

Executive Summary Second Quarter – 2017



This is an overview of the developments covered in the *Legal Pulse* Newsletter for the second quarter of 2017. This summary covers Agency, Property Condition Disclosure, RESPA, Deceptive Trade Practices Act/Fraud issues, and cases involving commercial properties.

1. **Agency:** Agency issues are reviewed every quarter. During the second quarter of 2017:
 - Two Agency cases discussed issues related to working with elderly clients. In one of the cases, the estate of an elderly seller alleged that the real estate defendants knew or should have known the client was not capable of engaging in a real estate transaction. In the other, the court determined the broker could be vicariously liable for a licensee's alleged financial exploitation of an elderly client. ([No. 15-1073](#); [No. 4D-16-2032](#))
 - Five states issued rules or notices regarding licensee advertising. All of these states require licensee advertising to include the broker name. Four of the five states also require the broker name to be "prominently" displayed or in a font larger than the licensee name. ([Mich. Comp. Laws § 339.2512e \(2017\)](#); [299 Neb. Admin. Code, Ch. 2, § 003 \(2017\)](#); [Tenn. Comp. R. & Regs. 1260-02-.12 \(2017\)](#); [Tex. Occ. Code Ann. § 1101.652 \(2017\)](#); [Rhode Island Department of Business Regulation, Notice: Real Estate Brokers and Salespersons Advertising \(2017\)](#))
2. **Property Condition Disclosure:** Property Condition Disclosure authorities are reviewed each quarter. In the second quarter:
 - In a Maryland case, the purchasers of a home sued the sellers, who were also licensees, for failure to disclose flooding and water damage. The seller-licensees bought the home as a foreclosure, remodeled it, and sold it. They claimed they were unaware of any water damage. The trial court improperly excluded the testimony of a home inspector who could testify that the sellers should have known of water damage during their period of ownership. ([No. 364](#))
 - In Maine, the seller's disclosure to purchasers must describe the means of accessing a property by a public way and any means other than a public way, if known by the seller. ([Me. Rev. Stat. Ann. tit. 33, § 173 \(2017\)](#))
3. **RESPA:** RESPA is also reviewed each quarter. In the second quarter, two Pennsylvania federal courts reached differing conclusions with respect to the statute of limitations for RESPA claims based on captive reinsurance schemes. ([No. 13-6433](#); [2:12-CV-00058](#))
4. **Deceptive Trade Practices Act/Fraud:** Deceptive Trade Practices Act/Fraud cases are examined on an annual basis. The past twelve months included a Washington case in which home purchasers sufficiently alleged a deceptive trade practices class action suit against listing brokers who failed to provide specific disclosures regarding airport noise as required by a county ordinance. ([No. 74353-8-1](#))
5. **Cases Involving Commercial Properties:** This quarter, we introduced a new section looking at cases involving commercial properties. An issue that arose with some frequency in the context of commercial properties is whether the property is suitable for a particular commercial use. In a Pennsylvania case, the real estate broker and representative were liable for negligent drafting of a contingency clause. The purchasers were unable to use the property for an overnight dog kennel as they had intended. Following a jury trial, the purchasers received a verdict of \$206,250.92. ([2967 EDA 2015](#))