

# Rockin' It Legally



## BUILDING UP BUSINESS

FLORIDA REALTORS® 2022

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General Counsel

# FLORIDA ADMINISTRATIVE CODE & FLORIDA ADMINISTRATIVE REGISTER

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# Advertising

61J2-10.025

- All real estate advertisements **must include the licensed name of the brokerage firm.**
- No real estate advertisement placed or caused to be placed by a licensee shall be **fraudulent, false, deceptive or misleading.**

- When the licensee's personal name appears in the advertisement, at the very least the **licensee's last name must be used.**
- When advertising on a site **on the Internet, the brokerage firm name** as required in subsection (1), above, **shall be placed adjacent to or immediately above or below the point of contact information.**



Advertising: Misleading?

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Advertising:  
Misleading?

- Arguably misleading, since the actual property has a large water tower immediately adjacent to it, and the photo has been edited to make the lawn green

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# Advertising

61J2-10.026

- In advertisements containing the team or group name, **the team or group name shall not be in larger print than the name of the registered brokerage.**
- **Team names may not include** words that suggest the team is a brokerage company. Specifically prohibited words include:

Agency, **Associates**, Brokerage, Broker, Company, Corporation, Corp., Inc., LLC, LP, LLP, Partnership, **Properties, Property, Real Estate, Realty**



*The Power Team*  
**Ken & Chuck**

Voted 8<sup>th</sup> Best  
Real Estate Team



**OPEN HOUSE**

Twice the Experience *AND* Expertise • #kenandchuck

Advertising:  
Team Rule?

# Advertising: Team Rule?

Missing brokerage firm name,  
which should be the same  
size or larger than the team  
name





# Copyright Infringement



# Copyright Lawsuits

- How it starts? You choose the “perfect picture” for your ad off the internet, i.e. a sunset by a popular local bridge or a shot of the beach filled with tourists enjoying the Florida sun.
- What happens next? You receive a “Cease and Desist” letter, along with a demand for payment for use of photos owned by another person or entity, like Getty Images.
- Then what? Check the image in question. Is it owned by the person who sent the demand letter? If so, remove it from your website. Attempt to negotiate a lower fee and possibly consult your own attorney, but don’t ignore the letter!



# Copyright Lawsuits

via physical mail and email

[REDACTED]  
Miami Beach, Florida 33139  
United States

[REDACTED].com

**Image License Validation for Agence France-Presse - Reference Number:** [REDACTED]

Dear Business Owner,

As an introduction, PicRights Ltd. ("PicRights") provides licensing compliance services to third-party content owners, including Agence France-Presse. Please note that PicRights is not a law firm and I am not a lawyer. PicRights has noticed that imagery represented by Agence France-Presse has been displayed on your website. Agence France-Presse has been unable to find a license for this usage of the imagery by your company. Therefore we are acting on behalf of Agence France-Presse to obtain compensation for your unauthorized past use of their imagery.

*At the end of this message, we've attached a visual reference of the imagery and its use on your website.*

Our goal in contacting you is to ascertain if you hold an active license for this use with Agence France-Presse or with any other entity authorized by Agence France-Presse to license and distribute the imagery:

- If you do have an active license for the use of this imagery, we kindly ask you to send us your valid license / authorization, by visiting [https://resolve.picrights.com/\[REDACTED\]](https://resolve.picrights.com/[REDACTED]) and clicking the "I have a license..." link; or
- If you do not have an active license for the use of this imagery, we request that you remove the imagery from your website.



# Copyright Lawsuits

- Please be aware that removal of the imagery alone will not resolve this issue. We also require payment of compensation in the amount of \$710.00 for the past unauthorized usage of the imagery.
- Please contact us to resolve this matter at +1 888 367 7778 or [resolve@picrights.com](mailto:resolve@picrights.com) or by visiting: <https://resolve.picrights.com> [REDACTED].

We would like to resolve this time-sensitive issue as soon as possible and request that you respond within 14 days from the date of this correspondence.

If you believe you have received this notice in error or have questions, please contact us with your reference number [REDACTED] at +1 888 367 7778 or [resolve@picrights.com](mailto:resolve@picrights.com).

On behalf of PicRights and Agence France-Presse, we thank you for your cooperation and look forward to assisting you in resolving this matter.

Sincerely,

Ahmer Hussain, LL.B.  
+1 888 367 7778 x3097  
Compliance Officer  
**PicRights Ltd.**  
[resolve@picrights.com](mailto:resolve@picrights.com)



# Copyright Lawsuits

- What about IDX and feeds?
- The Digital Millennium Copyright Act, or DMCA, which was passed in 1998, may offer some protections when posting third-party content. The DMCA is a federal law that provides a “safe harbor” to avoid some copyright infringement claims, ***but certain procedures must be met.***



# Copyright Lawsuits

- **Include a notice at your site.** Inform website users of your copyright policy and include it within your website's terms of use. View an example under the "Digital Millennium Copyright Act (DMCA)" section at [nar.realtor/terms-of-use](https://www.nar.realtor/terms-of-use).





# Copyright Lawsuits

- **Designate a copyright agent.** This person will be responsible for receiving any takedown notices in case of copyright claims and will need to be listed as a contact and copyright owner on your website, along with their contact information. Also, register the copyright agent with the Copyright Office.



# Copyright Lawsuits

- **Comply with the DMCA's takedown procedure.** After receiving any takedown notice due to a copyright allegation, promptly remove the content in question. Then, notify the person filing the complaint of its removal.

The image features a central white diamond shape containing the text "Fair Housing". This diamond is framed by a blue border and is set against a background of overlapping geometric shapes in shades of blue, grey, and yellow. The overall design is modern and minimalist.

Fair Housing

# Fair Housing Act: An Overview

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- Discrimination against a protected class can take many forms
  - it's not just a matter of avoiding certain words
    - Denying or limiting services
    - Setting different terms or conditions (requiring preapproval, identification)
    - ***Advertising a preference, limitation, or discrimination*** children)



# FHA Greatest Hits



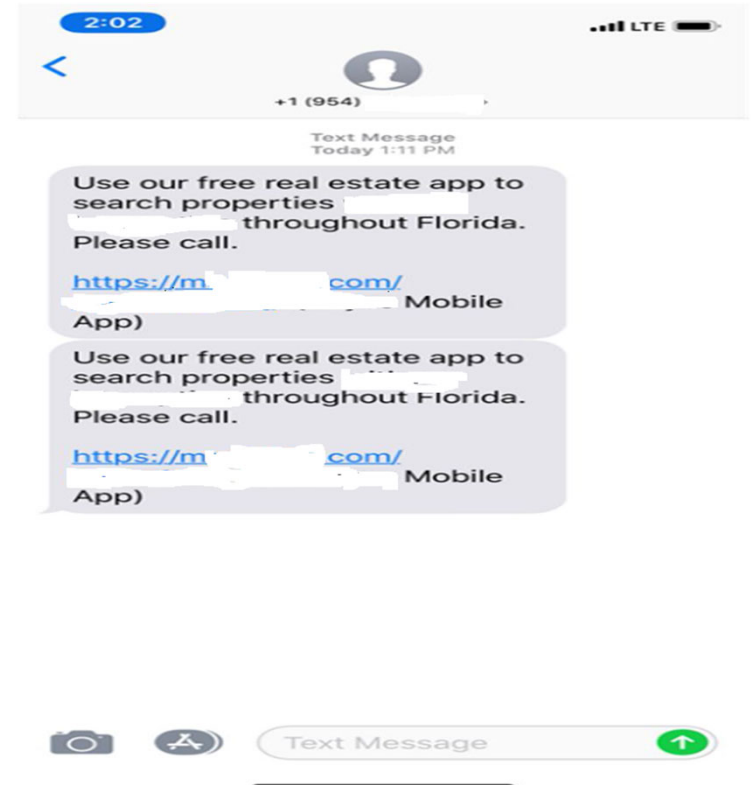
- Screening Tenants for Criminal History
- Source of Income
- Website Accessibility
- ASSISTANCE ANIMALS



Text Messaging

# The Smoking Gun

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# Telephone Consumer Protection Act (TCPA)

- Led to creation of the National Do Not Call Registry
- Prohibits sending text messages using auto dialers without consumer consent and ability to opt out
- Regulations also cover robocalls and faxes
- Can be enforced by private lawsuit, FTC, FCC, or the state of Florida
- Penalties of up to \$1,500 per violation



# Telephone Consumer Protection Act (TCPA)

- Consent to receive texts sent using an auto dialer is required
  - Telemarketing texts require signed consent; non-telemarketing texts require prior express consent
- Best practices when obtaining consent
  - Use clearly stated consent forms and keep a record
  - If verbal consent is used for non-telemarketing texts, follow up with written confirmation
  - Include consent language on forms

# Telephone Consumer Protection Act




**NAR Legal Affairs**

**TCPA**  
QUICK REFERENCE GUIDE

Before you contact a consumer, make sure you have the proper consent under the Telephone Consumer Protection Act (TCPA).

Contacting a consumer on their	Using this type of technology	With this kind of message <b>MARKETING INFORMATION</b> Needs this type of consent	
 CELLPHONE	Auto-dialed calls and texts	Prior express <u>written</u> consent*	Prior express consent, oral or written
	Artificial or pre-recorded voice	Prior express <u>written</u> consent*	Prior express consent, oral or written
 RESIDENTIAL LANDLINE	Auto-dialed calls	None required	None required
	Artificial or pre-recorded voice	Prior express <u>written</u> consent*	None required



Questions?  
Thank you!

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