

Executive Summary First Quarter – 2019



Here are some highlights of the developments covered in the *Legal Pulse* Newsletter for the first quarter of 2019.

1. **Agency:** Agency law is reviewed each quarter. During the first quarter of 2019:
 - In New York, a buyer brought suit against the real estate representative and company, presenting evidence that while the real estate representative and company represented the buyer, the real estate representative negotiated with the seller to purchase the property for herself. The court held that, although the real estate representative and company made material omissions of fact and breached their fiduciary duties, the buyer failed to establish a legally cognizable interest in the property and therefore was not entitled to the property for its purchase price as specific performance. (169 A.D.3d 865)
 - In New Mexico, an amended regulation states that the required disclosure of any written agreement also includes disclosure of any written agreement the broker has with a transaction coordinator who will be providing brokerage services related to the transaction. ([N.M. Code R. § 16.61.19.8](#))
 - Wyoming amended its law to decrease the length of time licensed real estate brokers must keep and maintain records of real estate transactions, from seven to two years. ([Wyo. Stat. § 33-28-123](#))

2. **Property Condition Disclosure:** Property Condition Disclosure issues are reviewed each quarter. During the first quarter of 2019:
 - In a Connecticut case, a buyer asserted claims for breach of contract, negligent misrepresentation, and civil theft due to the seller's failure to address issues identified in a home inspection. While the seller took actions to resolve the issues, the buyer believed it was not enough and asserted claims for breach of contract, negligent misrepresentation, and civil theft due to the seller's failure to address issues identified in a home inspection. The court held that the sellers did not misrepresent the condition of the house on the Residential Property Disclosure Report when the seller's reasonably addressed the three contested issues and performed their obligations under the agreement. (KNLCV176029185S)
 - In a Texas case, a court held that the real estate team had a duty to alert the buyer of the seller's failure to provide a required explanation of previous flooding in Disclosure Notice. ([No. 12-18-0024-CV](#))
 - In Indiana, an amended statute replaced the term "inspector approved" with "qualified inspector" in the portion of the disclosure form dealing with certification that contamination from the manufacture of controlled substances has been removed. ([Ind. Code § 32-21-5-7](#))

3. **RESPA:** RESPA issues are reviewed each quarter. During the first quarter of 2019
 - In a case from the Northern District of Illinois, a mortgage servicer mistakenly continued to attempt to collect arrearages and refused to accept scheduled payments the borrower made. The court held that the evidence supported a verdict based on violation of RESPA when the loan servicer failed to make an adequate investigation and correct the borrower's record. ([No. 15 CV 1164](#))

4. **Employment:** Employment issues are reviewed annually. Over the past twelve months from April 2018 to April 2019.
 - In a Georgia case, a real estate professional seeking an independent contractor position with a real estate company was informed that he did not pass the background review and would not be brought on as an independent contractor. The court held that the provisions of the Fair Credit Reporting Act that require notice of an adverse action taken due to a pre-employment credit report check do not apply to a credit check of a potential independent contractor. (No. 1:18-CV-03044-WMR-WEJ)