

**VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
REAL ESTATE COMMISSION**

In re Vermont Real Estate }
Information Network, Inc. } 2009 - 1 - 808 - Declaratory - REC

DECLARATORY RULING

INTRODUCTION:

On 10 April 2009, the Vermont Real Estate Information Network, Inc (“VREIN”), filed a request for declaratory ruling with this State Agency (the “Commission”) pursuant to the Administrative Procedure Act. *See* Chapter 25, Title 3.

VREIN’s request for Declaratory Ruling originally raised issues and sought guidance related to the use of “MLS compilations” of real estate listings intended for individual customers. VREIN submitted documents in support of its petition and gave testimony before the Commission on 23 April 2009. VREIN’s counsel also supplemented the record with representative MLS compilations.

QUESTION:

VREIN supplemented the record with exhibits in a letter dated 15 May 2009. VREIN also modified its question to address directly the issue of REC Rule 4.12’s applicability. *See* 3 V.S.A. §808. As presented to the Commission and upon review of the record, the Commission interprets VREIN’s question follows:

Is a unique and non-publicly disclosed MLS compilation of properties that:

- 1. is generated at the request of a client or customer who received the mandatory real estate consumer disclosure required by REC Rule 4.6; and*
- 2. is generated for the benefit of the specific client or customer; “advertising” for purposes of Real Estate Commission Rule 4.12.*

REC Rule 4.12 requires every “real estate advertisement [to] prominently indicate the brokerage firm’s registered name.” The ultimate question, for which VREIN’s seeks a ruling, is therefore whether the particular types of compilations at issue require a “prominent” display of the brokerage firm’s name.

VREIN filed its request pursuant to 3 V.S.A. § 808 (Process to obtain declaratory judgment on applicability of Real Estate Commission administrative rules), which allows

the Real Estate Commission to determine “the applicability of any statutory provision or of any rule or order of the agency . . .” A declaratory ruling has the same legal status under the Administrative Procedure Act as an agency decision rendered in a contested case pursuant to 3 V.S.A. § 809.

ANSWER:

In light of the evidence in the record provided by the Petitioner and considering the question as outlined in this Ruling and supported by the specific facts presented by VREIN, the Commission rules as follows:

A unique, non-public MLS compilation of properties is not advertising for purposes of Rule 4.12 under the following conditions:

1. The compilation of properties is generated at the request of a client or customer; who
2. Received the mandatory consumer disclosure form outlining the relationship between the licensee and the client or customer; and
3. The list is generated for the specific client or customer only.


The Real Estate Commission bases this declaratory ruling solely on the evidence entered into the record by VREIN.

This declaratory ruling is binding on VREIN, and this ruling has the same the same legal status as an agency order in a contested case. *See* 3 V.S.A. § 808.

- END -

Vermont Real Estate Commission

By:


Chairperson

Dated at Montpelier: 8/20 2009

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: _____