



Vermont Real Estate Commission

Newsletter

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Office of Professional Regulation

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MESSAGE FROM THE CHAIR

Recently, the Commission (REC) issued a declaratory ruling regarding the professional responsibility of licensees in the use and distribution of MLS data sheets as it pertains to advertising. The REC is aware of confusion and inaccuracies circulating amongst licensees in regards to the ruling, we thought it best to address the issue.

The question asked of the REC for the declaratory ruling was:

Is a unique and non-publicly disclosed MLS compilation of properties that:
1). is generated at the request of a client or customer who received the mandatory real estate consumer disclosure required by REC Rule 4.6; and
2.) is generated for the benefit of the specific client or customer;
"advertising" for purposes of Real Estate Commission Rule 4.12?

In response to that specific question the REC issued this declaratory ruling:

A unique, non-public MLS compilation of properties is not advertising for purposes of Rule 4.12 under the following conditions:

- 1). The compilation of properties is generated at the request of a client or customer; who
- 2). Received the mandatory consumer disclosure form outlining the relationship between the licensee and the client or customer; and
- 3). The list is generated for the specific client or customer only.

As a rule, REC's Rule 4.12's advertising disclosure duties generally apply to MLS compilations. It is important to understand that, in determining whether a compilation might not be "advertising" for purposes REC Rule 4.12, the critical issue is whether the client or customer is the party who initiated the request.

Unless the client or customer initiates the request for a compilation, REC Rule 4.12's disclosure obligations (e.g. disclosure of listing agent) apply to MLS compilations with the full force and effect of law. To assist licensees to understand and give guidance of the practical application of REC Rule 4.12, the following sample Questions & Answers are offered:

Is the MLS data sheet considered advertising by the REC? **Yes.**

Do MLS data sheets fall under all of the advertising rules? **Yes.**

Can an MLS data sheet be generated in a fashion where it might not be advertising for purposes of REC Rule 4.12? **Yes.** *If a licensee has an individual professional-to-client/customer relationship AND the professional has already conducted the initial meeting where the client/customer received the mandatory agency disclosures.*

Are MLS data sheets, generated for a prospective clients, "advertising?" **Yes.** *An MLS data sheet sent to a prospective client or prospective customer is not considered a one-to-one relationship and is considered to be advertising by the REC and falls under 4.12 rules*

A practical example of when the MLS data sheet is not considered advertising. A licensee meets with a customer/client, discusses with them their options as a consumer. The customer/client acknowledges the mandatory disclosure. Further, a conversation takes place on specifics of wants and needs. A selection of data sheets is printed for their perusal.

A practical example of what would be considered advertising.

The licensee has set in motion the periodic mailing to the prospective customer/client list. Through electronic media the shopping carts are loaded or manually sent to the mailing list. The REC considers that to be advertising and would fall under Rule 4.12.

Finally, in the interest of best practice and full disclosure to a consumer, the Commission advises that all licensees set forth the listing agency and listing agent on any data sheets generated for a consumer. The Commission recognizes, however, that not every communication between a licensee and a consumer is necessarily "advertising" for purposes of REC Rule 4.12.

Maretta Hostetler, Chair

Disputed Deposits

Rule 4.7(d) "When the broker learns of a dispute concerning the proper party to receive a deposit held in a pooled account, the broker shall notify the parties, in writing, that the deposit will remain in the trust account until (1) the parties to the disputed deposit give written authority to the broker to disburse the funds, or (2) a court of competent jurisdiction determines the proper party entitled to the proceeds of the disputed deposit."

Sole Proprietors Must Have a Registered Office

All brokers are required by law to work within a real estate office registered with the Commission.

If you are a sole proprietor of your own business you must register that office with the Commission, regardless of whether you use a company name, or your own personal name.

If you plan to use something other than your own name (e.g. John Brown Real Estate) then you must first register that name with the Corporations Division of the Secretary of State's Office
<http://www.sec.state.vt.us/corps/>.

After registering there then you can apply to the Commission for your office registration by going to our website at:
http://vtprofessionals.org/opr1/real_estate/.

Brokers whose offices are not appropriately registered with this office will not be allowed to renew their broker's license in May 2010.

Rule 4.12 relating to Web Advertising

Rule 4.12 defines the requirements for all types of advertising. For the most part the printed ads (newspapers, brochures, etc) are in compliance with those rules. However, it is very apparent that many brokerage firms using web based advertising either don't think the rule applies to internet ads, or are unclear as to the Commission's expectations as it relates to web advertising. The rules do not differentiate between printed advertising and web advertising. The same rules apply to all advertising. To assist licensees in acceptable web advertising the Commission issues the following interpretations.

Rule 4.12(a) states: *Every real estate advertisement shall prominently indicate the brokerage firm's registered name.*

Web Pages: The Commission interprets this to mean that the name of the brokerage firm must appear on the first displayed page of the agency's web site. The user should not have to scroll down in order to see the firm name. The firm name must be in a readily visible print and the typeface may not be smaller than any of the other type face used on that page.

Rule 4.12(d) states: *Advertisements which show properties listed by an agent other than the brokerage firm must also indicate that agents name, and firm.*

Web Pages: The Commission interprets this to mean that the name of the brokerage firm and listing agent must appear on the first page on which any listing data is displayed. For web pages the user should not have to scroll down in order to see the listing agent's name, or firm name. The names must be in a readily visible print and the typeface may not be smaller than any of the typeface used in the display of the listing data.

If a complaint comes before the Commission they will use these interpretations to guide them in determining if the advertisement (web page) is in violation of the rules, and therefore subject to disciplinary action.

RESPA – it's not just for settlement statements

The Real Estate Settlement Procedures Act (RESPA) was enacted into law in 1974 and is the federal consumer protection statute enacted to help consumers become better shoppers for settlement services and to eliminate kickbacks and referral fees that unnecessarily increase the costs of certain settlement services. In addition to being in compliance with all of the VT Statutes and VTREC Rules governing the practice of real estate in Vermont, RESPA is the most significant set of consumer protection regulations that governs your practice of the real estate profession. RESPA is enforced by HUD. A RESPA violation is a Federal offense which could result in a fine of up to \$10,000 and 1 year in jail or both depending on the severity of the violation. There are far

too many things that RESPA regulates to begin to address them in this article. But be informed so you don't become a defendant in a RESPA violation.

Unless you're a brand new real estate licensee, it may have been a while since you've attended an education course or had training exclusively in RESPA. Regardless of the type or size of your practice, if you're involved with residential brokerage you need to familiarize yourself with RESPA regulations. Not every real estate transaction is potentially affected in the same way. Take careful note of the types of real estate transactions you're involved with which are subject to RESPA regulations.

In the past couple of months sweeping changes went into effect in the disclosure of settlement costs as part of "Regulation Z" and there are more to come in the near future. Due to the new RESPA disclosure requirements some closings may be unavoidably delayed beyond the control of the buyer and seller as contained in the language of the purchase and sales agreements. It is a recommended 'best practice' to educate yourself now with the new disclosure notification requirements to avoid a missed closing date due to RESPA regulations. It may be necessary to incorporate special language in certain purchase and sale agreements to allow the buyer and the seller extra time to close to accommodate the changes. It is another recommended 'best practice' to have an early conversation with the lender about these issues and keep all of the parties informed throughout the transaction, particularly as the agreement approaches the anticipated closing date so all of the documents can be prepared and finalized as required by RESPA.

Compliance with RESPA is the singular responsibility of every real estate licensee. Visit the official HUD website for official RESPA information:

<http://www.hud.gov/offices/hsg/ramh/res/respamor.cfm>

Inspections – A Message from the Inspector Dan Vincent

I appreciate this opportunity to introduce myself and discuss the inspection program. I was hired as an Inspector for the Office of Professional Regulation (OPR) in January of 2008. Our division, Investigations and Inspections, conducts site inspections for several of the licensed professions. Those professions with a mandated two year inspection cycle were my first province. I am now commencing the inspections of real estate offices.

The inspection program is designed to serve the licensees with assistance and guidance and to bring practical concerns of the licenses' to the Board for resolution. As part of this intention I hope to learn, from the licensees, the professional aspects of the business, to enhance the inspection program.

Generally, site inspections would include some discussion about the office policies and general practices. The main area of inspection is of course, the examination of the files. The file review is random and would include current and closed files. I would be looking to verify proper and complete documentation of the executed agreements, contracts, deposit receipts, and trust account records. The inspection is in a standardized format. Throughout the inspection and at its completion I would review the data with the licensee. The inspection report and any follow up communications I would have would be emailed or posted to the licensee afterward.

I look forward to meeting with you.

Dan Vincent, Inspector

Licensing Statistics

	Resident	Non-Resident	Total
Broker	1082	164	1246
Salesperson	1264	134	1398
Branch Office	73	9	82
Main Office	375	55	430
Sole Proprietor	90	22	112

Enforcement Statistics - April -September

Month	New Cases Opened	Cases Disposed
Apr-09	5	1
May-09	0	5
Jun-09	1	4
Jul-09	1	0
Aug-09	2	2
Sep-09	2	2
Totals	11	14

Disciplinary Actions - April - September

Robert R. Hawthorne

<http://www.vtprofessionals.org/opr1/oprdocs/all/REC26-0407.pdf>

Anne Swanson

<http://vtprofessionals.org/opr1/oprdocs/all/REC41-0206.pdf>

Commission Meetings

The Commission usually meets once a month on the fourth Thursday, beginning at 10:00 a.m. Meetings are posted on the Office web page found at: www.vtprofessionals.org/meetings/meetingslist.htm

We encourage anyone who has an interest to attend. Meetings are open to the public. We also post the upcoming meeting Agenda, and Minutes on the Commission's web page.