/topics/climate-indicators/atmospheric-ocean-indicators/sea-level-rise> [https://perma.cc/8D3R-UM3C].

Increasing weather-related disasters and SLR also increase impacts on coastal ecosystems and natural shorelines, resulting in gradual (e.g., inland migration of wetlands) to abrupt (e.g., storm erosion of dunes and bluffs) changes that increase flood risks and damages to coastal communities and major infrastructure. The combined impacts will require fundamental reimagining of the coast. ... In some locations, coordinated and deliberate coastal relocation, implemented equitably, will be essential to reduce future risk to lives and livelihoods.¹⁷

Regional data also supports these conclusions, and provides information for local governments.¹⁸ For example, the Southeast Florida Regional Climate Change Compact produced a “Unified Sea Level Rise Projection” that applied federal and international data to depict the likely cumulative effects of rising seas upon Monroe, Miami Dade, Broward and Palm Beach Counties.¹⁹ By 2040, the Compact predicted between 10 and 17 inches of rising seas, and worse yet, 21 to 64 inches by 2070.²⁰ The document warns of risks to local infrastructure, noting that adaptation plans should be made with “selection of an alternative site” to avoid “loss of service, loss of asset value, and most importantly loss of life or irrecoverable resources.”²¹

These international, domestic, regional, and local scientific calculations may underestimate the risks. In his book, *Moving to Higher Ground*, author and geologist John Englander writes that the melting of the Greenland ice sheets will create profound contributions to the problem.²² Even if all carbon contributions to the atmosphere ended, the excess heat stored in the seas will continue the ice sheet melt.²³ Official estimates of sea level rise typically account for minor contributions from Greenland and Antarctica,²⁴ but actual melt rates appear to be doubling each decade.²⁵ A chaotic collapse of the mile-high ice sheets on Greenland and Antarctica could occur,²⁶ and scientists at

¹⁷ U.S. GLOBAL CHANGE RESEARCH PROGRAM, FIFTH NATIONAL CLIMATE ASSESSMENT, ch. 9: Coastal Effects, <https://nca2023.globalchange.gov/chapter/9/> [<https://perma.cc/D4AE-QMXT>].

¹⁸ *Id.* (the National Climate Assessment emphasized that about 15 centimeters (5.9 inches) of sea level rise over time has been observed along the northeast and southeast Atlantic and eastern Gulf Coasts).

¹⁹ SOUTHEAST FLORIDA REGIONAL CLIMATE CHANGE COMPACT, UNIFIED SEA LEVEL RISE PROJECTION SOUTHEAST FLORIDA 2019 UPDATE (2020), <https://southeastfloridaclimatecompact.org/wp-content/uploads/2023/10/2019-sea-level-projections.pdf> [<https://perma.cc/K9ZP-QDU3>].

²⁰ *Id.* at 10.

²¹ *Id.* at 13 (Guidance for Application).

²² JOHN ENGLANDER, *MOVING TO HIGHER GROUND: RISING SEA LEVEL AND THE PATH FORWARD* 27 (2021).

²³ *Id.* at 38.

²⁴ *Id.* at 38-9.

²⁵ *Id.* at 71.

²⁶ *Id.* at 45.

the European Space Agency consider the Greenland ice sheet melt on track with worst-case climate scenarios.²⁷

III. LEGAL DUTIES: PROFESSIONAL STANDARDS OF CARE (OR NOT)

Ideally, the professionals who design and build coastal communities should recognize the risks associated with rising seas. After all, the point of a “profession” is to allow qualified, eligible people to hold themselves out as more competent than others, equipped to handle matters falling within the scope of that profession and based upon special education, knowledge, and training.²⁸ Laypeople trust professional advisors to be competent and truthful.²⁹ The reality, however, is that climate competence for professionals is often a matter of discretion.³⁰ No overarching law or regulation dictates precisely how professionals should confront rising seas.³¹ Even in Florida – a state facing extraordinary threats³² – professionals are not obligated to warn others about the

²⁷ *Ice sheet melt on track with ‘worst-case climate scenario’*, EUR. SPACE AGENCY (Aug. 9, 2020) https://www.esa.int/Applications/Observing_the_Earth/Space_for_our_climate/Ice_sheet_melt_on_track_with_worst-case_climate_scenario [https://perma.cc/9446-VHHA] discussing Slater, T., Hogg, A.E. & Mottram, R., *Ice-sheet losses track high-end sea-level rise projections*, 10 NAT. CLIM. CHANG. 879 (2020) <https://doi.org/10.1038/s41558-020-0893-y> [https://perma.cc/W5NA-HHL9]; see also, Intergovernmental Panel on Climate Change, *Special Report on the Ocean and Cryosphere in a Changing Climate*, ch. 4: Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities (“A complete loss of Greenland ice contributing about 7 m to sea level over a millennium or more would occur for sustained GMST between 1°C (low confidence)...[over the course of 10,000 years] the estimated combined loss of Greenland and Antarctica ranges from 25–52 m of equivalent sea level.”).

²⁸ *Sunset Beach Inv., LLC v. Kimley-horn & Assocs., Inc.*, 207 So. 3d 1012, 1071 (Fla. Dist. Ct. App. 2014).

²⁹ Comment, *Professional Negligence*, 121 UNIV. OF PENN. L. REV. 627 (1973) (“the layman, in entrusting himself to the services of a professional, relies upon the standards of the profession.”).

³⁰ *Sch. Bd. of Broward County v. Pierce Goodwin Alexander & Linville*, 137 So. 3d 1059, 1072 (4th Cir. 2014).

³¹ Some state laws require careful consideration of the local and regional facts. See, e.g., FLA. STAT. § 380.093(1), (3)-(4) (requiring the Florida Department of Environmental Protection to “conduct a comprehensive statewide assessment of the specific risks posed to the state by flooding and sea level rise” and to generate maps and site-specific data publicly available data). A state by state evaluation of laws related to sea level rise exceeds the scope of this article, but a meaningful analysis of state laws on flood disclosure was performed by the Natural Resources Defense Council in its report *How States Stack Up on Flood Disclosure*, NRDC (Aug. 31, 2023), <https://www.nrdc.org/resources/how-states-stack-flood-disclosure> [https://perma.cc/9C2D-4WEM].

³² FLA. STAT. § 380.093(1)(a) (“The Legislature recognizes that the state is particularly vulnerable to adverse impacts from flooding resulting from increases in frequency and duration of rainfall events, storm surge from more frequent and severe weather systems, and sea level rise. Such adverse impacts pose economic, social, environmental, and public health and safety challenges to the state.”).

magnitude of the risks.³³ A Natural Resources Defense Council report gave Florida an “F” rating on its flood risk disclosure scorecard, emphasizing the dark truth that “home buyers who unwittingly purchase a flood-prone home are likely to incur tens of thousands of dollars in flood-related damages.”³⁴

Still, even without statutory duties, the common law of negligence exists, so professionals comply with generally accepted practices³⁵ and disclose information or risks.³⁶ Some scholars have even suggested that the historic notion of *caveat emptor* – buyer beware – has yielded to an expectation of due diligence and a duty to disclose.³⁷ However, to prove negligence, a breach of duty is required, and a standard of care must exist in the first place.³⁸ So, when experts and lawyers argue over professional duties, they often turn to the various ethical codes and documents written or published by leading professional associations to help describe professional responsibility.³⁹ In some instances, professions establish a clear “standard of care,” meaning the degree of care a reasonably prudent person would exercise in the same or similar circumstances and codifying the “measure or rule applicable in legal cases.”⁴⁰ Alternatively,

³³ FLA. STAT. § 161.57(1) (requiring purchasers to be made aware that some lands “are subject to fluctuations,” and “subject to coastal erosion and state regulations of coastal land”).

³⁴ *How States Stack Up on Flood Disclosure*, NRDC (Aug. 31, 2023), <https://www.nrdc.org/resources/how-states-stack-flood-disclosure> [<https://perma.cc/9C2D-4WEM>].

³⁵ See, e.g., *Parrish v. State Farm Fla. Ins. Co.*, 356 So. 3d 771 (Fla. 2023); *Basic Inc. v. Levinson*, 485 U.S. 224 (1988); *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977); *Nix v. Whiteside*, 475 U.S. 157 (1986).

³⁶ See, e.g., *Johnson v. Davis*, 480 So. 2d 625 (Fla. 1985) (home seller must disclose to buyer all known facts that materially affect the value of the property being sold); *Henson v. James M. Barker Co.*, 555 So. 2d 901 (Fla. 1st Dist. Ct. App. 1990) (allowing suit to proceed regarding contractor’s liability for alleged latent defects); *Syvruud v. Today Real Est.*, 858 So. 2d 1125 (Fla. 2nd Dist. Ct. App. 2003) (rejecting contract defenses and finding a proper cause of action for real estate broker’s knowing failure to disclose hidden defects); *Bay Garden Manor Condo. Ass’n, v. James D. Marks Assocs., Inc.*, 576 So.2d 744 (Fla. 3rd Dist. Ct. App. 1991) (reversing summary judgment and holding that engineering firm may be liable for negligence, even to subsequent purchasers with whom there is no contractual relationship, based upon false statements in an inspection report).

³⁷ David Hunter & James Salzman, *Negligence in the Air: The Duty of Care in Climate Change Litigation*, 155 U. PA. L. REV. 1741 (2007); Denis Binder, *The Duty to Disclose Geologic Hazards in Real Estate Transactions*, 1 CHAF. L. REV. 13 (1998) (“The duty to disclose in real estate transactions has undergone a well-documented metamorphosis from caveat emptor to a quasi-caveat vendor. It is fair to state the Property law rule of caveat emptor has been superseded by the Tort law doctrine of a duty to disclose.”).

³⁸ See generally *id.*

³⁹ See generally Nadia N. Sawicki, *Ethical Malpractice*, 59 HOUS. L. REV. 1069 (2022) (discussing medical malpractice); Marc R. Greenough, Note, *The Inadmissibility of Professional Ethical Standards in Legal Malpractice Actions after Hizley v. Carpenter*, 68 WASH. L. REV. 395 (1993) (discussing legal malpractice).

⁴⁰ *Standard*, BLACK’S LAW DICTIONARY 1404 (6th ed. 1990).

other professions refer to “best professional practices,”⁴¹ a sloppily-used term that sometimes means a mandate,⁴² but which also might be merely an aspirational guideline that exceeds the actual standard of care.⁴³

Attempting to codify some reasonable cross-cutting aspirations of climate competence, the Association of Climate Change Officers (“ACCO”), a voluntary, non-profit organization, created a Code of Ethics. Professionals “[a]ct with integrity, competence, diligence, respect, and in an ethical manner with their employer, fellow employees, partners, contractors and other colleagues in the climate change profession.”⁴⁴ ACCO’s Standards of Professional Conduct further expect “Knowledge of the Law” and “reasonable care and judgment to achieve and maintain independence and objectivity” while prohibiting misrepresentations, dishonesty, fraud, or deceit.⁴⁵ ACCO posited a duty of suitable advice, too, stating that professionals must:

Make a reasonable inquiry into a client’s or prospective client’s climate response experience, risk and return objectives, and constraints prior to making any recommendation or taking action and must re-assess and update this information regularly.⁴⁶

Although professional duties to consider climate change are still emerging, the design and property professions discussed in this article sometimes fall short of ACCO’s standards. While planners and architects have established themselves as climate leaders, the civil engineers are reluctant followers, and the realtors and appraisers would prefer not to discuss the subject.

⁴¹ Although the terms “standard of care” and “best professional practice” are sometimes used interchangeably, they possess different meanings. *Back v. Benefits Health Sys.*, 2018 Mont. Dist. LEXIS 6 (Mar. 1, 2018).

⁴² 46 U.S.C. § 53719 (requiring use of commercial best practices in federal loan documents to the extent permitted by law); *but cf.* FEDERAL RESERVE, CONSUMER COMPLIANCE HANDBOOK, app. sec. 5 (2010) (“This section outlines guidance on best practices to address some areas with the greatest potential for unfair or deceptive acts and practices...”), <https://www.federalreserve.gov/boarddocs/supmanual/cch/cch.pdf> [<https://perma.cc/LU7M-52LX>].

⁴³ *See, e.g.*, Karen E. Boxx & Terry W. Hammond, *A Call for Standards: An Overview of the Current Status and Need for Guardian Standards of Conduct and Codes of Ethics*, 2012 UTAH L. REV. 1207 (2012); *Briggs v. Wash. Metro. Area Transit Auth.*, 481 F.3d 839, 842 (discussing “generally accepted security practices”) and 848 (noting that “aspirational practices do not establish the standard of care”).

⁴⁴ *Code of Ethics & Professional Standards of Conduct*, ASS’N OF CLIMATE CHANGE OFFICERS (Feb. 5, 2018), <https://climateofficers.org/ethics> [<https://perma.cc/7QX4-UGKS>].

⁴⁵ *Id.*

⁴⁶ *Id.*

A. *Planners: Climate Leaders with an Unqualified Ethical Obligation*

In the planning profession – consisting of long-term thinkers who design neighborhoods, cities, rural and metropolitan areas⁴⁷ – climate risks are well understood. According to the American Institute of Certified Planners (“AICP”) and its Code of Ethics and Professional Conduct, planners have duties of competence, care, honesty, and good judgment.⁴⁸ Planners also have a responsibility to help communities prepare for and adapt to climate change.⁴⁹ The AICP Climate Change Policy Guide, approved by the organization’s delegates and board of directors, demands knowledge and action:

Climate change is the most consequential worldwide environmental event that human civilization has had to confront. ... The planning community has the obligation and the opportunity to use its planning processes, skills, and knowledge to help reduce the severity of those impacts, and to help humanity adapt swiftly, intelligently, and equitably to their negative consequences.⁵⁰

On the specific topic of rising seas, the APA report was equally explicit, calling for accurate and truthful disclosure,⁵¹ considering the risks to transportation infrastructure,⁵² coastal nuclear power plants,⁵³ the built environment,⁵⁴ natural ecosystems and recreational park lands,⁵⁵ and the entire economy.⁵⁶ Planning literature deems consideration of climate risk an ethical obligation.⁵⁷ However, in other critical professions responsible for developing and constructing the human habitat on the coastlines, the ethical implications of rising seas are less clear.

⁴⁷ *What is Planning?*, AM. PLAN. ASS’N, <https://www.planning.org/aboutplanning/> [https://perma.cc/DLK4-VU8F].

⁴⁸ American Institute of Certified Planners, *AICP Code of Ethics and Professional Conduct*, sec. A2, 4 (Nov. 2021).

⁴⁹ AM. PLAN. ASS’N, CLIMATE CHANGE POLICY GUIDE 3 (ratified Dec. 21, 2020), <https://www.planning.org/publications/document/9210766/> [https://perma.cc/JV96-K2E4].

⁵⁰ *Id.*

⁵¹ AM. PLAN. ASS’N, CLIMATE CHANGE POLICY GUIDE 5 (ratified Dec. 21, 2020), <https://www.planning.org/publications/document/9210766/> [https://perma.cc/JV96-K2E4].

⁵² *Id.* at 7.

⁵³ *Id.* at 27.

⁵⁴ *Id.* at 9, 14.

⁵⁵ *Id.* at 17, 22, 34.

⁵⁶ *Id.* at 22.

⁵⁷ *Id.* at 29 (“Whether we are engaging with community residents about local climate risks or planning for major infrastructure investment to support a climate-ready land development pattern, we have an ethical obligation to address the social and economic impacts of the choices ultimately made.”).

B. Architects: Duties to Consider Ascertainable Climate Risk

Like other professions, architects abide by professional standards. State architectural licensing programs are administered by the National Counsel of Architectural Registration Boards,⁵⁸ and architects can face malpractice risks.⁵⁹ According to their professional rules of conduct, architects must demonstrate reasonable care and competence, and they “shall apply the technical knowledge and skill ordinarily applied by architects in good standing practicing in the same locality.”⁶⁰ Importantly, that standard of competence takes into account the “locality.”⁶¹

In the United States, the American Institute of Architects (“AIA”) adopted a widely accepted code of ethics and professional conduct.⁶² The document includes three levels of standards: “canons” with broad principles, “ethical standards” with more specific but still aspirational goals, and “rules of conduct” that are considered mandates.⁶³ According to the AIA documents, the looming risks of flooding and rising seas in a specific locality should be part of an architect’s technical knowledge, but the AIA documents offer additional insights into the registration board’s standards. Architects are required to advise clients of the “potential environmental impacts or consequences” that the architect reasonably believes may occur.⁶⁴

Though “aspirational,” AIA ethical standards further clarify that climate change resilience and environmental risks fall within the scope of the subjects that an architect should reasonably consider in order to achieve “environmental equity and justice:”

Members should promote fairness and safety in providing professional services and make reasonable efforts to advise their clients and employers of their obligations to the environment, including: access to clean air, water, sunlight and energy for all; sustainable production, extraction, transportation and consumption practices; a built environment that equitably supports human health and well-being and is resistant to climate change; and restoring degraded or depleted natural resources.⁶⁵

⁵⁸ See *NCARB’s Role*, NCARB, <https://www.ncarb.org/about/ncarbs-role> [https://perma.cc/Q6HK-EJEE]. Cf. FLA. STAT. § 481.211 (Florida law requires the completion of the NCARB national internship program).

⁵⁹ *Seiler v. Levitz Furniture Co. of E. Region, Inc.*, 367 A.2d 999, 1007 (Del. 1976) (discussing architects malpractice risks and a breach of the duty of care where a shopping center experienced flooding issues after completion).

⁶⁰ NAT’L COUNCIL OF ARCHITECTURAL REGISTRATION BD., MODEL RULES OF CONDUCT r. 1.1 (2023).

⁶¹ *Id.*

⁶² AM. INST. OF ARCHITECTS, 2020 CODE OF ETHICS AND PROFESSIONAL CONDUCT (2020) [hereinafter AIA Code of Ethics].

⁶³ *Id.*

⁶⁴ AIA Code of Ethics at r. 2.401.

⁶⁵ *Id.* at Ethical Standard 2.4.

Thus, pursuant to these ethical duties and aspirations, architects must at least *consider* climate change. Sufficient tools and expertise exist to advise clients about their risk footprints.⁶⁶ Site specific data is readily available to create digital representations of properties and structures, known as business information modelling,⁶⁷ and use of this information is increasingly included as a requirement of construction contracts.⁶⁸ Given the available data about sea level rise and its extraordinary risks, an architect's failure to use this information could be perceived as professional malpractice.⁶⁹ Indeed, in a powerful statement, the AIA declared architects uniquely positioned to confront the challenges, because "[d]esigning and constructing buildings that support health, safety, and welfare are ethical imperatives."⁷⁰ The AIA offers courses, certificate programs and toolkits about climate adaptation,⁷¹ and the AIA has declared ambitious climate action goals:

All practitioners: Changes shall be so fundamental that every architect inside and outside AIA will transition to a climate-responsive practice no matter the location, size, or type of practice.

[...] Measurable impact: An intentional focus on applications will yield measurable results both in architectural practice adoption and in climate mitigation and adaptation.⁷²

The AIA report even suggested that the failure to use these tools, and a failure to consider climate risk, could affect claims of professional malpractice, declaring a need for "urgent milestones" and stating that "[t]he rate of change must occur within a 10-year timeframe."⁷³ In

⁶⁶ *About Coastal Risk*, COASTAL RISK, <https://riskfootprint.com/corporate-about/> [https://perma.cc/AE5Z-FD6K].

⁶⁷ Geoffrey F. Palachuk, *The New Decade of Construction Contracts: Technological and Climate Considerations for Owners, Designers, and Builders*, 11 SEATTLE J. TECH., ENV'T'L. & INNOVATION L. 171, 178 (2020).

⁶⁸ *Id.*

⁶⁹ See, e.g., Graziella Del Duca et al., *A Preliminary Contribution towards a Risk-Based Model for Flood Management Planning Using BIM: A Case Study of Lisbon*, 22(19) SENSORS 7456 (2022); Peter Phipps, *A coastal defence project has pioneered the use of BIM in a new field*, MOTT MACDONALD, <https://www.mottmac.com/views/a-coastal-defence-project-has-pioneered-the-use-of-bim-in-a-new-field> [https://perma.cc/FN7P-HNVJ].

⁷⁰ *Where we stand*, AM. INST. OF ARCHITECTS, <https://www.aia.org/about-aia/where-we-stand/climate-action> [https://perma.cc/P259-8LR5].

⁷¹ *Resilience Design Toolkit*, AM. INST. OF ARCHITECTS, <https://www.aia.org/resource-center/resilience-design-toolkit> [https://perma.cc/A8DJ-38NF]; *AIA+2030 Online Series Certificate Program*, AM. INST. OF ARCHITECTS, <https://aiaaia.org/theme/aiaa/details.php?id=1093> [https://perma.cc/MV2V-YA2A].

⁷² *Where we stand*, AM. INST. OF ARCHITECTS, <https://www.aia.org/about-aia/where-we-stand/climate-action> [https://perma.cc/P259-8LR5].

⁷³ AM. INST. OF ARCHITECTS, *SCALABLE CLIMATE ACTION* (2021), https://content.aia.org/sites/default/files/2021-11/21_10_EX_Scalable_Climate_Action_v02.pdf [https://perma.cc/UA8R-73Z8].

addition, the AIA emphasized that the absence of a legal requirement to consider climate change was “not dispositive” of the legal responsibility to do so when there is “ascertainable climate risk”:

The omission of climate risk in prevailing practices, and the omission of explicit standards for climate risk in extant laws and regulations, are relevant to, but not dispositive of, the legal responsibility for harm that may result from failure to act reasonably in the face of ascertainable climate risk. Statutes and rules often impose general duties to reduce risk and take reasonable precautions, and these obligations can be heightened when considerations of public health or safety are implicated.⁷⁴

In sum, when it comes to climate risks and rising seas, the architecture profession has imposed responsibilities upon itself. While state licensure requirements may not quite rise to an explicit mandate, the American Institute of Architects, repeatedly, indicates that the localized risks of rising seas should not – and in some circumstances, must not – be ignored.

C. *Civil Engineers: Aware of Climate Risk, Insisting on Disclaimers*

Like the architects who design coastal buildings, civil engineers have ethical and professional standards shaping their duties to consider rising seas. The American Society of Civil Engineers (“ASCE”), founded in 1852, is the nation’s oldest engineering society.⁷⁵ ASCE plays a critical domestic international role by shaping the ethical codes of the civil engineering profession.⁷⁶ Those codes, in turn, are sometimes adopted into state rules for licensure.⁷⁷

In its Code of Ethics, ASCE identifies five ethical responsibilities – in priority order – to society, the natural and built environment, the profession, clients and employers, and peers.⁷⁸ Within the first category, responsibilities to society, civil engineers “first and foremost, protect the health, safety, and welfare of the public.”⁷⁹ In addition, when expressing

⁷⁴ *Id.*

⁷⁵ *About ASCE*, AM. SOC’Y FOR CIV. ENG’RS, <https://www.asce.org/about-asce> [<https://perma.cc/3L6W-UN3Y>].

⁷⁶ *About ASCE*, AM. SOC’Y FOR CIV. ENG’RS, <https://www.asce.org/about-asce> [<https://perma.cc/3L6W-UN3Y>]; *Ethics*, AM. SOC’Y FOR CIV. ENG’RS, <https://www.asce.org/topics/ethics> [<https://perma.cc/ZQG9-PXMR>]; *see also*, *Code of Ethics*, NAT’L SOC’Y OF PRO. ENG’RS, <https://www.nspe.org/resources/ethics/code-ethics> [<https://perma.cc/3EM8-LY4W>].

⁷⁷ *Guidance on Licensing and Ethical Responsibilities for Civil Engineers*, AM. SOC’Y FOR CIV. ENG’RS 17 (2023), <https://www.asce.org/-/media/asce-images-and-files/career-and-growth/ethics/documents/saras-story.pdf> [<https://perma.cc/ZRR5-XV58>].

⁷⁸ *Code of Ethics*, AM. SOC’Y FOR CIV. ENG’RS, <https://www.asce.org/-/media/asce-images-and-files/career-and-growth/ethics/documents/asce-code-ethics.pdf> [<https://perma.cc/3LSV-H6G9>].

⁷⁹ *Id.*

professional opinions, civil engineers must do so “truthfully and only when founded on adequate knowledge” with zero tolerance for “fraud and corruption, in all forms.”⁸⁰ Displaying their responsibility to the environment, civil engineers “adhere to the principles of sustainable development.”⁸¹

In a footnote, however, the ASCE explicitly states that “[t]his Code does not establish a standard of care, nor should it be interpreted as such.”⁸² Simultaneously, its Code of Ethics says violations must be reported, because ASCE members, “regardless of their membership grade or job description, commit to all of the[se] ethical responsibilities.”⁸³ Thus, the Code of Ethics distinguishes malpractice standards of care and disciplinary standards and, by doing so, leaves questions as to the duties of civil engineers.

On matters of climate change and rising seas, the ASCE seems to be arguing with itself. In 2012, for example, the ASCE Council on Disaster Risk Management published a book on “Sea Level Rise And Coastal Infrastructure: Prediction, Risks, And Solutions,” reflecting the results of a workshop.⁸⁴ The Preface explained its goal: to develop “strategies for the phase-in of new construction and how to target existing infrastructures for retrofiting” in response to the threats of rising seas.⁸⁵ Like the Code of Ethics, however, the document includes a disclaimer clarifying that it was not creating a standard of care.⁸⁶

Similarly, in 2015, the ASCE Committee on Technical Advancement sponsored and published a substantial document explicitly discussing the relevance of climate science to civil engineers.⁸⁷ The factual description of the relevance of sea level rise was clear, and disturbing:

Rising sea levels and potentially more intense storms, compounded by regional subsidence, might increase the inundation of highways and rail lines in coastal areas. Many of these roadways also serve as regional evacuation routes, which could become compromised during extreme weather events. Storm surge and wave action can cause bridge scour and increase erosion of roads and supporting structures. Rising sea levels may reduce the vertical clearance of bridges over major waterways, thus limiting the types of navigation that typically use the waterway. Sea-level rise and saltwater intrusion could accelerate

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ AM. SOC’Y FOR CIV. ENG’RS, SEA LEVEL RISE AND COASTAL INFRASTRUCTURE iii (Bilal M. Ayuub, et al. eds., 2012).

⁸⁵ *Id.* at iii.

⁸⁶ *Id.* at Title Page.

⁸⁷ COMM. ON ADAPTATION TO A CHANGING CLIMATE, ADAPTING INFRASTRUCTURE AND CIVIL ENGINEERING PRACTICE TO A CHANGING CLIMATE vii-ix (J. Rolf Olsen ed. 2015).

infrastructure corrosion in coastal areas, reducing life expectancy, increasing maintenance costs and increasing the potential for structural failure during extreme events.⁸⁸

The ASCE Technical Committee further projected it “[v]ery likely that mean sea level rise will contribute to upward trends in extreme coastal high water levels,”⁸⁹ exceeding six feet of global sea-level rise by 2100,⁹⁰ and threatening coastal energy infrastructure.⁹¹ Yet again, ASCE adopted disclaimers; none of these concerns established a legal standard of any kind.⁹²

Plainly, civil engineers know that seas are rising, and they foresee the risks ahead. They have duties of competence and published ethical codes. Their own detailed documents delineate the risks of rising seas. But on climate competence, the civil engineers lack mandates, and disclaim the existence of any meaningful standards of care. Instead, engineers can dutifully follow the building codes – which may be inadequate for many coastal locations.⁹³ Simplistic adherence to these codes cannot be reconciled with a 2023 FEMA report, written after Hurricane Ian devastated the Fort Myers region on Florida’s Gulf of Mexico coastline, recommending much higher base elevation standards in the Florida Building Code to protect people and homes from flood damage.⁹⁴ Given this knowledge, the ethical codes for engineers should be a source of professional embarrassment. By simply including a disclaimer on otherwise well-known risks, the “first and foremost” duty to

⁸⁸ *Id.* at 33-34 (citations omitted).

⁸⁹ *Id.* at 16.

⁹⁰ *Id.* at 76.

⁹¹ *Id.* at 46.

⁹² *Id.* at ii (“The materials are for general information only and do not represent a standard of ASCE, nor are they intended as a reference in purchase specifications, contracts, regulations, statutes, or any other legal document.”).

⁹³ Florida requires floor elevations 1 foot above a base flood elevation, a figure calculated based on a 1% chance event, but debate exists over the need for 2 feet or more. INT’L CODE COUNCIL, 2020 FLORIDA BUILDING CODE, RESIDENTIAL R322.2.1(1) (7th ed. 2020) (“Buildings and structures in flood hazard areas, including flood hazard areas designated as Coastal A Zones, shall have the lowest floors elevated to or above the base flood elevation plus 1 foot (305 mm), or the design flood elevation, whichever is higher”); *but see* Alex Harris, *Florida’s Building Code Doesn’t Take Sea Rise Into Account That Could Change*, WUSF (Nov. 13, 2019), <https://www.wusf.org/environment/2019-11-13/floridas-building-code-doesnt-take-sea-rise-into-account-that-could-change> [<https://perma.cc/966P-FPVF>]. Cities and counties can establish higher local standards. *See, e.g.*, Johannes Werner, *Flood Damage: Will Sarasota County Require Higher Building Elevations?*, WSLR (Nov. 23, 2023), <https://wslr.org/flood-damage-will-sarasota-county-require-higher-building-elevations/> [<https://perma.cc/Y3SN-XJ7K>].

⁹⁴ FED. EMERGENCY MGMT. AGENCY, DR-4673-FL RA 1, *Designing for Flood Levels Above the Minimum Required Elevation After Hurricane Ian* (2023) (“Flooding in Florida from Hurricane Ian in 2022 extended far beyond mapped Special Flood Hazard Areas (SFHAs) and often exceeded base flood elevations (BFEs) depicted on the Flood Insurance Rate Maps (FIRMs), by several feet in some areas.”).

“protect the health, safety and welfare of the public” is subordinated, and, arguably, the civil engineering community’s primary ethical desire seems to be to protect itself.

D. Appraisers: Developing, then Abandoning, Climate Risk Advisories

When property is bought and sold, an unbiased appraisal report is often required to assess fair market value, evaluate the risks for lenders, or justify the purchase for the buyers.⁹⁵ Appraisers are licensed and trained independent professionals subject to federal regulation, state laws, and professional standards, such as those created by the federally funded Appraisal Foundation.⁹⁶ Negligent appraisal of property can lead to liability.⁹⁷

According to the Appraisal Foundation’s Uniform Standards of Professional Appraisal Practice (“USPAP”), property appraisers “must [...] be competent to perform the assignment[.]”⁹⁸ The USPAP establishes “generally recognized ethical and performance standards for the appraisal profession in the United States,” and was adopted by Congress in 1989.⁹⁹ More than aspirational, the document contains standards for appraisal services, and compliance is required for state-licensed and state-certified appraisers involved in federally-related real estate transactions.¹⁰⁰

According to the 2024 USPAP Standards, the Competency Rule, in particular, requires “the knowledge and experience to complete the assignment competently” and it “may apply to factors such as . . . an appraiser’s familiarity with a specific type of property or asset, a market, a geographic area, an intended use, specific laws and regulations, or an analytical method.”¹⁰¹ When implementing this duty, appraisers must

⁹⁵ See, e.g., FED. HOUS. ADMIN. OFF. OF SINGLE FAM. HOUS., *Appraisal Report and Data Delivery Guide* (2016), https://www.hud.gov/sites/documents/SFH_POLI_APPR_RPT_FIN.PDF [<https://perma.cc/4MV8-MYC7>]; *Understanding the Home Appraisal Process*, PENNYMAC (Apr. 27, 2017), <https://www.pennymacusa.com/blog/understanding-the-home-appraisal-process> [<https://perma.cc/JPH2-WPFD>].

⁹⁶ EDWARD V. MURPHY, CONG. RSCH. SERV., RS22953, REGULATION OF REAL ESTATE APPRAISERS (2012), <https://sgp.fas.org/crs/misc/RS22953.pdf> [<https://perma.cc/9VYF-MGVA>]; FLA. STAT. § 475.612 (2017); APPRAISAL FOUND., THE APPRAISAL FOUNDATION: AN OVERVIEW, <https://appraisal-foundation.sharefile.com/share/view/sf53855d92954023b> [<https://perma.cc/86SE-SPTW>].

⁹⁷ ERIC M. LARSSON, AM. JUR. PROOF OF FACTS 403 (3rd ed. 2011).

⁹⁸ APPRAISAL FOUND., UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE 13 (2024), <https://www.appraisalfoundation.org/imis/TAF/USPAP.aspx> [<https://perma.cc/W2JQ-XN5W>].

⁹⁹ *What is USPAP?*, APPRAISAL FOUND., https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbfa-41b3-9878-fac35923d2af [<https://perma.cc/MEY5-T9RC>].

¹⁰⁰ *Id.*

¹⁰¹ APPRAISAL FOUNDATION, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE 13 (2024).

either obtain competency, disclose the lack of competency, or withdraw from the action.¹⁰² Notably, when creating a credible appraisal and preparing a market value, the USPAP prohibits omissions that significantly affect an appraisal.¹⁰³ An appraiser must identify the “physical, legal and economic characteristics” of the property,¹⁰⁴ and must analyze “the physical adaptability of the real estate.”¹⁰⁵ Creating some uncertainty as to the nature of this analysis, the USPAP Commentary further states that an appraiser “must avoid making an unsupported assumption or premise about market area trends.”¹⁰⁶

The USPAP standards have been mandated in 35 states including Florida, and other states have an equivalent licensure exam with similar standards.¹⁰⁷ State laws may also specifically require consideration of location in the valuation of a particular piece of property¹⁰⁸ and may further require communication with the client.¹⁰⁹ Based on these standards, appraisers may have a duty to consider the meaningful risks of rising seas. For example, the location of coastal land needs to be considered, and a competent, credible appraisal should be aware of the many scholarly, media articles, and reports warning that coastal property could be overvalued due to insufficient consideration of climate-related risks.¹¹⁰ As mentioned previously, rising seas and recurring flooding

¹⁰² *Id.* at 13–14.

¹⁰³ APPRAISAL FOUNDATION, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE r. 1-1(b) (2024).

¹⁰⁴ APPRAISAL FOUNDATION, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE r. 1-2 (2024) (“in developing a real property appraisal, an appraiser must: . . . (e) identify, from sources the appraiser reasonably believes to be reliable, the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including: (i) its location and physical, legal and economic characteristics;”).

¹⁰⁵ APPRAISAL FOUNDATION, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE r. 1-3(a)(iv) (2024) (“an appraiser must: (a) identify and analyze the effect on use and value of: . . . (iv) the physical adaptability of the real estate;”).

¹⁰⁶ *Id.*

¹⁰⁷ See FLA. ADMIN. CODE ANN. R. 61J1-9.001 (2024); *What Is USPAP?*, NEBB INST. (May 20, 2010), <https://www.certitrek.com/nebb/blog/what-is-uspap/> [<https://perma.cc/FD33-B8BS>].

¹⁰⁸ See, e.g., FLA. STAT. § 193.011 (2024) (factors to consider in deriving just valuation include highest and best use, location, quantity or size, cost and replacement value of improvements, condition, income from said property, and net proceeds of sale of property). Cf. *Agapion v. United States*, 167 Fed. Cl. 761 (2023) (finding that the best appraisal practice for federal land acquisition is through the Uniform Appraisal Standards for Federal Land Acquisition).

¹⁰⁹ The statutes also underscore the importance of open communication between appraisers and property owners, ensuring a fair and accurate valuation process. FLA. STAT. § 193.023 (2024).

¹¹⁰ Jesse D. Gourevitch et al., *Unpriced Climate Risk and the Potential Consequences of Overvaluation in US Housing Markets*, NATURE CLIMATE CHANGE 250, 257 (2023); Miyuki Hino & Marshall Burke, *The Effect of Information About Climate Risk on Property Values*, PNAS (Apr. 20, 2021), <https://doi.org/10.1073/pnas.2003374118> [<https://perma.cc/ZRE4-KM43>]; Union of Concerned Scientists, *Underwater: Rising Seas, Chronic Floods, and the Implications for US Coastal Real Estate* (2018).

have already impacted some property market,¹¹¹ and valuation experts and investment firms engaged in the real estate market have called for caution and the use of modeling and data to assess site-specific risks.¹¹²

EXTRAORDINARY ASSUMPTION: an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Uncertain information might include physical, legal, or economic characteristics of the subject property; or conditions external to the property, such as market conditions or trends; or the integrity of data used in an analysis.¹¹³

This assumption, however, can be used to evade climate competence, enabling appraisers to limit their liability for things they do not know.¹¹⁴ For example, some appraisers make extraordinary assumptions that a property conforms with local ordinances, which may or may not be true.¹¹⁵ Similarly, appraisers working on coastal properties might assume that the property will not be flooded by rising seas.¹¹⁶ The disclosure of known ignorance, however, is not exactly the hallmark of professionalism.

Some appraisers have suggested the need for a more rigorous approach. In a series of advisory documents, the Appraisal Foundation's Appraisal Practice Board addressed the need to consider environmental conditions of a property in the valuation process. In a 2015 advisory document, appraisers engaged in the valuation of green, sustainable, and high performance properties were encouraged to recognize that some properties might "be more healthy and productive to its occupants and/or provide lower operational cost and ownership risk."¹¹⁷ The advisory

¹¹¹ See Gourevitch, *supra* note 110, at n. 3-12.

¹¹² Brian Deese et. al., *Getting physical: Scenario analysis for assessing climate-related risks*, BLACKROCK INV. INST. (Apr. 4, 2019), <https://www.blackrock.com/us/individual/literature/white-paper/bii-physical-climate-risks-april-2019.pdf> [https://perma.cc/5JLJ-W3V4]; Jonathan Rivera, *The Impact of Climate Change on Real Estate Valuations and Decisions*, CAPRIGHT (Sept. 3, 2020), <https://www.capright.com/the-impact-of-climate-change-on-real-estate-valuations-and-decisions-2/> [https://perma.cc/V7VY-6RNW].

¹¹³ APPRAISAL FOUNDATION, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE 4 (2024).

¹¹⁴ Carrie Mick, *Extraordinary Assumptions and When to Use Them*, MCKISSOCK LEARNING (Apr. 9, 2024), <https://www.mckissock.com/blog/appraisal/extraordinary-assumptions-and-when-to-use-them/> [https://perma.cc/92UG-X2PL].

¹¹⁵ *Id.*

¹¹⁶ *Cf. id.*

¹¹⁷ See, e.g., APPRAISAL FOUND., APB VALUATION ADVISORY 6: VALUATION OF GREEN AND HIGH PERFORMANCE PROPERTY: BACKGROUND AND CORE COMPETENCY 1 (2015), https://appraisalfoundation.org/imis/docs/Valuation_Advisory-6-Valuation_of_Green_and_High_Performance_Property-Background_and_Core_Competency_060215.pdf [https://perma.cc/8VBR-ZLKC].

further explains that appraisers valuation process should consider “the initial cost of construction as well as the[...] lower/higher risk” and “the specific features and attributes of a given property.”¹¹⁸

Another 2016 advisory document, focused on one-to-four-unit residential properties, elaborated on the need for a careful site assessment, clearly noting that sea level, disaster risks, and insurability were all factors to be considered in property valuations:

The sustainability of a site may be impacted by its physical characteristics ... Additionally, various environmental issues can impact a site, including if the site is located near brownfields or if it is in an area that is below sea level, or the presence of an earthquake-resistant property may impact a site’s insurability and desirability.¹¹⁹

Additionally, a 2018 advisory document for non-residential sites further acknowledged that “green buildings” might be superior to conventional construction, and noted the risks associated with changing water conditions and climate change:

Conditions may reveal that a green building is a superior use for the site as opposed to a conventional building. A consideration of related risk is critical in this analysis, particularly if market factors suggest development with a green property would be considered a less risky investment longer term. Site-specific attributes include ... proximity to natural disaster and/or hazard zones. ‘Locational factors including drought conditions, water scarcity, water rate increases, and other aspects of climate change vulnerability will increasingly affect asset value.’¹²⁰

The 2018 advisory document did not mention floods or rising seas, but it recognized the need to consider site-specific or location-based risk factors such as disaster probability¹²¹ and resiliency of the property.¹²² Although collectively informative and revealing, in the end, the three advisories are merely “voluntary” in nature.¹²³

Other literature for appraisers suggests that competent professionals *should* consider the climate related property risks, but there are no

¹¹⁸ *Id.* at 6, 12.

¹¹⁹ APPRAISAL FOUNDATION, APB VALUATION ADVISORY #7: VOLUNTARY GUIDANCE ON RECOGNIZED VALUATION METHODS AND TECHNIQUES: VALUATION OF GREEN AND HIGH-PERFORMANCE PROPERTY: ONE- TO FOUR-UNIT RESIDENTIAL 7 (2016), https://www.appraisalfoundation.org/imis/docs/Valuation_Advisory_7_Valuation_of_Green_and_High_Performance_Property_Residential_FINAL_042916.pdf [<https://perma.cc/SP6E-95GE>].

¹²⁰ APPRAISAL FOUNDATION, APB VALUATION ADVISORY #9: VALUATION OF GREEN AND HIGH-PERFORMANCE PROPERTY: COMMERCIAL, MULTI-FAMILY, AND INSTITUTIONAL PROPERTIES 45 (2018).

¹²¹ *Id.* at 8, 60.

¹²² *Id.* at 44.

¹²³ *See, e.g., id.* at 13 (“...compliance with the guidance is voluntary.”).

ethical imperatives. Some appraisers and analysts note that the market has not yet factored risks such as flood resilience into the price of real property,¹²⁴ so market prices may not reflect awareness of the risks.¹²⁵ Arguably, that ignorance is fueled, in part, by the failure of appraisers to properly consider the foreseeable risks in the valuation process.¹²⁶

Sadly, the professional ignorance of the appraisal community to climate risks may be intentional. The Appraisal Practice Board was created after the real estate crisis in 2008, in an effort to provide voluntary advice to the community of appraisers, many of whom had no professional affiliation.¹²⁷ When the Board issued these three advisories in 2015, 2016 and 2018, it became controversial and subjected to complaints about “regulatory burdens” and “mission creep.”¹²⁸ Faced with resistance, the Appraisal Foundation sunset the Board.¹²⁹ In other words, rather than refining its own standards, the appraisers chose to stay silent about the risks of climate change and rising seas and whether or how they should be considered.

¹²⁴ See, e.g., Kristin McCarthy, *Residential Real Estate Appraisal and Flood Resilience Measures*, 10(2) SEA GRANT L. & POL’Y J. 115, 125 (2020) (“The appraisal process is a reflection of the housing market itself, and therefore does not reflect a demand for flood resilience measures to an extent beyond that which exists in the current market. While changes to the appraisal process may help to the extent the process does not currently reflect the demand for resilience measures, it is likely that other factors are at play in flood resilience measures not being reflected in housing values. Public education about flooding and resilience measures is needed ...”).

¹²⁵ Georgia Warren-Myers & Lucy Craddock, *Physical and climate change-related risk identification in valuation practice: an Australian perspective*, 40(1) J. PROP. INV. & FIN. 14, 15 (2022) (“implications for values of climate change risks are not being consistently found, and this is likely because the market is either not aware of the risk, or is not pricing risk in their decision-making”); Dinah Voyles Pulver, *Few Florida homebuyers asking about rising tides*, DAYTONA BEACH NEWS J. (Aug. 13, 2018, 5:39 PM), <https://www.news-journalonline.com/story/news/local/volusia/2018/08/10/few-florida-homebuyers-asking-about-rising-tides/11067183007/> [<https://perma.cc/38DQ-5UH6>].

¹²⁶ Asaf Bernstein et al., *Disaster on the horizon: the price effect of sea level rise*, 134(2) J. FIN. ECON. 253, 253-272 (2019); Sven Bienert, *Extreme weather events and property values: assessing new investment frameworks for the decades ahead*, URB. LAND INST., <https://europe.uli.org/wp-content/uploads/2019/03/Extreme-Weather-Report-20141.pdf> [<https://perma.cc/P8R6-2F7F>].

¹²⁷ *Appraisal Practices Board: A Free Resource for Appraisers*, APPRAISERBLOGS (July 24, 2012), <https://appraisersblogs.com/appraisal/appraisal-practices-board-a-free-resource-for-appraisers/> [<https://perma.cc/DD7W-JSU7>].

¹²⁸ *Id.*

¹²⁹ Email from Appraisal Foundation to Keith W. Rizzardi, Professor of L., Nova Se. Univ. Shepard Broad Coll. of L. (on file with author) (“While the Foundation did publish the documents you refer to, those documents were written by the Appraisal Practices Board, a board that was sunset numerous years ago. Thus, if you are looking for methods and techniques related to a specific issue, I would recommend looking [to] the appraiser membership organizations who publish textbooks, articles, and other materials related to methods.”).

E. Realtors: Location, Location, But Ignorance Allowed

A real estate agent helps a buyer engage in a real estate transaction. The most common realtor association in the United States is the National Association of Realtors (“NAR”). Further, NAR has 54 state associations that mandate the NAR Code of Ethics and Standards of Practice, thereby imposing higher professional standards and obligations of its members.¹³⁰ NAR also has best practice recommendations for realtors using the multiple listing service (“MLS”).¹³¹ While compliance with the MLS best practices is not required, it is highly recommended.¹³²

According to Article I of the Code of Ethics and Standards of Practice created by the NAR, when serving a buyer, seller, landlord, tenant or other party, obligations to clients are primary, but realtors also “remain obligated to treat all parties honestly.”¹³³ In all transactions, realtors have a duty not to misrepresent or conceal pertinent facts.¹³⁴ When managing properties for a client, realtors must “exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses.”¹³⁵ Subsequent provisions undermine the realtor’s honesty principles. Realtors are “only . . . obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority.”¹³⁶ Also, realtors are not obligated to discover latent defects in the property.¹³⁷ Accordingly, in the absence of actual knowledge, a state requirement, or an otherwise patent defect, realtors have limited duties, if any, to consider the problems created by climate change and rising seas.¹³⁸ Interestingly, the realtors’ own Code of Ethics allows realtors to engage in known ignorance, as long as they tell the client:

¹³⁰ See NATIONAL ASSOCIATION OF REALTORS, CODE OF ETHICS & ARBITRATION MANUAL 1 (2024) (citing Bylaws of the National Association, Article IV, Code of Ethics), <https://www.nar.realtor/code-of-ethics-and-arbitration-manual> [<https://perma.cc/5Y7X-6UAM>]; Greif v. Sanin, 74 Cal. App. 5th 412, 428 (2022).

¹³¹ See *MLS Best Practices*, NAT’L ASS’N OF REALTORS, <https://www.nar.realtor/about-nar/policies/mls-best-practices> [<https://perma.cc/TL59-3NXR>].

¹³² *Id.*

¹³³ *Code of Ethics and Standards of Practice of the National Association of Realtors*, NAT’L ASS’N OF REALTORS Article 1 (effective Jan. 1, 2024), <https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2024-code-of-ethics-standards-of-practice> [<https://perma.cc/H8S8-TR8S>].

¹³⁴ *Id.* at Article 2 . . .

¹³⁵ *Id.* at Standard of Practice 1-11.

¹³⁶ *Id.* at Standard of Practice 2-1.

¹³⁷ *Id.*

¹³⁸ See, e.g., FLA. STAT. § 475.278(2)(d) (2024) (requiring a real estate broker to disclose as “all known facts that materially affect the value of residential real property and are not readily observable to the buyer:”). But cf., MacKenzie Elmer, *Environment Report: Real Estate Sellers Aren’t Required to Disclose Sea Level Rise Risk*, VOICE OF SAN DIEGO (Aug. 24, 2020), <https://>

When REALTORS® prepare opinions of real property value or price they must: 1) be knowledgeable about the type of property being valued, 2) have access to the information and resources necessary to formulate an accurate opinion, and 3) be familiar with the area where the subject property is located unless lack of any of these is disclosed to the party requesting the opinion in advance.¹³⁹

Again, realtors should “be knowledgeable” about the type of property, based on “access to information” as necessary to “formulate an accurate opinion,” *unless* the realtor discloses otherwise. Thus, in terms of protecting the client, the relevant professional standards for realtors set a low bar.

On matters of climate change, however, literature from the National Association of Realtors asserts that competent realtors should understand the risks. Its webpages emphasize the business and moral implications.¹⁴⁰ Articles in industry magazines warn of climate risks, explaining how investors and developers can consider property resilience as a measure of value.¹⁴¹ Surveys document owners’ fears of climate-induced flooding and disaster.¹⁴² Articles and blogs further quantify the climate risks, offering “don’t fear the data” reminders to realtors and explaining the tools available to help gauge the rising seas and the level of risk to each property.¹⁴³

voiceofsandiego.org/2020/08/24/environment-report-real-estate-sellers-arent-required-to-disclose-sea-level-rise-risk/ [https://perma.cc/J2C3-Y2TN].

¹³⁹ *Code of Ethics and Standards of Practice of the National Association of Realtors*, NAT’L ASS’N OF REALTORS Article 11-1 (effective Jan. 1, 2024), <https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2024-code-of-ethics-standards-of-practice> [https://perma.cc/H8S8-TR8S].

¹⁴⁰ Craig Foley, *Climate Change: We Don’t Have 50 Years to Wait*, NAT’L ASS’N OF REALTORS: REALTOR MAG. (Feb. 26, 2019), <https://www.nar.realtor/magazine/real-estate-news/commentary/climate-change-we-don-t-have-50-years-to-wait> [https://perma.cc/73MU-N9YQ].

¹⁴¹ David A. Goldberg, *Paying for Protection from Extreme Weather*, NAT’L ASS’N OF REALTORS: ON COMMON GROUND (Apr. 28, 2022), <https://www.nar.realtor/on-common-ground/paying-for-protection-from-extreme-weather> [https://perma.cc/W3FP-A3LM]; Autumn Cafiero Giusti, *Future-Proof Your Community*, NAT’L ASS’N OF REALTORS: REALTOR MAG. (Apr. 16, 2023), <https://www.nar.realtor/magazine/real-estate-news/commentary/future-proof-your-community> [https://perma.cc/2XRY-AGRV].

¹⁴² *Survey: Owners Fear Inability to Recover From Disaster*, NAT’L ASS’N OF REALTORS: REALTOR MAG. (Sept. 20, 2021), <https://www.nar.realtor/magazine/real-estate-news/survey-owners-fear-inability-to-recover-from-disaster> [https://perma.cc/86MB-MBJR]; *Survey: 63% Fear Climate Change Will Affect Their Area*, NAT’L ASS’N OF REALTORS: REALTOR MAG. (Dec. 12, 2021), <https://www.nar.realtor/magazine/real-estate-news/survey-63-fear-climate-change-will-affect-their-area> [https://perma.cc/2G9S-NCUG].

¹⁴³ Brad Broberg, *Real Estate in a Riskier Climate: Challenges, Opportunities and Trends*, NAT’L ASS’N OF REALTORS: ON COMMON GROUND (Apr. 28, 2022), <https://www.nar.realtor/on-common-ground/real-estate-in-a-riskier-climate> [https://perma.cc/7JS9-X6WP]; Melissa Dittmann Tracey, *Don’t Fear Flood Data: Here’s How It Helps Clients*, NAT’L ASS’N OF REALTORS: REALTOR MAG. (Aug. 9, 2020), <https://www.nar.realtor/magazine/real-estate-news/sales-marketing/dont-fear-flood-data-heres-how-it-helps-clients> [https://perma.cc/X3RV-E47W]; Michele Lerner,

Realtors thus send mixed messages. Climate competence is desirable, but not required. Ethical duties encourage realtors to use information and formulate accurate opinions about property locations, but also allow realtors to inform their client of their own lack of knowledge. In truth, this ethical system simply shifts responsibility to the client. Realtors should be competent but can openly decline to pursue professional competence. Clients then must be discerning enough to understand the risk of working with a real estate professional who discloses ignorance.

IV. CONCLUSIONS: PROFESSIONAL COMPETENCE, OR BUYER BEWARE?

The design and property professions have divergent views of climate competence and the need to consider the coastal implications of rising seas.¹⁴⁴ Based on their ethical standards and documents, planners and architects assert leadership, openly confronting the problem.¹⁴⁵ In contrast, civil engineers are reluctant followers, using disclaimers to protect themselves from liability.¹⁴⁶ Meanwhile, appraisers eliminated their own guidance documents, choosing to stay silent on the subject,¹⁴⁷ and realtors allow disclosure of ignorance.¹⁴⁸

In time, these ethics and standards may evolve.¹⁴⁹ Just as non-binding statements of international law influence domestic legal systems, the documents establishing ethical standards or best practices for professionals may eventually be transformed into laws or mandates to help society adapt to rising seas.¹⁵⁰ Until then, if professional action or inaction harms a client, tort law may determine accountability.¹⁵¹

Sustainability and Resilience Efforts Driven by Large Data Sets, NAT'L ASS'N OF REALTORS: ON COMMON GROUND (Nov. 1, 2022), <https://www.nar.realtor/on-common-ground/sustainability-and-resilience-efforts-driven-by-large-data-sets> [<https://perma.cc/6X2N-YBGH>].

¹⁴⁴ The efforts of the various professions, as discussed in this article, are summarized in Chart 1.

¹⁴⁵ See *supra* Part III.A, III.B.

¹⁴⁶ See *supra* Part III.C.

¹⁴⁷ See *supra* Part III.D.

¹⁴⁸ *Code of Ethics and Standards of Practice of the National Association of Realtors*, NAT'L ASS'N OF REALTORS Article 11-1 (effective Jan. 1, 2024), <https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2024-code-of-ethics-standards-of-practice> [<https://perma.cc/H8S8-TR8S>].

¹⁴⁹ Robert W. McGee, *Do Ethical Rules Need to Change Over Time? A Look at Professional Codes of Ethics*, 1(3) J. OF ACCT., ETHICS AND PUB. POL'Y 489, 502 (1998).

¹⁵⁰ William W. Burke-White, *The Future of International Law Is Domestic (or, The European Way of Law)*, 47 HARV. INT'L L. J. 326, 337 (2006); STEPHEN P. MULLIGAN, CONG. RSCH. SERV., RL32528, INTERNATIONAL LAW AND AGREEMENTS: THEIR EFFECT UPON U.S. LAW 12 (2023).

¹⁵¹ Lawyers for the oil industry have petitioned the Supreme Court for review of a series of Hawaii tort law cases, posing the question of "whether federal law precludes state-law claims seeking redress for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions on the global climate." Petition for a Writ of Certiorari at 8, *Sunoco v. Honolulu*, (No. 23-947), 2025 U.S. Lexis 146 (Jan. 13, 2025), *cert. denied*, 2025 U.S. Lexis 146 (Jan. 13, 2025).

Negligence cases can be difficult to prove, however. The initial burdens of a motion to dismiss must be overcome.¹⁵² The professional, as opposed to something else, must be proven to be the cause¹⁵³ of the damages.¹⁵⁴ And on the central subject of this article – the breach of the professional duty of care – ill-defined professional standards can reduce the dispute to a battle of experts.¹⁵⁵ Plaintiffs’ lawyers and witnesses will insist that competent professionals should adhere to “best practices” and defense counsel will argue that competent professionals need not adopt “the best” practices as long as they are adequate.¹⁵⁶

The legal system sometimes fails the people. In the 1920s, after con-man Charles Ponzi was freed from jail for his famous “Ponzi scheme,” he made another ill-gotten fortune selling worthless swamps near Jacksonville, Florida.¹⁵⁷ A century later, those coastal properties present new risks, but once again, buyers can be taken advantage of by schemers and

¹⁵² Negligence cases sometimes struggle with privity, and whether an adequate relationship existed between the professional and the injured party. See Herbert F. Goodrich, *Privity of Contract and Tort Liability*, 21 MICH. L. REV. 201, 203 (1922); Anthony F. Earley, *Liability of Architects and Engineers to Third Parties: A New Approach*, 53 NOTRE DAME L. REV. 306, 310 (1977). Statutes of limitations add still more complexity. See Margaret A. Cotter, *Limitation of Action Statutes for Architects and Builders – Blueprints for Non-Action*, 18 CATH. U. L. REV. 361 (1969).

¹⁵³ Comment, *Professional Negligence*, 121 U. PA. L. REV. 627, 645 (“This reflects the fact that the layman, in entrusting himself to the services of a professional, relies upon the standards of the profession.”).

¹⁵⁴ When calculating the damages, separating the degree of the injury caused by the professional, as opposed to the property owner’s maintenance decisions, other people or natural forces, can be perplexing. Murray H. Wright & David E. Boelzner, *Quantifying Liability Under the Architect’s Standard of Care*, 29 U. RICH. L. REV. 1471, 1495 (1995); George M. Bell, *Professional Negligence of Architects and Engineers*, 12 VAND. L. REV. 711, 715 (1959).

¹⁵⁵ See generally, Eugene J. Farrug, *The Necessity of Expert Testimony in Establishing the Standard of Care for Design Professionals*, 38 DEPAUL L. REV. 873, 889 (1989).

¹⁵⁶ For example, discussing the distinctions between standards of care and best practices, one medical malpractice expert observed as follows:

Many docs interpret the “standard of care” to mean “best practice.” So any care that deviates from best practice, they contend, is prima facie a failure to meet the standard of care (and hence, malpractice). Unfortunately, this is the interpretation that plaintiff’s experts also prefer to embrace! However, it’s important to understand that “standard of care” is a legal term with a clear definition that is much more expansive: the level at which an ordinary, prudent professional having the same training would practice under the same or similar circumstances. So the standard of care is not only not perfect care, it is not even average care, because by definition that would imply that 50 % of care is below the standard.

Medical malpractice: Equating standard of care to best practice, KEVINMD.COM (Jan. 8, 2013), <https://www.kevinmd.com/2013/01/medical-malpractice-equating-standard-care-practice.html> [https://perma.cc/96MC-N2GA].

¹⁵⁷ Jessie-Lynne Kerr, *Ponzi lived here: Infamous name tied to scheme was local: The story behind the Ponzi scheme has a chapter in Jacksonville*, FLA. TIMES UNION (Dec. 21, 2008); Mary Darby, *In Ponzi We Trust: Borrowing from Peter to pay Paul is a scheme made famous by Charles Ponzi. Who was this crook whose name graces this scam?*, SMITHSONIAN MAG. (Apr. 14, 2021), <https://www.smithsonianmag.com/history/in-ponzi-we-trust-64016168/> [https://perma.cc/G5UZ-QE7R]; JASON VUIC, SWAMP PEDDLERS (2021).

their non-disclosures. In 2021, the oceanfront Surfside Condominium tragically collapsed, leading to questions about malpractice, professional liability and the role of rising seas and saltwater intrusion.¹⁵⁸ As with the Ponzi schemes of the past, people became victims.

Ponzi did suffer legal consequences for his fraud,¹⁵⁹ but for professionals who develop coastal property, the Florida legislature responded to the Surfside events, in part, by *curbing* professional liability. The state enacted a rigid statute of repose, foreclosing most lawsuits a mere seven years after the issuance of a certificate of occupancy.¹⁶⁰ Meanwhile, for the owners of waterfront condominiums, costs of maintaining reserves for repairs have increased, and property values have fallen.¹⁶¹ Buyers of older condominiums are suffering financial hardships due to the need to maintain and repair buildings.¹⁶² Investors warn of the many threats to coastal property ownership, including global warming, natural disasters, rising insurance premiums and interest rates, and additional repair and maintenance expenses.¹⁶³ Nevertheless, the uninformed buyer may not be able to count upon their realtor or appraiser to disclose and explain these risks of coastal property ownership. (After many failed attempts at reform, Florida finally passed, in 2024, a law requiring disclosure of some actual flood events.)¹⁶⁴

Ethics remain somewhat elusive for the coastal design and property professionals. Florida's history of real estate scandals echoes. Unscrupulous but licensed professionals can develop projects and cash the checks today. Coastal property clients become victims of the rising seas tomorrow. Some professionals will see, hear, and speak no sea level, and the old adage has returned: buyer beware.

¹⁵⁸ Randall W. Parkinson, *Speculation on the role of sea-level rise in the tragic collapse of the Surfside condominium (Miami Beach, Florida U.S.A.) was a bellwether moment for coastal zone management practitioners*, 215 OCEAN & COASTAL MGMT. 105968 (2021), <https://www.sciencedirect.com/science/article/abs/pii/S0964569121004518> [<https://perma.cc/J2HM-CMJG>].

¹⁵⁹ Cora Bullock, *The Man Who Time (Almost) Forgot: William H. McMasters Finally Gets His Due for Exposing Ponzi*, FRAUD MAG. (July/Aug. 2011), <https://www.fraud-magazine.com/article.aspx?id=4294970026> [<https://perma.cc/UFS9-VM44>].

¹⁶⁰ FLA. STAT. § 95.11(3)(b) (2024).

¹⁶¹ Evan Wyloge, *Florida's Real Estate Market Has a Split Personality: What to Know If You're Buying or Selling in the Sunshine State*, REALTOR.COM (Aug. 10, 2024), <https://www.realtor.com/news/trends/florida-housing-market-condos-home-prices-coast-inland/> [<https://perma.cc/8ZUM-4596>].

¹⁶² Liz Brumer-Smith, *Florida's Condo Crisis: Why Condo Sales are Plummeting: Florida's Condo Market is Under Immense Pressure from New Regulations Requiring Inspections and Expensive Repairs*, U.S. NEWS & REP. (Sept. 5, 2024), <https://realestate.usnews.com/real-estate/articles/floridas-condo-crisis-why-condo-sales-are-plummeting> [<https://perma.cc/3URD-YHJE>].

¹⁶³ Alyssa Guzman, *Top Investor's Chilling Warning About Florida's Condo Crisis with 80% of Owners at Risk of Losing Money on Their Properties: 'Worse than Global Warming'*, DAILY MAIL (Sep. 14, 2024), <https://www.dailymail.co.uk/yourmoney/article-13842867/florida-condo-crisis-impact-homeowners-financial-collapse.html> [<https://perma.cc/7455-5F5M>].

¹⁶⁴ FLA. STAT. § 689.302 (2024). (requiring sellers to disclose past flood related insurance claims to purchaser).

TABLE I.

RISING SEAS AND THE DESIGN AND PROPERTY PROFESSIONALS		
A Selective Summary of Professional Ethics and Best Practices		
Source	Extent of duty	Relevant expectations
Planners		
AICP Climate Change Policy Guide	Unqualified “obligation”	To “reduce the severity of those impacts, and to help humanity adapt”
	“an ethical obligation”	“to address the social and economic impacts of the choices ultimately made.”
Architects		
National Counsel of Architectural Registration Boards, Model Rules	“shall apply”	“the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in the same locality.”
American Institute of Architects, Code of Ethics & Professional Conduct	“should... advise ...of [] obligations”	“including ... a built environment that equitably supports human health and well-being and is resistant to climate change”
Civil Engineers		
American Society of Civil Engineers Code of Ethics	“This Code does not establish a standard of care”	“Engineers ... first and foremost, protect the health, safety, and welfare of the public”
		“Engineers... adhere to the principles of sustainable development”
Appraisers		
Appraisal Foundation’s Uniform Standards of Professional Appraisal Practice	“must”	identify the “physical, legal and economic characteristics” of the property
		identify and analyze “the physical adaptability of the real estate”
Appraisal Foundation APB Valuation Advisory #7	Voluntary guidance	“an area that is below sea level... may impact a site’s insurability and desirability”
Realtors		
Realtors Code of Ethics	Qualified “duty”	to use “resources necessary to formulate an accurate opinion” and “be familiar with the area where the subject property is located” unless the lack of consideration of this information “is disclosed to the party requesting the opinion in advance.”
	Qualified “obligation”	to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority