

When Farming Goes Too Far: Expired Listings and CRMLS Rule 12.11

Edward Zorn, Vice President and General Counsel, CRMLS

I was sitting in Graziano's pizzeria for a birthday celebration for my father-in-law when my sister-in-law barreled into the restaurant and went into a tirade about agents that kept calling her. She received over a dozen telephone calls, the vast majority being robo callers, since her property had expired from the MLS earlier that morning. The few telephone calls that she'd decided to answer resulted in awkward conversations with agents who clearly knew nothing about her property, and in her opinion did not know what they were doing. (She was a REALTOR® about 10 years ago.)

Unfortunately, her experience is very typical for a homeowner that has a listing either expire or cancel from the MLS.

What many agents don't realize is that contacting a seller because their listing has either expired or canceled in the MLS is a violation of CRMLS Rule 12.11 (emphasis added):

"12.11 Use of MLS Information. In recognition that **the purpose of the MLS is to market properties** and offer compensation to other Broker Participants and R.E. Subscribers for the **sole purpose of selling the property**, and that **sellers of properties filed with the MLS have not given permission to disseminate the information for any other purpose**, Participants and Subscribers are **expressly prohibited from using MLS information for any purpose other than to market property to bona fide prospective buyers or to support market evaluations** or appraisals as specifically allowed by Sections 12.14, 12.15 and 12.16. MLS information may also be used to develop Statistics, Market Condition Reports, and Broker or Agent Metrics. Any use of MLS information inconsistent with these sections is expressly prohibited. Nothing in this section, however, shall limit the MLS from entering into licensing agreements with MLS Participants and Subscribers or other third parties for use of the MLS information."

Trolling expired or canceled listings in an effort to secure a new listing clearly falls outside of the permitted uses of MLS information pursuant to rule 12.11. My sister-in-law did not agree to have her property listed in the MLS so that it would be easier for an agent to get new business. She placed her home in the MLS in an effort to secure a buyer that might be represented by a different agent than hers.

Agents, or worse, computers, that call her are not gaining an upper hand in securing her business. What they are very successful in doing is angering her as a seller, and greatly diminishing her respect of the REALTOR® community.

At the California Association of REALTORS® spring conference in 2018, Elizabeth Miller-Bougdanos, the C.A.R. staff attorney to the MLS community, provided a legal update at the MLS Committee. She mentioned in passing that agents soliciting for new business could not use expired listings. The room instantly was abuzz with conversation. Many of the agents in the room appeared to be in shock. Elizabeth pointed out that this has always been the rule and is very obvious from the clear language of the rule. She was surprised that a room full of skilled, experienced REALTORS® who were in C.A.R. leadership found such an obvious statement to be controversial.

As a result of the confusion generated at the spring meetings, CRMLS convened a task force to investigate the issue to consider alternatives to this well-established rule.

The CRMLS task force, made up entirely of active and working agents and brokers, sought input from each of their local Association MLS committees and Boards of Directors. They brought these comments and insights back to a number of task force meetings exploring if any of the language in the rules should be modified.

After an evaluation of some truly appalling stories of actions taken by agents attempting to secure a new listing, and after weighing those negative impressions against the somewhat common practice of marketing directly to expired listings, the task force concluded that there was no need to modify or change the existing rule as written.

The task force decided that the language within rule 12.11 does prohibit agents from marketing to expired listings. However, they directed the CRMLS Compliance Department not to issue Citations for any alleged violations for that practice. They determined that marketing to expired listings is a very fact-sensitive allegation and would most appropriately be addressed by either the seller or their prior listing agent reporting those solicitations to their local Association for a disciplinary hearing.

By proceeding in this manner, a local Association's Professional Standards hearing panel would have the ability to fine up to \$15,000 for any violation of Rule 12.11.

The CRMLS Compliance Department still routinely receives complaints and reports of agents soliciting sellers as a result of their homes going to an expired or canceled status. CRMLS recommends in each of those instances that the reporting party immediately file a complaint with the local REALTOR® Association or Board of the violating member.

Additionally, I have personally fielded numerous calls from sellers who have contacted the MLS complaining about the aggressive behavior and invasion of their privacy and personal space from agents soliciting their expired listing. A number of these sellers have even threatened lawsuits. Many expressed their frustration and open regret of ever having listed their property in the MLS.

These activities, and the increased aggression in going after expired listings, has resulted in a very negative impact and the lowering of the reputation of the overall real estate community in our area.

Soliciting expired listings is a violation of the rule, and the practice needs to be stopped.

Please remember that the MLS exists to help brokers cooperate with one another in assisting established clients in buying and selling properties. The MLS does not exist as a shortcut or method for you to obtain a new client.