

## Executive Summary 1Q – 2020



The Legal Pulse examines legal liability trends in the real estate industry. This 1Q edition reviews case decisions and legislative activity in areas of agency, property condition disclosure, and RESPA. In addition, this edition reviews legal developments relating to employment issues that occurred between April 2019 and April 2020.

Below are highlights of the first quarter of the 2020 edition of the Legal Pulse Newsletter. <sup>1</sup>

### AGENCY

Agency issues were identified in 11 cases this quarter. Liability was determined in 3 of those cases, and the licensee was not found liable in any of them. Summaries of the most notable cases are set out below.

2 agency cases discussed issues related to the duties licensees might owe to buyers.

- In one case, the buyers alleged that their real estate representative erroneously informed them that the purchased vacant lot was “buildable” under local zoning requirements ([No. A-5928-17T4](#)).
- In another case, the court determined that the agent did not owe the purchaser the duty of retaining a structural engineer to inspect a home ([No. 1180718](#)).

A third agency case concerns the purchase of a commercial unit listed as zoned “B1-3,” a nonexistent commercial classification ([No. 1-18-1135](#)).

A total of 4 statutes were identified this quarter. No regulations were located. The statutory changes focused predominately on brokerage representation agreements and responsibilities. Summaries of the most notable changes are below.

- In Idaho, sales associates who obtain signed brokerage agreements must now provide copies of the agreement to the broker or broker’s office prior to the end of the next business day ([Idaho Code Ann. § 54-2050](#)).
- Designated brokers must maintain reasonable and regular contact with sales associates engaged in real estate transactions, per an amended statute ([Idaho Code Ann. § 54-2038](#)).

### **PROPERTY CONDITION DISCLOSURE**

Property condition disclosure issues were identified in 6 cases this quarter. Liability was determined in 3 cases, and the licensee was not found liable in any of those cases. The most notable cases are summarized below.

Two property condition disclosure cases discussed issues related to plumbing and sewer/septic systems that were identified after the properties were purchased.

<sup>1</sup> To learn more, please review the 1Q *Legal Pulse* Newsletter.

- In one case, the courts held that the plumbing system was not in “working order on the day of the closing.” ([No. W2019-00188-COA-R3-CV](#)).
- In another case, the buyers alleged that they were denied the opportunity to inspect the existing failing septic system as a direct result of the defendants' misrepresentations (No. CV186014780S).
- In the last case, the buyers asserted that the seller’s real estate broker’s duty and liability to them arose from the misrepresentation made by the seller in his statutorily mandated property disclosure form, which the real estate broker delivered to them (No. UWYCV196048297S).

Two statutes pertaining to property condition disclosure were identified this quarter. No regulations were located. The located statutory changes predominately focus on required disclosures. Summaries of the most notable changes are below.

- In Arkansas, closing agents are required to disclose agricultural operations near real property located in a rural area ([Ark. Code Ann. § 18-11-107](#)).
- In North Dakota, a new statute was enacted relating to property disclosure requirements ([N.D.C.C. § 47-10](#)).

## RESPA

RESPA issues were identified in four cases this quarter. The predominant issues this quarter were kickbacks and unearned fees. Liability was determined in none of the cases. The most notable cases are summarized below.

- In one case, home buyers filed a putative class action against a real estate brokerage firm and title company alleging a kickback scheme that deprived home buyers of impartial and fair competition between settlement services providers ([No. 19-1024](#)).
- In another case, a home buyer alleged that the defendants received money for referrals of services related to financing, charged him for unnecessary services, and conspired to “up sell” him ([No. 19-cv-1465-BAS-MDD](#)).
- In the last case, the court determined that the home buyer had pleaded actual damages and her RESPA claims could go forward (No. 19-877).

No statutory or regulatory changes relating to RESPA were identified this quarter.

## EMPLOYMENT

Employment issues were identified in 6 cases from April 2019 to April 2020. Liability was determined in 2 cases, and the licensee was found liable in one of those cases. The most notable cases are summarized below.

Employment cases primarily focused on independent contractors.

- In one case, the court entered judgment and awarded damages, including exemplary damages, under the Washington Wage Rebate Act ([No. 78014-0-1](#)).
- In another case, the court held that the real estate broker could enforce an arbitration agreement as a third-party beneficiary ([No. 10525, 652282/18](#)).

- In the final case, the arbitrator concluded that the associate licensee was the “procuring cause” of the transaction and rendered a final binding arbitration award, finding that the associate licensee was entitled to her share of the commission for the sale of the property ([No. E069644](#)).

No statutory or regulatory changes relating to employment were identified from April 2019 to April 2020.