

#### **40. Coming Soon Listings**

The Nebraska Real Estate Commission is receiving an increasing number of calls and inquiries regarding the rules for advertising a property represented as “coming soon,” where there is a listing for the property but it is not yet being publicly marketed or shown.

There are no specific statutes or regulations on the use of “coming soon” advertisements, but the general rules of advertising apply:

*“Advertising shall include all forms of identification, representation, promotion, and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to licensed real estate activity. All advertising shall be under the direct supervision of the broker, and in the name the broker is conducting business as recorded with the Commission.” (NAC Title 299, Ch. 2, Sec. 003)*

Also applicable are the unfair trade practices statutes (Neb. Rev. Stat. §81-885.24)

*“(2) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, terms, values, policies, or services of the business conducted:”*

*and*

*“(11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or his or her authorized agent;”*

*“(12) Offering real estate for sale or lease without the knowledge or consent of the owner or his or her authorized agent or on terms other than those authorized by his or her authorized Agent;”*

*The Nebraska Real Estate Commission interprets these statutes and regulations to allow “coming soon” advertising if the following criteria are met:*

- 1. The advertising broker has an active listing agreement in place (so it is not potentially false or misleading advertising.)*
- 2. The advertising is done in the name under which the broker does business and the broker’s supervision.*
- 3. The advertising is done with the knowledge and written consent of the property owner or his or her authorized agent.*
- 4. The listing is in fact “coming soon” and not currently being shown or marketed to a limited group only.*

Furthermore, if an offer is received when a property is on coming soon status the seller should be informed that there is a pending offer or offers, and asked if they want to remove the property from coming soon status and make it an active listing at which time the agent should inform the offeror to resubmit their offer when the property is no longer coming soon and is in fact on the market.

While permissible, the use of “coming soon” advertising has potential to give rise to violations of the act.

The proper use of “coming soon” advertising would be a situation where a listing agreement has been entered into but the property or owner is not yet ready for showings, perhaps due to needed clean up or repairs, or personal matters or events that keep the owner from wanting to show the property immediately.

The improper use would be using the “coming soon” advertising to limit the showing of the property to preferred buyers, or the exclusion of certain buyers, this could lead to various violations of the license act, which would include but not be limited to:

1. A violation of Neb. Rev. Stat. §81-884.24(2) “intentionally using advertising which is misleading or inaccurate” if the property is represented as “coming soon” and is in fact being marketed to a limited pool of buyers.

2. A violation of Neb. Rev. Stat. §76-2417(c) “promote the interests of the client with the utmost good faith” if the coming soon listing is used to secure a transaction which places the interest of the licensee over that of the client.

3. A violation of §76-2417(c)(i) “seeking a price which is acceptable to the client” if the licensee only offers or exposes the property to a limited number of potential buyers through a coming soon listing.

4. A violation of the Federal Fair Housing Act if the coming soon listing is used to limit or exclude certain people or classes of people from the marketing of the property based on race, color, national origin, religion, sex, familial status or handicap.

*Adopted September 17, 2015  
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