



The Legal Pulse

Fourth Quarter/Year-in-Review 2015

Welcome to the Legal Pulse newsletter. In this Year-in-Review edition, we review legal authorities in the areas of Agency, Property Condition Disclosure, and RESPA. In addition to our usual review of the recently decided cases and statutory and regulatory changes from the past quarter, we revisit a few of the significant cases discussed in previous editions this year and summarize the trends observed in 2015. We also present an annual review of Fair Housing cases and legislative activity from the past year.

There was a sizeable jump in the number of agency cases reviewed this year. Breach of fiduciary duty continues to be the most frequently-addressed issue, with 12 more cases than last year. A few trends we noted from 2015 include: (1) plaintiffs did not have much success in proving claims based on a licensee's conspiracy with other parties; (2) the courts tend to be strict in finding whether or not a fiduciary duty exists, and do so only when a licensee was clearly hired and/or acting as a party's broker or real estate representative; and (3) the cases in which damages are awarded against a licensee tend to include fairly egregious behavior, such as the altering of notarized documents or selling the licensee's personal interest in a property without disclosing that fact to the investors. Although the real estate professionals generally received favorable outcomes in agency cases, there were several large verdicts in breach of fiduciary duty cases in 2015. Furthermore, a large number of statutes and regulations regarding agency issues were enacted or amended in the final quarter of 2015.

We continued to see a significant number of property condition disclosure cases in 2015, with water and mold disclosure as the predominant issue. In many of these cases, the court found that the water and/or mold issue had been disclosed to the purchaser. One theme in the cases from this past year was the disclosure of conditions that were not directly on the property. For instance, cases considered the disclosure of unruly neighbors and the existence of lawsuits affecting the property. Another issue addressed this year was whether or not a licensee has a duty to inspect a property. Generally speaking, real estate professionals tended to fare well in the property condition cases. However, verdict awards were entered against licensees for failing to disclose valuation issues and the presence of black mold.

The RESPA cases continue to examine a variety of alleged kickback schemes. For instance, improper schemes involving force-placed insurance, reinsurance entities, and various types of referral fees were each alleged in several cases retrieved this year. The vast majority of these

cases were decided in favor of the lenders and other defendants. In regulatory news, the TILA-RESPA Integrated Disclosure Rule became effective in October 2015. This rule is intended to create easier-to-use forms for customers to better understand the terms of a mortgage so that consumers will shop for mortgages with multiple lenders.

As noted above, this edition of the *Pulse* also reviews Fair Housing decisions from the past year. Several cities and counties, including the cities of Miami and Los Angeles, sued lenders for alleged injuries resulting from predatory lending practices. While one jurisdiction allowed the claim to proceed, similar claims were not successful elsewhere. Other cases addressed various claims of racial discrimination, racial and disability discrimination in lending, and disability design and build claims. The largest number of Fair Housing cases involved lending issues. The real estate professionals and lenders were successful in all Fair Housing cases in which liability was determined. With respect to legislative activity, Illinois amended its Human Rights Act to prohibit discrimination based on familial status.

Tables at the end of this edition show how many overall cases, statutes and regulations appeared for major topic areas for the year, along with statistics regarding how liability was decided in finalized cases. The first three tables present data for the usual three Major Topics and Fair Housing. The remaining tables collect data for all topics we track for the Legal Pulse, including some comparisons to 2014 data, and show 2015 data relating to liability, the dollar range of damage awards, the top ten damage awards, and the top three settlements.

I. AGENCY

A. Cases

In this edition, we revisit two cases from earlier this year resulting in significant damage awards occasioned by the real estate professional's breach of fiduciary duty. Several other recent breach of fiduciary duty cases retrieved this quarter, including one in which the broker was found liable, are also summarized below. In an interesting case from New York, the court held that a real estate professional potentially may be held liable for a personal injury incurred during a property showing if the professional created the hazardous condition.

AGENCY CASES FROM EARLIER EDITIONS

In general, real estate licensees tend to fare well in breach of fiduciary cases. However, the following two cases from 2015 resulted in significant damage awards against the real estate professionals for breach of fiduciary duty.

Haena v. Martin, No. C066280, 2015 Cal. App. Unpub. LEXIS 170 (Jan. 12, 2015)

The plaintiffs, former clients and acquaintances of the broker, invested in promissory notes secured by real estate, at the broker's request. Plaintiffs later learned that the broker had sold his interest in the note to them and that the developer was in default. The trial court concluded that the broker misled the plaintiffs about the investment. In addition, the broker breached his fiduciary duty with respect to four of the plaintiffs. The broker had previously acted as their real estate licensee and held their funds in his brokerage account, which gave rise to a fiduciary duty, and that duty carried over to the ill-fated investment. Damages of \$363,380 were awarded to the plaintiffs.

Helmke v. Service First Realty, LLC, No. 1 CA-CV 14-0078, 2015 Ariz. App. Unpub. LEXIS 230 (Feb. 26, 2015)

A real estate licensee acted as dual representative for both the sellers and buyers of subdivision lots. The licensee provided disclosures from the seller regarding an access road that was not complete. After closing, the buyers could not secure a building permit because the access road was built without a permit. The buyers sued the licensee's broker for breach of fiduciary duty and negligence-based claims. The jury found the broker 70% at fault, making it liable for \$222,790.33 in damages.

1. **Stone Invest Dakota, LLC v. De Bastos**, No. 15-61406, 2015 WL 6997979 (S.D. Fla. Nov. 12, 2015)

A sales associate, who was not hired as an investor's broker, did not owe a fiduciary duty to the investor.

An investor purchased an investment marketed by a real estate sales associate and his real estate company. According to the investor, the investment was promoted as relating to oil fields, but it was actually a speculative investment in residential studio units for transient housing. Among other claims, the investor alleged breach of fiduciary duty against the licensee. The court found, however, that there was no evidence of a fiduciary relationship between the parties. The investor was a sophisticated company and investor, could review and analyze the investment opportunity, and engaged in an arms-length transaction with the licensee. There was also no statutory duty imposed on the licensee because there is no indication that the investor hired the licensee as a real estate broker. Therefore, the court dismissed the fiduciary duty claim. Of the remaining claims, approximately half were allowed to proceed, and the other half were dismissed for failure to plead with specificity.

2. **Stimmel v. Osherow**, 113 A.D. 3d 483 (N.Y. App. Div. 2015)

A real estate professional potentially may be held liable for personal injuries incurred by a potential buyer while viewing property if the licensee created the hazardous condition.

The plaintiff tripped and fell on a drapery cord while viewing a property being shown by a real estate broker. The plaintiff sued the sellers, who in turn filed a third-party claim against the real estate broker and her brokerage firm. The trial court granted summary judgment for the broker, holding that the broker did not owe a duty to the plaintiff, and that a real estate broker is generally not responsible for personal injuries incurred during real estate showings if the real estate broker did not have previous knowledge of the hazard. On appeal, however, the court considered whether the broker could be held responsible if she created the hazardous situation. Because there were factual issues

regarding the broker's actions with respect to the drapery cord, the appellate court reversed the summary judgment.

3. **Shen v. Gotham Corp. Group, Inc.**, No. CV 14-07870, 2015 WL 5842274 (C.D. Cal. Oct. 6, 2015)

A broker's failure to disclose her financial arrangement with an entity she recommended to buyers supported a claim for breach of fiduciary duty.

After purchasing a home, the buyers' broker recommended a company to handle the design and construction for a remodel of the property. The buyers alleged that the broker made false statements regarding the company's ability to manage the project and failed to disclose her financial arrangement with the company. The court held that the broker's alleged failure to disclose her financial arrangement with the recommended company and her alleged participation in a conspiracy to deceive the buyers regarding the company's capabilities were sufficient to support a claim for breach of fiduciary duty. Likewise, the broker's alleged concealment of her relationship with the company supported a claim for fraud, so the broker's motion to dismiss was denied.

4. **Aliev v. Courtney**, No. D064239, 2015 WL 7455197 (Cal. Ct. App. Nov. 24, 2015)

A buyer's representative breached his fiduciary duty by using a non-registered brokerage business name and altering a notarized document.

A licensed real estate salesperson without a broker's license represented the buyer in a real estate transaction. The licensee used his former broker's name on the paperwork for the transaction, even though the broker business name was not registered with the real estate commission because the broker had passed away. The licensee also altered the trust deed to add himself as a beneficiary after the document had been notarized. The court found that the licensee breached his fiduciary duty to the buyer and ordered disgorgement of the \$60,000 commission received for the transaction. The court also ordered the licensee to pay \$97,125 for the buyer's attorneys' fees. The judgment was affirmed by the appellate court.

5. **Gibson v. Bankofier**, No. 110201781, A153425, 2015 WL 8330256 (Or. App. Dec. 9, 2015)

A broker did not breach her fiduciary duty by accepting referral fees from an investment sponsor.

A broker assisted the plaintiff trustee's mother with several real estate transactions in which she sold property and re-invested in other properties to avoid tax consequences. The broker researched various tenant-in-common properties for investment by the plaintiff's mother, and ultimately received fees from the sponsors of the investments purchased. The trustee sued the broker for elder abuse and negligence. The court found that the broker properly acted as the real estate licensee. The broker merely facilitated a real estate transaction, the plaintiff's mother received independent information about the investment, and the broker properly received sponsorship fees. There was no special relationship between the broker and the plaintiff's mother, and the broker did not violate any of her statutory duties. The court granted summary judgment in favor of the broker.

6. **Fentisova v. Lefkowitz**, No. 11-A-642790-C, 2015 WL 3929682 (Nev. Dist. Ct. Jan. 16, 2015)

A licensee did not participate in a scheme with the property owner to sell property at an inflated price.

A buyer alleged that her real estate licensee made misrepresentations and breached her fiduciary duty while representing her in a transaction. According to the buyer, the licensee misrepresented the value of the property and stated that an appraisal was unnecessary. The buyer claimed the licensee was working with the property owner in a scheme to sell the property at an inflated price, but the jury entered a verdict in favor of the real estate professional.

B. Statutes and Regulations

Hawaii

Hawaii amended its disciplinary statute to state that a broker or salesperson may be disciplined if, when acting on behalf of a seller or purchaser of real estate, the licensee “acts in a manner that prohibits a prospective purchaser or prospective seller of real estate from being able to retain the services” of a real estate broker or salesperson.¹

Idaho

Idaho amended a statute to require real estate licensees to ensure that all offers to purchase real property include the dates of all signatures.²

Illinois

Some counties in Illinois maintain a property fraud alert system. A real estate professional may register a client for this service. A licensee cannot be held liable for his or her error in registering a property owner.³

Virginia

Several recently amended regulations implicate agency issues for Virginia licensees. One of the amended regulations clarifies the records that a principal or supervising broker must maintain in his or her files. Financial records for all moneys received, all consent to dual agency and designated agency agreements, and all executed contracts of sale and other executed agreements must be maintained for three years.⁴

With respect to a transaction involving property in which the licensee has an ownership interest, a licensee must disclose in writing to the seller, purchaser, or lessee that he is a licensee and that he, a family member, or firm member has an ownership interest in the property.⁵

Virginia regulations were also amended to include “failing to safeguard the interests of the public” and “engaging in improper, fraudulent or dishonest conduct” as prohibited conduct for licensees.⁶ Failing to safeguard the interests of the public includes failing to supervise, failing to retain required documents regarding escrow account disbursements, failing to disburse escrow account funds in accordance with regulations, failing to submit documents in a timely manner, and allowing unsupervised access to a home. Improper

¹ [Haw. Rev. Stat. § 467-14 \(2015\).](#)

² [Idaho Code § 54-2051 \(2015\).](#)

³ [55 Ill. Comp. Stat. 5/3-5010.10 \(2015\).](#)

⁴ [Va. Admin. Code § 135-20-185 \(2015\).](#)

⁵ [Va. Admin. Code § 135-20-210 \(2015\).](#)

⁶ [Va. Admin. Code § 135-20-260 \(2015\).](#)

fraudulent acts include the signing of documents on behalf of a client without permission and submitting the same earnest money deposit with multiple offers.

Vermont

Vermont added two sections to its regulations that create a distinction between designated agency firms and non-designated agency firms.⁷ A brokerage firm may elect to practice Designated Agency. All other brokerage firms are Non-Designated Agency firms and must disclose this status in all seller and buyer agreements.

Washington

Washington amended its statutes to allow real estate licensees to sell “floating on-water residences” without being licensed as a vessel dealer.⁸ The term “real estate brokerage services” was amended to include services related to any “interest in a floating home or floating on-water residence.”⁹

Nebraska

The Nebraska Real Estate Commission issued a policy statement regarding Coming Soon Listings, which is a topic of current interest. The state has not issued any statutes or regulations specifically addressing Coming Soon Listings, but existing advertising and unfair trade practices statutes apply. According to the Real Estate Commission policy, coming soon listings are appropriate where a listing agreement has been signed, but the property or property owner is not ready for showings.¹⁰ The following criteria must be met to comply with the governing statutes and regulations: (1) there is an active listing agreement in place; (2) advertising is in the name under which the broker does business; (3) advertising is done with the knowledge and written consent of the property owner; and (4) the listing is in fact coming soon and is not currently being shown or marketed to anyone.

C. Volume of Materials Retrieved

Agency issues were identified 74 times in 53 cases (see Table 1; note that some cases address multiple issues). Breach of Fiduciary Duty, Agency: Other, Buyer Representation, Dual Agency, Vicarious Liability, and Subagency were identified in multiple cases (see Table 2). The number of Agency cases has increased significantly compared to 2014 (see Table 4). Seventeen statutes and twenty-nine regulations addressing Agency issues were retrieved (see Table 1). These items addressed Breach of Fiduciary Duty, Agency Disclosure, Designated Agency, and Agency: Other.

⁷ Vt. Code R. 4.3, 4.4 (2015).

⁸ [Wash. Rev. Code § 88.02.720 \(2015\)](#).

⁹ [Wash. Rev. Code § 18.85.011 \(2015\)](#).

¹⁰ [Nebraska Real Estate Commission, Coming Soon Listings](#), Sept. 2015.

II. PROPERTY CONDITION DISCLOSURE

A. Cases

This quarter we review two cases in which a verdict was entered against the licensee and damages were awarded to the plaintiff. In an update to a case examined earlier this year, the appellate court affirmed that a seller or real estate professional does not need to disclose adverse off-site conditions, such as an unruly neighbor. Furthermore, two state supreme courts issued decisions this year (both discussed below) which held that real estate professionals must only disclose adverse conditions known to them and do not owe a duty to inspect a property.

Property Condition Cases from Earlier Editions

In 2015, the supreme courts of Vermont and Montana both addressed the important issue of a real estate licensee's duty to disclose adverse conditions on the property. The following case, decided early in the year, reached the same conclusion as the *Watterud* case, which was decided in the fourth quarter of 2015 and is discussed later below. In both cases, the court determined that a real estate licensee need only disclose those conditions of which he or she is aware, and need not independently verify or investigate the facts.

PH West Dover Properties v. Lalancette Eng'rs, No. 13-157, 2015 VT 48, 2015 Vt. LEXIS 28 (Vt. Mar. 20, 2015)

The buyer sued the seller's representative, alleging she had misrepresented the condition of the property. The seller's disclosure statement indicated there were no current problems with the roof, flooding, draining, or grading. A potential buyer, however, told the seller's representative she had seen flooding in the parking lot and the roof needed repairs. The Vermont Supreme Court stated that a real estate licensee does not have a duty to independently verify the seller's representations about the property unless the licensee is aware of facts indicating the seller's representations are false. In this instance, the statements told to the licensee were vague rumors. The real estate licensee did not have a duty to share that information or investigate further.

1. **Zodiac Constr. v. Stewart Title Guar. Co.**, No. 2013-CV-030701, 2015 WL 4768757 (Colo. Dist. Ct. Apr. 24, 2015)

The seller's representative was found liable for failing to disclose that the property was subject to a lawsuit.

The buyer discovered the property was subject to a lawsuit after closing on the transaction. The buyer filed suit against the seller's representative for failure to disclose the existence of the lawsuit, that the property was located in a FEMA floodway area, that the property was originally built as a mobile trailer rather than a wood frame structure, and that the property was subject to zoning restrictions. The buyer also asserted a claim against the title company for failing to tell him title was encumbered. At a bench trial, the seller's real estate professional was found liable for \$3,323 in damages for failing to disclose the pending lawsuit, but the court entered a verdict for the seller's rep and the title company on the other claims.

2. **Graybill v. Big Bear Municipal Water Dist.**, No. CIVDS-10-13074, 2015 WL 6446299 (Cal. Super. Ct. Mar. 24, 2015)

The real estate professional was liable for failing to disclose that property was subject to an agreement transferring a portion of the property to another entity.

Purchasers allege that sellers and the real estate broker failed to disclose the property was subject to an agreement under which a portion of the property was transferred to a municipal water district, that a levee was to remain on the property, and that the property was subject to flooding. A jury found the sellers and the broker liable for negligent misrepresentation and fraud, and the broker was also liable for breach of fiduciary duty. Damages of \$330,000 were awarded to the purchasers.

3. **Martin v. Steve Delia & Assocs., Ltd.**, No. 15-721, 2015 WL 8331468 (La. Ct. App. Dec. 9, 2015)

A licensee disclosed information regarding previous water damage on the property.

The purchaser alleged that the seller and the sellers' representative failed to disclose the history of flooding on the property. The evidence showed that the sellers and their real estate representative disclosed prior sewer problems on the property and the existence of a concrete structure in the backyard built to prevent water intrusion. The trial court granted summary judgment for the sellers and sellers' representative, and the judgment was affirmed on appeal.

4. **Watterud v. Gilbraith**, 381 Mont. 218 (2015)

Real estate licensee owed duty to disclose facts of which she was aware, but did not have a duty to inspect the property.

Purchasers sued the seller's real estate licensee for negligence for failure to disclose mold in the home. The property disclosure statement indicated that the basement had previously flooded and the basement had been re-done. The disclosure also stated that no mold test had been performed and made no representations or warranties regarding mold. The Montana Supreme Court concluded that the real estate licensee owed only statutory duties to disclose adverse material facts of which she was aware and had no duty to inspect the property. The seller's representative did not know of any mold problem on the property, and thus summary judgment for seller's representative was affirmed.

5. Phoenix v. U.S. Homes Corp., No. 14-4463, 2015 WL 6152896 (3d Cir. Oct. 20, 2015)

Update!

There is no duty to disclose off-site, transient social conditions near a property.

The appellate court recently issued a decision in a case we examined in an earlier *Pulse*. While viewing a home for purchase, the purchaser inquired to the real estate licensee regarding a neighbor who confronted them during the showing. The real estate licensee told the purchaser that the neighbor would not be a problem. Several months after purchasing the home, the purchaser filed a criminal complaint for harassment against the neighbor. The purchaser brought claims for fraud and nondisclosure, alleging that the seller fraudulently concealed the neighbor's harassing behavior. The fraud claim was dismissed because the purchaser did not allege any statement that was false. The nondisclosure claims also failed because the seller has no duty to disclose off-site, transient social conditions. The court affirmed dismissal of the claims.

B. Statutes and Regulations

Washington

Washington amended its real estate disclosure form to include disclosures of structural defects regarding elevators, stairway chair lifts, and wheelchair lifts.¹¹

Indiana

Indiana passed a new statute stating that the mere transportation of a real estate transaction-related document does not impose liability for its content.¹² A licensee is not responsible for a report or statement by a person who made a report concerning real estate, including an inspection report or survey, unless the report or statement was made by someone employed by the licensee or a broker with whom the licensee is associated, the report or statement was made by a person selected and hired by the licensee, or the licensee knew before closing that the statement was false.

Colorado

The Colorado Real Estate Commission issued a position statement on broker disclosure of adverse material facts. The Commission provides guidance on the types of items that are considered "material facts," such as "facts affecting title, facts affecting the physical

¹¹ [Wash. Rev. Code § 64.06.020 \(2015\)](#).

¹² [Ind. Code § 25-34.1-6-4 \(2015\)](#).

condition of the property and environmental hazards affecting the property.”¹³ The statement also provides that if material information is “contrary (i.e. “adverse”) to the interest of one of the parties,” that information must be disclosed to all parties. A broker must only disclose the information of which he or she has actual knowledge, but a broker is required not to disclose information that may “psychologically impact or stigmatize real property,” absent informed consent of the client.

C. Volume of Materials Retrieved

Property Condition Disclosure Issues were identified 49 times in 34 cases collected during 2015 (see Table 1). Mold and Water Intrusion was addressed most frequently, followed by Boundaries and Insects/Vermin (see Table 2). Several other issues were addressed as well. Ten statutes and eleven regulations also were retrieved. The volume of cases decreased from 2014, while the number of statutes and regulations increased from 2014 (see Tables 4 and 6.)

III. RESPA

A. Cases

Several cases from last quarter considered a scheme involving payments to reinsurance entities created by lenders for private mortgage insurance. In another decision, the court made clear that RESPA is only concerned with whether or not a party actually performed services in exchange for fees received; RESPA does not examine the reasonableness of the payment for those services.

¹³ [Colorado Real Estate Commission, CP-46 Commission Position on Broker Disclosure of Adverse Material Facts](#), Aug. 2015.

RESPA Cases from Earlier Editions

In many of the RESPA cases decided in 2015, the courts examined whether particular referral fee or kickback schemes violated RESPA. However, in these two cases, the courts considered interesting legal issues impacting RESPA claims. The first case considered the effect of a state law regarding who can perform closing services, while the second case decided the availability of attorneys' fees for successful defendants in RESPA cases.

Wesolowski v. Title Source, Inc., 2015 U.S. App. LEXIS 5544 (11th Cir. Apr. 7, 2015)

Borrowers sued the company that provided services for their home refinance. The borrowers claimed that the company violated the anti-kickback provisions of RESPA, because state law said that only licensed attorneys could perform closing services. The court held that RESPA was not violated if the services were actually performed, even if state law said that the provider was not allowed to perform those services. The court granted the company's motion for summary judgment, and denied a motion for summary judgment brought by the company's in-house counsel, holding that there were disputed facts as to whether she actually performed services.

Baehr v. Creig Northrop Team, P.C., No. WDQ-13-099, 2015 U.S. Dist. LEXIS 24964 (D. Md. Mar. 2, 2015)

Buyers sued a brokerage under RESPA's anti-kickback provisions. The brokerage counterclaimed, requesting attorneys' fees and costs unless judgment was entered against it. The brokerage contract called for indemnification of the brokerage's attorneys' fees in the event of a lawsuit arising out of the transaction, but the counterclaim was dismissed. RESPA allows a successful defendant to recover attorneys' fees only if the plaintiff's suit was frivolous or without foundation.

1. **Jackson v. Wells Fargo Bank, N.A.**, No. 2:12CV1262, 2015 WL 5732090 (W.D. Pa. Sept. 30, 2015)

Borrowers alleged that excess fees paid for flood zone determinations were retained by the lender and constituted an improper kickback.

The lender charged borrowers \$19.00 for each flood zone determination performed to assess whether flood insurance was required on the property. The actual cost of the determination was approximately \$5.00 per property. Borrowers allege that either the insurance entity split the charge with the lender, or that the lender kept some of funds and did not pay the full flood zone determination fee to the insurance company. The borrowers claimed that, under either scenario, the fee constituted an improper kickback in violation of RESPA. A court-approved settlement agreement provided \$9.50 to each claimant.

2. **Fangman v. Genuine Title, LLC**, No. RDB-14-0081, 2015 WL 8315704 (D. Md. Dec. 9, 2015)

Borrowers alleged that a title company used sham companies and agreements to pass payments to mortgage brokers for services that were not actually performed.

Borrowers alleged that a title company provided payments and materials to mortgage brokers who referred clients for settlement services, in violation of RESPA. The borrowers claimed that the payments and kickback scheme were not disclosed in the closing documentation. The also alleged that the title company used sham companies and agreements for services that were not actually performed. The court found that the borrowers adequately stated a claim for violation of RESPA, and the title entities' motion to dismiss was therefore denied. The court did, however, dismiss the deceptive trade practices claim.

3. **Chultem v. Ticor Title Ins. Co.**, Nos. 1-14-0808, 1-14-0820, 2015 Il. App. 140808 (Ill. App. Ct. Dec. 9, 2015)

No illegal kickback scheme existed where attorneys performed some services for the fees earned.

Borrowers alleged that title companies made illegal kickback payments by splitting a fee with attorneys who referred business. The borrowers alleged that payments were made to attorneys who were also the title agents. Because the title companies provided the attorneys with pro forma title commitment documentation, the borrowers claimed that the attorneys did not actually perform any services, and the fees were unearned. At trial, the court determined the attorneys did actually perform title settlement services, so the payments were not kickbacks in violation of RESPA. Furthermore, the court did not consider the reasonableness of the fee in relation to the services performed. Under RESPA, the relevant inquiry is whether the party performed any services at all; RESPA does not consider whether the amount paid for a service was reasonable. Judgment for the title companies was affirmed.

4. **Munoz v. PHH Corp.**, No. 1:08-CV-00759-AWI-BAM, 2015 WL 5834162 (E.D. Cal. Oct. 1, 2015)

Update!

Borrowers claimed the lender's reinsurance scheme was actually a payment of kickbacks in violation of RESPA.

In this ongoing case, borrowers obtained mortgages from the lender with less than a 20% down payment. Because of the small down payment, the lender required the borrowers to purchase private mortgage insurance through a provider selected by the lender. The lender then required the insurance provider to obtain reinsurance through an entity called Atrium. Borrowers claimed that no transfer of risk actually occurred between the provider and Atrium. As such, the Atrium premiums were not for services actually performed, but were a kickback in violation of RESPA. The court granted a motion to dismiss claims regarding a certain subclass of borrowers on statute of limitations grounds. In this decision, the court denied the borrower's attempt to appeal that dismissal.

5. Weiss v. Bank of Am., No. 15-62, 2015 WL 9304506 (W.D. Pa. Dec. 12, 2015)

Borrowers alleged that lenders created reinsurance subsidiaries as a means for diverting kickbacks from private mortgage insurance.

Borrowers obtained mortgages from a lender, who required them to purchase private mortgage insurance. They further alleged that the lender created reinsurance subsidiaries, which assumed little or no risk, but received premiums from the private mortgage insurance providers. The borrowers alleged that the lender created the subsidiaries as a way to divert unlawful kickbacks from the private mortgage insurers, in violation of RESPA. In this decision, the court denied the lender's motion to dismiss the RICO claim.

B. Statutes and Regulations

Federal Regulation

The TILA-RESPA Integrated Disclosures Rule became effective October 3, 2015.¹⁴ This rule consolidates the mortgage disclosures required under both TILA and RESPA into integrated forms. The rule is designed to create easier-to-use forms that allow customers to understand the terms of a mortgage and to actively shop for a mortgage with lenders.

C. Volume of Materials Retrieved

RESPA issues were identified 41 times in 31 cases (see Table 1). The cases mostly involved kickback issues (see Table 2). The volume of cases increased from 2014. (See Table 4.) One regulation addressing RESPA issues was retrieved this year. (See Tables 1, 6.)

IV. FAIR HOUSING

A. Cases

Several cases from this past quarter involved claims for racial discrimination based on a lender's denial of a loan modification. In all three of these cases, the court dismissed the claims because the borrowers failed to allege that they qualified for the loan modification. Two other cases reviewed this year both addressed whether a lender's request for

¹⁴ [12 C.F.R. § 1024 \(2015\)](#).

information regarding Social Security income constituted discrimination, with differing results.

1. **Mulato v. Wells Fargo Bank**, No. 14-CV-00884, 2015 WL 6552704 (N.D. Cal. Oct. 28, 2015); **Colquitt v. Mfrs. and Traders Trust Co.**, No. 3:15-CV-00807-BR, 2015 WL 7221046 (D. Or. Oct. 9, 2015); **Molina v. Aurora Loan Services, LLC**, No. 15-10456, 2015 WL 7753215 (11th Cir. Dec. 2, 2015)

In all three of these cases, the borrowers' claims for housing discrimination based on race were dismissed because the borrowers did not allege that they met the qualifications for loan modification.

In each of these cases, the borrowers alleged that the lenders refused their requests for a loan modification because of the borrowers' race, and asserted a claim for violation of the Fair Housing Act. However, the borrowers did not state that they met the qualifications of the loan modification, nor did they allege that loans were approved for similarly situated white borrowers or otherwise show that the modification was denied because of race. As such, the court granted the lenders' motions to dismiss the housing discrimination claims.

2. **Germain v. M & T Bank Corp.**, No. 13-CV-7273, 2015 WL 3825198 (S.D.N.Y. June 19, 2015)

Alleged discrimination directed toward the owner of commercial property, but not at the residents of the property, does not fall within the ambit of the Fair Housing Act.

The borrower, a U.S. citizen of Muslim and Albanian descent, sought financing for a real estate transaction. He alleged that the lender would not consider the loan application because it believed he had ties to the Albanian mob, and claimed the lender discriminated against him because he was Muslim. The court examined whether a party may bring a claim for discrimination when the party seeks to purchase a residential property for

commercial purposes. In this case, there was no allegation that discrimination was directed at any prospective residents of the property. As such, the transaction did not qualify as a “residential real-estate-related transaction” under the Fair Housing Act and the claim was dismissed.

3. **City of Miami v. Bank of America**, No. 14-14543, 2015 WL 5102581 (11th Cir. Sept. 1, 2015)

The City of Miami may allege a Fair Housing Act claim for injuries to the City resulting from a lender’s alleged predatory lending practices.

The City claimed that the lender targeted black and Latino borrowers for predatory loans with more risk and higher fees, including subprime and interest-only loans, and that such practices resulted in economic harm in the city. On appeal, the appellate court reversed the trial court’s dismissal of the claims. According to the appellate court, the City adequately stated a claim under the FHA based on allegations that the discriminatory practices led to more foreclosures, which in turn decreased property tax revenue and caused the City to spend additional money. This alleged injury to the City fell within the “zone of interests” protected by the FHA.

4. **City of Los Angeles v. Bank of Am.**, No. CV13-9046 PA(AGR), 2015 WL 4880511 (C.D. Cal. May 11, 2015)

The City of Los Angeles did not state a viable legal claim under the Fair Housing Act based on the lender’s alleged predatory lending practices.

The City alleged that the lender engaged in a pattern and practice of predatory lending, which constituted reverse redlining. The City claimed that this pattern and practice of discrimination violated the FHA and resulted in a disproportionately high number of foreclosures in minority neighborhoods within the City. The City claimed the practices and foreclosures resulted in harm to the City because the City received less property tax revenues and had increased costs to address the unsafe conditions at the vacant properties. The court found that the City did not have sufficient evidence of damages

incurred as a result of the discriminatory loans and did not state a viable legal claim. Summary judgment was granted for the lenders.

5. **Bowman v. RJM Ctr., LLC**, No. 4:15CV272-LG-CMC, 2015 WL 4722110 (E.D. Tex. Aug. 7, 2015)

A disabled veteran properly stated a claim for disability discrimination under the FHA against the parties who designed and constructed a property with a lack of accessible features.

Plaintiff Bowman, a disabled veteran, viewed a property for possible rental. He encountered barriers and lack of accessible features at the property. Bowman alleged discrimination on the basis of disability in violation of the FHA against the entities who designed and constructed the building. Bowman claimed the property lacked accessible parking spaces, contained mailboxes that were too high and blocked by a curb, and that light switches, electrical outlets, and thermostats were placed too high. The court denied the defendants' motion to dismiss the claim.

6. **Stewart v. McDonald**, 779 S.E. 2d 695 (Ga. Ct. App. 2015)

A purchaser's claim for discrimination was denied because he could not show that the seller's licensee's attempt to derail a real estate transaction was motivated by racial discrimination.

A purchaser alleged that after he entered into a transaction to purchase property, he encountered discriminatory behavior by the seller's representative in violation of Georgia's fair housing statute. The purchaser claimed that the seller's rep made a discriminatory comment and repeatedly stated she would cancel the transaction if the purchaser did not agree to the seller's actions and demands, including the requirement that the purchaser use the seller's preferred closing attorney. The purchaser claimed that the seller's licensee engaged in this conduct because the purchaser is African-American and the rep wanted to prevent the purchaser from moving into the neighborhood, where

she was also a resident. Because the purchaser did not show that the conduct was motivated by racial discrimination rather than a legitimate, nondiscriminatory reason, the court affirmed summary judgment for the seller's representative.

7. **Gomez v. Quicken Loans, Inc.**, No. 13-56084, 2015 WL 6655476 (9th Cir. Nov. 2, 2015)

The borrower stated a claim for intentional discrimination based on the lender's request for medical proof of the borrower's disability.

The borrower received Social Security Disability Insurance. As a condition of approving his mortgage, the lender required the borrower to submit medical proof of his disability. The complaint alleged that no other loan applicants were required to submit this type of information, but the trial court rejected the claim. The appellate court reversed the trial court's decision, finding that the borrower sufficiently stated a claim for intentional discrimination under the Fair Housing Act.

8. **Wigginton v. Bank of Am. Corp.**, 770 F.3d 521 (7th Cir. 2014)

A lender's request for information showing that the borrower's Social Security benefits would continue for three years did not constitute discrimination because the lender requested income information from all applicants.

Borrowers who received Social Security Disability Insurance applied for a mortgage. The lender requested information from their physicians or the Social Security Administration showing that the benefits would continue for three years. When the borrowers did not provide this information, the lender denied the loan. The borrowers claimed that the lender's request for information violated the FHA and other statutes. The court found that the borrowers did not state a claim for discrimination because the lender required all loan applicants to provide information regarding continuation of income. There was no allegation that the lender treated the borrowers differently from other applicants. Dismissal of the borrowers' claims was affirmed.

B. Statutes and Regulations

Illinois

The Illinois Human Rights Act was amended to prohibit any advertisement or the making of any record of inquiry in connection with a real estate transaction which indicates discrimination based on familial status.¹⁵

C. Volume of Materials Retrieved

Fair Housing issues were encountered in 31 cases in 2015, a significant increase over 2014 (see Tables 1, 4). The cases principally addressed Lending and Design-and-Build issues (see Table 2). One statute and two regulations were located, similar to the 2014 results (see Tables 1, 6.)

V. VERDICT AND LIABILITY INFORMATION

A. Agency Cases

Liability was determined in 39 Agency cases in 2015, and the licensee was found liable in nine¹⁶ (see Table 3) of those cases.

B. Property Condition Disclosure Cases

Liability was determined in 27 Property Condition Disclosure cases in 2015, and the licensee was found liable in five¹⁷ of those cases (see Table 3).

¹⁵ [775 Ill. Comp. Stat. 5/3-102 \(2015\)](#).

¹⁶ [Aliev v. Courtney, No. D064239, 2015 WL 7455197 \(Cal. Ct. App. Nov. 24, 2015\)](#) (discussed in the Agency section above); [Bunger v. Demming, No. 53A01-1409-PL-395, 2015 WL 4468751 \(Ind. Ct. App. July 22, 2015\)](#) (discussed in the Third Quarter 2015 Pulse); [Duncan v. Maag, 2015-Ohio-505, 2015 Ohio App. LEXIS 511 \(Ct. App. Feb. 5, 2015\)](#) (\$1,206,100 in damages); [Graybill v. Big Bear Municipal Water Dist., No. CIVDS-10-13074, 2015 WL 6446299 \(Cal. Super. Ct. Mar. 24, 2015\)](#) (discussed in the Property Condition Disclosure section above); [Haena v. Martin, No. C066180, 2015 Cal. App. LEXIS 170 \(Jan. 12, 2015\)](#) (discussed in the Agency section above); [Helmke v. Service First Realty, LLC, No. 1 CA-CV 14-0078, 2015 Ariz. App. Unpub. LEXIS 230 \(Feb. 26, 2015\)](#) (discussed in the Agency section above); [Marchese v. Miller, 2015 WI App. 52, 2015 Wisc. App. LEXIS 327 \(May 5, 2015\)](#) (damages of \$119,700; and [KMM Invs., LLC v. Ritchie, Nos. 2014-CA-000627-MR, -000739-MR, 2015 Ky. App. Unpub. LEXIS 347 \(May 15, 2015\)](#) (damages limited to \$500).

¹⁷ [Helmke v. Service First Realty, LLC, No. 1 CA-CV 14-0078, 2015 Ariz. App. Unpub. LEXIS 230 \(Feb. 26, 2015\)](#) (discussed in the Agency section above); [Graybill v. Big Bear Municipal Water Dist., No. CIVDS-10-13074, 2015 WL 6446299 \(Cal. Super. Ct. Mar. 24, 2015\)](#) (discussed in the Property Condition Disclosure section above); [Monge v. Rojas, No. EP-14-CV-385-PRM, 2015 WL 4588960 \(W.D. Tex. Jan. 27, 2015\)](#) (damages of \$717,506); [Duncan v. Maag, 2015-Ohio-505, 2015 Ohio App. LEXIS 511 \(Ct. App. Feb. 5, 2015\)](#) (\$1,206,100 in damages); and [Zodiac Constr. v. Stewart Title Guar. Co., No. 2013-CV-030701, 2015 WL 4768757 \(Colo. Dist. Ct. Apr. 24, 2015\)](#) (\$3,323 awarded on property condition disclosure claim).

C. RESPA Cases

Liability was determined in 22 RESPA cases in 2015, and the real estate professional was liable in only two¹⁸ of those cases (see Table 3).

D. Fair Housing Cases

Liability was determined in 17 Fair Housing cases in 2015, and none of them resulted in liability for the real estate professional (see Table 3).

VI. TABLES

Table 1.
Volume of Items Retrieved for 2015 by Major Topic

Major Topic	Cases	Statutes	Regulations
Agency	74	17	29
Property Condition Disclosure	49	10	11
RESPA	40	2	1
Fair Housing	32	1	1

Table 2.
Volume of Items Retrieved for 2015 by Issue

Issue	Cases	Statutes	Regulations
Agency: Dual Agency	8	0	0
Agency: Buyer Representation	12	2	0
Agency: Designated Agency	0	0	6
Agency: Transactional Agency	0	1	0
Agency: Subagency	1	0	0
Agency: Disclosure of Confidential Info.	0	0	0
Agency: Vicarious Liability	4	0	0

¹⁸ [McCulley v. U.S. Bank, 378 Mont. 462, 347 P.3d 247 \(2015\)](#) (\$6,000,000); *Spears v. First Am. eAppraiseIT, LLC*, No. 5-08-cv-00868 (RMW), 2015 U.S. Dist. LEXIS 57257 (N.D. Cal. Apr. 27, 2015) (\$4,951,787).

Agency: Breach of Fiduciary Duty	33	0	2
Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	0	0	8
Agency: Minimum Service Agreement	0	0	0
Agency: Pre-listing	0	0	1
Agency: Other	16	12	15
Property Condition Disclosure: Structural Defects	7	1	0
Property Condition Disclosure: Sewer/Septic	3	0	0
Property Condition Disclosure: Radon	0	1	0
Property Condition Disclosure: Asbestos	0	0	0
Property Condition Disclosure: Lead-based Paint	0	0	0
Property Condition Disclosure: Mold and Water Intrusion	15	0	1
Property Condition Disclosure: Roof	1	0	0
Property Condition Disclosure: Stucco	0	0	0
Property Condition Disclosure: Flooring	0	0	0
Property Condition Disclosure: Imported Drywall	0	0	0
Property Condition Disclosure: Plumbing	2	0	0
Property Condition Disclosure: HVAC	2	0	0
Property Condition Disclosure: Electrical	1	0	0
Property Condition Disclosure: Valuation	1	0	0
Property Condition Disclosure: Short Sales	0	0	0
Property Condition Disclosure: REOs	0	0	0
Property Condition Disclosure: Insects	5	0	0

Property Condition Disclosure: Boundaries	6	0	0
Property Condition Disclosure: Zoning	1	0	0
Property Condition Disclosure: Off-site Adverse Conditions	1	0	0
Property Condition Disclosure: Meth Labs	0	0	0
Property Condition Disclosure: Stigmatized Property	0	0	0
Property Condition Disclosure: Megan's Laws	0	0	0
Property Condition Disclosure: Underground Storage Tank	0	0	1
Property Condition Disclosure: Electromagnetic	0	0	0
Property Condition Disclosure: Pollution	1	4	2
Property Condition Disclosure: Other	3	4	7
RESPA: Disclosure of Settlement Costs	7	0	1
RESPA: Kickbacks	27	1	0
RESPA: Affiliated Business Arrangements	2	1	0
RESPA: Other	4	0	0
Fair Housing: Handicap Design/Build	7	0	0
Fair Housing: Advertising/Target Marketing	3	1	0
Fair Housing: Steering	2	0	0
Fair Housing: Lending	22	0	1

Table 3.
Liability Data for 2015 by Major Topic

Major Topic	Liabe	Not Liabe	% Liabe	% Not Liabe
Agency	9	30	23%	77%
Property Condition Disclosure	5	22	19%	81%
RESPA	2	21	9%	91%
Fair Housing	0	17	0%	100%

Table 4.
Distribution of 2015 Cases by Major Topic with Comparisons to 2014 Data

Major Topic	2014 Count	2015 Count	Δ
Agency	50	74	+24
Property Condition Disclosure	63	49	-14
RESPA	30	41	+11
Employment	14	6	-8
Fair Housing	18	32	+14
Technology	6	4	-2
Antitrust	4	2	-2
Third Party Liability	17	20	+3
Ethics	2	3	+1

Table 5.
Distribution of 2015 Cases by Issue with Comparisons to 2014 Data

Issue	2014 Count	2015 Count	Δ
Agency: Dual Agency	5	8	+3
Agency: Buyer Representation	8	12	+4
Agency: Designated Agency	0	0	+1
Agency: Transactional Agency	0	0	0
Agency: Subagency	0	1	+1
Agency: Disclosure of Confidential Info.	0	0	0
Agency: Vicarious Liability	1	4	+3
Agency: Breach of Fiduciary Duty	21	33	+12
Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	4	0	-4
Agency: Minimum Service Agreement	0	0	0
Agency: Pre-listing	0	0	0
Agency: Other	11	16	+5
Property Condition Disclosure: Structural Defects	3	7	+4
Property Condition Disclosure: Sewer/Septic	4	3	-1
Property Condition Disclosure: Radon	0	0	0
Property Condition Disclosure: Asbestos	0	0	0
Property Condition Disclosure: Lead-based Paint	0	0	0
Property Condition Disclosure: Mold and Water	6	15	+9
Property Condition Disclosure: Roof	2	1	-1
Property Condition Disclosure: Stucco	1	0	-1

Property Condition Disclosure: Flooring	2	0	-2
Property Condition Disclosure: Imported Drywall	0	0	0
Property Condition Disclosure: Plumbing	1	2	+1
Property Condition Disclosure: HVAC	0	2	+2
Property Condition Disclosure: Electrical	0	1	+1
Property Condition Disclosure: Valuation	9	1	-8
Property Condition Disclosure: Short Sales	1	0	-1
Property Condition Disclosure: REOs	2	0	-2
Property Condition Disclosure: Insects	2	5	-3
Property Condition Disclosure: Boundaries	8	6	-2
Property Condition Disclosure: Zoning	1	1	0
Property Condition Disclosure: Off-site Adverse Conditions	5	1	-4
Property Condition Disclosure: Meth Labs	0	0	0
Property Condition Disclosure: Stigmatized Property	1	0	-1
Property Condition Disclosure: Megan's Laws	1	0	-1
Property Condition Disclosure: Underground Storage Tank	1	0	-1
Property Condition Disclosure: Electromagnetic	1	0	-1
Property Condition Disclosure: Pollution	6	1	-5
Property Condition Disclosure: Other	7	3	-4
Employment: Wrongful Termination	3	1	-2
Employment: Personal Assistants	0	0	0
Employment: Independent Contractors	6	3	-3

Employment: Wage and Hour	5	2	-3
Fair Housing: Handicap/Design and Build	7	7	0
Fair Housing: Advertising/Target	3	0	-3
Fair Housing: Steering	0	3	+3
Fair Housing: Lending	8	22	+14
Technology: State Internet Advertising	0	0	0
Technology: Social Networks	1	0	-1
Technology: Privacy	0	0	0
Technology: Anti-Solicitation	3	1	-2
Technology: Other	2	3	+1
Antitrust: Price-Fixing	1	0	-1
Antitrust: Group Boycotts	2	1	-1
Antitrust: Advertising	0	1	+1
Antitrust: Tying Agreements	0	0	0
Antitrust: Other	1	0	-1
RESPA: Disclosure of Settlement Costs	4	7	+3
RESPA: Kickbacks	22	28	+6
RESPA: Affiliated Business Arrangements	2	2	0
RESPA: Other	2	4	+2
Third Party Liability: Appraisers	11	7	-4
Third Party Liability: Inspectors	2	6	+4
Third Party Liability: Other	4	7	+3
Ethics: Reliance on NAR's Code of Ethics	1	1	0

Ethics: Enforcement of NAR's Code of Ethics	1	2	+1
DTPA/Fraud	28	42	+14

Table 6.

Distribution of 2015 Statutes and Regulations by Major Topic with Comparisons to 2014 Data

Major Topic	2014 Count	2015 Count	Δ
Agency	22	46	+24
Property Condition Disclosure	11	21	+10
RESPA	0	3	+3
Fair Housing	3	2	-1
Technology	20	16	-4
Antitrust	0	0	0
Third Party Liability	0	0	0

Table 7.

Distribution of 2015 Statutes and Regulations by Issue with Comparisons to 2014 Data

Issue	2014 Count	2015 Count	Δ
Agency: Dual Agency	0	0	0
Agency: Buyer Representation	6	2	-4
Agency: Designated Agency	1	6	+5
Agency: Transactional Agency	0	1	+1
Agency: Subagency	1	0	-1
Agency: Disclosure of Confidential Info.	0	0	0
Agency: Vicarious Liability	0	0	0
Agency: Breach of Fiduciary Duty	3	2	-1

Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	3	8	+5
Agency: Minimum Service Agreement	0	0	0
Agency: Pre-listing	1	1	0
Agency: Other	7	27	+20
Property Condition Disclosure: Structural Defects	0	1	+1
Property Condition Disclosure: Sewer/Septic	0	0	0
Property Condition Disclosure: Radon	0	1	+1
Property Condition Disclosure: Asbestos	0	0	0
Property Condition Disclosure: Lead-based Paint	0	0	0
Property Condition Disclosure: Mold and Water Intrusion	0	1	+1
Property Condition Disclosure: Roof	0	0	0
Property Condition Disclosure: Stucco	0	0	0
Property Condition Disclosure: Flooring	0	0	0
Property Condition Disclosure: Imported Drywall	0	0	0
Property Condition Disclosure: Plumbing	0	0	0
Property Condition Disclosure: HVAC	0	0	0
Property Condition Disclosure: Electrical	0	0	0
Property Condition Disclosure: Valuation	0	0	0
Property Condition Disclosure: Short Sales	0	0	0
Property Condition Disclosure: REOs	1	0	-1
Property Condition Disclosure: Insects	0	0	0
Property Condition Disclosure: Boundaries	0	0	0

Property Condition Disclosure: Zoning	1	0	-1
Property Condition Disclosure: Off-site Adverse Conditions	0	0	0
Property Condition Disclosure: Meth Labs	2	0	-2
Property Condition Disclosure: Stigmatized Property	0	0	0
Property Condition Disclosure: Megan's Laws	0	0	0
Property Condition Disclosure: Underground Storage Tank	1	1	0
Property Condition Disclosure: Electromagnetic	0	0	0
Property Condition Disclosure: Pollution	2	6	+4
Property Condition Disclosure: Other	4	11	+7
Fair Housing: Handicap Design/Build	1	0	-1
Fair Housing: Advertising	2	1	-1
Fair Housing: Steering	0	0	0
Fair Housing: Lending	0	1	+1
Technology: State Internet Advertising	6	8	+2
Technology: Social Networking	3	1	-2
Technology: Anti-Solicitation	3	0	-3
Technology: Privacy	4	7	+3
Technology: Other	N/A	N/A	N/A
Antitrust: Price-Fixing	0	0	0
Antitrust: Group Boycotts	0	0	0
Antitrust: Advertising	0	0	0
Antitrust: Tying Agreements	0	0	0

Antitrust: Other	0	0	0
RESPA: Disclosure of Settlement Costs	0	1	+1
RESPA: Kickbacks	0	1	+1
RESPA: Affiliated Business Arrangements	0	1	+1
RESPA: Other	0	0	0
Third Party Liability: Appraisers	0	0	0
Third Party Liability: Inspectors	0	0	0
Third Party Liability: Other	0	0	0

Table 8.
Distribution of 2015 Cases by Liability

Determination of Liability	Count	% of Total
Agent/Broker Liable	23	16%
Agent/Broker Not Liable	124	84%

Table 9.
Distribution of 2015 Cases Awarding Damages by Amount

Amount	Count	Percentage
\$5 million or more	1	6%
\$1 million to 4,999,999	3	18%
\$500,000 to 999,999	1	6%
\$100,000 to 499,999	8	47%
\$50,000 to 99,999	2	12%
\$10,000 to 49,999	1	6%
Under \$10,000	0	0%

Unknown	1	6%
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Table 10.
Ten Largest Damage Awards in 2015

Damage Award	Issue(s)	Case	State
\$6,000,000	Deceptive Trade Practices Act/Fraud	McCulley	MT
\$1,579,000	Fair Housing: Lending	Fifth Third Mortgage	GA
\$1,206,100	Agency: Breach of Fiduciary Duty, Dual Agency	Duncan	OH
\$717,506	Deceptive Trade Practices Act/Fraud	Monge	TX
\$363,380	Agency: Breach of Fiduciary Duty, Deceptive Trade Practices Act/Fraud	Haena	CA
\$350,534	Deceptive Trade Practices Act/Fraud	Olague	CA
\$181,000	Agency: Other	Watts	KY
\$155,746	Deceptive Trade Practices Act/Fraud	Brown	NJ
\$154,000 ¹⁹	Agency: Breach of Fiduciary Duty, Agency: Vicarious Liability	Bunger	IN
\$119,000	Agency: Other; Deceptive Trade Practices Act and Fraud	Marchese	WI

¹⁹ Case was remanded to exclude interest.

Table 11.
Top Three Settlements in 2015

Settlement Amount	Issue	Case	State
\$9,863,945	RESPA: Kickbacks, RESPA: Other	Spears	CA
\$6,250,000	RESPA: Kickbacks	Moore	PA
\$200,000	Property Condition Disclosure: Sewer/Septic	Wong	CA