



LEGAL TIP OF THE WEEK

Professionalism & POCKET LISTINGS

By now pocket listings are a concept most real estate professionals are familiar with, and in some circles they have become something of a dirty word. Lower inventory in many areas has created a surge in pocket listings and while legal, agents must proceed cautiously and consider the related risk management concerns they pose.

A pocket listing, coming soon, or “office exclusive” listing as it is sometimes called, generally refers to a listing in which an agent has a listing agreement and either holds off on placing the property on the MLS or the seller does not authorize the placement of the listing on the MLS. Instead, the agent markets the property through informal networks or new online platforms. MLS rules commonly require agents to place listings on the MLS within a certain number of days of receiving a signed agreement. Failure to do so violates MLS rules, garnering the agent significant penalty and fines.

[UtahRealEstate.com policies require that every listing shall be submitted to the MLS within five \(5\) Business Days of the effective date of the Listing Agreement or when the Broker Participant or Agent Subscriber first advertises the Listing on any website accessible by the general public, whichever occurs first.](#)

Of course, sellers can always elect not to have their property included in the MLS. In these instances, agents must have the seller sign an MLS opt-out form evidencing the seller’s direction not to have the property placed on the MLS and pay the required URE opt-out fee.

The REALTOR® Code of Ethics’ Article 1 requires REALTORS® “to promote and protect the interests of the client.” REALTORS® must always keep this in mind when recommending a pocket listing to a client, even for the time period allowed by the standards of the MLS. Even beyond the Code of Ethics, state law generally dictates that real estate agents owe a fiduciary duty to their clients, meaning real estate professionals must place their clients’ interests above their own and act in the best interests of their clients at all times.

Legal risk concerning pocket listings arises when agents or brokers keep listings off the MLS for reasons that are not in the best interest of the client.

EXAMPLE... An agent signs a new listing, takes photos, and posts “new listing coming soon” details to various social media sites to inform their SOI. Unlike MLS listings, a pocket listing is more likely to result in the agent representing the seller and the buyer, and the outcome would be a higher commission to the agent. This in itself is not illegal or unethical, but if the prospect of a double commission is the reason the agent listing the property on the MLS – especially if the client is unaware of the reason for the delay – then this could violate the Code of Ethics, MLS rules, and possibly the laws.

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