



CONNECTICUT REALTORS®

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“Coming Soon” Advertisements White Paper

1. What is a “Coming Soon” Advertisement and Why this White Paper?

More and more real estate licensees and consumers are finding the term “Coming Soon” on real estate sign riders, in the Public Remarks section of MLS, or flagged as such on real estate advertisements or listing sites. Connecticut REALTORS® is writing this White Paper to assist you in understanding the terminology, your obligations under Connecticut Real Estate Commission license law and statutes, obligations under the Code of Ethics, compensation issues, and other considerations.

National Association of REALTORS (NAR) General Counsel Katie Johnson explains, “Some ‘coming soon’ advertisements involve unlisted properties that may or will be listed with a broker in the near future, while others relate to properties that are subject to listing agreements where property is available to potential purchasers only through the listing broker and not available, temporarily or indefinitely, for showing or purchase through other MLS participants.”

Because Connecticut law prohibits real estate licensees from advertising any property prior to obtaining a listing agreement, that scenario (“pre-listing”) is not included in this White Paper. The specific section of reference is as follows:

Sec. 20-328-6a. Agreements: (a) (1) Before a licensee attempts to negotiate a sale, exchange, or lease of real estate, other than a commercial real estate transaction, on behalf of the owner or lessor of real estate, the licensee shall enter into a listing agreement with the party or parties for whom the licensee will act. All listing agreements shall be in writing, properly identifying the property and containing all of the terms and conditions of the sale, exchange or lease, including the commission to be paid, the date on which the listing agreement is entered into and its expiration date. The listing agreement shall be signed by the owner, seller or lessor or an agent authorized to act on behalf of the owner, seller or lessor only by a written document executed in the manner provided for conveyances in Connecticut General Statutes, Section 47-5, and by the broker or the broker’s authorized agent. The type of listing shall be clearly indicated in the listing agreement. The licensee shall deliver immediately a copy of any listing agreement to any party or parties.

A long-standing interpretation of the word “negotiate” is broad and inclusive of prior to showings or any advertisements of a property for sale (such as, signs on the lawn, showing a property, inclusion in MLS, etc.)

2. Isn’t this the same as a “pocket listing” or an “office exclusive”?

NAR distinguishes the terminology: “A pocket listing, off-MLS, or ‘office exclusive’ listing as it is sometimes called, generally refers to a listing in which an agent has a listing agreement and 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.” While concerns and explanations in this White Paper may also apply in those scenarios, the specific focus of this paper is where a listing is being specifically advertised to the public and to other real estate licensees as a property that is “coming soon”.

3. How are you defining “advertisements”?

Connecticut Real Estate license law is clear in the scope of what is included as advertising:

Sec. 20-328-1a. Definitions: (h) “Advertising” means 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 engaging in the real estate business.

4. Why would anyone use a “Coming Soon” advertisement?

The two most common scenarios are when a property is listed but just not ready to have showings, for example when there is a significant repair or renovation that must be made before potential buyers should enter the property; the other is when a real estate brokerage agency may believe that additional interest in the property could be generated by stating showings are going to be delayed until a future date and communicates that to the Seller.

5. Why are we even hearing about this now?

When NAR's General Counsel wrote an article about how "Coming Soon" properties may cause consumer confusion, Connecticut REALTORS® started getting inquiries about how those may apply in Connecticut. In addition, a major online national real estate listings advertising site recently began a promotion that includes "coming soon" listings on their site by providing preferential display placement to "coming soon" listings, provided those listings are excluded from the MLS. Sellers, buyers and real estate licensees who may otherwise have not known of the concept in the past are starting to see property listings with those words across it appear first in online displays.

6. What are the considerations and concerns under Connecticut real estate license law and the REALTOR® Code of Ethics?

The motivation for a real estate licensee to suggest "Coming Soon" as a marketing strategy, where there is not an issue of a repair or renovation to a listed property, would be carefully evaluated in multiple areas including compliance with Connecticut law, MLS policy, and the REALTOR® Code of Ethics. Under both CT law and the REALTOR® Code of Ethics, REALTORS® must promote and protect the interest of their clients and must present a true picture in their advertisements and other representations. For most sellers, getting the highest and best price for their property and maximizing exposure of the property to potential buyers advances those interests.

Connecticut law is clear in the scope of what is required under "Duties" for all licensees in the state:

Sec. 20-328-2a. Duties to parties: (h) In the sale or lease of property which is exclusively listed with a real estate broker pursuant to an exclusive right to sell or lease listing or an exclusive agency to sell or lease listing, the broker shall cooperate with other real estate brokers upon mutually agreed upon terms when it is in the best interests of the party or parties for whom the broker is acting.

A broker who fails to comply with state law risks disciplinary action and/or the possibility of litigation by his/her client who may later challenge "best interests". Legal risks concerning "coming soon" listings arise when agents or brokers keep listings off the MLS and restrict cooperation with other licensees for reasons that are not in the best interest of the client or for possible misrepresentation in advertising. A REALTOR® may also face a Code of Ethics complaint should a client have concerns about "best interests".

7. How does the Seller consent to having a property described as "Coming Soon" and delayed/excluded from MLS?

A Seller may consent to a delay or exclusion of a property from being included in MLS, or a "Coming Soon" marketing strategy, by specifically detailing that consent and marketing decision in a written agreement (such as the agency agreement) prior to any marketing commencing. In addition, a multiple listing service in which the real estate brokerage agency participates may require a specific form that includes a description of the risks of limiting property exposure in order to delay or exclude a property from the MLS rules. (Note: a Seller may opt-out of MLS and still permit other forms of advertising.)

8. If the property is noted as "Coming Soon" may the listing agent permit showings anyway with Seller consent?

That question would get to the truthfulness of what is being communicated in advertisements, and whether that "coming soon" marketing will cease as soon as the Seller consents to a showing for anyone. Exclusionary showings may also expose the broker, agent and Seller to legal liability for misrepresentation in advertising or fair housing complaints. A Seller may change their consent decision but that should also be made in writing and an agent would carefully evaluate this option with their seller.

9. Can a potential buyer make an offer on a "Coming Soon" listing that includes a condition that it is contingent on the buyer's satisfactory review of the property?

Yes, a buyer can make an offer to purchase at any time, and the listing agent cannot make the decision under Connecticut license law not to present that offer to the Seller. Agents cannot delay presenting offers to sellers, but a Seller may choose to direct their agent in writing not to receive offers during the Coming Soon time period and therefore seller may opt out of permitting any offers to be presented by their agent during this time. The Real Estate Commission ensures that offers that are made by potential buyers are actually presented in a timely manner unless the Seller directs their agent in writing otherwise. However, the seller can reject the offer. Separately, there are buyers who purchase properties without ever viewing them; and viewing is not a requirement for a sale, for co-brokerage or for procuring cause.

10. If a “Coming Soon” property is not in the MLS, how can the buyer agent be compensated?

There are several ways: a) the Buyer can compensate his/her agent directly (which may already be in the buyer’s agency agreement); b) there may be a pre-existing letter agreement between the companies for co-brokerage compensation, whether that property is in the MLS or not; c) a separate compensation agreement may be presented and signed by both brokers prior to the showing for agreement prior to that showing; or if no showing, prior to presenting an offer; or d) the offer may include a seller concession to the buyer that provides funds for the buyer to be able to settle his/her contractual compensation agreement with the buyer agent at closing. However, like any seller concession involving a mortgage, a lender may limit the amount and/or permitted use of such concession. Note that the Code of Ethics does not permit using an offer to modify a compensation amount, such as an MLS offer or the listing agent compensation amount.

11. What are the MLS requirements about “Coming Soon” listings? Are there other considerations if foreclosure or short sale?

You will need to check these questions with the MLS, as these policies are local options. Some of the considerations include:

- Is there a mandatory form to use to delay or exclude properties from MLS? If not, what may be permitted to show Seller consent?
- If a property is not available for showing or cooperation at the time of listing, is it eligible for the MLS?
- If “coming soon” is permitted, how is that listing entered (e.g., a temporary listing, an active listing with a notation in Internal/Public Remarks)?
- Is there a definition of “soon”?
- If a property is not included in the MLS until it has a status of having an accepted offer, is there a rule that the company/agent should know?

If the property is a short sale or foreclosure, ensure that the lender is aware of a delay in marketing through the MLS as it may not be permitted under their requirements for short sale or deed-in-lieu consideration.

12. I believe there is a violation and/or the Buyer wants to file a complaint, where would the contact be to complain or get resolution?

It depends on what violation may have occurred:

- a) If a property is in the MLS and you are notified it is “coming soon” and not available for showings, contact the MLS.
- b) If you see a “Coming Soon” sign on a property or in another form of advertising, and do not find it in the MLS, contact the MLS to verify that there is Seller consent to the property being withheld from MLS.
- c) If your buyer makes an offer through you the Buyer’s agent, and the Seller’s agent refuses to present it, the Buyer agent should tell his/her manager/broker who can attempt to expedite the presentation through appropriate channels. If they also can’t get any response, or if they get a refusal to present, the Buyer may present an offer directly to the Seller. The law says Buyer’s Broker/agent may only contact the Seller if “after diligent effort, [broker/agent] is unable to communicate with the listing agent or a licensee designated by the listing agent to service the listing in the listing agent’s absence.” Sec. 20-328-2a(f)(1).
- d) If a consumer believes that he/she did not get the best price possible for a property based on a “coming soon” marketing advice, you can direct him/her to the local association with a REALTORS® Code of Ethics complaint and/or to the Department of Consumer Protection with a license law complaint.

THIS LEGAL INFORMATION FOR REALTORS® IS INTENDED FOR GENERAL INFORMATION PURPOSES AND IS NOT INTENDED TO PROVIDE LEGAL ADVICE ON ANY SPECIFIC FACTS. IF YOU HAVE SPECIFIC QUESTIONS CONCERNING YOUR OWN SITUATION, PLEASE CONSULT YOUR ATTORNEY.

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