

## Executive Summary Second Quarter – 2018



This is an overview of the developments covered in the *Legal Pulse* Newsletter for the second quarter of 2018. This summary covers Agency, Property Condition Disclosure, and RESPA, as well as annual developments in Deceptive Trade Practices Act/Fraud issues and cases involving commercial properties.

- Agency:** Agency issues are reviewed every quarter. During the second quarter of 2018:
  - Vicarious liability issues arose in multiple cases. In a California case, the broker was found vicariously liable for the licensee's negligence in representing the square feet of a mixed commercial and residential property. The broker was responsible for \$310,000 in damages (plus interest). ([No. B265290](#))
  - Texas issued amended regulations regarding team names and licensee advertising. Team and trade names must be registered with the Texas Real Estate Commission before they can be used in an advertisement. Team names must also end in the word "team" or "group." All licensee advertising must contain the licensee's name or team name, and the broker's name must be at least half the size of the largest contact information for any licensee, broker, or team name included in the advertisement. ([22 Tex. Admin. Code § 535.154](#); [22 Tex. Admin. Code § 535.155](#)).
- Property Condition Disclosure:** Property Condition Disclosure authorities are reviewed each quarter as well. In the second quarter:
  - In a case from Louisiana, teachers purchased a condominium for their use in the summer, and intended to rent the property for the other months of the year. The condominium board changed its policy to require a minimum one year lease, which thwarted the purchasers' plans to lease the property. In this decision, the court concluded that the buyers' real estate representative and real estate company did not withhold any information with respect to the condominium board decision. ([No. 16-6835](#))
  - Louisiana's residential real property disclosure form was revised to include a disclosure regarding whether an illegal methamphetamine laboratory was ever located on the property. ([La. Rev. Stat. § 9:3198](#)).
- RESPA:** RESPA is also reviewed each quarter. In the second quarter:
  - In a New York case, the court found that alleged claims which do not involve the sale of any property or the requirement that title insurance be purchased from a particular title company do not state a RESPA claim. ([No. 15-CV-05845](#))
  - An Oregon court concluded that completing a substantial amount of business with a single escrow company does not result in a RESPA violation absent the exchange of any fee, kickback, or thing of value. ([6:18-cv-648-MC](#))
- Deceptive Trade Practices Act/Fraud:** Deceptive Trade Practices Act/Fraud cases are examined on an annual basis. Over the past twelve months:
  - In a Washington case, the court found that a real estate representative/designated broker and a contractor/project manager, both of whom worked with a licensee that defrauded a customer, had no knowledge of or involvement in the scheme. ([No. C14-0503RSL](#))
- Cases Involving Commercial Properties:** This quarter, we also took a closer look at cases involving commercial properties. Over the past twelve months:
  - A California court concluded that the failure of a real estate transaction was not the result of any breach of duty by the real estate representative. Rather, the transaction was not effectuated because the buyer did not indicate approval, as required by the plain language of the agreement. ([No. B277922](#))