



Vermont Real Estate Commission

Newsletter

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Office of Professional Regulation

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Message from the Chair

When it came to learning how to market a property, one of the first things I was told is; “You can’t sell a secret”! Marketing our listings is a critical component and service we provide to our clients. Advertising is a large part of the marketing strategy and the advent of the internet has expanded that tool. When properly utilized, internet advertising is extremely effective. Many potential buyers, both within and outside of Vermont, rely on information they gather from the internet to investigate available properties. Real estate websites generate numerous inquiries that can and do result in transactions.

Unfortunately, the Real Estate Commission has noticed, that there have been abuses of this new technology. Please remember, that you as the licensee are responsible for the accuracy and content on your website, regardless of whether you manage the site yourself or contract with an outside firm to manage it. The responsibility rests with the licensee to insure that accurate and up-to-date information is posted. Please remember that should you present listings from agencies other than your own, you must clearly identify the listing agency’s identity. So perhaps the old adage should be expanded to say, “You can’t sell a secret AND you can’t blame your website host for property information errors”.

Susan (Sam) Matthews
 Chair

Who's on first, What's on second, I Don't Know is on third...

We all remember that Abbott and Costello piece always good for a laugh, but at times very hard to follow. It's not uncommon for licensees, and the public, to confuse the roles of the Real Estate Commission with the function of the associations. Frequently we have licensees who contact us asking what to do, because an association is telling them one thing, and the Commission is saying something else. For example, a real estate office told us that they had not returned the license of one individual because the association had told them they couldn't because the individual had not paid their dues.

Bottom line, when it comes to issues that involve licensing, professional conduct, disclosure, etc. make no mistake, the Commission is the only authority, and the only regulatory body that has the statutory authority to impact your ability to practice.

In short folks, we're the only game in town.

Office Inspections

4.13(c) of the Rules says, in part: "...The principal broker or designee is entitled to be present during any inspection, and shall cooperate in good faith with the Commission's agent."

The term "entitled" means that the principal broker (PB), or designee (PBD) is "allowed", or "permitted", to be present. **It does not mean** that the PB/PBD **must** be present, or that the broker's office can refuse to allow the Inspector to review the records because they are not on site, or available.

A failure to cooperate with the Inspector's request to inspect records can be considered unprofessional conduct, and may result in the opening of a formal investigation against the offending Office, and principal broker, and subsequent disciplinary action.

Commission Adopts Zero Tolerance Position on Sign Violations

Due to the increased number of complaints related to illegally placed advertising signs and the lack of compliance by licensees with the statutes and rules governing real estate advertising, the Commission is taking a "zero tolerance" position for future violations. Office of Professional Regulation investigators will patrol for signage violations; and licensees who violate signage laws can expect, at a minimum, administrative fines for first-time offenses.

On-premise signs advertising the sale of property or activities being conducted on the property must comply with Title 10, §493.

* An on-premise sign shall not be located more than fifteen hundred feet from a main entrance from the highway to the property advertised.

* A main entrance shall be a private roadway or driveway which leads from a public highway to the advertised property.

* Property shall not include land which is separated from the property for sale by a public highway, or other intervening land.

"On premise" means just that! On the property that is for sale. Not on the neighbors lot, not down the street, not in the State or Town highway right-of-way.

The Commission does not intend to use this particular "zero tolerance" enforcement policy to regulate same-day "Open House" signs directing potential buyer to property or to regulate signs directing potential buyers to the property for the 24 hours immediately preceding the open house.

Education Committee Report

Recently the Education Committee updated the Continuing Education Policy. Since it appeared that with the rule changing process our policy was lacking in areas we took a look at the policy

in its entirety and consequently made changes. It was behind the curve in the technology surge of the past 10 years. We were somewhat amused to see that the latest non-traditional instruction on our working document was Interactive Television with not the slightest mention of Online Delivery. It definitely was time to update! We added topics to our Program Criteria, which can be viewed online. We also now have a current list of educational providers, and available courses on our Website at: http://vtprofessionals.org/opr1/real_estate/

An area of dismay to us is the submission of courses for continuing education credit which do not fall into any of the subject matter categories we have listed. Courses that are submitted for credit that involve personal improvement, marketing, and other professions' CE courses that vaguely touch real estate issues will not be approved. We have had an over-abundance of these types of submissions. So we are asking all providers, instructors and marketers of real estate CE to please review the guidelines. Submitting anything that comes along in hopes of a "maybe" is counter productive.

In response to any confusion on the mandatory course content requirement for the 2008-2010 renewal, again we would direct you to the website. Recent statutory changes required the Commission to begin the rulemaking process. Initially, the mandatory course had been announced to include both Statutes and Rules. However, since the Rules are currently in a state of flux it would be disadvantageous to licensees to review the current rules as part of the mandatory program. We have approved several of the applications for the mandatory course of "Statutes and Unprofessional Conduct" and have posted the providers on the website.

Online delivery for CE credit has been expanded. In the past, we had limited online credit to only 4 hours. With the development of many online courses by qualified instructors and a good delivery method, we have decided that it is now time to permit all continuing education credits to be completed online. We felt that this would be a help to licensees in the outlying

areas where it may be hard to get classroom instruction when needed.

Lastly, Out-of-state Brokers who seek Vermont licensure, and come from another jurisdiction that requires at least a 40 hour pre-licensing course, will only have to take the Vermont Law portion of the examination.

Agency Disclosure – When Should It Take Place

The Commission's position is that agency disclosure must be made at the "first point of significant contact." That "point of significant contact" can be when a licensee meets to give a listing presentation, as not every listing appointment results in a signed listing agreement. Also, information disclosed at an initial meeting before a formal relationship is established, can be substantial. Disclosure must occur prior to showing or listing a property. Based upon those considerations as well as a review of the Statutes and Rules, the Commission continues to consider an Agency Disclosure Form as a necessary best practice for licensees to adhere to their legal disclosure obligations to the public.. A sample form as to content of this disclosure can be found on our web page. (*Vermont Mandatory Consumer Disclosure*)

Presenting Offers to Sellers

The following question was recently posed to the Office. "When a property goes under contract, is the listing company obligated to continue to show the property and, if offered, take back-up offers to present to the seller?" Your services and obligations are specified in your signed listing agreement. Brokers are always required to bring any, and all, offers to the seller, regardless if the property is under contract (Rule 4.3(b)). In addition, you are required to have an active listing agreement until the final closing. Your seller may request no further advertising, in which case you should get that in writing. But if an offer is made, you must present that offer to your seller.

When Is A Material Fact Material?

Recently we received a call asking if someone had been murdered, and buried on the property for sale (although the body had since been exhumed), would it be considered a material fact? Another caller wanted to know if they needed to disclose to a potential buyer that the next door neighbor was a convicted sex offender. So are these material facts? Let's consider this. A material fact is any fact if told to a potential buyer that might influence the buyer's decision to purchase the property, or to lower their offering price. The answer to both of these questions is a resounding "YES." Both are material facts. Understand we don't want to discourage anyone from asking us for guidance, but the rule of thumb should be: "If you are asking yourself the question "Is this a material fact?" then it probably is, and you should disclose it. Do keep in mind that disclosure of health issues are not deemed "material", and under federal law cannot be discussed.

Licensees as of February 12, 2007

Type of License	Resident	Non-Resident	Total
Broker	1,105	169	2,459
Salesperson	1,230	129	1,359
Office	407	54	461

Disciplinary Actions – Please keep in mind when reviewing the disciplinary actions of the Commission that each case has a unique set of material facts. The facts and/or circumstances guide the Commission in imposing sanctions. For more information please read the entire decision found at: <http://vtprofessionals.org/opr1/searchdiscipline.htm>

David E. Harrington, Broker – Cabot – 1/25/2007 – REC22-1005
Harrington obtained a listing for the sale of a store located at the junction of Route 15 and Route 2 in West Danville. He placed his real

estate sign in the median between the parking lot of the store and Route 15, which is a designated right-of-way for the State of Vermont. The Commission found Harrington in violation of Rule 4.11(c) and he was ordered to pay an Administrative Penalty of \$250.00.

Michael Hernandez, Broker – North Adams, Mass. – 1/29/2007 – REC04-0805
Hernandez failed to, in part, disclose to a buyer all material facts within his knowledge, failed to deposit within five banking days all earnest money and contract deposits held by him, failed to inform clients, establish trust and escrow accounts, and maintain records. The Commission found Hernandez to have engaged in unprofessional conduct. Hernandez's license was revoked, and any privileges he may have had to renew his lapsed license was also Revoked. In addition, Hernandez was ordered to pay \$5,000.00 in Administrative Penalties.

Daniel Maclure, Broker – Derby – 6/26/2006 – REC13-0905
Maclure violated the Commission's Rules mandating the procedure to follow relating to disputed deposits held in pooled broker accounts. Specifically, Maclure failed upon learning of a dispute concerning a deposit held in a pooled account, to transfer the funds to an individual trust account in violation of Rule 4.6(d). Maclure was Reprimanded and ordered by the Commission to pay an Administrative Penalty in the amount of \$500.00, and complete eight hours of continuing education in the study of the laws and rules governing the practice, or the principles of contract law or agency law.

Robert G. McCafferty, Broker – Manchester Ctr. – 1/25/2007 – REC12-0905
McCafferty served as the senior manager for LandVest, which distributed to a list of property owners in LandVest's market area a flyer stating that in contained "A sampling of exclusive LandVest Listings recently sold..." One of the flyers was distributed containing two properties that had not been exclusively listed by LandVest, but had been co-brokered with another listing agency. McCafferty was issued a Warning.

John B. Reed, Broker – Hartford, CT –
1/25/2007 – REC63-0606

A Vermont newspaper published an article about a piece of property being put up for sale in Brattleboro. The article reported that a “for sale” sign had been located on the property for about three weeks, and included a photograph of the sign. The article also advised that the sale was being handled by the Ellis Real Estate Agency with Reed acting as the listing agent. Although Ellis had various real estate offices located throughout New England, Ellis did not maintain a licensed office in the State of Vermont during the relevant time. Reed was given a Warning, ordered to pay an Administrative Penalty of \$750.00, and required to complete a four hour course on Vermont Real Estate statutes.

Dale Schaetzke, Massachusetts Broker –
9/29/2006 - ULP-REC39-0106

Schaetzke is licensed in Massachusetts, not in Vermont. Schaetzke sold property through an online real estate sale and auction website with its principal place of business located in Massachusetts. In 2005 Schaetzke listed a piece of property for sale in Vermont on his website. He was not licensed in Vermont at the time he listed the Vermont property on his website. The Commission found that Schaetzke had acted in the capacity of a real estate broker without first being licensed here. The Commission ordered that he pay an Administrative Penalty of \$800.00, a violation of 26 V.S.A. § 2212.

Wade Treadway, Broker – Woodstock –
10/30/2006 – REC25-1105

Treadway conducted a showing of a piece of property, this property was a current, active listing with Treadway Real Estate with Treadway as primary broker. At the time Treadway showed the property his license had been suspended for a minimum of thirty days effective October 9, 2005, as a result of a previous disciplinary action by the Commission. The Commission found Treadway in violation of 3 V.S.A. § 129a(a)(4), and 129a(b)(2).

Treadway’s license to practice was ordered to be suspended for a total of 210 days beginning November 3, 2006, and he was ordered to pay an Administrative Penalty of \$7,000.00. As a

condition of reinstatement, Treadway must take four hours of continuing education on the topic of real estate business ethics.

William Wheeler, Broker – Essex Jct. –
8/1/2006 – REC68-0605

Wheeler represented the seller in the sale of a condominium to the buyers. The buyers’ developed an interest in purchasing the condominium. Due to their work schedules, they met with Wheeler on separate dates to visit the condo. Wheeler failed to provide the buyers with an agency disclosure form during either of their visits to the condo, a violation of Rule 4.5(b). The Commission Warned Wheeler and ordered him to pay an Administrative Penalty of \$500.00.

Commission Meetings

The Commission usually holds its meetings on the fourth Thursday of each month, beginning at 9:00 a.m. Meetings are posted on the Office web page found at:
www.vtprofessionals.org/meetings/meetingslist.htm

We encourage anyone who has an interest to attend. Meetings are open to the public. We also post the upcoming meeting Agenda, and Minutes on the Commission’s web page.

On a final note, we have made changes to the Commission’s web page and hope you will find some time to take a look.

Calling all Principal Brokers, and Broker’s in Charge

We frequently receive requests to change a licensee’s location, etc. only to find out that their current location (in our data base) is not the same as where they claim to be. Please double check the licenses you have posted to be sure they have the correct information, and if not, send us a “Change of Information” form. See 3 V.S.A. § 129a (a)(14) (It is a violation of Vermont law and unprofessional conduct for a real estate licensee to fail “to report to the office [of professional regulation] within 30 days a change of name or address”).

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