

Legal Pulse: First Quarter 2016

Video Transcript

NAR LEGAL AFFAIRS DEPARTMENT
June 2016

Welcome to the Legal Pulse risk management report. I am Finley Maxson, NAR Senior Counsel. Today we are going to review the first quarter of 2016 as well as introduce a new feature.

By way of background, the Legal Pulse is a quarterly report that explores legal issues affecting real estate professionals, and reviews a variety of sources such as case law, jury verdicts, and statutes organized by topic. In addition to the research component, each edition will analyze trends that will help guide training for salespeople. The Legal Pulse is available on realtor.org for download.

In addition to the quarterly report, we will now also release every quarter a 1-page Executive Summary that captures the highlights of each edition. The Executive Summary can be found on the Legal Pulse page on realtor.org and is a good way to quickly find cases or new laws which might be of interest.

This quarter's report covered 4 major subject areas with over 50 total subtopics. As in every edition of the Legal Pulse, Agency, RESPA, Property Condition Disclosure are covered, and in addition this report conducts an annual review of Employment issues.

We are going to focus this month's video on four agency cases from this quarter that raised the question about the duties that a transaction broker or intermediary owes to his/her clients. In most states, a transaction broker is in a nonagency relationship with his/her client, does not owe a fiduciary duty to the client, and only owes duties to the client that are defined by statute.

Two of the transaction broker cases come from Georgia. In Georgia, a transaction brokerage relationship arises if the real estate professional and the client if no written agreement is entered into between the parties, which was the case in both of the Georgia cases.

In *Spies v. DeLoach Brokerage*, an experienced property investor decided to buy a retirement home on St Simons Island, Georgia. After looking at a number of properties, she decided to make an offer for a property that was bordered on two sides by water. The buyer only saw the property for an hour and didn't inspect the property borders because it was raining out. The buyer later testified that she had expected the real estate professional to be "her eyes and ears" on the property.

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After her offer was accepted and she completed the purchase of the property, the buyer discovered that the property had significant erosion problems and there were signs of the problem on the property. The sellers had disclosed water intrusion issues, but the buyer testified that she never read the disclosure documents. The buyer brought a lawsuit, alleging that the real estate professional had fraudulently concealed the erosion problems. The court entered judgment in favor of the brokerage. The broker did not owe a fiduciary duty to the buyer and instead only had a duty to undertake ministerial functions like transmitting documents and ordering inspections, and the broker had performed those duties competently. There was also no evidence that the transaction broker had attempted to conceal the erosion problems. The appellate court affirmed the trial court ruling.

The other Georgia transaction broker case involved a commercial property. The seller rejected a buyer's offer because it had not received the requested financial information in a timely manner. The buyer brought a lawsuit against the transaction broker, alleging that the real estate professional had failed to tell him that this information had been requested by the seller. The trial court had ruled in favor of the transaction broker, but the appellate court reversed and sent the case back to the trial court. While a transaction broker owes a client limited statutory duties, transaction brokers still owe a duty of care while performing them. One duty owed to the client is transmitting information in a timely manner, and so the court needed to examine whether the transaction broker had met the duty of care in providing information to the buyer.

In *Rogers v. Wright*, a Wyoming court dismissed a lawsuit against a seller alleging misrepresentation when the buyer discovered cracks in the foundation after purchasing. The basis for the buyer's allegations were statements made by the licensee and the buyer claimed that the seller was responsible for these statements. However, the licensee was merely serving as an intermediary and not representing either party. This fact was noted in the purchase contract, and there was no evidence that the real estate professional breached any duties while serving as an intermediary. The judgement in favor of the seller was affirmed.

Finally, Idaho's highest court considered allegations against a seller and the seller's son and daughter-in-law. The son and daughter-in-law had helped the seller complete some of the disclosure forms used in the transaction but had moved away during the course of the transaction. Following the completion of the purchase, the

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buyer discovered that the property's sprinkler system was connected to a water source that he did not have the right to use. The buyer alleged that the seller's son and daughter-in-law were in an agency relationship with the seller and so the seller was liable for their alleged misrepresentations. The court examined the relationship between the parties, and did not find that there was an agency relationship, as the seller did not control the actions of the son and daughter-in-law. Thus, the court affirmed the judgment.

This concludes the 2016 first quarter report. Please check back in August for the second quarter report. Thank you.