



## ***Legal Pulse Newsletter***

### **Year-in-Review 2019**

Welcome to the Year-in-Review edition of the *Legal Pulse*. The *Legal Pulse* Newsletter examines legal liability trends in the real estate industry. In this edition, we examine legal authorities in the areas of agency, property condition disclosure, and RESPA. In addition, we review Fair Housing case decisions and related legislative activity occurring from December 2018 to December 2019. Along with our standard review of legal developments from the past quarter, we revisit important cases decided this year and analyze trends observed in 2019.

In 2019, the most common issues addressed in agency cases related to breach of fiduciary duty and buyer representation. Much of the legislative and regulatory action relating to agency issues involved clarification or modification of existing laws for licensee and team advertising.

As in prior years, mold and water intrusion issues were the most commonly addressed topics in property condition disclosure cases. There were limited legislative or regulatory changes made to property condition disclosure requirements this year; however, a few jurisdictions modified their required property condition disclosure forms.

Allegations of kickbacks and windfalls remained the predominant issues in the RESPA cases this year. No new statutes or regulations pertaining to RESPA issues were retrieved for any of the states this year.

In 2019, there were fewer cases decided under the Fair Housing Act compared to the number of cases retrieved in this area last year. There was no legislative or regulatory activity on this topic.

The tables at the end of this edition of the *Legal Pulse* show the number of cases, statutes, and regulations that were located for each major topic area this year, along with statistics regarding how liability was decided in finalized cases. The first three tables present data for the topics of agency, property condition disclosure and fair housing that are discussed in this edition. The remaining tables collect data for all topics tracked by the *Legal Pulse*, including some

comparisons to 2018 data. These tables also show 2019 data relating to liability, the dollar range of damage awards, the top damage awards, and the top settlements.

## I. AGENCY

### A. Cases

The agency cases located this quarter predominantly address the scope of real estate brokerage services. Agency issues were identified in eleven cases.<sup>1</sup>

1. **Gainey v. MINOO, LLC**, No. 02-19-00171-CV, 2019 WL 6768128 (Tex. App., December 12, 2019)

***Agents are third-party beneficiaries of real estate purchase agreements and are able to compel arbitration.***

The buyer's agent entered into a Commercial Earnest Money Contract for the purchase of a shopping center ("the Purchase Agreement"). At the time of contracting, the largest tenant in the shopping center was a liquor store. About a year after the closing of the purchase, the liquor store vacated its space in the shopping center. The buyer had predicated the value of the shopping center on the liquor store's continued presence and had "relied on the statements and assurances made that the liquor store would not be vacating the Tenant Space in deciding to purchase such Property." Following the liquor store's decision to vacate the shopping center, the buyer sued the seller's real estate agents ("the agents") under the fraud provision of the Texas Business Commerce Code. The buyer claimed that the agents failed to disclose information that the liquor store had entered into a lease at another shopping center, and had begun the process of obtaining approval from governmental agencies to move and to acquire another liquor license for its new location. The buyer further contended that its own agent did not have the authority to sign on its behalf. The sellers agents moved to compel arbitration even though neither they nor the buyer had signed the agreement containing the arbitration clause.

The appellate court determined that the buyer acknowledged that the party that had signed the agreement containing the arbitration clause was its agent. The buyer, as principal, was bound to the agreement by the acts of its agent. Therefore, the agents were third-party beneficiaries of the agreement containing the arbitration clause and were thus able to compel arbitration of the buyer's claim against them. The appellate court reversed the trial court's order denying the agent's motion to compel arbitration and the case was remanded to the trial court and ordered stayed<sup>2</sup> pending completion of arbitration.

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<sup>1</sup> See tables 1, 2 for a complete list of identified materials.

<sup>2</sup> A "stay" provides a temporary halt to judicial proceedings.

2. **Grove v. Franke**, No. 09-18-00119-CV, 2019 WL 5243152 (Tex. App., October 17, 2019)

***The present condition clause negates the reliance element of seller's claim against the agents as a matter of law.***

A seller listed his log home for sale and completed a Texas Association of Realtors Seller's Disclosure Notice ("the Notice"). The Notice did not identify any issues with wood rot or wood destroying insects. The seller entered into a contract with a potential buyer who subsequently had the property inspected. According to the buyer, the inspection uncovered extensive wood rot and damage from wood destroying insects. The seller offered the buyer a \$50,000 price reduction based upon these findings. Ultimately, the buyer terminated the contract. Following the unsuccessful sale, the seller hired a contractor to replace a number of logs. The quote from the contractor noted that additional logs would need to be replaced "in due time." The seller did not amend the notice. After modifications to the property were made, the same buyer and seller executed a Texas Real Estate Commission (TREC) earnest money contract for the purchase of the property. The buyer purchased a \$100 option that gave him the opportunity to terminate the contract within a set period of time. The buyer then hired his own inspector to inspect the log home and prepare a report. The inspector identified several other significant problems with the property, including electrical issues, potential roofing issues, and issues with the foundation. Notably, this inspector admitted he never examined a log home prior to inspecting this property. The seller had a separate termite inspection performed on the property and the inspector did not identify any active wood destroying insects. Based on the inspection report, the buyer and the real estate agent representing him sought monetary concessions from the seller.

The TREC contract signed by the parties contained the following options: "(1) Buyer accepts the property in its present condition, or (2) Buyer accepts the property in its present condition provided seller, at seller's expense, shall complete the following specific repairs and treatments." The parties chose the first option. After occupying the property, buyer experienced multiple problems, many of which his inspector had identified and listed in the report prior to purchase. The buyer then sued the seller, the seller's wife, and the seller's real estate agents. The buyer's action against the agents was based on a claim of statutory fraud in a real estate transaction.<sup>3</sup> The appellate court determined that the present condition clause negated the reliance element of the seller's claim against the agents as a matter of law. Because the seller failed to submit any evidence to create a genuine issue of material fact regarding the

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<sup>3</sup> Buyer asserted additional causes of action against the Sellers, including common law fraud, breach of contract, violation of the Texas Deceptive Trade Practices Act, and negligent misrepresentation.

enforceability of the clause, the appellate court affirmed that the trial court's order granted summary judgment in favor of the agents.

3. **Gonzales v. Silverhawk, Inc.**, No. C083810, 2019 WL 7046708 (Cal. App, December 23, 2019)

***Buyers have an independent duty to exercise reasonable care to protect themselves.***

A buyer signed a contract to purchase a gas station, convenience store, and car wash for \$1.8 million from seller. The contract provided for a six-month due diligence period. Virk, a licensed real estate broker, represented the seller and the buyers. The buyer, Kamal, the president of Silverhawk, Inc., assigned his interest in the property to Silverhawk. In September 2005, Kamal initialed every page of the escrow instruction and signed on behalf of Silverhawk, Inc. He acknowledged that an independent investigation had been made and further acknowledged an opportunity to "inspect all the equipment, furniture, fixtures, electricity, plumbing, drainage, heating & cooling system prior to the close of escrow . . ." The buyer provided \$605,408.40 in cash. The buyer also executed a second promissory note for \$607,820, which would be lent to the buyer by the seller. Nine years later, on May 1, 2015, Silverhawk, Inc. failed to make the monthly payment on the loan from the seller. Silverhawk also failed to make any subsequent payments. On June 15, 2015, the seller filed suit against the buyers and Silverhawk to enforce the terms of the promissory note and also sought judicial foreclosure against the property. The buyers filed a second amended cross-complaint against Virk and the seller for fraudulent concealment, alleging that the buyers were told by a real estate broker that "the business was purchased in 2005 at a grossly inflated price." The buyers' complaint alleged that Kamal was not provided an opportunity to read the escrow instructions. Additionally, they alleged that Virk did not advise them to get an appraisal or to independently investigate the business.

The appellate court noted that a fiduciary relationship can mitigate the usual duty of diligence. However, the buyers still had an independent duty to exercise reasonable care to protect themselves. "Nothing . . . relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself, including those facts which are known to or within the diligent attention and observation of the buyer or prospective buyer." Additionally, the presence of a dual agent would not eliminate the buyers' duty to independently investigate the value of the business, given that the price was central to their decision to purchase the business. The purchase and loan agreements instructed the buyers to conduct an investigation in the purchase and loan documents, and Kamal initialed each page of the documents, indicating that he understood this directive. The appellate court found there were no facts alleged to show that the buyer or real estate agent concealed the facts of the allegedly fraudulent misrepresentation

of the value of the business. Accordingly, the appellate court affirmed the district court dismissal of the case.<sup>4</sup>

4. **Benner, LLC, v. Bradley Company LLC**, No. 19-1439, 2019 WL 6998154 (6th Cir., December 20, 2019)

***Broker is not liable for a delay listing a property where the seller cannot show that the property would have sold if listed sooner.***

The Benner companies owned twenty-two commercial properties around Grand Rapids, Michigan. The companies filed for bankruptcy and negotiated a settlement with their primary creditor, Comerica Bank (“Bank”). Under the agreement, the Bank agreed to forgive their outstanding debt if Benner paid it \$18.75 million within five months. If Benner failed to meet this deadline, the Bank would have the right to take the properties. The Benner companies entered into a listing agreement with a real estate broker, the Bradley Company, to market ten of the properties. Seven were listed for sale, and three were listed for lease. None of the properties were sold or leased. As a result, the Benner companies failed to meet the settlement deadline and lost all twenty-two properties. The Bank provided information about the properties to various potential buyers, and eventually, an affiliate of Great Lakes Capital (a company that shared common ownership with Bradley Co. LLC) bought the Bank's rights to the properties at a significant discount. The Benner companies sued the real estate broker for breach of contract and breach of fiduciary duty.

The Benner companies claimed that the real estate broker didn't use its “best efforts” to market the properties, since the broker waited approximately two months before listing any of the properties. The Benner companies also alleged that the broker disclosed confidential information to Great Lakes Capital. The court determined that the Benner companies failed to offer any evidence to show that any of the properties would have sold or leased if Bradley had listed them sooner. Additionally, the court determined that even if the properties would have been sold and leased, the Benner companies would have still received millions of dollars less than what they owed the bank under the settlement agreement. The court further noted that the Benner companies also failed to offer any evidence that Bradley disclosed confidential information to Great Lakes, or that Bradley caused the default under the settlement agreement. Therefore, the appellate court affirmed summary judgment in favor of the real estate broker.

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<sup>4</sup> The contract provided that a non-prevailing party in a legal proceeding relating to the contract is obligated to pay fees. As the non-prevailing party, the buyer was obligated to pay the fees as ordered by the trial court. The Court of Appeals affirmed the trial court's judgment awarding attorney's fees to the agents.

## B. Statutes and Regulations<sup>5</sup>

### *Illinois*

A new definition of “team” was added to the Real Estate License Act of 2000. The new definition provides that a team is “any 2 or more licensees who work together to provide real estate brokerage services, represent themselves to the public as being part of a team or group, are identified by a team name that is different than their sponsoring broker’s name, and together are supervised by the same managing broker and sponsored by the same sponsoring broker. ‘Team’ does not mean a separately organized, incorporated, or legal entity.”<sup>6</sup>

The amended statute<sup>7</sup> further states that team names in advertising “may not contain inherently misleading terms, such as ‘company’, ‘realty’, ‘real estate’, ‘agency’, ‘associates’, ‘brokers’, ‘properties’, or ‘property’”. Additionally, “in advertising that includes the sponsoring broker’s name and a team name or individual broker’s name, the sponsoring broker’s business name shall be at least equal in size or larger than the team name or that of the individual.”<sup>8</sup>

Sponsoring brokers in Illinois may now permit one or more of their sponsored licensees to act as dual agents in the same transaction. The licensee must obtain the informed written consent of all clients, per the amended dual agency statute.<sup>9</sup>

Another amended statute<sup>10</sup> now provides that the Exclusive Brokerage Agreements must be in writing

The Illinois Realtors issued a Legal News article that details the recent updates to legal forms. The article notes that new language for brokerage agreements includes language relating to a seller’s use of surveillance (both audio and video), a client’s consent to being contacted by their broker by phone, email, or fax, and updating the list of protected classes to include gender identity.<sup>11</sup>

### *Ohio*

The Ohio Division of Real Estate amended its regulations to provide that name identification in a licensee’s advertising may consist only of the name of the person, partnership, corporation, limited liability company, limited liability partnership or association.<sup>12</sup> A licensee may advertise

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<sup>5</sup> This fourth quarter update reviews legislative activity from the following jurisdictions: California, Washington D.C., Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin.

<sup>6</sup> [225 Ill. Comp. Stat. § 454/5-10 \(2019\)](#)

<sup>7</sup> [Id.](#)

<sup>8</sup> [Id.](#)

<sup>9</sup> [225 Ill. Comp. Stat. § 454/15-45 \(2019\)](#)

<sup>10</sup> [225 Ill. Comp. Stat. § 454/15-75 \(2019\)](#)

<sup>11</sup> [Illinois Realtors, Legal News, Legal Forms Fully Updated, January 2019.](#)

<sup>12</sup> [Ohio Admin. Code 1301:5-1-02 \(2019\)](#)

using a first name other than the name on his or her license, or advertise with the licensee's maiden name, provided that the preferred first name or the maiden name is not misleading and is registered with the Division.<sup>13</sup>

The amendment to the advertising regulation also added a new section stating: “[t]he name of the brokerage shall be displayed at least in equal prominence with the name of the salesperson in all advertising, including internet websites, that are within the ownership or direct control of the licensee or the brokerage with which the licensee is affiliated. A licensee shall not be considered to have violated this rule if the terms of use or the format of a website or other advertising medium not owned or controlled by the licensee does not allow the licensee to control or direct the size and prominence of the brokerage and salesperson’s names.”<sup>14</sup>

In addition, a licensee shall not advertise or alter information regarding the listing of any property “unless the licensee has first secured written permission of the owner or owner’s authorized agent and fully discloses in the advertisement the name of the listing brokerage, in the same or larger size type as used to describe the property...”<sup>15</sup>

## II. PROPERTY CONDITION DISCLOSURE

### A. Cases

The Property Condition Disclosure cases retrieved this quarter addressed property disclosure statements with regards to easements and defects identified after the properties were purchased. Property condition disclosure issues were identified in six cases.<sup>16</sup>

1. **Ribeiro v. K&D Builders, Inc.**, No. 2019-CA-000069-MR, 2019 WL 5681182 (Ky. App., November 1, 2019)

***Failure to comply with the disclosure statute in a timely fashion constituted sufficient grounds for vacating an arbitration decision.***

The buyer purchased a home in Louisville in October 2016. The house was built by K&D Builders “in the mid-2000's on speculation,” and was used as a rental property between 2007 and 2016. The buyer and her agent toured the house on two separate occasions. After the second visit, she made a written offer to purchase the property. K&D Builders accepted the offer, and the parties entered into a purchase/sell contract that provided for arbitration of any dispute or claim regarding the transaction. The property was inspected before closing by a licensed

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<sup>13</sup> [Id.](#)

<sup>14</sup> [Id.](#)

<sup>15</sup> [Id.](#)

<sup>16</sup> See Tables 1, 2 for a complete list of identified materials.

inspector, and the inspector determined that the house was “fundamentally sound.” K&D Builders made certain repairs to the house as requested by the buyer. At closing, the buyer accepted a general warranty deed from K&D Builders. In March 2017, the buyer moved out of the home, citing defects in the interior and yard. The buyer then commenced arbitration proceedings against defendants, claiming they intentionally deceived her into purchasing the property by withholding or misrepresenting material information regarding the condition of the home. The buyer also alleged that K&D's agent violated his statutory duty to deliver a disclosure statement to her before closing. Additionally, the buyer alleged her agent breached her fiduciary duty by failing to advise her against purchasing the property without reviewing the seller's disclosure.

The arbitrator concluded that the buyer did not suffer any damages because there was nothing wrong with the house. Even if damages had been sustained, they were not caused by a violation of the seller's agent statutory duty. Therefore, the buyer could not establish a breach of any fiduciary duty owed to her. On appeal, however, the appellate court held that the failure to comply with the disclosure statute in a timely fashion constituted sufficient grounds for vacating the arbitration decision. The Appellate Court vacated and remanded the case to the lower court for entry of an order granting a new arbitration.

2. **Shalant v. Wieger**, No. B295087, 2019 WL 6520907 (Cal. App., December 4, 2019)

***Purchaser alleged he was deprived of the opportunity to negotiate lower price.***

A purchaser agreed to buy a home in Santa Barbara for \$1,124,500. After the escrow on the property closed, the purchaser claimed that he was unaware that a pipeline easement ran adjacent to the living room of the home when he signed the offer to purchase. This alleged material defect affected the property value. During the escrow period, purchaser learned of the easement from documents provided by the escrow company, including an amended written transfer disclosure statement. The purchaser alleged he was “deprived of the opportunity to negotiate a lower price of the property” and subsequently sued the seller's real estate agent and the agent's company for fraudulent concealment, claiming he never received a timely transfer disclosure statement that would have allowed him to negotiate a lower purchase price in light of the pipeline easement.

The appellate court concluded that the purchaser's admission that he had actual knowledge of the easement prior to the close of escrow precluded him from establishing that he was unaware of the easement and would have acted differently had he known of his existence. The appellate court affirmed the dismissal of purchaser's first amended complaint without leave to amend further.

B. Statutes and Regulations

No Property Condition Disclosure statutes or regulations were retrieved.

III. **RESPA**

A. Cases

The RESPA cases retrieved this quarter predominately examined kickbacks. RESPA issues were identified in four cases.<sup>17</sup>

1. **Wildcat v. American West Development, Inc.**, No. 2:19-cv-01248-JAD-NJK, 2019 WL 6569678 (D. Nev., November 15, 2019)

***Conclusionary allegations of a kickback are insufficient to state a claim.***

The borrowers placed a \$5,000 deposit with American West Development (“American West”) on a home. The deposit was made contingent on the borrowers obtaining a mortgage to finance their purchase. According to the borrowers, American West directed them to contact Loan Depot about obtaining a mortgage, and Loan Depot informed borrowers that they would need to improve their credit to qualify for a loan. The borrowers failed to qualify for a mortgage by the set deadline, their contact was canceled, and their deposit was forfeited. They brought suit against American West and Loan Depot, asserting several causes of action, including a federal cause of action under the Real Estate Settlement Procedures Act (“RESPA”) based upon an alleged kickback between American West and Loan Depot. Loan Depot filed a motion to dismiss for failure to state a claim. The magistrate judge determined that the borrowers offered only conclusory allegations of a kickback, and that these allegations were insufficient to state a claim on which relief may be granted. The magistrate judge recommended that the court dismiss the RESPA claim without leave to amend.

2. **Jackson v. Standard Mortgage Corp.**, No. 6:18-cv-00927, 2019 WL 6769361 (W.D. La., December 11, 2019)

***Borrower argues for tolling of statute of limitation based on date of discovery of her claims.***

The borrower closed on her first home mortgage in April 2013, and her second mortgage in July 2016. On July 13, 2018, the borrower filed a complaint against her lender alleging violations to Real Estate Settlement Procedures Act (“RESPA”) section 2605. Section 2605 addresses certain disclosures that must be made to the applicant at the time of loan application

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<sup>17</sup> See Tables 1, 2 for a complete list of identified materials.

and imposes certain obligations on loan servicers. Claims for violation of section 2605 must be brought no later than three years after the date of the occurrence of the violation. The lender filed motions to dismiss, contending that the statute of limitations had run. The borrower countered, arguing that the statute of limitations for her RESPA claims should be tolled because she did not discover the basis for her claims until 2017. The court found that the 2016 loan claims were timely filed and therefore there was no basis for tolling the applicable statute of limitation for those claims. Regarding the 2013 loan, the court found no basis for equitably tolling her RESPA claims because the claims were not asserted in a timely fashion. The court dismissed the 2013 loan RESPA claims with prejudice but gave the borrower the opportunity to amend her complaint to state a viable claim with regard to the 2016 loan.

3. **Somerville, III, v. West Town Bank & Trust**, No. PJM 19-0490, 2019 WL 6131288 (D. Md., November 19, 2019)

***Congress did not intend for entities engaged in unlawful kickbacks and concealment schemes to successfully use the statute of limitations as a defense.***

A putative class action lawsuit alleged the existence of an illegal kickback scheme in which the lender accepted payments, primarily in the form of U.S. postage stamps, from All Start Title, Inc., in exchange for referring mortgagors to All Star, a mortgage settlement services company. Borrowers alleged that as a result of the scheme, they were overcharged by All Star for settlement services. The borrowers claimed that the payment of kickbacks was a patent violation of the Real Estate Settlement Procedures Act (“RESPA”). The lender filed a motion to dismiss, arguing that they did not fraudulently conceal pertinent facts from borrowers, and that the borrowers’ claims were barred because of the statute of limitations. In response, the borrowers argued that the lenders’ active concealment of the alleged violations prevented the borrowers from being on notice of the supposed wrongdoing until more than eight years after their loan closing. The court found that the borrowers met their burden in showing that the lenders fraudulently concealed evidence of their alleged scheme. The court concluded that Congress did not intend for entities engaged in unlawful kickbacks and concealment schemes “to reap the benefits of the statute of limitation as a defense.” Additionally, the court concluded that the applicable statute of limitations should be tolled and the borrowers RESPA claim is not barred by the statute of limitations. The court further held that the borrower put forth sufficient factual allegations that the lender received kickbacks in exchange for referring a mortgagor to All Star Inc., and that these allegations were supported by invoices, forms, and emails by lenders’ employees. The court denied the lenders’ motion to dismiss the RESPA claim.

B. **Statutes and Regulations**

No statutory or regulatory changes relating to RESPA were located.

#### IV. FAIR HOUSING

##### A. Cases

The Fair Housing topics of interest to real estate professionals cover a wide array of topics, such as discriminatory advertising, discriminatory lending, and design and build issues. The Fair Housing cases retrieved from December 2018 to December 2019 primarily focused on discriminatory lending. Over the past twelve months, Fair Housing issues were identified in eight cases.<sup>18</sup>

1. **City of Miami Gardens v. Wells Fargo & Co.**, No. 18-13152, 931 F.3d 1274, (11th Cir., July 30, 2019)

***The City of Miami Gardens was unable to prove that it suffered an injury as a result of the alleged redlining and reverse redlining by Wells Fargo.***

The City of Miami Gardens (“the City”) brought action against mortgage lender (“Wells Fargo”) alleging that, through practices of “redlining” and “reverse redlining,” it had engaged in discriminatory or predatory lending in violation of the Fair Housing Act (FHA) between 2004 and 2008. The City did not allege that it had received such loans from Wells Fargo. Instead, it asserted that Wells Fargo engaged in both “redlining—the practice of denying credit to particular neighborhoods based on race—and reverse redlining—the practice of ‘flooding a minority community with exploitative loan products’ — by ‘refusing to extend mortgage credit to minority borrowers...on equal terms as to nonminority borrowers’ [and by] extending mortgage credit on predatory terms to minority borrowers in minority neighborhoods in Miami Gardens.” The district court dismissed the initial complaint without prejudice and instructed the City to detail “(1) how Miami Gardens is injured, (2) how that injury is traceable to the conduct of each Wells Fargo defendant, and (3) how the injury can be redressed with a favorable decision in this case.” The City amended its complaint twice.

The court determined that “the undisputed evidence confirmed that none of the 153 loans originated by Wells Fargo [within the limitation period] foreclosed.” The City could therefore not have suffered an injury as a result of any of these loans. The court held that the City failed to establish standing and failed to establish that it would be unfair to require it to establish standing<sup>19</sup> under the standard ordinarily applicable at summary judgment. Therefore, the court vacated Wells Fargo's summary judgment and remanded with instructions to dismiss for lack of subject-matter jurisdiction.

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<sup>18</sup> See Tables 3, 4 for a complete list of identified materials.

<sup>19</sup> “Standing” is the legal right to bring a particular lawsuit.

2. **United States of America v. First Merchant Bank**, No. 1:19-cv-02365-JPH-MPB, 2019 WL 3779768, (S.D. Ind., August 12, 2019)

***U.S. alleged bank engaged in unlawful redlining by avoiding providing mortgage credit services to majority-Black areas.***

The Fair Housing Act (“FHA”) and the Equal Credit Opportunity Act (“ECOA”) are remedial statutes that promote fair housing and equal credit opportunity by eliminating discrimination. The United States filed a civil complaint against First Merchants Bank (“the Bank”) alleging violations of the FHA and the ECOA committed between 2011-2017. The complaint alleged that the Bank engaged in unlawful redlining by not providing mortgage credit services to majority-black areas in Marion County Indiana. Additionally, the complaint alleged that the Bank excluded Indianapolis-Marion County and its 50 majority-black census tracts from the Bank’s Community Reinvestment Act assessment areas, while including overwhelmingly white counties. The complaint further alleged that the Bank failed to have any branch locations in majority-black areas, refused to market in majority-black counties, and had disproportionately low number of loan applications and loan originations from majority-black neighborhoods. In addition, the Bank’s residential mortgage lending policy gave a lending preference based on the location of borrowers, not their creditworthiness.

The parties filed a Settlement Agreement with the court. In the agreement, the Bank denied the allegations in the complaint, but agreed to take all actions necessary to ensure that it offers and provides all persons with an equal opportunity to apply for and obtain credit, retain an independent third-party consultant to assess its fair lending risk management program, maintain a fair lending monitoring program, and provide various training to all employees. In addition, the Bank agreed to:

- conduct a community credit needs assessment;
- designate a full-time Director of Community Lending and Development;
- serve a lending area that includes all counties that comprise its current Community Reinvestment Act assessment area, including all of Indianapolis-Marion County;
- open one new full-service branch located in a majority-Black census tract in Indianapolis-Marion County;
- open one loan production office in Indianapolis-Marion County that is centrally located to multiple majority black census tracts and accessible to residents of those tracts through public transportation;
- spend a total of \$500,000 on advertising, outreach, consumer financial education, and credit repair; and
- advertise and conduct outreach within majority-Black consensus tracts.

The bank also promised to create a loan subsidy fund of \$1.12 million aimed at majority-Black census tracts in Indianapolis-Marion County. Regular reporting requirement provisions were also included in the agreement. The court granted the joint motion for Entry of Settlement Agreement after determining that the agreement was fair, reasonable, and adequate.

3. **Prince George's County, Maryland, et. al., v. Wells Fargo & Co.**, No. PJM 18-3576, 2019 WL 5391302 (D. Md., October 22, 2019)

***Suit filed against Wells Fargo sufficiently pled claims associated with foreclosure processing costs.***

Prince George's County and Montgomery County (“the Counties”) filed suit against Wells Fargo and related entities (“Defendants”) for alleged predatory and discriminatory residential mortgage lending, servicing, and foreclosure practices in violation of the Fair Housing Act (FHA). In the complaint, the Counties alleged five broad categories of injuries: foreclosure processing costs; the increased cost of municipal services; economic injuries to the Counties’ tax bases; lost municipal income; and non-economic injuries. The Court held that the Counties sufficiently pled claims associated with foreclosure processing costs, but found the alleged non-economic injuries were too far removed from the alleged discriminatory conduct to be “plausibly proximately” caused by the defendants. As for the remaining three categories of alleged injuries – increased municipal services costs, tax base injuries, and lost municipal income and utility fees – the Court deferred making a ruling to allow the Counties an opportunity to amend their complaint by November 15, 2019, to include more detail with respect to these claims.

B. **Statutes and Regulations**

No statutory or regulatory changes relating to Fair Housing were located.

**V. VERDICT AND LIABILITY INFORMATION**

A. **Agency Cases**

Liability was determined in 28 Agency cases in 2019, and the licensee was found liable in 7<sup>20</sup> of those cases (see Table 4).

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<sup>20</sup> *Colorado Real Estate Commission v. Vizzi*, No. 17CA2388, 2019 WL 1087016, (Colo. App., March 7, 2019) (\$0); *Edwards v. Wash*, No. 706244/13, 169 A.D. 3d 865, (N.Y. App. Div., February 20, 2019) (\$0); *Finch v. Commonwealth of Virginia, Department of Professional and Occupational Regulation, Real Estate Board*, No. 1289-18-1, 2019 WL 921152, (Va. App., February 26, 2019) (\$0); *Bermudez v. PBG Real Estate Inc.*, RG-18-889174, 2019 WL 5418158 (Cal. Super., July 24, 2019) (\$47,000); *Guidry v. Menard*, No. 2016-6463-I, 2019 WL 4254760 (La. Dist., February 21, 2019) (\$103,230.31); *Brandon v. Queenan*, No. 2016-SLCC-00002, 2019 WL 3774438 (Mo. Cir., June 7, 2019)

B. Property Condition Disclosure Cases

Liability was determined in 10 Property Condition Disclosure cases in 2019, and the licensee was found liable in 1<sup>21</sup> of those cases (see Table 4).

C. RESPA Cases

Liability was in 4 RESPA cases in 2019, and the real estate professional was not held liable in any of those cases (see Table 4).

D. Fair Housing Cases

Liability was determined in 1<sup>22</sup> Fair Housing case in 2019, which resulted in liability for the real estate professional (see Table 4).

VI. TABLES

**Table 1.**

Volume of Items Retrieved for 2019 by Major Topic

Major Topic	Cases	Statutes	Regulations
Agency	63	18	12
Property Condition Disclosure	22	6	0
RESPA	27	0	0

**Table 2.**

Volume of Items Retrieved for 2019 by Issue

Issue	Cases	Statutes	Regulations
Agency: Dual Agency	5	1	0

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(\$1,637,000); *Galvan v. 1720 W. Anderson Lane L.L.C.*, No. D-1-GN-18-001327, 2019 WL 6726048 (Tex. Dist., April 26, 2019) (\$185,000); *Bowfits 1308 v. Falcon Props.*, No. 2018-2-01412-3, 2019 WL 3537156 (Wash.Super., April 27, 2019) (\$213,000).

<sup>21</sup> *Guidry v. Menard*, No. 2016-6463-I, 2019 WL 4254760 (La.Dist., February 21, 2019) (\$103,230.31).

<sup>22</sup> *Sanzaro v. Ardiente Homeowners Association, LLC et al.*, No. 2:11-cv-01143-RFB-CWH, 2019 WL 918981, (D. Nev., February 25, 2019) (\$635,000).

Agency: Buyer Representation	15	0	0
Agency: Designated Agency	0	0	0
Agency: Transactional Agency	0	0	0
Agency: Subagency	0	0	0
Agency: Disclosure of Confidential Info.	0	0	0
Agency: Vicarious Liability	1	0	0
Agency: Breach of Fiduciary Duty	22	0	0
Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	0	0	0
Agency: Minimum Service Agreement	1	0	0
Agency: Pre-listing	0	0	0
Agency: Teams	0	0	2
Agency: Coming Soon Listings	0	0	0
Agency: Other	40	18	10
Property Condition Disclosure: Structural Defects	2	0	0
Property Condition Disclosure: Sewer/Septic	0	0	0
Property Condition Disclosure: Radon	0	0	0
Property Condition Disclosure: Asbestos	0	0	0
Property Condition Disclosure: Lead-based Paint	0	0	0
Property Condition Disclosure: Mold and Water Intrusion	3	0	0
Property Condition Disclosure: Roof	2	0	0

Property Condition Disclosure: Stucco	0	0	0
Property Condition Disclosure: Flooring/Walls	1	0	0
Property Condition Disclosure: Imported Drywall	0	0	0
Property Condition Disclosure: Plumbing	1	0	0
Property Condition Disclosure: HVAC	0	0	0
Property Condition Disclosure: Electrical	0	0	0
Property Condition Disclosure: Valuation	0	0	0
Property Condition Disclosure: Short Sales	0	0	0
Property Condition Disclosure: REOs	2	0	0
Property Condition Disclosure: Insects	1	0	0
Property Condition Disclosure: Boundaries	0	0	0
Property Condition Disclosure: Zoning	0	0	0
Property Condition Disclosure: Off-site Adverse Conditions	0	0	0
Property Condition Disclosure: Meth Labs	1	0	0
Property Condition Disclosure: Stigmatized Property	0	0	0
Property Condition Disclosure: Megan's Laws	0	0	0
Property Condition Disclosure: Underground Storage Tank	0	0	0
Property Condition Disclosure: Electromagnetic	0	0	0
Property Condition Disclosure: Pollution/Env't'l Other	1	0	0

Property Condition Disclosure: Other	13	6	0
RESPA: Disclosure of Settlement Costs	0	0	0
RESPA: Kickbacks	8	0	0
RESPA: Affiliated Business Arrangements	0	0	0
RESPA: Marketing Service Agreements	1	0	0
RESPA: Other	19	0	0

**Table 3.**

Volume of Fair Housing Items Retrieved in Past Twelve Months (December 2018 – December 2019)

Major Topic	Cases	Statutes	Regulations
Fair Housing: Advertising	1	0	0
Fair Housing: Coming Soon Listings	0	0	0
Fair Housing: Design/Build	4	0	0
Fair Housing: Lending	1	0	0
Fair Housing: Steering	2	0	0

**Table 4.**

Liability Data for 2019 by Major Topic

Major Topic	Liabe	Not Liabe	% Liabe	% Not Liabe
Agency	8	20	29%	71%
Property Condition Disclosure	1	9	10%	90%

RESPA	0	4	N/A	100%
Fair Housing	1	0	100%	N/A

**Table 5.**

Distribution of 2019 Cases by Major Topic with Comparisons to 2018 Data

Major Topic	2018 Count	2019 Count	Δ
Agency	66	84	+18
Property Condition Disclosure	25	27	+2
RESPA	27	28	+1
Employment	1	4	+3
Fair Housing	17	8	-9
Technology	9	7	-2
Antitrust	0	1	+1
Third Party Liability	9	3	-6
Ethics	0	0	0

**Table 6.**

Distribution of 2019 Cases by Issue with Comparisons to 2018 Data

Issue	2018 Count	2019 Count	Δ
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Agency: Dual Agency	9	5	-4
Agency: Buyer Representation	9	15	+6
Agency: Designated Agency	3	0	-3
Agency: Transactional Agency	0	0	0
Agency: Subagency	0	0	0
Agency: Disclosure of Confidential Info.	0	0	0
Agency: Vicarious Liability	8	1	-7
Agency: Breach of Fiduciary Duty	28	22	-6
Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	0	0	0
Agency: Minimum Service Agreements	0	1	+1
Agency: Pre-listing	0	0	0
Agency: Teams	0	0	0
Agency: Coming Soon Listings	0	0	0
Agency: Other	14	40	+26
Property Condition Disclosure: Structural Defects	5	2	-3
Property Condition Disclosure: Sewer/Septic	2	0	-2
Property Condition Disclosure: Radon	0	0	0
Property Condition Disclosure: Asbestos	1	0	-1
Property Condition Disclosure: Lead-based Paint	1	0	-1
Property Condition Disclosure: Mold and Water Intrusion	3	3	0

Property Condition Disclosure: Roof	0	2	+2
Property Condition Disclosure: Stucco	0	0	0
Property Condition Disclosure: Flooring	1	1	+1
Property Condition Disclosure: Imported Drywall	0	0	0
Property Condition Disclosure: Plumbing	2	1	-1
Property Condition Disclosure: HVAC	0	0	0
Property Condition Disclosure: Electrical	1	0	-1
Property Condition Disclosure: Valuation	0	0	0
Property Condition Disclosure: Short Sales	0	0	0
Property Condition Disclosure: REOs	0	2	+2
Property Condition Disclosure: Insects	1	1	0
Property Condition Disclosure: Boundaries	1	0	-1
Property Condition Disclosure: Zoning	1	0	-1
Property Condition Disclosure: Off-site Adverse Conditions	0	0	0
Property Condition Disclosure: Meth Labs	0	1	+1
Property Condition Disclosure: Stigmatized Property	0	0	0
Property Condition Disclosure: Megan's Laws	0	0	0
Property Condition Disclosure: Underground Storage Tank	0	0	0
Property Condition Disclosure: Electromagnetic	0	0	0
Property Condition Disclosure: Pollution	0	1	-1

Property Condition Disclosure: Other	2	13	+11
Employment: Wrongful Termination	0	0	0
Employment: Personal Assistants	0	0	0
Employment: Independent Contractors	1	3	+2
Employment: Wage and Hour	0	1	+1
Fair Housing: Handicap/Design and Build	5	4	-1
Fair Housing: Advertising/Target	1	1	0
Fair Housing: Steering	2	2	0
Fair Housing: Lending	9	1	-8
Fair Housing: Coming Soon Listings	0	0	0
Technology: State Internet Advertising	0	0	0
Technology: Social Networks	0	0	0
Technology: Privacy	0	0	0
Technology: Anti-Solicitation	0	2	+2
Technology: Data Breaches	0	0	0
Technology: Cyber Fraud	2	0	-2
Technology: Drones	1	0	-1
Technology: Copyright	5	3	-2
Technology: Other	1	6	+5
Antitrust: Price-Fixing	0	0	0
Antitrust: Group Boycotts	0	0	0
Antitrust: Advertising	0	0	0

Antitrust: Tying Agreements	0	0	0
Antitrust: Other	0	1	+1
RESPA: Disclosure of Settlement Costs	1	0	-1
RESPA: Kickbacks	18	8	-10
RESPA: Affiliated Business Arrangements	6	0	-6
RESPA: Marketing Service Agreements	0	1	+1
RESPA: Other	2	19	+17
Third Party Liability: Appraisers	3	1	-2
Third Party Liability: Inspectors	1	2	+1
Third Party Liability: Other	5	3	-2
Ethics: Reliance on NAR's Code of Ethics	0	0	0
Ethics: Enforcement of NAR's Code of Ethics	0	0	0
DTPA/Fraud	38	31	-7

**Table 7.**

Distribution of 2019 Statutes and Regulations by Major Topic with Comparisons to 2018 Data

Major Topic	2018 Count	2019 Count	Δ
Agency	35	30	-5
Property Condition Disclosure	13	6	-7
RESPA	1	0	-1
Fair Housing	2	0	0
Technology	6	1	-5

Antitrust	0	0	0
Third Party Liability	3	16	+3

**Table 8.**

Distribution of 2019 Statutes and Regulations by Issue with Comparisons to 2018 Data

Issue	2018 Count	2019 Count	Δ
Agency: Dual Agency	0	1	+1
Agency: Buyer Representation	0	0	0
Agency: Designated Agency	0	0	0
Agency: Transactional Agency	1	0	-1
Agency: Subagency	0	0	0
Agency: Disclosure of Confidential Info.	0	0	0
Agency: Vicarious Liability	0	0	0
Agency: Breach of Fiduciary Duty	1	0	-1
Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	4	0	-4
Agency: Minimum Service Agreement	0	0	0
Agency: Pre-listing	0	0	0
Agency: Teams	0	2	+2
Agency: Coming Soon Listings	0	0	0
Agency: Other	27	28	+1
Property Condition Disclosure: Structural Defects	0	0	0

Property Condition Disclosure: Sewer/Septic	0	0	0
Property Condition Disclosure: Radon	2	0	0
Property Condition Disclosure: Asbestos	0	0	0
Property Condition Disclosure: Lead-based Paint	0	0	0
Property Condition Disclosure: Mold and Water Intrusion	0	0	0
Property Condition Disclosure: Roof	0	0	0
Property Condition Disclosure: Stucco	0	0	0
Property Condition Disclosure: Flooring	0	0	0
Property Condition Disclosure: Imported Drywall	0	0	0
Property Condition Disclosure: Plumbing	0	0	0
Property Condition Disclosure: HVAC	1	0	-1
Property Condition Disclosure: Electrical	1	0	-1
Property Condition Disclosure: Valuation	1	0	-1
Property Condition Disclosure: Short Sales	0	0	0
Property Condition Disclosure: REOs	0	0	0
Property Condition Disclosure: Insects	0	0	0
Property Condition Disclosure: Boundaries	0	0	0
Property Condition Disclosure: Zoning	0	0	0
Property Condition Disclosure: Off-site Adverse Conditions	0	0	0
Property Condition Disclosure: Meth Labs	1	0	-1

Property Condition Disclosure: Stigmatized Property	0	0	0
Property Condition Disclosure: Megan’s Laws	1	0	-1
Property Condition Disclosure: Underground Storage Tank	0	0	0
Property Condition Disclosure: Electromagnetic	0	0	0
Property Condition Disclosure: Pollution	0	0	0
Property Condition Disclosure: Other	6	6	0
Fair Housing: Handicap Design/Build	2	0	0
Fair Housing: Advertising	0	0	0
Fair Housing: Steering	0	0	0
Fair Housing: Lending	0	0	0
Fair Housing: Coming Soon Listings	0	0	0
Technology: State Internet Advertising	0	1	-1
Technology: Social Networking	1	1	0
Technology: Anti-Solicitation	1	1	0
Technology: Privacy	0	0	0
Technology: Cyber Fraud	0	0	0
Technology: Drones	0	0	0
Technology: Copyright	0	0	0
Technology: Data Breach	3	0	-3
Technology: Other	0	2	+2
Antitrust: Price-Fixing	0	0	0

Antitrust: Group Boycotts	0	0	0
Antitrust: Advertising	0	0	0
Antitrust: Tying Agreements	0	0	0
Antitrust: Other	0	0	0
RESPA: Disclosure of Settlement Costs	1	0	-1
RESPA: Kickbacks	0	0	0
RESPA: Affiliated Business Arrangements	0	0	0
RESPA: Marketing Service Agreements	0	0	0
RESPA: Other	0	0	0
Third Party Liability: Appraisers	2	14	+12
Third Party Liability: Inspectors	0	2	+2
Third Party Liability: Other	0	0	0

**Table 9.**  
Distribution of 2019 Cases by Liability

Determination of Liability	Count	% of Total
Agent/Broker Liable	9	21%
Agent/Broker Not Liable	33	79%

**Table 10.**  
Distribution of 2019 Cases and Jury Verdicts Awarding Damages by Amount

Amount	Count	Percentage
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\$5 million or more	1	10%
\$1 million to 4,999,999	2	20%
\$500,000 to 999,999	1	10%
\$100,000 to 499,999	3	30%
\$50,000 to 99,999	0	N/A
\$10,000 to 49,999	3	30%
Under \$10,000	0	N/A
Unknown	0	N/A

**Table 11.**  
Largest Damage Awards in 2019

Damage Award	Issue(s)	Case	State
\$6,136,979	Deceptive Trade Practices Act and Fraud; Agency: Buyer Representation	Philips	TX
\$3,582,000	RESPA: Other	Saccameno	IL
\$1,637,000	Deceptive Trade Practices Act and Fraud	Brandon	MO
\$635,000	Fair Housing: Handicap Discrimination/Design and Build	Sanzaro	NV
\$213,000	Deceptive Trade Practices Act and Fraud; Agency: Other	Bowfits	WA
\$185,000	Agency: Other; Deceptive Trade Practices Act and Fraud	Galvan	TX

\$103,230.31	Agency: Other; Property Condition Disclosure: Insects/Vermin	Guidry	LA
\$47,000	Agency: Breach of Fiduciary Duty	Bermudez	CA
\$41,060.77	Third-Party Liability: Other	Iron Shields Investments, Inc.	CT
\$13,356.40	Technology: Other	Real Estate Edge, LLC	MN

**Table 12.**

Largest Damage Awards Reported in Jury Reports Retrieved in 2019, but Decided in 2018

Damage Award	Issue(s)	Case	State
N/A	N/A	N/A	N/A

**Table 13.**

Top Settlements in 2019

Settlement Amount	Issue	Case	State
N/A	N/A	N/A	N/A