

Executive Summary

Second Quarter – 2019



Below is a summary of the highlights covered in the *Legal Pulse* Newsletter for the second quarter of 2019.

1. **Agency:**

- In a Texas case, the court held that because a builder, who was also a licensed real estate agent, was not acting as a real estate licensee when he contracted with the buyers for the construction of a new home, the buyers could not recover from the Texas Real Estate Recovery Trust Account. The court found that the buyers failed to provide any evidence or authority to support their claim that the builder acted as a real estate broker. ([No. 05-18-00702-CV](#))
- An Alaskan regulation was updated to require that the guidelines and procedures for the supervision of teams should include a policy covering the usage of the consumer disclosure and how consumers are represented within a team. [Alaska Admin. Code tit. 12, § 64.117 \(2019\)](#)

2. **Property Condition Disclosure:**

- In a New York case, buyers brought an action against a listing broker alleging concealment of a recurring mold-causing condition. The court held that the listing broker did not have a duty to disclose any information concerning the condition of the premises because the sales contract included a specific disclaimer of reliance by the buyers on representations as to the condition of the property. Additionally, the court held found that the buyers failed to establish reliance as required to prevail on fraud claims against the broker. ([No.62604/15](#))
- In North Dakota, a new property disclosure requirements statute was enacted that mandates the use of a property disclosure form in sales of real property. The written disclosure must include latent defects, general condition, environmental issues, structural systems, and mechanical issues regarding the property. [N.D. Cent. Code. § 47-10-02.1 \(2019\)](#)

3. **RESPA:**

- In Washington case, Plaintiffs filed a putative class action against Zillow alleging that Zillow's "co-marketing program" violated Section 8 of RESPA because the program allowed participating brokers to refer mortgage business to participating lenders. Zillow moved to dismiss the complaint. The court denied Zillow's motion, and concluded that the plaintiffs' complaint stated a claim of violation of RESPA anti-kickback provisions, thereby permitting Plaintiff's claim to proceed. This case has not yet been resolved. ([No. C17-1387-JCC](#))
- The U.S. Fourth Circuit Court of Appeals found that the one-year statute of limitations applicable to RESPA is not jurisdictional in nature, and thus may be tolled based on equitable grounds, including fraudulent concealment. ([No. 18-1216](#))

4. **Deceptive Trade Practices Act/Fraud:** From July 2018 to July 2019:

- In a Texas case, the buyers of a residential lot, along with the homeowners' association of the development, sued the developer-seller for breach of fiduciary duty and for violations of the Texas Deceptive Trade Practices Act regarding the questionable condition of the private condition of a private road in the subdivision. The core issue was whether a fiduciary relationship existed between the sellers and the buyers and the HOA. The plaintiffs contended that because the brokers did not keep their real estate firm completely separate from the seller, the developer-seller acted as a broker to the buyers. The court held that no fiduciary relationship or any prior

relationship of trust and confidence existed between the developer-seller and the plaintiffs, and the directed verdict in favor of the defendants was affirmed. ([No. 12-18-00317-CV](#))

5. **Cases Involving Commercial Properties:** From July 2018 July 2019:

- In California, buyers sued the sellers' listing broker and brokerage firm following the sale of a commercial property, which included a lease-back to the sellers' corporation. The sellers' corporation defaulted on the rent, and the buyers brought suit, alleging that the seller's real estate broker and brokerage firm made misrepresentations and concealed material facts pertaining to the financial condition of the seller's corporation. The trial court found that the two-year statute of limitations had run on the buyers' claims, and granted judgment in favor of the brokers. The appellate court affirmed. ([No. SCV245987](#))