

"COMING SOON" ADVERTISEMENTS



Susan L. Dioury, JD
Senior Vice President,
Risk Management
Legal Counsel
sdioury@mnrealtor.com

It is not uncommon to see real estate licensees utilize a bold "COMING SOON" on their lawn sign or on an Internet advertisement. There may be numerous legitimate reasons why the seller wishes to advertise the property as "coming soon" versus "for sale," and not make the property immediately accessible for showing or available for purchase. Whatever the seller's reason, a REALTOR® should ensure that before placing a "coming soon" advertisement, the REALTOR® has explained the pros and cons of such an advertisement to their seller, get their seller's informed consent, and remain in compliance with federal and state laws, [REALTOR® Code of Ethics](#) obligations, and any applicable MLS rules.

Fiduciary Duties: "Coming soon" listings can be legal and ethical; however, it is the seller that must ultimately determine whether the "coming soon" advertisement is in the seller's best interest and whether to allow a "coming soon" advertisement. If you are acting as a seller's broker (signed listing agreement), you owe the seller fiduciary duties, including, among others, the fiduciary duties of **loyalty** (broker/salesperson will act only in client(s)' best interest) and **obedience** (broker/salesperson will carry out all client(s)' lawful instructions). [Article 1](#) of the Code of Ethics also requires REALTORS® to protect and promote the interests of their client.

Informed Consent: When your seller client is considering a "coming soon" advertisement, have a conversation with your seller and provide them with written

continued on next page

information to explain the pros and cons of using this type of marketing.

- Does the seller just want to fix up the property before showing it to anyone?
- Does the seller want maximum exposure and cooperative marketing of the listed property to get the highest and best price, less time on the market, and other favorable terms, or does the seller want to first try selling the property quietly within the listing brokerage and without broad public display?
- Will the seller agree to dual agency, or would the seller prefer single agency for the sale?
- Will there be a variable rate commission?
- Is the “coming soon” advertisement going to be viewed by general public or only to cooperating brokers?

These and other issues should be considered by the seller, so he or she can determine whether a “coming soon” advertisement is in his or her best interest and can provide the licensee with the appropriate direction. A REALTOR® should never suggest a “coming soon” listing for the purpose of securing both sides of the deal and the double commission, or for any other perceived broker/agent benefit

“...the duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make the property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords.”

if it is not in the best interest of the client, as such action may be deemed a breach of the broker’s and salesperson’s fiduciary duties. Such action may result in ethical and legal actions against the REALTOR®.

Meaning: Licensees should also make sure they understand what the seller intends before using “coming soon” in advertisements. There are different interpretations of what

a “coming soon” advertisement means, and the context of the advertising may change the interpretation. For example, it may be interpreted differently if it is directed to another REALTOR® member in the MLS versus the general public. If the seller is considering a “coming soon” advertisement, the licensees should think about the intended recipient and how the “coming soon” might be interpreted by that recipient. The [Merriam-Webster Dictionary](#) defines “coming” as, “the time when something begins” and “soon” means “at a time that is not long from now” or “in a short time after something happens.” What does the licensee mean when using “coming soon” in their advertisement to the general public? To other REALTORS®? Remember, REALTORS® have a duty under [Article 12](#) to be honest and truthful in their real estate communications and shall present a true picture in their advertising,

marketing, and other representations. Additionally, [Minnesota Statutes § 82.81, subd. 12](#), prohibits licensees from advertising in any manner that is misleading or inaccurate with respect to properties, terms, values, policies, or services conducted by the licensee.

Duty to Cooperate: Under [Article 3](#) of the Code of Ethics, REALTORS® agree to cooperate with other brokers, except when cooperation is not in the client's best interest. Article 3 prohibits REALTORS® from misrepresenting the availability of access to show or inspect a listed property. Further, Standard of Practice 3-10 states that, "the duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make the property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords."

MLS Rules: Note also that your MLS has rules and regulations pertaining to withholding listing information from the MLS and forwarding sold information once your listing has sold. Please check with your MLS for further information.

Obtain a signed written agreement. [Minnesota Statutes § 82.66, subd. 1](#) requires a licensee to obtain a signed listing agreement or other signed written authorization from the owner of real property or from another person authorized

...obtain a signed listing contract or other written authorization from the owner of the real property...before advertising the property for sale or lease to the general public.

to offer the property for sale or lease before advertising the real property for sale or lease to the general public. Failing to obtain a signed written agreement that substantially complies with the statutory requirements for a listing contract can affect your brokerage's ability to collect compensation from the seller.

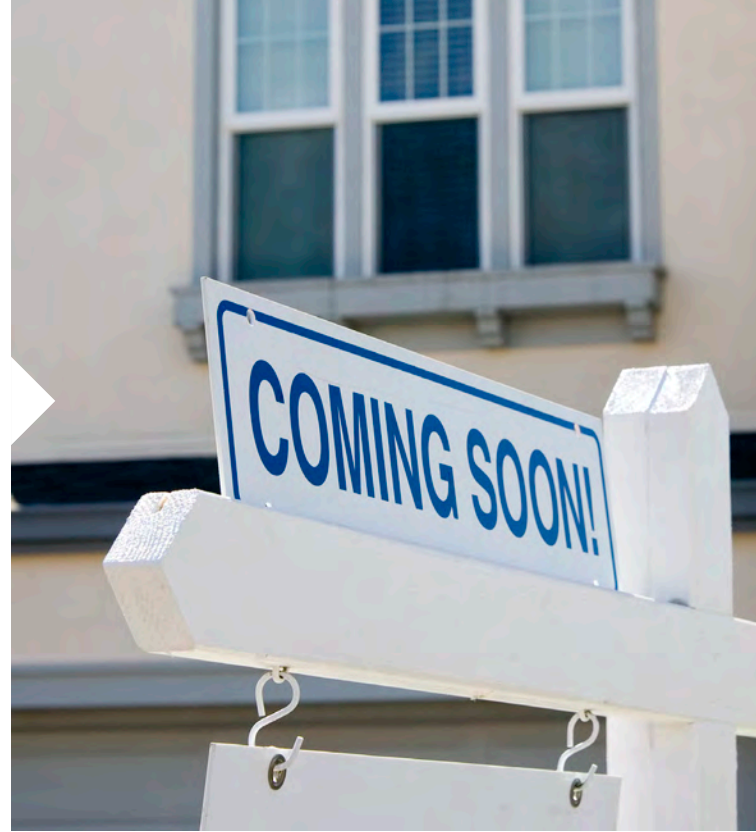
Select Marketing: If a seller's broker directs a "coming soon," advertisement to other cooperating brokers, and the seller's broker intends to market the property to potential purchasers through the seller's broker or a private group of competing brokers or salespersons before placing the information on the MLS, legal counsel should be consulted to understand the risks and benefits. Anti-discrimination and antitrust laws will be applicable.

- **Antitrust:** The acts of some participants in a private group of competitors may create antitrust liability for all participants. (See ["Window to the Law: Antitrust for Real Estate Professionals,"](#) by [Ralph Holmen, NAR Associate General Counsel.](#))
- **Fair Housing:** The [Fair Housing Act](#) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or

continued from previous page

national origin. Note that the Fair Housing Act may be violated by actions which have a disparate impact on protected classes without a showing of discriminatory intent. (See also [Minnesota Statutes § 363A.09](#) and [Article 10](#) of the Code of Ethics).

In conclusion, there are numerous issues that should be considered by sellers and seller's brokers before utilizing "coming soon" advertising. Discuss the pros and cons with your sellers and let them determine whether a "coming soon" advertisement is in their best interest. Take the time to understand your legal and ethical obligations *before* placing the "coming soon" advertisement to avoid liability for non-compliance.



GET IN — GET WHAT YOU NEED — GET BACK TO BUSINESS!



Visit Store.REALTOR.org for new products, to take advantage of these special offers, and receive member-only deals and free products today!



Store.REALTOR.org