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Sent: Friday, October 07, 2005 12:09 PM
To: ATR-Real Estate Workshop
Cc: sen.jim.metzen@senate.mn; tim.pawlenty@state.mn.us;
rep.joe.atkins@house.mn
Subject: listing copyright and creation of land owner wealth

To whom it may concern:

Enclosed please find a response to a dialogue currently being discussed on the real estate blog at "RealTalk@InternetCrusade.com"
Subject: Creation of Wealth Through Copyright:

In a previous post Jay says "Semantics":

snip <<Since the agent works for the broker to obtain listings, it would be a weak argument that the agent has any vested copyrightable interest in the data that is filled in on the brokers copyrighted form.>>

Terry Hogan responds to Jay:

Your whole premise is based on an assumption that I see as erroneous. Yes, the agent pens colorful and eloquent descriptive language and of course artfully stages each room to compose a pictorially explicit and delightful portrait for the marketplace to behold. But arguing about who owns the copyrights to such work is not the premise.

The premise is about representation. The listing agent represents the seller. As such, the agent should disclose to the seller that if the listing is published revenues may result which adds value to the listing. Further, without the seller's express written permission the subject matter cannot be published. Omission of this disclosure could be an oversight that the seller might not appreciate.

IMO the Agent is performing an independently contracted "work for hire" which cannot be published without the consent of the seller unless usurped as if in the public domain, which it is not. The agent must obtain written permission from the seller to publish the listing and the seller is paying a commission to the broker so doesn't it seem fair that the seller has more right to the work than the agent, broker, MLS, or REALTOR.com, etc.?

For a fee the seller can record the copyrights and create an additional stick for the "Bundle of Rights" that run with the land, or not. I don't know. I'm not an attorney and not trying to give legal advice so you may want to visit <http://www.copyright.gov/> and research copyright. Also, you might try <http://www.revisor.leg.state.mn.us/> or another pertinent site for state statutes on representation issues.

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