

## **CP-44 Commission Position on Coming Soon Listings (Adopted June 3, 2014)**

The Commission has received inquiries and complaints regarding real estate brokers (“brokers”) who advertise properties as “coming soon” to the market. The common complaint the Commission receives about “coming soon” listings is that the listing broker provides limited exposure of the property on the open market in an effort to broker both sides of the transaction, or “double end the deal”. Many of the complaints that the Commission receives indicate that once the property is entered into a multiple listing service, becomes available for showings or is otherwise given full market exposure, the listing broker notifies any parties interested that the property is already under contract. While the Commission cannot impose limitations on how a property is marketed for sale or lease, a broker must comply with the license law.

Among other duties, §12-61-804(1), C.R.S. requires a broker acting as a single agent engaged by a seller or a landlord, to “exercise reasonable skill and care for the seller or landlord” and “promote the interests of the seller or landlord with the utmost good faith, loyalty, and fidelity”. A broker who acts as a transaction broker for the seller or landlord is also required to “exercise reasonable skill and care”, among the other responsibilities and obligations enumerated in §12-61-807, C.R.S.

During the negotiation of the listing contract, and as part of the broker’s obligation to exercise reasonable skill and care, a broker is responsible for advising the seller or landlord “of any material benefits or risks of a transaction which are actually known by the broker”. This includes limiting a property’s market exposure by delaying access for showings or open houses, or limiting the amount of time that the seller or landlord will consider offers. Motivation for limiting exposure of the property should be carefully considered. Is the property being marketed as “coming soon” because the seller is preparing it for sale or lease? This would be a legitimate use of that particular marketing method. However, if the property is being marketed as “coming soon” in an effort for the listing broker to acquire a buyer and “double end” the transaction, this would be a violation of the license law because the broker is not exercising reasonable skill and care. If the broker is a single agent for the seller or landlord, the broker may be viewed by the Commission as also failing to promote the interests of the seller or landlord with the utmost good faith, loyalty and fidelity. Finally, a broker who places the importance of his commission above his duties, responsibilities or obligations to the consumer who has engaged him is practicing business in a manner that endangers the interest of the public

Ultimately, it is the seller or landlord’s decision how, when and where the property will be marketed. A broker who fails to advise a seller or landlord of the material benefits or risks, or does not allow the seller or landlord to decide how the property will be marketed, may be subject to license discipline by the Commission. The manner in which the broker and seller or landlord agree to market the property must be memorialized in writing in the listing contract prior to any marketing being performed.