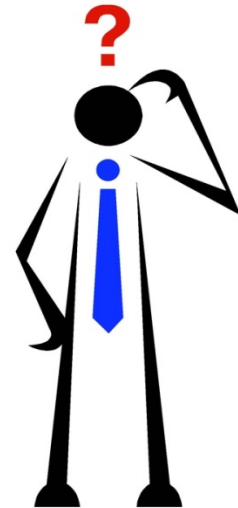


# Is Copyright Infringement an Ethics Violation for Realtors?

I didn't start out to file a lawsuit, I started out by contacting the TAR's (Texas) legal ombudsman to understand how to file an ethics complaint, and to obtain the proper forms. Our conversation was surprising, as well as the information I obtained. So see what you think ... here's the scenario:

Realtor A hired me to create interactive floor plans for one of his listings, a \$3M golf-course property. The work includes a detailed property pictorial with 14 embedded photos inside of it that is integrated with an extensive room-by-room detailed description of the features and finishes of the property .... the whole package is contained in one PDF file and uploaded onto our MLS, becoming part of the agent's online MLS property listing. The fee to create these materials extends to the agent a right-to-use for as long as he is the listing agent. Once that term is resolved all usage rights revert solely to me and I retain (and register) the copyright.

Unfortunately Realtor A was dismissed without realizing a sale, and Realtor B was hired. In response to an inquiry about the property, Realtor B emailed to the inquiring party -- my floor plan drawings and 9 pages of my detailed amenities text describing the property. There is no question the materials are mine as my (registered and) trademarked logo is visible on the email as well as the copyright notice (in three places). There is no question it was sent as the email documents the transmission with time, date-stamp and the agents signature block .... including her (locally) franchised broker name and contact information.



So, is this an ethics violation and if so which part of the code of ethics is being violated (ie when filing a complaint you must identify the portion of the code that is being violated).

If you were Realtor A, would you file an ethics complaint? Why or why not?

If you were me ... the creator of the materials, would you file an ethics complaint? Why or why not?

I'll give you a chance to comment and then relay to you what the TAR told me.

=====> **This what the ombudsman told me on the phone:** =====>

**UPDATE ..** I called the TAR ombudsman to discuss filing a potential ethics violation; I needed to find out the proper procedure and obtain the necessary forms. In order to file a complaint, the procedure requires you to state (specifically) WHICH portion of the code of ethics has been violated. The lady listened carefully to my description of the events leading up to my call.

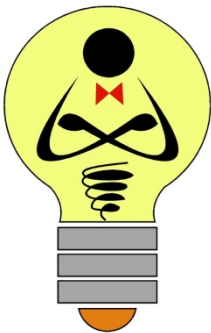
TAR: "Are the marketing materials involved a correct representation of the house/property?" she asked.

Me: "Yes they are."

TAR: "Then I don't think there is a violation... with respect to marketing materials, our code of ethics is only violated if the materials are fraudulent or misleading, and if you say the materials are correct in representing the property, then it does not sound like there is a basis for a violation.

Me: "Let me get this straight, one of your members can steal marketing materials, violate a federally registered copyright and federally registered trademark, and use these materials that they didn't pay for to market a property and become commissions payable on a transaction ... and this doesn't violate any part of your code of ethics?"

TAR: "Ok, I admit that when you put it like that ... it does sound pretty silly... BUT understand the Code of Ethics and its statutes are written to cover specific portions of the transaction ... and as far as marketing materials go... the statute requires they be a true representation of the property --- and you have said that they are true and correct. Your issue is one of property rights -- who "owns" the materials and has the right to use them -- and is best handled as a civil matter, or in federal court as you previously explained because of the copyright and trademark issues."



Me: [LIGHTBULB GOING OFF in an AHA moment!] Yes! ... what she said actually made sense ... even though it was quite contrary to my way of thinking when I got into this conversation.

TAR: She continued, "From what you told me, it seems that you would be best served in obtaining remediation through the federal courts since the copyright and trademark are both federally registered. I can help you file a complaint here, but as I explained, the source statute is not strongly in your favor and after you go through this whole process it may likely result in a warning or a small fine." [ie. "Small fine was later described as \$50-

\$150]

I thanked her for her time and THAT is how I came to be filing a lawsuit in The United States District Court for the Southern District of Texas, Houston Division; against a local Realtor.

Thanks for stopping by,

Judith, The Floor Plan Lady