

## Executive Summary 4Q – 2019



The Legal Pulse examines legal liability trends in the real estate industry. The 4Q edition reviews case decisions and legislative activity in areas of agency, property condition disclosure, and RESPA. In addition, the 4Q edition reviews legal developments relating to Fair Housing issues that occurred between December 2018 and December 2019.

Below are highlights of the fourth quarter of 2019 edition of the Legal Pulse Newsletter. <sup>1</sup>

### AGENCY

Agency issues were identified in eleven cases this quarter, with a total of 63 cases decided in the last year. Liability was determined in 8 cases this quarter; the licensee was found liable in 5 of those cases. Below, please find a summary of the most notable cases.

Three Agency cases discussed issues related to the purchase of commercial properties.

- In one of case, the buyer alleged that the seller's real estate agents failed to disclose information that a liquor store had entered a lease at another shopping center ([No. 02-19-00171-CV](#)).
- In another case, the buyer alleged fraudulent concealment against the seller and the seller's real estate broker for "the grossly inflated price" of the purchased gas station ([No. C083810](#)).
- Lastly, in the third case the court held that the Benner companies failed to offer any evidence to show the properties would have sold or leased if the real estate broker would have listed them sooner. ([No. 19-1439](#))

The fourth Agency case concerns the purchase of a home that had extensive wood rot and damage from wood destroying insects. ([No. 09-18-00119-CV](#))

A total of 18 statutes and 12 regulations were identified this quarter with a total of 24 statutes and 19 regulations identified in the last year. The statutory and regulatory changes located this quarter predominately focused on advertising. Below please find a summary of the most notable changes.

- In Illinois, advertising may not contain misleading terms. ([225 Ill. Comp. Stat. § 454/5-10](#)).
- In Ohio, an amended regulation states that a licensee shall not advertise or alter information regarding the listing of any property unless written permission has been secured. ([Ohio Admin. Code 1301:5-1-02](#)).

### **PROPERTY CONDITION DISCLOSURE**

Property Condition Disclosure issues were identified in six cases this quarter, with a total of 22 cases decided in the last year. Liability was determined in 4 cases this quarter; the licensee was found liable in 1 of those cases. Below, please find a summary of the most notable cases.

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<sup>1</sup> To learn more, please review the 4Q *Legal Pulse* Newsletter.

Two Property Condition Disclosure cases discussed issues related to easements and defects identified after the properties were purchased.

- In one case, the buyer alleged the agent breached her fiduciary duty by failing to advise her to not purchase the property without reviewing the seller's disclosure notice. ([No. 2019-CA-000069-MR](#))
- In the other case, the court held 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. ([No. B295087](#))

No statutory or regulatory changes relating to Property Condition Disclosure were identified this quarter, however, 11 statutes were identified in the last year.

## **RESPA**

RESPA issues were identified in four cases this quarter, with a total of 27 cases decided in the last year. Liability was determined in 0 cases this quarter. Below, please find a summary of the most notable cases.

RESPA cases predominately examined kickbacks this quarter.

- In one case, the borrowers alleged there was a kickback between American West and Loan Depot, after borrowers failed to qualify for mortgage and lost their deposit. ([No. 2:19-cv-01248-JAD-NJK](#))
- In the other case, the court held that the borrowers 2016 loan claims were timely filed and therefore there was no basis for tolling the applicable statute of limitation for those claims. ([No. 6:18-cv-00927](#))
- Lastly, 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. stamps. ([No. PJM 19-0490](#))

No statutory or regulatory changes relating to RESPA were identified in the last year.

## **FAIR HOUSING**

Fair Housing issues were identified in one case this quarter, with a total of 8 cases decided in the last year. Liability was determined in 1 case this quarter, and the licensee was found liable. Below, please find a summary of the most notable cases.

Fair Housing cases discussed this quarter primarily focused on discriminatory lending.

- In one cases, the City of Miami Gardens brought action against Wells Fargo alleging that it had engaged in discriminatory or predatory lending. ([No. 18-13152](#))
- In another case, the United States alleged that First Merchants Bank engaged in unlawful redlining by not providing credit services to majority-black areas in Marion County Indiana. ([No. 1:19-cv-02365-JPH-MPB](#))
- Lastly, Maryland counties filed suit against Wells Fargo for alleged predatory and discriminatory residential mortgage lending, servicing, and foreclosure practices.

No statutory or regulatory changes relating to Fair Housing were identified in the last year.