

Window to the Law: "Coming Soon" Listings Best Practices: Transcript

Hi everyone, today we're discussing "coming soon" listings, the differences between legitimate and improper coming soon listings, and best practice tips for how you can use them in your business.

A "coming soon" listing is a listed or unlisted property that is not available for showing or sale until a later date. "Coming soon" can be a legitimate advertising technique. They allow the owners more time to complete repairs, pack, or otherwise ready the property for showing or sale. A legitimate "coming soon" complies with state law, MLS rules, and NAR's Code of Ethics.

On the other hand, improper coming soon listings violate state law, MLS rules, and NAR's Code of Ethics because they are used to circumvent the MLS, to market the property to a select group of people, or to ensure a buyer uses the listing broker for the transaction.

Our best practice tips will help you avoid improper coming soon listings. But first, let's talk about what makes them improper. Well, they violate state licensing laws and NAR's Code of Ethics in a number of ways. For example, state law and the Code both require real estate professionals to act in the best interest of their clients, but improper coming soon listings serve the listing broker's interest ahead of the client's interest. State law and the Code also both require truth in advertising, while improper coming soon listings are misleading and inaccurate.

Improper coming soon listings could also violate your MLS's rules. MLSs facilitate real estate transactions as a consolidated source of accurate property information and as a private offer of cooperation and compensation. They function at their best when information is complete. Improper "coming soon" listings compromise that accuracy and undermine cooperation amongst real estate professionals. That's why many MLSs have strict rules to ensure proper use of coming soon.

As coming soon listings gain popularity, real estate commissions are taking notice and offering guidance on how to use them without breaking state law. Most recently, the Idaho Real Estate Commission issued Guidance #8. The document recognizes that some coming soon listings are legitimate while others are "nefarious", and the determination is fact specific. The Idaho Real Estate Commission emphasizes that marketing a property to only a limited pool of potential buyers for the purpose of, for

example, pocketing more of the sales commission, violates state law because the professional is not acting in the client's best interest.

The Nebraska Real Estate Commission's guidance document No. 40 lists four criteria for permissible "coming soon" advertising based on Nebraska's advertising law. (1) the advertising broker must have an active listing agreement in place; (2) the advertising must be done in the name in which the broker does business and under the broker's supervision; (3) the advertising must be done with the property owner's, or his or her authorized agent's, knowledge and written consent; and (4) the listing must in fact be "coming soon" and not currently being shown or marketed to a limited group.

So, don't risk lawsuits by dissatisfied clients or disciplinary action by your real estate commission or MLS due to your use of "coming soon". Instead, follow these best practice tips to properly and effectively use coming soon listings.

First, always confirm that your advertising is legal under state licensing laws and regulations. Check with your state's real estate commission for guidance on the issue.

Second, consult your MLS about any rules or requirements for coming soon listings.

Third, identify a compelling reason for why a "coming soon" listing is in your client's best interest, explain the limitations and potential pit falls of coming soon to your clients, and document their consent to use a coming soon listing in writing.

Fourth, always have a signed representation agreement with your client

And finally, make sure that the "coming soon" restriction is applied equally to all potential buyers.

These best practices will help protect you, your clients, and your fellow real estate professionals. If you have any questions, please feel free to email me. Thanks for watching this month's episode of Window to the Law.