

Executive Summary Fourth Quarter – 2018



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

1. **Agency:** Agency issues are reviewed each quarter. In the fourth quarter:
 - In a case from Delaware, a real estate company was denied summary judgment in a dispute over whether it could be held vicariously liable for fraudulent acts committed by a broker. The court concluded that it was reasonable to infer that the broker was a representative of defendant real estate company, and that his alleged fraud occurred within the scope of his duties. (No. N18C-01-185 AML.)
 - California amended a statute relating to the information a dual agent may withhold from clients. The statute now defines “confidential information” as “facts relating to the client’s financial position, motivations, bargaining position, or other personal information that may impact price.” The amended statute retains the restriction against a dual agent sharing the seller’s or buyer’s flexibility on price. ([Cal. Civ. Code § 2079.16.](#))
2. **Property Condition Disclosure:** Property Condition Disclosure materials are reviewed each quarter. In the fourth quarter:
 - In a New Jersey case, the purchaser brought a claim against the real estate representative for allegedly failing to explain the scope of a conservation easement that burdened the purchased property. There, the court found in favor of the representative. The purchaser knew about the easement before the purchase, and there was no finding that the easement had adversely affected the property value. (Docket No. A-4503-16T2.)
 - Wisconsin amended its “Real Estate Condition Report” to require a seller of residential real property to disclose to a prospective buyer whether the owner is aware of burial sites on the property. ([Wis. Stat. § 709.03.](#))
3. **RESPA:** RESPA authorities are also reviewed each quarter. In the fourth quarter:
 - A Minnesota Federal Court denied Quicken Loans’ motion to dismiss a RESPA claim brought by a group of mortgagors. The mortgagors alleged that Quicken was charging unreasonable attorney fees to prepare reaffirmation forms for use in bankruptcy proceedings. The form in question was available for free online and required no filing fee. (Civil No. 18-1566 (MJD/LIB).)
4. **Fair Housing:** Fair Housing issues are discussed annually. Over the past year:
 - The Superior Court in Connecticut denied a challenge made by a local civic association seeking to overturn an accommodation granted by the town zoning board of appeals. The accommodation granted a permit that allowed the use of a single-family residence as a sober house with nine unrelated recovering residents and one staff member. The court found that the board’s actions complied with the federal law’s policy to encourage and enable fair housing for those with disabilities. (67 Conn. L. Rptr. 357.)
 - An Ohio Federal Court denied a motion to dismiss a Fair Housing claim brought by an apartment renter with mobility issues against the apartment owners. When plaintiff entered into his lease agreement, the property owners assured him that he would receive accessible parking. Shortly after the renter moved in, the owner leased a number of parking spaces to a nearby business. The parking spot assigned to the renter was a considerable distance from his unit, and was allegedly partially blocked by a large piece of concrete. (No. C 18-04888 WHA.)