

## Executive Summary Fourth Quarter – 2016



This is an overview of the developments covered in the *Legal Pulse* Newsletter for the fourth quarter of 2016. This summary covers Agency, Property Condition Disclosure, RESPA, and Fair Housing issues.

1. **Agency:** Agency law is reviewed each quarter. During the fourth quarter of 2016:
  - In a California case, two associated licensees working for the same brokerage firm represented the buyer and seller in a real estate transaction. The broker served as a dual agent in the transaction. After the transaction was completed, the purchaser discovered a large discrepancy between the square footage listed on the building permit and that stated in the marketing materials for the property, and sued for breach of fiduciary duty. The California Supreme Court concluded that each of the associated licensees owed a duty to the purchaser equivalent to that owed by the broker. ([S218734](#))
  - California, Illinois, and New Mexico all passed rules requiring licensee advertising to identify the broker's name. ([Cal. Bus. & Prof. Code 10140.6](#); [Ill. Admin. Code § 1450.715](#); [N.M. Code R. § 16.61.16.9](#))
  - In Maryland, seller's representatives must post an agency disclosure notice at all open houses. ([Maryland Real Estate Commission, Open House Disclosure](#))
2. **Property Condition Disclosure:** Property Condition Disclosure is researched every quarter. In the fourth quarter of 2016:
  - In Ohio, home buyers sued a licensee for failing to disclose that the next-door neighbor had committed a crime against a girl in the neighborhood. The court concluded that the information was not material to the transaction and did not require disclosure. ([C-160447](#), [C-160460](#))
  - In California, (a) an occupant's death; (b) the manner of an occupant's death more than three years ago; and (c) the fact that an occupant was living with HIV or died from an AIDS-related complication are nonmaterial facts that do not require disclosure. ([Cal. Civil Code § 1710.2](#))
3. **RESPA:** RESPA is also reviewed every quarter. In the fourth quarter, a federal court reversed an enforcement action against a lender relating to its captive reinsurance arrangement. The court determined that captive reinsurance arrangements do not violate RESPA as long as the insurer pays market value for the reinsurance services. ([No. 15-1177](#))
4. **Fair Housing:** We review Fair Housing issues on an annual basis. In the past year:
  - A court dismissed claims brought by the City of Miami against numerous lenders for alleged predatory lending, which the City argued resulted in decreased tax revenue and increased public safety expenditures (for instance, see [No. 13-24506](#)).
  - A court concluded that the Fair Housing Act design and construction accessibility standards do not apply to converted buildings built prior to 1991. ([No. 15-1366](#))
  - Three states amended their discrimination laws. In Delaware, a licensee may not discriminate on the basis of "source of income" ([Del. Code Ann. tit. 6, §§ 4601-4607](#)). Illinois added "military status" as a protected category under its Human Rights Act ([Ill. Admin. Code § 1450.710](#)). In New York, age, sex, sexual orientation, disability, gender identity, and military status were added to the list of protected categories (N.Y. Comp. Codes R. & Regs. tit. 19, § 175.17).