

Executive Summary Second Quarter – 2016



Here's an overview of the developments covered in the Legal Pulse Newsletter for last quarter. This summary covers Agency, Property Condition Disclosure, RESPA, Deceptive Trade Practices Act/Fraud, Section 1031 Exchanges, and Ethics issues.

- Agency:** We cover agency law every quarter. During second quarter 2016:
 - Courts dealt with breach of fiduciary duty, dual agency, and vicarious liability issues.
 - In one California decision, a broker licensee was held liable for a large damage award because he failed to adequately investigate use of the property and represented that the property could be converted into a dinner theater. ([No. D067835, 2016 WL 2936835](#))
 - Nebraska, South Carolina, and Tennessee adopted rules on real estate teams. Teams must be supervised by a broker and may not represent themselves as separate from the broker. ([Neb. Rev. Stat. § 81-885.01](#); S.C. Code Ann. § 40-57-360 (eff. 1/1/17); [Tenn. Comp. R. & Regs. 1260-02.41](#)). In South Carolina, team advertising must contain the team name and full name of the brokerage, and may not include the terms “realty” or “real estate.”
 - South Carolina overhauled its real estate licensing act, effective January 1, 2017, which changes to recordkeeping, agency disclosure, and buyer representation requirements. (S.C. Code Ann. § 40-57-30, et seq.) (eff. 1/1/17).
 - Texas adopted new agency disclosure requirements earlier this year ([Texas Real Estate Commission](#)) and Tennessee recently adopted amended regulations regarding advertising and electronic record retention ([Tenn. Comp. R. & Regs. 1260-02.12, -.40](#)).
- Property Condition Disclosure:** Disclosures are also reviewed quarterly. Last quarter:
 - Water intrusion-related issues were addressed in many cases, but structural defects, underground storage tanks, and other issues also arose in the court decisions.
 - In one case, the court considered claims against the seller-licensee and the purchasers' representative (both worked for the same brokerage), based on alleged misrepresentations about property conditions. The court ruled for the purchasers' representative, who did not have a duty to investigate and had no knowledge of defects. But the claim against the seller-licensee went forward, because her statements could be deemed to be misrepresentations ([Kessler v. Schwartzman](#); [Kessler v. Schwartzman](#)).
 - Nebraska amended its Seller Property Disclosure Statement, to be used beginning January 1, 2017, to include disclosures regarding the number of carbon monoxide alarms and the presence of noxious weeds on the property. ([Neb. Admin. R. & Regs. 302.1.001](#)).
- RESPA:** RESPA is covered in every update. Over second quarter:
 - Several plaintiffs claimed that kickback or improper fee transfer schemes between lenders and other parties violated RESPA. In many cases, though, the claims failed because the allegations were too vague or too much time had passed since the transaction to bring a claim.
- Deceptive Trade Practices Act/Fraud, Section 1031 Exchanges, and Ethics:** DTPA/Fraud, Section 1031 exchange, and Ethics cases are examined annually.
 - Only one case involved Section 1031 exchanges, but there have been many DTPA and fraud cases since last year. Courts in these cases considered a wide range of false statements and deceptive conduct by defendants. There were no Ethics cases retrieved in the past year.
 - In one case, the court found the licensee was not liable for statements regarding his relationship with a local official, and his ability to obtain construction permits. In many other cases, courts found licensees were not liable for fraud because they did not know their statements were false.