

Executive Summary Third Quarter – 2017



This is an overview of the developments covered in the *Legal Pulse* Newsletter for the third quarter of 2017. This summary covers Agency, Property Condition Disclosure, RESPA, Technology, and Third Party Liability issues.

1. **Agency:** Agency issues are reviewed every quarter. During the third quarter of 2017:
 - In a Texas case, the licensee who represented the seller failed to inform the seller that he renegotiated with the other party, and then gave himself a larger commission than agreed to with the seller. He was found liable for fraud and breach of fiduciary duty, and the court awarded \$1,175 in actual damages, \$3,525 in treble damages, and \$14,000 in attorneys' fees. ([No. 04-16-00460-CV](#)).
 - Oregon amended its statutes governing real estate licensees and brokers. Principal brokers may associate with licensed real estate property managers under the same business name but must execute a written supervisory agreement that allocates supervisory control and responsibility for all of the associated parties. With respect to trust accounts, real estate brokers and licensed real estate property managers may not commingle funds in a client trust account. Licensees do not need to create a trust account when acting only as a courier conveying a check payable to the seller from the purchaser. ([Or. Rev. Stat. § 696.241](#); [Or. Rev. Stat. § 696.310](#)).
2. **Property Condition Disclosure:** Property Condition Disclosure materials are reviewed each quarter. In the third quarter:
 - After determining that the sellers' representative made misrepresentations regarding sewer access to the property, a Tennessee court granted rescission of the contract for the purchaser. The court also concluded that the purchasers' representative violated the Tennessee Consumer Protection Act by failing to disclose his relationship to the seller of the property. ([No. E2015-01487-COA-R3-CV](#)).
 - Oregon modified its Seller's Property Condition Disclosure Statement to include a disclosure regarding seismic risk. Sellers must indicate whether the house was constructed before 1974 and whether the house has been bolted to the foundation. ([Or. Rev. Stat. § 105.464](#)).
3. **RESPA:** RESPA is also reviewed each quarter. In the third quarter:
 - A Kentucky federal court concluded that a referral scheme between a law firm, title insurance companies, and the bank did not violate RESPA because it fell within the affiliated business arrangement exception. ([No. 3:13-CV-01047-CRS-DW](#)).
4. **Technology:** Technology issues are examined on an annual basis. Over the past twelve months:
 - Two cases addressed copyright infringement claims in connection with a licensee or broker's use of copyrighted photographs in property listings. (No. 2:15-CV-7270-SVW-RAO; No. 9:16-CV-80109-Dimitrouleas/Snow).
 - Numerous states passed laws regarding the use of drones.
5. **Third Party Liability:** Third Party Liability authorities are also reviewed on an annual basis. Over the past twelve months:
 - In a case from Louisiana, the purchasers bought a home through a VA loan. The purchasers sued the appraiser, arguing that, in addition to value, the appraiser's appraisal represented that the property met the VA's minimum property requirements. The magistrate judge rejected this argument, finding that the appraiser owed a duty to the lender, but that duty did not extend to the buyers. (No. 16-CV-0856).