



TRAINING Tip of the week

PROPERTY PHOTOS ON THE MLS

PROSPECT A noted REALTOR® B's advertisement on the multiple listing service (MLS), describing a home for sale and including photos which showed the property to be clean and in good condition. PROSPECT A was not local to the area and enlisted the help of a friend who lived in the area to preview the property and FaceTime the showing.

After electronically viewing the property, PROSPECT A called the local Board of REALTORS® to complain that the property inspected did not match the property as advertised on the MLS. That upon inspection of the property, it was determined that the photos were either of an entirely different property, similar to the property being viewed, or the photos were taken long before the property fell into its current condition. Either way, PROSPECT A was frustrated for having taking the time to view a property he otherwise would not have.

HAS A VIOLATION OCCURED? Likely, yes. MLS policy 1.21 states that *"all photos included in the MLS must not be misleading and must be a true representation of the property, or of an attribute or amenity of the property."* IF IN FACT it is determined that the photos were not of the property itself, but another property similar in design, the subscriber (listing agent) would be found in violation of MLS policies and be subject to a \$20 per-business-day fine until the offense is corrected. If the MLS finds that it IS of the property, but that the property has substantially changed since the photos were taken, and the photos no longer "paint a true picture," the subscriber would also be found in violation.

COULD THERE BE ETHICAL VIOLATIONS? Also yes. Article 12 of the REALTOR® Code of Ethics states that *"REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing and other representations."* More specifically, Standard of Practice 12-8 obligates REALTORS® to *"present a true picture in representations to the public"* which includes information presented, provided or displayed on online.

WHAT ABOUT LICENSEE VIOLATIONS? Possibly. Depending on the facts of the case, photos that do not represent the property could result in the licensee being in violation of:

- 61-2f-401(1)(d) making a false representation or promise through an agent, sales agent, advertising, or otherwise.
- 61-2f-401(13) advertising the availability of real estate ... in a false, misleading or deceptive manner.
- R162-2f-401a(7) make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property.

ARE THERE EXCEPTIONS FOR NEW CONSTRUCTION? Nope. New Construction and To-Be-Built homes are not exempt from MLS policy 1.21, but (according to the MLS) usually are their biggest offender of this practice. If a builder plans to build a home on a property, and has to be listed as such, a photo is NOT required, but the subscriber/listing agent may advertise a rendered drawing. However, if the home plan changes from the advertised rendering, new photos must replace the current photos. This policy also applies when a new construction home is finished. At the time of completion, updated photos should be listed and or replace the rendered plan drawing.

BOTTOM LINE... Had PROSPECT A wished to file a formal complaint, and REALTOR® B was found to have used photos of another property to advertise their listing, this would have resulted in expensive fines from the both the MLS and the REALTOR® organization, as well as punishments allowed by the Division of Real Estate.

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