

Guideline #8 (eff. July 1, 2016)

Coming Soon Listings

The Idaho Real Estate Commission receives many calls about property being advertised as “Coming Soon.” There are legitimate reasons to promote a property this way, and there are some nefarious reasons as well. As with most things, this issue is fact specific.

A seller may want to advertise a property as “Coming Soon” if there are repairs underway, packing that hasn’t concluded, or even yardwork that should be addressed.

Idaho Code 54-2050 provides that all representation agreements must be in writing. In order to advertise a property at all, including “Coming Soon,” the brokerage must possess a written listing agreement signed by the property owners before placing the sign and beginning any marketing activities. This agreement must include all of the required elements detailed under Idaho Code 54-2050.

Too many times, however, the property is advertised as “Coming Soon” for the purpose of excluding the open market from selling the property. The listing agent, or agency, believes they can produce a buyer without any additional assistance from competing licensees. Selling his or her own listing allows the licensee to potentially pocket more of the sales commission than cooperating with another licensee or brokerage.

Some licensees work with investor buyers who are looking for exceptional prices on property to flip. When a licensee promotes a property as “Coming Soon,” but is actually marketing the property to a select group of buyers, it is a **misleading advertisement**. The property was not “Coming Soon,” it was only available to a select group.

This type of action harms sellers, and the market at large, because the property was not correctly exposed to fair competition. Many of these properties sell for less than they might if offered across a broader spectrum.

Idaho Code 54-2086(1)(a) & (b) requires a licensee to perform ministerial acts on behalf of a customer, and to perform these acts with **honesty, good faith**, and reasonable skill and care.

When an agency relationship is created, Idaho Code 54-2087(4) requires the licensee to promote the **best interest** of the client, and to seek a buyer to purchase the property at a price, and under terms and conditions acceptable to the seller.

Claiming that a seller accepted an offer and, therefore, they must be content with their transaction, is not a safe haven. It is no guarantee that the licensee acted with **honesty, good faith**, and reasonable skill and care.

If the licensee is marketing property only to a limited pool of potential buyers, either to benefit investor clients, or to double-end the sales commission, he or she is not acting with **honesty or good faith**. He or she is not promoting the **best interest** of the seller client.

Further, misrepresenting property as “Coming Soon” in order to dissuade competition could also be considered an unconscionable method, act, or practice under Idaho’s Consumer Protection Act. The Act, enforced by the Idaho Attorney General, provides for penalties and/or sanctions beyond the scope of the Idaho Real Estate Commission.

Along with the duties imposed on licensees by the license law and the Consumer Protection Act, some Multiple Listing Services have rules pertaining to “Coming Soon” listings which must be followed in order to maintain MLS participation. MLS rules are outside the Commission’s jurisdiction.