



LEGAL PULSE NEWSLETTER

THIRD QUARTER 2016

Welcome to the *Legal Pulse* Newsletter. *Legal Pulse* reviews legal liability issues of concern to real estate professionals. As always, in this edition we examine Agency, Property Condition Disclosure, and RESPA case decisions and legislative activity from the past quarter. In addition, this quarter we look at Technology and Third Party Liability cases and legislative activity from the past twelve months.

The number of Agency cases remained consistent from the last review quarter. As we noted in the last edition, this is a slight decline from previous quarters. While breach of fiduciary duty issues continues to be the most commonly-addressed, several cases also addressed vicarious liability this quarter. Other frequent topics, such as whether an agency relationship was created and the scope of a dual agent's duty, are discussed in the cases highlighted below. A few Agency-related regulations regarding advertising and the documents to be maintained by a licensee with respect to real estate transactions were retrieved in this review period as well.

With respect to Property Condition Disclosure cases, water intrusion/mold issues continue to be a popular topic, and were addressed in two cases this period. The other PCD cases involved sewer/septic, HVAC, termite damage, and other issues. There was a decline in the number of PCD cases this quarter, and no PCD statutes or regulations were retrieved.

The RESPA story is remarkably similar to last quarter. Once again, we saw fewer RESPA cases than in the previous quarter. Alleged kickbacks and improper payments remain the most common issue, and in many of the cases, the allegations failed to adequately describe an improper transfer of fees. Also consistent with last quarter, none of the defendants were held liable in the RESPA cases this period.

In this third quarter edition of the *Legal Pulse*, we examine Technology and Third Party Liability decisions and authorities from the past year.¹ In the realm of Technology, the legal

¹ We also review Antitrust authorities from the past year; however, there are no Antitrust case decisions or statutes to report from the past twelve months.

authorities touch on a variety of issues, including the Telephone Consumer Protection Act, copyright infringement, and electronic media. Text messages were central to many of the Technology cases this year. One issue decided in two cases over the past year is whether a real estate transaction can be effectuated through text messages. Furthermore, as you might expect, legislative activity in many states this year addressed technology-related issues. Several states amended their data breach or consumer data protection statutes. Several states also made changes to their advertising rules for licensees with respect to advertising on electronic media.

Many of the third-party liability cases involve claims against inspectors and appraisers, and also address claims against escrow agents. A common question in these cases is whether the inspector, appraiser, or escrow agent owes a duty to the party who is suing them.

To learn more about these recent trends in real estate law, read the summaries below and check out the tables that follow, which summarize the frequently-cited topics and liability figures.

I. AGENCY

The Agency cases from this period address issues that we frequently see in this context, such as whether an agency relationship existed, whether a licensee was an employee or independent contractor, whether a broker could be liable for the negligence of a licensee, and the duty owed by a licensee.

A. Cases

1. **Maida Development, LLC v. Tarantino Properties, Inc.**, No. 07-16-00014-CV, 2016 WL 413050 (Tex. Ct. App. Aug. 2, 2016)

No agency relationship existed between licensee and prospective purchaser of property.

The prospective purchaser of a commercial property brought a lawsuit after he was not successful in purchasing the property. At the time the would-be purchaser contacted the licensee, the licensee had already been working on behalf of the seller to find a buyer. He agreed to bring the prospective purchaser's offer to the seller, but informed the purchaser that the property was off-market. The prospective purchaser alleged that the real estate salesperson breached his fiduciary duty to the potential purchaser.

The written offers prepared by the purchaser indicated the licensee represented the “Seller only,” the purchaser did not have control over the details of the licensee’s actions, and the licensee had autonomy and independent decision-making authority in the sales process. The court concluded that no principal-agent relationship was created between the purchaser and the licensee, and therefore, the licensee did not owe a fiduciary duty to the purchaser. In the absence of a fiduciary duty, the licensee’s broker was also not vicariously liable for the licensee’s conduct. Summary judgment in favor of the licensee and broker was affirmed on appeal.

2. **Santorii v. MartinezRusso, LLC**, No. 1: CA-CV-15-0211, 2016 WL 4440375 (Ariz. Ct. App. Aug. 23, 2016)

Broker was not vicariously liable for salesperson’s negligent driving because salesperson was an independent contractor.

The court considered whether the broker could be vicariously liable for the negligent driving of its licensee. The licensee was driving back from a real estate sales appointment when his car struck another car, resulting in the death of both drivers. The court concluded that the broker was not liable for the licensee’s actions because the licensee was an independent contractor, not an employee.

The court determined that under Arizona statutes and regulations, a broker’s duty to supervise its salespeople relates only to real estate transactions. The licensee had control over the time, manner, and means of traveling to meet clients, had no quotas or required meetings, and controlled his own hours. Thus, the licensee was not an employee or agent of the broker and the broker was not vicariously liable for the licensee’s actions. On appeal, the court affirmed the trial court’s entry of summary judgment in favor of the licensees.

3. **Wagner v. MSE Technology Applications, Inc.**, 384 Mont. 436 (Aug. 30, 2016)

Licensee acting as dual agent could be liable for failing to act in the best interest of the potential purchaser.

The potential purchaser of land sued the seller, buyer, and a listing broker claiming they interfered with his attempt to purchase the property. The potential purchaser and seller entered an agreement, with the listing broker acting as dual agent in the transaction. A few months later, several meetings were held between the seller, an adjacent property owner, the listing broker, and an individual interested in purchasing the adjoining property. The potential purchaser did not attend these meetings, and indicated that she was not interested in purchasing the adjacent parcel, which contained the only existing road providing access to the property. When the potential purchaser failed to close on the property, the seller then closed the deal with the buyer. The listing broker assisted with the new transaction and claimed that the potential purchaser had indicated she was no longer interested in the original property. The trial court granted judgment for all defendants on the intentional interference claim. The trial court also granted summary judgment in favor of the licensee on a professional negligence claim.

On appeal, the appellate court reversed the court's decision with respect to the licensee. The appellate court concluded that summary judgment on the negligence claim was improper because disputed facts had to be determined, such as what the licensee knew at the time and to what extent he participated in the actions at issue. Furthermore, the other claims could go forward because the potential purchaser presented some evidence showing that the licensee may not have acted in the would-be purchaser's best interest as dual agent. The court reversed summary judgment and dismissal of claims in favor of the licensee.

B. Statutes and Regulations²

North Carolina

North Carolina amended several regulations relevant to licensees. With respect to advertising, a broker may not advertise or operate in any manner using a name different from the name under which they are licensed.³ A broker also may not advertise or operate in any way which could mislead a consumer as to the broker's actual identity or identity of the firm with which the broker is affiliated.⁴

Another amended regulation adds to the list of documents that must be maintained by a broker in its real estate transaction file. Brokers must maintain "sketches, calculations, photos, and other documentation used or relied upon to determine square footage" and "advertising used to market a property."⁵

² We review state legislative activity in the quarter in which the state's annual legislative session typically ends. This third quarter update reviews legislative activity from North Carolina and Oregon.

³ [N.C. Admin. Code tit. 21, r. 58A.0103 \(2016\)](#).

⁴ *Id.*

⁵ [N.C. Admin. Code tit. 21, r. 58A.0108 \(2016\)](#).

C. Volume of Materials Retrieved


Agency issues were identified 13 times in 11 cases (see Table 1). Breach of fiduciary duty and vicarious liability were the most commonly raised issues. Three Agency regulations were retrieved this quarter.

II. **PROPERTY CONDITION DISCLOSURE**


In two of the PCD cases below, the courts examined the disclosure rules governing real estate transactions in their respective states. In a case from Michigan, the court held that the disclosure rules require disclosure only with respect to conditions of the property. In a Florida case, the court concluded that a licensee must abide by statutory disclosure rules even if the language of a contract provision suggests that a licensee has no obligation to make disclosures.

A. Cases

1. **Ealey v. Benjigates Estates, LLC**, No. 327244, 2016 WL 4251209 (Mich. Ct. App. Aug. 11, 2016)



Property condition disclosure rules relate to conditions of the property and do not require disclosure regarding interest rates.



The purchaser claimed that the seller and its representative failed to tell her that the finance charge under the land contract for the property exceeded legal limits. The court held that the purchaser failed to show that the defendants had a duty to disclose any information about the finance charges. Michigan real property disclosure rules impose a duty to disclose conditions of the property, but do not require any disclosure regarding interest rates. Interest rates are not a condition of the property. The appellate court affirmed dismissal of the claims.

2. **Lapinsky v. Cook**, No. E2015-00735-COA-R3-CV, 2016 WL 5385849 (Tenn. Ct. App. Sept. 26, 2016)

Licensee was not liable for misrepresentations where homebuyer accepted the house after an inspection and could not have relied upon statements made by the licensee.

Homebuyer sued the sellers and sellers' representative, claiming that repairs were not made as agreed to in the contract, that defects were hidden, and that the defendants made misrepresentations regarding the septic system. The trial court entered summary judgment for the defendants.

The homebuyer had inspected the home with her husband, a licensed general contractor. Afterwards, she signed a Final Inspection Form indicating her acceptance of the house. Evidence showed that the lack of completed repairs was obvious to the homebuyer and her husband during the inspection as there were missing shingles on the roof and peeling trim. Because the homebuyer was aware (or should have been aware) of the obvious failures but still accepted the property, the court concluded that the homebuyer must not have relied on statements made by the sellers or the licensee about the repairs. There was also no unfair trade practice on behalf of the licensee because the homebuyer never had direct contact with the licensee. The appellate court affirmed summary judgment for the licensee.

3. **Kjellander v. Abbott**, No. 1D15-5475, 2016 WL 4992415 (Fla. Dist. Ct. App. Sept. 19, 2016)

Licensee could be liable for undisclosed water and HVAC problems.

The purchasers of a home sued the sellers, sellers' representative, and purchasers' home inspector for undisclosed water damage, mold, and problems with the HVAC system. The purchasers alleged that the defendants misrepresented, concealed, or failed to disclose the true condition of the house. The trial court entered summary judgment in favor of the licensee on the basis of a contract provision stating that the

purchasers would rely solely on the representations of the sellers and third parties other than the licensee.

The appellate court disagreed with the trial court's decision. According to the appellate court, the contract provision did not relieve the licensee of his duties. The licensee must still satisfy statutory obligations and duties to clients, including the duty of honesty and fair dealing, the duty to disclose all known facts that materially affect the value of the property, and a duty not to make misleading or fraudulent misrepresentations. The court reversed summary judgment in favor of the licensee.

B. Statutes/Regulations

No PCD statutes or regulations were retrieved this quarter.

C. Volume of Materials Retrieved

Property Condition Disclosure issues were identified 7 times in 4 cases (see Table 1). The cases addressed mold and water intrusion, septic system, HVAC, insects, and other issues. No statutes or regulations regarding Property Condition Disclosure were retrieved this quarter.

III. RESPA

In the RESPA cases discussed below, the borrowers failed to show that the lenders and other entities paid or received kickbacks or other improper fees.

A. Cases

1. Schiano v. MBNA, No. 5-1771 (JLL), 2016 WL 21257761 (D. N.J. Aug. 10, 2016);
Schiano v. MBNA, No. 5-1771 (JLL), 2016 WL 4009821 (D. N.J. July 25, 2016)

Borrowers failed to show lenders paid or received improper fees or kickbacks.

Borrowers alleged that various lenders and entities violated RESPA by paying fees and kickbacks to each other. They also claimed that disbursements made to MBNA were unaccounted for and, therefore, constitute unearned fees or kickbacks. In one of the decisions, the court considered the claims against a lender and affiliated mortgage

company. The court ruled there were no allegations that the lender withheld any fees, nor was there any evidence that the defendants received unearned fees or kickbacks. Summary judgment was granted in favor of the lender and mortgage company.

In the other decision, the court examined the allegations against a lender who was allegedly a successor to MBNA. The court concluded that the Borrower's allegations were not specific enough; they did not state which party accepted false charges, the party with whom fees were split, when the fees were charged, or the services involved. The court granted the lender's motion to dismiss.

2. **Silvestar v. Nationstar Mortgage, LLC**, No. 1:15-CV-4246-RWS-JKL, 2016 WL 5339736 (N.D. Ga. July 12, 2016)

Homeowner failed to show payments between bank and mortgage company were misleading.

Homeowner alleged that a bank and mortgage company violated RESPA by making misleading payments between themselves and that the payments were designed to create a windfall. The magistrate judge recommended dismissal of the lawsuit because the homeowner did not show how any of the payments between the parties were misleading.

B. Statutes/Regulations

Florida

A regulation in Florida provides a long list of activities which constitute an unlawful inducement for the sale or referral of title insurance business, if the activities are performed for a referrer or settlement service business. The list includes providing simulated panoramic home and property tours to real estate brokers and sales associates to promote their listings, sponsoring and hosting open houses for real estate brokers and sales associates, paying for advertising to promote real estate listings, and providing an endorsement or designation of preferred status on media promoting real estate brokers or sales associates.⁶

⁶ [Fla. Admin. Code R. 69B-186.010 \(2016\)](#).

C. Volume of Materials Retrieved


RESPA issues were identified 5 times in 5 cases (see Table 1). The cases addressed kickbacks and disclosure of settlement costs.

IV. **TECHNOLOGY – YEARLY UPDATE**


Many of the Technology case decisions this past year involved text messaging. In two decisions, both from Massachusetts, the court considered whether a real estate transaction may be completed through the exchange of text messages. Another case involved an alleged Telephone Consumer Protection Act violation by a licensee who sent a text message. One case involved allegations of copyright infringement.

A. Cases

1. **Donius v. Milligan**, No. 16MISC000277 HPS, 2016 WL 3926577 (Mass. Land Ct. July 25, 2016)



Text messages may create an enforceable contract if all essential terms are included and the terms are signed.



A prospective purchaser sought to enforce a contract to purchase a property. He argued that text messages between his representative and the seller's representative created an enforceable contract. The text messages included a sales price and a closing date.

The court held that text messages may create an enforceable contract if they contain the essential terms of the transaction and they are signed. In this instance, the texts were not signed, the messages did not include all material terms, and the seller's representative was not authorized to bind the principal. The court dismissed the case.

2. **Bell v. Taylor**, Nos. 15-2343, 15-3735, 15-3731, 2016 WL 3568139 (7th Cir. July 1, 2016)

Photographer could not prove damages against licensee who used unauthorized photo on her website.

A photographer brought a copyright infringement action against a licensee who used one of his photographs on her website. The trial court determined that the licensee infringed the copyright, but the photographer could not prove any damages from the use of the photograph. The value of the photo was speculative, and there was no evidence that the licensee attracted more clients because of the photo. The appellate court affirmed summary judgment for the licensee.

3. **St. John's Holdings, LLC v. Two Electronics, LLC**, No. 16MISC0000090, 2016 WL 1460477 (Mass. Dist. Ct. Apr. 14, 2016)

A text message may memorialize offer and acceptance in a transaction.

The potential purchaser alleged that the seller accepted a binding offer to purchase a property through a text message sent by the seller's representative. The court determined that a text message may memorialize offer and acceptance of an offer in a property transaction if all essential terms are included and the terms are signed. The electronic signature at the end of a text message is evidence of a party's intent to have the writing be legally binding. The seller's motion to dismiss was denied allowing the potential purchaser's case to proceed.

4. **Payton v. Kale Realty, LLC**, No. 13C8002, 2016 WL 703869 (N.D. Ill. Feb. 22, 2016)

Licensee did not violate the Telephone Consumer Protection Act by sending a text message that did not relate to the sale of goods.

The plaintiff brought a claim for violation of the Telephone Consumer Protection Act against a licensee for an allegedly unauthorized text message. Several months prior to the text message at issue, the parties had engaged in discussions regarding a possible business relationship, during which the plaintiff provided the licensee with his cell phone number. According to the court, the text message related to a possible employment relationship and so was not a commercial solicitation. Therefore, there was no violation of the Telephone Consumer Protection Act and the court granted summary judgment in favor of the licensee.

B. Statutes/Regulations

California

California amended its consumer data protection statute. The definition of consumer data now includes “username or email address in combination with a password or security question and answer that would permit access to an online account.”⁷

Oregon

Oregon passed an amendment to its security breach statute. The amendment modified the definition of “personal information” to include data from “automatic measurements of a consumer’s physical characteristics, such as an image of a fingerprint, retina or iris, that are used to authenticate the consumer’s identity in the course of a financial transaction or other transaction.”⁸ If a data breach occurs, the customer and attorney general must be notified if more than 250 people were affected.⁹

South Carolina

As noted in a prior edition of the *Legal Pulse*, South Carolina passed a new statutory scheme, effective January 1, 2017, governing real estate licensees. In South Carolina, licensee advertising must identify the name of the affiliated brokerage firm. When advertising on the internet or other electronic media, a licensee may include a link to the brokerage firm website to satisfy that requirement.¹⁰

Virginia

Virginia’s regulations were amended to reflect newer forms of advertising. The regulations replace “online” and other terms with the term “electronic media.”¹¹ Electronic advertising must include disclosure of the firm name and city and state of

⁷ [Cal. Bus. & Prof. Code § 1798.81.5 \(2015\)](#).

⁸ [Or. Rev Stat. 646A.602 \(2015\)](#).

⁹ [Or. Rev Stat. 646A.604 \(2015\)](#).

¹⁰ S.C. Code Ann. § 40-57-135(E)(2) (2016)

¹¹ [Va. Reg. Regs. 135-20-190 \(2015\)](#).

business, or the licensee name, affiliated firm name, and city and state of business. In electronic advertising, the disclosure must be provided on the main page of the website or no more than one click away from the main page of the website.¹²

Washington

Washington amended its data breach statute. Notice of a data breach is not required if the breach is not reasonably likely to subject consumers to a risk of harm.¹³ However, a breach must be disclosed if information was not secured or the encryption key or other information needed to decipher protected information was acquired by unauthorized personnel.¹⁴

C. Volume of Materials Retrieved

Technology issues were identified 3 times in 3 cases this quarter (see Table 1).

V. THIRD PARTY LIABILITY – YEARLY UPDATE

The third-party liability cases from the past year addressed claims against inspectors, appraisers, and escrow agents. A central question in these cases is whether the third party owed a duty to the party asserting a claim. In the cases below, the escrow agents did not owe a duty to the plaintiffs; home inspectors and appraisers did not fare as well.

A. Cases

1. **Lem2Q, LLC v. Guaranty Nat. Title Co.**, No. 3472EDA2014, 2016 WL 4088100 (Pa. Super. Ct. July 28, 2016)

Escrow agent did not owe a duty to disclose prior unrecorded loans to investor.

An investor who invested in a real estate holding company sued the escrow agent working on the transaction. The investor alleged that the escrow agent breached his duty to disclose prior unrecorded loans made to the entities in the transaction. The court held that the escrow agent did not have a duty to disclose because the escrow agent is responsible only for administrative duties. According to the court, an escrow

¹² *Id.*

¹³ [Wash. Rev. Code § 19.255.010 \(2015\)](#).

¹⁴ *Id.*

agent is generally an agent for both parties, and the authority of an escrow agent is narrowly construed. The court granted summary judgment in favor of the escrow agent.

2. **Llano Financing Group, LLC v. Kuehl**, No. 15C7692, 2016 WL 4063175 (N.D. Ill. July 29, 2016); **Llano Financing Group, LLC v. Smith**, No. 15C7689, 2016 WL 4063174 (N.D. Ill. July 29, 2016); **Llano Financing Group, LLC v. Wenger**, No. 2:15-CV-305, 2016 WL 4414966 (N.D. Ind. Aug. 19, 2016)

***Assignees of interest in mortgage sued appraisers
for undersecured property loans.***

In these related cases, a finance entity who was the assignee of an interest in various mortgages sued the appraisers who appraised the properties. The finance entity claimed that appraisals were negligently prepared and contained material misrepresentations, resulting in the property loans being significantly undersecured.

In one of the cases, the court determined that the assignee finance group failed to show how it had rights to bring a claim against the appraiser. In two other cases, though, the court concluded that the finance entity did have rights to bring a claim. The entity sufficiently stated a claim because the complaint alleged the appraisals used improper comparable properties, and the parties relied on the appraisals. The appraisers' motions to dismiss were denied on all claims, except for the breach of contract claims.

3. **Giles v. Blackmon**, No. 2150430, 2016 WL 4493625 (Ala. Civ. App. Aug. 26, 2016)

***Purchasers properly stated negligence and breach of contract claims against
home inspector for failure to disclose water and termite damage.***

Home purchasers brought claims for negligence, misrepresentation, and breach of contract against the home inspector who inspected the home they purchased. The purchasers allege that the inspection report failed to disclose water and termite damage. The trial court granted the inspector's motion to dismiss. On appeal, the appellate court reached a different conclusion on the negligence and breach of contract claims.

On the negligence claim, the allegations in the complaint stated that the inspector owed the purchasers a duty, the inspector breached that duty, and the breach caused them damage. The contract claim alleged that the inspector failed to satisfy his contractual obligations to diligently inspect the home in accordance with professional standards. The appellate court affirmed dismissal of the misrepresentation claim, but found that the purchasers had stated negligence and breach of contract claims against the inspector. The court reversed the dismissal of the negligence and breach of contract claims.

4. **BSA Construction, LLC v. Johnson**, 54 N.E. 3d 1026 (Ind. Ct. App. May 16, 2016)

Appraiser owes a duty to the lender, but does not owe a duty to the seller.

After the appraiser valued a property less than the purchase price, the bank refused to provide the loan for the property. The property seller then sued the appraiser. The court held that the appraiser had a duty to the bank, but did not have a duty to the seller of the property. Summary judgment in favor of the appraiser was affirmed on appeal.

5. **Resh v. Realty Concepts, Ltd.**, No. 3:12-CV-00668 2016 WL 593809 (S.D. W. Va. Feb. 12, 2016)

Escrow agent had no duty to disclose double escrow nature of the real estate transaction.

Real estate investors claimed they were victims of fraud and induced to buy a property. The investors sued both the escrow agent and the title company for fraudulent misrepresentation for failing to disclose the double escrow nature of the transaction. The court held that the escrow agent had no duty to disclose the double escrow transaction. Summary judgment was entered for the escrow agent and title insurer.

6. **Bank of America v. Zaskey**, No. 9:15-CV-81325, 2016 WL 2907732 (S.D. Fla. May 18, 2016)

Title insurer not vicariously liable for closing agent's error in closing.

During a short sale, the closing agent for the transaction failed to wire the money to the lender on time, and the lender foreclosed on the home. The borrowers then brought a claim against the title insurer. The borrowers allege that the title insurer was vicariously liable for the closing agent. The court held that the title insurer was not liable for defects in the closing caused by the closing agent. The court dismissed the claims against the title insurer.

7. **Donnelly v. Fannie Mae**, CA No. CPA4-13-003614, 2015 WL 6739163 (C.C.P. Del. Nov. 3, 2015)

Inspector hired by the purchaser did not owe a duty to the licensees or other third parties involved in real estate transaction.

The purchaser sued licensees and other defendants involved in the real estate transaction after discovering that the roof on the home did not meet building code requirements. The purchaser argued that the defendants knew the roof did not satisfy the local code. Defendants filed a counterclaim against the home inspector hired by the purchaser.

In this decision, the court considered whether the defendants could state a counterclaim against the inspector. The court determined that the inspector did not owe a duty to the licensees and other defendants. The information provided by the inspector was provided solely for the purchaser's use, and it was not intended for use with third parties. There was also no allegation that the defendants relied upon the inspection report. The court granted summary judgment in favor of the inspector.

B. Statutes/Regulations

No relevant statutes or regulations were retrieved this quarter.

C. Volume of Materials Retrieved

Third party liability issues were identified 7 times in 7 cases this quarter (*see* Table 1).

VI. VERDICT AND LIABILITY INFORMATION

A. Agency Cases

Liability was determined in 10 Agency cases, and the licensee was not liable in any of the cases (*see* Table 3).

B. Property Condition Disclosure Cases

Liability was determined in 2 Property Condition Disclosure Cases, and the licensee was not liable in either of the cases (*see* Table 3).

C. RESPA Cases

Liability was determined in 4 RESPA cases; the defendant was not liable in any of those cases (*see* Table 3).

D. Technology Cases

Liability was determined in 2 Technology cases; the licensee was not liable in either of the cases (*see* Table 3).

E. Antitrust Cases

No Antitrust cases were retrieved this quarter.

F. Third Party Liability Cases

Liability was determined in 3 different third party liability cases retrieved this quarter; the third parties were not held liable in any of those cases (*see* Table 3).

VII. TABLES

Table 1
Volume of Items Retrieved for Third Quarter 2016
by Major Topic

Major Topic	Cases	Statutes	Regulations
Agency	11	0	3
Property Condition Disclosure	4	0	0
RESPA	5	0	0
Technology	3	0	0
Antitrust	0	0	0
Third Party Liability	7	0	0

Table 2
Volume of Items Retrieved for Third Quarter 2016
by Issue

Issue	Cases	Statutes	Regulations
Agency: Dual Agency	1	0	0
Agency: Buyer Representation	2	0	0
Agency: Designated Agency	0	0	0
Agency: Transactional/Nonagency	0	0	0
Agency: Subagency	0	0	0
Agency: Disclosure of Confid. Info.	0	0	0
Agency: Vicarious Liability	4	0	0
Agency: Breach of Fiduciary Duty	5	0	0
Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	0	0	0
Agency: Minimum Service Agreements	0	0	0
Agency: Pre-listing Marketing of Properties	0	0	0
Agency: Teams	0	0	0
Agency: Coming Soon Listings	0	0	0
Agency: Other	1	0	3
PCD: Structural Defects	0	0	0
PCD: Sewer/Septic	1	0	0
PCD: Radon	0	0	0
PCD: Asbestos	0	0	0
PCD: Lead-based Paint	0	0	0

Issue	Cases	Statutes	Regulations
PCD: Mold and Water Intrusion	2	0	0
PCD: Roof	0	0	0
PCD: Synthetic Stucco	0	0	0
PCD: Flooring/Walls	0	0	0
PCD: Imported Drywall	0	0	0
PCD: Plumbing	0	0	0
PCD: HVAC	1	0	0
PCD: Electrical System	0	0	0
PCD: Valuation	0	0	0
PCD: Short Sales	0	0	0
PCD: REOs & Bank-owned Property	0	0	0
PCD: Insects/Vermin	1	0	0
PCD: Boundaries	0	0	0
PCD: Zoning	0	0	0
PCD: Off-site Adverse Conditions	0	0	0
PCD: Meth Labs	0	0	0
PCD: Stigmatized Property	0	0	0
PCD: Megan's Laws	0	0	0
PCD: Underground Storage Tanks	0	0	0
PCD: Electromagnetic Fields	0	0	0
PCD: Pollution/Env't'l Other	0	0	0
Property Condition Disclosure: Other	2	0	0

Issue	Cases	Statutes	Regulations
RESPA: Disclosure of Settlement Costs	1	0	0
RESPA: Kickbacks	4	0	0
RESPA: Affiliated Business Arrangements	0	0	0
RESPA: Marketing Service Agreements	0	0	0
RESPA: Other	0	0	0
Technology: State Internet Advertising Rules	0	0	0
Technology: Social Networking	0	0	0
Technology: Privacy	0	0	0
Technology: Anti-Solicitation Laws	0	0	0
Technology: Data Breaches	0	0	0
Technology: Other	3	N/A	N/A
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
Third-Party Liability: Appraisers	4	0	0
Third-Party Liability: Inspectors	2	0	0
Third-Party Liability: Other	1	0	0

Table 3
Liability Data for Third Quarter 2016

Topic	Liable	Not Liable	% Liable	% Not Liable
Agency	0	10	0%	100%
Property Condition Disclosure	0	2	0%	100%
RESPA	0	4	0%	100%
Technology	0	2	0%	100%
Antitrust	0	0	N/A	N/A
Third-Party Liability	0	3	0%	100%