

BUSINESS DEVELOPMENT

Re: Formal Advisory of the Maryland Real Estate Commission
False Advertising of Listed Properties

On December 8, 2012, the Maryland Real Estate Commission posted on its website the Summer, 2012 issue of [The Commission Check](#), the periodic newsletter of the Commission. At the top of page 4 of the 6-page newsletter appears the following article:

“Is It Prospecting or Poaching?”

According to the [February/March 2012 issue](#) of Maryland REALTOR® magazine, a full 35% of homebuyers look for their new home online before considering contacting a real estate agent. There's no doubt that it makes good business sense for real estate professionals to develop a strong online presence. But along with legitimate e-marketing strategies, many unethical and unlawful advertising practices have evolved nationwide.

Quite simply, if you take someone else's listing and alter the price, description or type of offering (for sale or for rent), you have violated the Maryland Real Estate Broker's Act and Code of Ethics, along with the Codes of Ethics of the Maryland Association of Realtors and the National Association of Realtors. While it may generate interest in your business and provide you with leads, it can also cause you to lose your license along with incurring additional sanctions against you.

The Commission has investigated several instances of listing “poaching” in Maryland, and has been successful in stopping the practice from continuing or spreading. If you discover any advertisement with evidence that the listing is not the advertiser's, and credit is not given to the listing broker, please contact John West, Complaint Intake Administrator, at jwest@dllr.state.md.us or 410-230-6206.”

There are numerous provisions of the Maryland Real Estate Brokers Act and the Code of Ethics of the Maryland Real Estate Commission and the National Association of REALTORS® which address the issue of advertising and, in particular, advertising properties listed by other real estate brokers.

Generally speaking, a licensee may not advertise, show or market residential real property without the written consent of the owner of the property. Similarly, a licensee may not advertise property listed with another broker without the consent of both the owner and the listing broker. Additionally, a real estate licensee must not interfere with the exclusive agency of another real estate licensee and must be fair and honest in all advertising.

Although MLS participants and authorized users of the MLS are authorized to post properties listed by the brokers on the licensee's website, the listing must disclose the name of the listing company.

So what is “poaching” a listing? Simply stated, it is any online advertisement by a licensee which suggests or infers that a particular property is listed with that licensee's company and which does not disclose the name of the listing company. In essence, “poaching” is a “bait-and-switch” concept. Placing another broker's listed property online, without giving credit to the listing broker as to the fact that you and your company are not the listing agent for that property is typically done in order to generate interest in the property and to encourage contact by interested buyers with the licensee who has falsely advertised the property for the purpose of generating prospective buyers. By “poaching” another broker's listed property, a licensee is violating multiple provisions of the real estate license law and the code of ethics.

Additionally, there have been cases where licensees have gone beyond simply poaching a listing. In one alleged case, the licensee who was not the listing agent previewed a property and videotaped the interior of the property while viewing it. The licensee then posted this “virtual tour” on their website without the consent of the owner or the listing broker and without any attribution that the property was listed with another company. More problematic, neither the owner nor the listing agent authorized the videotaping of the interior or exterior of the property.

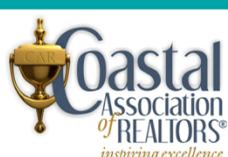
Simply stated, even if the owner and listing broker have consented - typically through the MLS - that other MLS participants may advertise the property online, the advertisement must clearly advise the consumer as to the identity of the true listing company in the advertisement.

In any event, the above verbatim statement of the Maryland Real Estate Commission constitutes due notice to all real estate licensees as to the position of the Maryland Real Estate Commission on this matter and, therefore, licensees have been forewarned. As the adage goes - to be forewarned is to be forearmed.

Yours very truly,
Alvin C. Monshower, Jr.

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