Austin Board of Realtors launches photo copyright program

At a time when allegations of copyright infringement of listing photos seem to pop up again and again, the Austin Board of Realtors has launched a program the trade group says protects agents and brokers as well as photographers.

ABoR debuted its Verified MLS Photography Partner Program (VMP3) in January. Through the program, photographers agree to license their photos to the Board of Realtors' multiple listing service in perpetuity, making members who use their services a third-party beneficiary of the licensing agreement.

Stan Martin

That means a member who uses a photographer's services can use the photographer's photos on marketing materials for the property (such as fliers and postcards) and on social media and on third-party sites like Zillow and realtor.com, according to Stan Martin, ABoR's MLS director. ABoR has 13,000 agent, broker and appraiser members and its MLS covers the 18-county Central Texas region.

"The terms of service offered by most real estate photographers do not license use for the many ways in which Realtors routinely use the photos they purchase. ABoR's Verified MLS Photography Partner Program is a great example of a Realtor association stepping up in a big way to protect its members," said Jonathan Boatwright, ABoR board member and broker-owner of RealtyAustin, in a statement.

"RealtyAustin agents now only use Verified photographers to support photography protections in the ABoR MLS and throughout our industry," he added.

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Real estate listing photos appear to be the subject of increasing legal skirmishes in recent years, notably in a now nearly-three-year-long legal battle between real estate photography firm VHT and real estate giant Zillow Group. While VHT did not name any agents, brokers or MLSs as defendants in the case, purporting to license photos under rights they don't have could land real estate pros in legal hot water in the future.

"The national discussion about who owns real estate photos when they're added to the MLS was a catalyst for the Austin Board of Realtors to rethink best practices," said Emily Chenevert, ABoR's CEO, in a statement.

"ABoR understands the liability facing Realtor members, and we'll continue to seek proactive solutions to mitigate risk."

Earlier this month, in another attempt to avoid expensive litigation, the board of directors of the National Association of Realtors passed policy changes for Realtor-affiliated MLSs that created a process for resolving complaints of unauthorized use of listing content before a broker can pursue legal action, but Martin noted that MLS policies do not apply to third-party photographers who are not members of an MLS.

Under ABoR's program, photographers continue to own the images and no restrictions are placed on their use by the MLS, Martin told Inman via email. At the same time, the photographers agree to infringement procedures which require written notice to the MLS and allow the MLS a "cure" period to work with members to resolve, Martin said.

“It protects our members and the MLS from infringing on a photographer’s copyright,” he said.

If a third party misused a listing photo, ABoR would help mediate disputes between program photographers and ABoR members, but ultimately, “the owner of the copyright would be responsible for enforcing,” he added.

ABoR promotes the photographers who join the program as “a Verified MLS Photographer” and so far nearly 70 have joined, according to ABoR. The association touts the program as “helping to create an orderly marketplace for all parties involved.”

“Most MLSs have implemented new MLS Participant and Subscriber agreements to address photo copyright concerns, placing the burden on listing agents to ensure they have appropriate use permissions,” Martin said.

“A few have created separate agreements directly between the MLS and photographers modeled after [Northwest MLS]. We believe we have taken this idea to the next level by creating a branded program that can be sustained and provide value to both photographers and our members.”

Email Andrea V. Brambila.

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