



March 2023

Advertising, Ethics, and the Law

Are you getting the word out about your business? Or breaking the law? Some common practices may cross the line.

Advertising fuels the real estate industry. The road to the closing table is paved with photos, videos, listing descriptions, and pitches from real estate licensees about why they deliver the best services for clients. It's the beating heart of competitive capitalism, and the foundation of every Realtor's® prosperity. With the stakes riding so high, sometimes legal and ethical boundaries are crossed in the confusion. To help you compete vigorously and honestly, MNR's Risk Management team looks at some of the dubious advertising practices to avoid.

Taking Videos, Stealing Listings.

In a tight housing market, good listings can be hard to come by. That's what motivates some agents to get creative on ways to get noticed, even without a listing. Here's a common scenario we've been encountering.

A Realtor® from one brokerage contacts another brokerage and sets up an appointment for a "showing." Yet when the agent arrives at the property, he's toting a video camera instead of accompanying a prospective buyer. After taking a quick tour of the home, and extensive video shoot of the listed property, he posts a video on his website, strongly implying that he is the listing agent and encouraging interested parties to call him for a showing.

No harm in that if it brings a qualified buyer to the closing table, right?

Actually, it raises serious legal and ethical concerns.

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According to Minnesota law (Minn.Stat. § 82.66), a brokerage must have a written listing contract or other agreement where the seller gives permission to advertise a property for sale to the public. Only the broker with the exclusive listing agreement is authorized to advertise the property for sale to the general public or provide permission to do so on behalf of the seller. If another brokerage wants to advertise the property, it must obtain permission through the listing broker. The Realtors® Code of Ethics also states that the Realtor® shall not offer for sale/lease or advertise property without authority (Standard of Practice 12-4).

Other illegal advertising practices include:

- Scraping and posting listing pictures* on a non-listing broker's website without permission
- Printing documents created by another brokerage and publicly displaying them

Of course, if the seller is willing, a listing brokerage can partner with other brokerages on advertising properties. This includes allowing non-listing brokerages to electronically display and deliver other brokers' listing information under authorized mediums. For example, some multiple listings services (MLS) have broker participant agreements that allow member brokers to share listing data via Internet data exchanges.

Using Copyrighted Photos without Permission

Why go to the trouble of photographing a home when you can pluck the images from other brokerage's websites and social media? Never mind that these aren't even your listings. What could possibly go wrong?

Plenty, of course.

Apart from the legal and ethical violations of advertising properties without permission from the listing brokerage and seller (See above section: Taking Videos, Stealing Listings), there is infringement of copyright to consider.

Under the Copyright Law of the United States, a wide range of photographs are protected, including those made for advertising and marketing purposes. The law also applies to videos and other moving images. In the simplest terms, the moment a photographer clicks the shutter, an exclusive copyright is created for that image. So, whether the photographer is a homeowner, a real estate agent, or a hired photo professional, the image is their property. In order to use it, the brokerage, MLS or any other party must obtain the photographer's permission. Real estate licensees who copy and re-use such images without permission on their own websites, social-media venues, print materials, or any other publicly displayed channel are violating copyright law.

Nicknames in Advertising

Nicknames are everywhere. There are countless Wills, Bills, Buds, Buffys and Bettys, and let's not forget all those Barts, Becks,

Bobbys, and Debbies. Whether they're derived from a longer legal name or picked up along the way in grade school, high school, or college, nicknames add color, distinction, and fun.

But do they have a place on your business cards, advertisements, and other promotional materials? In strictly legal terms—no. According to Minn. Stat. § 82.68:

“A salesperson shall only conduct business under the licensed name of and on behalf of the broker of whom he or she is licensed.”

Technically, this means nicknames are not permitted. However, in past conversations with the Minnesota Department of Commerce (DOC), they indicated nicknames could be used under certain conditions.

When using a nickname in your advertising, you must include initials for your first name, middle name (if applicable) followed by the nickname and last name. For example, let's say the licensee's full legal name is William Franklin Jones, but he prefers to be known by his nickname, Bud. He could display it in one of the following ways:

- W.F. Bud Jones
- W.F. “Bud” Jones
- W.F. (Bud) Jones

A Word on Aliases and Assumed Names

Some Realtors® do business under a variant of their legal full name, or an entirely different name. For example, Jones Real Estate Sales or Minneapolis Real Estate Sales. The DOC allows Realtors® to add a formal alias to their license by:

- Filing an Assumed Name form as a sole proprietor with the Minnesota Secretary of State
- Providing proof of the filing to the DOC by having a copy of the certificate published in two successive issues of a “qualified” local newspaper

And remember, intentional misrepresentation of your name or location of business is prohibited. Violators can face criminal penalties.

You can learn more about the state's qualifications for aliases by reading [Assumed Name/DBA](#) at the Office of the Minnesota Secretary of State webpage. Also see, [Minn. Stat. § 333.01 et. Seq.](#)

And don't forget to include your brokerage name

Lastly, all your advertising must include the name of the real estate brokerage where you are licensed. It must be clearly and conspicuously displayed.

Expand Your Advertising Acumen

For more guidelines on laws regarding advertising, see the [Advertising and Marketing](#) section of *The Legal Companion*.

*See section below on Using Copyrighted Photos Without Permission