



DISPLAYING PROPERTY PHOTOS: A CRITICAL Q & A

WHAT DO I NEED TO KNOW? You must have the legal right or copyright to a photograph before displaying it on a listing.

WHAT DOES THIS MEAN? Before you display a photo on a listing or give it to the MLSLI to display, you either have to be the copyright owner of the photo or have the permission of the copyright owner.

WHAT IS COPYRIGHT? The person who takes a photograph is the legal owner of the photo and has the exclusive copyright to that photo.

WHY DO I NEED TO KNOW THIS? Licensees have significant and costly legal exposure if they use photos to which they don't own the copyright or legal right to use the photo.

WHO OWNS THE LISTING PHOTOS? Whoever took the photo owns it. If the homeowner took the photo, the homeowner owns it. If the agent took the photo, the agent owns it. If the photographer takes the photo, the photographer owns it.

CAN AN AGENT/BROKER USE A PHOTO THAT SOMEONE ELSE TOOK? Yes, but only with written permission from the person who took the photo.

WHAT IF THE AGENT/BROKER USES THE PHOTO WITHOUT PERMISSION FROM THE PERSON WHO TOOK THE PHOTO? Then the agent/broker can be sued for copyright infringement and face costly legal fees.

HOW CAN AN AGENT/BROKER GET PERMISSION TO USE A PHOTO OF A LISTING THAT A HOMEOWNER TOOK? If a homeowner takes a photo of the listing, the MLSLI listing agreement already contains language whereby the homeowner gives the agent/broker and the MLSLI the permission to use the photo.

HOW CAN AN AGENT/BROKER GET PERMISSION TO USE A PHOTO THAT A PHOTOGRAPHER TOOK? MLSLI has available for you two common types of agreements that can be used when you hire a photographer to take photos of a listing.

WHAT ARE THE TWO TYPES OF AGREEMENTS?

1. "Assignment" Agreement: The photographer assigns all rights, title and interest in the photos to the broker/agent.
2. "Exclusive License" Agreement: If a photographer wants to retain ownership in her photos, the photographer grants to the broker/agent an exclusive license to display and distribute them in connection with the real estate industry.

WHERE CAN THE AGENT/BROKER GET THESE PHOTOGRAPHY AGREEMENTS? Go to LIREALTOR.COM under “Documents on Demand” and look for each of the Two different types of Agreements (Assignment Agreement and Exclusive License Agreement).

ARE THERE ANY OTHER REASONS WHY I NEED PERMISSION FROM THE PERSON WHO TOOK THE PHOTO TO USE THE PHOTO? Yes. In the Participant Agreement that the Broker signed with MLSLI and in the Subscriber Agreement that the Agent signed with MLSLI, both the Broker and the Agent warranted that they had the legal rights to submit the photos to the MLSLI for publishing with the listings and to third party portals such as Realtor.com.

CAN AGENTS/BROKERS ALTER THESE PHOTOGRAPH AGREEMENTS? Agents/brokers should not modify the Agreements. Only their attorneys should modify the Agreements, as necessary.

WHAT IF ANYTHING CAN THE AGENT/BROKER WRITE IN THE AGREEMENT? The agent/broker can write in the space provided the date, the name of the broker/agent signing the agreement, and the fee charged by the photographer.

CAN THE AGENT/BROKER USE THE PHOTOGRAPH AGREEMENTS AS IS OR MUST THEY BE REVIEWED BY AN ATTORNEY? You should not use these documents unless they are reviewed by your attorney. These documents are samples only and do not constitute legal advice or opinion.