

## SEPTIC PERMITS AND NUMBER OF BEDROOMS

An issue has arisen regarding how agents should deal with determining the number of bedrooms for homes that are on septic. Below is a thumbnail summary which discusses several laws which could come into play if an agent knowingly advertises a home as having more bedrooms than it is permitted to have. For example, the agent KNOWs that a home is permitted to have 3 bedrooms, but advertises that it has 5 bedrooms.

### I. Tennessee Consumer Protection Act

#### A. New Construction

1. Tenn. Code Ann. § 47-18-104(b)(42)
  - a. Is applicable only to newly constructed residences
  - b. Removes constructive notice
  - c. Allows agents to rely upon information provided by sellers
  - d. Prohibits knowingly advertising homes as having more bedrooms than they are permitted to have

#### B. All Homes

1. Tenn. Code Ann. § 47-18-104(a)
  - a. prohibits unfair or deceptive acts or practices which affect conduct of trade or commerce
  - b. is a Class B misdemeanor
2. Tenn. Code Ann. § 47-18-104(b)(27)
  - a. cannot engage in any act or practice which is deceptive to the consumer or to any other person.

#### C. Penalties

1. Criminal implications (Class B misdemeanor)
2. Treble damages (multiply damages by 3)
3. Attorney's fees and costs

### II. Broker's Act

#### A. Misrepresentation

1. Tenn. Code Ann. § 62-13-312(b)(1)
  - a. prohibits substantial or willful misrepresentations
2. Tenn. Code Ann. § 62-13-312(b)(3)
  - a. prohibits pursuing a continued and flagrant course of misrepresentation
  - b. prohibits making false promises in advertising
3. Tenn. Code Ann. § 62-13-312(4)
  - a. prohibits engaging in misleading or untruthful advertising

#### B. Adverse Facts

1. Tenn. Code Ann. § 62-13-403(2)
  - a. requires disclosure of adverse facts of which agent has actual notice or knowledge
  - b. adverse fact is defined as "conditions or occurrences generally recognized by competent licensees that have a negative impact on the value of the real estate, significantly reduce the structural

integrity of improvements to real property or present a significant health risk to occupants of the property.” Tenn. Code Ann. § 62-13-102(2)

## II. NAR Code of Ethics

### A. Article 12

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

## III. Septic requirements.

### A. Permits

- B. Application requires that there be a disposal field with a minimum of 370 sq. feet for each bedroom

## IV. Common Law

### A. Intentional Misrepresentation

#### 1. Elements

- a. intentionally misrepresents material fact or produces false impression;
- b. done in effort to mislead another or obtain undue advantage;
- c. misrepresentation made knowing that statement was false
- d. fraudulent intent;
- e. must be of an existing fact that is material; and
- f. person must have reasonably relied upon information and have been injured.

### B. Negligent Misrepresentation

#### 1. Elements

- a. a person who in the course of business, profession or employment or in a transaction in which he has a pecuniary (monetary) interest
- b. supplies false information to guide others in their business; and
- c. does not exercise reasonable care or competence in getting or communicating the information

#### 2. Tenn. Code Ann. § 62-13-403(1)

- a. agent must diligently exercise reasonable skill and care in providing services to all parties