

---

---

# REAL ESTATE MATTERS

SPILE, SIEGAL, LEFF & GOOR, LLP

---

---

## **Don't Let Those Fliers Get Away From You**

Fliers and advertisements are perhaps the most customary marketing devices used by realtors in their efforts to attract interest in the properties they list. Unfortunately, as the old saying goes: "Anything you say can and will be used against you in a court of law." For this reason, considerable thought and care should go into the representations contained in all fliers, advertisements, and other marketing materials.

There are a number of representations, commonly included in marketing materials, which are particularly vulnerable to legal claims of false representations. The following is intended to identify some examples, along with means for mitigating your risks.

Marketing materials often include statements concerning square footage. It is important that disclaimers accompany any mention of square footage. These disclaimers should include: 1) the source of the information; 2) the fact that the amount stated is only an approximation which has not been verified by the realtor; and 3) a warning to all potential buyers to have the square footage independently verified. In addition, the square footage specified should always be rounded down to at least the next lowest one hundred feet. This gives you a little cushion for error should an issue arise concerning square footage.

The choice of wording used in marketing materials is also critical. First, you should be careful when using brand names which in the public's mind have become generic. An example of this would be "jacuzzi." Many call all hot tubs "jacuzzis." In reality, "jacuzzi" is a specific brand. If you advertise a hot tub as a "jacuzzi" and it turns out to be another brand, you could be sued for a false representation.

Another example is the use of adjectives to describe some element of the property. It is dangerous to use absolute terms such as "best," "finest," "greatest," and "new." An unscrupulous attorney could make an argument that such a representation led the buyer to purchase the property under the belief that the item(s) were the "best" or "new." Rather than using absolutes like "best" it is safer to use terms like "beautiful," "great," and "nice." These types of terms are subjective, and allow for the possibility that may be something better. Similarly, since an argument can always be made that something is not "new" (i.e., it may be a day, a week or a month old), it is better to use words such as "newer," which allow for such distinctions.

---

---

# REAL ESTATE MATTERS

## SPILE, SIEGAL, LEFF & GOOR, LLP

---

---

Specifying a value for fixtures or other items at the property will create additional risks. There is no certainty as to the measure of value. Is the value based upon the purchase price? Is it based upon its resale price? Who provided the estimate? For these reasons, it is dangerous to include such statements as “sale includes a chandelier worth \$2,000.”

With respect to all representations contained in the marketing materials, it prudent to take steps to independently verify all information. In addition, you should consider including a disclaimer similar to: “The information contained in this flyer is unverified. Potential buyers should take all steps necessary to satisfy themselves regarding the information contained herein.” With this type of disclaimer, you will have at least shifted some of the burden to the buyers in the event a claim arises regarding one or more of the representations contained in the marketing material.

As a final consideration, you should always have your clients, the sellers, sign a copy of all marketing materials before they are disseminated. In this regard, have them write in their handwriting: “I have reviewed this document. I verify the information contained herein and approve the dissemination of this to the public.” This will protect you on two levels. First, it will help to defeat any claim that your client may make regarding your marketing materials. Second, it will provide strong evidence that you acted in good faith in obtaining the information which you used to market the property.

By integrating the foregoing measures into your marketing efforts, you can successfully market your properties, without taking unnecessary risks in the process.