

Real Estate Commission Takes a Stand on "Coming Soon" Listings

I've written before about the increasingly common practice in this seller's market of listing agents promoting their listings well before they are put on the MLS. (See my April 24th column, which is archived at www.JimSmithColumns.com.) This month the Colorado Real Estate Commission (CREC) took on this issue from a consumer's perspective (which is their duty) and issued a position statement (CP-44) that addresses the matter well — and quite concisely. The document recognizes that there can be valid reasons for promoting a listing as "coming soon," but if the listing agent's motive is to earn more money by finding an unrepresented buyer and thereby not sharing his commission with another licensee, then that violates license law by not serving the client well.

The position statement cites the

requirement of licensees, when acting as agents, to "exercise reasonable skill and care for the seller" and, further, "promote the interests of the seller or landlord with the utmost good faith, loyalty, and fidelity." A licensee serving the client as a transaction broker instead of as an agent still has the obligation to "exercise reasonable skill and care," and CP-44 states that

failure to inform the seller of the "material risks or benefits of a transaction which are actually known by the broker" would violate that requirement to exercise reasonable skill and care.

The position statement states that "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." The dilemma facing the CREC, the MLS, and Realtor associations as enforcement bodies has been how to determine whether the agent has informed his client of the "material risks" of not maximizing the exposure of the listing by putting it on the MLS — that is, the risk of not getting the highest price for his/her home.

In my April 24th column I pointed out that only the CREC can create mandatory forms, but while the commission did not create a form to deal with this issue, it did conclude by saying that "The manner in which the broker and seller... agree to market the property must be memorialized in writing in the listing contract prior to any marketing being performed."

This is a reasonable and, in one sense, better approach than creating yet another stock paragraph in the listing agreement which could easily be overlooked by the client. I would have liked an additional sentence in CP-44 along the following lines: "If

said statement within the listing agreement contains a limitation of exposure to the full market, it should also contain a sentence that the seller acknowledges that such withholding of the listing from the full market could result in obtaining a lower purchase price for his/her property."

Nonetheless, we do have a good start at making agents and transaction brokers comply with the law requiring them to put the client's interest above their own.

The National Association of Realtors (NAR) found it newsworthy that the Colorado's real estate commission had taken this position, making it the lead item in a recent email to members and asserting that no other state's real estate commission had taken such a position. I suspect other states will follow Colorado's lead.

I have posted a link to the full position statement along with this column on www.JimSmithColumns.com and on my blog, www.JimSmithBlog.com.

REAL ESTATE TODAY



By **JIM SMITH, Realtor®**

This Week's Featured New Listings from Golden Real Estate



The number of active listings in the City of Golden just increased by 20% with these two new listings from Golden Real Estate. The above home at **626 Texas Street** backs to the Norman D Memorial Park in north Golden. This home is currently a rental (at \$1,200 per month), under a lease which expires on April 30, 2015, so it will probably be purchased by an investor, although a buyer who can wait until then to make it their primary residence might also want to consider it. The listing price is **\$370,000**. It is a bi-level home with four bedrooms, two baths, and 1,852 sq. ft. of living space. Although there are privacy fences between it and the neighboring houses, a chain link fence with gate is all that separates it from the park be-

hind it, with its great playground equipment and gazebo. You can take a narrated video tour of this home at www.NorthGoldenHome.com.

Also just listed (by associate Suzi Nicholson) is unit #310 at **1350 Golden Circle** in the Golden Ridge complex, pictured at right. A big selling point for this 800-sq.-ft., 2-bedroom, 1.5-bath condo built in 1973 is that it's within walking distance of the new light rail terminal across the newly built pedestrian bridge. You'll enjoy the view of the foothills and downtown Golden from the west-facing balcony. It's listed at **\$121,900**. Take a narrated video tour at www.GoldenRidgeCondo.info.



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