

## Executive Summary First Quarter – 2018



This is an overview of the developments covered in the *Legal Pulse* Newsletter for the first quarter of 2018. This summary covers Agency, Property Condition Disclosure, RESPA, and Employment issues.

1. **Agency:** Agency law is reviewed each quarter. During the first quarter of 2018:
  - In a California case, the court held that the licensee could be liable for its mismanagement of the resale list and failure to properly follow the terms of a resale agreement incorporated into the listing agreement between the seller and broker. ([No. C080462](#))
  - In another case from California, the broker and licensee could require arbitration of the claim brought against them by the purchaser, based on the arbitration clause in the purchase agreement. Even though the broker and licensee were not signatories to the agreement, they could enforce the clause because they were identified in the agreement as agents of the purchaser and seller. ([No. B276540](#))
  - Real estate teams were the subject of legislation in Virginia and regulation in Mississippi. The Virginia legislation ([Ch. 223](#)) requires teams to obtain a business entity salesperson's license. The Mississippi regulation ([Rule 3.5](#)) requires registration of teams, and calls for the appointment of a team leader.
  - The Kansas Real Estate Commission adopted new forms and revisions of existing forms that relate to disclosure of brokerage relationships, transaction brokerage, and consent to direct negotiation. ([K.A.R. 86-3-26](#), [-27](#), [-28](#))
  - The New Mexico Real Estate Commission amended the rules regarding the duties of a broker to clarify that the broker has a duty to disclose all agency relationships. ([N.M.A.C. tit. 16, § 61.19.8](#))
2. **Property Condition Disclosure:** Property Condition Disclosure authorities are reviewed each quarter. In the first quarter:
  - In a decision from Illinois, the court dismissed claims against the broker and employer for allegedly providing incorrect information about a parking lot adjacent to a commercial building. There was no evidence that the broker and employer had actual knowledge that the lot was two separate tracts of land and the purchaser could not have relied on any false statements because the legal description of the property was attached to the purchase agreement. ([No. 1-17-0614](#))
  - Under an amended rule in Iowa, electronic delivery of a property condition disclosure statement will not be deemed to be complete until the transferor receives written acknowledgment that the statement has been received. ([Iowa Admin. Code r. 193E-14.1\(543B\)](#))
  - Per statute, the Virginia Real Estate Commission will create and maintain on the Commission's website a form to be signed by the parties acknowledging that the purchaser was advised to review the property condition disclosure form. ([Ch. 60](#))
3. **RESPA:** RESPA is also reviewed every quarter. In the first quarter:
  - In a string of related Maryland cases alleging an improper kickback scheme based on referrals between various financial institutions and a title company, the court dismissed the claims because they were barred by the statute of limitations. (Nos. RDB-17-0540; RDB-16-3938; RDB-17-1734; RDB-17-2902)
4. **Employment:** We review Employment issues on an annual basis. Over the past twelve months:
  - In two separate New York cases, the courts determined that the licensees in both cases were employees of the broker because, among other things, the broker controlled the licensee's work hours, limited outside work, and provided office equipment and supplies to the licensee. ([No. 524647](#); [2017 NY Slip Op 06118](#))