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The Voice for Real Estate® in Florida

# Legal Update

WHAT IS YOUR LEGAL KYPTONITE

# Kryptonite

/'kriptə,nīt/ Noun

- ▶ Something that can seriously weaken or harm a particular person or thing.
- ▶ In the fictional world of the comic book, it is an alien mineral that has the property of depriving Superman of his powers.

# The Villain- Plaintiffs Counsel AKA Legal Troll

- ▶ Copyright Infringement
- ▶ Texting
- ▶ Scams
- ▶ FREC Landmines



# Copyright Violations

# Copyright Violations and How to Avoid Them- How it starts?

- YOU CHOOSE THE “PERFECT PICTURE” FOR YOUR AD OFF THE INTERNET, I.E. A SUNSET BY A POPULAR LOCAL BRIDGE OR A SHOT OF THE BEACH FILLED WITH TOURISTS ENJOYING THE FLORIDA SUN.

# Copyright Violations and How to Avoid Them- What happens next?

- ▶ You receive a “Cease and Desist” letter, along with a demand for payment for use of photos owned by another person or entity, like Getty Images.

# Copyright Violations and How to Avoid Them- Then What?

- ▶ Check the image in question. Is it owned by the person who sent the demand letter? If so, remove it from your website.
- ▶ Attempt to negotiate a lower fee and possibly consult your own attorney, *but don't ignore the letter!*

# Protection Tips

- ▶ Be proactive! Don't wait for the letter.
- ▶ Audit your website and identify all images used.
- ▶ Figure out where any images came from – did you personally take them?
- ▶ If not, do you have permission to use the photo from the person who took it? License?
- ▶ If you can't answer “yes” to either of these questions, the safest bet is to remove the image until you've obtained permission.



# IDX Webpage Images

## Digital Millenium Copyright Act

- ▶ “Safe Harbor Provision” under DMCA involving FIVE steps:
  - 1) A website operator (you) does not have actual knowledge of the infringing content.
  - 2) You aren't aware of facts or circumstances from which infringement is apparent.
  - 3) You didn't receive a financial benefit directly attributable to the infringing activity.
  - 4) TAKE DOWN POLICY- You act expeditiously to remove the infringing content when notified.
  - 5) You have provided a means to receive notice. Register a contact person with the U.S. Copyright Office to receive those notices and have that information in the terms and conditions section of your website.



# Scams

# Scam 1: Phishing

- ▶ Phishing: fraudulent attempt to get sensitive information like login information, credit card details, etc.
  - ▶ Example: email or phone call designed to look like official bank business leads to a request for personal information
  - ▶ Example: email claiming to come from company IT department requests password information

# Scam 1: Phishing

- ▶ Recent Phishing attempt targeting Realtors
  - ▶ Associate receives text from someone claiming to be broker
  - ▶ “Broker” asks associate to purchase a gift card as a favor
  - ▶ “Broker” asks associate to text a picture of gift card information
  - ▶ “Broker” promises to pay associate back

# Scam 2: Poaching Wire Transfer

- ▶ Scammer hacks into a real estate agent or title company email account (could be as simple as obtaining login password)
- ▶ Scammer monitors a purchase and sale transaction
- ▶ Near the closing date, scammer sends wire transfer instructions on where funds to close should be sent

# Scam 2: Poaching Wire Transfer

## Minimizing Risk

- ▶ Educate parties who plan to wire funds (form language, reminder to verify instructions)
- ▶ Buyer should verify the request using trustworthy contact information for the recipient.
- ▶ Agents should use sound email security practices (secure email hosting when possible, 2 step authentication, good password, beware unsecured public Wi-Fi)
- ▶ Act quickly if a problem occurs (bank, FBI)



# Text Messages

# The Daily Planet says...

- ▶ **“Lawsuit Filed Over ‘Thousands’ of Text Messages Promoting Listings”** REALTOR Magazine April 2019
- ▶ **“Fla. sees uptick in TCPA-violation lawsuits**  
Florida Realtors April 2019



# Telephone Consumer Protection Act (TCPA)

- ▶ Led to creation of the National Do Not Call Registry
- ▶ Prohibits sending text messages using auto dialers without consumer consent and ability to opt out
- ▶ Regulations also cover robocalls and faxes
- ▶ Can be enforced by private lawsuit, FTC, FCC, or the state of Florida
- ▶ Penalties of up to \$1,500 per violation

# Telephone Consumer Protection Act (TCPA)

- ▶ **Consent to receive texts sent using an auto dialer is required**
  - ▶ **Telemarketing texts require signed consent; non-telemarketing texts require prior express consent**
- ▶ **Best practices when obtaining consent**
  - ▶ **Use clearly stated consent forms and keep a record**
  - ▶ **If verbal consent is used for non-telemarketing texts, follow up with written confirmation**
  - ▶ **Include consent language on forms**

# Telephone Consumer Protection Act (TCPA)

- ▶ **Consumer may revoke consent to receive texts using any reasonable means**
- ▶ **Best practices for opt-out requests**
  - ▶ **Enable consumers to text a single word, such as “STOP” or “UNSUBSCRIBE”**
  - ▶ **Promptly honor all opt-out requests**
  - ▶ **Create a record to show when the opt-out was requested and honored**



# FREC Landmines

# Team Advertising Rule - The Name

- ▶ Team or group is the name or logo of *one or more licensees* who represent themselves to the public as team or group.
- ▶ The team name *may* include the word “team” or “group” as part of the name. (not required).
- ▶ The team name shall NOT include words like Realty, Real Estate, Associates, Brokerage, Company, LLC, or similar words suggesting the team is a separate brokerage.
- ▶ The public should know from the ad that they are dealing with a team, not a separate brokerage.

# TEAM AD UPDATE

## CURRENT SIZE REQUIREMENT

- ▶ The *team or group name* shall not **appear** in larger print than the *name* or *logo* of the registered brokerage.

## PROPOSED REQUIREMENT (Approved by FREC for rulemaking in March)

- ▶ The *team or group name* shall not **be** in larger print than the *name* of the registered brokerage.

# Team Advertising Rule - Broker

## Responsibility

- ▶ Each team must file with the broker a licensed team member responsible for ensuring compliance with advertising rules.
- ▶ At least once *monthly*, the registered broker must maintain a current, written record of each team's members.
- ▶ Suggestions for compliance:
  - ▶ Require in your independent contractor agreement or office policies that agents understand the rule and will provide broker current information.
  - ▶ Add compliance with this rule to other monthly office procedures like escrow reconciliations.

# NEW Processing expectations

- ▶ Impacted areas: applications, change of status, etc.
- ▶ Before filing, review check list
- ▶ New timeline



# Simple Tips to Avoid FREC problems

- ▶ Update DBPR of new mailing address within 10 days
- ▶ Licensees should review FREC records every 3 months to ensure accuracy (both brokers verifying agent info and agents)
- ▶ Check your online account to determine what CE courses you have taken and need

Thank you!

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