

“COMING SOON” Some Do’s and Don’ts

“Coming Soon” as a marketing technique has raised questions about under what circumstances, and with what caveats, disclosures and agreements the use is appropriate and when it is inappropriate. The use of “Coming Soon” has drawn the attention of the Colorado Real Estate Commission resulting in Commission Position CP-44. While CP-44 indicates there may be some circumstances in which the use of “Coming Soon” may be appropriate there are a number of situations in which it would constitute a violation of the license law as well as instances in which it would be a violation of the MLS Rules of the Pueblo Association of REALTORS®. This memo will touch on some of the Do’s and Don’ts. It is not intended to be a complete listing of all circumstances but is an effort to provide a helpful overview. Brokers who are considering the use of “Coming Soon” are encouraged to carefully review CP-44.

The Pueblo Association of REALTORS® does not have a policy that would forbid the use of “Coming Soon”, provided it is done in a way that does not violate the MLS Rules and the Code of Ethics. Additionally, CP-44 provides guidance on behavior that could result in the Real Estate Commission finding a violation of the license law.

The determination of whether to use “Coming Soon” in appropriate circumstances should typically be a matter of office policy established by the Employing Broker/Designated REALTOR®.

It is not an appropriate use of “Coming Soon” to exclude other MLS participants in order to “double end” a transaction. CP-44 points out the breach of statutory obligations owed by a listing broker to a seller that would result from such a strategy.

While it could be a legitimate use of “Coming Soon” where a seller is preparing a property for sale it is still necessary that the seller be informed of the risks involved in such a strategy. In order to avoid a future misunderstanding as to the nature and scope of such a disclosure it would be the better practice to have such a disclosure in writing. A written agreement on the marketing of the property as part of the listing contract appears to be a requirement of CP-44.

The MLS Rules require that a listing be entered into the MLS within 1 Business day. Failure to do so would be an MLS violation, unless the listing agreement with the seller specifically directs the listing broker to not place the property in the MLS. CP-44 would require that the risks and downside of such a restriction on marketing be fully explained to the seller.

There is an alternative to the “Coming Soon” marketing approach which avoids the potential appearance of improper behavior by the listing broker. A listing could be placed in the MLS with a notation to MLS participants that the seller is currently refreshing the property and that the property will not be available for showing until a future date certain.

A broker who would choose not to obtain a listing agreement but place a “Coming Soon” sign on the property creates a significant risk for him/herself. The seller is under no obligation to pay a commission to a broker who does not have a listing agreement and the seller could choose to deal with a buyer or other third party and not pay any compensation to the broker who placed the “Coming Soon” sign on the property.

As indicated, this is not intended to be an exhaustive list of all the possible do’s and don’ts or circumstances that might arise. Hopefully it will provide an overview and starting point so that a broker considering use of “Coming Soon” does their research and is fully informed of the potential perils to be avoided.