

OFF-MLS AND COMING SOON LISTINGS

The real estate industry has historically marketed listings for sale in the same fashion: take the listing, put up a sign, put it in the Multiple Listing Service (MLS) and commence other marketing techniques. Industry trends are appearing that have altered these methods in some transactions. Two of these practices are Off-MLS and Coming Soon listings.

First, the definitions of each:

- **Coming Soon Listings:** A Coming Soon Listing is a listing that the Seller and listing Broker have agreed will be marketed for sale immediately, but no Buyers or Agents are allowed to view the property until the coming soon phase is complete. Reasons for this agreement vary but include the Seller is making needed repairs, the Seller wishes to move out prior to showings, or the Seller and Broker wish to build pent up demand.
- **Off-MLS Listings:** An Off-MLS Listing is a listing that the Seller and listing Broker have agreed will never be marketed in the MLS. The listing Broker uses other marketing techniques to procure Buyers for the property, just not the MLS.
- **Other names of Off-MLS listings include:**
 - Pocket Listings
 - Office Exclusive Listings

The Idaho Real Estate Commission receives calls about properties being marketed as Off-MLS and Coming Soon and offer the following guidance. There may be legitimate reasons to promote a property like this, and there are also improper reasons. The Idaho Real Estate Commission (IREC) takes no position on Off-MLS and Coming Soon listings aside from how Idaho license law may play a part. Three issues licensees need to remain aware of are **Marketing Too Soon, Failed Agency Duties and Not Presenting All Offers to the Seller.**

1. **Marketing Too Soon.** Idaho Code 54-2050 states that all representation agreements must be in writing. In order to advertise a property for sale the brokerage company must have a written listing agreement signed by the property owner(s). This is required before placing a sign on the property and before ANY marketing activities begin. This includes properties to be marketed *on and off* the MLS. A property owner's verbal agreement and promise to pay you a fee if you can bring them a Buyer but refuses to sign a listing agreement, is not a listing. Remember, the Seller(s) must sign documents giving the Broker and/or Agent permission to commence marketing in any fashion.
2. **Failed Agency Duties to a Client.** When a Brokerage is representing a Seller, Idaho Code 54-2087(4) requires the licensee to promote the best interest of the [Seller] client, and to seek a Buyer to purchase the property at a price and under terms and conditions acceptable to the

Seller.

Agency duties are mandatory and may never be waived or abrogated. Those duties are violated when the licensee does not act solely in the client's best interest.

3. **Not Presenting All Offers to the Seller.** Listing Agents need to remember Idaho Code 54-2051(1) which requires the Seller be presented every written offer to purchase as promptly as practicable. This applies to all listings, even Off-MLS and Coming Soon listings.

If the listing Agent receives an offer to purchase from a Buyer working with a different company than the listing company or outside the targeted network of selected companies and/or Buyers, they are still required to present that offer to the Seller as soon as practicable.

Aside from those statutory duties, the Idaho Real Estate Commission has no further authority over these types of property marketing. That said, additional commentary is warranted. IREC maintains there are both **proper** and **improper** uses of Off-MLS and Coming Soon listings.

1. **Proper use:** Off-MLS listings may not violate state law, REALTOR® Code of Ethics, or MLS rule. But you still:

- Must have a signed listing agreement with all property owners
- Must have a compelling reason that it is in the best interest of the Seller client
- Must have the Seller's informed consent in writing to NOT place it in the MLS or hold it out as Coming Soon
- Understand that it restricts showings and potential offers from MANY potential Buyers who would have seen it on the MLS

It is acceptable to withhold listings from the MLS at the express direction of the Seller who may have a personal interest to limiting the exposure of their property. Reasons a Seller might choose to retain the listing as Off-MLS or Coming Soon might be privacy, confidentiality, or even a desire to limit or restrict access to the property. Additionally, the Seller may wish to complete repairs or otherwise get the property in a more market ready condition while their Agent begins to market the property.

Coming Soon listings are proper when **ALL** interested Buyers must wait to see the property once the Coming Soon phase is complete.

2. **Improper use:** Off-MLS and Coming Soon listings may also be a concern if used for the wrong reasons or without the Seller's understanding the potential consequences of limited market exposure. This happens when:

- There is no signed listing agreement
- It is not in the Seller's best interest
- It is done without the Seller's written consent
- It is only shown to a select group of Buyers

This guideline is not a new law but is an agency interpretation of existing law.

For more information on this guideline, please contact:

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It is a widely known that exposing the listing to the widest possible audience for a reasonable amount of time provides the best chances for the Seller to receive the most favorable offers.

An Off-MLS listing drastically reduces its exposure to the market, which may result in the Seller not receiving the best possible offer, since potential Buyers may never have had the chance to view the property. Properties sold through an MLS typically command higher sales prices by promotion of the property to a wider range of potential Buyers. An MLS also provides an economic incentive to agents by offering compensation to buyer agents who show their clients the listed properties, which in turn brings more Buyers to the property and gives the property a wider exposure.

Encouraging a Seller to allow the listing company, team or agent to market the property Off-MLS solely for the purpose of collecting a larger commission by not cooperating with other brokers and agents is seen as placing their own personal interest above the interests of their clients.

The Idaho Real Estate Commission warns that Off-MLS listing arrangements and advertising that is used to market a property to only a select group, such as investors or Buyers represented by the listing agent, team or company, may be self-serving and constitute an agency violation.

Coming Soon listings are improper when it allows the only the listing agent and listing company to show and sell the listing during the coming soon phase, but all other interested Buyers from other companies must wait to see the property once the coming soon phase is complete.

With such a high percentage of active Idaho licensees as members of the National Association of REALTORS® (NAR), it bears mentioning NAR's Clear Cooperation Policy that imposes on its members duties to cooperate with other firms and their licensees. Additionally, MLSs have rules and policies its members must follow.

Although improper Off-MLS advertising may violate state laws and regulations, marketing property Off-MLS is not inherently wrong or illegal. If this technique is used by the listing agent or office, be sure to remember:

- You must have a signed listing contract with all the property owners and that contract gives you explicit permission to market the property Off-MLS.
- Ensure you fulfill your agency duties by promoting the Seller's best interest.
- You must present all written offers to the Seller.

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