

WHAT IS “SCRAPING?” IF YOU DO IT, YOU COULD BE IN TROUBLE!

By Jim Hochman

A recently filed IDFPR license complaint crossed my desk, and I will be defending this well-meaning, and apparently innocent out-of-state real estate broker. My new client is accused of deceptive advertising and unlicensed practice, and our state’s regulatory folks take a dim view of each.

“Scraping,” defined at IDFPR Rule 1450.720(a)(5), can include taking another broker’s listing or advertising materials and altering them so they appear to be your own, thereby advertising the available property without attribution of the listing to the actual listing broker. Chicago brokerage lore describes an old time industrial broker known for “cutting and pasting” his competitors’ listings, back when this meant literally cutting out the true listing broker’s name and pasting in his own name and contact information. This was, I am told, accomplished with scissors and a photocopier, and was, allegedly, done so consistently that this alleged perpetrator was removed from his competitors’ mailing lists. The reasoning was explained to me as “If we don’t give him our brochure, he won’t change it, or at least we will make it harder for him to appear to list the properties that we actually list.”

Today, scraping is easier. Listing materials are distributed electronically, and the materials can, I am told, be edited by wily brokers who would distribute the materials to their own buyers, or post the edited materials on their own websites. Remember, the broad definition of advertising, under the Illinois Real Estate Broker License Act 225 ILCS 454/10-3 indicates that advertising includes communication in print, on the internet, or in any other medium.

so your listing materials, and the contents of your website (containing other brokers’ listings) constitute advertising. If you appear to list property when you offer it for sale or lease, and in fact you and your firm do not have the owner’s written authorization to market that property (read that as an exclusive or even an open listing agreement), you may be courting buyers or tenants, but you are also courting disaster. Discipline rendered by IDFPR for deceptive advertising has, in the recent past included fines, published discipline, and other sanctions. Moreover, a practice such as this could be considered to violate the NAR’s Code of Ethics (Article 2, 12 and 16) and SIOR’s Code of Ethical Principals and Standards of Professional Practice which prohibit deceptive advertising (Principals 2, 10, and 14).

It can get worse. If you were scraping a listing of a property located in a state where you are not licensed, the complaint might be expanded to include unlicensed practice. As it was explained to me by one well-meaning state prosecutor “In our state, you can’t list property located here without either an IL license or a co-listing agreement with an IL licensee. If you are co-listing a property, the advertising should contain the IL broker’s name and contact information.

In the market segment of selling commercial properties subject to triple net leases, you can find all sorts of properties available, offered by brokers who may or may not have an office in and may or may not be licensed in the state where the listed property is located. In the relatively small sample size of my own client’s website, where he properly offers other brokers’ triple most leased properties for analysis and sale – with proper attribution to the listing broker of course, I found several offerings of property where the “listing broker” held no license in the state where the property was located. Anyone with a computer can go to a real estate commission’s website and with “License Lookup,” determine who has or doesn’t have a license.

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My own client's clear statement on his website that he doesn't list property, and that he only represents buyers from his office in his home state of licensure, will likely close the file and resolve the complaint. However, on the chance that either you or someone in your firm are either "scraping" or advertising property without proper authorization and proper license, well folks, it's pretty obvious this could lead to discipline. Managing brokers in IL are held responsible for all of their firm's advertising. You are well advised to make sure there is no scraping and no over-reaching coming out of your shop. ▽

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Please reach out to me and let me know how I can help you. We will find the best and individual solution for you and client.

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