

Below you will see all of the articles that have been printed in the newsletters in the last 3 years. There are many more informative articles written in the newsletters. Please see our newsletters on our website at http://vtprofessionals.org/opr1/real_estate/newsletters.asp

Spring 2010

Signs could cost you more money than you realize...

We have written letters, put articles in our newsletters, spoken to the licensees attending their local Realtor meetings but to no avail. Illegal signs, either directional arrows or signs advertising a property that are on a property other than the one being sold, continue to be a source of complaints. We grow weary of repeating ourselves, so we won't send out any more reminders or newsletters on the subject, but we will begin filing formal charges, and assessing administrative penalties for violations. An administrative penalty for a single sign offense can be as much as \$ 1,000.00.

October 2009

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.

April 2009

Rule 4.12 relating to Print and 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. Printed Ads: The Commission interprets this to mean that the name of the brokerage firm must appear on the same page of the agency's ad. 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. 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. Printed Ads: The Commission interprets this to mean that the name of the brokerage firm and listing agent must appear on the page on which the listing is displayed. The names must be in a readily visible print and the typeface may not be smaller than any of the other typeface used in the printed ad. 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.

October 2008

Web Advertising

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April 2008

Printed Brochures, After The Listing Expires – What To Do?

You've printed, and distributed, a brochure to advertise properties you have currently listed. Shortly after distribution the property sells, or the listing expires. What do you do about the brochure? The Commission's position is that at the time the brochure is printed the properties must all be accurately identified as to their status (active listing, sold, under contract, etc.) and that if the status changes, after distribution, the agency should be able to document in their records the change in status (e.g. active listing to sold) happened after the brochure was created. The Commission would not expect the advertising office to try to recall brochures already distributed, but would expect future distributions to be updated accordingly.

October 2007

Advertising and On Premise Signs

We are encouraged to see that licensees are heeding our warnings to remove their illegal off-premise signs from the roadways and to adhere to the sign law. There are still many out there who haven't removed those signs and our investigators are continuing to issue warnings to the transgressors. Should you receive a notice from the investigator or the Commission Office, remove your sign in a timely fashion. A second offense could result in an Administrative Penalty of up to \$ 1,000.00. As a reminder, the brokerage firm is the responsible party for the signage. It is up to each individual firm as to how they want to handle the issue with their agents. The signage offense that is still occurring is the directional

arrow signs that read, "House for Sale" with the identifying brokerage firm's logo. When those are anywhere other than on the property, it is illegal and must be removed. Licensees may not encourage owners to place signs to serve that purpose. In some of the condominium and subdivision development projects signs are being posted on what appears to be common land. Signs on common land, land that is owned by all the home owners in a subdivision, are considered to be on-premise. The exception to our efforts to clean up the illegal signs is the "Open House" signs placed off site to direct consumers to the property. Those signs may only be displayed for the 24 hours immediately preceding the open house, and must be removed promptly after the open house is over. Advertising continues to present us with new challenges, particularly web advertisements. Each advertisement whether in print or on the web, must prominently identify the brokerage firm's name as it is registered with the Commission. In both web advertising and print advertising, we are seeing names other than the brokerage firm's name. In many cases it is improperly done. If you are "The Smith Group" at "XYZ Agency", "XYZ Agency" must be the prominent identity. For example, "The Smith Group" should not be the predominant heading. In web advertising, we do not want to see pages and pages of advertising without a mention of the brokerage firm's name. If you are advertising another brokerage firm's listings, the permission must be granted by the listing agency and must be properly identified. When someone is viewing the advertising, it should be clearly understood what company is doing the advertising and whose listing is being advertised. We don't consider it proper identification if it is obscured and is there is some minimal attempt to identify the listing agency by some code, pages away. We have observed that kind of identification and consider it to be an attempt to mislead the consumer to believe that the listing is that brokerage firm's listing.

March 2007

Commission Adopts Zero Tolerance Position on Sign Violations

Due to the increased number of complaints related to illegally placed advertising signs and the lack of compliance by licensees with the statutes and rules governing real estate advertising, the Commission is taking a "zero tolerance" position for future violations. Office of Professional Regulation investigators will patrol for signage violations; and licensees who violate signage laws can expect, at a minimum, administrative fines for first-time offenses. On-premise signs advertising the sale of property or activities being conducted on the property must comply with Title 10, §493. * An on-premise sign shall not be located more than fifteen hundred feet from a main entrance from the highway to the property advertised. * A main entrance shall be a private roadway or driveway which leads from a public highway to the advertised property. * Property shall not include land which is separated from the property for sale by a public highway, or other intervening land. "On premise" means just that! On the property that is for sale. Not on the neighbors lot, not down the street, not in the State or Town highway right-of-way. The Commission does not intend to use this particular "zero tolerance" enforcement policy to regulate same-day "Open House" signs directing potential buyer to property or to regulate signs directing potential buyers to the property for the 24 hours immediately preceding the open house.