



The Legal Pulse

2014 Year in Review and Fourth Quarter Highlights

Welcome to a special edition of the *Legal Pulse Newsletter*. In this edition, we will review the year 2014 and also look at legal liability trends from 2014 by focusing on three major topics of concern—agency, property condition disclosures, and RESPA. We also highlight top jury-verdict reports for cases reported in 2014. Finally, we review select Fair Housing issues that can cause legal problems, including the “design and construct” provisions in the Fair Housing Act, advertising, and lending discrimination.

In 2014, agency continued to be a much-disputed issue. Despite the activity, no real overarching theme emerged from the cases. Several decisions dealt with whether an agent or broker owed duties to someone other than the represented party, such as a buyer or an interested third party. Others involved possible misrepresentations or concealed defects, raising agency issues as well as property condition disclosure questions.

In 2014 RESPA cases, courts continued to study kickback claims. Many of the cases focused on the use of mortgage insurance premiums as a mask for referral payments.

This 2014 overview covers significant new cases and authorities from the fourth quarter, along with some of the most intriguing items encountered earlier in the year. A list of all of the research gathered can be found by clicking the [Legal Pulse research link](#) on REALTOR.org. The case summaries include two bullet points for a quick description of the case and the outcome for the real estate professional involved. 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 are new to the *Legal Pulse*, but are drawn from the former *Scan* reports. These tables (4 through 7) collect data for all topics we track for the *Legal Pulse*, including some comparisons to 2013 data (never before reported!). The last set of tables (8 through 11) show 2014 data relating to liability, the dollar range of damage awards, the top ten damage awards, and the top three settlements.

I. AGENCY HIGHLIGHTS

A. Cases

Agency is still an active issue, but the number of cases reported in 2014 fell dramatically from 2013 levels. Last year, 50 Agency cases were reported, slightly more than half of the 97 cases reported in 2013. The largest single subissue for 2014 was Breach of Fiduciary Duty, with 21 cases reported.

NEW CASES FROM 4th Quarter 2014:

1. *Cardoza v. Reed* (California Superior Court Sonoma County, August 1, 2014)

- Seller's brokers were found negligent because they failed to disclose rumors that a commercial property's principal tenant planned to move.
- The brokers and sellers were held jointly liable to the buyers for \$6,500,000.

In *Cardoza*,¹ the plaintiffs bought a commercial property for \$4.7 million. At the time of the transaction, the main tenant of the commercial property was a company owned by the sellers, and the company held a ten-year lease with two five-year options. This main lease and a second tenant's rent allegedly provided rental income of about \$30,000/month. Following the closing, the main tenant moved out without notice. The second tenant had only two years remaining and paid only \$8,000 per month in rent. The main tenant later filed for bankruptcy.

The plaintiffs sued the sellers and the sellers' real estate brokers for intentional fraud and misrepresentation, conspiracy, a breach of the duty to disclose, and broker's negligence. The plaintiffs claimed that the seller and the brokers conspired to inflate the property's value by raising the rents before the closing. They also argued that the main tenant's abandonment of its specially designed premises dropped the building's value from the appraised \$4 million to \$2 million. The 2009 crash of the real-estate market further eroded its value. The plaintiffs eventually sold the property in a short sale.

The sellers' brokers contended that they had not heard rumors that the main tenant was moving, and even if they had, they had a duty to the seller not to inform the buyers.

The jury awarded \$5 million in damages for the loss of past and anticipated rent, along with \$1.5 million in prejudgment interest against the sellers and the brokers. The sellers were found liable for intentional fraud, while the brokers were held liable for breach of broker's duty of disclosure and broker's negligence (and not for fraud or

¹ *Cardoza v. Reed*, No. SCV-2345837, 2014 Jury Verdicts LEXIS 8840 (Cal. Super. Ct. Sonoma County Aug. 1, 2014).

misrepresentation). The sellers were also assessed \$12.2 million in punitive damages because the jury had found their actions were intentional.

2. *Ardent Service Corp. v. Grand Beach Real Estate Inv., LLC* (Federal District Court of Western Michigan, Nov. 13, 2014)

- A buyer's agent did not go beyond her authority from the buyer by signing closing documents under a power of attorney.

*Ardent*² addresses the scope of an agent's authority to sign closing documents on behalf of a client pursuant to a power of attorney. The buyer of commercial property in Michigan was a single-member LLC based in Illinois. The LLC's principal, an Illinois attorney, gave a power of attorney to a Michigan real-estate agent so the agent could sign the closing documents. The transaction included the principal's personal guaranty on a loan. The LLC defaulted on the loan, and the lender turned to the principal for payment under the guaranty. The principal said the guaranty did not apply because (1) there was an irregularity in how the power of attorney was notarized and (2) the power of attorney did not give the Michigan agent power to sign the guaranty. He also sued the Michigan agent for exceeding her authorization, contending that they had agreed that she would not have authority to execute a guaranty.

The trial court entered judgment for the Michigan agent. It concluded that the power of attorney was unambiguous and precise. Because it contained language that it "shall be construed broadly" and that "[t]he listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner," it authorized the Michigan agent to act. Because the power of attorney was unambiguous, the court could not hear evidence of a more limited agreement between the Illinois attorney and the Michigan agent.

² [*Ardent Serv. Corp. v. Grand Beach Real Estate Inv., LLC*, No. 1:12-cv-583, 2014 U.S. Dist. LEXIS 159752 \(W.D. Mich. Nov. 13, 2014\).](#)

OTHER SIGNIFICANT 2014 AGENCY CASES

1. **Listing Broker owes fiduciary duty to buyer?:** *Horiike v. Coldwell Banker*, 225 Cal. App. 4th 427 (2014)

- Two salespeople in the same brokerage on both sides of the transaction may cause the listing broker to owe a fiduciary duty to the buyer.
- Issue was whether a listing broker has a fiduciary duty to the buyer when both parties are represented by the same brokerage. A state appeals court held that each agent owes fiduciary duties only to his or her principal, even if they both work for the same broker.
- The California Supreme Court recently granted a petition to review the appellate court decision.

2. **Brokerage only liable for conduct within scope of relationship:** *Auer v. Paliath*, 17 N.E.3d 561 (Oh. App. 2014)

- A broker is responsible for a salesperson's conduct intended to facilitate or promote the broker's business; the broker is not liable for conduct outside of the scope of their relationship
- Buyer sued an Ohio real-estate agent for fraudulent inducement after the agent promised, but failed, to rehabilitate and manage several investment properties she had acquired for the buyer.
- Lower courts held the broker liable for a rogue agent's conduct if the broker received a portion of agent's commission. But the Ohio Supreme Court reversed the ruling, because the broker's vicarious liability should be based on whether the agent's conduct was intended to facilitate or promote the broker's business.

B. Statutes and Regulations

1. *California*

California added a definition for “commercial real property” to its agency disclosure statute, thereby making the agency disclosure statutes applicable to commercial real-property transactions (including commercial leases.)³

2. *Colorado*

Colorado issued a position statement on Pre-listing Marketing of Properties,⁴ an issue believed to be an emerging area of concern. The listing broker must advise the seller or lessor of the material benefits and risks of making a “coming soon” listing and let

³ [Cal. Civ. Code § 2079.13\(d\) \(2014\) \(Ch. 200, § 2 \(2014\), S.F. 1171\)](#). The intent of the new definition is set forth in the introductory Digest of the enacting legislation. *See* 2014 Cal. Acts ch. 200. California's Agency Disclosure requirements are set forth in [Cal. Civ. Code §§ 2079.13–24](#).

⁴ [Colo. Dep't of Reg. Agencies, Div. of Real Estate, CP-44: Comm'n Position on Coming-Soon Listings \(adopted June 3, 2014\)](#).

the seller or lessor decide whether to pre-list the property. The position statement concludes that “[t]he manner in which the broker and seller or landlord agree to market the property must be memorialized in writing in the listing contract prior to any marketing being performed.”

3. *Iowa*

Iowa passed a new statute addressing elder abuse, another emerging area of concern.⁵ The statute includes real-estate brokers and agents within the scope of the term “person in a position of trust and confidence” and elder abuse includes financial exploitation. The statute provides for injunctive relief and the return of money or property to the vulnerable adult.

4. *Minnesota*

Minnesota revised its licensing law.⁶ Among other things, the terms “buyer’s broker” and “seller’s broker” have been defined and these representatives owe fiduciary duties to the buyer or seller, respectively.⁷ Also, a buyer’s representation agreement may contain an “override” clause, which permits the buyer’s representative to get paid if the buyer who was introduced to the property by the real estate professional purchases a property after the agreement has expired.⁸

5. *Wisconsin*

Wisconsin enacted a statute making an employing broker immune from civil liability for negligent hiring in certain circumstances. This is one of the first statutes of this sort. If the broker hires a real-estate licensee who commits a crime under Wisconsin law or another wrongful act and the employing broker relied on the investigations conducted by state agencies, then the broker is not liable for negligent hiring.⁹

C. Volume of Materials Retrieved

Agency issues were identified fifty times in thirty-six cases (*see* Table 1; note that some cases address multiple issues). Breach of Fiduciary Duty, Buyer Representation, Dual Agency, Agency Disclosure and Agency: Other were identified in multiple cases (*see* Table 2). The number of Agency cases has decreased significantly compared to 2013 (*see*

⁵ [Iowa Code §§ 235F.1–8 \(2014\) \(SF 2239, §§ 1-8\)](#).

⁶ [2014 Minn. Sess. Law ch. 199; H.F. 2694](#).

⁷ [Minn. Stat. §§ 82.55, subds. 3a, 23a \(2014\) \(Ch. 199, §§ 1, 5\)](#).

⁸ [Id. § 82.55, subd. 13\(2\) \(2014\) \(Ch. 199, § 2\)](#).

⁹ [Wis. Stat. § 452.139\(3\) \(2014\) \(2013 Act 288, § 11 \(2014\), SB 531\)](#).

Table 4), though the reason for the decrease is unclear. Ten statutes and eleven regulations addressing Agency issues were retrieved (*see* Table 1). These items addressed Buyer Representation, Breach of Fiduciary Duty, Agency Disclosure, Designated Agency, Subagency and Agency: Other. Here, too, the volume of material has decreased (*see* Table 6), though this decrease may be attributed to the fact that many states tend focus on budget issues during the second year of their legislative sessions or have a shortened session.

II. PROPERTY CONDITION DISCLOSURE HIGHLIGHTS

A. Cases

Property condition disclosure disputes have remained remarkably constant in the past two years, with 63 decisions reported in each of 2013 and 2014.

NEW CASES FROM 4th Quarter 2014:

1. *Adams v. Gulf Coast Realty* (Alabama Circuit Court, Jan. 16, 2013)¹⁰

- Broker, salesperson, and seller held jointly liable for \$426,427 for knowingly and falsely denying bat infestation.

In *Adams*,¹¹ prior to purchase, buyer noticed bat droppings in the house. He asked both broker and sellers if there was an infestation, which they roundly denied. After buying the house for \$50,000, seller discovered that there was indeed an infestation, and asked the seller and broker to remediate the problem. They refused, and the infestation grew. Buyer sued the sellers, the broker, and three of the broker's salespeople for contending that the defendants knew about the infestation and had hidden it. A jury returned a verdict for \$426,427, an amount that exceeded both the cost to remove the bats and the purchase price. The court denied a defense motion to reduce the verdict.

2. *Phoenix v. U.S. Home Corp.* (Federal Court for the District of New Jersey, Nov. 3, 2014)

- Sellers and brokers do not have a duty to disclose an "undesirable neighbor" because bad neighbors are off-site *social* conditions rather than off-site *physical* conditions.

¹⁰ This 2013 settlement report was retrieved in research update for the fourth quarter of 2014.

¹¹ *Adams v. Gulf Coast Realty*, No. 08-83, 2013 AL Jury Verdicts Rptr LEXIS 63 (Ala. Cir. Ct. Jan. 16, 2013).

In *Phoenix*,¹² the listing broker did not disclose to a buyer that the man who lived across the street from the property had various grievances against the property builder. The neighbor mentioned his dispute to the buyer when she was looking at the property. The buyer asked the broker “whether there was a problem” with the neighbor, and the broker said there was not. The buyer later learned that the neighbor had had “harassing, hostile, and volatile interactions” with the builder’s employees.

After the buyer closed and moved in, the neighbor began harassing her and her family. Among other things, he made “snide and racist comments,” spit at her, played loud music, intimidated her guests, called the police about her, parked his vehicles in front of her house, and blocked her driveway.

The court concluded that an undesirable neighbor is not a physical condition that must be disclosed. Further, the listing broker’s statement that there was no problem with the neighbor was deemed a statement of opinion, which could not provide the basis for a claim of misrepresentation.

OTHER SIGNIFICANT 2014 DISCLOSURE CASES

1. Developer liable for view-blocking scheme: *Etelson v. Shore Club*, 2014 WL 901942 (N.J. App. 2014).

- High rise condo developer instructed on-site sales staff to use sweeping views as a selling point. Unbeknownst to either sales staff or buyers, developer was planning a new, view-blocking construction project next door.
- Upon discovering that their panoramic views were to be obliterated, buyers sued the developer for fraud and other claims.
- A verdict of \$4,817,638.12 for condo buyers was affirmed on appeal.

2. Listing Broker liable for withholding information from seller: *Bailey v. Delacruz*, 143 So. 3d 220 (La. App. 2014).

- After discovering mold and structural issues, buyers sued listing broker and salesperson, claiming fraud, misrepresentation, and a breach of listing broker’s duties to buyers.
- Court found for buyers on all counts, as the evidence showed that broker and salesperson had known of home’s issues, and had failed to provide buyers with complete copies of inspection reports that noted the problems.
- The court held broker and salesperson liable for \$109,891, the amount needed to make the house sound.

3. Listing Broker had no duty to disclose murder-suicide: *Milliken v. Jacono*, 96 A.3d 997 (Pa. 2014).

- Listing broker did not inform buyer of a notorious murder-suicide that took place in the home. Buyer sued.
- Pennsylvania Supreme Court affirmed summary judgment in favor of broker, holding that Seller’s agent does not have a duty to disclose a property’s psychological stigma.

¹² [*Phoenix v. U.S. Home Corp.*, No. 14-1615, 2014 U.S. Dist. LEXIS 155297 \(D.N.J. Nov. 3, 2014\)](#).

4. **Buyer's salesperson not liable for unintentional misstatement of square footage:** *Zhu v. Lam*, 426 S.W.3d 353 (Tex. App. 2014).

- Based on square footage data provided by seller, buyers' salesperson overrepresented home's living space.
- Buyer sued for breach of fiduciary duty and misrepresentation.
- Court held for salesperson, holding that salesperson did not know he was giving buyer bad information, and that salesperson had no duty to measure the home to confirm square footage provided by seller. Affirmed on appeal.

B. Property Condition Disclosure: Statutes and Regulations from 4th Quarter 2014

As in the previous year, 2014 saw states nationwide making a total of 11 changes to laws and regulations pertaining to property condition disclosure. Below is a recap of some of the more significant changes.

1. *Indiana*

Indiana modified its disclosure form to require the disclosure of methamphetamine production or dumping of meth production waste products on the property.¹³

2. *North Carolina*

North Carolina amended its property condition disclosure statement requirements to clarify that a seller must disclose known violations of local zoning ordinances, restrictive covenants, building-code requirements, and other land-use restrictions.¹⁴

3. *Oregon*

Concerns about methamphetamine waste also prompted an amendment to Oregon's foreclosure statute. Because the history of foreclosed properties is often unknown, Oregon now requires the notice of a trustee's sale to include the following language: "[S]ome residential property sold at a trustee's sale may have been used in manufacturing methamphetamines, the chemical components of which are known to be toxic. Prospective purchasers of residential property should be aware of this potential danger before deciding to place a bid for this property at the trustee's sale."¹⁵

4. *Wisconsin*

¹³ [Ind. Code § 31-21-5-7\(2\) \(2014\) \(Pub. Law 180, § 5; HEA 1141\)](#).

¹⁴ [21 N.C. Admin. Code 58A.0114 \(2014\)](#).

¹⁵ [Or. Rev. Stat. § 85.771 \(2014\)](#).

Wisconsin amended its Property Condition Disclosure Form to require disclosure of underground or above-ground storage tanks. A seller also must register the tanks with the state Department of Agriculture, Trade and Consumer Protection.¹⁶ Another amendment to the form requires sellers to disclose the existence of a dam on, or partially on, the property, when the ownership of the dam will transfer with the property. The state Department of Natural Resources must be contacted regarding transfer requirements.¹⁷

C. Volume of Materials Retrieved

Property Condition Disclosure Issues were identified sixty-three times in forty-seven cases collected during 2014 (*see* Table 1). Valuation was addressed most frequently, followed by Boundaries, Pollution/Environmental Other, Mold and Water Intrusion, and Off-site Adverse Conditions (*see* Table 2). Several other issues were addressed as well, albeit less frequently. Ten statutes and one regulation also were retrieved. The volume of cases, statutes and regulations is unchanged from 2013. (*See* Tables 4 and 6.)

III. RESPA HIGHLIGHTS

A. Cases

RESPA case law kept a similar pace from 2013 to 2014, with 30 and 33 new cases respectively. The cases also showed a fairly constant distribution among the reported subtopics, despite a dip in affiliated business relationship decisions.

NEW CASES FROM 4th Quarter 2014:

1. *Liguori v. Wells Fargo & Co.* (Federal Court for the Eastern District of Pennsylvania Feb. 7, 2013)
 - Wells Fargo and Company and some of its subsidiaries/affiliates were sued under RESPA § 8 (12 U.S.C. § 2607) for allegedly accepting kickbacks and fee splits from private mortgage insurers to whom they referred business.

¹⁶ [Wis. Stat. §§ 709.03 \(form\), C.8, .003 \(form\) C.9 \(2014\) \(2013 Act 304, §§ 1, 3 \(2014\), S.B. 344\).](#)

¹⁷ [Wis. Stat. §§ 709.03 \(form\) C.9m, .033 \(form\) C9m \(2014\) \(2013 Act 304 §§2, 4 \(2014\), S.B. 344\).](#)

This 2013 jury settlement report was retrieved in research update for the fourth quarter of 2014. In *Liguori*,¹⁸ the plaintiffs' lenders required them to purchase private mortgage insurance that was reinsured by a Wells Fargo subsidiary, North Star Mortgage Guaranty Reinsurance Company. The complaint alleged that Wells Fargo referred borrowers to several private mortgage insurers and required those private insurers to reinsure the risk with North Star. Wells Fargo allegedly received a portion of the reinsurance premiums and the private mortgage insurers allegedly received a steady stream of business.¹⁹ The settlement fund permitted each member of the plaintiff class to recover about \$173.²⁰

2. *Baehr v. Creig Northrup Team, P.C.* (Federal Court for the District of Maryland Jan. 29, 2014)
 - A national real-estate brokerage was not vicariously liable for one of its local agency's alleged participation in a kickback scheme involving title-insurance referrals because it did not participate in the alleged scheme.

In *Baehr*,²¹ the plaintiffs sued several defendants, including a national real-estate brokerage firm and one of its offices, alleging a kickback scheme for title-insurance referrals amounting to \$500,000 over a thirteen-year period. The claim against the national brokerage firm was dismissed because it did not participate in the scheme and could not be held vicariously liable for the conduct of one office. The branch office also sought dismissal of the case, but the court allowed the case to proceed against the branch office.

¹⁸ *Liguori v. Wells Fargo & Co.*, No. 5:08-cv-00479-PD, 2011 Jury Verdicts LEXIS 428 (E.D. Pa. Feb. 7, 2013). The case also may be referred to as *Hoffman v. Wells Fargo & Co.*, after the second lead plaintiff. The only court opinion on LEXIS is the approval of the class-action settlement. See *Hoffman v. Wells Fargo & Co.*, No. 5:08-cv-00479-PD, 2013 U.S. Dist. LEXIS 189337 (E.D. Pa. Feb. 2, 2013).

¹⁹ See "Background" at the class-action settlement homepage, <http://www.wellsfargopmi-settlement.com/>.

²⁰ See Gavin Brody, *Wells Fargo Puts up \$13M to End Reinsurance Kickback Suit*, at <http://www.law360.com/articles/414044/wells-fargo-puts-up-13m-to-end-reinsurance-kickback-suit>.

²¹ *Baehr v. Creig Northrup Team, P.C.*, No. WDQ-13-0933, 2014 WL 346635 (D. Md. Jan. 29, 2014).

OTHER SIGNIFICANT 2014 RESPA CASES

1. **Challenge to affiliated business fails:** *Minter v. Wells Fargo Bank*, 762 F.3d 339 (4th Cir. 2014)

- A real-estate broker whose agents referred buyers to an affiliated lender was not liable under RESPA, because the agents made referrals to other lenders as well and did not influence the borrowers to use the affiliated lender.
- Class-action plaintiffs alleged the defendants set up a “sham” lender to avoid RESPA’s prohibitions on kickbacks and referrals.
- Fourth Circuit ruled that lenders were only suggested and that buyers were not influenced to choose the affiliated lender.

2. **No RESPA violation for MLS dividend:** *Bolinger v. First Multiple Listing Serv.*, 2014 WL 4803155 (N.D. Ga. 2014)

- A multiple listing service’s payment of “Patronage Dividends” to brokers was not a kickback or a split of an unearned commission.
- Plaintiffs alleged that a multiple listing service (not associated or operated by a REALTOR® Association) and member brokers violated RESPA’s kickback and fee-splitting prohibitions through an arrangement in which the brokers and their agents referred business to the MLS and the MLS paid kickbacks called “Patronage Dividends.”

3. **FedEx charges alleged to violate RESPA:** *Henson v. Fidelity Nat’l Financial*, 18 F. Supp. 3d 1006 (C.D. Cal. 2014)

- A RESPA § 8 claim proceeded in a case alleging that “marketing fees” from overnight express delivery services

B. Statutes and Regulations

As in 2013, no statutes or regulations addressing RESPA issues were collected during the last year.

C. Volume of Materials Retrieved

RESPA issues were identified thirty times in twenty-seven cases (*see* Table 1; three cases addressed more than one RESPA issue). The research focused on claims arising as a result of the settlement process, rather than on foreclosure-related claims. Cases mostly involved kickback issues (*see* Table 2). The volume of cases is similar to 2013. (*See* Table 4.) As in 2013, no statutes or regulations addressing RESPA issues were found. (*See* Tables 1, 6.)

IV. FAIR HOUSING HIGHLIGHTS: All Quarters 2014

A. Cases

2014 saw an upswing in fair housing-related litigation from the previous year. The top three settlements last year all came from fair housing cases. (See Tables 10 and 11.)

Courts heard a number of cases involving pregnancy discrimination by lending institutions this year (*Velasquez*, *First Bank Mortgage Partners*, *Greenlight Financial* and *Mountain American Credit*). Other fair housing-related cases tackled advertising violations and target marketing (*Lil-1 Associates*) and non-compliant design-and-build issues (*Centro* and *Harding*).

1. *Velasquez v. Wells Fargo Home Mortgage* (Press Release from Dep't of Hous. & Urb. Dev., Oct. 9, 2014)
 - Lending institution required to pay \$5 million in settlement for routinely denying credit to prospective borrowers who were pregnant or on maternity leave.

In *Velasquez*,²² six families sued Wells Fargo Home Mortgage after it refused to lend them money to purchase homes based on the fact that one of the borrowers was pregnant or on maternity leave. The settlement awarded \$165,000 to each family and set aside \$3.5 million for other claimants. The settlement also required the lender to replenish the fund if more than 175 other claimants establish their claims. This settlement was one of many similar cases settled in 2014.²³

2. *Connecticut Fair Housing Center v. Lil-1 Associates* (Press Release from Dep't of Hous. & Urb. Dev., June 26, 2014)
 - Real estate licensees published advertisements on the internet and in the MLS that specified “no children” even through the housing complex being advertised was not designated for older persons.²⁴

²² [Velasquez v. Wells Fargo Home Mtge., HUD No. 14-124 \(Oct. 9, 2014\)](#).

²³ E.g., [Dep't of Hous. & Urb. Dev. v. First Bank Mtge. Partners, HUD No. 14-105 \(Sept. 12, 2014\)](#) (\$35,000 settlement in case in which loan was denied 24 hours before a scheduled closing); [Unknown Plaintiff v. Greenlight Fin. Servs., HUD No. 14-084 \(July 1, 2014\)](#) (\$48,000 settlement); [Dep't of Hous. & Urb. Dev. v. Mountain Am. Credit. Union, HUD No. 14-082 \(June 25, 2014\)](#) (\$25,000 settlement; lender contended its insurer's guidelines allowed income of woman who was pregnant or on maternity leave to be considered only if she returned to work before loan closed; \$15,000 of settlement was to be used for public-education campaign).

²⁴ 1988 amendments to the Fair Housing Act, and, thereafter, the 1995 Housing for Older Persons Act (Pub. L. 104-76, 109 Stat. 787, December 28, 1995), create an exemption to the FHA's prohibition against familial status discrimination for housing that meets the Fair Housing Act's definition of “housing for older persons”.

- The case settled against licensees for \$24,375.

In *Lil-I Associates*,²⁵ listing broker’s advertisement for condos stated that children were not permitted on the premises. The defendants also verbally stated the no-families policy to a tester who posed as a potential buyer. The licensees agreed to pay \$24,375 in damages. One broker agreed to ensure that all its employees attend fair-housing training and to hold itself out as an equal-opportunity housing provider in future advertising.

3. *Department of Housing & Urban Development v. Centro LLC* (Press Release from Dep’t of Hous. & Urb. Dev., June 9, 2014)

- Settlement reached after HUD brought action against builder, architect, and a management company of newly constructed housing complex for failing to comply with wheelchair accessibility requirements.
- Settlement terms required defendants to make various modifications to the units and to hire an accessibility consultant and conduct training.

In *Centro LLC*,²⁶ a housing complex consisting of 56 “apodments,” or small units designed for one resident each, had wheelchair-inaccessible electrical outlets, thermostats, door thresholds, and bathrooms. In the common areas, the mailboxes were placed too high, a laundry room was too narrow for wheelchairs, and the walkways were too steep. The defendants agreed to modify the common areas and to modify one of the units to make it accessible. The defendants also agreed to hire an accessibility consultant to inspect units in other recently-constructed buildings and make all recommended retrofits. The defendants further agreed that persons responsible for designing accessible features would attend FHA design and construction training.

4. *Harding v. Orlando Apts., LLC* (Eleventh Circuit Court of Appeals, Apr. 14, 2014)

- Because FHA design-and-build regulations apply to the design and construction of housing, post-construction owners that were not involved in the design and construction of the building were not liable for building’s non-compliant features.

²⁵ [Conn. Fair Hous. Ctr. v. Lil-I Assocs., HUD No. 14-083 \(June 26, 2014\).](#)

²⁶ [Dep’t of Hous. & Urb. Dev. v. Centro LLC, HUD No. 14-068 \(June 9, 2014\).](#) See also [Metro. St. Louis Equal Hous. Opp;y Council v. H&H Dev. Group, Inc., HUD No. 10-021 \(Mar. 19, 2014\)](#) (36-unit condominium complex had routes to units that were not wheelchair accessible, narrow kitchens with knob-style hardware, and inadequate parking; defendant agreed to \$35,000 “retrofit fund” to correct issues).

In *Harding*,²⁷ an apartment complex was built in 2009 and sold in 2010. The plaintiff, a prospective tenant, identified a large number of non-FHA-compliant areas in the building. . He sued both the prior owner and the new owner. The legal theory against the new owner was that the statute setting forth the design-and-build requirements requires later owners to ensure that the dwelling conforms to those standards. The Eleventh Circuit stated that the new owner did not have such a duty. It specifically noted that the Department of Housing and Urban Development itself did not believe that the statute imposed a duty on later purchasers of noncompliant dwellings.

B. Statutes and Regulations

Three new or amended statutes and regulations associated with fair housing were enacted in 2014, representing a modest dip from 2013's five legislative changes in this area of law.

1. *Virginia*

Virginia amended its Fair Housing regulation addressing the “reasonable modification” of existing dwellings to incorporate by reference the “Reasonable Modifications under the FHA” promulgated by the Department of Housing and Urban Development and the Department of Justice.²⁸ Virginia also amended its Fair Housing advertising regulations to include the specific equal housing opportunity language required in all advertising; the prior version merely provided a reference to the FHA regulation.²⁹

C. Volume of Materials Retrieved

Fair Housing issues were encountered eighteen times in 2014, a moderate increase over 2013 (*see* Tables 1, 4). The cases principally addressed Lending and Design-and-Build issues (*see* Table 2). One statute and two regulations were located, a slight decrease from 2013. (*See* Tables 1, 6.)

V. VERDICT AND LIABILITY INFORMATION

A. Agency Cases

Liability was determined in twenty-six Agency cases in 2014, and a real estate licensee

²⁷ [Harding v. Orlando Apts., LLC, 748 F.3d 1128 \(11th Cir. 2014\).](#)

²⁸ [See 18 Va. Admin. Code § 135-50-200 \(2013\), in 30 Va. Reg. Regs. 1597 \(Jan. 27, 2014\) \(eff. Mar. 1, 2014\)](#) (citing Joint Stmt. of HUD & DOJ “Reasonable Modifications under the Fair Housing Act” dated March 5, 2008).

²⁹ [See 18 Va. Admin. Code § 135-50-110 \(2013\), in 30 Va. Reg. Regs. 1594–95 \(Jan. 27, 2014\) \(eff. Mar. 1, 2014\).](#)

was found liable in seven (*see* Table 3), several of which ended in substantial awards of damages (*see* Table 3).³⁰

B. Property Condition Disclosure Cases

Liability was determined in thirty-eight Property Condition Disclosure cases in 2014, with a real estate licensee found liable in seven (*see* Table 3).³¹

C. RESPA Cases

Twelve RESPA cases in 2014 resulted in liability for defendants, but only one ended in a finding of liability for a real estate licensee (*see* Table 3). No damages were awarded in that case, however.³²

D. Fair Housing Cases

Liability was determined in four Fair Housing cases decided in 2014, but none ended with a finding of liability against a real estate licensee.

³⁰ *See, e.g.,* [Cardoza v. Reed](#), No. SCV-2345837, 2014 Jury Verdicts LEXIS 8840 (Cal. Super. Ct. Sonoma County Aug. 1, 2014) (discussed in Agency section above); [McDermott v. Related Assets, LLC](#), 45 Misc. 3d 1205(A), 2014 NY Slip Op. 514654(U), 2014 WL 4977412 (N.Y.C. Civ. Ct. Sept. 16, 2014) (discussed in Property Condition Disclosure section above); [Saffie v. Schmeling](#), 224 Cal. App. 4th 563, 168 Cal. Rptr. 3d 766 (2014) (damages award of \$232,147.60 affirmed; discussed in the First Quarter *Legal Pulse*); [Kelly v. Smith](#), 2013-0280, 2014 WL 1369862 (La. Ct. App. 4th Cir. Feb. 16, 2014) (\$46,413.50 was awarded on a breach of fiduciary duty claim).

³¹ *See* [McDermott v. Related Assets, LLC](#), 45 Misc. 3d 1205(A), 2014 NY Slip Op. 514654(U), 2014 WL 4977412 (N.Y.C. Civ. Ct. Sept. 16, 2014) (discussed in Property Condition Disclosure section above); [Etelson v. Shore Club S. Urban Renewal, L.L.C.](#), A-0570-11T4, 2014 WL 901942 (N.J. Super Ct. App. Div. Mar. 10, 2014) (discussed in Property Condition Disclosure Highlights section above; damages award of \$4,817,638.12); [Saffie v. Schmeling](#), 224 Cal. App. 4th 563, 168 Cal. Rptr. 3d 766 (2014) (damages award of \$232,147.60; discussed in the First Quarter *Legal Pulse*); [Bailey v. Delacruz](#), 49,083 (La. App. 2 Cir. 6/16/14), 2014 WL 2702926 (discussed in Property Condition Disclosure Section above; court concluded that agent and broker were liable for whole \$109,891.66 verdict rather than merely discrete part of verdict).

³² [Commonwealth Land Title Ins. Co. v. Robertson](#), No. 49A04-1302-PL-84, 2014 WL 847155 (Ind. Ct. App. Mar. 4, 2014) (discussed in the First Quarter *Legal Pulse*).

Table 1
Volume of Items Retrieved for 2014 by Major Topic

Major Topic	Cases	Statutes	Regulations
Agency	50	11	11
Property Condition Disclosure	63	10	1
RESPA	30	0	0
Fair Housing	18	1	2

Table 2
Volume of Items Retrieved for 2014 by Issue

Issue	Cases	Statutes	Regulations
Agency: Dual Agency	5	0	0
Agency: Buyer Representation	8	2	4
Agency: Designated Agency	0	1	0
Agency: Transactional/Nonagency	0	0	0
Agency: Subagency	0	1	0
Agency: Disclosure of Confid. Info.	0	0	0
Agency: Vicarious Liability	1	0	0
Agency: Breach of Fiduciary Duty	21	1	2
Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	4	2	1
Agency: Minimum Service Agreements	0	0	0

Issue	Cases	Statutes	Regulations
Agency: Pre-listing Marketing of Properties	0	0	1
Agency: Other	11	4	3
PCD: Structural Defects	3	0	0
PCD: Sewer/Septic	4	0	0
PCD; Radon	0	0	0
PCD: Asbestos	0	0	0
PCD: Lead-based Paint	0	0	0
PCD: Mold and Water Intrusion	6	0	0
PCD: Roof	2	0	0
PCD: Synthetic Stucco	1	0	0
PCD: Flooring/Walls	2	0	0
PCD: Imported Drywall	0	0	0
PCD: Plumbing	1	0	0
PCD: HVAC	0	0	0
PCD: Electrical System	0	0	0
PCD: Valuation	9	0	0
PCD: Short Sales	1	0	0
PCD: REOs & Bank-owned Property	2	1	0
PCD: Insects/Vermin	2	0	0
PCD: Boundaries	8	0	0
PCD: Zoning	1	0	1
PCD: Off-site Adverse Conditions	5	0	0

Issue	Cases	Statutes	Regulations
PCD: Meth Labs	0	2	0
PCD: Stigmatized Property	1	0	0
PCD: Megan's Laws	1	0	0
PCD: Underground Storage Tanks	1	1	0
PCD: Electromagnetic Fields	0	0	0
PCD: Pollution/Env't'l Other	6	2	0
PCD: Other	7	4	0
RESPA: Disclosure of Settlement Costs	4	0	0
RESPA: Kickbacks	22	0	0
RESPA: Affiliated Business Arrangements	2	0	0
RESPA: Other	2	0	0
Fair Housing: Handicap Discrim./ Design and Build	7	0	1
Fair Housing: Advertising and Target Marketing	3	1	1
Fair Housing: Steering	0	0	0
Fair Housing: Lending	8	0	0

**Table 3
Liability Data for 2014**

Topic	Liable	Not Liable	% Liable	% Not Liable
Agency	7	17	29%	71%
Property Condition Disclosure	7	31	18%	82%
RESPA	1	11	8%	92%
Fair Housing	0	4	0%	100%

Table 4
Distribution of 2014 Cases by Major Topic
with Comparisons to 2013 Data

Major Topic	2013 Count	2014 Count	Δ
Agency	97	50	-47
Property Condition Disclosure	63	63	0
RESPA	33	30	-3
Employment	15	14	-1
Fair Housing	13	18	+5
Technology	3	6	+3
Antitrust	13	4	-9
Third-party Liability	11	17	+6
Ethics	1	2	+1

Table 5
Distribution of 2014 Cases by Issue
with Comparisons to 2013 Data

Issue	2013 Count	2014 Count	Δ
Agency: Dual Agency	12	5	-7
Agency: Buyer Representation	20	8	-12
Agency: Designated Agency	3	0	-3
Agency: Transactional/Non-agency	2	0	-2
Agency: Subagency	0	0	0
Agency: Disclosure of Confid. Info. After Termination of Agency R'ship	0	0	0
Agency: Vicarious Liability	2	1	-2
Agency: Breach of Fiduciary Duty	34	21	-13
Agency: Disclosure of Financial Ability	1	0	-1
Agency: Agency Disclosure	5	4	-1
Agency: Minimum Service Agreements	0	0	0
Agency: Pre-listing Mktg. of Properties	0	0	0
Agency: Other	18	11	-7
PCD: Structural Defects	2	3	+1
PCD: Sewer/Septic	4	4	0
PCD: Radon	0	0	0
PCD: Asbestos	0	0	0
PCD: Lead-based Paint	2	0	-2
PCD: Mold & Water Intrusion	11	6	-5
PCD: Roof	4	2	-2

Issue	2013 Count	2014 Count	Δ
PCD: Synthetic Stucco	1	1	0
PCD: Flooring/Walls	4	2	-2
PCD: Imported Drywall	0	0	0
PCD: Plumbing	0	1	+1
PCD: HVAC	0	0	0
PCD: Electrical System	2	0	-2
PCD: Valuation	11	9	-2
PCD: Short Sales	1	1	0
PCD: REOs & Bank-owned Property Via Foreclosure	2	2	0
PCD: Insects/Vermin	1	2	+1
PCD: Boundaries	7	8	+1
PCD: Zoning	2	1	-1
PCD: Off-site Adverse Conditions	1	5	+4
PCD: Meth Labs	1	0	-1
PCD: Stigmatized Property	0	1	+1
PCD: Megan's Laws	0	1	+1
PCD: Underground Storage Tanks	0	1	+1
PCD: Electromagnetic Fields	0	1	+1
PCD: Pollution/Environmental Other	4	6	+2
PCD: Other	3	7	+4
Employment: Wrongful Termination	0	3	+3
Employment: Personal Assistants	0	0	0

Issue	2013 Count	2014 Count	Δ
Employment: Independent Contractors	14	6	-8
Employment: Wage & Hour Issues	1	5	+4
Fair Housing: Handicap Discrimination—Design & Build	5	7	+2
Fair Housing: Advertising and Target Marketing	0	3	+3
Fair Housing: Steering	1	0	-1
Fair Housing: Lending	7	8	+1
Technology: State Internet Advertising Rules	0	0	0
Technology: Social Networking	0	1	0
Technology: Privacy	0	0	0
Technology: Anti-solicitation Laws	0	3	+3
Technology: Other	2	2	0
Antitrust: Price-fixing	1	1	0
Antitrust: Group Boycotts	6	2	-4
Antitrust: Advertising	0	0	0
Antitrust: Tying Agreements	0	0	0
Antitrust: Other	6	1	-5
RESPA: Disclosure of Settlement Costs	2	4	+2
RESPA: Kickbacks	21	22	+1
RESPA: Affiliated Business Arrangements	9	2	-7
RESPA: Other	1	2	+1
Third-party Liability: Appraisers	4	11	+7

Issue	2013 Count	2014 Count	Δ
Third-party Liability: Inspectors	5	2	-3
Third-party Liability: Other	2	4	+2
Ethics: Court Reliance on Code of Ethics	1	1	10
Ethics: Enforcement of Code of Ethics by Courts	0	1	+1
DTPA/Fraud	39	28	-11

Table 6
Distribution of 2014 Statutes and Regulations
by Major Topic with Comparisons to 2013 Data

Major Topic	2013 Count	2014 Count	Δ
Agency	54	22	-32
Antitrust	5	0	-5
Fair Housing	5	3	-2
Property Condition Disclosure	11	11	0
RESPA	0	0	0
Technology	14	20	+6
Third-party Liability	1	0	-1

Table 7
Distribution of 2014 Statutes and Regulations
by Issue with Comparisons to 2013 Data

Issue	2013 Count	2014 Count	Δ
Agency: Dual Agency	5	0	-5
Agency: Buyer Representation	4	6	+2
Agency: Designated Agency	1	1	0
Agency: Transactional/Non-agency	5	0	-5
Agency: Subagency	3	1	-2
Agency: Disclosure of Confid. Info. After Termination of Agency R'ship	0	0	0
Agency: Vicarious Liability	1	0	-1
Agency: Breach of Fiduciary Duty	7	3	-4
Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	4	3	-1
Agency: Minimum Service Agreements	0	0	0
Agency: Pre-listing Mktg. of Properties	0	1	+1
Agency: Other	24	7	-17
PCD: Structural Defects	1	0	-1
PCD: Sewer/Septic	1	0	-1
PCD: Radon	0	0	0
PCD: Asbestos	0	0	0
PCD: Lead-based Paint	0	0	0
PCD: Mold & Water Intrusion	0	0	0
PCD: Roof	0	0	0

Issue	2013 Count	2014 Count	Δ
PCD: Synthetic Stucco	0	0	0
PCD: Flooring/Walls	0	0	0
PCD: Imported Drywall	0	0	0
PCD: Plumbing	0	0	0
PCD: HVAC	0	0	0
PCD: Electrical System	0	0	0
PCD: Valuation	1	0	-1
PCD: Short Sales	0	0	0
PCD: REOs & Bank-owned Property Via Foreclosure	0	1	+1
PCD: Insects/Vermin	0	0	0
PCD: Boundaries	1	0	-1
PCD: Zoning	0	1	+1
PCD: Off-site Adverse Conditions	0	0	0
PCD: Meth Labs	0	2	+2
PCD: Stigmatized Property	0	0	0
PCD: Megan's Laws	0	0	0
PCD: Underground Storage Tanks	0	1	+1
PCD: Electromagnetic Fields	0	0	0
PCD: Pollution/Environmental Other	1	2	+1
PCD: Other	6	4	-2
Fair Housing: Handicap Discrimination—Design & Build	1	1	0

Issue	2013 Count	2014 Count	Δ
Fair Housing: Advertising and Target Marketing	1	2	+1
Fair Housing: Steering	1	0	-1
Fair Housing: Lending	2	0	-2
Technology: State Internet Advertising Rules	4	6	+2
Technology: Social Networking	4	3	-1
Technology: Anti-solicitation Laws	1	3	+2
Technology: Privacy	2	4	+2
Technology: Anti-solicitation Laws	1	3	+2
Technology: Other	2	2	0
Antitrust: Price-fixing	1	0	-1
Antitrust: Group Boycotts	0	0	0
Antitrust: Advertising	0	0	0
Antitrust: Tying Agreements	0	0	0
Antitrust: Other	4	0	-4
RESPA: Disclosure of Settlement Costs	0	0	0
RESPA: Kickbacks	0	0	0
RESPA: Affiliated Business Arrangements	0	0	0
RESPA: Other	0	0	0
Third-party Liability: Appraisers	0	0	0
Third-party Liability: Inspectors	0	0	0
Third-party Liability: Other	1	0	-1

Table 8
Distribution of 2014 Cases by Liability

Determination of Liability	Count	Percent of Total
Agent/Broker Found Liable	37	26%
Agent/Broker Found Not Liable	104	74%

Table 9
Distribution of 2014 Cases Awarding Damages by Amount

Amount	Count	Percentage ³³
\$5 million or more	1	5%
\$1 million to \$4,999,999	4	19%
\$500,000-999,999	1	5%
\$100,000-499,999	6	29%
\$50,000-99,999	3	14%
\$10,000-49,999	4	19%
Under \$10,000	1	5%
Unknown	1	5%

³³ Total percentage exceeds 100% due to rounding.

**Table 10
Ten Largest Damage Awards in 2014**

Damage Award	Issue(s)	Case	State
\$6,500,000	Agency: Other; PCD: Valuation	Cardoza	CA
\$4,817,638.12	PCD: Flooring/Walls, Boundaries, Off-site Adverse Cdns; DTPA/Fraud	Etelson	NJ
\$2,924,800	Agency: Other; DTPA/Fraud	Abromovitz Inv.	AZ?
\$2,581,747.50	DTPA/Fraud	Cardinale	CA
\$1,027,266.80	Agency: Other; DTPA/Fraud	Getson	CA
\$647,000	Third-party Liability: Appraisers	Rood	NV
\$232,147.50	Agency: Buyer Rep., Breach of Fiduc. Duty; PCD: Pollution/ Environmental Other	Saffie	CA
\$232,000	Agency: Breach of Fidic. Duty; PCD: Short Sales	Ho	CA
\$109,891.66	PCD: Structural Defects, Mold & Water Intrusion, Synthetic Stucco/EIFS	Bailey	LA
\$80,000	Technology: Social Networking	Tylor	HI

**Table 11
Top Three Settlements in 2014**

Settlement Amount	Issue	Case	State
\$5,000,000	Fair Housing: Lending	Velasquez	HUD
\$48,000	Fair Housing: Lending	Unknown Pl. v. Greenlight Fin.	HUD
\$35,000	Fair Housing: Handicap Discrimination/Design & Build	Metro. St. Louis	HUD