

Executive Summary First Quarter – 2016



Short on time? Here's an overview of the developments covered in the Legal Pulse Newsletter for last quarter. This summary covers Agency, Property Condition Disclosure, RESPA, and Employment issues.

- Agency:** We cover agency law every quarter. During first quarter 2016:
 - A number of cases considered statutorily-defined, nonagency relationships between the real estate professional and the consumer.
 - In one decision from Wyoming, the court held that the licensee was merely serving as an intermediary. The licensee was not responsible for statements about the property in that role ([2016 WL 280942](#)). Likewise, a court considered the duties owed to a client in Georgia. Under the Georgia statute, a broker does not owe a fiduciary duty to a customer unless the parties agree otherwise in writing; there was no such written agreement between the parties. The broker exercised "reasonable care" in performing his duties as a transaction broker, and was not liable to the client ([2016 WL 280942](#)).
 - A new law in Georgia dealt with what actions a licensee can do in a transaction, while new provisions in Virginia and Washington dealt with written agency agreements and document storage respectively.
- Property Condition Disclosure:** Disclosures are another quarterly topic. Last quarter:
 - Structural defects and water-related issues continued to show up in court decisions.
 - No licensees were held liable for damages over any disclosure issues in the cases published last quarter. In one case, though, a decision was sent back to the lower court to determine if a seller's representative knew about a water system problem before closing; if so, she could be held liable for fraud and misrepresentation ([477 S.W.3d 745](#)).
 - Virginia changed its disclosure requirements. The revised disclosure form indicates that the owner of property makes no representations regarding covenants or restrictions on the property, or zoning or use of adjacent parcels of property ([Va. Code Ann. § 55-519](#)).
- RESPA:** RESPA is the third issue that appears in every update. Over first quarter:
 - Several plaintiffs alleged that kickback schemes impacted their transactions, but in many cases, kickback claims were thrown out of court because too much time had passed since the transaction to bring a claim.
 - Anti-kickback cases often involved fees split between two or more parties. For instance, in a class action in New York, a plaintiff claimed a lender had split a "tax service fee" with other parties, but was unable to prove the fee splitting, so the RESPA claim failed ([2016 WL 390088](#)).
- Employment:** We review Employment changes annually, but over that time, only four real estate cases dealt with employment issues.
 - The most important employment case came out of Massachusetts. The licensees sued their former broker, claiming that they should have been treated as employees. The appeals court held since the real estate licensing statute makes clear that licensees may be independent contractors or employees, it was acceptable for the brokerage to engage licensees as independent contractors ([471 Mass. 566](#)).
 - Arkansas passed a law ([Ark. Code Ann. § 17-42-104](#)) that listed what an unlicensed employee of a brokerage firm may do. The law now states that an unlicensed employee may deliver lease applications, receive security deposits, show units, and convey information prepared by a principal broker, but cannot undertake responsibilities of principal brokers.