

TRUTH IN ADVERTISING

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It should just be a simple matter. Tell the truth. But, the truth is, it isn't. What is the truth? A police officer once told me that when he arrives at the scene of an accident and is tasked with determining what happened and who may have been at fault, he begins with the knowledge that one party will have their version of what happened, the other party often has a different version of what happened. And, there is a third version of what happened – which is the truth.

What about “white lies”? Is it ever OK to not tell the truth, the whole truth and nothing but the truth? I can tell you one thing for certain: you cannot remain married for 43 years as I have by telling the truth about how your wife's dress looks on her.

If we are on our best behavior in the presence of guests or strangers, and we suppress our true feelings, thoughts, and behaviors, are we “liars, liars, pants on fire?” Or, should we just tell the truth all the time: “golly Aunt Nellie, this casserole is horrible.”

And what about truth in the business world – in advertising a product or service for sale or lease? Do we present things in their “best light”, at the “peak of freshness”, with great showcases and beautiful models in spectacular locations? What about the practice of “bait and switch”? Do we hear misleading claims about strength, durability, strength, portability, cost savings, beauty enhancement, health inducing products, and on and on. We are all being lied to constantly, all day and every day to one degree or another. We seem to thrive on being told that we are going to save money and time, lose weight and anxiety, break bad habits, and become more beautiful and wealthy simply by purchasing the right products and services.

In the real estate business, there is a special term reserved for the exaggerations we use to describe real estate to enhance its appeal: “puffing” – as in puffing up a pillow to make it look better. Extravagant claims made by sellers and their agents for the purpose of attracting buyers happen in many arenas – but real estate seems to be one of it’s most popular subscribers.

Best house ever! Fantastic, huge, beautiful, cozy, quaint, safe, secure, super! These extreme expressions of opinion and/or exaggeration are just a few puffing terms that are often used. Puffery is usually a statement made by a salesperson or found in an ad regarding the quality of the item or the service offered. It is more of an opinion than a fact, which is why it is usually not considered binding or against the law. Puffing is legal as long as the statements are not fraudulently misrepresenting something.

In addition to puffery with words, pictures and videos are also now being puffed. Photoshop has enabled us to not only enhance our photographs to make them look as good as they can by improving resolution, making them brighter and just generally sprucing up reality. The problem comes when it is taken a step further to actually change the image in a way that is misleading or just plain fraudulent. Cutting a person (often the photographer) out of a photograph that was taken in front of a mirror for example, is not fraud. Taking out something unattractive like a telephone pole or power lines, or a dead tree on a property is going too far. Enhancing a sunset – probably OK, cutting and pasting in a landscape view that doesn’t really exist – blatantly fraudulent.

Both the National Association of REALTORS® (NAR) and the Maryland REALTORS® Code of Ethics prohibit licensees and REALTORS® from advertising in a misleading or untruthful manner. In other words, you must be careful at all times to present a true and accurate picture in your advertising and representations to the public.

NAR Code of Ethics - Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations.

The Federal Trade Commission (FTC) governs all forms of advertising on a wide range of products and services that require Truth in Advertising:

When consumers see or hear an advertisement, whether it's on the Internet, radio or television, or anywhere else, federal law says that ad must be truthful, not misleading, and, when appropriate, backed by scientific evidence. The Federal Trade Commission enforces these truth-in-advertising laws, and it applies the same standards no matter where an ad appears – in newspapers and magazines, online, in the mail, or on billboards or buses. The FTC looks especially closely at advertising claims that can affect consumers' health or their pocketbooks...

<https://www.ftc.gov/news-events/media-resources/truth-advertising>

“If you tell the truth, you don't have to remember anything.”

- Mark Twain

DISCLAIMER

John P. Hale is a licensed real estate agent in Maryland and Pennsylvania. He is affiliated with Coldwell Banker Residential Brokerage in Westminster, Maryland. John has been licensed since 2000 and also practiced in Tucson, Arizona for many years. Mr. Hale holds the following designations and certifications awarded by the National Association of REALTORS® (NAR) and other authorized institutions: ABR-Accredited Buyers Representative, AHWD-At Home With Diversity, CNE-Certified Negotiation Expert, CRMS-Certified Risk Management Specialist, CRS-Certified Residential Specialist, CTA-Certified Tourism Ambassador, e-PRO-Online Real Estate Practice, GRI-Graduate of Realtor Institute, MRE-Master of Real Estate, MREP-Mortgage Real Estate Professional, MRP-Military Relocation Professional, and Workforce Housing Certification.

Please note that this article was written by John to provide objective information and to also reflect his opinion of good practice at the time of its' writing for the general benefit of those considering sale or purchase of real estate. It is not intended as definitive legal advice and you should not act upon it as such without seeking independent legal and financial counsel. Frequent changes in the law and standards of practice may cause this information to become outdated and no longer applicable or incorrect.