



Reno/Sparks Association of REALTORS®

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“Coming Soon” Listings – What Agents Should Know

Information issued jointly by RSAR and NNRMLS

In today's seller's market brought on by low inventory, the practice of “coming soon” listings has become more prevalent. Before you have the discussion with a seller regarding the concept of a “coming soon” listing, there are some things you should know from an ethical, MLS and legal perspective. Also be sure and talk to your broker about this practice.

Ethical Perspective

Adherence to the NAR Code of Ethics is an important consideration for brokers and agents when advising clients on whether or not to advertise properties as “coming soon.” REALTORS® must remember to promote and protect the interest of the clients (Article 1); present a true picture in their advertising, marketing, and other representations (Article 12); and make property available to other brokers for showing to prospective purchasers when it is in the best interest of the sellers (Article 3, Standard of Practice 3-10). Failing to do so harms the reputation of the broker and REALTORS® generally and may result in disciplinary action from the association of REALTORS®.

MLS Perspective

The Rules and Regulations of the Northern Nevada Regional MLS require that listings be “filed” with the MLS within 2 business days of obtaining signatures on the Exclusive Right to Sell or Exclusive Agency agreement. Filed is defined as either being entered as live into the Paragon System or NNRMLS has received a copy of a fully executed Sellers Waiver of MLS Benefits form.

The most common form of a “coming soon” listing is one where the Exclusive Right to Sell contract is signed and the seller is withholding the listing while the property is prepared for its debut onto the full market. The MLS cannot deny the sellers' right to withhold a listing from the MLS. It is for this reason that the Seller's Waiver of Benefits form was updated several years ago to include direct language that articulates the value of including the listing in the MLS and outlines the possible consequences of not exposing the listing to the full marketplace through the MLS.

NNRMLS follows up with all reports of properties advertised as “coming soon,” whether on the internet or through yard signs. We closely monitor consumer facing websites that allow for agent/broker direct upload prior to input into the MLS. If a listing is advertised “coming soon” on one of these websites, NNRMLS is notified and immediately verifies that Sellers Waiver of MLS Benefits form is on file. If it is, the agent is within the rules. If it is not on file, NNRMLS sends the agent a \$1,000 automatic level 4 citation. Upon receipt of a citation the agent advertising the listing as “coming soon” must prove that no listing agreement has been executed, at which time the citation is removed. There is nothing in the NNRMLS rules to prevent these properties from being marketed prior to execution of the listing agreement.

Legal Perspective

Tiffany Banks, Legal Counsel for the Nevada Association of REALTORS® says that NRS is very clear that an agent must present all offers. NRS 645.254(4). This duty arises upon the creation of the agency agreement. If you are the exclusive agent, you must present all offers, even if the home is not yet on the market, or in the MLS. A seller's agent who takes this time period as an opportunity to only present offers from within his own brokerage is risking his license to do so. A seller's agent must advise their client that the law demands that he present ALL offers all the time. The law does not delineate time periods based upon marketing tactics of the seller. If agency exists, the duties of the agent exist.

A violation of the NRS 645 can carry a fine of up to \$10,000 per violation or revocation of a real estate license by the Nevada Real Estate Division.

If agency has not been created with the seller through an exclusive agency agreement, Nevada law does not prohibit an agent (with seller permission) from advertising a property as “coming soon”; but agents do so at their own risk as they have no protection should a represented or unrepresented buyer bring an offer to the seller. The listing agent could not claim an interference with an agency relationship, since no relationship was solidified with a listing agreement. The seller would be free to negotiate with the represented or unrepresented buyer without compensating the agent.

It’s also important to note that should an agent intend to “offer the real estate for sale” through the coming soon listing prior to having a valid listing agreement (thereby creating agency), the agent must have seller’s permission in writing expressly granting the agent the ability to advertise the property to avoid any question on the terms agreed to by the parties. A failure to do so could be a violation under NRS 645.635 and subject you to discipline by the Nevada Real Estate Division.

NRS 645.635 Additional grounds for disciplinary action: Unprofessional and improper conduct relating to real estate transactions. The Commission may take action pursuant to [NRS 645.630](#) against any person subject to that section who is guilty of:

1. Offering real estate for sale or lease without the knowledge and consent of the owner or the owner’s authorized agent or on terms other than those authorized by the owner or the owner’s authorized agent.

Summary

If agents, with the approval of his/her broker, wish to use “coming soon” as a mechanism to generate enthusiasm, it is lawful and MLS rules apply. It is strongly recommended that an Exclusive Right to Sell be executed and the seller is fully informed of the pros and cons of holding the property off the market. It’s important to explain to the seller that although the property is advertised as “coming soon,” it is an agent’s duty to present any and all offers.

It is a violation of both the law and the Code of Ethics to use “coming soon” for personal gain and to obstruct other potential buyers from the opportunity to submit offers.

Other resources on this topic

NAR has written guidelines on “coming soon” Listings, <http://www.realtor.org/articles/coming-soon-is-it-in-the-seller-s-best-interest>

<http://ohiorealtors.org/2014/04/09/rising-trend-of-coming-soon-signage-pocket-listings-is-raising-legal-ethical-questions-2/>